



CALIFORNIA METALS COALITION

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October 22, 2012

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



RE: COMMENTS ON JULY 2012 DRAFT INDUSTRIAL STORM WATER PERMIT (IGP)

Dear Ms. Townsend and Members of the Board:

The metalworking industry is comprised of nearly 6,000 facilities, employing over 250,000 Californians with living wage jobs and benefits. 8 out of 10 employees in the metalworking sector are considered ethnic minorities or reside in communities of concern.

The metalworking sector is a mature industry. Those facilities that have chosen to continue operating in the state of California have proactively made site improvements to match the state's environmental and regulatory expectations. It is also important to note that the majority of CMC members operate facilities under roof or indoors.

One area where the metalworking industry has been a leader is in storm water. CMC members have been active participants in storm water compliance efforts since the first permit was issued almost twenty years ago. CMC members are also one of the pioneers in group monitoring by establishing a state water board approved Metal Casting Storm Water Monitoring Group ("MCSMGI") in 1992.

The California Metals Coalitions' comments are submitted with the members' desire to meet their compliance obligations in a manner that will result in protection of California's waters without placing unrealistic and arbitrary compliance burdens on industrial dischargers.

While the July 2012 draft includes several improvements when compared to the January 2011 draft, the current draft IGP contains numerous elements with which CMC members have expressed deep concern:

1) Using non-sector specific US EPA Benchmarks as Numeric Action Levels (NAL):

The State Water Resources Control Board (SWRCB) has 20 years of storm water sampling data for the metalworking industry. This data clearly shows that it is often impossible for certain facilities to meet all of

the US EPA benchmarks. As a result, using the US EPA benchmarks as Numeric Action Level triggers in the draft IGP will inherently set-up small metalworking businesses for failure. CMC supports the development of properly derived and statistically valid Numeric Action Levels (NALs), if done on an industry sector-specific basis. If the SWRCB continues to use US EPA benchmarks, this should be done only if NALs are used in the same way as the US EPA, which is as one tool for assessing a facility's performance.

2) Understanding the cost of draft permit:

The State Water Board's *Analysis of Cost Compliance* found that, overall, the average annual cost of compliance of the new permit for facilities with "no exceedances" would increase between 5% and 12% compared to the annual cost of compliance with the existing permit. As previously discussed, the metalworking industry expects to trigger the NAL's in numerous circumstances, resulting in Level 1 and Level 2 actions. Costs for Level 1 activities are approximately \$25,000-\$37,500 per facility, while costs for Level 2 actions are \$100,000-\$1,250,000 per facility (depending on the type of treatment required). Some of these costs are on an ongoing basis. And this does not include costs for additional sampling, devoting additional worker time to training, and other new IGP requirements. Metalworking companies compete around the world, are operating on very narrow margins, and have a number of other new regulatory pressures facing them in 2013. Remaining competitive in today's changing economy is different than anything we have faced in the past. Cumulative impacts of California's regulatory costs only works against our goal of a healthy economy and middle class jobs.

3) Is there a path to compliance?

The metalworking industry remains very concerned that the draft IGP does not allow for compliance. As an example, issues such as establishing BAT/BCT for our sector remains undefined and pose a real challenge. Small businesses in California want to be in compliance. But when the regulation, or permit, is not specific, this can lead to confusion and 3rd party lawsuits. Moreover, being that receiving water limitations can often trump the requirements of this permit, small businesses remain even further exposed to unknown costs and liabilities. CMC strongly encourages the SWRCB and its staff to clear any ambiguity as best possible going forward.

4) Use of resources outside of SWRCB for key elements of the permit:

In attending the public workshops held by the SWRCB, it became apparent that the SWRCB will be working with outside organizations to complete key areas of this permit. One example is training. It is unclear whether the SWRCB will be utilizing internal resources or working with outside resources to establish training. CMC is concerned that since outside resources are unmanaged by the SWRCB, the availability of these outside resources can vanish at any time. The final IGP should only rely on resources within the SWRCB.

5) Qualified Storm Events

CMC members are located in diverse climactic regions throughout the state. Storm water discharges are highly variable and episodic. CMC believes it would be beneficial to relax the qualifying storm event requirements so that there is no antecedent dry weather period required. The most important element to capturing a representative storm is that business operations have commenced recently in the drainage area from the sample is being taken. These are the activities that originally resulted in the regulations of permitted entities when US EPA originally passed its storm water rule in 1990. CMC suggests that the qualifying storm event requirement be relaxed to allow for additional opportunities to capture storm water samples.

