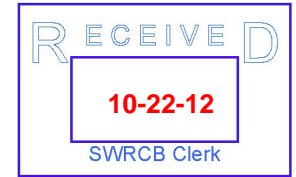




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October 22, 2012

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Subject: Comment Letter – Industrial General Permit

Dear Members of the State Water Resources Control Board:

We appreciate the opportunity to review and provide comments on the Draft California Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Draft Permit), dated July 16, 2012. The State of California Auto Dismantlers Association (SCADA) is the statewide trade association for the professional auto dismantling and recycling industry with approximately 200 members within 6 local chapters and Direct Membership Areas. SCADA was founded in 1959 to serve the members with education, regulatory, and business activities. Our members are recycling facilities that sell used vehicle parts under Standard Industrial Classification (SIC) Code 5015.

Licensed auto dismantlers provide an essential service that directly addresses society's ever increasing problem of what to do with end-of-life vehicles (ELVs). An estimated 1.3 million vehicles will reach the end of their useful lives this year in California, either by determination of their owners or by being declared a total loss by an insurance company. While those vehicles might otherwise end up on the roadside or abandoned in empty lots, licensed dismantlers acquire them and safely convert them into reusable/recycled commodities.

Component parts are tested and examined to determine which can be reused or recycled. Fluids are extracted and properly recycled. The reusable parts are removed, cleaned, catalogued and stored. They are then sold to repair other cars at a savings of up to 80% over the cost of new parts. Recyclable materials are sent to a processor, and manufactured into new products. There are about 1,100 dismantlers licensed by the California Department of Motor Vehicles.

SCADA members support responsible recycling, worker safety, and environmental protection. SCADA promotes the proper handling and disposal of all automotive-related hazardous materials, including gasoline, oil, freon, antifreeze, brake fluid, transmission fluid, batteries, mercury switches, and tires. In 2001, SCADA committed to the industry's premier certification program within the United States. The Partners in the Solution® program was developed to help SCADA members improve regulatory compliance and to motivate facility operators to meet the nation's highest environmental and safety performance standards. This proactive, industry led approach assists members in complying with the complicated set of environmental, safety, and business regulations that face California auto dismantlers. SCADA underscored its commitment by becoming the only recycling industry trade association in the United States to make its certification program mandatory for all members.

As discussed in our testimony at the October 17 hearing, the auto dismantling industry faces severe challenges from unlicensed and unregulated operators who can pay more for salvage vehicles because they do not spend money on measures to protect the environment, including complying with the General Permit. Complying with this new permit would double or triple our current compliance costs, which will further fuel the competitive advantage that unlicensed and unregulated operators have against those of us attempting to comply with the permit.

We have significant concerns about the impacts of the Draft Permit on the auto dismantling industry. We offer the following comments for your consideration:

Stormwater Sampling

We note that the State Board intends to promulgate Numeric Effluent Limits (NELs) in the future, and possibly sector specific permits. The State Board acknowledges that it does not have the information necessary to achieve these goals: the storm water sampling data that have been collected over the past two decades are inadequate to define storm water quality differences between various industries, to identify high-risk dischargers, or to assess compliance and the effectiveness of Best Management Practices (BMPs). The Blue Ribbon Panel Report (2006) and other studies concluded that the existing industrial storm water database is too variable and inaccurate to be reliably used for decision-making. To resolve this problem, the Draft Permit increases the frequency of sampling (to create a larger database), and adds training requirements.

For the auto dismantling industry, the sampling requirements in the Draft Permit will represent a huge increase in sampling activity. Approximately 70% of SCADA members participate in a Group Monitoring Program (GMP). For those members who participate in a GMP, the Draft Permit calls for a ten-fold increase in sampling. For those members who do not participate in a GMP, the sampling frequency would double. This ¹ represent a significant increase in cost and time to prepare for sampling, collect and ship the samples, have the samples analyzed at a certified laboratory, and interpret the sampling results. Yet the Draft Permit offers no evidence or justification that the specific increase in sampling called for in the Draft Permit will provide an adequate database that meets the State Board's goals. In fact, we believe that the new database will probably continue to be too variable and inaccurate to be reliably used for the Board's stated purposes.

