

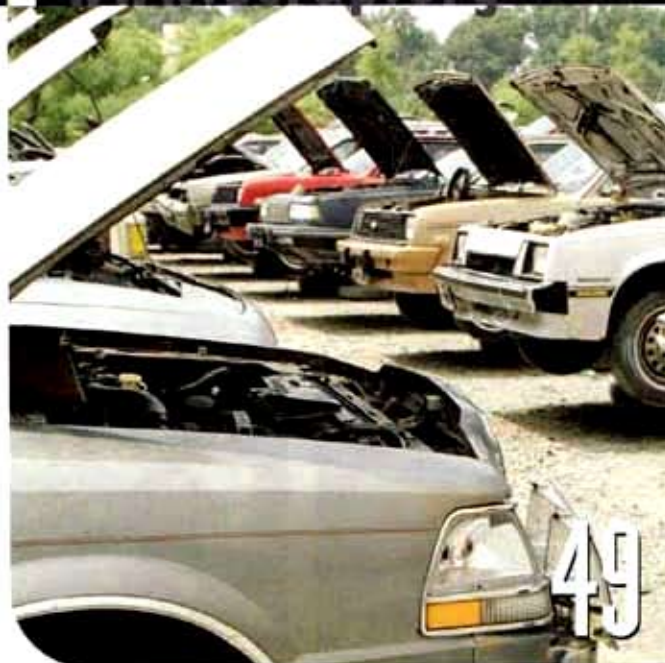
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DEPARTMENTS

- 7 **VIEW FROM THE CHAIR**
The Power of People
- 9 **PRESIDENT'S PERSPECTIVE**
The Big Easy Is Back
- 11 **COMMENTARY**
A Song for Unsung Leaders
- 13 **MARKETTRENDS**
- 17 **SCRAP BEAT**
National Mercury Switch Program Approved
- 27 **NEW PRODUCTS**
- 36 **USED EQUIPMENT**
- 39 **INSURANCE INSIGHTS**
- 41 **SAFETY FIRST**
- 43 **ON SALES**
- 47 **OF COUNSEL**
- 132 **ISRI NEWS**
- 140 **PEOPLE**
- 142 **MEETINGS**
- 146 **ADVERTISER INDEX**
- 149 **MARKETPLACE**
- 152 **ONE ON ONE**
Doug Kramer



CAR TALK

BY KENT KISER

The Automotive Recyclers Association's George Eliades talks shop, covering the trends, triumphs, and challenges facing auto recyclers.

FEATURES

62 The E-Scrap Export Enigma

BY STEVE BARLAS

E-scrap exporters face a complex mix of international trade laws, market demand, and environmental concerns. Here's how some are managing the challenges.

74 Clouds on the Horizon

BY KIM FERNANDEZ

New and potential stormwater rule changes could affect your scrap operations.

82 Rubber Reborn

BY ANN C. LOGUE

Recycled rubber finds new life in a variety of innovative products.

93 The Market for Magazines

BY RACHEL H. POLLACK

Old magazines look to exports as their best hope for growth in demand.

101 Safety Series: Respiratory Protection

BY LAURA GAJEWSKI

A respiratory protection program can save workers' lungs from unseen hazards.

109 New Orleans Now

Jo Cozzi, wife of ISRI Chair Frank Cozzi, recounts her July visit to New Orleans.

117 Equipment Focus: Truck Scales

BY JIM FOWLER

A look at the many factors to weigh when shopping for a full-length truck scale.

125 Go West

BY SI WAKESBERG

Over 60 years, Jack Engle has built a pioneering West Coast family scrap business.



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STORMWATER CONTROL MIGHT BECOME MORE COSTLY OR COMPLEX WHEN A NEW EPA PROPOSAL TAKES EFFECT, AND POTENTIAL STATE-LEVEL CHANGES HAVE SERIOUS IMPLICATIONS AS WELL.

BY KIM FERNANDEZ

Decades ago, scrap recyclers didn't worry too much about stormwater. When it rained, the water ran off many of their properties into storm sewers or nearby bodies of water, but they didn't filter or funnel that water, let alone analyze what it contained.

About 20 years ago, however, implementation of the federal Clean Water Act made stormwater a topic of industry concern. And about 15 years

ago, when the U.S. EPA first introduced stormwater permits, recyclers began to face complex requirements to monitor and control stormwater runoff from their facilities. State regulations and lawsuits from consumer and environmental organizations have further muddied the waters, imposing more stringent requirements on some businesses.

