

[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 July 2014 Contest Winner!


James B. Vernon III is this month's winner!

The question was ...

Where can benchmarks for storm water analytical results be found?

According to a recent letter from a third party environmental group to an Industrial General Permittee, the benchmark values can be found at:

www.epa.gov/npdes/pubs/msqp2008_finalpermit.pdf

James wins \$25 to  for supplies to do some "preventative maintenance" or to build a shark cage.

"To Do List" for August:



- Print out and place new forms in your storm water observation and sampling data book (see below).
- Perform the 1st Quarter Non-Storm Water Observation (Forms 2 & 3) by September 30.
- Schedule your Fall storm water training for facility personnel.
- Inspect your facility for housekeeping and maintenance items that need to be taken care of before the rainy season.

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: <http://wgr-sw.com/SW-newsletters/StormWaterForms-Generic2014-2015.doc>

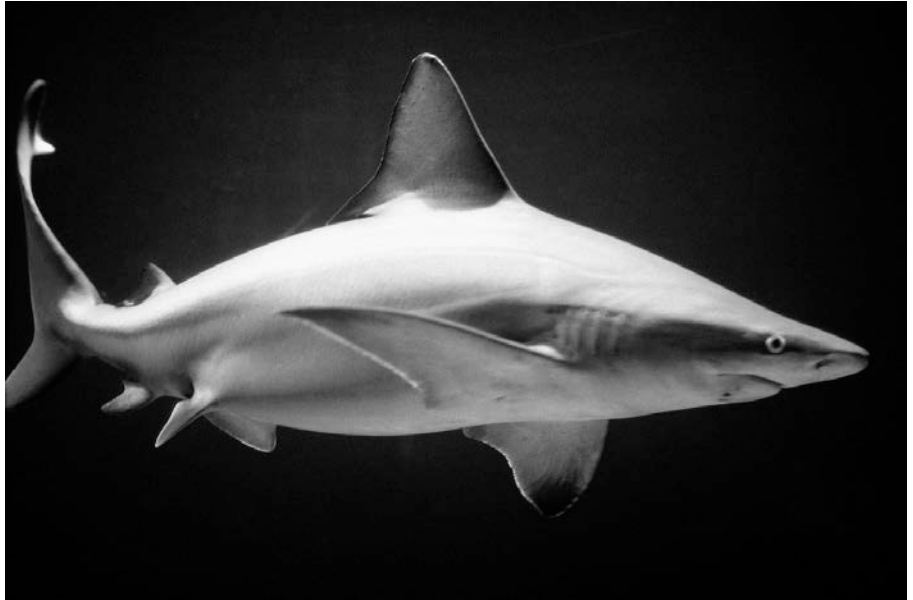
- Form 1 is used to summarize and report the analytical laboratory results.
- Form 2 is for the Quarterly Authorized Non-Storm Water Observations.
- Form 3 is for the Quarterly Unauthorized Non-Storm Water Observations.
- Form 4 for the Monthly Storm Water Observations (October – May)
- Form 5 is for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

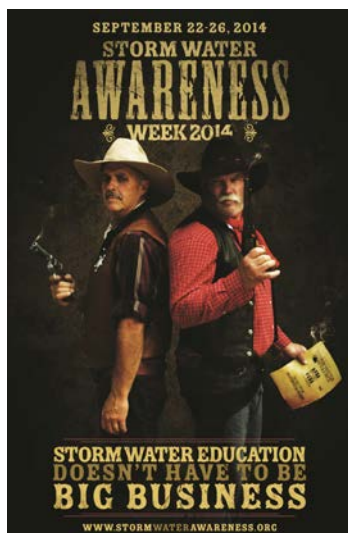
The current Industrial General Permit defines a qualifying storm event as the following:

- 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.

Learn More!

Sept. 22-26, 2014

www.stormwaterawareness.org



- *The live web-broadcasted kickoff event on Monday, Sept. 22 at Noon will feature a discussion between an attorney representing third party environmental groups and an attorney representing industrial dischargers in which topics about the IGP, water quality, and Clean Water Act citizen lawsuits will be discussed.*
- *Downey Brand and WGR will host three workshops in Sacramento on Thursday, Sept. 25 about how to prevent litigation of your storm water program.*
- *There over 50 workshops all over California that will help you with your program.*
- *All events and workshops are free.*


August 2014 Storm Water Contest

Try it out! You can win!

By September 5th, submit a response for the following question by email to steravskis@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 treat your BMP team to some chili and tacos.

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Please contact us if you have any questions ...



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Technical Questions about Environmental Compliance?

Call ...

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DITCHCHEXX™, 12-INCH	80 FT/PALLET; 8 - 10' PIECES	CHECK DAMS, LARGE INLETS

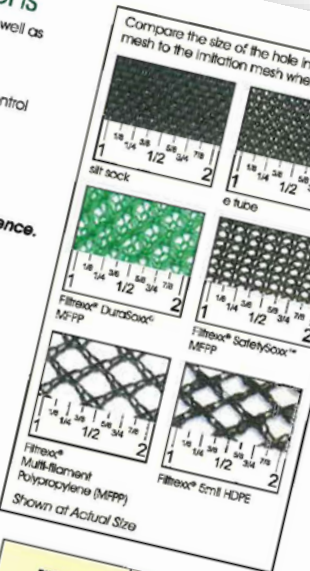


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STORM WATER AWARENESS WEEK 2014

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