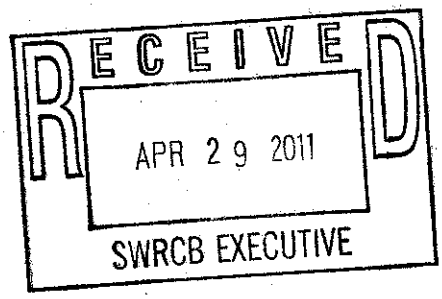

April 28, 2011




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

**RE: Comment Letter – Draft Industrial General Permit**

Dear Ms. Townsend and Members of the State Water Resources Control Board:

As Vice President of Government Affairs for LKQ Corporation (LKQ), I thank you for allowing us the opportunity to comment on the draft California Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated With Industrial Activities (Industrial General Permit). As the nation's leading provider of new, recycled, remanufactured and reconditioned motor vehicle parts and the leading processor of end-of-life vehicles in North America, LKQ is committed to working with the State Water Resources Control Board (State Water Board) to craft a cost-effective yet environmentally responsible framework for our industry by developing a workable Storm Water Pollution Prevention Plan (SWPPP).

LKQ Corporation is the largest nationwide provider of aftermarket and recycled collision replacement parts for automobiles and other vehicles. LKQ also is a leading distributor of mechanical replacement parts such as remanufactured engines, and refurbished collision replacement products including wheels, bumper covers and lights. LKQ employs 12,000 people nationwide and operates more than 325 facilities in more than 43 states, offering customers a broad range of replacement systems, components and parts to repair automobiles and light, medium and heavy-duty trucks. LKQ has 1,061 employees at 25 locations in California,[1] and pays taxes on a payroll of over $33.5 million dollars. We are "Recycling Facilities" coded under California's Standard Industrial Classifications (SICs) 5015 and 5093. From the 10 million automobiles that are recycled in the United States each year, more than 10 million short tons of steel, 1.2 million short tons of aluminum, 950,000 short tons of copper and 260,000 short tons of zinc are pulled out for recycling with each ton of steel conserving 2500 pounds of iron ore, 1400 pounds of coal and 120 pounds of limestone. Greenhouse gas (GHG) emissions are significantly reduced through recycling: recycled automotive steel reduces GHG emissions by nearly 8 million metric tons (MT) annually; aluminum recycled from automobiles reduces GHG emissions by more than 110 million MT annually; recycled copper from automobiles reduces

[1] LKQ has facilities in the following cities: one in Anaheim, two in Bakersfield, one in Chula Vista, one in Dinuba, two in Fresno, one in Ontario, one in Redding, one in Rialto, one in San Diego, three in Santa Fe Springs, one in Monrovia, one in Stanton, two in Stockton, one in Sun Valley, one in Tracy, and three in Wilmington.

GHG emissions by nearly 200,000 MT; and lead reclaimed from automotive batteries reduce GHG emissions by more than 3 million MT.

After review of the draft Industrial General Permit we are extremely concerned with and oppose section V (Effluent Limitations), section XVII (Corrective Actions), and the elements of section VII (Training Qualifications and Certification) that combines the removal of "Group Monitoring" with the requirement that each discharger appoint a Qualified SWPPP Developer (QSD) and a Qualified SWPPP Practitioner (QSP). We discuss these concerns below.

## Numeric Effluent Limitations and Numeric Action Levels

Under section I (Findings) point 39 to 43, the State Water Board concluded that numeric effluent limitations (NELs) and numeric action levels (NALs) are technically feasible to control industrial storm water discharges, provided certain conditions are considered. The conclusion also determined these NELs should be the U.S. Environmental Protection Agency (EPA) benchmarks listed in its industrial Multi-Sector General Permit. LKQ strongly opposes this approach, but rather agrees with EPA that it is wholly inappropriate to use benchmarks as NELs. On this issue we have to concur with EPA that "the benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in knowing when additional corrective action(s) may be necessary to comply with the effluent limitation."[2] As the State Water Board is mostly likely aware, EPA is currently accepting comments on the use of NELs more prevalently by industries to limit pollution discharges. As this process evolves nationally, it is more practical to await the final decision of EPA on the issue before adopting what is now merely a proposed initiative. The State Water Board would be wise to recognize how important it is for national stakeholders like LKQ, who provide a cost-effective product to consumers in an environmentally responsible way, to have uniformity across the country in certain regulatory areas as well as in the same state. For example, in 1998 the Los Angeles Regional Water Control Board amended its plan to include testing for zinc and copper without much notice. After over a decade of sustaining Best Management Practices (BMPs) that utilized galvanized (zinc) cover or fencing of problem areas the District decided to start enforcing this amendment and have all these costly improvements replaced. Statewide corporations cannot develop a standardized plan for handling their discharges with this lack of uniformity.

