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TELECOMMUNICATIONS COVER LETTER

To: Debbie Irvin, Clerk to the Board
Company: Metal Recyclers Monitoring Group
California Wineries Monitoring Group
FAX Number: (916) 341-5620
February 3, 2005
From: Jason M. Booth
1140-001/1141-001

MESSAGE Attached are the revised versions and comments on the General Permit.
Please replace the copies faxed of yesterday.

Total number of pages, including this cover letter: 11

Sent by: JMB

PLEASE NOTE: The information contained in this facsimile transmission is intended for the stated recipient(s) only. If the reader of this message is not the intended recipient, you are hereby notified that we do not intend to waive any privilege that might ordinarily attach to this communication and that any dissemination, distribution or copying of the information contained in this facsimile is therefore prohibited. YOU are further asked to notify us of any such error in transmission as soon as possible at the telephone number shown above and to return the facsimile documents to us by mail at the address shown above. Thank you for your cooperation.

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February 2, 2005

VIA TELECOPIER**(916) 341-5620**

State Water Researcher Control Board
C/O Ms. Debbie Irvin
Clerk to the Board
1001 "I" Street, 24th Floor
Sacramento, California 95814

Re: **Comments on Proposed Revisions to
General Storm Water Permit**

To The State Water Resources Control Board:

Dongell Lawrence Finney LLP serves as legal counsel to the California Wineries Storm Water Monitoring Group ("CWG"), as well as numerous other parties operating under the General Industrial Storm Water Permit ("the Permit"), amounting to almost 100 facilities. On behalf of the CWG members, we provide the following comments with respect to the proposed revisions to the Permit.

We are concerned that the current draft seeks to expand the reliance on benchmarks as an enforceable standard and use them as a catalyst for enforcement. We therefore urge the Board members and staff to continue to focus on the use of Best Management Practices (BMPs) in lieu of the imposition of effluent limitations for storm water discharges, and to reconsider the present efforts to impose numeric limits on storm water discharges.

Reliance on BMPs is appropriate and consistent with USEPA's approach for storm water discharges. However, the General Permit, as now crafted, appears to reflect an

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intent to allow further encroachment of effluent limitations into a process in which they simply will not work. It is neither appropriate nor feasible to employ numeric limitations to regulate storm water discharges, as every industry, and even every discharger, presents a unique set of storm water issues that must be addressed through the implementation of specifically tailored BMPs. Issues as basic as weather patterns, climate conditions, terrain, soil conditions, and facility lay-out can create dramatic differences in what constitutes an appropriate BMP for a given operation even among members of the same industry in the same general geographic area. Two similar operations on opposite sides of a street could require vastly different BMP programs based simply on difference in slope of their yards. One size does not fit all, and it is a mistake to act as if it does, especially without any scientific basis for contending otherwise.

The industries impacted by these proposed changes do not operate process wastewater programs in which water quality can be assumed to be relatively constant and controllable. Rather, the nature of the industries covered by the Permit and the obvious variability of the weather, naturally and invariably leads to broad fluctuation in sample results. Such fluctuation is unavoidable as a result of the many outside influences over which the operators have no control. Implementation of the Permit will cause a dramatic increase in the costs associated with collection and assessment of analytical storm water discharge samples, and the technical challenges associated with treating storm water, are prohibitively expensive. As a result, facilities are faced with the prospect of expending their limited resources on costly and potentially endless sampling, at the expense of BMPs, without any reasonable or justifiable purpose, and with no prospect of turning sample results into environmental benefit.

Effluent limitations based upon the multi-sector benchmarks have never been proven to be practicable or even achievable by many if not all of the industries covered by the General Permit. In fact, just the opposite is true. One of this firm's clients has been under order from the EPA to capture and treat all its storm water, and has been prohibited from discharging the collected storm water until it meets the multi-sector benchmarks. Despite the fact that the water is captured, pumped into and settled in large holding tanks, run through charcoal filters, and then sampled and tested, it rarely meets the benchmarks, if at all, and then only after it has been filtered and re-filtered, tested and retested, numerous times. Often, our client is forced to seek special permission from the EPA to discharge its collected storm water because it simply cannot meet the requisite numeric limitations for a given batch of water no matter how many times it has been filtered. The technology simply does not exist to make the benchmarks a regularly achievable goal. The Permit, as drafted, assumes that benchmarks can and will be met simply through the addition of more BMPs. However, there is no scientific proof to support that conclusion, and substantial evidence to refute it. The Permit, as presently framed, will doom California permittees to endless attempts to meet a standard that the available technology cannot achieve. This cannot be right.

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The California Industrial General Permit should not serve as a national test case for such an approach. Instead, the Board should work with EPA Region 9 and Headquarters to study the feasibility of such an approach in the future before it considers implementing it and imposing costly and probably impossible obligations on its industry. California has no mandate to adopt a permit based on numeric limits. Neither the Clean Water Act nor the Porter-Cologne Act require or suggest a numeric effluent approach to NPDES storm water permits. Rather, they recognize the need for and efficacy of limiting effluent discharge through the implementation of BMPs.

