STATE OF CALIFORNIA AUTO DISMANTLERS ASSOCIATION

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Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Via Email: commentletters@waterboards.ca.gov

Subject: **Draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit)**

Dear Ms. Townsend:

We appreciate the opportunity to review and provide comments 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 or IGP), dated July 19, 2013.

The State of California Auto Dismantlers Association (SCADA) is the statewide trade association for the professional auto dismantling and recycling industry with approximately 200 members within 6 local chapters and Direct Membership Areas. SCADA was founded in 1959 to serve the members with education, regulatory, and business activities. Our members are recycling facilities that sell used vehicle parts under Standard Industrial Classification (SIC) Code 5015.

Licensed auto dismantlers provide an essential service that directly addresses society's ever increasing problem of what to do with end-of-life vehicles (ELVs). An estimated 1.3 million vehicles will reach the end of their useful lives this year in California, either by determination of their owners or by being declared a total loss by an insurance company. While those vehicles might otherwise end up on the roadside or abandoned in empty lots, licensed dismantlers acquire them and safely convert them into reusable/recycled commodities. This dismantling is done in partnership with other state agency programs that support the recycling of vehicles, thereby abating the severe environmental hazards associated with improperly disposed vehicles.

Component parts are tested and examined to determine which can be reused or recycled. Fluids are extracted and properly recycled. The reusable parts are removed, cleaned, catalogued and stored. They are then sold to repair other cars at a savings of up to 80% over the cost of new parts. Recyclable materials are sent to a processor, and manufactured into new products. There are about 1,200 dismantlers licensed by the California Department of Motor Vehicles.

SCADA members support responsible recycling, worker safety, and environmental protection. SCADA promotes the proper handling and disposal of all automotive-related hazardous materials, including gasoline, oil, Freon, antifreeze, brake fluid, transmission fluid, batteries, mercury switches, and tires. In 2001, SCADA committed to the industry's premier certification program within the United States. The Partners in the Solution® program was developed to help SCADA members improve regulatory compliance and to motivate facility operators to meet the nation's highest environmental and safety performance standards. This proactive, industry led approach assists members in complying with the complicated set of environmental, safety, and business regulations that face California auto dismantlers. SCADA underscored its commitment by becoming the only recycling industry trade association in the United States to make its certification program mandatory for all members.

As discussed in our testimony at the August 21st public hearing and in previous hearings, the auto dismantling industry faces severe challenges from unlicensed and unregulated operators who can pay more for salvage vehicles because they do not spend money on measures to protect the environment, including complying with the General Permit. Compared to the earlier drafts, this Draft Permit simplifies the compliance process and slightly reduces the cost of compliance. However, the cost of compliance remains alarmingly high: complying with this new Draft Permit would essentially double our current compliance cost. This will further fuel the competitive advantage that unlicensed and unregulated operators have against those of us attempting to comply with the permit.

Again, while we believe this version of the permit is improved, we continue to have concerns about the impacts of the Draft Permit on the auto dismantling industry. In this regard, we offer the following comments for your consideration:

Stormwater Sampling

SCADA and its members appreciate the revisions related to sampling that should make it easier to collect samples. Specifically, we appreciate revisions that simplified the Qualifying Storm Event (QSE), sampling protocol, and sampling frequency.

We note that the State Board intends to promulgate Numeric Effluent Limits (NELs) in the future, and possibly sector specific permits. The State Board has previously acknowledged that it does not have the information necessary to achieve these goals, which seems to serve as the basis for the across the board sampling requirements. In this regard, we question whether there is actual benefit in across the board sampling. The Fact Sheet specifically acknowledges that the quality of the sampling data will not be good and that there is little known relationship between Best Management Practices (BMPs) and sampling results. Staff has shared their ***hope*** that the data will be more useful because the actual sampling data, the SWPPPs, and the ERAs will be electronically available on SMARTS thereby allowing for some correlation to be derived.

For the auto dismantling industry, the sampling requirements in the Draft Permit will represent a huge increase in sampling activity and cost. Yet the Draft Permit offers no evidence or justification that the specific increase in sampling called for in the Draft Permit will provide an adequate database that meets the State Board's goals. In fact, we believe that the new database will probably continue to be too variable and inaccurate to be reliably used for the Board's stated purposes.

As the new stormwater database is created, we recommend that the State Board conduct a statistical evaluation of the larger database to determine whether it is sufficient to be used for the stated regulatory purposes.

We also reaffirm our belief that an improved and more credible and reliable database could be provided by allowing industries to propose alternative sampling programs that would be professionally managed and utilize automatic flow-based sampling equipment installed at a representative group of facilities. We again urge the State Board to consider such an option.

