



ORANGE COUNTY
COASTKEEPER®

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April 18, 2011

VIA EMAIL

Kurt Berchtold
Executive Officer
California Regional Water Quality Control Board
Santa Ana Region
Attn: Michael Adackapara
madackapara@waterboards.ca.gov

Re: Comments on the 2011 Draft Scrap Metal Stormwater Permit (Order No. R8-2011-0011)

Dear Executive Officer Berchtold:

SA Recycling (“SA”) and Orange County Coastkeeper (“OCCK”) hereby submit the following comments on the February 25, 2011 Draft Scrap Metal Stormwater Permit (“Scrap Metal Permit”). We appreciate the California Regional Water Quality Control Board Santa Ana Region’s (“Regional Board”) efforts in supporting a robust stakeholder process that achieved a dialogue between environmentalists, regulators, and the business community, and that has ultimately resulted in a draft framework for permitting scrap metal recycling facilities.

SA has over 40 facilities located throughout California and the Southwest, and is a major leader in the metal recycling and processing industry. While processing millions of tons of scrap each year, SA is committed to being a steward of the environment and, consistent with that goal and the current permit regime, is working diligently to improve the Stormwater Pollution Prevention Plans (“SWPPPs”) and Best Management Practices (“BMPs”) at their many facilities located throughout the Regional Board’s jurisdiction and Statewide.

OCCK’s mission is to protect and preserve all of Orange County’s water bodies and restore them to healthy, fully functioning systems that will protect recreational uses and aquatic life. In pursuit of this goal, OCCK balances advocacy, education, restoration, research, and enforcement to increase awareness of environmental issues and reduce pollution of Orange County’s watersheds and coastal waters.

The Draft Scrap Metal Permit is the Result of a Stakeholder Process and is Focused on Improving Water Quality

This Regional Board is a leader in facilitating the stakeholder process when developing new regulatory requirements and this effort is no exception. As indicated in the Draft Scrap Metal Permit, a Metal Recyclers Water Quality Standards Committee (“Committee”) was formed by stakeholders including representatives from industry, environmental

interests, staff of the Regional Board, and other interested parties. The Committee was born out of the recognition that storm water discharges from metal recyclers can significantly impact water quality, and the current regulatory regime does not provide clear, effective, and efficient compliance parameters. The Committee met for six months and hashed out a proposal for a sector-specific permit that would comply with the requirements of federal statutes, regulations, and the California Water Code (“CWC”). This collaborative effort produced a Straw Man proposal (“Straw Man”) that was submitted to the Regional Board staff for review with the hope that a draft permit would result.

The Straw Man reflected the Committee’s consensus that reliable and substantial reduction of pollutant loads, achieved primarily by runoff volume reduction, provides the most valuable outcomes both for achieving water quality standards and for reducing long term costs. Where site-specific constraints reduce the efficacy of runoff reduction, treatment options are designed to backstop preventative efforts. Based on an evaluation of existing scrap metal yards, the Committee proposed pollution prevention and treatment methods described in the Straw Man that would reduce the mass loading of metals in stormwater runoff by no less than 80%. The Straw Man concept was intended to be amenable to incorporation into a permit that would achieve these load reductions before implementation of numeric performance standards. The Straw Man was designed to develop a clear concept for a permit so that compliance and enforcement would be uniform and provide a measure of certainty for dischargers and the community.

Some concepts from the Straw Man are reflected in the Draft Scrap Metal Permit, and some are not. In general, SA and OCCK support the Draft Scrap Metal Permit and highlight significant provisions below.

The Draft Scrap Metal Permit is Consistent with Clean Water Act Requirements

The Clean Water Act (“CWA”) section 402(p) outlines the requirements for regulating discharges from industrial facilities. Pursuant to this statutory imperative, the United States Environmental Protection Agency (“USEPA”) promulgated regulations in 1990 establishing application requirements for industrial storm water permits. 40 C.F.R. §§ 122, 123, and 124. These regulations require that storm water runoff associated with industrial activities be regulated under the National Pollutant Discharge Elimination System (“NPDES”) permit program. In 1991, the State Water Resources Control Board (“State Board”) issued the first statewide General Permit under these authorities for Storm Water Discharges Associated with Industrial Activity.

