



ORANGE COUNTY  
**COASTKEEPER®**

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August 31, 2011

Santa Ana Regional Water Quality Control Board  
ATTN: Michael Adackapara  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

RE: **Comments on Scrap Metal Recycling Facilities Sector Specific General Permit for Storm Water Associated with Industrial Activities, Order No. R8-2011-0011, NPDES Permit No. CAG618001**

Dear Mr. Adackapara,

Orange County Coastkeeper (Coastkeeper) is an environmental organization with the mission to preserve, protect, and restore the watersheds and coastal environment of Orange County. After careful review of the latest iteration of the Scrap Metal Recycling Facilities Sector Specific General Permit for Storm Water Associated with Industrial Activities, Order No. R8-2011-0011, NPDES Permit No. CAG618001 (Permit), Coastkeeper generally supports this permit while encouraging the Regional Board make some revisions to improve permit clarity.

When Coastkeeper initiated the Permit process our intent was to improve regional water quality through a reduction in metals originating from a specific class of industrial facilities in storm water discharges. Additionally, Coastkeeper aspired to collaboratively generate an industrial permit with a realistic potential for statewide applicability and adoption by the State Water Resources Control Board. We strongly believe the Permit has been significantly strengthened during the process, with the third draft being the nearest to our goal of an enforceable permit resulting in measurable improvement to regional water quality. There are, however, some revisions that could improve the Permit's latest draft.

#### **I. The Draft Permit Must Provide Numeric Effluent Limits That Apply Equally to Dischargers**

Coastkeeper maintains our opposition to a specific element embedded within the draft Permit that allows some Permittees to avoid the enforcement of Numeric Effluent Limits (NELs) for storm water discharges. Section III.D.6 of the draft Permit states, "[I]f the Permittees have opted for the Phased Approach and fully implemented each phase as per the time schedules specified below, they will not be found in violation of Section III.D. of this Permit." Section III.D.6.c.2 states, "[T]he Permittee will be deemed to be in compliance with the effluent limitations once the phase III Corrective Action Plan is fully implemented." Either Section of the draft Permit can be interpreted to provide a Permittee with the ability to submit and implement plans and be rewarded with avoiding compliance with mandatory NELs if those plans do not result in meeting basic NELs, such as those in Table 1a with Section III.D.6.

As written, Sections III.D.6 and III.D.6.c.2 are in direct conflict with Section III.D.1's mandate that regulated facilities under the Phased Approach and Non-Phased Approach to comply with effluent limitations. For example, in the unlikely event that a regulated facility which opts for a Phased Approach and fully implements each phase and still does not meet basic NELs, that all facilities should as a minimum be able to satisfy, the Regional Board's options for improving water quality would be unreasonably constricted. Section III.D.1 sets a minimum bar for all regulated facilities in Tables 1a and 1b, depending on which approach the facility opts to follow, and clearly establishes that those effluent limitations "shall be compli[ed]" with. Submission and implementation of plans should insulate some facilities, but the draft Permit allows some yards to remain in technical compliance even when they cannot meet the elemental NELs found in Table 1a. Compliance with NELs is a necessity. This type of technical compliance was not anticipated when Coastkeeper organized the creation of the stakeholder process.

Specific to Section III.D.6.c.2 of the draft Permit, the last sentence, insulating the regulated facility from a violation of the Permit so long as they fully implement the Phase III Corrective Action Plan, presents the question of the need for a Reasonable Potential analysis under 40 C.F.R. § 122.44(d)(1) in order to meet water quality standards (WQS).

## II. **The National Toxics Rule and California Toxics Rule are Applicable to Storm Water Discharges**

Section II.E. of the draft Permit should be deleted to provide regulatory consistency in compliance with recent legal precedent on the application of the National Toxics Rule (NTR) and the California Toxics Rule (CTR) to storm water discharges. Section II.E. of the draft Permit reads, “[T]his State Implementation Policy does not apply to storm water discharges (See footnote 1 of the State Implementation Policy).” Footnote 1 of the State Implementation Policy has been previously litigated in reference to the applicability of CTR to storm water. On at least three occasions, and recently confirmed in *Santa Monica Baykeeper v. Kramer Metals, Inc.*, 619 F. Supp. 2d 914, 927 (C.D. Cal. 2009), the Federal Court has applied CTR to end of pipe discharges at scrap facilities.

Recently, the Federal Court rejected the Regional Board’s assertion that footnote 1 of the Policy for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (also referred to as the “State Implementation Policy”) precludes the application of CTR to storm water discharges. *See Baykeeper v. Kramer Metals*. According to the Court,

“The CTR expressly applies to ‘all waters’ for ‘all purposes and programs under the Clean Water Act.’ By noting that the Implementation Policy does not apply to storm water discharges, the Implementation Policy does not purport to exempt storm water dischargers from the limits imposed by the CTR, a federal regulation. [Further], the CTR criteria apply ‘end of the discharge pipe, unless the State authorizes a mixing zone.’ The General Permit authorizes no mixing zone.”

*Santa Monica Baykeeper v. Kramer Metals*, 619 F. Supp. 2d at 927. As stated in our letter dated May 24, 2011, this is controlling law, and the draft Permit’s inclusion of Section II.E. is inconsistent with existing case law. The Regional Board responsibly revised previous iterations of the draft Permit to reflect the court’s interpretation of this footnote. Coastkeeper encourages the Regional Board to complete this revision by deleting Section II.E. of the draft Permit in order to reflect an accurate statement of the law and ensure internal consistency within the draft Permit.

In conclusion, Coastkeeper continues to support the adoption of the draft Permit by the Regional Board and commend the Regional Board staff on their continued dedication to maintaining and improving regional water quality. We appreciate your efforts in working with Coastkeeper on this matter and look forward to your continued cooperation.

Sincerely,

A handwritten signature in black ink that reads "Garry Brown". The signature is written in a cursive, flowing style.

