



CALIFORNIA METALS COALITION

Main Office and Mailing Address: 2971 Warren Lane El Dorado Hills, CA 95762
Lobbying Office: 1215 K Street, 17th Floor, Sacramento, CA 95814
Phone: 916-933-3075 Fax: 916-933-3072
Web Site: www.metalscoalition.com Email: staff@metalscoalition.com



September 18, 2013

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
commentletters@waterboards.ca.gov

RE: COMMENTS ON JULY 2013 DRAFT INDUSTRIAL STORM WATER PERMIT (IGP)

Dear Ms. Townsend and Members of the Board:

The metalworking industry is comprised of nearly 6,000 facilities, employing over 210,000 Californians with living wage jobs and benefits. 8 out of 10 employees in the metalworking sector are considered ethnic minorities or reside in communities of concern.

The metalworking sector is a mature industry. Those facilities that have chosen to continue operating in the state of California have proactively made site improvements to match the state's environmental and regulatory expectations. It is also important to note that the majority of CMC members operate facilities under roof or indoors.

One area where the metalworking industry has been a leader is in storm water. CMC members have been active participants in storm water compliance efforts since the first permit was issued over twenty years ago. CMC members are also one of the pioneers in group monitoring by establishing a state water board approved Metal Casting Storm Water Monitoring Group ("MCSMGI") in 1992.

The California Metals Coalition's comments are submitted with the members' desire to meet their compliance obligations in a manner that will result in protection of California's waters without placing unrealistic and arbitrary compliance burdens on industrial dischargers.

While the July 2013 draft includes numerous improvements when compared to recent previous drafts, the current draft IGP contains several elements of which CMC members have concern:

1) Using non-sector specific US EPA Benchmarks as Numeric Action Levels (NAL):

The State Water Resources Control Board (SWRCB) has 20+ years of storm water sampling data for the metalworking industry. This data clearly shows that it is often impossible for certain facilities to meet all of the US EPA benchmarks. As a result, using the US EPA benchmarks as Numeric Action Level triggers in the draft IGP will inherently set-up small metalworking businesses for failure. CMC supports the development of properly derived and statistically valid Numeric Action Levels (NALs), if done on an industry sector-specific basis. If the SWRCB continues to use US EPA benchmarks, this should be done only if NALs are used in the same way as the US EPA, which is as one tool for assessing a facility's performance.

2) Numeric Action Level exceedances are not violations of the General Permit; and NAL triggering actions come from the same discharge location.

"NAL exceedances defined in this General Permit are not, in and of themselves, violations of this General Permit." Section I.N.63. CMC agrees with this statement and appreciates the clarification.

Further, Sections I.M.62.B and XII(A)(2) should contain clarifying language that states that an NAL triggering action can only occur when two or more analytical results from any parameter and from the same discharge point occur.

3) Effective date of the next IGP must be July 1st and not January 1st.

The proposed new IGP is a more sophisticated and complicated approach to storm water regulation. It should not be assumed that individual facilities have been following each iteration of the draft storm water permit, debated changes, and potential amendments. As a result, CMC strongly encourages the effective date of the next IGP to be established in July, and not January. (In the most recent proposal, the effective date would be July 1, 2015.) It should not be seen as a "delay" to hold the effective date until July. Permit holders will still have to operate under a storm water permit as July approaches. More importantly, a January effective date means that facilities will be operating under the old permit and instantaneously switch to a new permit in the middle of the "wet season." SMARTs must be automatically switched as well with updates and proper navigation for new reporting. Overall, the State Water Board should use its discretion and understand the benefits of a July 1 effective date.

4) Stronger requirements for Compliance Group Leaders:

The compliance group program is a useful and beneficial program for individual sites, as well as the state. CMC greatly appreciates the State Water Board and staff's acknowledgement of groups in the current draft IGP. But if compliance groups are going to be viewed as a step towards sector specific permits, there should be a more stringent requirement to become a Group Leader. One of the weaknesses of the current Group program is that some "leaders" are not technically experienced to lead groups under storm water. How will this change under the latest draft IGP? CMC suggests adding a QISP training specific to Group Leaders. This training would be nothing more than the general QISP training material, but with additional material specific to Group Leaders. The output of Level 1 and Level 2 reports will be of higher quality if we take the time to establish better Group Leaders.

5) Receiving water limitations and advanced BMPs:

The State Water Board should maintain the receiving water limitations provision in the findings section of the draft order and adopt language that ensures that receiving water limitations will be satisfied by the assessment and/or implementation of additional best management practices ("BMPs") set forth in Section XX. CMC believes that the following language contained in the Draft Order should be included in the Final Order:

"WQS apply to the quality of the receiving water, not the quality of the industrial storm water discharge. Therefore, compliance with the receiving water limitations can generally not be determined solely by the effluent water quality characteristics." Section I.E.37.

