**Tentative Order No. R8-2011-0011**
**Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region**

**Response to Comments Received on the 3rd Draft (August 1, 2011)**

Comments were received from the following:

Orange County CoastKeeper (OCCK) – August 31, 2011
Brash Industries (Brash) – August 31, 2011
Institute of Scrap Recycling Industries, Inc. (ISRI) – August 31, 2011
California Refuse Recycling Council (CRRC) – August 31, 2011
County of Orange, Public Works (OCPW) – August 31, 2011
Frog Environmental (Frog) - August 30, 2011

Comment 1. The draft permit must provide numeric effluent limits that apply equally to dischargers. (OCCK).

Response: The fourth draft of the Scrap Metal Permit includes clarifications to eliminate some of the conflicts pointed out in OCCK's letter, specifically in Sections III.D.6 and III.D.6.c.2.

Comment 2. The National Toxics Rule and California Toxics Rule are Applicable to Storm Water Discharges. (OCCK).

Response: OCCK noted that some of the more recent court cases are more relevant in discussing the applicability of National Toxics Rule and California Toxics Rule to storm water discharges. Please see revisions to Section II.E of the draft Permit.

Comment 3. Laboratory analysis fees will increase from $200-$300 a year to $1500 a year, especially as there is no reduction in analysis frequency for group monitoring participants. There should be a cost reduction incentive for those opting to participate in group monitoring. (Brash, Frog)

Response: Neither the group nor the individual monitoring programs under the current Statewide Industrial Storm Water Permit program has provided quality data needed to determine compliance with the permit. It is critical that we develop a monitoring program that provides reliable and quality data. The proposed Permit includes provisions to reduce the monitoring requirements if certain conditions are met.

Comment 4. It appears that each facility will be required to install a $100,000 media filter system. Further, there is no proof that

after installation of this system, a facility's discharge will meet the required testing limits as defined on Table 1.b. More information should be collected and evaluated before any BMP becomes a requirement. (Brash)

Response: If a facility implements good housekeeping practices including the minimum BMPs required under Phases I and II of Option 1, an advanced media filtration or other equivalent systems may not be necessary. Furthermore, if a facility is opting for compliance with the Permit under Option 1, then Table 1.b is not applicable to that facility. Under Option 1, the Permittees have the option to develop and implement appropriate treatment control technologies.

Comment 5. It appears that the application of Best Professional Judgment to discharge limits does not consider all aspects of water transport from source to receiving water. (Brash)

Response: Brash characterizes Best Professional Judgment (BPJ) as a term of art; we do not consider BPJ to be a term of art. As defined in the glossary, BPJ considers all reasonably available and relevant data.

Comment 6. The requirement that areas prone to erosion be paved conflicts with the requirement that uncontaminated runoff be percolated, evapotranspirated or used on site. Further converting more than 500 square feet from pervious to impervious triggers the SUSMP provisions of the MS4 permit which are extremely expensive. (Brash)

Response: First of all, construction of 500 square feet of impervious surface does not trigger the Water Quality Management Plan (in the Santa Ana Region we use the term Water Quality Management Plan, or WQMP instead of SUSMP) requirements. For most new development and redevelopment projects, the threshold for WQMP is 5,000 square feet. Each facility has to evaluate the site conditions to determine if low impact development types of BMPs provide better water quality benefits compared to paving the site.

Comment 7. The development the QSP/D training program within the needed timeframe will be challenging. (Brash)

Response: Comment noted. Based on earlier comments, the third draft provided additional time to develop the QSD/QSP program.

Comment 8. The permit is too complex and should be simplified. (Brash)

Response: To the extent practicable, we have tried to simplify the Permit.

Comment 9. The design standards for treatment systems need to be consistent throughout the permit. Section III.D.4 references the "annual average daily runoff" and III.D.6.b.3 references the "annual average runoff." (ISRI)

Response: The September 13, 2011 draft has made the design standard for treatment systems consistent throughout the Permit.

Comment 10: It should be made clear that analytical results representing a storm event in excess of the design storm will not be used in determining a NAL or NEL exceedance. (ISRI)

Response: The September 13, 2011 draft has added language to clarify this issue.

Comment 11. The voluntary Non-Phased Approach (Option 2) introduced in the 3rd draft is puzzling rather than objectionable. There is concern that there may be overt and covert coercion upon the regulated community to opt for the more stringent Non-Phased Approach. (ISRI)

Response: As detailed at a number of locations in the draft Permit, Option 2 is voluntary. The draft Permit neither has any overt nor covert language to coerce the Pemittees into complying with a more stringent standard than what is needed to protect water quality standards.

Comments 12. There are discrepancies between Cu, Pb, Zn NELs for the Non-Phased Approach in Table 1.b at 19 and the NALS that will become NELS for the Phased approach in Attachment B at 64. It appears that these discrepancies may be based on hardness. However, generic tables should be based on the same hardness numbers. (ISRI)

Response: The differences are only because of the differences in the hardness factors used in the calculations.