Garry Brown  
Executive Director  
Orange County Coastkeeper



August 31, 2011

Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501  
Attn: Mr. Mark Smythe

Subject: Order No R8- 2011-0011

Dear Mr. Smythe:

The undersigned is a concerned member of the industrial sector and as an Environmental Engineer, Storm Water Group Program Manager, representative from several auto recycling trade Associations: California Automotive, Dismantling, Recycling Association, CADRA, Valley Auto Dismantlers Association, VADRA, Automobile Dismantlers of Southern California, ADASC, Inland Auto Dismantlers Association, IADA, and numerous independent Southern California scrap metal facilities that have reviewed this Perm. and wishes to provide comments on behalf of stake holder interests. The undersigned qualifications include a State of California Professional Engineering Certification, a Trainer of Record, a CPSWQ, CPESC, Masters Degree in Industrial Engineering and a Master's Degree in Environmental Engineering.

We recognize that water quality is an important issue, as is the State's economy. Regulation is an important part of the process that leads to improved water quality. The difficult task at hand is the implementation of a Permit that improves water quality to levels that do not adversely impact the beneficial uses of the receiving water while at the same time being cost effective and sustainable. Sustainability should include consideration as to the number of small or not well financed or not very profitable businesses that could be forced out of business for small increases or deminimus increases in water quality.

Although the subject Permit clearly intends to seek stormwater water quality improvements, the question remains, is the Permit the most cost effective approach to water quality, particularly in light of today's economy? In light of the foregoing we are seeking consideration of the following points:

### **Cost**

Laboratory analysis fees have increased more than five to eight times. Previously 5093 scrap facilities were required to test for five metals pH, total dissolved solids, Oil and Grease, conductance, total suspended solids, and Chemical Oxygen Demand. The new Permit requires sampling more frequently, four times a year, minimum. Previously if the permittee was a group participant, sampling was once in two years, and the suite of samples has increased five to eight times. The costs range has increased from \$200-\$300 a year to \$1500 per year. How does the

increase in testing costs improve water quality?

It appears that sooner or later each facility will be required to install a media filter system. It appears that these systems are in the \$100,000 range, installed. The Permit refers to the BAT standard as Best Available Technology Economically Achievable. No economic analysis was found within the Permit to establish "economic achievability." In order for the Permit to achieve BAT an economic analysis should be completed. It should be pointed out that numerous scrap metal facilities are small operations that could not afford a \$100,000 media bed filter system, let alone a \$10,000 system.

After the installation of the \$100,000 system there is no submitted evidence that there are multiple sources to supply the media filters, nor is there any proof that storm water after passing through the filter 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. The proof of concept aspects of a BMP program should not be forced on the industry to establish the feasibility of the concept. Proof of concept should come from small scale (pilot or bench scale systems) before being established as an industry standard.

### **Effluent Limit Standards**

The effluent standards on Table 1b. appear to be based upon BPJ or best professional judgement. As a term of art, the BPJ standard appears reasonable in establishing safety factors in engineering work that relates to materials, but the application of BPJ to discharge limits appears to not consider all the aspects of water transport from source to receiving water, and there is no indication that the BPJ standard is appropriately established as to it being too high or too low.

### **Group Program**

The concept of the Group Storm Water Monitoring Program is supported by industry. In previous permits the higher cost of group participation was off set by a reduction in sampling frequency. In this Permit no-cost off set was observed. A cost off set should be provided to those Scrap metal recyclers that opt for group participation to off set the cost of higher scrutiny, resulting in higher levels of compliance, than for non group participants.

### **Pervious versus Impervious**

Paragraph 6.a. iii. indicates that areas prone to erosion shall be paved. Paragraph 6.a. v. requires the development of a program to the maximum extent practicable to percolate, evapotranspire, or use onsite, uncontaminated runoff. These two paragraphs seem to be in conflict. Converting more than 500 square feet from pervious to impervious triggers the SUSMP provisions of the Municipal Permit which are extremely costly.

### **QSD**

As a Trainer of Record for the IGP I am aware that this program began far before the Permit's passage. This Permit states the requirements for QSD/P program is to be established in 18 months and if not developed by the SWB within the 18 month time period the SARWB will create the

QSD/P program. Having worked closely with CASQA, Sacramento State University, and the SWB in the development of the CGP it is believed that this will be an extremely challenging undertaking for the SARWQCB or any RWQCB in both time and resource availability.

### **Permit Complexity**

After reading the Permit several times and discussing with other member of the regulated community, and as a California Licensed Professional engineer there appears to be a universal sense that this Permits complexity will preclude straight forward implementation by the regulated community. It is suggested that a far less complex document be prepared to facilitate ready implementation by any Permittee.

It is hoped that this Permit's final form considers not only the adverse impact on receiving waters but also the adverse impacts on the business community, contrasted against the deminus gains in water quality.

Thanking Board and Staff for their consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. H. Sachse".

Marvin H. Sachse, P.E., CPSWQ, CPESC, CESSWI, ToR, QSD/P



Institute of  
Scrap Recycling  
Industries, Inc.

www.isri.org

August 31, 2011

Mark Smythe, Chief of Stormwater – Coastal  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501

**Re: 3<sup>rd</sup> Draft of Scrap Metal Sector-Specific Permit, NPDES No. CAG 618001**

Dear Mr. Smythe,

The Institute of Scrap Recycling Industries, Inc. (ISRI) submits the following comments in response to the request by the Santa Ana Regional Water Quality Control Board (henceforth, “the Board”) for public comment on the third version of its draft Scrap Metal Sector-Specific Permit, NPDES No. CAG 618001, dated August 1, 2011 (henceforth, “the 3<sup>rd</sup> Draft Permit”). ISRI appreciates this opportunity to comment and also the Board’s consideration of previous comments.

ISRI is the “Voice of the Recycling Industry”. With 21 chapters nationwide, including the West Coast Chapter for California and neighboring states, and headquarters in Washington, DC, ISRI represents more than 1,600 companies that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. ISRI provides education, advocacy, and compliance training, and promotes public awareness of the value and importance of recycling to the production of the world’s goods and services. During 2010, the latest year with complete figures, the industry employed more than 100,000 people and processed more than 130 million metric tons of scrap materials, conserving impressive amounts of energy and natural resources and minimizing environmental emissions associated with production of the world’s goods and services.

As with the previous two draft versions, ISRI believes that the 3<sup>rd</sup> Draft Permit is sufficiently potentially precedent-setting for stormwater general permits nationwide that submitting comments from the national perspective is warranted.