However, in order to ensure consistency with the above-language in the Draft Order, the 1997 Industrial General Permit's C.3 provision, and the Kramer Metals¹ decision, it is necessary to include language in Section VI. ("[d]ischargers shall ensure that industrial storm water discharges and authorized NSWDS do not cause or contribute to an exceedance of any applicable WQS in any affected receiving water") that specifically states that a facility will not be in violation of a Receiving Water Limitation as long as the facility complies with the procedures outlined in Section XX.B. Making it clear that complying with Section XX.B will not result in an alleged violation of a Receiving Water Limitation is extremely important and necessary to help industrial dischargers. Thus, in order to allow the industrial dischargers to focus on the end-game – the implementation of BMPs to achieve better water quality in California – it is necessary for the final draft of the IGP to include the mechanism described above.

6) Clarifying "New Discharger" in TMDL language:

¹ In *Santa Monica Baykeeper v. Kramer Metals* (C.D. Cal. 2009) 619 F.Supp.2d 914, 927, 929, the court stated that section C.3 provides a "safe harbor" for industrial dischargers who cause or contribute to an exceedance of a water quality standard. Thus, a facility operator "will not be in violation of Receiving Water Limitation C(2) as long as the facility operator has implemented BMPs that achieve BAT/BCT and follows a reporting procedure." *Id.*

The draft IGP sets a high bar for new dischargers in watersheds subject to TMDLs. This provision of the General Permit would effectively prevent new businesses from opening or require new business to implement substantially higher level of BMPs to meet water quality standards if there is no remaining load available. At a minimum, the term "new discharger" needs to be defined in the General Permit for the purposes of this section. The definition of new discharger for the purposes of this section should not include renewing dischargers, existing facilities that were previously exempt (NEC facilities), or new owners or existing facilities.

7) SMARTs

Electronic filing is also a new requirement, when compared to the current IGP. Most metalworking companies are unfamiliar with electronic filing for this permit. CMC suggests, first and foremost, that there are "warning" prompts before the user confirms sampling data that exceeds the NALs. CMC suggests that there must be a mechanism to remove erroneous data, or to keep erroneous data from annual or instantaneous calculations. Finally, CMC suggests protecting proprietary information by removing the requirement for SWPPPs to be electronically filed with the Water Boards.

8) Cost of Compliance:

CMC greatly appreciates the State Water Board's release of a cost analysis. Cost is too important of a factor to ignore when seeking solutions for storm water. But it is unacceptable that the cost analysis was released the same day as the end of the public comment period (September 12)-- then to have the comment period extended only five working days to September 19. The comment period should have been extended 30 days based on this release schedule.

The 2013 cost analysis needs to reconsider several items (1) How can there be no cost increase for developing and updating a SWPPP and monitoring program plan when they move from Baseline to Level 1, and then from Level 1 to Level 2? Not only are there substantial changes required at each step, the changes will likely require engineering, technical and even legal review. (2) Designating one person at the facility to be the storm water program lead (or QISP) is important, but what about the cost of training other employees in areas who work in production, maintenance and goods movement? Everyone at the facility has a responsibility for storm water and this cost needs to be defined in the cost analysis. (3) Drafting a Level 1 ERA report will not cost \$750. A better estimate is \$5,000-\$8,000 for a small facility, and \$14,500-\$25,000 for a large facility. (4) Drafting a Level 2 technical report will not cost \$1,650. A better estimate is \$8,500-\$13,000 for a small facility and \$27,500-\$38,000 for a large facility. (5) Finally, what about the cost of treatment? If treatment equipment and installation costs approximately \$55,000-\$1.5M (plus annual maintenance), where is this factored in the cost analysis? Metalworking companies compete around the world, are operating on very narrow margins, and have a number of other new laws to comply with over the

next five years. Remaining competitive in today's changing economy is different than anything we have faced in the past. Cumulative impacts of California's regulatory costs only works against our goal of a healthy economy and middle class jobs.

9) Enforcement of non-filers and fees:

CMC requests that the SWRCB provide a report illustrating the allocation of resources dedicated to enforcement of non-filers, site reviews/inspections of industrial dischargers who have not filed notices of intent ("NOI"), and industrial dischargers who have not established a SWPPP. CMC believes that the SWRCB should be transparent for how our fees are used to enforce non-filers.

10) Is there a path to compliance?

The metalworking industry remains very concerned that the draft IGP does not allow for compliance. Small businesses in California want to be in compliance. But when the regulation, or permit, is not specific, this can lead to confusion and 3rd party lawsuits. Moreover, being that receiving water limitations can often trump the requirements of this permit, small businesses remain even further exposed to unknown costs and liabilities. CMC strongly encourages the SWRCB and its staff to clear any ambiguity as best possible going forward.

We appreciate the opportunity to present these comments. If you have any questions or comments, please feel free to contact our office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James Simonelli', with a stylized flourish at the end.

James Simonelli
Executive Director

cc: Castellon & Funderburk Law Firm, Legal Counsel