



## Storm Water: Enforcement Trends, Citizen Suits, and Lessons Learned

Presented by  
Michael N. Mills  
Melissa A. Foster  
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### ROADMAP

- Industrial General Storm Water Permit (“IGP”)
  - Current Permit and Recent Changes
  - Citizen Suit Case Studies
  - Lessons Learned: “We know a thing or two because we’ve seen a thing or two.”
- Enforcement Summary: IGP and Construction General Storm Water Permit (“CGP”)

## IGP: CURRENT PERMIT

- Permit in effect since July 1, 2015
- Expanded scope to thousands more facilities than were required to take action under the 1997 permit
- Requires reporting via SMARTS public database
- **Allows public access to data**

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## IGP: 2020 AMENDMENTS

- IGP amendment approved in November 2018
- Amendments cover three items:
  - Implementation of adopted Total Maximum Daily Loads (“TMDLs”)
  - Federal Sufficiently Sensitive Test Method Ruling
  - Statewide Compliance Options
- Effective on July 1, 2020

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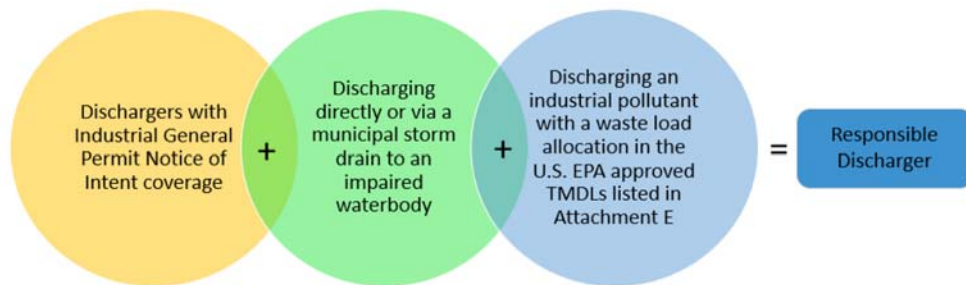
## IGP: 2020 AMENDMENTS

- Adoption of TMDL-specific Numeric Action Levels (TNALs) and Numeric Effluent Limitations (NELs) applicable to discharges to water bodies for which industrial storm water waste load allocations (WLAs) have been assigned
- “Responsible Dischargers” will be required to comply with the new TMDL-specific discharge requirements

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## IGP: 2020 AMENDMENTS



- Source: State Board FAQs re IGP Amendment (Sept. 26, 2018)

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## IGP: 2020 AMENDMENTS

- Regions currently affected:
  - Los Angeles (Region 4) – 26 TMDLs
  - San Diego (Region 9) – 7 TMDLs
  - Bay Area (Region 2) – 3 TMDLs
  - Santa Ana (Region 8) – 1 TMDL
  
- Source: Attachment E to 2018 IGP Amendment

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## IGP: 2020 AMENDMENTS

- Incorporates federally required testing methods adopted by EPA in 2014
  
- Specifically, Dischargers must use analytical test methods that are sufficiently sensitive to measure or detect pollutants at or below the applicable water quality criteria, action level, or effluent limitation

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## IGP: 2020 AMENDMENTS

- Compliance options incentivizing storm water capture:
  - On-site capture and use, and/or infiltration of industrial storm water discharges, up to and including the 85th percentile 24-hour daily storm volume; **or**
  - Participation in agreements to capture and use, and/or infiltrate industrial storm water discharges, up to and including the 85th percentile 24-hour daily storm volume, off-site as approved by the applicable RWQCB

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## IGP: CITIZEN SUITS

- “Any citizen” can sue for alleged IGP violations
- Process and observations:
  - 60-day Notice of Intent to Sue
  - Citizen suits used to acquire information about company operations
    - Site inspections
    - Document requests
    - Reports

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## IGP: CITIZEN SUITS

- “We know a thing or two because we’ve seen a thing or two.”