As previously stated explicitly (first comments) and implicitly (second comments referring to the first comments), ISRI continues to believe that the timing of this scrap metal permit is premature relative to the state’s activities on its industrial general permit.

Based on review of the 3<sup>rd</sup> Draft Permit, ISRI believes that some issues in the 2<sup>nd</sup> Draft Permit have not been adequately addressed in the 3<sup>rd</sup> Draft Permit and that the 3<sup>rd</sup> Draft Permit has some new issues that need to be addressed.

### **Comments on Outstanding Issues from the 2<sup>nd</sup> Draft Permit**

In its response summary dated August 1, 2011, the Board provided responses to ISRI's comments on the 2<sup>nd</sup> Draft Permit, identified as follows:

- Comment 19 – Metal recycling threshold for permit applicability;
- Comment 20 – Insufficient time for QSD/QSP qualification, implementation of on-site Phase I measures, and SWPPP preparation;
- Comment 21 – Design standards; and
- Comment 22 – Trigger exclusion for flows exceeding the design standard.

ISRI appreciates the Board's responsiveness to the issues raised in Comments 19 and 20 and the resulting changes in the 3<sup>rd</sup> Draft Permit. At the same time, ISRI finds that the 3<sup>rd</sup> Draft Permit does not adequately address the issues identified in Comments 21 and 22.

#### Comment 21

Regarding Comment 21, ISRI finds that the design standards in Sections III.D.4 (at 21) and III.D.6.b.3 (at 26) are still inconsistent (underlining added):

*Section III.D.4: "All treatment systems shall be sized and designed to allow no more than 5% bypass of annual average daily runoff, based on a continuous simulation of historical daily rainfall information available for the location where the regulated facility is located."*

*Section III.D.6.b.3: "The design volume shall be greater than or equal to 95<sup>th</sup> percentile\* of the annual average runoff volume from exposed areas not eliminated by Phase I BMPs."*

Depending upon the Board's intent here, resolving this inconsistency may be as simple as inserting "daily" between "average" and "runoff" in the sentence above in Section III.D.6.b.3. Alternatively, Section III.D.6.b.3 could refer to Section III.D.4 to define the design volume, or both sections could refer to a new definition for design storm (see

below). However accomplished, these sections must have or articulate consistent design standards.

### Comment 22

Regarding Comment 22, ISRI did not find any clarifying language in Section III.D, as indicated in the response summary, concerning the inapplicability of an analytical result representing a storm event in excess of the design storm to determining a NAL or NEL exceedance. Such clarifying language would articulate that an analytical result representing an excess storm event could not be considered any of the following:

1. An exceedance of a NAL or NEL.
2. A permit violation.
3. A value to be used in determining a NAL or NEL exceedance.

Such clarifying language should and must be added to the next version of the Permit, whether the Final Permit or the 4<sup>th</sup> Draft Permit.

### Other Issues

ISRI would like to take this opportunity to mention a very small, persistent issue – both on substance and actual size – in Footnote 52 to Section III.D.6.a, “Phase I Requirements” (at 22). Footnote 52 mentions a “singed report” to be submitted to the Board. For many reasons, “singed report” should be changed to “signed report”.

### **Comments on New Issues in 3<sup>rd</sup> Draft Permit**

In addition to the above comments, ISRI has some comments and questions on some new features in the 3<sup>rd</sup> Draft Permit.

### Non-Phased Approach with “Immediate” Applicability of NELs

The sudden appearance of the voluntary Non-Phased Approach in the 3<sup>rd</sup> Draft Permit is more puzzling to ISRI than inherently objectionable. It would be helpful to have more background on the Non-Phased Approach other than that the Metal Recyclers Water Quality Standards Committee recommended adding it to the 3<sup>rd</sup> Draft Permit.

If the Non-Phased Approach is truly voluntary, then ISRI has no objection to the Board providing members of the regulated community the opportunity to freely commit themselves to more-stringent standards (i.e., the Non-Phased Approach) than other standards otherwise freely available to them (i.e., the Phased Approach). The potential

danger lies in overt and covert coercion upon members of the regulated community to opt for the voluntary more-stringent standards (i.e., Non-Phased Approach). As it is, in the absence of more-stringent standards, “overcompliance” (relative to less-stringent standards) is always an option anyway. Why then does the Board feel compelled to formally add the Non-Phased Approach to this 3rd Draft Permit?

If the Board is concerned about backsliding under a Scrap Metal Permit without a Non-Phased Approach by subject facilities already meeting the requirements of the Non-Phased Approach, it is worth noting that such facilities are already “overcomplying” today without any Scrap Metal Permit. It seems unlikely that they would suddenly backslide – and essentially waste much of their effort and investment to be able to meet the requirements of the Non-Phased Approach – just because they had become subject to a Scrap Metal Permit without a Non-Phased Approach. As it is, at some time in the future, all subject facilities would have to meet the same set of stringent requirements under the Scrap Metal Permit.

In ISRI’s view, given the free choice, very few facilities would opt for the Non-Phased Approach. For such facilities, the Non-Phased Approach contains a potential regulatory danger. In their earnest efforts to (continue to) meet the Non-Phased NELs in Table 1.b (see below), effective December 31, 2011, such facilities would be potentially exposing themselves to permit violations for stormwater discharge concentrations that trigger the Non-Phased NELs but would otherwise, perhaps easily and safely, meet the Phased NELs in Table 1.a, effective July 31, 2013, and Phased NALs in Attachment B. This would be a disincentive to opting for the Non-Phased Approach, especially for facilities that cannot consistently meet the Non-Phased NELs with sufficient margins of safety.

In the end, ISRI finds that the Non-Phased Approach is unnecessary and questions its inclusion in the next version, whether the Final Permit or 4<sup>th</sup> Draft Permit.