2. recommend that the State Board provide statistical evidence that the larger database will be sufficient to be used for regulatory purposes, and that the type of training envisioned under QISP I will substantially and adequately improve the effectiveness and accuracy of the sampling activities.

We believe 3. the requirement in the Draft Permit to sample all discharge locations (even with the provision that would allow samples from similar outfalls to be combined in a laboratory) is excessive, costly, and cumbersome. We are also concerned that forcing industries to sample small difficult outfall locations will actually decrease the accuracy of the database. We recommend that the State Board allow “representative outfalls” to be sampled, as permitted in most other states.

4. recommend that the permitted facilities be allowed to use either pH paper strip tests, or pH meters, for the onsite testing. The accuracy of the inexpensive test strips is sufficient.

5. *Alternative Storm Water Sampling Program:* We recommend that the State Board amend the Draft Permit to allow industries or associations to propose alternative storm water sampling programs that would provide a much more accurate and credible storm water database that meets the Water Board’s goals. Such an alternative sampling program would be an option for industries that are willing to invest in providing the best possible storm water database and analysis, work cooperatively with Water Board staff and other stakeholders to best determine which individual facilities need additional controls, and determine what type and level of control is appropriate to protect water resources.

The objectives of an alternative sampling approach would be:

1. To provide a credible and reliable storm water database that is widely-accepted and that accurately represents the quality of storm water runoff from an industry, helps define facility compliance, determines which facilities need advanced BMPs or structural/treatment measures, characterizes the applicability and effectiveness of such controls, assists the RWQCBs in quantifying TMDL sources, and provides the State Board with high quality data and information that can be used to develop sector specific permits and NELs.
2. To rely on professional storm water sampling resources that retain the inherent variability of storm water sampling data, yet minimize grab sample problems, sampling errors, and the excessive uncertainty associated with facility self-sampling.
3. To properly take into account the elevated pollutant discharges associated with storm first flush (all CA) and seasonal first flush (Southern CA).
4. To establish procedures that would allow the professional sampling results and analysis to be applied to all facilities participating in the alternative sampling program.

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5. To avoid unnecessary enforcement actions or citizen action lawsuits so that such resources can be targeted at non-compliant and illegal operations.

We would suggest that a well-respected, independent storm water researcher be retained by an industry or perhaps industry Compliance Group to prepare the sampling plan, install and maintain automatic flow-weighted composite sampling equipment, and review and analyze the sampling results. Sample site selection would be coordinated with staff from the Water Boards. It is envisioned that automatic sampling would be conducted at 10 – 20% of the participating facilities. Automatic sampling would be conducted during all significant storm events for the first two years of the General Permit. This would accelerate the collection of sampling data, resulting in a larger, more accurate database that is available at an earlier date for analysis and decision-making. The equipment could be re-located to other facilities at a later date.

We understand the Board's intent to have each individual facility demonstrate compliance. As part of an approved alternative sampling plan, the industry and Water Boards would agree on how the improved sampling data would be applied to determine what level of pollutant control was needed, and which facilities would be required to implement advanced BMPs or structural/treatment controls. For example, the composite sampling data would be used along with criteria such as size of facility, physical characteristics, type of operations, and existing BMPs to identify additional needed controls. All needed controls would be implemented within the time frame set forth in the General Permit. The analysis of the statistically-valid storm water sampling data would be augmented by detailed facility inspections, limited sampling, and precise recordkeeping. Procedures would be established to ensure that the process and information are transparent, and that facilities cannot "hide" behind the group.

If such an alternative approach is allowed in the final Permit, SCADA is prepared to immediately begin discussions with the Water Boards to agree on the conditions of such a plan for the auto dismantling industry.

Numeric Action Levels

The proposed Numeric Action Levels (NALs) are the same as the USEPA Federal Multi-Sector Permit benchmarks. USEPA states that the benchmarks are intended to be used as guidelines to help industrial facilities evaluate the effectiveness of their BMPs and identify areas of concern. Under the Draft Permit, exceedance of the NALs can trigger advanced BMPs and structural/treatment controls.⁶ It appears that the State Board is using the NALs, at least in part, to define BAT/BCT. This requirement exceeds the intended use of the benchmarks, and will likely lead to high expenditures for controls that may or may not be needed to protect waterways, and to increased enforcement/third-party lawsuits.⁷ The scientific basis for at least some of the NALs does not necessarily represent a water quality problem. For example, there is little if any indication that an iron level exceeding 1.0 mg/l is harmful to fish and aquatic life or other beneficial use. The Total Suspended Solids (TSS) benchmark of 100 mg/l was selected because it approximated the median level in urban runoff during the Nationwide Urban Runoff Program (NURP) study in the 1980s.

