



CALIFORNIA METALS COALITION

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March 4, 2014

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 FEBRUARY 19, 2014 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 **February 19, 2014** draft includes numerous improvements when compared to recent previous drafts, the current draft IGP contains several elements of which CMC members have concern:

9.1 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.

9.2 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.

9.3 3) Clarifying "New Discharger" in TMDL language:

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.

9.4 4) 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.

9.5 5) Cost of Compliance:

CMC greatly appreciates the State Water Board's previous release of a cost analysis. Going forward, we expect a cost analysis in all future draft permits. Cost is too important of a factor to ignore when seeking solutions for storm water. 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.

9.6 6) Design Storm Standards for Treatment Control BMPs:

CMC agrees with CASQA's comments on this particular issue. Given the broad definition of Treatment Control BMPs, many simple and effective BMPs that may be employed by a discharger in satisfying the minimum BMP section may be considered treatment control. CMC does not believe that the State Water Board's intent is to apply the design storm criteria to practices that may be part of the minimum BMP suite.

9.7 7) Sampling Event Visual Observations for Bypass:

The new requirement in this section is unclear and combines statements about sampling and visual observation requirements in the visual observation section of the permit. Observations at the discharge location would be of the combined bypass and treated flow leaving the site. In circumstances where the bypass and treated flow went to different discharge locations, the permit requires all discharge locations be observed; therefore this is an unnecessary and confusing statement.

9.8 8) Update of ERA Level 2 Action Plans:

CMC agrees with CASQA that once a Discharger has satisfactorily demonstrated a natural background pollutant source, a non-industrial pollutant source, or Industrial Activity BMPs have been achieved, it is unnecessary to revise the Technical Report for the same exceedance in the same drainage area. This appears to put a Discharger into an endless loop, especially in the cases of the non-industrial or natural background sources. Other provisions in the permit provide for reinitiating the ERA process if there is an NAL exceedance for a new constituent or the same constituent in a different drainage area.

9.9

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 (“NOP”), 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.

9.10

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,



James Simonelli
Executive Director

cc: Castellon & Funderburk Law Firm, Legal Counsel