#### Non-Phased NELs in Table 1.b

Concerning the Non-Phased NELs in Table 1.b (at 19) and the Phased NALs in Attachment B (at 64), ISRI notes that the values for hardness-dependent metals in these two tables do not reflect the same hardness level. The values in Table 1.b ostensibly reflect a total hardness of 100 mg/L (see Footnote e<sup>1</sup> of 40 CFR §131.38(b)(1)) whereas those in Attachment B reflect the default receiving water hardness range of 125–150 mg/L. While the values of applicable NALs and NELs would depend upon the

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<sup>1</sup> “Freshwater aquatic life criteria for metals are expressed as a function of total hardness (mg/L) in the water body. The equations are provided in matrix at paragraph (b)(2) of this section. Values displayed above in the matrix correspond to a total hardness of 100 mg/l.”

hardness of the actual receiving waters, and could be significantly different from those in these tables, the values in these (or any) tables, when rendered generically, should and must be based on the same hardness level, with that hardness level clearly indicated.

### Diversion to Sanitary Sewer System

Regarding potential diversion of first flush or contaminated stormwater to the sanitary sewer system, ISRI notes that Section III.D.6.a.2.xxii (at 24) was modified to allow such diversion “if the sanitary sewage collection agency reclaims and distributes and/or uses reclaimed water” (underlined text is new). It would be helpful to know under what circumstances such diversion to a sanitary sewer system would be disallowed. ISRI notes that on this matter, Section III.D.6.a.2.xxii and the Fact Sheet (at FS15) are slightly inconsistent.

### Need for Oil-Water Separator

ISRI notes that Section III.D.6.a.3.iv (at 25) includes the following new final sentence: “An oil-water separator is not needed if there is no potential for oil contaminated wastes to be processed at the facility.” Assuming that the Board intends “oil contaminated wastes” here to mean “oily scrap metal”, ISRI objects to the (mis)characterization of oily scrap metal as “oil contaminated wastes”. The phrase “oil contaminated wastes” should and must be removed and replaced by the phrase “oily scrap metal” – unless “oil contaminated wastes” is intended to refer to materials other than oily scrap metal.

### Definition of “Design Storm”

While ISRI agrees that the 3<sup>rd</sup> Draft Permit should have a definition for design storm (see above), ISRI notes that the new definition of “Design Storm” (at 41) –

*“This is the rainfall depth or intensity to which the treatment systems should be designed. The Permit defines it as the 95<sup>th</sup> percentile storm event\* for the area”*

– contains two slight errors.

First, notwithstanding this new definition, the 3<sup>rd</sup> Draft Permit does not define the design storm **as** “the 95<sup>th</sup> percentile storm event”. Rather, Section III.D.4 (at 21) states that “[d]epending on the facility location, this design storm magnitude will be roughly equivalent to the 95<sup>th</sup> percentile storm” (underlining added). This definition should and must be changed to reflect approximate equivalence to the 95<sup>th</sup> percentile storm and also should probably include some of the detail in Section III.D.4.

Second, this new definition “misidentifies” another new definition, “95<sup>th</sup> percentile rainfall event”, as “95<sup>th</sup> percentile storm event”. In reality, the new definition of “95<sup>th</sup> percentile rainfall event” appears to be the problem because the phrase “rainfall event” appears only in it, and nowhere else in the 3<sup>rd</sup> Draft Permit. Similarly, the phrase “rain event” appears only in the context of the “Rain Event Action Plan” (REAP). If “storm event”, “rainfall event”, and “rain event” are intended to be synonymous, then it may be helpful to state this fact. In the new definition of “95<sup>th</sup> percentile rainfall event”, including the defined phrase itself, “rainfall event” should be changed to “storm event”. While “rain event” could also be changed to “storm event”, doing so would change (perhaps ironically) the acronym REAP (“Rain Event Action Plan”) to SEAP.

### Summary

In summary, ISRI reiterates its general position that the timing of this scrap metal permit is premature relative to the state’s activities on its industrial general permit. On the substance of the 3<sup>rd</sup> Draft Permit, ISRI finds many issues, some old and some new, that need to be addressed in the next version, whether the Final Permit or the 4<sup>th</sup> Draft Permit. Old issues requiring correction include the inconsistent articulation of the design standard and the missing promised clarification about the inapplicability of analytical results from excess storm events to determining a NAL or NEL exceedance. New issues requiring further explanation or correction include the unnecessary Non-Phased Approach, the inconsistent rendering of hardness-dependent NALs and NELs, diversion of certain flows into sanitary sewer systems, the inappropriate characterization of scrap metal as “waste”, and the problematic definition of “design storm”.

In closing, ISRI thanks the Board for this opportunity to provide comments on the 3<sup>rd</sup> Draft Permit and for its consideration of these comments. If you have any questions or comments, you can reach me at 202-662-8533 or [DavidWagger@isri.org](mailto:DavidWagger@isri.org).

Sincerely,



David L. Waggoner, Ph.D.  
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August 31, 2011

Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348  
Attn: Michael Adackapara  
Mark Smythe

*Via Email & U.S. Mail*  
[madackapara@waterboards.ca.gov](mailto:madackapara@waterboards.ca.gov)  
[msmythe@waterboards.ca.gov](mailto:msmythe@waterboards.ca.gov)

**Re: Comment Letter**

**Draft Sector-Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Metals Recycling Facilities (Scrap Metal Facilities),  
Order No. R8-2011-0011, NPDES No. CAG 618001 (Draft Permit)**

Gentlemen:

The California Refuse Recycling Council (CRRC) is a trade association comprised of more than a hundred solid waste collection and recycling firms throughout California. Our membership includes material recovery facilities (MRFs), transfer stations, green waste composting facilities, construction and demolition facilities, and e-waste collection facilities. As an industry that facilitates the recycling of waste, we work on a daily basis to keep our state clean and healthy. Multiple new provisions in the Draft Permit make positive strides towards improving the regulation of storm water, something our industry supports. However, we feel the intent of the Board is unclear in the applicability of the Draft Permit and additional clarification is needed, especially for storm water dischargers in the refuse removal and recycling industry.

