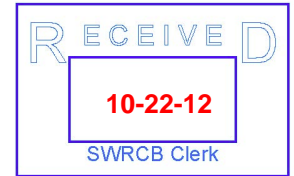




October 22, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov



RE: Comment Letter –Industrial General Permit

Dear Ms. Townsend and Members of the State Water Resources Control Board:

As Vice President of Government Affairs for LKQ Corporation (LKQ), I thank you for allowing us the opportunity to comment on the 2012 draft California Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated With Industrial Activities (Industrial General Permit). As the nation’s leading provider of new, recycled, remanufactured and reconditioned motor vehicle parts and the leading processor of end-of-life vehicles in North America, LKQ is committed to working with the State Water Resources Control Board (State Water Board) to craft a cost-effective yet environmentally responsible framework for our industry by developing a workable Storm Water Pollution Prevention Plan (SWPPP).

LKQ Corporation is the largest nationwide provider of aftermarket and recycled collision replacement parts and refurbished collision replacement products such as wheels, bumper covers and lights, and a leading provider of mechanical replacement parts including remanufactured engines. LKQ also has operations in the United Kingdom, Canada, Mexico and Central America. Globally, LKQ has just under 20,000 employees and operates more than 430 facilities, offering its customers a broad range of replacement systems, components and parts to repair automobiles and light, medium and heavy-duty trucks. LKQ employs 14,000 people nationwide and operates more than 400 facilities in 43 states. LKQ employs 1,624 individuals in 50 locations in California,¹ and pays taxes on a payroll of over \$54.5 million dollars. We are “Recycling Facilities” coded under California’s Standard Industrial Classifications (SICs) 5015 and 5093.

Each year 10 million automobiles are recycled in the United States with more than 10 million short tons of steel, 1.2 million short tons of aluminum, 950,000 short tons of copper and 260,000 short tons of zinc are pulled out for recycling with each ton of steel conserving 2500 pounds of

¹ LKQ has facilities in the following cities: two (2) in Anaheim, two (2) in Bakersfield, one (1) in Chula Vista, one (1) in Dinuba, seven (7) in Fresno, one (1) in Hesperia, one (1) in Monrovia, three (3) in Ontario, one (1) in Oxnard, one (1) in Pomona, one (1) in Poway, twelve (12) in Rancho Cordova, one (1) in Redding, one (1) in Riverside, one (1) in San Bernardino, two (2) in Santa Fe Springs, one (1) in Stanton, four (4) in Stockton, two (2) in Sun Valley, one (1) in Tracy, one (1) in Union City, and four (4) in Wilmington.

iron ore, 1400 pounds of coal and 120 pounds of limestone. Greenhouse gas (GHG) emissions are significantly reduced through recycling: recycled automotive steel reduces GHG emissions by nearly 8 million metric tons (MT) annually; aluminum recycled from automobiles reduces GHG emissions by more than 110 million MT annually; recycled copper from automobiles reduces GHG emissions by nearly 200,000 MT; and lead reclaimed from automotive batteries reduce GHG emissions by more than 3 million MT.

After initial review of the draft Industrial General Permit, we are extremely concerned with and oppose the use of Numeric Action Levels (NALs) as they currently operate within the permitting scheme. We also oppose Section IX (Training Qualifications) which require that each discharger retain a Qualified Industrial Storm Water Practitioner (QISP). In addition, we have identified several areas of the draft permit where ambiguities exist and we request these be clarified. We discuss these areas below.

Numeric Action Levels

Regarding of the State Water Board's removal of Numeric Effluent Limitations (NELs) that were present in the last draft Industrial General Permit, LKQ is concerned that the use of the NALs system in the current draft effectively creates a violation of the permit by forcing dischargers into what is essentially a corrective action status. The NALs are based on the same U.S. Environmental Protection Agency (EPA) benchmarks. LKQ strongly opposes this approach, and agrees with EPA that it is wholly inappropriate to use monitoring benchmarks as NALs. On this issue we have to concur with EPA that "the benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in knowing when additional corrective action(s) may be necessary to comply with the effluent limitation."² Although the draft permit explicitly states that exceeding the NALs is not a permit violation, the operation of the Exceedance Response Action (ERA) section effectively renders the NALs as a trigger for a permit violation.