- First citizen suit in 1997 – California Sportfishing Protection Alliance – challenging abandoned mining properties in the Sierra Foothills
  - No SMARTS
  - Fewer suits

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## IGP: CITIZEN SUIT CASE STUDIES

- **“Ripped from the headlines.”**
- *Environmental Defense Center v. Vintage Production California LLC*, Case No. CV12-4030 JAK (SSx) (C.D. Cal.)
- Newspaper article on hydraulic fracturing at the Grubb-Rincon Oil Field
- *End result*: Consent Decree with Commitment that oil company would not use hydraulic fracturing in the oil field

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## IGP: CITIZEN SUIT CASE STUDIES

- **“No good deed goes unpunished.”**
- *San Joaquin Raptor Rescue Center and Protect Our Water v. Central Valley Company*, (E.D. Cal.)
- Level 2 ERA and everything done according to permit – publicly available on SMARTS
- *End result:* Consent Decree with an Action Plan to look over company’s shoulder

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## IGP: CITIZEN SUIT CASE STUDIES

- **“Quid Pro Quo Harassment.”**
- *Environmental Defense Center v. California Resources Production Corporation*, Case No. 2:16-cv-02325-GW-RAO (C.D. Cal.)
- Trust for Public Lands attempting to secure conservation easement over lands in which defendant owned mineral rights that could be developed in future
- *End result:* Consent Decree with an option to later acquire surface rights to limit mineral development on unrelated lands

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## IGP: CITIZEN SUIT CASE STUDIES

- **“If you can’t beat ’em, join ’em.”**
- *Puget Soundkeeper Alliance v. Pierce County Recycling, Composting and Disposal LLC, et al.,* Case No. C17-5731-BHS (W.D. Wash.)
- Puget Soundkeeper brought suit concerning violations at landfill that were difficult and costly to correct and refused to settle
- *End result:* Brought matter to state regulators and negotiated an agreed-upon order with the state that mooted most of the plaintiff’s action

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## IGP: CITIZEN SUITS, LESSONS LEARNED

- SMARTS exposes all of your dirty laundry to potential plaintiffs
- Know your enemies
- If you are sued, try to find out what is motivating the lawsuit – usually it is something besides your compliance with the IGP
- Don’t be afraid to involve state regulators if you are being extorted by an abuse of the citizen suit provision

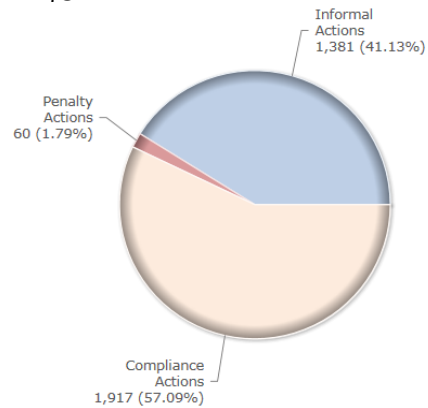
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## STATEWIDE ENFORCEMENT OVERVIEW FY 2017-18 (IGP & CGP)

- # of Informal Actions: 1,381
- # of Compliance Actions: 1,917
- # of Penalty Actions: 60



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## STATEWIDE ENFORCEMENT OVERVIEW FY 2017-18 (IGP & CGP)

Region	Enforcement Actions			Total
	Informal Actions	Compliance Actions	Penalty Actions	
1	3	0	0	3
2	40	1	5	46
3	128	163	7	298
4	537	321	6	864
5	224	677	0	901
6	23	296	0	319
7	0	15	0	15
8	245	444	41	730
9	181	0	1	182
<b>TOTAL</b>	1,381	1,917	60	3,358

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## STATEWIDE ENFORCEMENT OVERVIEW FY 2017-18 (IGP & CGP)

- **Data Source:** CIWQS and SMARTS Period:  
July 1, 2017 to June 30, 2018
- **Unit of Measure:** Number of enforcement actions  
with an effective date during FY 2017-18 issued  
for violations of the Construction Storm Water  
permit and the Industrial Storm Water permit
- **Source:**  
[https://www.waterboards.ca.gov/about\\_us/performance\\_report\\_1718/enforcement/31201\\_npdes\\_sw\\_enf\\_actions.html](https://www.waterboards.ca.gov/about_us/performance_report_1718/enforcement/31201_npdes_sw_enf_actions.html)

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## CGP: ENFORCEMENT OVERVIEW, REGION 5 (7/1/18 – 3/31/19)