We are pleased the SARWQCB has recognized that the challenges of storm water pollution management can vary within certain industries; hence, the need for Sector-Specific Permits to address the unique conditions at relevant facilities. On Page One of your Draft Sector-Specific Permit for Metal Recyclers dated August 01, 2011, the language states that "This Permit is not applicable to recycling facilities commonly referred to as material recovery facilities that only receive source-separated recyclable materials primarily from non-industrial and residential sources." This language is potentially confusing, in that many of our MRFs process source-separated and/or commingled recyclables (mixed waste) in order to achieve AB 939 compliance for their primary customer base (municipalities). The sorting and processing activities are similar with both recycling streams; however, it would be difficult to distinguish between the stormwater discharge from a source-separated MRF that processes largely contaminated recyclables, and a commingled MRF that processes largely uncontaminated recyclables.

To this end, we respectfully request that the Board consider modifying the language on the first page to include both source-separated and commingled MRFs. The suggested language would read as follows: "This Permit is not applicable to recycling facilities commonly referred to as material recovery facilities that receive source-separated and/or commingled recyclable materials primarily from nonindustrial and residential sources."

We feel that our request is consistent with the language of the third draft on Page 5 of 65, regarding "Facility Information (Facilities regulated under this order)". Specifically, the following text language supports our recommendation: "Other types of facilities listed under SIC Code 5093 and engaged in wastes recycling are not required to get coverage under this Permit".

Please know that the members of CRRC and the refuse removal and recycling community as a whole fully support measures that improve the quality and health of California's environment. As members of the regulated community, we want to eliminate aspects of the Draft Permit that will result in confusion or hinder compliance efforts. Hopefully, our comments will assist the SARWQCB in revising the Draft Permit in a manner that will serve our environment and businesses together.

Please feel free to contact Paul Ryan (951) 288-5049, Ken Pretell (909) 908-7976 or myself if you have questions or would like to discuss this matter further. Thank you for your consideration of these comments.

Sincerely,



For

**David Fahrion**  
CRRC-Southern District President  
Telephone: (951) 657-7512

August 31, 2011

Mr. Michael Adackapara  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501

RE: Sector Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region, Order No. R8-2011-011

Dear Mr. Adackapara:

OC Public Works has previously provided comments on the prior draft of the proposed "General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region, Order No. R8-2011-011." While a response to these comments was provided, it does not address the basis of our concerns. The following clarifications of these concerns are therefore offered:

1. The benchmarks established in the monitoring provisions of USEPA's Multi-Sector General Permit for Stormwater Discharges Associated With Industrial Activity were never intended by USEPA to be used as effluent limits. Indeed, USEPA's intention in this matter is clear: "EPA notes that Part 6.2.2 emphasizes that the benchmark thresholds used for monitoring are not effluent limits" (see Federal Register Vol. 73, No 189, September 29, 2008, pg 56574 as noted in prior letter). While your response (Comment 29) states that the Numeric Action Levels (NALs) proposed in the draft order serve the same purpose (i.e. benchmark monitoring thresholds for determining BMP effectiveness), it does not recognize that the permit NALs become NELs on July 31, 2013. In drawing your attention to USEPA's clear intent regarding NALs/NELs, Regional Board should explain why it is requiring NELs beyond the requirements of EPA.
2. The County notes that the Metal Recycling Permittees are provided the opportunity to develop and propose an alternative set of technology-based effluent limitations. Based upon the discussion in H.26, it is evident that these limitations will need to be derived in a manner consistent with USEPA's effluent limitation guidelines and based on an in-depth analysis of treatment technologies available. If the proposed NALs are found to be unattainable, the Permittees have little more than a single storm season to perform this study and complete a reopening of the permit prior to the NALs becoming NELs. Moreover, the permit is ambiguous on whether there is indeed an opportunity to develop an alternate set of NELs. For example, while H.29 refers to "alternate NELs",

the commitment of the Regional Board in H.30 is simply to "determine the need to reopen the permit to incorporate any "additional NELs." With respect to this provision of the permit, it needs to be more clear that the Metal Recycling Permittees have a genuine opportunity to reopen the permit for the purpose of revising the NALs/NELs. The County recommends that the permit include detailed information regarding the procedures required to revise the NALs/NELs and the process for incorporating the revised NALs/NELs into the permit. Also, instead of establishing a fixed date for the NALs to become NELs, the permit should be revised such that the NALs become NELs only when sufficient data is available to establish technology based NELs in accordance with EPA's effluent limitations guidelines.

In concluding, we would again draw your attention to the Blue Ribbon Panel report. In its discussion of the applicability of NELs to industrial activities the Panel noted that that "The Board needs to reexamine the existing data sources, collect new data as required and for additional water quality parameters .... to establish practical and achievable Numeric Limits." We remain concerned that, contrary to this observation, the draft permit is taking the precedential step of establishing NELs in a stormwater permit in a manner contrary to both federal direction, expert advice and with no explicit consideration in the Findings as to whether the NALs/NELs are indeed practical and achievable. Not translating the NALs into NELs on July 31, 2013, and using the period of the permit instead to evaluate the application of NALs would be an approach consistent with the Panel's observations and address the concerns we have raised.

We appreciate the opportunity to provide comments. If you would like to discuss these comments further, please contact Richard Boon at (714)955-0670.

Very truly yours,

A handwritten signature in black ink, appearing to read "CC", is written over the typed name "Chris Crompton".

Chris Crompton, Manager  
Environmental Resources



Your ~~Business~~ Business Is Our Environment

August 30, 2011

California Water Quality Control Board – Santa Ana Region  
3737 Main Street, Suite 500  
Riverside, CA 92501  
ATTN: Michael Adackapara

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

Dear Michael Adackapara,

The Santa Ana Regional Board drafted a Sector-Specific General Permit to regulate storm water discharges associated with scrap metal recycling facilities (hereinafter referred to as the "Scrap Metal Permit") upon the recommendation of the Metal Recyclers Water Quality Standards Committee, and we have reviewed the third draft of the proposed Scrap Metal Permit. Although certain revisions were incorporated into this latest draft, we stand firm in our position that the proposed Scrap Metal Permit contains requirements and standards that are unsubstantiated, costly, punitive, unduly burdensome, and most importantly, outside of the law. The dramatic increase in costs, coupled with the inconsistencies and subjective gaps in the draft, will detrimentally impact the metal recyclers to the extent that compliance will be difficult, if not impossible.