Furthermore, as noted above, we⁸ are concerned that the sampling data that would be compared against the NALs will likely be too variable to be an accurate assessment. In addition,⁹ because the consequences of

NAL exceedance are so extreme, we are concerned that there is too much incentive to “alter” the storm water samples so that the NALs are met. ¹⁰ 2003 White Paper on Auto Dismantling prepared by Sustainable Conservation concluded that more than one-half of the auto dismantling facilities in California had failed to even submit a Notice of Intent to obtain storm water permit coverage. Such rogue facilities that fail to comply with license and permit requirements are also unlikely to properly conduct storm water sampling. Falsified samples would further compromise the accuracy of the database. (We note that under our Partners in the Solution[®] program, all SCADA members are required to be in compliance with their storm water permit and other regulations).

The Fact Sheet included with the Draft Permit describes in great detail the challenges with establishing NELs and NALs, and the quality problems with the existing industrial storm water data set. The Fact Sheet indicates that the SWRCB Staff agrees with the assessment and findings of the Blue Ribbon Panel. Our industry also supports the recommendations of the Blue Ribbon Panel report to assess program effectiveness. ¹¹ The use of the US EPA MSGP benchmarks as annual NALs is not consistent with the recommendations of the Blue Ribbon Panel and creates “de-facto” NELs, which if exceeded, create an obligation for the discharger to either implement additional BMPs and structural/treatment measures, or to take one of the complicated and costly ERA off ramps. The inclusion of the US EPA benchmarks as NALs appears to contradict both the Blue Ribbon Panel report findings and recommendations and the fact sheet.

We recommend that the NALs be used as recommended by USEPA – to assess BMPs and identify problem areas. Since the State Board intends to implement Numeric Effluent Limits (NELs) in future permits, we ¹² recommend that “numerically-triggered” structural/treatment controls be postponed until such NELs are developed. Industries are still facing too many unknowns and uncertainties: structural/treatment controls that are designed to meet the NALs may not be adequate to meet future NELs and BAT/BCT– which could require facilities to remove and replace expensive controls. Of course, facilities would be required to implement structural/treatment controls if their BMPs were inadequate or they were contributing to a TMDL water quality problem (as mandated in the existing general permit).

Exceedance Response Actions

¹³ The ERA Reports called for in the Draft Permit will be difficult and costly to prepare, usually requiring that a consulting engineer be hired. We understand that the State Board needs improved information and data on BMPs and structural treatment controls, but placing that burden on small industries and businesses (many of which have less than 5 employees) is unreasonable and too expensive. The Demonstration Technical Reports that are allowed after reaching Level 2 are far too complicated for small businesses -- requiring detailed technical analysis and typically more sampling.

¹⁴ Urge the SWRCB to provide streamline the ERA process, most importantly the “off ramp” where we have the opportunity to demonstrate that BMPs are sufficient and that additional structural or treatment measures are not warranted. More specifically, the SWRCB should provide guidance whereby the significant costs for elaborate structural and treatment controls and the financial abilities of individual dischargers to fund those potentially expensive measures are considered in the off ramp process. Several years ago, many members of our industry worked with the SWRCB staff and others to develop storm water

BMP guidance for the auto dismantling industry. Another way to streamline the path to compliance for our industry is to use that guidance as a starting point for BAT/BCT determination.

Again, we are concerned that the ERAs are triggered by sampling data that are likely to be too variable and inaccurate to justify these types of detailed engineering analyses and expenditures. We recommend that the State Board compile the information that is needed to develop NELs before imposing such excessive expenditures on small businesses.

Compliance Groups

SCADA supports the establishment of Compliance Groups to replace the current GMPs. ¹⁵ Compliance Groups should have an active role in developing future NELs for the dismantling industry and a sector specific permit. The only significant benefit of participating in a Compliance Group in the Draft Permit is the opportunity to prepare Consolidated ERAs. Because there would be a significant cost involved, additional benefits and incentives will be needed to convince auto dismantlers to participate in such a group.