- Statewide CONSTW violations from July 1, 2018  
to March 31, 2019: **915**
  - Statewide - The vast majority are violations related  
to late reports and deficient BMP implementation
- Central Valley Regional Board (Region 5)  
violations: **313**
  - **Sacramento (301), Redding (9), Fresno (3)**
- <https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?inCommand=reset&reportName=PublicVioSummaryReport> [Search: region,  
CONSTW, date range 7/1/18-3/31/19; accessed 04.19.19]

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## CGP: ENFORCEMENT OVERVIEW, REGION 5

- 283 are Class 3 violations for first time or infrequent violators
  - Pose a minor threat to water quality
  - Include statutorily required liability for late reporting
- 25 are Class 2 violations
  - Pose a moderate, indirect, or cumulative threat to water quality
  - Include negligent or inadvertent noncompliance with the potential to cause or allow the continuation of unauthorized discharge or obscuring past violations

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## CGP: ADMINISTRATIVE CIVIL LIABILITY OVERVIEW

- Online database allows you to search for active, historical, withdrawn, or “all” ACL information
- For July 1, 2018- March 31, 2019:
  - Pending/Completed Statewide ACLs total just over \$429,000
  - This amount does not include an additional \$385,000 in SEPs
  - Regions involved: San Francisco Bay (Region 2); Central Coast (Region 3); San Diego (Region 9)
- <https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/summACLRepSearch.do>  
[Search: All, CONSTR, both; accessed 04.19.19]

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## CGP: ACL OVERVIEW 7/1/18 - 3/31/19

### Summary Administrative Civil Liability (ACL) Report

Enforcement Status: All  
 Program: CONSTW  
 Enforcement Address MMP: All  
 Effective Date: 07/01/2018 and 03/31/2019

Region	Number of Actions	Liability Total	Liability Paid/Completed	Liability Pending	SEP Total
2	1	\$385,000	\$385,000	\$0	\$385,000
3	6	\$7,668	\$3,834	\$3,834	\$0
9	1	\$36,371	\$36,371	\$0	\$0
<b>TOTALS</b>	<b>8</b>	<b>\$429,039.00</b>	<b>\$425,205.00</b>	<b>\$3,834.00</b>	<b>\$385,000.00</b>

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## CGP: ACL OVERVIEW FY 2017-18

- For July 1, 2017- June 30, 2018:
  - Pending/Completed Statewide ACLs total just over \$102,000 across 19 actions
  - Regions involved: Central Coast (Region 3); Los Angeles (Region 4); and Santa Ana (Region 8)
- <https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/summACLRepSearch.do>  
 [Search: All, CONSTR, both; accessed 04.19.19]

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## CGP: ACL OVERVIEW FY 2017-18

### Summary Administrative Civil Liability (ACL) Report

Enforcement Status: All  
 Program: CONSTW  
 Enforcement Address MMP: All  
 Effective Date: 07/01/2017 and 06/30/2018

Region	Number of Actions	Liability Total	Liability Paid/Completed	Liability Pending	SEP Total	SEP Paid/Completed
3	5	\$6,390	\$3,834	\$2,556	\$0	\$0
4	1	\$1,718	\$1,718	\$0	\$0	\$0
8	13	\$94,308	\$91,196	\$3,112	\$0	\$0
<b>TOTALS</b>	<b>19</b>	<b>\$102,416.00</b>	<b>\$96,748.00</b>	<b>\$5,668.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

## CGP: THE NEXT ITERATION

- Current CGP originally took effect on July 1, 2010 and has been amended twice, in 2010 and 2012.
- Next round of CGP revisions will include implementation of TMDLs
- Fall 2019 - Anticipated release of proposed CGP revisions
- Late 2019? / 2020? - Possible adoption of new permit after public comment period

## CGP: THE NEXT ITERATION



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## HOW CAN WE HELP?

- Collaborate on strategy (attorney work product confidentiality)
- Carefully review all documents before filing with SMARTS
- If you receive a 60-day notice:
  - contact your trusted advisors immediately (attorney, storm water professionals, etc.)
  - A valid lawsuit cannot be filed until the 60 days have passed so take the time to correct any violations and develop a strategy for a potential citizen suit

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## CONTACT INFORMATION

Stoel Rives LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
P: 916.447.0700  
F: 916.447.4781

[michael.mills@stoel.com](mailto:michael.mills@stoel.com); 916.319.4642  
[melissa.foster@stoel.com](mailto:melissa.foster@stoel.com); 916.319.4673