We urge the Regional Board not to act in haste in adopting a permit that is premature and incomplete. Alternative options in regulating the industry should be further explored. Specifically, any action regarding the Scrap Metal Permit should be delayed until the passage of the Industrial General Permit has been finalized so that it can be utilized as guidance for and comparison against these proposed regulations. An unbiased committee should be formed in order to review the information provided by the Regional Board, environmental organizations, consultants, and vendors of storm water treatment technologies so that the necessary research can be performed to establish consistent requirements. The proposed regulations must be further examined in the context of the issues and obstacles that scrap metal recycling facilities will face in complying with the new standards in a timely and cost effective manner. In addition to framing the necessary regulations, the costs and size of the facility, as well as other relevant factors, should be reviewed as it is crucial in promulgating fair and reasonable regulations that can be successfully implemented.

Our concern for our clients and all scrap metal recycling facilities that are potentially subject to the proposed Scrap Metal Permit is paramount. Pursuant to the third draft of the proposed Scrap Metal Permit as revised on August 1, 2011, we respectfully submit the following comments for your consideration, action, and resolution:

**General:**

1. *[Previous Frog Comment 5/27/2011]: The adoption of the draft Scrap Metal Permit should be delayed until the passage of the draft Industrial General Permit has been approved as the Industrial General Permit serves as the foundation/basis for storm water compliance throughout all industries and regions. Implementing a regional, sector-specific permit prior to the finalization of the draft Industrial General Permit yields not only the appearance of inconsistency, but also one of a particular segment being targeted or penalized. Delaying the adoption of the draft Scrap Metal Permit would, at the very least, give the appearance that this regional, sector-specific permit took the new Industrial General Permit into consideration and display that there is a structured, sound, unified, simplified, and streamlined process for implementing regional, sector-specific permits. This would be a fair and good precedent to establish*

*as the proposed requirements and stringent compliance period are unduly burdensome to the individual scrap metal recycler. There has been no mentioned consideration of the significant hardship and impact on the industry collectively or to the individual business owner. A sector-specific permit should be tailored to that industry; it should not be punitive in nature nor set that industry up for failure.*

*[Regional Water Board Response 8/1/2011]: This comment was submitted during the comment period for the second draft and responded to within the Regional Water Board response letter (Comment 32). The response stated: "One of the benefits of the proposed scrap metal recycler permit is that it only affects a handful of dischargers in a specific sector, in a specific geographical area." Regional Board also commented that, "...should the statewide general industrial permit renewal process be unduly delayed, or be re-adopted with minimal changes, the progress achieved by the proposed scrap metal recycler permit should aid in the development of the next generation of statewide general industrial permits or statewide sector-specific permits."*

***[Frog Comment to Regional Water Board Response]:*** The arbitrary response of the Regional Board underscores the necessity of establishing a precedent whereby the foundation for any sector-specific permit is based upon the Industrial General Permit. It is imperative that the industry is subjected to fair and consistent standards that reflect a fair balance between the substantiated need for the regulation and the impact on the industry. The idea of a sector-specific permit affecting a handful of dischargers in a specific sector, in a specific geographical area, can influence the State as a whole seems counterintuitive and raises concerns. The logic in passing legislation that may target or penalize a specific section of industry because it may, at some undetermined point in the future, "aid in the development of the next generation of statewide general industrial permits or statewide sector-specific permits" is unsound and unjust. This line of reasoning would be akin to saying that the needs of a few individuals in a particular area should affect the laws that apply to the large majority of the population throughout the entire State. This is not a sound method for implementing regulation.

2. *[Previous Frog Comment 5/27/2011]: It is unclear as to how exactly affected industries within this Region were represented, in what capacity they were represented, if they were accurately represented, and, ultimately, if they were fairly represented. It would go a long way in terms of demonstrating "good faith" to further explain how the "affected" group was represented during the permit writing process. Frog Environmental maintains numerous scrap metal recycling facilities as clients in this region, none of whom were consulted during this process to provide input; nor were their consultants, who could have provided helpful and accurate information to the Regional Board.*

*[Regional Water Board Response 8/1/2011]: This comment was submitted during the comment period for the second draft and responded to within the Regional Water Board response letter (Comment 1). The response stated: "The Metal Water Quality Standards Committee is a stakeholder group that was organized by some of the local scrap metal recyclers (many of these recyclers are members of the Institute of Scrap Recycling Industries, Inc. or ISRI, and were represented by George Adams of SA Recycling), environmental organizations, consultants, and vendors of storm water treatment technologies. Regional Board staff participated in the Committee meetings at the request of this stakeholder group. The Committee was not organized by the State or any State agency."*

***[Frog Comment to Regional Water Board Response]:*** The fact that the Committee was not organized by the State or any State agency raises questions about the need for this sector-specific permit and the agenda of the Committee. If the information being used to justify the content of this permit came directly from the Regional Board, then why didn't the Regional Board independently determine the need for such a permit? In this instance, where the stakeholder group drafting the proposed sector-specific permit formed itself rather than the Regional Board assessing a need and conducting an unbiased selection process, including a representation of members from the affected industry, to form a committee. Therefore, Regional Board needs to release and make public on the Regional Board website the list of Committee



members and stakeholders and their findings to demonstrate "good faith" and clearly illustrate how the "affected" group was represented during the permit writing process.

The response quoted above also describes Committee members as local scrap metal recyclers, environmental organizations, consultants, and vendors of storm water treatment technologies. It is not uncommon for certain stakeholders within an industry to desire that more stringent requirements be put in place if these requirements could cause competitors within the industry to have an increased financial burden or even go out of business. Are the environmental organizations those that want more stringent regulations in order to facilitate more litigation? Will the consultants and vendors on the Committee potentially benefit financially from increased business due to more stringent regulation?

