



Dangerous Waters

[Enter scary Jaws theme music: Da-da, da-da, da-da, da-da; people start running away from the water in a panic; the waters foam, a fin appears, and the next thing you know it is all over for the helpless victim.] You may remember being scared to even go into your bathtub after first watching the 1975 movie about the great white predator. What made the movie even more believable is that shark attacks really happen. Even though these attacks are fairly rare, when they do occur, it is usually catastrophic for the poor soul on the receiving end of the rows of teeth. But, did you know the ocean is not the only water where dangerous predators exist? They are also lurking in your storm water! The following is another scary scene which is happening more and more frequently around our State:

You as an Industrial General Permittee receive a certified letter in the mail stating that an organization is giving you a 60-day notice of their intention to sue you for alleged violations of the permit. The letter itemizes your facility's benchmark exceedances, accuses you of not having BMPs that meet the BAT/BCT standard, and states that your discharges are violating receiving water quality standards. You are instructed in the letter to contact the party intending to sue and to make arrangements to come to a settlement before they file the lawsuit. After contacting them, you find out they want to come inspect your facility and meet with you to discuss the pending action. They inform you that your facility is grossly out of compliance and they want you to agree to a settlement in which you will pay for their legal fees (usually \$15,000 +); contribute to one of their favorite non-profit environmental projects (usually \$10,000 +); implement a host of additional BMPs and control measures at your facility; perform additional sampling and testing of storm water discharges; and agree to allow their inspector to come periodically to your facility during the next 2 -3 years to check up on your progress. Of course you will hire an environmental attorney, who will tell you that in California it is extremely difficult to fight off these attacks and that you will be better off to just settle.

These storm water sharks are indiscriminate of who they attack. Both large companies and small companies are targeted. Once you are caught in the jaws of these predators, you will be extremely

fortunate to settle for less than \$25,000. For a small company, this is like taking off an arm or a leg; or may even be fatal to your business. Because we have been seeing more and more of this carnage, we are dedicating this edition of The Rain Events to warn our readers of very real predators that may be lurking around your facilities.

A Recent Shark Attack

Stockton, CA - An auto dismantling company recently experienced a particularly brutal attack. In this case, the predator was an environmental organization that associates themselves with sports fishing. The initial attack came in as a 60-day notice containing the following:

- The owner of the company and the manager of the facility (who is not an owner) were personally named in the lawsuit rather than the corporation.
- They were named for benchmark exceedances of zinc and total suspended solids (which were barely over the benchmarks).
- They were accused of contributing to receiving water exceedances and of not having BMPs that meet the BAT/BCT standard.
- The environmental organization claimed that this company's SWPPP was not compliant or adequate.

What made this case particularly shocking is the following:

- There were huge inaccuracies of the weather data used and cited by the environmental organization. In fact, the 60-day notice even boldly accused the company of claiming to sample on a day that did not receive rain in Stockton. However, two local governmental weather stations not only showed that rain occurred, but the hourly data corresponded perfectly with the reported sampling time.
- Allegations made by the environmental organization lacked supporting information. For example, they provided no evidence showing that the receiving water was negatively impacted by the discharge for the contaminants in question. In fact, the auto dismantler was able to provide five years of data for the receiving water showing that the suspected pollutants were consistently below the State's water quality objectives.
- Within the last three years, the dismantler had been inspected by the USEPA, the RWQCB, and twice by the City of Stockton storm water inspectors, in which only relatively minor comments were made about their compliance program. The dismantler had implemented all corrective action suggested by the inspection reports. This was pointed out to the environmental organization.
- The environmental organization later admitted that they did not have a copy of the company's SWPPP when they sent out the 60-day notice in which they had claimed it to be non-compliant.
- A letter was submitted that countered every allegation in the 60-day notice showing that the facility was absolutely in compliance with the permit. Furthermore, the last round of sampling for the current year had analytical results all below benchmarks; which is a strong indicator that the facility was employing BMPs that meet BAT/BCT and following the required iterative approach.
- During the site inspection, after they filed the lawsuit, the environmental organization appeared not to know about the contents of the dismantler's response letter submitted to them.

So how did all this end up? Even though there was no credible evidence of non-compliance, the business owner ended up settling for \$20,000 in fees and environmental "charitable" contributions. This was after paying approximately \$10,000 in their own legal fees and approximately \$6,000 in consulting and BMP modifications. The dismantler's environmental attorney stated that they were very fortunate and got off much better than others who have been attacked by this particular predator. So the question everyone asks is why didn't they choose to fight it if they were innocent? According to the attorney, their legal fees alone would have far out-weighted the settlement amounts. Other such court cases have shown the judges in this area of the State to rule more favorably towards the environmental organizations. Being personally named in the lawsuit, the owner and the facility manager knew they could potentially lose everything ... the gamble was just too great. The sharks know this and exploit it.