The action levels are in appropriate methods by which to achieve ecological storm water discharge levels. The use of benchmarks in evaluating and adjusting, as necessary, management practices is a more effective use of this measurement tool as it allows environmentally responsible operators, such as LKQ, to continuously fine-tune procedures due to changes in

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[2] United States Environmental Protection Agency (EPA), MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP), Part 6.2.1, as modified effective May 27, 2009.

materials processed and events outside our control that affect stormwater discharges. For example, we have experienced situations where a State's renovation of a highway adjacent to our facility caused our discharges to be outside of the benchmarks for the extent of construction period where there had been no change to our operations during that period. We have also had instances where City construction of a shopping mall or another corporation's building a new facility have varied our discharges during the construction. The use of NELs and NALs as a measure of a violation during these types of occurrences is grossly unfair and unworkable as the cause of the "violations" would be wholly outside the control of the permittee. Moreover, it would require the State Water Board to be responsible for sorting out these disputes on responsibility ad nauseam.

The impracticality of using NELs and NALs as a measure of compliance is further illustrated by the State Water Board's historical approach to dealing with atmospheric deposition that can lead to water quality issues. State Water Board Resolution number 2005-0077 states the importance of working with the California Air Resources Board further to address water issues: "It appears that larger particulates are responsible for the highest loadings of metals in atmospheric deposition, and therefore pose the greatest risk to water quality. The two agencies [Los Angeles Water Board & State Water Board] need to (1) expand monitoring of larger particulates in atmospheric deposition to better gage the potential impact to water quality and (2) to investigate the sources of these metals in order to design a control strategy." Dry depositions prominent throughout the state due to road dust, agricultural burning, residential wood combustion, diesel truck exhaust, crude oil combustion, and construction dust to name a few examples that cause variances in the rainwater's chemical composition. As the State Water Board is well aware, the typical rain in California from border to border does not have a standard chemical composition, therefore a hard-line NEL that penalizes industries in the path of this rain is not fair regulation.

Further, it is important that the State Water Board be pragmatic about how to remedy discharges that do not meet a benchmark. Like many other industries, LKQ has highly complex facilities dealing with a wide variety of materials. We conduct regular sampling of our discharges at our facilities across the country during storm events. When sampling reveals a discharge not within a benchmark, we use in-house trained experts or third party consultants to make the necessary changes to material management and/or operational procedures to correct the issue. It is not possible, of course, to confirm the effectiveness of these remedies until the next storm event when confirmatory sampling can take place. This process may result in additional fine-tuning and adjustments of the remedy to ensure that any discharges meet the appropriate benchmark. This process may take one to several efforts of adjustments to get the discharge to an ecologically responsible level.

The draft Industrial General Permit's proposed NALs method, however, would put a facility in violation during the correction period. As explained above, there are simply too many factors outside the control of the permittee to consider these discharges a violation when a facility is actively engaging in altering its operations to meet the applicable benchmark. Moreover, automotive recycling facilities continually manage a wide range of ever-changing materials. These materials come from a mix of decades-old automobile manufacturing processes that get combined with the new material compositions in modern vehicle designs. Automotive recycling and dismantling facilities simply will not be able to function with an inflexible effluent discharge

limit permit because of the continually changing nature of the business and the need for operations to evolve with these materials. Statewide, it will not be possible to develop a uniform materials composition percentage limitation as there will never be an accurate prediction of what the standard material composition will be from an automotive recycling facility. Given this, LKQ strongly encourages the Storm Water Board, consistent with EPA's caution above, to use benchmarks as a measure of the overall effectiveness of a facility's control measures, and *not* as a hard and fast measure of compliance.

Economic Impact

It is critical that the State Water Board fully appreciate the adverse economic impact of implementing an Industrial General Permit plan through the use of benchmarks for numeric limits. Such an approach will unnecessarily put our operations at risk (as well as other operations throughout the State) with the attendant loss of jobs. Benchmarks for use in evaluating Best Management Practices (BMPs) have been in place for years and, when properly utilized for adapting BMPs, adequately protect against pollutant stormwater discharges. The State Water Board should not abandon this cost-effective and efficient approach. In contrast, the draft Industrial General Permit's second trigger level would require either structural source control and/or treatment of stormwater. Any facility reaching third trigger level would be forced to sample each and every storm throughout the year. This would be devastating to our industry. Examples of the impact this would have on our recycling facilities include purchase of treatment equipment, surrounding land acquisition, or functional site reduction to hold and treat stormwater. Preliminary costs estimates for treatment equipment runs upward of $200,000 with preliminary estimates to hold the water for treatment at $150,000 per acre – our California facilities run anywhere from 5 to 50 acres (assuming the site can retain water). The marginal economics of the vehicle recycling industry continually challenge the financial viability of the industry's operators, especially considering that we do not control the composition of the products we are supplied or the regulation of these products final disposition. At the same time, we provide an important recycling and economic service to the public at large. Automotive recyclers provide wholesale and retail customers' quality parts that range from 20 to 80 percent less than comparable new parts with an annual revenue in the United State and Canada estimated to be $22 billion. Decades of industry evolution and technical innovation have made the automotive recycling industry essential to the world's transportation infrastructure. Since 1960, 1 billion end-of-life vehicles have been recycled worldwide. This number is predicted to almost double by 2030. As stated above, the specter of operating under a constant threat of violation would seriously threaten the continued viability of these important operations.