We appreciate the changes in the proposal that provides for the use of either pH paper strip tests or pH meters for the onsite testing. The added cost of the meters and updates on top of other regulatory compliance costs and permit fees add up quickly. Allowing for the use of paper test strips will be sufficiently accurate at a lower cost.

Numeric Action Levels

The proposed Numeric Action Levels (NALs) are the same as the USEPA Federal Multi-Sector Permit benchmarks. USEPA states that the benchmarks are intended to be used as guidelines to help industrial facilities evaluate the effectiveness of their BMPs and identify areas of concern. Under the Draft Permit, exceedance of the NALs can trigger advanced BMPs and structural/treatment controls. This requirement exceeds the intended use of the benchmarks, and will likely lead to high expenditures for controls that may or may not be needed to protect waterways, and to increased enforcement/third-party lawsuits.

We anticipate that most stormwater samples from auto dismantling facilities will exceed the NALs for iron, copper, zinc, and to a lesser extent aluminum and perhaps other parameters. Consistently meeting these NALs will usually require the installation of extremely expensive stormwater filtration and treatment systems that are not economically achievable for most dismantlers. Such expenditures should not be triggered solely by the exceedance of NALs that were originally intended by USEPA to be used only as a general guide to evaluate BMPs and identify areas of concern. Auto dismantlers should also not be required to treat stormwater runoff to levels that are much cleaner than typical runoff from adjacent parking lots and roadways.

The scientific basis for at least some of the NALs does not necessarily represent a water quality problem. For example, there is little if any indication that an iron level exceeding 1.0 mg/l is harmful to fish and aquatic life or other beneficial use. The Total Suspended Solids (TSS) benchmark of 100 mg/l was selected because it approximated the median level in urban runoff during the Nationwide Urban Runoff Program (NURP) study in the 1980s. Complying with such NALs that lack a strong scientific basis will do little to protect the beneficial uses of California's waterways.

Furthermore, as noted above, we are concerned that the sampling data that would be compared against the NALs will likely be too variable to be an accurate assessment.

We recommend that the NALs be used as recommended by USEPA – to assess BMPs and identify problem areas.

Since the State Board intends to implement Numeric Effluent Limits (NELs) in future permits, we recommend that "numerically-triggered" structural/treatment controls be postponed until such NELs are developed. Industries are still facing too many unknowns and uncertainties: structural/treatment controls

that are designed to meet the NALs may not be adequate to meet future NELs and BAT/BCT– which could require facilities to remove and replace expensive controls. Of course, facilities would be required to implement structural/treatment controls if their BMPs were inadequate or they were contributing to a TMDL water quality problem (as mandated in the existing general permit).

Exceedance Response Actions

The ERA Reports called for in the Draft Permit will be difficult and costly to prepare, usually requiring that a consulting engineer be hired. We understand that the State Board needs improved information and data on BMPs and structural treatment controls, but placing that burden on small industries and businesses (many of which have less than 5 employees) is unreasonable and too expensive. We note that the September 6, 2013 Compliance Cost Analysis prepared by the State Board staff estimated an average cost of $12,150 to evaluate structural/treatment BMPs and prepare the Level 2 ERA Technical Report – a huge financial burden for any small business. We anticipate that at least half of the auto dismantlers will need to comply with the Level 2 requirements. We strongly urge the State Board to simplify and streamline the ERA process.

Compliance Groups

SCADA appreciates the retention of the Compliance Groups, replacing the current Group Monitoring Programs (GMP). Such Compliance Groups should have an active role in reviewing collected sampling data, identifying needed BMPs, developing future NELs, and evaluating the potential for developing a sector specific permit.

We also appreciate staff's efforts to include incentives for participation in Compliance Groups such as a reduction in sampling frequency and reduced SMARTS electronic submittals.

SCADA notes that the State Board and Regional Boards will be holding the Compliance Group Leaders accountable for their performance and for the compliance of their members. This is an important consideration for all groups who should work closely with their consultants that will lead the Groups. It is in everyone's interest that the groups are led by professional, well-managed and well-trained Group Leaders that are active and diligent in ensuring their members comply with the Permit.

QISP Training

SCADA appreciates the value of excellent environmental compliance training programs, and we regularly offer training and educational resources via our Conventions, SCADAgram fax broadcast newsletters, magazine, and on-site visits.

We appreciate the simplification of QISPs and the associated training. Further, we recommend that QISP training be allowed to be offered by organizations such as SCADA, or by experienced consultants that serve the industry.

SMARTS

While we support compliance transparency and recognize the convenience of electronic submittals for regulators, we are highly concerned that SMARTS electronic submittals remain complicated and time-consuming for many dismantlers, especially the smaller operations. Some dismantlers do not have

computers or the skill necessary to submit the information. It is also important that SMARTS be designed to protect "trade secrets" from inappropriate public distribution. Additional steps should also be taken to ensure that the submitted data are accurate, and erroneous reporting is minimized.