We Have a September Contest Winner!

Sylvia Marson submitted the winning answer!

The question was ...

According to the current Industrial General Permit, what does “preventative maintenance” include?

According to the current permit, “preventative maintenance” includes the regular inspection and maintenance of structural storm water controls (catch basins, oil/water separators, etc.) as well as other facility equipment and systems.

Sylvia wins \$25 to  for supplies to do some “preventative maintenance” around her home for the storm season.

“To Do List” for November:



- Print out and place new forms in your storm water observation and sampling data book (see below).
- Perform the 2nd Quarter Non-Storm Water Observation (Forms 2 & 3) by December 31.
- Sample the first qualifying storm event if you have not yet done so.
- Perform and document your monthly storm water inspections (Form 4).

Storm Water Observation and Sampling Book:

Here is a list of the forms you will need to have on hand for this year. You can download these forms at: www.wgr-sw.com/SW-newsletters/2012-2013StormWaterForms.doc

- Form 1 is used to summarize and report the analytical laboratory results.
- Form 2 is for the Quarterly Authorized Non-Storm Water Observations.
- Form 3 is for the Quarterly Unauthorized Non-Storm Water Observations.
- Form 4 for the Monthly Storm Water Observations (October – May)
- Form 5 is for the Annual Comprehensive Site Compliance Evaluation.

Plus, we have included an inspection checklist to help you track what has been done and what inspections still need to be completed.



How to Shark- Proof Your Compliance Program

If you must go into “dangerous waters”, it is nice to have a shark cage. However, as demonstrated on page 2 of this newsletter, at times even the best protective cage can seem like no protection at all. The following are tips for helping to protect you and your business from storm water predators.



Stay within benchmarks:

-  The State says that exceeding benchmarks does not automatically mean a business is violating the Industrial General Permit. However, third party environmental organizations target facilities with benchmark exceedances. We used to think that they only targeted businesses significantly exceeding benchmarks; that no longer appears to be the case.
-  Make sure you only sample “qualifying storm events”; if a storm doesn't qualify, there's no requirement to sample it.
-  Practice good sampling techniques, samples that are collected from puddles or are collected carelessly can result in higher analytical results and benchmark exceedances.
-  Eliminate Table D or other potential pollutant sampling and testing when you can legally do so. The current permit says a discharger can drop the monitoring of those constituents if they are not detected in significant quantities after two consecutive sampling events. But we have seen businesses elect to continue to test for them even after they can be eliminated. Don't feed the sharks more than you have to!

Implement BAT/BCT and practice the iterative approach:

-  The USEPA and State Water Resources Control Board do not include numeric effluent limits in the industrial NPDES general permits. They require dischargers to implement BMPs, test their discharge, compare sampling results to benchmarks, and take corrective action if benchmarks are exceeded. This is called the iterative approach.
-  Always take corrective action when benchmark exceedances occur and document the action taken.
-  Practice the reporting procedure identified on pages 4 – 6 of the current Industrial General Permit. Most of the time when dischargers are sued by environmental organizations, failure to meet the requirements on pages 4-6 are cited in the lawsuit. These permit pages are attached to the back of this newsletter.
-  Don't go cheap on BMPs. You might think spending \$10,000 on additional BMPs is outrageous, but how does that compare to what you read on page 2?

Other Tips:

- 🐟 Storm water compliance is all about location, location, location. Consider moving your facility to where operations can be kept under cover allowing you to file for a No Exposure Certificate or to a facility that can impound water and typically not have a discharge.
- 🐟 Maintain and record readings from a rain gauge at or near your facility.
- 🐟 Document all housekeeping and preventative maintenance performed by employees and contractors.
- 🐟 Try to minimize the number of discharges and points of discharge. Again, it is largely location dependent. But if you can prevent discharges by allowing runoff from smaller rain events to percolate into permeable soils or evaporate, you will be reducing your chances of exceeding benchmarks.
- 🐟 Review and revise your SWPPP annually and make sure you have implemented all BMPs listed in the plan.
- 🐟 Do the required inspections and turn in annual reports on time.

What is a “qualifying” storm event?

The current Industrial General Permit defines a qualifying storm event as the following:

- It is preceded by 3 days of dry weather;
- The first hour of discharge occurs during normal daylight business hours when it can be sampled and observed; and
- It produces sufficient precipitation to cause runoff.