3. *[Previous Frog Comment 5/27/2011]: There are numerous instances throughout the draft Scrap Metal Permit which mention the use of "best professional judgment" to make a particular determination. While the Regional Board has made an effort to clarify the process used in establishing best professional judgment in the latest revision of the draft, many questions still remain about its definition. If there is no criteria that defines, outlines, or limits what best professional judgment is, then the judgment becomes an arbitrary term that can vary depending on the professional and his/her experience, biases, etc. There should be an objective definition for best professional judgment, and minimum requirements should be established for "professionals" that can use their "best judgment" to make determinations that could potentially be costly and/or significant. More importantly, best professional judgment or any other subjective standard should not be prematurely substituted for actual data and scientific information that will show a true representation of discharges from scrap metal recycling facilities. Requiring these facilities to take onerous and costly actions in response to such subjective standards, when Regional Board has admitted these standards may change in the near future, is inconceivable and a serious detriment to the success of the industry.*

**[Frog Comment to Regional Water Board Response]:** This comment was submitted during the comment period for the second draft. However, it was not responded to within the Regional Water Board response letter. There is still no objective definition for best professional judgment or a set of criteria that defines, outlines, or limits best professional judgment. Furthermore, there are no minimum requirements established for "professionals" that can use their "best judgment." This term is currently open for subjective interpretation and application and must be clarified or removed from the proposed legislation.

4. *[Previous Frog Comment 5/27/2011]: The mechanics of the multi-purpose Phase I offer a dubious solution to a problem that hasn't been fully identified. It is counterintuitive to implement a discovery period (Phase I) to determine the baselines/ standards moving forward while simultaneously assessing the new information and applying it almost immediately in real-time to dictate what a facility must do in Phase II. If there is a basis being determined during a set timeframe, it is logical to first evaluate the data gathered, formulate the guidelines to be put into place, and then institute those formulated guidelines prior to beginning the process of enforcement/ compliance. A time period prior to Phase I (a "pre-Phase I" period, so to speak) should be set aside to conduct the appropriate research and analysis in a traditionally fair and practical manner. The adoption of the draft Scrap Metal Permit should be delayed until after the Regional Board has completed its evaluation of scrap metal recycling facilities and provides a scientific report detailing which specific facilities were visited, the number of facilities visited, the scope of its evaluation, and the findings as they relate to Best Management Practices (BMPs), NALs/NELs, proven available treatment technologies, etc. This report should also include an analysis about cost-effectiveness, availability, efficacy, and practicality with regards to the significant provisions within the draft Scrap Metal Permit (BMPs, additional monitoring frequency and parameters, observations, NALs/NELs, treatment control measures, QAPP, REAP, SWAMP, etc.). Currently, the language and requirements in the draft Scrap Metal Permit would add an undefined cost to businesses without providing a clear solution, and this may quickly drain resources that are already strained within the scrap metal recycling industry.*



**[Frog Comment to Regional Water Board Response]:** This comment was submitted during the comment period for the second draft. It is being reiterated with this set of comments because the need still exists for a scientific report addressing the factors listed above as the data listed within the SMARTS system is not sufficient in its current form. This listed data, in addition to other relevant information, should be analyzed and interpreted in a specific manner which logically relates to the content of the draft Scrap Metal Permit.

**Specific:**

1. *[Previous Frog Comment 5/27/2011]: Section IV of the Fact Sheet (p. FS3) states that "approximately 50% of the facilities exceeded the USEPA's benchmark levels for one or more metals" within the Regional Board's jurisdiction during the years of 2005-2010. The following page (p. FS4) continues along the same theme, citing deficiencies such as "(1) approximately 10% of the facilities do not implement the minimum control measures (BMPs) specified in the State's [sic] General Industrial Permit; (2) approximately 85% of the Storm Water Pollution Prevention Plans (SWPPPs) are not site-specific; (3) the employees are not properly trained in storm water pollution prevention methods; and (5) [sic] only about 20% of the facilities had any kind of storm water treatment systems installed." Regional Board should release a separate report detailing the data used to compile their statistics. One very important reason for releasing this report to the public is to allow for a peer review to determine the proper context for these statistics. For example, how many facilities actually sampled during this period? What if only 16 out of 100 facilities sampled consistently over the five year period, and only half of those 16 facilities experienced an exceedance? In that case, the 50% statistical figure would be skewed. What if a facility barely exceeded a benchmark once in 2005 and did not exceed again in the following years; will that facility be incorporated into the 50% statistical figure? If a site has not updated a contact name in a SWPPP, would this constitute as a non site-specific plan? Regional Board should provide the industry with transparent information to ensure a fair analysis of data was conducted and to instill confidence among the affected group.*

**[Frog Comment to Regional Water Board Response]:** This comment was submitted during the comment period for the second draft and responded to within the Regional Water Board response letter (Comment 34). The response stated: "The data is available for public review through the SMARTS system." Data listed within the SMARTS system is not sufficient in its current form as it does not address factors 1, 2, 3, and 5 listed above. This listed data, in addition to other relevant information, should be analyzed and interpreted in a specific manner which logically relates to the content of the draft Scrap Metal Permit and be released to the public via the Regional Board website.

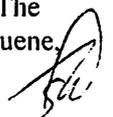
2. It is noted that the draft Scrap Metal Permit clarifies the design storm criteria for treatment systems as roughly a 95<sup>th</sup> percentile rainfall event, allowing no more than 5% bypass of annual average daily runoff, based on a continuous simulation of historical daily rainfall information available for the location of the facility. Is the historical period for daily rainfall to be understood as a specific period of record (i.e. 10 years), or is it for the entire period that historical data exists for? Regional Board should clarify its definition of historical daily rainfall information recommend/determine criteria and a universally accessible source for determining this information. For example, a facility should use the closest active weather station listed from a particular Regional Board approved website to refer to for rainfall data over a specific Regional Board determined time period.
3. The third draft offers permittees two routes towards compliance: a Phased Approach (Option 1) or a Non-Phased Approach (Option 2). If a permittee should choose Option 2 and exceed an NEL from Table 1b, the draft Scrap Metal Permit states that the NEL exceedance is a violation; however, it is unclear what the consequences will be. In contrast, required actions for permittees exceeding an NAL/NEL within the Phased Approach are clearly stated. Would any consequence(s) for permittees exceeding an NEL within the Non-Phased Approach be up to the discretion of the Regional Board staff member/inspector/regulator?