There are significant consequences for the regulated community associated with the State Water Board's proposed approach, if it were to become law, since exceeding NELs would result in strict liability on the discharger. Automotive recyclers would be liable under the Clean Water Act subject to state, EPA and citizen suit enforcement, including substantial penalties up to $37,500 per day, per violation under the Clean Water Act §1319 or $25,000 per violation per day plus $100 per gallon under California Water Code §13385. Further, the threat of being labeled in "violation" – which, as explained above, often hinges on circumstances beyond our control – would put LKQ and the rest of the automotive recycling industry, in an unwarranted negative light in the eye of the public. As the leader in the automotive recycling industry, LKQ goes to

great lengths to ensure our facilities are a model for the industry in environmental practices. We work hand-in-hand with the national Automotive Recyclers Association and promote its Certified Automobile Recyclers (CAR) program as the model standard for the industry. The draft Industrial General Permit's NELs and NALs methodology will have an impact on our facilities that inaccurately portray our operations as insensitive to ecological concerns when in fact we are leaders in an essential environmental industry. Given the complex nature of storm water discharges, habitual citations for not achieving limits without an adequate understanding by the public of the process it takes to make the changes to meet the limits, will result in a black mark on our industry in the community. This also could result in unnecessary and costly legal battles with various communities or public organizations that do not fully understand the proposed action levels system over drinking or other water issues. See San Francisco Baykeeper v. Pinole-Rodeo Auto Wreckers, 1997 U.S. Dist. LEXIS 5016 (N.D. Cal. Jan. 23, 1997).

Lack of Legal Authority

The Clean Water Act and the implementing regulations establish a meticulous process for developing NELs into stormwater permits if the NELs are going to be enforceable for violations.[3] Properly developed technology based effluent limitations (TBELs) must follow developed and legally valid processes under the law. TBELs aim to prevent pollution by requiring a minimum level of effluent quality that is attainable using demonstrated technologies for reducing the discharge of pollutants. Though California, as well as EPA, is afforded a certain level of discretion in establishing broadly applicable technology standards pursuant to the CWA, there are a number of minimum factors the State Water Board must analyze and consider before adopting these standards.[4]

The CWA requires EPA to develop effluent limitations guidelines for certain classes of industries.[5] If EPA has not developed these effluent guidelines for an industry category or type of discharge, the agency is to use a case-by-case basis for developing TBELs. EPA is to consider factors such as age of equipment, processes used, engineering aspects of control techniques, non-water quality environmental impact, and the cost of achieving such effluent reductions to name a few. The draft Industrial General Permit lacks any evidence or analysis to support the adopting NELs as technology-based numeric effluent limitations. The State Water Board has failed to set out specific data, other technical basis, or legal authority imposing numeric TBELs in this draft. It has neither specifically considered any of the required factors set forth in the Clean Water Act or its implementing regulations. The draft Industrial General Permit fails to establish the necessary legal authority to imposed NELs.

## Training Qualifications and Certification

The draft permit combines the removal of "Group Monitoring" with the requirement that each discharger appoint a Qualified SWPPP Developer (QSD) and a Qualified SWPPP Practitioner (QSP). Automotive recycling in North America saves an estimated 85 million barrels of oil a