The State Water Board would be wise to recognize how important it is for national stakeholders like LKQ, who provide a cost-effective product to consumers in an environmentally responsible way, to have uniformity across the country in certain regulatory areas as well as in the same state. For example, in 1998 the Los Angeles Regional Water Control Board amended its plan to include testing for zinc and copper without much notice. After over a decade of sustaining Best Management Practices (BMPs) that utilized galvanized (zinc) cover or fencing of problem areas the District decided to start enforcing this amendment and have all these costly improvements replaced. Statewide corporations cannot develop a standardized plan for handling their discharges with this lack of uniformity.

² United States Environmental Protection Agency (EPA), MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP), Part 6.2.1, as modified effective May 27, 2009.

The action levels are inappropriate methods by which to achieve desired storm water discharge levels. The use of benchmarks in evaluating and adjusting management practices is more effective as it allows environmentally responsible operators, such as LKQ, to continuously fine-tune procedures. This is a more successful system because operationally materials handled in automotive recycling may be changed by manufactures without notice to dismantlers. There are also other factors out of the control of the permittee that may affect discharges. For example, we have experienced situations where a state's renovation of a highway adjacent to our facility caused our discharges to be outside of the benchmarks for the extent of the construction period where there had been no change to our operations during that timeframe. We have also had instances where construction of a shopping mall next door has varied our discharges. The use of NALs as a measure of a violation during these types of occurrences is grossly unfair and unworkable as the cause of the "violations" would be wholly outside the control of the permittee. Moreover, it would require the State Water Board to be responsible for sorting out these disputes on responsibility ad nauseam. We note that paragraph 70 of the draft permit Findings section allows dischargers to submit a Demonstration Technical Report to demonstrate that certain pollutants are attributable to adjacent facilities and not the discharger; however, this report is not available under the permitting scheme until the discharger has actually violated the NALs and is in an ERA phase. The draft permit should allow a discharger to demonstrate proactively that a facility is not causing a NAL violation rather than suffer the consequences of the ERA process.

The impracticality of using NALs as a measure of compliance is further illustrated by the State Water Board's historical approach to dealing with atmospheric deposition that can lead to water quality issues. State Water Board Resolution number 2005-0077 states the importance of working with the California Air Resources Board further to address water issues: "It appears that larger particulates are responsible for the highest loadings of metals in atmospheric deposition, and therefore pose the greatest risk to water quality. The two agencies [Los Angeles Water Board & State Water Board] need to (1) expand monitoring of larger particulates in atmospheric deposition to better gauge the potential impact to water quality and (2) to investigate the sources of these metals in order to design a control strategy." Dry depositions prominent throughout the state due to road dust, agricultural burning, residential wood combustion, diesel truck exhaust, crude oil combustion, and construction dust to name a few examples that cause variances in the rainwater's chemical composition. As the State Water Board is well aware, the typical rain in California from border to border does not have a standard chemical composition, therefore a hard-line NAL that penalizes industries in the path of this rain is unfair. We reiterate the comment above regarding allowing a discharger to proactively submit a Demonstration Technical Report to demonstrate compliance with the NALs.

Further, it is important that the State Water Board be pragmatic about how to remedy discharges that do not meet a benchmark. Like many other industries, LKQ has highly complex facilities dealing with a wide variety of materials. We conduct regular sampling of our discharges at our facilities across the country during storm events. When sampling reveals a discharge not within a benchmark, we use in-house trained experts or third party consultants to make the necessary changes to material management and/or operational procedures to correct the issue. It is not possible, of course, to confirm the effectiveness of these remedies until the next storm event when confirmatory sampling can take place. This process may result in additional fine-tuning and adjustments of the remedy to ensure that any discharges meet the appropriate benchmark.

