



September 12, 2013

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 Draft Industrial General Permit issued on July 19 2013 (July 2013 Draft 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 alternative collision replacement parts and a leading provider of recycled engines and transmission and remanufactured engines, all in connection with the repair of automobiles and other vehicles. Globally, LKQ employs over 23,000 people, including 14,000 in the United States, across more than 500 facilities. It has operations in the United Kingdom, Benelux, France, Canada, Mexico and Central America, offering its customers a broad range of replacement systems, components and parts to repair automobiles and light, medium and heavy-duty trucks. LKQ employs 1,656 individuals in 57 locations in California,¹ and pays taxes on a payroll of over \$63.4 million dollars.

We are “Recycling Facilities” coded under California’s Standard Industrial Classifications (SICs) 5015 and 5093. From the 10 million automobiles that are recycled in the United States each year, 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 iron ore, 1400 pounds of coal and 120 pounds of limestone. Greenhouse gas (GHG) emissions are significantly reduced through recycling: recycled

¹ LKQ has facilities in the following cities: two (2) in Anaheim, three (3) in Bakersfield, one (1) in Chula Vista, one (1) in Dinuba, nine (9) in Fresno, one (1) in Hesperia, one (1) in Monrovia, one (1) in Merced, three (3) in Ontario, one (1) in Oxnard, one (1) in Poway, twelve (12) in Rancho Cordova, two (2) in Redding, one (1) in Riverside, one (1) in San Bernardino, three (3) 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 five (5) in Wilmington.

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.

While we believe this is a much-improved version, we continue to have concerns about the impacts of the Draft Permit on LKQ and the auto dismantling industry. We look forward to a continued dialogue to address those issues that are being raised in these additional comments. Specifically, we remain concerned over the unnecessary increased sampling. We discuss these areas below.

- Much automotive dismantling is done in partnership with other state agency programs to recycle cars that causing other, large environmental issues for the state such as our high-emissions vehicle and truck recycling programs with the Air Board. The Water Board will be penalizing a much-needed California recycling industry with excess sampling.
- Increased sampling in year 1 is a de facto penalty without cause. Sampling should not be increased from current requirements in year one, unless a facility in year one samples out of compliance, which is taken care of by the new Action Level system.
- If SMARTS is designed to protect "trade secrets" it would not have increase administrative cost by the Storm Water Board to protect this information from public distribution; leaving this out of the permit could lead to erroneous reporting by some industries, because the threat of suit by third parties is far more costly, frivolous or not, than increased sampling. Every LKQ facility out of compliance WILL take the necessary steps to remedy the issues, however, they do not need a second penalty from unqualified groups intervening during this process.
- Compliance reports need to let facilities out of higher action levels if they can show, due to minimum and advanced BMPs implemented, the discharge from the facility is lower (or only slightly higher) than surrounding lands such as roads and parking lots even if the overall discharge is higher than the NEL for the particular element. More specifically, when recycling automobiles, we should be able to distinguish what exceedances are from normal automobile traffic (notably heavier in some areas of California than the rest of the country) and what is from our actual facility operations. I.e. If our facility discharge is lower (or higher) than the road or the parking lot, the difference should be our recorded level of discharge for that element, not the sum. A facility should not bear the cost to treat storm water discharge exceedances that are not theirs. The demonstration report allowances in this area of the draft are not clear on this point.
- For applicable industrial facilities, the Water Board should implement a system by which the Water Board will declare, on behalf of a facility, that the facility is in compliance with all state and federal requirement of its industrial storm water permit, and therefore should not be subject to other municipal storm water fees, impervious surface requirements, or cost not directly outlined in this permit.
- Cost of using automatic flow-based sampling equipment for Advance BMPs should be address more strongly
- **Compliance Cost estimate of \$200k over 5 years**
- We would suggest stronger support the following:

- Numeric action levels should be guidelines to assess BMP's, not violation triggers
- Delay imposing Numeric Effluent Limits (NEL's)
- Support the Compliance Group changes
- Further review of the setting of Total Maximum Daily Limits (TMDL'S); July 2015 is too soon for the Water Board to assess the impact on industry. The period to express the terms of TMDLs in the new permit should be extended to allow the Water Board time to evaluate if the new standards are going to be feasible for recycling companies like ours. Six months is not enough time for the Water Board or industry to evaluate the cost and structural impact of this incorporation. More specifically, the incorporation of the limits, will need to account for major changes that may occur under the new industrial permits other provisions. A facility may have made or be in the process of making changes, outlined by this permit, then need to start over for new concerns during the incorporation of TMDLs. This is a wasted cost for all industrial facilities.
- The final comment to form a working group to review these issues BEFORE the new permit is issued

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 confused how the Numeric Action Level (NALs) system does not effectively accomplish the same goal by using the same numerology. 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 benchmarks as NELs. 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 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 a 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 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 city's construction of a shopping mall next door have varied our discharges. The use of NELs and 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.

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 gage 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.

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 than 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 Storm 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.

LKQ is also concerned that the Demonstration Technical Reports that will allow a discharger within an Exceedance Response Actions (ERAs) only come after reaching Level 2 non-compliance. As discussed above and throughout these comments, it should be evident that dischargers do not benefit nor disregard the discharge of hazardous elements. On the contrary, LKQ facilities make immediate management practice changes to amend this issues. While we support the "off-ramps" provided under this current draft, we recommend the Storm Water Board include other means to exit these ERAs. Otherwise, our facilities face the danger of performing actions as required within an Action Level that are not necessary long past the remedying of an unacceptable exceedance. Based on the other requirements of this permit, this would waste our operations needed time and money.

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. 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 since 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 model standard for the industry. The draft Industrial General Permit's NELs and 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, habitual 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 onus to 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 SWPPP Developer (QSD) and a Qualified SWPPP Practitioner (QSP). 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 specialized level of engineering or laboratory oversight as the draft suggests. The Storm Water Board gives no rationale for the narrow list of qualified individuals that may fill this QSD position, nor does it give adequate reasoning why other professionals do not qualify. 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 two new employees simply to monitor

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

⁴ According to 2011 ARA Statistics.

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.

The combination of this policy change and the elimination of group monitoring could be overwhelming to our industry. 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. Group monitoring and the sharing of the cost for QSDs and QSPs is a more cost-effective way of ensuring the elimination of pollutant discharges for the industry.

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, 60,000 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 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

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

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.

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 the first letter of the first name being a large, stylized 'E'.

Eileen A. Sottile
Vice President, Government Affairs
LKQ Corporation

⁶ Arbitman & Gerel, pg. 14

⁷ According to 2011 ARA Statistics.