Comment 13. The opportunities to discharge to a sanitary sewer system in III.D.6.a.2.xxii and Fact Sheet 15 seem to be slightly inconsistent. It would be helpful to know what circumstances such a diversion would be disallowed. (ISRI)

Response: The language in the Fact Sheet has been made to be consistent with the Order.

Comment 14. The commenter has an objection to the (mis)characterization of “oily scrap metal” as “oil contaminated wastes” in III.D.6.a.3.iv. (ISRI)

Response: The language in the draft Permit has been revised.

Comment 15. The definition for the “Design Storm” in the glossary needs to match III.D.4 and the use of “rain event”, “storm event” and “rainfall event” need to be clarified. (ISRI)

Response: A number of changes have been made in the September 13, 2011 draft to clarify the design storm and other related terms.

Comment 16. The commenter reiterates their position that the timing of this permit is premature and should follow adoption of the draft Statewide General Industrial Storm Water Permit. (ISRI, Frog)

Response: Even though this draft Permit has considered some of the issues discussed in the draft statewide Industrial Storm Water Permit issued by California, the USEPA’s Industiral General Permit and permits issued by other states, it is not based on any of the storm water permits either issued by the states or the USEPA. It is based on a unique approach developed by the stakeholders in the region. It is our belief that if adopted, this Permit would provide better water quality protection. As such, we do not believe that delaying adoption of this Permit is consistent with the water quality protection goals of this Region.

Comment 17. The language describing the types of facilities covered by this permit, on page 1, should be modified so that non-applicability covers both “source-separated” and “commingled” material recovery facilities. (CRRC)

Response: The language has been revised in the September 13, 2011 draft.

Comment 18. This permit takes benchmarks established for USEPA’s Multi-Sector General Permit and will use them for numeric effluent limits, starting on July 31, 2013. Part 6.2.2 of USEPA’s permit states that these benchmarks are to be used for monitoring and are not effluent limits. The Regional

Board should explain why it's requiring numeric effluent limits beyond the requirements of USEPA. (OCPW)

Response: The NELs specified in Table 1.a are either based on Basin Plan objectives or best professional judgment. They become effective on July 31, 2013, only if alternative effluent limits are not proposed by the Permittees and approved by the Board. There is an opportunity for the Permittees to develop and propose appropriate technology-based effluent limits.

Comment 19. In the event that the proposed NALs are found to be unattainable, the mechanism that allows a reopening of the permit to propose new NALs/NELs does not allow enough time to conduct the studies necessary to support the new NALs/NELs, allow for public comment and hold a hearing. (OCPW)

Response: Option 1 provides for the Permittees to develop technology-based effluent limits; not NALs. If the Permittees have implemented all the three phases as provided for in Option 1, Provision III.D.6.c.2 states that they will be deemed to be in compliance with the BAT/BCT standards.

Comment 20. The Regional Board needs to release and make public the list of Committee members and stakeholders. (Frog)

Response: It is posted at: http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/scrap_metal_committee.shtml

Comment 21. Certain NALs and NELs in the permit are identified as being based on Best Professional Judgment, however there no objective definition for BPJ or a set of criteria that define or limit BPJ, furthermore there are no minimum requirements established for "professionals" that can use their "best judgment." (Frog)

Response: The glossary includes a definition of BPJ derived from USEPA's definitions. The NALs that we have used in the draft Permit are the same as those used in the USEPA's Industrial General Stormwater Permit. Where we had to use BPJ, we used all reasonably available and relevant data.

Comment 22. The Monitoring and Report Program requires (in part) that a QSP certified individual perform or oversee facility inspections without providing a grace period for the

development of an industrial QSP/QSD training program. (Frog)

Response: The language in the draft Permit has been changed to provide a grace period (see Provision III.A.1 of the MRP at page 53 of the September 13, 2011 draft Permit).

Comment 23. Section III.D.5 allows for equivalent programs or professional experience to qualify individuals to perform the duties of the QSP and QSD, until those training/certification programs are established. However, those qualifications are too ambiguous. Specific certifications should be listed and/or be based on the upcoming draft Industrial General Permit. (Frog)

Response; The Executive Officer will consider education and experience in determining QSD/QSP equivalent programs.

Comment 24. The increase in number of sampling events and number of analytes will cost thousands of dollars, even before facility upgrades are considered. There should be some documented justification/study that identifies the need for these additional parameters and sampling events. (Frog)

Response: Neither the group nor the individual monitoring programs under the current Statewide Industrial Storm Water Permit program has provided quality data needed to determine compliance with the permit. It is critical that we develop a monitoring program that provides reliable and quality monitoring data. The proposed Permit includes provisions to reduce the monitoring requirements if certain conditions are met.

Comment 25. The Permit should provide clarification on the process by which alternate NELs are to be submitted and approved and the type of information that will be needed to substantiate these changes. (Frog)

Response: Frog Environmental is correct that the Permit does not provide a mechanism to submit proposals for alternate NELs. Regional Board staff is committed to develop a procedure for this in collaboration with the stakeholders after adoption of the Permit.