This process may take one to several efforts of adjustments to get the discharge to an ecologically responsible level. We are concerned that an action level will be triggered during the process of establishing the most feasible way to remedy an issue.

The draft Industrial General Permit's proposed NALs method would put a facility in violation during the correction period. As explained above, there are simply too many factors outside the control of the permittee to consider these discharges a violation when a facility is actively engaging in altering its operations to meet the applicable benchmark. Moreover, automotive recycling facilities continually manage a wide range of ever-changing materials. These materials come from a mix of decades-old automobile manufacturing processes that get combined with the new material compositions in modern vehicle designs. Automotive recycling and dismantling facilities simply will not be able to function with an inflexible effluent discharge limit permit because of the continually changing nature of the business and the need for operations to evolve with these materials. Statewide, it will not be possible to develop a uniform materials composition percentage limitation as there will never be an accurate prediction of what the standard material composition will be from an automotive recycling facility. Given this, LKQ strongly encourages the State Water Board, consistent with EPA's caution above, to use benchmarks as a measure of the overall effectiveness of a facility's control measures, and *not* as a hard and fast measure of compliance.

As discussed above and throughout these comments, it should be evident that dischargers do not benefit from nor disregard the discharge of hazardous elements. On the contrary, LKQ facilities make immediate management practice changes to address these issues. While we support the "off-ramps" provided under this current draft, we recommend the State Water Board include other means to exit these ERAs. Otherwise, our facilities face the danger of performing unnecessary actions as required within an Action Level long past the remedying of an unacceptable exceedance. This would result in an undue increase in costs and expenses, including operational resources and time.

Economic Impact

It is critical that the State Water Board fully appreciate the adverse economic impact of implementing an Industrial General Permit plan through the use of benchmarks for numeric limits. Such an approach will unnecessarily put our operations at risk (as well as other operations throughout the State) with the attendant loss of jobs. Benchmarks for use in evaluating Best Management Practices (BMPs) have been in place for years and, when properly utilized for adapting BMPs, adequately protect against pollutant stormwater discharges. The State Water Board should not abandon this cost-effective and efficient approach. In contrast, the draft Industrial General Permit's second trigger level would require either structural source control and/or treatment of stormwater at a tremendous cost. Any facility reaching third trigger level would be forced to sample each and every storm throughout the year. This would be devastating to our industry. Examples of the impact this would have on our recycling facilities include purchase of treatment equipment, surrounding land acquisition, or functional site reduction to hold and treat stormwater. Preliminary costs estimates for treatment equipment runs upward of \$200,000 with preliminary estimates to hold the water for treatment at \$150,000 per acre – our California facilities run anywhere from 5 to 50 acres (assuming the site can retain

water). The marginal economics of the automotive recycling industry continually challenge the financial viability of the industry's operators, especially considering that we do not control the composition of the products we are supplied or the regulation of these products' final disposition. At the same time, we provide an important recycling and economic service to the public at large. Automotive recyclers provide wholesale and retail customers' quality parts that range from 20 to 80 percent less than comparable new parts with annual revenue in the United States and Canada estimated to be \$22 billion.³ Decades of industry evolution and technical innovation have made the automotive recycling industry essential to the world's transportation infrastructure. Since 1960, 1 billion end-of-life vehicles have been recycled worldwide.⁴ This number is predicted to almost double by 2030. As stated above, the specter of operating under a constant threat of violation would seriously threaten the continued viability of these important operations.

There are significant consequences for the regulated community associated with the State Water Board's proposed approach. If it were to become law, a triggering event would result in strict liability on the discharger. As the leader in the automotive recycling industry, LKQ goes to great lengths to ensure our facilities are a model for the industry in environmental practices. We work hand-in-hand with the national Automotive Recyclers Association and promote its Certified Automobile Recyclers (CAR) program as the standard for the industry. The draft Industrial General Permit's NALs methodology will have an impact on our facilities that inaccurately portray our operations as insensitive to ecological concerns when in fact we are leaders in an essential environmental industry. Given the complex nature of storm water discharges, excessive citations for not achieving limits without an adequate understanding by the public of the process it takes to make the changes to meet the limits will result in a misguided negative perception of our industry in the community. This also could result in unnecessary and costly legal battles with various communities or public organizations that do not fully understand the proposed action levels system over drinking or other water issues. See San Francisco Baykeeper v. Pinole-Rodeo Auto Wreckers, 1997 U.S. Dist. LEXIS 5016 (N.D. Cal. Jan. 23, 1997).

