THE FLANIGAN LAW FIRM

October 22, 2012

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Ms. Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Comment Letter – Draft Industrial Storm Water NPDES General Permit Issus July 16, 2012

Dear Ms. Townsend:

On behalf of the West Coast Chapter of the Institute of Scrap Recycling Industries (ISRI), we are providing the following comments on the July 16, 2012 draft of the General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit). ISRI is a trade association representing approximately 1,550 companies nationwide, of which ten percent are located in California. ISRI members process, broker, and consume scrap commodities. They are experts in the handling, processing, shipping, and/or recycling of recyclable scrap commodities.

Storm water management is one of the most important issues for the recycling industry as it affects every aspect of facility operations. From the inception of storm water regulations in the early 1990s, ISRI has been active in storm water management. The recycling industry's preferred approach to storm water management has focused on the design, implementation, operation, and maintenance of appropriate, effective nonstructural and structural best management practices (BMP) and control measures to reduce and minimize the impact of recycling activities on the quality of storm water discharges

1 ISRI believes that California should more closely tailor its industrial general permit approach to that set forth by the U.S. Environmental Protection Agency's Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (MSGP). The MSGP provides an effective approach to industrial storm water general permitting, relying extensively on non-numeric technology-based effluent limits, compliance with water quality based effluent requirements, corrective actions, documentation, and reporting. The MSGP also provides industry-specific requirements in its 29 different "sectors." EPA's comprehensive, multi-tiered approach represents a well-considered balance of regulatory mandates and permitting authority oversight with site-specific flexibility, and rightfully represents the leading model for industrial storm water general permitting across the country.

ISRI supports the development of properly derived and statistically valid Numeric Action Levels (NALs) and continues to support the development of appropriately derived industry-
2 or specific NALs. While we support the inclusion of "off-ramps" in this draft permit, we are concerned the current NAL/Exceedance Response Action (ERA) approach in the permit has

U.S. BANK PLAZA • 980 NINTH STREET, SUITE 2380 • SACRAMENTO, CA 95814
TELEPHONE (916) 443-0381 • FACSIMILE (916) 443-1856

shifted the burden of proof significantly on the individual discharger to make BAT/BCT determinations, without the benefit of sufficient guidance for both the dischargers and regulators to fully understand how the ERA and off-ramp process will actually work.

As we have stated in previous comments, ISRI supports using properly derived action levels as recommended by the Blue Ribbon Panel report (as upset values) as one of many mechanisms to assess program effectiveness. Since the use of "action levels" is not expressly addressed in EPA regulations, use of numeric values as "benchmarks' or action levels" must be very carefully defined in an NPDES permit. We agree with California Stormwater Quality Association's (CASQA) comments regarding Numeric Action Levels and specifically, that the SWRCB must make sure that such numeric values are not converted into Numeric Effluent Limits or be the focus of asserting non-compliance. 3

ISRI is also concerned that the July 1, 2014, timeframe for QISP implementation will not provide sufficient time for the SWRCB to develop and allow industry to receive QISP training sufficient to meet the permit requirements. 4 The permit requires a QISP certify the facility SWPPP and provide employee training by July 1, 2014. As written, if QISP training is not available by July 1, 2014, then the only qualified people that can revise a SWPPP will be Licensed Professionals, as they are not required to complete the QISP training course and can function as a QISP upon Permit adoption. The use of a Professional Engineer or similar Licensee to certify a SWPPP and to provide basic employee storm water training would represent a substantial financial burden for facilities who would otherwise utilize their own knowledgeable storm water staff members. In addition, a Professional Engineer or similar Licensee would be expected to take on the liability of implementing the IGP before the State has provided guidance on how to implement this new, complex Permit.

We refer to CASQA's comments relating to the costs and additional requirements as outlined in the July 16, 2012 draft of the Industrial Storm Water NPDES General Permit, which we agree with their analysis and concerns. Furthermore, we are very concerned that the language included in Section V.C. which exposes permittees to premature and inappropriate administrative or third party actions to enforce TMDL requirements before the TMDLs are clarified for application to specific industrial storm water dischargers and before those refined requirements are incorporated into the permit as outlined in CASQA's comments. 5

Thank you for the opportunity to provide comments.

Sincerely,

Katherine S. Brandenburg
Legislative Advocate

cc: Members of the State Water Resources Control Board