In December 2005, the EPA released proposed revisions to the National Pollutant Discharge Elimination System Multi-Sector General Permit for Industrial Activities, which governs stormwater management in territories and states including Alaska, Arizona, Idaho, Massachusetts, New Hampshire, New Mexico, and the District of Columbia. (Though other states have their own stormwater management authorities, they often base their permits on the EPA's.) When adopted, the new requirements have implications that

CLOUDS ON T



could cost individual facilities thousands, even millions, of dollars. Some recyclers might need to hard-surface their entire properties, if they have not done so already, and install expensive filtering or water treatment systems. The requirements might give more leverage to groups that file lawsuits against alleged CWA violators. And the implementation of best management practices might not be enough to avoid permit violations. The proposal—and changes to state-level stormwater regulations—have recyclers and environmental experts predicting rough waters ahead.

BEYOND BENCHMARKS

When the EPA introduced its 1995 stormwater permits, it provided benchmarks for businesses to reach in reducing pollutant levels. The current proposal changes some of those benchmarks to much lower allowable levels. The benchmark for

total recoverable copper, for example, would fall from 0.0636 milligrams per liter to 0.014 mg/L.

"A lot of folks were worried about this back in the mid-'90s, when stormwater regulations first came into effect," says Fred Cornell of Sims Hugo Neu Corp. (Jersey City, N.J.). "The BMP permits were put into place in anticipation of gaining stormwater quality improvements in a flexible and reasonable way. What's happening now is that the agencies are starting to look at the results of those permits, they're not satisfied with the improvements over that period of time, and they're looking to raise the bar."

In 1995, the agency listed best management practices that businesses could implement to meet the benchmarks, but it also specified that, in itself, not reaching the benchmarks is not a violation of the Clean Water Act. That will still be the case under the revised permit, but some states are

THE HORIZON



moving toward connecting their benchmarks to legally enforceable pollutant limits. Though at least one state considering such a change, Oregon, has less stringent benchmarks than the EPA, other states' benchmarks are more stringent. What this means, Cornell says, is that "individual scrap recycling facilities could not only be required to implement BMPs, but implement them in a way that they're achieving the best results 100 percent of the time to ensure that stormwater at their site meets those stringent testing limits."

When representatives of one state environmental agency reached out to the local ISRI chapter for feedback, "what we found is that although they're flexible in the timing, they're not flexible with where they want the stormwater permit to end up," Cornell says. "The agency wants regular testing and defined permit limits, and if you don't meet the limits, you pay a fine." And strict limits can have serious financial implications. Cornell notes that scrap recyclers most likely won't be able to meet New Jersey's new effluent limits without water treatment. Stormwater studies in North Carolina and Texas demonstrate that even highway runoff does not meet the limits that are being proposed, he adds.

Perhaps more worrisome than the new benchmarks is the possibility that other, even lower numbers could

supersede them. Under the new permit, individual municipalities and states can apply to scrap recyclers the water quality limits of specific bodies of water. When a particular lake or stream has a total maximum daily load limit for a pollutant, specific types of facilities might receive a TMDL-based wasteload allocation for that pollutant, which might be lower than the benchmark. If a facility's discharge exceeds its TMDL wasteload allocation, the company is in violation of its stormwater permit.

"A lot of people are concerned," says David Waggoner, ISRI's director of environmental management. "With the new benchmark values, the stormwater permit is becoming closer and closer to a typical water discharge permit. If water-quality limits come into play because of where the discharge happens to go, you're in the wastewater enforcement routine."

Scrap recyclers face several challenges in meeting the existing benchmarks, let alone new, lower limits. The benchmark numbers can seem arbitrary and vary between states. And refuting that a particular company has violated the limits can be daunting.

"Some of the benchmark numbers are actually below drinking-water standards," Waggoner notes. "In theory, if you open a tap to a faucet and let it run out a stormwater drain, you could be in violation of the benchmark." Further, he says, "Some states have

benchmark limits that exceed the ability of technology to confirm them."