¹⁶ We recommend that the State Board consider the following benefits for Compliance Group participants:

1. Some reduction or postponement in storm water sampling.
2. Joint QISP I training provided by the Group Leader.
3. Reduced SMARTS electronic submittals.

QISP Training

SCADA appreciates the value of excellent environmental compliance training programs, and we regularly offer training and educational resources via our Conventions, SCADAGram fax broadcasts, magazine, and on-site visits. ¹⁷ We recommend that QISP I training be allowed to be offered by organizations such as SCADA, or by experienced consultants that serve the industry.

We ¹⁸ have concerns about the QISP II and III training requirements. The training requirements in the Draft Permit will force many small dismantlers to retain consultants or professional engineers that they otherwise may not need. Advanced training of professional consultants and engineers should be voluntary, not mandatory. Businesses should have maximum flexibility to use whatever resource they select to help them comply. We are concerned that these training requirements may be designed to eliminate competition or steer industries towards certain consultants.

SMARTS

While we support compliance transparency and recognize the convenience of electronic submittals for regulators, ¹⁹ we strongly believe that SMARTS electronic submittals outlined in the Draft Permit are excessive and unnecessary. Submitting so much information on SMARTS will be too complicated and time-consuming for many dismantlers, especially the smaller operations. Some dismantlers do not have computers or the skill necessary to submit the information.

Providing²⁰ compliance-related information on SMARTS will increase our industry's vulnerability to third-party lawsuits and invite abuse of the system -- launching unprecedented and unreasonable scrutiny on our industry and imposing devastating legal costs.

²¹ recommend that the existing data and information submitted to SMARTS be continued, but that additional submittals not be required at this time.

Total Maximum Daily Loads (TMDLs)

SCADA understands that TMDLs are the primary mechanism to determine watershed-specific water quality needs. We agree that industries that are contributing to waterway impairment should take whatever actions are necessary to protect that waterway. We understand that the State Board staff believes that the existing TMDL reports are too vague and generic to be able to target individual industries or other sources. We concur that more specific TMDL reports would be valuable.²² We recommend that sufficient data and analysis be collected and analyzed to support the accuracy of specific TMDL waste load allocations.

Cost of Compliance

²³ We reviewed the report entitled, "Analysis of Compliance Costs for the IGP" prepared by the State Board staff. The staff estimated an overall 7% increase in compliance costs over the current (1997) permit. We concluded that the compliance cost estimated by staff is grossly unrealistic and it underestimates the expenditures that would be faced by the dismantling industry.

Auto dismantling facilities would incur large cost increases for sampling, training, SMARTS implementation, ERAs, and implementation of Advanced BMPs and structural/treatment controls. For the dismantling industry, we estimate that the typical facility would incur a 5-year compliance cost of \$200,000 to \$300,000 – which approximately doubles the cost of complying with the 1997 permit. ²⁴ a cost increase will cripple the professional auto dismantling industry in California, drive smaller operations out of business, force more dismantlers underground as illegal operators, and ultimately threaten water resources since fewer vehicles will be properly processed.

Final Comments

²⁵ The industrial storm water permit will have a tremendous impact on the auto dismantling industry – particularly given the un-level playing field associated with the numerous unlicensed, unregulated entities acquiring end of life vehicles and who refuse to comply with environmental and other regulatory requirements. This serious competitive disadvantage for SCADA members does not exist for many industries subject to this permit. As such, we urge you to give consideration to this issue and provide alternative options to comply within the provisions of the permit. We are highly concerned that the long-term business viability of the good actors – SCADA members – depends on such alternative options and failure to provide them will result in the good actors going out of business to the detriment of water quality as the unregulated community takes over.

SCADA thanks you for the opportunity to share our concerns and recommendations. We look forward to working with the State Board and staff on a final General Permit that imposes reasonable requirements on

industry and protects California's water resources. Should you have any questions, please feel free to contact me at (916) 979-7088.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martha Cowell", written in a cursive style.

Martha Cowell
Executive Director
State of California Auto Dismantlers Association