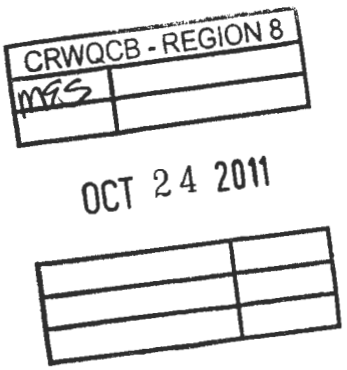

October 19, 2011

Ms. Carole H. Beswick
Chairperson
Santa Ana Regional Water Quality Control Board
3737 Main Street, Ste. 500
Riverside, CA 92501

Re: Comment Letter
Draft Sector-Specific General Permit
Scrap Metal Recycling Facilities – Santa Ana Region

Dear Ms. Beswick,

This is in response to a number of storm water issues in the most recent draft Scrap Metal Sector Specific industrial permit currently under discussion by the Regional Board.

A number of these items in this most recent Draft permit have the potential to adversely affect our, and other, company's ability to stay in business. These comments are to alert you and the Board to the problems with each of these issues.

Critical comments

First of all, we are extremely disappointed that this most recent draft was only received via e-mail three days ago. This of course leaves very little time to respond in a conscientious or timely fashion.

Second, there have been no written responses to the issues raised in writing by this author and others over the last several months.

Third, there have been no responses to the issues raised by the undersigned at the Board meeting last month in Irvine.

Fourth, to give a (*non-groupie*) company ***60 days to be in compliance (page 17, footnote)*** is laughable. This is even shorter than the 90 days given in the third draft "permit" last spring. Such unequal treatment may not even be legal!! The "non-group" permittees need to have the same compliance dates as all other dischargers. The costs, time and training to even come close to getting prepared, and hiring trained and qualified person to perform the work would require six months – which is what the state permit gives as a minimum!

Fifth, what is the desperate need to adopt a permit for a single SIC code/sector with a compliance date in two months?? We know of no deadline imposed by either the Clean Water Act or lawsuit requiring adoption, especially in light of the concerns presented herein.

All of the above items, and those below, give us reason to doubt whether the Board's staff seriously intends to even listen to the issues raised, whither administrative or technical. It gives the impression that the Board's staff is intent on getting this document adopted regardless of input from the regulated community.

We urge the Board to carefully consider the comments in this letter and fully resolve them prior to any adoption of a new Permit or better yet, eliminate this "sector specific" permit until the state has adopted its state-wide general permit.

Specific Comments and Concerns

The fifth draft, for the reasons given herein, is inconsistent and not well thought out. We are of the professional opinion that this draft is pre-mature - since the statewide Permit is still pending and many issues are largely unknown [such as proven technologies, QSD/QSP issues, among others, etc.].

Among our other concerns are the following, by issue.

Standards

We note that the draft permit demands both ***design standards*** and ***performance standards***. By definition, design standards impose liability on the entity providing those designs - whether you call them 'BMPs' (which by the EPA are not mandatory), 'mitigative measures', or 'control measures.'

Performance standards - NALs and/or NELs – are the standard environmental permit limits. Whether concentration units or mass/unit time units in a discharge, they are the absolute measure of the impact of an emission on the environment. These standards are appropriate and we support them if they are:

1.) reasonable, and
2.) attainable.

Either the Board must accept liability for its design standards ('BMPs', 'mitigative measures', 'control measures.') or it must let a business determine how best to meet a reasonable and attainable discharge standard (*see above comments on copper levels*). Otherwise you have a fascist state!

Mandatory "Shall" language

We have noted in last month's hearing, and it is still in the draft permit, that the word "**shall**" appears numerous time where before the permissive word "should" was previously in the text.

As you know "shall" in a law or regulation makes the action MANDATORY. So, if a BMP requirement now says that industrial areas **shall** be paved, there is no longer any option: ***unless the source paves the area, they will be in violation of the Clean Water Act!!***

Starting on Page 22-25 of the draft permit, the mandatory **"shall"** (***in addition to the above paving requirement***) includes:

- ➔ diversion of run-on and flows from in-industrial areas away from industrial areas. *This would impose an enormous cost on every facility to begin diverting storm water flows around various parts of a facility (including the costs of civil engineering documents) During hard economic times, this may not be the most effective approach.*
- ➔ roofing materials shall be "non-polluting" - *what is a non-polluting roof???*
- ➔ use drip pans and absorbent materials under or around leaky vehicles and equipment.
- ➔ keep records of drip pan use and maintenance with inspection records
- ➔ develop a "Rain Event Action Plan" base on a weather forecast three (3) days in advance! *See comments below on adequacy of this approach.*
- ➔ build secondary contains and roofs over chemical and hazmat storage areas
- ➔ inspect **all** vehicles and equipment for leaks, spills or other malfunctions
- ➔ label **all** containers (*regardless of contents???*)
- ➔ minimize storm water contact with contamination by removal, painting or other *(undefined)* measures
- ➔ clean up spills and leaks promptly using dry absorbents

These actions alone will require upward of $100,000 per year for just a smaller yard; larger ones will require correspondingly more!