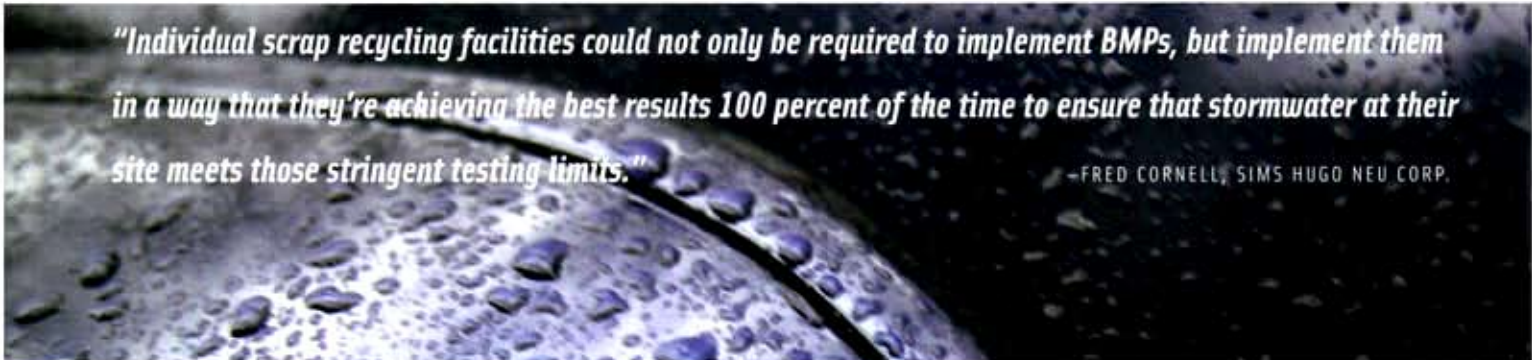
MERCURY SWITCH PROVISIONS

Another cause for alarm is the stormwater permit proposal's requirement that scrapyards remove mercury switches—and antilock brake systems containing such switches—from cars. It might be difficult, if not impossible, for scrapyards to comply with this provision, Waggoner says. "By the time the vehicles get to [scrapyards], they're typically crushed," he explains.

"Those switches are hard to find, and not every car has them. There's no list that says this one has [them] and that one doesn't. There are a whole lot of logistical and feasibility issues here."

The EPA recently worked with ISRI and the steel, auto manufacturing, and auto dismantling industries to create a voluntary national program for mercury switch removal—one that does not apply to antilock brake systems—which launched in August. The voluntary program involves all of those industries, but the stormwater permit provision puts the burden of removing the switches only on the scrap recycling sector—the least feasible point to do so, Waggoner says. Failure to comply could mean "a potential CWA violation" and penalties of \$5,000 per violation per day, he notes.

"There's a better way" to achieve the goal of mercury switch removal, Waggoner says, "and it's not through this



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—FRED CORNELL, SIMS HUGO NEU CORP.

stormwater permit." ISRI is requesting that the EPA change all mercury switch provisions of the stormwater permit proposal so that they refer to the voluntary national program.

URBAN CONCERNS

Recyclers in urban areas might have even more cause for concern about the proposed requirements. Their stormwater discharge and filtering processes could be subject to widely varying municipal stormwater codes.

"One of the requirements of [municipal] permits is that they identify illicit discharges and eliminate them," says Calvin Noling of StormwaterRx LLC (Portland, Ore.). "Normally in cities, stormwater flows through pipes—storm drains," he explains. "The stormwater from an industrial facility inside the city goes into the storm drain that's operated by the municipality. The city has done a lot of analysis to figure out, of the

stormwater in those pipes, where the greatest concentrations of these substances are coming from. And they're looking to identify individual facilities, including scrapyards, that have higher than the normal concentrations of stormwater pollutants."

When TMDLs come into play, water bodies that are more polluted—typically those in urban areas—get more stringent limits. Thus, facilities in large cities are at a disadvantage, and scrap recyclers within city limits often find themselves implementing costly BMPs to keep discharges below their wasteload allocations.

Beyond their industrial stormwater permits and their municipal permits, recyclers inside city limits also might be subject to construction permits, which generally apply to construction projects disturbing more than 1 acre of ground. Any facility that is forced to concrete over its property will almost certainly disturb more than an acre of ground,

thus falling into the jurisdiction of construction stormwater permits.

THE COSTS OF COMPLIANCE—OR NONCOMPLIANCE

Scrap recyclers—particularly those inside municipal limits—might face steep costs to bring their yards into compliance with the proposed regulations. "Cities are not looking for paper studies," Noling says. "They want results. They'll be looking to reduce the pollution load of these sites. Treatments will likely come into play, and reducing pollutant loads will come down to a combination of source control, design changes to facilities, and stormwater treatment."

Compliance "will require substantial improvements at most facilities," Cornell says. Even now, "in one state, the industry is being required to pave or concrete the entire property and direct stormwater to specific outfalls, so there's a place where it can be

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—CALVIN NOLING, STORMWATERX LLC

tested and/or treated." Concrete costs about a quarter-million dollars per acre, he notes.

