

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 During and After
the September 16, 2011 Public Hearing

Comments were received from the following. Major comments are summarized below with responses to each comment:

Lindsay Maine – SA Recycling, September 16, 2011
Terry Adams - SA Recycling, September 16, 2011
Garry Brown – Orange County Coastkeeper, September 16, 2011
Tim Simpson – AMEC, September 16, 2011
Anna LeMay – Castellon & Funderburk, LLP, September 16, 2011
Ken Pretell – California Refuse Recycling, September 16, 2011
Roger Griffin – Ecology Auto Parts, September 16, 2011
Tom Bois– Ecology Auto Parts, September 16, 2011
Tim Mares- Frog Environmental, September 16, 2011

State Water Resources Control Board (State Board) – October 21, 2011
Castellon & Funderburk, LLP (Castellon & Funderburk) – October 24, 2011
Ecology Auto Parts (Ecology) – October 19, 2011 (rec'd October 24, 2011)
Stormwater Rx, LLP (Stormwater Rx) – October 26, 2011
California Metals Coalition (CMC) – October 27, 2011

Comment 1. There are inconsistencies in the Order regarding the definition of the design storm (Tim Simpson).

Response: All inconsistencies have been rectified; the design storm is the 95th percentile storm event for the area.

Comment 2. Those facilities that only collect, compact, store and transport CRV aluminum cans should not be subject to this Order (Anna LeMay, Ken Pretell)

Response: The Order has been revised to include 'compaction' as a process that does not (by itself) trigger the need for coverage under this Order.

Comment 3. The REAP trigger of 40% chance of precipitation is unusable without knowing the size of the predicted storm. It would be better to require weekly implementation of the REAP

activities throughout the year without regard to the chance of rain (Roger Griffin).

Response: The NOAA site referenced in the Order does not include the size of the predicted storm. If prior to the re-issuance of the permit in five years, a superior governmental weather website is developed, the Order will rely on that new website. With regards to the suggestion for a weekly implementation of the tasks found in the REAP, it may be overly burdensome for the discharger to do this task on a weekly basis without any significant impacts on water quality improvement.

Comment 4. By changing many of the requirements from 'should' to 'shall', the permit imposes several mandates on the permittees. With that in mind, several of the control measures that may not be practicable or possible in some situations became mandatory requirements (Roger Griffin).

Response: Regional Board staff agrees that the change may have some unintended consequences and we have added clarifying language at a number of places. See Provisions III.D.6 a.2.vi, viii and xviii.

Comment 5. There should be a 30-day notice and public comment period following the release of the 5th draft of the Order (Tom Bois).

Response: A re-notification and a 30-day comment are required for significant changes proposed to the draft. The fifth draft of the Permit has either addressed inconsistencies (e.g., design storm) or added clarifying language to the Permit. These changes were mostly based on comments at the public hearing on September 16, 2011. Even though these changes are non-substantive, the public still has a chance to comment on these changes at the October 28, 2011 Public Hearing.

Comment 6. There is no procedure in the permit for an acknowledgement that the BMPs proposed in a Phase III Corrective Action Plan meet the BAT/BCT standard (Tom Bois).

Response: Language has been added to Provision III.6.D.6.2, stating that after fully implementing an approved Phase III Corrective Action Plan, a Permittee will be deemed in compliance with the BAT/BCT effluent limitations.

Comment 7. Regional Board staff have clarified that the intent of this permit "... wasn't to include material recycling facilities as long as they didn't do industrial processing, only commercial and residential" (Ken Pretell).

Response: Just to ensure clarity, the source of the materials being recycled is immaterial. It is the processes that take place at the facility in question. If the only processes that take place include sorting, compaction, storage and transport, the facility should not get coverage under this Order, but should be regulated under the Statewide General Industrial Storm Water Permit.

Comment 8. The State Water Board may want to adopt the subject permit on a statewide basis rather than have it apply only regionally. There are advantages to adopting a single statewide permit including a level statewide playing field and a more efficient regulatory process (State Board)

Response: We agree that a statewide permit would provide efficiency and a level playing field. Regional Board staff recommends that the provisions of this draft permit be incorporated into the next draft of the Statewide Industrial General Permit. The Regional Board has been provided a copy of the State Board comment letter, along with copies of all other comment letters. The Regional Board will consider these comments and is expected to act on the proposed permit at the October 28, 2011 Board meeting.

Comment 9. Rather than mandating an exclusion to recycling facilities that do not meet the definition of the permit, these facilities should have the option to gain coverage under this permit (Castellon &Funderburk).

Response: The proposed permit has been designed for a specific subset of recycling facilities. To open it up to optional enrollment by other types of recycling facilities would likely require further revisions to fit the processes of those other types of facilities and the ramifications of applying the proposed permit to those other types of facilities has not been thoroughly investigated. However, the proposed permit may provide a basis for future expansion of this permit (or others like it) to additional types of recycling or other industrial facilities.