"Technology" Based Standards

We noted - on page 26 - that a required Phase II Corrective Action Plan *"...**shall** select and design an advanced media filtration system or an equivalent treatment system to treat the design volume....."* This requirement alone will most likely bankrupt most smaller facilities because the technology to meet the Table 1b standards for metals does not exist!

We seriously doubt whether available technologies were even evaluated or compared to systems currently installed in California. The Board's staff never released even a list of the treatment technologies which, in their 'professional judgment,' makes possible attaining the NELs listed in the Permit!!

We note that page 10 (item #28) states that ".....these efforts are **likely to lead** *[ed. future tense]* to a number of acceptable treatment technologies ....."

So, how can the staff say that the NEL limits are "technology based" when item # 28 (above) indicates that the technologies are only **likely** to be **developed in the future**??

We are extremely concerned that the Board is prepared to adopt a permit which includes standards which cannot be consistently attained even with "Gold Standard" treatment technology!

To better determine if existing, installed, technologies are capable of meeting the effluent NELs, we reviewed the effluent analyses for the last three years from one of our yards as a test case. This yard is equipped with tertiary treatment for its stormwater. ***Tertiary treatment is the "Gold Standard" for water and waste water treatment.***

Of 26 discharges over the last three years, we found that ***even with tertiary treatment, the proposed NEL copper standard (13 µg/L) could not be met 19.3% of the time***. If tertiary treatment treatment won't work for a significant percentage of the time, what hope will lesser technologies have?? How then can the staff say that these effluent limits are "technology based??"

Rain Event Action Plan

The page 23 'Rain Event Action Plan' (REAP) depends on a Weather service prediction of 40% WITHOUT AN AMOUNT of rainfall listed. This, on its face, is laughable particularly three days in the future! We also note the accuracy of the "weather service" for Hurricanes Katrina, in 2005, and Irene this year.

It is far more efficacious to simply mandate that every yard implement its rain contaminant mitigation activities every Wednesday (or any other given day)!! It would easily accomplish the same result at far less cost!

We also note that NO OTHER weather forecasting service is permitted.

Sampling Analytes/Pollutants

Table 3 (page 56) details the minimum chemical analytes for storm water discharge lab analyses.

We question why the methodology for organic materials dissolved in storm water using the 'Total Organic Compound' [TOC] method was dropped as an option?? We have found that TOC is a simpler lab method than the older 'oil & grease' (O&G) method. Also, O&G costs about 45% more than the TOC method, which is again a concern in these difficult economic times.

Accordingly we are urging the Board to reinstate the option for the TOC method in this section.

Numeric Effluent Limits/Benchmark Levels

Since the last draft of the RWQCB-Santa Ana's Scrap Industry General Permit ("Permit") environmental groups have prevailed upon the RWQCB to add in provisions which require permittees to comply with numeric effluent limitations. These are in essence the USEPA's Benchmark Levels set out in the USEPA Multi-State General Permit ("MSGP"); and, the CTR (see discussion below).

As now worded, the proposed Permit incorporates USEPA Benchmarks from the MSGP ***even though the MSGP was not intended to apply to California.***

The USEPA's MSGP Benchmarks are only intended to be used to assess whether a site's Best Management Practices ("BMPs") are achieving Best Available Technology Economically Acheivable ("BAT") and/or Best Control Technology ("BCT") standards and requirements. We

note that the **USEPA has not promulgated specific regulations and standards for storm water discharges from scrap recycling facilities.**

The USEPA's MSGP Benchmarks ***are not intended to be effluent limitations.***

Federal Regulations state the "Benchmarks" were established "to determine the overall effectiveness of your SWPPP in controlling the discharge of pollutants to receiving waters....an exceedance of a benchmark value does not, in and of itself, constitute a violation of this permit" *[65 Fed. Reg. 64766-67].* Numeric effluent limitations must take into account industry-specific BAT/BCT - ***which is not yet proven***!!.

California Toxics Rule

The California Toxics Rule ("CTR") requires that storm water discharges "shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Basin Plan" *[40 C.F.R. 131.38].*

Such criteria will need to attained at the end of the discharge pipe (i.e. point source) unless the SARWQCB authorizes a **mixing zone**.

The proposed Permit does not authorize a mixing zone. So, the CTR is a water quality standard in the Permit and a permittee violates ***receiving water limitations*** when it "causes or contributes to an exceedance of" such a standard, including the CTR.

Thus, if the storm water leaving a scrap site from a point source exceeds the CTR's water quality standards (e.g. for copper at 13 µg/L), it will constitute a permit violation and a Clean Water Act violation ***despite the implementation of BMPs*** implementing BAT/BCT.

Therefore, this requirement must be either completely backed out of the Permit; or, a new provision should be added to allow for a mixing zone.

We will believe that implementation of BMPs based on BAT/BCT should be the standard rather than a strict liability end of pipe standard; and/or a mixing zone allowance provision should be added to the Permit.

CLOSURE

In light of the above comments we highly recommend that the board eliminate or put off this "sector specific" permit until the state has adopted its state-wide general permit. If you have any questions, please contact us at the above address, or by phone at (562) 921-9974 or e-mail at: rgriffin@ecoparts.com.

Sincerely,

Roger Griffin, MS, P.E.
Director, Environmental Compliance
cc: C. Siroonian
R. Coffman
T. Bois