[3] CWA §§ 301, 304(b), and 402(a)(1); 40 C.F.R. 122.44(a)(1), 125.3
[4] CWA § 304(b)
[5] 40 C.F.R. §§ 405 to 671

year that would have been used in the manufacturing of new or replacement parts. This has been made possible despite the fact that more than three quarters of all automotive recycling companies employ 10 or fewer people. We understand the need to occasionally request the services of a laboratory or other specialist, but to require a business to either hire a new employee or a consultant should not be mandated by the State Water Board. It is unreasonable to mandate a business owner to hire an outside party to write a SWPPP, when the start-up managers or our in-house trained experts are capable of understanding the permitting requirements and know the business operations and how to prevent pollutants best. It is our experience that the vast majority of facilities SWPPPs do not require a specialized level of engineering or laboratory oversight as the draft suggests. The Storm Water Board gives no rationale for the narrow list of qualified individuals that may fill this QSD position, nor does it give adequate reasoning why other professionals do not qualify. A requirement that every automotive recycling facility either employ and train or pay for outside consultants to handle this issue will unjustifiably burden our operations. Automotive recycling facilities are designed to be efficient and cost effective. The requirement to hire two new employees simply to monitor stormwater discharges will make it difficult for recyclers and dismantlers to hire and/or maintain other workers essential to maintaining their cost-effective and environmentally responsible operations.

The combination of this policy change and the elimination of group monitoring could be overwhelming to our industry. It is a necessity in the vehicle recycling industry to work hand-in-hand with the manufacturers that produce the vehicles, the end-of-life vehicle suppliers (like insurance companies and salvage pools), and scrap metal recyclers. We must also work together within our industry to ensure that we are properly handling the materials we process. Group monitoring and the sharing of the cost for QSDs and QSPs is a more cost-effective way of ensuring the elimination of pollutant discharges for the industry.

## Final Comments

Approximately 35 million vehicles will come to the end of their useful lives in California within the next decade. This number equates to about 140 million tires, 60,000 gallons of waste oil, 70 million gallons of ethylene glycol, 35 million batteries, thousands of mercury switches and many other products potentially harmful to the environment. When fluids and other hazardous materials are not properly removed, processed and recycled, public health and aquatic ecosystems are threatened. This is due to dismantling and end-of-life recycling being performed by untrained, unqualified individuals who will not take the time to process the materials in a vehicle in an environmentally sound manner. Unfortunately, these types of activities are likely to increase if responsible recyclers, like LKQ, are confronted with unreasonable and costly regulatory controls that threaten the continued viability of their operations in California.

LKQ Corporation, like any licensed auto dismantler, specializes in dismantling end-of-life vehicles that contain potentially harmful materials, such as waste fuels, waste oil, lead acid batteries, airbag canisters, ethylene glycol, mercury, nickel, lead, and cadmium. If vehicle fluids and parts are not handled and disposed with appropriate care, a range of environmental problems can result. There is a major difference between licensed auto dismantlers, who are prepared to manage end-of-life vehicles in a manner that avoids potential environmental impacts, and unlicensed auto dismantlers. Due to our already thin operating margins, subjecting licensed

operators to unreasonable regulations could force many of us out of business, resulting in more end-of-life vehicles being mishandled by unlicensed, unpermitted, or otherwise unqualified entities. Subjecting licensed operators to unreasonable scrutiny from regulators and environmental groups will put many of us out of business, resulting in more end-of-life vehicles being handled by these rogue entities that are less likely to take adequate measures to properly recover and handle these ecologically hazardous materials. It is estimated only one out of five (about 700,000) of all end-of-life vehicles in California are recycled by licensed auto dismantlers each year.[6] Unlicensed operations in the state do not volunteer themselves to the State's environmental permitting. One 2001 study has estimated that nearly half of the 10,000+ vehicle recycling facilities in California that are subject to the general stormwater permit have failed to file their notice of intent (NOI) with the State Water Board to obtain coverage under the statewide General Permit for Discharge of Stormwater Associated with Industrial Activities.[7] Increasing the cost of business on environmentally responsible recyclers is counterproductive to the overall philosophy. Vehicle recyclers are an essential industry in a complex, intertwined system of businesses that take a vehicle from the original assembly line to the steel stocks that are used to make the next line of vehicles. Recycling vehicles in the United States and Canada provides enough steel to produce almost 13 million new vehicles annually. Recovering steel not only saves money, but also dramatically reduces energy consumption, compared to making steel from virgin materials.

As Vice President of LKQ Corporation's Government Affairs Department, I hope you will recognize the importance of this matter to our industry and carefully consider these comments. On behalf of LKQ Corporation, I thank you for the opportunity to comment on this draft Industrial General Permit Order and look forward to working with you on this issue going forward.

Please do not hesitate to contact me if you have any questions. I can be reached at (954) 492-9092.

Respectfully,

Eileen A. Sottile
Vice President, Government Affairs
LKQ Corporation

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[6] Nathan Arbitman & Mike Gerel, *Sustainable Conservation, Managing End-of-Life Vehicles to Minimize Environmental Harm White Paper on Sustainable Conservation's Auto Recycling Project*, pg. 7, *(2003)* http://www.suscon.org/autorecycling/pdfs/autorecycling_whitepaper_elvs.pdf

[7] Arbitman & Gerel, pg. 14