Comment 10. The following language should be added to Section III.D.8, "Once the Phase III Corrective Action Plan is fully implemented, the Permittee will be considered to be in

compliance with (1) the BAT/BCT effluent limitations and discharge specifications specified in this Permit; and (2) the Receiving Water Limitations provision in subsection III(H) of this Permit” (Castellon &Funderburk and CMC).

- Response: We have carefully considered the recommendation and slightly modified the language in this section. Since no receiving water monitoring is required in the Permit, we consider the modified language in the 5th draft to be appropriate.
- Comment 11. There is too little time available after the release of the 5th draft (October 14, 2011) to conscientiously comment on it (Ecology).
- Response: For the most part, the changes proposed in the 5th draft of the permit were discussed at the September 16, 2011 Regional Board meeting. The only issue that was not discussed at that Board meeting was the references to “BAT/BCT effluent limitations” rather than “BAT/BCT standards”. We made this change based on a recommendation from the US EPA, the agency that has delegated the permitting authority over storm water discharges to the State of California. This change is based on the fact that only the effluent is required to be monitored and the “standards” apply to receiving waters, whereas “effluent limitations” apply to end of pipe discharge.
- Comment 12. There have been no written responses to the issues raised in writing by this author and others over the last several months (Ecology).
- Response: All comments on the 1st, 2nd and 3rd drafts have been responded to and those “Response to Comment” documents have been posted on the Regional Board website. Specifically, the comments on the 2nd draft, provided by Ecology in their May 27, 2011 letter, were responded to in staff’s “Response to Written Comments on Second Draft” document, which was posted on the Regional Board website on August 1, 2011. No comments were received from Ecology on the 1st or the 3rd drafts.
- Comment 13. There have been no responses to the issues raised by Ecology at the September 16, 2011 Regional Board meeting (Ecology).
- Response: While Regional Board staff may have orally responded to the issues raised by Ecology during the September 16, 2011

Public Hearing, those issues have been memorialized in this document and have been responded to (see Comments 3, 4, 5 and 6, above).

Comment 14. Giving “non-groupies” 60 days to be in compliance (see footnote on page 17) with regards to hiring and training qualified persons to perform the work is “laughable” (Ecology).

Response: We assume that Ecology’s comment regarding “non-groupies” is a reference to those facilities selecting Option 2. We believe that this option would be selected only by those facilities that have already implemented appropriate treatment controls. As such the 60 days to comply with the effluent limitation in Table 1b should not a problem for these facilities. Other than meeting the Table 1b Numeric Effluent Limits, the other major requirement under the proposed permit for Option 2 facilities is the preparation and implementation of the facility Monitoring and Reporting program, which follows the same timeframe as Option 1 facilities.

Comment 15. Either the Board must set (and accept) a set of minimum BMP design standards or set attainable discharge standards and allow facilities to determine how best to meet them. “Otherwise you have a fascist state!” (Ecology).

Response: Option 2 provides an opportunity to the Permittees to meet Numeric Effluent Limits without provisions on minimum BMP implementation. Option 1 provides an opportunity to the Permittees to develop and propose effluent limits based on currently available technology.

Comment 16. As commented on before, the replacement of the permissive word “should” with the mandatory word “shall” means that industrial areas shall be paved or they will be in violation of the Clean Water Act as well as a number of other activities that will require smaller yards to spend \$100,000 per year (Ecology).

Response: Please note the additional clarifying language added to address this issue in the 5th draft.

Comment 17. The requirement that an advanced media treatment filtration system be installed will likely bankrupt most small facilities because the technology to meet the Table 1b standards for metals does not exist! (Ecology).

Response: The commenter is reminded that Table 1b standards apply only to those facilities that voluntarily choose to participate in Option 2, the non-phased approach. If Option 1 is chosen, then initially the NALs are applicable. NAL exceedances are not violations of the permit, but require that actions take place up to and including the preparation, approval and implementation of a Phase III Corrective Action Plan. Further, the commenter is reminded that should the NELs presented in the proposed permit not be achievable using currently available technology, alternative NELs can be proposed by the Permittees based on economically and technically feasible technologies.

Comment 18. The commenter has a “tertiary treatment” system at one of their yards, which they consider the “Gold Standard” for water and waste water treatment and are unable to meet the proposed NEL for copper (13 ppb) 19.3% of the time (Ecology).

Response: While it is unclear what constitutes a “tertiary treatment” system outside of sewage treatment plants, as was pointed out in the response to Comment 17, the NEL for copper only applies to those facilities selecting Option 2. Option 1 initially specifies NALs. The final NELs for Option 1 should be based on technically and economically feasible technology.

