

# Waste & Water Update

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## STORM WATER LITIGATION: ARE YOU VULNERABLE TO A CLEAN WATER ACT LAWSUIT?

Industrial facility operators covered under California's storm water Industrial General Permit (IGP) have, in the past several years, become targets of threatened lawsuits alleging IGP violations. These threats are based on provisions of the federal Clean Water Act (CWA), which allows citizens to file lawsuits against entities whom they claim are interfering with their beneficial use of waters of the United States. For the past 40 years, such legal action has been used primarily against large wastewater dischargers with obvious impacts, such as paper mills and power plants. Unfortunately, this provision is now being used to target much smaller facilities discharging storm water under a federally authorized permit. (California's IGP is a federally authorized permit.)

The lawsuit threats are being made by a varied group of plaintiffs; some are environmental groups and others are small law firms that specialize in these types of actions. While the different entities often have somewhat different positions and tactics, and may pursue somewhat different settlement outcomes, they are all generally trying to pursue a monetary settlement in exchange for not proceeding with the lawsuit.

The typical starting point for the threatened legal action is a discharger's receipt of a "60-day notice." These are usually recognizable by arriving via certified mail and a letter that reads: *RE: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")*

(33 U.S.C. §1251 et seq.). The letters will then contain a list of alleged IGP violations, which can range from failure to develop and implement a compliant Storm Water Pollution Prevention Plan (SWPPP), to failure to collect and analyze sufficient numbers of storm water samples, to failure to submit required reports into the State's Storm Water Multiple Application and Report Tracking System (SMARTS). Some may contend violation of various allegedly applicable water quality standards.

The first step after receiving such a letter is (as with any threatened legal action) to reach out to in-house or external legal counsel and provide them with the letter. While the response process will certainly involve facility personnel and others with technical expertise in the IGP requirements, it is essential that legal counsel with experience in these types of actions are involved from the very beginning.

There are generally two paths to take: allow the lawsuit to proceed and fight the matter in court, or work toward settlement without a court action. Depending on the facts of each case, legal counsel will determine the best strategy. While out-of-court (or court-filed) settlement agreements seem most common, there are many examples of the parties ending up in court.

**Bottom Line:** The best way to avoid being served with a CWA lawsuit is paying close attention to complying with each and every IGP provision. With SMARTS being a publicly available database, non-compliance can be easy for plaintiffs to spot. Do what the IGP requires, double-check every document submitted into SMARTS, and ensure submittals are made on time.

## Waste & Water Tip

*Hazardous waste generator ID numbers are issued to facilities by the United States Environmental Protection Agency (U.S. EPA) or authorized state to allow regulators to track hazardous waste from its point of origin to final disposal. In California, a generator must annually re-confirm continued use of their number via the State's electronic Verification Questionnaire (eVQ) tool, which can be found at <https://evq.dtsc.ca.gov/Home.aspx>. Annual eVQ submissions are due by March 31<sup>st</sup>; facilities that fail to submit their eVQ report will have their ID numbers inactivated. An inactive ID number is ineligible for further use until it is reactivated, which is a bureaucratic process best avoided through timely submittal of the annual eVQ.*

### Upcoming Online EH&S Training Offered by Yorke Engineering (4-Hour Sessions)

- California Multi-Media Environmental Regulations: Permitting, Compliance, and Reporting Seminar:  
April 7, 9, 14, and 16, 2026
- California Industrial Hygiene and OSHA Safety Regulations Seminar:  
March 17, 18, 24, and 25, 2026  
Class Info at: <https://yorkeengr.com/classes>

### Upcoming Due Dates for 2026\*

- CDTFA Haz. Waste G&H Fee .....2/28
- CUPA HMBP Recertification .....3/1\*\*
- DTSC Tiered Permit Closure Cost Estimate Inflation Adjustment.....3/1
- DTSC Annual Facility Report (All Permitted TSDFs).....3/1
- U.S. EPA Biennial Haz. Waste Report....3/1
- DTSC Haz. Waste eVQ Filing .....3/31
- U.S. EPA TRI Form R Report.....7/1
- SWRCB IGP Annual Report .....7/15
- SWRCB Level 2 ERA Technical Report Updates .....7/15

\*Due dates listed are statutory dates; sometimes dates are extended when on a weekend/holiday.

\*\*Most common due date, varies by CUPA.