Training Qualifications and Certification

The draft permit requires that each discharger appoint a Qualified Industrial Stormwater Professional (QISP) and confers upon that person(s) a great amount of responsibility under the permit. From submitting the SWPPP, developing Level 1 and 2 ERA Reports, to staff training, the role of a QISP under the draft permit is staggering. Automotive recycling in North America saves an estimated 85 million barrels of oil a year that would have been used in the manufacturing of new or replacement parts. This has been made possible despite the fact that more than three quarters of all automotive recycling companies employ 10 or fewer people. We understand the need to occasionally request the services of a laboratory or other specialist, but to require a business to either hire a new employee or a consultant should not be mandated by the State Water Board. It is unreasonable to mandate a business owner to hire an outside party to write a SWPPP, when the start-up managers or our in-house trained experts are capable of understanding the permitting requirements and know the business operations and how to prevent pollutants best. It is our experience that the vast majority of facilities SWPPPs do not require a

³ According to 2011 Automotive Recycling Association (ARA) Statistics.

⁴ According to 2011 ARA Statistics.

specialized level of engineering or laboratory oversight as the draft suggests. A requirement that every automotive recycling facility either employ and train or pay for outside consultants to handle this issue will unjustifiably burden our operations. Automotive recycling facilities are designed to be efficient and cost effective. The requirement to hire extensively trained or licensed individuals to monitor stormwater discharges will make it difficult for recyclers and dismantlers to hire and/or maintain other workers essential to maintaining their cost-effective and environmentally responsible operations. In addition, the draft general permit fails to provide adequate information to classify the QISP levels. It is clear that a person can qualify as a QISP through completion of a State Water Board-sponsored course; however, it is unclear how licensed professional civil engineers or geologists qualify at a particular QISP level. Tables 1 and 2 in the draft permit do not provide any enlightening information as to what skills, abilities, or experience may qualify a particular licensed professional at a certain QISP level. The additional costs associated with the requirement for dischargers to retain and outside, licensed professional, to perform a number of tasks under the draft permit including training all personnel who are responsible for implementing any permit activities could be overwhelming to our industry.

We support the consolidated group provision of the permit. It is a necessity in the vehicle recycling industry to work hand-in-hand with the manufacturers that produce the vehicles, the end-of-life vehicle suppliers (like insurance companies and salvage pools), and scrap metal recyclers. We must also work together within our industry to ensure that we are properly handling the materials we process.

Regarding section VII, B of the Total Maximum Daily Loads (TMDLs) we are concerned with the requirements of paragraph 3. Section B applies to discharges to impaired waterbodies where there is not an approved TMDL. Paragraph 3 requires, if the discharger cannot eliminate all exposures or demonstrate a particular pollutant is not present on site (paragraphs 1 and 2), to submit data showing there will not be an exceedance of Water Quality Standards (WQS). The draft permit allows a discharger to demonstrate that they will meet WQS through showing there is available Waste Load Allocation (WLA) or uses control strategies employed by similar discharges covered by the TMDL. As this section is meant to apply to waterbodies where there is no TMDL, these last two options are impossible. Please clarify this section and provide a viable alternative method for a discharger to be in compliance. In doing so, consider that many waterbodies are impaired because of impacts to biological communities or thermal impacts. These impairments often are not clearly linked to particular pollutants or control strategies and may not be feasible to control under a general industrial storm water permit. We suggest that this section is revised considering these non-traditional impairments so as not to require measures that are unknowable or uncertain.