Further, providing all compliance-related information on SMARTS will increase our industry's vulnerability to third-party lawsuits and invite abuse of the system -- launching unprecedented and unreasonable scrutiny on our industry and imposing devastating legal costs. This is a critical consideration – particularly given the underground economy and the fact that we are the "good actors" working to be in compliance and protect water quality. If such vulnerabilities are pursued in greater numbers, this will only serve to put these "good actors" out of business to the detriment of water quality.

We recommend that the existing data and information submitted to SMARTS be continued, but that additional submittals not be required at this time and that the information not be immediately transparent. We recommend a process whereby the information could be obtained through a formal request to the Board, which will help alleviate witch hunts from being so easily undertaken with the immediate availability of such information.

Total Maximum Daily Loads (TMDLs)

SCADA understands that TMDLs are the primary mechanism to determine watershed-specific water quality needs. We agree that industries that are contributing to waterway impairment should take whatever actions are necessary to protect that waterway. We understand that the State Board staff believes that the existing TMDL reports are too vague and generic to be able to target individual industries or other sources. We concur that more specific TMDL reports would be valuable, but recommend that sufficient data and analysis be collected and analyzed to support the accuracy of specific TMDL waste load allocations. We believe that further review of the TMDLs is necessary; given the many years that TMDLs have been developed, it does not appear that the State Board can adequately assess the impact on industry by July 2015.

Cost of Compliance

SCADA reviewed the September 6, 2013 report entitled, "2013 Update of Report on the Compliance Costs for the Final (2013) Draft Industrial General Permit (IGP)" prepared by the State Board staff. The report is represented as "an estimate of the pollution control strategy costs necessary to comply with the regulations." The report concludes that the cost of complying with the Draft Permit would be 15% higher than the cost of complying with the existing (1997) permit. For the auto dismantling industry, we believe that the Compliance Cost Report seriously underestimates the percentage of facilities that will need to comply with Level 2 structural/treatment BMP requirements. The Report also ignores the cost of Level 1 Advanced BMPs, and greatly underestimates the cost of Level 2 structural/treatment systems that a typical auto dismantler would need to implement to consistently meet the NALs.

More specifically, auto dismantling facilities would incur large cost increases for sampling, training, SMARTS implementation, ERAs, and implementation of Advanced BMPs and structural/treatment controls. For the dismantling industry, we estimate that the typical facility would incur a 5-year compliance cost of $280,000 – which represents a 72% increase in the cost of complying with the existing (1997) permit. Some large dismantling facilities with multiple stormwater discharge locations will face a compliance cost approaching $1 million. Such a cost increase will cripple the professional auto dismantling industry in California, drive

smaller operations out of business, force more dismantlers underground as illegal operators, and ultimately threaten water resources since fewer vehicles will be properly processed.

Final Comments

The industrial storm water permit will have a tremendous impact on the auto dismantling industry – particularly given the un-level playing field associated with the numerous unlicensed, unregulated entities acquiring end of life vehicles and who refuse to comply with environmental and other regulatory requirements. This serious competitive disadvantage for SCADA members does not exist for many industries subject to this permit. We remain highly concerned that the long-term business viability of the good actors – SCADA members – depends on alternative options for compliance, protection from unreasonable litigation and further action to address the underground operations. Failure to address these issues going forward will result in the good actors going out of business to the detriment of water quality as the unregulated community takes over.

In order to protect water quality without further tilting the playing field in favor of the bad actors, we recommend that a working group be formed to report to the State Board that would be made up of licensed dismantlers (and other industry sectors with similar concerns/impacts), regulators, and environmental advocates. Such a working group could be established to provide a forum for dialogue on IGP compliance, overall water quality and other environmental issues that are a result of activities associated with end of life vehicles. It could be used as a forum to hear and consider issues prior to the issuance of the next storm water permit with the goal of better addressing the complexities associated with the ever-changing playing field and the impacts on the current licensed, regulated community. The working group could be directed to provide recommendations regarding leveling the playing field, capturing the "bad actors," and avoiding further harm to the "good actors," all within the context of the regulatory requirements associated with water quality and environmental protection. It could serve as a good forum within which to further discuss the issues around the unregulated, unlicensed entities and the critical need to level the playing field.

SCADA thanks you for the opportunity to share our concerns and recommendations. We look forward to working with the State Board and staff on a final General Permit that imposes reasonable requirements on industry and protects California's water quality. If you have any questions, please contact Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993. Thank you.

Respectfully Submitted,

Martha Cowell
Executive Director