The Board should not lose sight of the fact that the BMP-based approach in the existing and draft permit works. Since 1992, industrial dischargers have invested a great deal of time and money into their facilities for the specific purpose of improving storm water discharges. This investment in storm water BMPs is an ongoing activity and will continue as a result of this new Permit. Specific examples include:

- Installing canopies and covers over materials storage areas
- Improving good housekeeping practices
- Implementing material handling practices to reduce the exposure of materials to storm water
- Developing and testing new technologies to improve storm water quality
- Developing employee training programs and employee awareness of the benefits of storm water protections

The new Permit establishes several new sampling and effluent limit-like requirements that are impractical and needlessly burdensome to businesses that could otherwise afford to operate and meet their environmental obligations. The Permit's new provisions may actually be counter-productive and, in the end, do more environmental harm than good.

Grab samples of the kind called for in the Permit do not represent runoff from the site. Due to the nature of storm water discharges, collecting truly representative samples would require technical expertise well beyond that which a facility operator should be expected to possess, and the cost of hiring an outside expert to collect representative samples is well beyond the financial wherewithal of most facilities. Moreover, the cost of collecting, testing, and analyzing a sufficient number of samples to make interpretation of such data meaningful is well beyond the financial means of any of the companies operating under the Permit.

Reliance upon grab samples to determine a facility's environmental performance is no more appropriate than reliance upon a photograph taken during single play of a football game to determine how well a team performed. Taking a few more such photographs will not improve the method's diagnostic value. Moreover, neither the State nor EPA has shown that such an approach has enough environmental benefit to justify the tremendous financial and

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In light of the virtually certain failure to meet one or more of the benchmarks that most if not all the permittees will experience, there will be other, probably unforeseen negative consequences as well. The new reporting requirement will place a huge additional burden on the Regional Board staff members, who will have to review and approve all the additional site specific BMPs called for under the new Permit. Without site-specific knowledge, staff will be placed in the impossible task of either making site-specific BMP determinations in the dark, or visiting every facility that abides by the Permit's terms to determine whether their BMPs are adequate, and determine whether any additional BMPs can and should be implemented. Any belief that the new requirements will not substantially increase the workload of the already overburdened Regional Board members must be viewed as overly optimistic at best.

In addition, the already limited resources of the Regional Board staff members will be further taxed, if not absorbed altogether, just in the handling of the massive amount of additional paperwork that compliance with the Permit will necessarily generate. Time and energy that could and should be spent on tasks that would lead to an actual improvement of storm water quality will instead be spent simply logging in and reviewing meaningless grab sample results and various proposed but untested additional BMPs.¹ This will also further limit the Regional Boards' ability to locate operators who have not filed Notices of Intent and who are making no attempt to comply with California's storm water regulations. The operators that deserve the most enforcement attention will receive the least, while the operators who have already demonstrated a desire to comply with their environmental obligations will be further singled out, and asked to bear an even greater financial burden, but without legitimate environmental justification.

The fact that industry members resist a particular approach should not, by itself, incite the environmental community to support that approach blindly. Disapproval by industry of a proposed environmental requirement does not automatically invest that concept with wisdom or benefit. Permittees as diverse as school districts, trucking companies, and auto recyclers have come forward to voice their strong and well-reasoned concerns over the provisions of the draft Permit. We urge the environmental regulatory community to look at this issue from the viewpoint of what is best for California. The funds that will be wasted in meeting

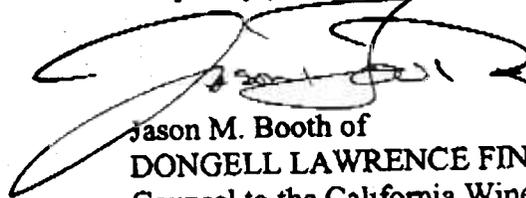
¹ We do not and cannot speculate as to the eventual impact of the Permit's apparent imposition upon the Regional Boards of an obligation to analyze and approve each and every proposed new BMP that a permittee seeks to implement.

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Accordingly, we recommend that the Board return to a BMP-based approach in this Permit, and reject the use of benchmarks to trigger additional monitoring and reporting requirements. We also encourage the State to increase its efforts to bring into this program those non-filing dischargers that have thus far avoided compliance, and leave the Regional Boards with the time and resources to do so.

Very truly yours,



Jason M. Booth of
DONGELL LAWRENCE FINNEY LLP
Counsel to the California Wineries
Storm Water Monitoring Group

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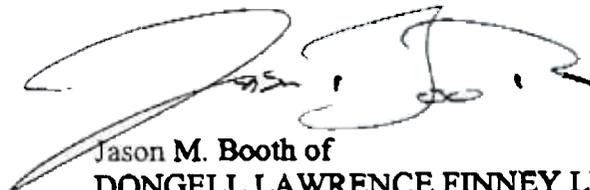
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