Currently, stormwater discharges from all industrial facilities in California are governed by the Industrial Storm Water General Permit Order 97-03-DWQ (“General Permit”), which renewed the 1991 permit. The General Permit has been in effect since 1997, and pursuant to applicable law, requires pollution control to the performance standard of best available technology economically achievable (“BAT”, 33 U.S.C. § 1311(b)(2)(A)), and best conventional pollutant technology (“BCT”, 33 U.S.C. § 1342(b)(2)). The General Permit requirements for BAT and BCT are to be met by developing and fully implementing a Storm Water Pollution Prevention Plan (“SWPPP”) that meets the requirements of the General Permit. Finally, the General Permit requires a Monitoring and Reporting Program.

If adopted by the Regional Board, the sector-specific Draft Scrap Metal Permit would apply to metal recyclers and processors in Region 8 in lieu of the General Permit. The Draft Scrap Metal Permit builds off of the General Permit, incorporating the same BAT and BCT requirements applicable under the General Permit and the law, but in attempt to advance water quality requirements, applies targeted measures developed specifically for the scrap metal industry's unique operations. For the Regional Board's convenience, we have highlighted aspects of the Draft Scrap Metal Permit that demonstrate why it represents a significant step forward for water quality and for the scrap metal industry.

Numeric Effluent Limits

In 2005 and 2006, the State Board convened a panel of stormwater experts ("Blue Ribbon Panel") to attempt to answer whether it would be technically feasible to establish numeric effluent limitations ("NELs") for stormwater discharges. The Blue Ribbon Panel concluded that it was feasible to establish NELs for industrial discharges. The Blue Ribbon Panel went on to recommend that additional monitoring parameters be established so that NELs could be set. According to the Blue Ribbon Panel, because the current permit regime only requires sampling for pH, conductivity, total suspended solids, and either total organic carbon or oil and grease, there is not an adequate data set to establish NELs.

Facilities regulated under the Draft Scrap Metal Permit would be required to meet certain NELs. *See* Draft Scrap Metal Permit at 17, Table 1. Echoing the Blue Ribbon Panel recommendations, the NELs would cover four constituents: pH, turbidity, specific conductance, and oil and grease. Additionally, recognizing that additional data may help refine these standards, the Draft Scrap Metal Permit also provides a mechanism whereby the NELs can be modified or added over time. By setting clear limits that are protective of water quality, and based on an adequate data set, the scrap metal industry attains greater regulatory certainty while adhering to its commitment to be stewards of our environment.

Numeric Action Levels

The Blue Ribbon Panel found that in instances where data cannot support NELs, the permit writer could reasonably establish numeric action levels ("NALs"). The Draft Scrap Metal Permit would require permitted facilities to design SWPPPs that document compliance with the numeric action levels ("NALs") specified in Attachment B of the Draft Permit.

Credit for Cover

The Draft Scrap Metal Permit recognizes that industrial facilities with reduced runoff volume, whether through lessened exposure to stormwater (e.g. covered by a roof) or percolation basins, deserve a credit when determining compliance. Significantly, the credit applies to efforts completed by dischargers both before the permit adoption and after. This concept was expressly endorsed by the Blue Ribbon Panel.

Design Storm for Treatment Control Measures

Under the Draft Scrap Metal Permit, treatment controls would be harmonized across facilities. All treatment systems would be designed to treat 95% of the annual average

volume of runoff for each facility's locale. Providing equanimity across sites and based upon localized rainfall data, the design storm would ensure controls appropriate to each site's geographic conditions while providing a level playing field for regulated entities. In addition, design storm requirements increase the clarity and certainty of the regulations and assist with compliance efforts.