Options for treatment include passive filtration systems installed underground that connect to existing stormwater systems without any power or chemicals. Underground separation systems can help pull solids and oils from water before it is discharged.

Despite the potential of these and other technologies, their installation can create further headaches for scrapyards, Waggoner says. "Digging up a property to put in concrete pavement or install some sort of stormwater

management system to meet new requirements ... might have ramifications for what states regard as remediation," he explains. "Industrial facilities have surface soils that have received small spills or have small amounts of material on them. When you dig up that soil, you can hit regulations that require you to dispose of it in expensive ways. And when you have these more stringent requirements that require structural changes, you're forced into remedial activity that wouldn't otherwise occur."

Given the potential cost of complying, some might wonder, what's the

cost of not complying? Civil penalties for polluters in some states—Noling points to California and Oregon—can be \$30,000 to \$50,000 a day per violation, and those fines can be retroactive to either the date of first discharge at a facility or the date the facility opened for business.

When it comes to enforcement, "by and large, the state regulatory bodies are overtaxed," Noling notes. That doesn't mean your scrapyard is off the hook, though. "Now what we're seeing," he adds, "is that environmental groups and other groups who pay attention to such things are filing suit.

I'd say the biggest risk to a facility today is not so much fines, but third-party litigation."

Scrapyards have faced several such suits in recent years. In January 2006, Our Children's Earth Foundation sued the California scrapyards of Standard Iron and Metal Co. (Oakland, Calif.) for allegedly failing to implement an adequate stormwater management program. And a Georgia neighbor of a yard belonging to Scrap Metal Processors Inc. sued successfully in 2004 for violations of the CWA and Resource Conservation and Recovery Act.

"There are a lot of grassroots environmental organizations ... those are the types of nonprofit organizations that are typically behind those kind of suits," Noling says. "The CWA allows it explicitly." The proposed revisions to the EPA's stormwater permit impose a 30-day waiting period on companies that file a notice of intent to apply for a permit. That waiting period might give such organizations more of an opportunity to oppose the permit. Further, Noling says, "I believe the media attention surrounding the new industrial permit, continuing progress by cities on the municipal permits, and the advancement of TMDLs will continue to shift environmentalist attention toward stormwater and industrial impacts, particularly in urban areas."

WORKING TOGETHER

Scrap recyclers in at least one state are working with local regulators on stormwater management issues. About

15 years ago, members of ISRI's Wisconsin Chapter began collaborating with that state's Department of Natural Resources on a cooperative agreement that would help recyclers meet stormwater standards while avoiding penalties.

The voluntary Cooperative Compliance Program provides participants with training and professional assistance in implementing BMPs for stormwater management regarding potential scrapyard contaminants such as mercury, fluids, lead, and shredder fluff. The CCP also audits its members annually and submits compliance reports to the DNR.

More recently, the CCP was the first signer of a charter for environmental performance under the Wisconsin DNR's Green Tier program. Under the charter, each CCP participant agrees to adopt an environmental management system with the goal of beating stormwater runoff benchmarks. In return, the DNR will allow some elements of the EMS to satisfy some requirements of the general stormwater permit. Further, participating companies will not face fines or prosecution for self-reported violations if they take corrective actions within an agreed-upon time. Participants also can use the Green Tier logo in marketing and qualify for certificates recognizing superior environmental performance.

"It's an integrated approach for all environmental programs," says David Borsuk of Sadoff Iron & Metal Co. (Fond du Lac, Wis.). "The Green Tier program is a contract [among] indus-

tries, trade associations, and DNR to achieve environmental excellence over and above that which is required by regulatory or permit requirements."

The CCP is currently recruiting members and working with other groups to ensure satisfaction among all interested parties. "We've negotiated objectives with not only DNR, but other environmental stakeholders—neighbors, customers, and other environmental groups," Borsuk says.

"What we're doing is exceeding what's already spelled out," he says. "We will identify different areas of environmental action and look at ways to improve our environmental performance. It's not only good for the environment, but it's also good for long-term cost reduction and certainly a good business program."

Wagger hopes the Wisconsin CCP will be the first of many such programs, from both recyclers and regulators who see the benefit in cooperative agreements that give a little flexibility to both sides. In July ISRI's Operations Committee established a task force to continue working on stormwater issues.

"We want to get to the next level of environmental behavior, and a cooperative regime is what we need," Wagger says. "It's going to be less about punishment and more about getting people to act better to improve themselves. This mode of environmental compliance is really in its infancy." ■

Kim Fernandez is a writer based in Bethesda, Md.



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