6) Exceedance Response Actions (ERA):

ERA's are a new concept in the draft IGP. As a result, CMC expects this concept to be amended to better meet the permit holder needs. CMC suggests allowing dischargers up to two years to implement and measure the effectiveness of improvements made at Level 1 before a status change to Level 2. CMC suggests that the SWRCB alleviate unrealistic expectations that dischargers can demonstrate resolution of NAL exceedances in a single year's monitoring after BMP improvements by specifying that Level 2 will not be triggered during a period before the scheduled completion date for BMP improvements under a Level 1 technical report. CMC suggests providing more flexibility to dischargers by giving them up to one year, rather than 4 months, to complete Level 2 reporting requirements which includes a determination of necessity of structural and/or treatment control BMPs, and preparation of detailed Level 2 ERA Technical Report. CMC suggests specifying that a new Level 2 evaluation will not be triggered during a period before the scheduled completion date for BMP improvements under a Level 2 technical report. Finally, CMC suggests providing realistic time frames to dischargers to fully implement any Level 2 Structural/ Treatment controls by giving them an additional year.

7) SMARTs

Electronic filing is also a new requirement, when compared to the current IGP. Most metalworking companies are unfamiliar with electronic filing for this permit. CMC suggests, first and foremost, that there are "warning" prompts before the user confirms sampling data that exceeds the NALs. CMC suggests clarifying which unimplemented compliance activities or ERAs a discharger is to identify in the Annual Report. CMC suggests that there must be a mechanism to remove erroneous data, or to keep erroneous data from annual or instantaneous calculations. Finally, CMC suggests protecting proprietary information by removing the requirement for SWPPPs to be electronically filed with the Water Boards.

8) Improving language for monitoring:

Being that the 2012 draft permit introduces several new ideas and concepts, CMC additionally suggests the following (1) Allow more flexibility in visual observations requirements by requiring they be conducted at either the approximate start of discharge, or soon after the start of facility operations. (2) Provide more flexibility to dischargers by giving them at least 45-days, rather than 30, to electronically report analytical data through SMARTS. (3) Allow dischargers to use a value of zero for any effluent sampling analytical results that are properly reported by laboratory as "non-detect" (which is determined to be less than the method detection limit). (4) Provide relief from pre-storm visual observations requirements by instead requiring monthly inspections to identify any spills, leaks, or improperly controlled pollutant sources, and to ensure appropriate BMPs are implemented. (5) Provide relief from and flexibility in routine logging and tracking of rainfall at individual sites to determine if a Qualified Storm Event has occurred by stipulating that rainfall can be measured as recorded by a local weather service station and to allow (but not force) the alternative of sampling when a discharge is observed regardless of the inches that have fallen. (6) Assist dischargers comply with the permit requirements to analyze all effluent samples for applicable parameters related to 303(d) listed impaired water bodies by including a web link and/or address to review the state's 303(d) list of impaired water bodies.

9) Timing of QISP Requirements:

As written, if QISP training is not available by July 1, 2014, then the only qualified people that can revise a SWPPP will be licensed engineers. The use of a Professional Engineer or similar licensee to certify a SWPPP and to provide basic employee stormwater training would represent a substantial financial burden for facilities who would otherwise utilize their own knowledgeable stormwater staff members. In addition, a

Professional Engineer or similar licensee would be expected to take on the liability of implementing the IGP before the State has provided guidance on how to implement this new, complex permit.

10) Background levels:

The NALs do not take into account background levels and natural occurrence of many regulated constituents such as metals or their prevalence in our cities in the form of common building construction materials, vehicles, and day-to-day human activities. It is not until much later in the ERA process that this occurs, and at this point significant costs will be incurred. For example, aluminum in the form of aluminum oxides is present on painted buildings and zinc is common in buildings with galvanized metal siding or roofs, cyclone fences, and automobile tires and undercoating. In fact, it is almost certain that facilities not falling into an SIC Code regulated by the IGP could achieve the NALs if they were required to conduct storm water sampling and analysis. Thus, it is simply inequitable to place an unfair burden on industrial dischargers – that of which is beyond their practical ability to control – while other businesses in non-regulated SIC Codes with similar infrastructure are not required to employ any storm water management practices.

11) Fees and enforcement:

The members of CMC continue to have concerns with how its members' permit fees are being spent. CMC, thus, requests that the SWRCB, in its response to comments of the industrial general permit, provide a budget illustrating the allocation of resources dedicated to the following: enforcement of non-filers who are wholly not complying with the general industrial permit, site reviews/inspections of industrial dischargers who have filed notices of intent ("NOI"), and industrial dischargers who seek the assistance of the regional water boards through the 1997's IGP's C.3 mechanism. CMC believes that the SWRCB should focus its resources on the facilities that have not filed an NOI and/or facilities that are obviously and visibly in non-compliance with general permit requirements.

12) Enactment date of IGP:

There are several improvements to the July 2012 draft, when compared to the January 2011 draft. But it took the SWRCB 18 months to revise and rewrite the second draft. Expecting the regulated community to digest and understand a new IGP within months of Board approval is unrealistic. CMC strongly suggests that the approval of the next IGP should have an enactment date of the following year. (Example: if the Board approves the permit in April 2013, the enactment date should be July 2014, and not July 2013).

We appreciate the opportunity to present these comments. If you have any questions or comments, please feel free to contact our office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James Simonelli', with a long horizontal flourish extending to the right.

James Simonelli
Executive Director