Preventative Measures

Perhaps most significantly, in Phase I the Draft Scrap Metal Permit implements a series of control measures with implementation phased in over time. *See* Draft Scrap Metal Permit at 19-23. Instead of an amorphous directive to comply with water quality requirements with scrap metal recyclers left to decipher various approaches until they meet with success at the end of pipe, the Draft Scrap Metal Permit establishes a path towards compliance for all dischargers -- a veritable checklist of BMPs that will improve discharge quality. Under relevant precedent, the Regional Board has authority to write a permit with specific BMPs designed to achieve compliance with water quality standards. *Natural Resources Defense Council v. EPA*, 966 F.2d 1292, 1308 (9th Cir. 1992).

The obligations listed in the preventative measures can be roughly categorized as planning, actions, programs, and mitigation measures. Of these the Rain Event Action Plan ("REAP"), low impact development ("LID"), and discharge point consolidation measures afford the best opportunity for an industrial discharger to adapt from the current permit regime to the tailored requirements of the Draft Scrap Metal Permit with observable improvements in water quality data. These preventative measures were designed by the Committee to achieve attainment of water quality improvements and adherence to applicable legal requirements while providing clear, practicable requirements for the scrap metal industry. These measures represent the outcome of the Committee's innovative, consensus-driven effort and present a win-win opportunity for the environment, for industry, and for communities served by the Regional Board.

In Phase II of the Draft Scrap Metal Permit, dischargers are directed to assess the effectiveness of Phase I BMPs. Phase I is designed to guide dischargers through the process of fashioning BMPs at the facilities to meet water quality requirements during stormwater discharge events. If either NELs or NALs have been exceeded, permittees are then focused on reassessing the Phase I BMPs to determine what more can be done.

Also, if triggers have been exceeded (as defined by section C. 1.c.; p. 17 of 64) permittees must submit a Phase II Corrective Action Plan to the Regional Board and implement it within 90 days of approval. At this point, advanced media filtration or the equivalent will be required.

Finally, if triggers have been exceeded despite the implementation of either Phase I or II, a Phase III Corrective Action Plan would be required. This plan would identify the potential causes of the violation, proposed solutions, technical information regarding proposed controls, and a time schedule for implementing the proposed corrective action.

By clearly defining a stepped and progressively more stringent phased approach, the Draft Scrap Metal Permit achieves the laudable regulatory goals of clarity and water quality.

Kurt Berchtold

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The Draft Scrap Metal Permit Should Not Apply to Paper, Plastic, and Glass Recycling Facilities

Despite the steps in the Draft Scrap Metal Permit towards achieving environmental benefits and certainty for industry, SA and OCCK wish to convey the following concern. On page 4 of the Fact Sheet, a list of types of discharges regulated by the Draft Scrap Metal Permit appears to be over inclusive. We ask that the Board consider and make a change to limit the language and ensure that the Final Scrap Metal Permit achieves its intended purposes. The Draft Scrap Metal Permit should not apply to facilities that recycle paper, plastic, and glass. As discussed above, the Committee formed with the intent of creating a sector-specific permit for scrap metal recycling facilities. SA and OCCK respectfully request that this clarification be made to the Draft Scrap Metal Permit in response to comments to clarify the regulatory reach of this limited and sector-specific permit.

The Draft Scrap Metal Permit As the Statewide Model for Sector Specific Requirements

Recently, the Draft Scrap Metal Permit has been influential with the process surrounding the Draft Industrial General Stormwater Permit (“IGP”) released by the State Board. SA and OCCK testified at the State Board workshop on March 29, 2011 to propose that the Regional Board effort become the standard bearer for this industry as a sector-specific permit. SA and OCCK look forward to continuing to work with the public process to bring this Draft Scrap Metal Permit to the Regional Board for adoption so that the effort to implement a statewide sector-specific permit may continue.

Sincerely,

/s/

George Adams
SA RECYCLING

Sincerely,

/s/

Garry Brown
ORANGE COUNTY COASTKEEPER