Comment 19. The dependence of the REAP implementation on a Weather service prediction of 40% three days in advance is ‘laughable’. It would be more efficacious to simply mandate that the REAP be implemented every Wednesday. Further, the commenter notes that no other weather forecasting service is permitted (Ecology).

Response: See the response to Comment 3. We believe that implementation of REAP on a weekly basis is overly burdensome on the Permittees.

Comment 20. The permit should still allow the use of Total Organic Carbon (TOC) as a substitute for Oil & Grease, especially since Oil & Grease analyses cost 45% more than TOC (Ecology).

Response: This comment was responded to in the Response to Comments on the 2nd Draft (August 1, 2011). Both oil and grease are generally used to lubricate machine parts, tools and equipment. Therefore, oil and grease are expected to be present in scrap metal recycling facilities. Total organic carbon (TOC) is a non-specific indicator of water quality and provides a broad measure of the amount of organic material

in water. The organic materials include decaying natural organic matter as well as synthetic organics. TOC measurements are generally used as an indicator of water quality for drinking water. As such, oil and grease appears to be a better indicator of storm water pollution at scrap metal facilities as opposed to TOC.

Comment 21. Since the last draft (4th?), provisions which require compliance with numeric effluent limitations have been added at the request of environmental groups (Ecology).

Response: It is unclear what the commenter is referring to. The only change regarding numeric effluent limitation language from drafts 4 to 5 was the substitution of "BAT/BCT effluent limitations" for "BAT/BCT standards" as requested by US EPA.

Comment 22. This permit uses US EPA's Multi-Sector General Permit (MSGP) benchmarks as NALs and NELs. First, the MSGP was not intended to apply to California. Second, benchmarks are intended to be used to assess the effectiveness of BMPs and are not intended to be effluent limits (Ecology).

Response: The values taken from the MSGP were used only in the NALs found in Attachment B. As such, they perform essentially the same function as in the MSGP: exceedance of an NAL results in the implementation of additional actions, such as the preparation of a Phase II or Phase III Corrective Action Plan. Further, note that single exceedances of an NAL may not trigger further action.

Comment 23. The California Toxics Rule (CTR) requirement that storm water discharges not cause or contribute to a water quality standard exceedance means that without the establishment of a mixing zone by the Regional Board, any discharge that exceeds CTR standards at the end of the discharge pipe is a violation of receiving water limitations (Ecology).

Response: Please note the Permittee is deemed to be in compliance if the different phases in Option 1 are implemented as specified in the Permit (see Provision III.D.8).

Comment 24. The permit should be consistent with the statewide General Industrial Permit and use total suspended solids instead of turbidity (Stormwater Rx).

Response: This comment was responded to in the Response to Comments on the 2nd Draft (August 1, 2011). Turbidity refers to how clear the water is and is an expression of the optical property that causes light to be scattered by the suspended particles. It is not a measurement of the amount of suspended solids present or the rate of sedimentation of a stream since it measures only the amount of light that is scattered by suspended particles. Measurement of total suspended solids is a more direct measure of the amount of solid particles contained in water. An internet search indicates that a portable turbidity meter costs less than a thousand dollars (Hanna Instruments Portable Turbidity Meter=\$790; <http://www.nextag.com/turbidity-meter/shop.html>). It is easy to use and can be used in the field and is a good indicator of clarity in the runoff from the site.

Comment 25. The rationale for the establishment of the NELs for turbidity and specific conductance should be better documented (Stormwater Rx).

Response: Regional Board staff reviewed more recent storm water monitoring data and determined that the NELs specified in Table 1a are achievable by implementing good housekeeping practices. As more reliable and quality monitoring data becomes available these NELs will be reviewed and revised, if necessary.

Comment 26. The Phase II and III requirements that 'advanced media filtration or other treatment controls be used', needs more specific guidance to ensure that minor BMPs, such as a catch basin insert filter, are not used to gain compliance when they obviously would not result in meeting NALs and NELs (Stormwater Rx).

Response: The proposal for 'advanced media filtration or other treatment controls' will be made in Phase II and Phase III Corrective Action Plans. Those plans must be approved by Regional Board staff before implementation and Regional Board staff will ensure that the BAT/BCT standard is met in those proposals.

Comment 27. The method for sampling turbidity should be better defined due to the changes in sample turbidity that can result from delays in analysis (Stormwater Rx).

Response: The footnote to Table 1a states that "pH, turbidity and specific conductance shall be measured in the field as soon as a sample is collected." Further, Table 3 requires that the

measurement be conducted in accordance with EPA Method No. 180.1 or using a calibrated portable instrument with a minimum detection level of 0.5 ntus. It is not clear what better definition could be added to the requirements and none were provided by the commenter.