On page 37, paragraph 2.d should be clarified as to whether the anticipated precipitation event is subject to the same volume and weather requirements as the Qualifying Storm Event (QSE) described in B.2 on the next page. Additionally, the role of the QISP in reviewing the precipitation forecast is unclear and could potentially add unnecessary costs for dischargers trying to meet permit requirements.

Final Comments

Approximately 35 million vehicles will come to the end of their useful lives in California within the next decade. This number equates to about 140 million tires, 30 million gallons of waste oil, 70 million gallons of ethylene glycol, 35 million batteries, thousands of mercury switches and many other products potentially harmful to the environment. When fluids and other hazardous materials are not properly removed, processed and recycled, public health and aquatic ecosystems are threatened. This is due to dismantling and end-of-life recycling being performed by untrained, unqualified individuals who will not take the time to process the materials in a vehicle in an environmentally sound manner. Unfortunately, these types of activities are likely to increase if responsible recyclers, like LKQ, are confronted with unreasonable and costly regulatory controls and unfair competition from irresponsible operators that threaten the continued viability of their operations in California.

LKQ Corporation, like any licensed auto dismantler, specializes in dismantling end-of-life vehicles that contain potentially harmful materials, such as waste fuels, waste oil, lead acid batteries, airbag canisters, ethylene glycol, mercury, nickel, lead, and cadmium. If vehicle fluids and parts are not handled and disposed with appropriate care, a range of environmental problems can result. There is a major difference between licensed auto dismantlers, who are prepared to manage end-of-life vehicles in a manner that avoids potential environmental impacts, and unlicensed auto dismantlers. Due to our already thin operating margins, subjecting licensed operators to unreasonable regulations could force many of us out of business, resulting in more end-of-life vehicles being mishandled by unlicensed, unpermitted, or otherwise unqualified entities. Subjecting licensed operators to unreasonable scrutiny from regulators and environmental groups will put many of us out of business, resulting in more end-of-life vehicles being handled by these rogue entities that are less likely to take adequate measures to properly recover and handle these ecologically hazardous materials. It is estimated only one out of five (about 700,000) of all end-of-life vehicles in California are recycled by licensed auto dismantlers each year.⁵ Unlicensed operations in the state do not volunteer themselves to the State's environmental permitting. One 2001 study has estimated that nearly half of the more than 10,000 vehicle recycling facilities in California that are subject to the general stormwater permit have failed to file their notice of intent (NOI) with the State Water Board to obtain coverage under the statewide General Permit for Discharge of Stormwater Associated with Industrial Activities.⁶ Increasing the cost of business on environmentally responsible recyclers is counterproductive to the overall philosophy. Automotive recyclers are an essential industry in a complex, intertwined system of businesses that take a vehicle from the original assembly line to the steel stocks that are used to make the next line of vehicles. Recycling vehicles in the United States and Canada provides enough steel to produce almost 13 million new vehicles annually.⁷ Recovering steel not only saves money, but also dramatically reduces energy consumption, compared to making steel from virgin materials.

⁵ Nathan Arbitman & Mike Gerel, *Sustainable Conservation, Managing End-of-Life Vehicles to Minimize Environmental Harm White Paper on Sustainable Conservation's Auto Recycling Project*, pg. 7, (2003) http://www.suscon.org/autorecycling/pdfs/autorecycling_whitepaper_elvs.pdf

⁶ Arbitman & Gerel, pg. 14

⁷ According to 2011 ARA Statistics.

As Vice President of LKQ Corporation's Government Affairs Department, I hope you will recognize the importance of this matter to our industry and carefully consider these comments. On behalf of LKQ Corporation, I thank you for the opportunity to comment on this draft Industrial General Permit Order and look forward to working with you on this issue.

Please do not hesitate to contact me if you have any questions. I can be reached at (954) 492-9092.

Respectfully,

A handwritten signature in black ink, appearing to read "E. Sottile". The signature is fluid and cursive, with a large initial "E" and a stylized "Sottile".

Eileen A. Sottile
Vice President, Government Affairs
LKQ Corporation