4. Page 21 of the draft Scrap Metal Permit (Section III.D.5.a.) states that "If the State Board does not develop an industrial QSD/QSP certification program as part of the General Industrial Permit within 18 months of adoption of this Permit, the Regional Board proposes to organize the development of a scrap metal-specific QSD/QSP certification program." It is fairly clear that there is an 18 month period for facilities to hire/retain properly qualified personnel to create SWPPPs that comply with the new requirements of this draft Scrap Metal Permit. However, there does not seem to be a similar grace period for implementing the Monitoring and Reporting Program (MRP). Page 51 of the draft Scrap Metal Permit (MRP Section I.A.) states "All facilities currently regulated under the State's General Industrial Permit shall update its MRP in accordance with the requirements specified in this section within 90 days of adoption of this Order." MRP Section I.B. continues on to say, "The MRP shall be implemented within 30-days of uploading the PRDs." This is a significantly smaller time frame to implement the MRP. Page 53 of the Permit (MRP Section III.A.1.) also states, "Each month a group leader, a QSP or a person under the direction of a QSP or the group leader shall conduct visual inspections of the industrial areas of the permitted facility..." Rather than allow a sufficient time period for a proper industrial/scrap metal QSD/QSP program to be in place, the Regional Board is requiring certifications solely specific to Construction activities to implement an Industrial program.

Furthermore, on Page 57 (MRP Section IV.A.), the MRP calls for a QAPP to be developed by a SWAMP certified professional. The response to Comment 48 within the Regional Water Board response letter states, "We are working with local laboratories to develop such a program (SWAMP) and a list of such laboratories will be published *after* adoption of this order." The fact that yet another required program/certification is still being developed is further evidence that there should be a longer implementation period for the MRP and that this draft Scrap Metal Permit is being rushed. Yet another example of the rushed nature of this program can be found on Page 19 of the Fact Sheet within the Group Monitoring Section where it states that one of its purposes is "(2) to develop and implement a monitoring program that is consistent with the quality assurance and quality control programs developed for the State Board's SWAMP program." Again, these groups will have to be formed, approved by the Regional Board, create an MRP with a QAPP in accordance with SWAMP (a certification program that is still in development), submit the information listed on Page 59 of the draft Scrap Metal Permit (Section VII.B.), nominate a group leader that will need to obtain a QSD/QSP and SWAMP certification, and meet any other additional necessary requirements. The time period with which to do so seems unreasonable, especially if a facility wanted to accomplish these things internally without the help of a consultant.

5. Page 21 of the draft Scrap Metal Permit (Section III.D.5.a.) also states that "In the absence of such a program, other equivalent programs or professional experience and other certifications may be considered by the Executive Officer." However, in its current form, the use of the term "equivalent" to describe the minimum criteria of a qualified person is too ambiguous. Regional Board should clearly list the other certifications and/or professional experience (e.g. CPSWQ, mechanical engineer, etc.) that may be substituted. This will enable the affected group to better plan and prepare.
6. Regional Board should also base its criteria for determining a qualified person on that of the upcoming draft Industrial General Permit QSD/QSP program to provide a consistent, unified, simplified, and streamlined approach. This uncertainty also highlights the importance of delaying the adoption of the draft Scrap Metal Permit until after the passage of the draft Industrial General Permit has been approved.
7. In its current form, the draft Scrap Metal Permit requires the collection of four samples (up from the two samples as currently required by the Industrial General Permit) from all discharge points, regardless of facility size. Regional Board should allow for a reduction in the number of sample locations at a facility, instead of requiring sampling from all discharge locations. Furthermore, the additional parameters listed in Table 2 (page 56) appear over-inclusive. Currently, facilities with an SIC code of 5093 are required to test for pH, Specific Conductivity, Total Suspended Solids (TSS), Total Organic Carbon (TOC) or Oil and Grease (O&G), Zinc, Aluminum, Iron, Lead, Copper, and Chemical Oxygen Demand (COD). The draft Scrap Metal Permit further requires that Turbidity, Benzene, Ethyl Benzene, Naphthalene, Toluene,



Total Petroleum Hydrocarbons, Methyl-tertiary-butyl Ether (MTBE), Total Xylenes, Nickel, Silver, Chromium, Cadmium, and Arsenic be tested as well. With the proposed increase of sample parameters required for analysis, individual scrap metal recycling facilities will need to invest thousands of dollars to certify compliance with the draft Scrap Metal Permit, prior to any actual site upgrades as mandated by the Phased Approach. Regional Board should provide and make public some type of scientific study/report which explains data reviewed and the process used to justify the requirement of these additional parameters.

8. Footnote 16 on Page 17 of the draft Scrap Metal Permit states, "The Permittees have the option to develop and submit for approval of the Regional Board alternate NELs based on performance evaluation of the BMPs and treatment technologies." This is also mentioned in the response to Comment 28 within the Regional Water Board response letter. Regional Board should provide further clarification about how this process is to take place and what type of information to gather/provide.

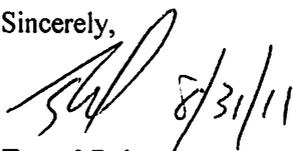
**Conclusion:**

Currently, the draft Scrap Metal Permit is premature, rushed, unsubstantiated, and unfinished. The absence of sound, reliable, and defensible data to justify the implementation these proposed and substantial provisions/ requirements sets a dangerous and unconstitutional precedent. A scientific report detailing the data and analysis methods is a prerequisite to any such implementation. Additionally, unless a clear definition with specific criteria listed is used to describe the term "best professional judgment," its subjective meaning can vary from inspector to inspector, region to region, and even day to day. At some point, the mandate for additional procedures, samples, parameters, equipment, documentation, plans, and so on and so forth will need to be reduced as businesses cannot continue to shoulder the increased cost. Simply passing the buck and creating an undue burden, without any evidence or indication of long-term, sustainable benchmarks or economic practicality, will simply force many scrap metal recycling facilities to close their doors. At what cost must these facilities achieve or try to achieve compliance?

We hope that these crucial issues will be re-evaluated and a feasible, alternative plan can be established for this industry.

If you have any questions, please don't hesitate to contact me via the phone/fax numbers listed below or via my e-mail address: [terry@frogenv.com](mailto:terry@frogenv.com).

Sincerely,



Terry J Balog  
President

cc: Ms. Carey A. Miller, Esquire