Get Involved!

MUNICIPAL STORM WATER PERMITS RECEIVING WATER LIMITATIONS LANGUAGE

NOTICE IS HEREBY GIVEN THAT the State Water Resources Control Board (State Water Board) will hold a public workshop concerning the receiving water limitations provisions (Receiving Water Limitations Language) of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharges from Municipal Separate Storm Sewer Systems (MS4s). The public workshop will be held as follows:

November 20, 2012 - 9:00 a.m.

Joe Serna Jr. - Cal/EPA Headquarters Building
Coastal Hearing Room
1001 I Street, Second Floor
Sacramento, CA 95814

This is the language that is contained on the Industrial General Permit's pages 4 – 6 (attached to this newsletter), and as mentioned before, this is the language that the storm water sharks exploit to their advantage. Although this hearing is for the municipal permit, please consider going to the hearing to give comment on and support to providing language that will help prevent wrongful and frivolous lawsuits.

November Storm Water Contest

Try it out! You can win!

By November 30, 2012, submit a response for the following question by email to jteravskis@wgr-sw.com.

True or false - The word "benchmark" is not found in the current Industrial General Permit.



All persons submitting the correct answer will be placed in a drawing. The winner will receive a gift card for \$25 to  to warm you up with some chili after your next sampling event.

STORM WATER AWARENESS WEEK 2012

Report on the
September 24 – 28, 2012 Event

This year's first ever event was a huge success! Over 20 classes were held and more than 250 persons participated in the event. We received tons of positive comments about this free training opportunity. We are already starting to plan the 2013 event to be held during the last week of September. Thank you to all of you who participated in this year's event.

The Rain Events Coupon

Need a SWPPP Overhaul?

Get \$100 off on your next SWPPP Revision

For a quote or more information, contact Aaron Ortiz at aortiz@wgr-sw.com. Offer does not apply to prepaid compliance programs.



Please contact us if you have any questions ...

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Technical Questions about Storm Water Compliance? Call ...

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Subchapter N) shall not exceed the specified effluent limitations.

2. Storm water discharges and authorized non-storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.
3. Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.

C. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely impact human health or the environment.
2. Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.
3. A facility operator will not be in violation of Receiving Water Limitation C.2. as long as the facility operator has implemented BMPs that achieve BAT/BCT and the following procedure is followed:
 - a. The facility operator shall submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report shall include an implementation schedule. The Regional Water Board may require modifications to the report.
 - b. Following approval of the report described above by the Regional Water Board, the facility operator shall revise its SWPPP and monitoring program to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required.
4. A facility operator shall be in violation of this General Permit if he/she fails to do any of the following:

- a. Submit the report described above within 60 days after either the facility operator or the Regional Water Board determines that discharges are causing or contributing to an exceedance of an applicable water quality standard;
- b. Submit a report that is approved by the Regional Water Board; or
- c. Revise its SWPPP and monitoring program as required by the approved report.

D. SPECIAL CONDITIONS

1. Non-Storm Water Discharges

- a. The following non-storm water discharges are authorized by this General Permit provided that they satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.
- b. The non-storm water discharges as provided in Paragraph a. above are authorized by this General Permit if all the following conditions are met:
 - i. The non-storm water discharges are in compliance with Regional Water Board requirements.
 - ii. The non-storm water discharges are in compliance with local agency ordinances and/or requirements.
 - iii. BMPs are specifically included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges.
 - iv. The non-storm water discharges do not contain significant quantities of pollutants.
 - v. The monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective.

- vi. The non-storm water discharges are reported and described annually as part of the annual report.
- c. The Regional Water Board or its designee may establish additional monitoring programs and reporting requirements for any non-storm water discharge authorized by this General Permit.
- d. Discharges from firefighting activities are authorized by this General Permit and are not subject to the conditions of Paragraph b. above.

E. PROVISIONS

1. All facility operators seeking coverage by this General Permit must submit an NOI for each of the facilities they operate. Facility operators filing an NOI after the adoption of this General Permit shall use the NOI form and instructions (Attachment 3) attached to this General Permit. Existing facility operators who have filed an NOI pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall submit an abbreviated NOI form provided by the State Water Board. The abbreviated NOI form shall be submitted within 45 days of receipt.
2. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in accordance with Section A of this General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement an SWPPP in accordance with Section A of this General Permit when the industrial activities begin.
3. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing Monitoring Program and shall implement any necessary revisions to their Monitoring Program in accordance with Section B of the General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement a Monitoring Program in