

## Enforcement for Non-Compliance with the Storm Water Industrial General Permit (IGP)<sup>1</sup>

### Introduction

This document was developed to provide some basic enforcement information to enhance the QISP training. This information is for reference only and should not be used to determine permit compliance or specific enforcement actions.

The Regional Water Quality Control Boards and the State Water Resources Control Board (hereinafter, Water Boards) are established in the California Water Code as the primary State Agency for protecting the quality of waters in California. The Water Boards have federally delegated authority in the Clean Water Act (CWA) to implement the National Pollutant Discharge Elimination System (NPDES) Permits for storm water discharges in California. NPDES storm water permits are the primary regulatory mechanism for controlling storm water pollutant sources. The Water Boards issue NPDES storm water permits to agencies, entities, or individuals who have polluted or have the potential to pollute receiving water bodies. The Water Boards have the authority to enforce permit requirements. There are a variety of enforcement actions the Water Boards can take against Dischargers who violate permit requirements or other Water Board regulations. The table below outlines the violations applicable to Dischargers required to obtain IGP coverage.

### Violation Types<sup>2</sup>

Type	Description	Permit Citation
Inadequate BMP Implementation	Best Management Practices (BMPs) deficient, not maintained, or not implemented.	X.H.1
Failure to Obtain Permit	Storm water discharger failure to obtain permit coverage. (Wat. Code, § 13399.25 et seq.)	XVI.A
Failure to Pay Annual Fees	Annual fees not paid on time or in full.	II.B.1.c
Failure to Meet NEC Criteria	Facility conditions did not meet the NEC criteria as described in the IGP.	XVII
Denied Access	Dischargers are required to allow the Water Boards, U.S. EPA, and local MS4 (including any authorized contractor acting as their representative) access to the facility/site.	XXI.I
Failure to Pay Enforcement Fee	Discharger failed to pay enforcement (ACL, MMP, etc.) fees on time or in full.	XXI.Q
Insufficient SWPPP	Storm Water Pollution Prevention Plan (SWPPP) is incomplete or not implemented (e.g. self-inspections, updating plan, etc.).	X
Deficient Annual Report	Incomplete report or failure to notify per requirement (e.g., not taking the required number of samples).	XVI
Late Annual Report	Annual Report is not received or the report is received after the due date.	XVI
Unauthorized NSWD	Unauthorized Non-Storm Water Discharges (NSWDs) as described in the IGP.	III.B
No SWPPP	SWPPP was not made available upon request.	X
Effluent	Identified NAL – Exceedance Response Action violations	XII

<sup>1</sup> From the perspective of storm water staff, not an attorney or enforcement staffs perspective.

<sup>2</sup> There may be other violation types set forth in the IGP.

## Enforcement Types

**Informal Enforcement Actions:** for actual, threatened, or potential violations.

- Oral communication.
- Staff enforcement letter (SEL).
- Notice of violation (NOV).
- Expedited payment letter (EPL).

**Formal Enforcement Actions:** for actual, threatened, or potential violations.

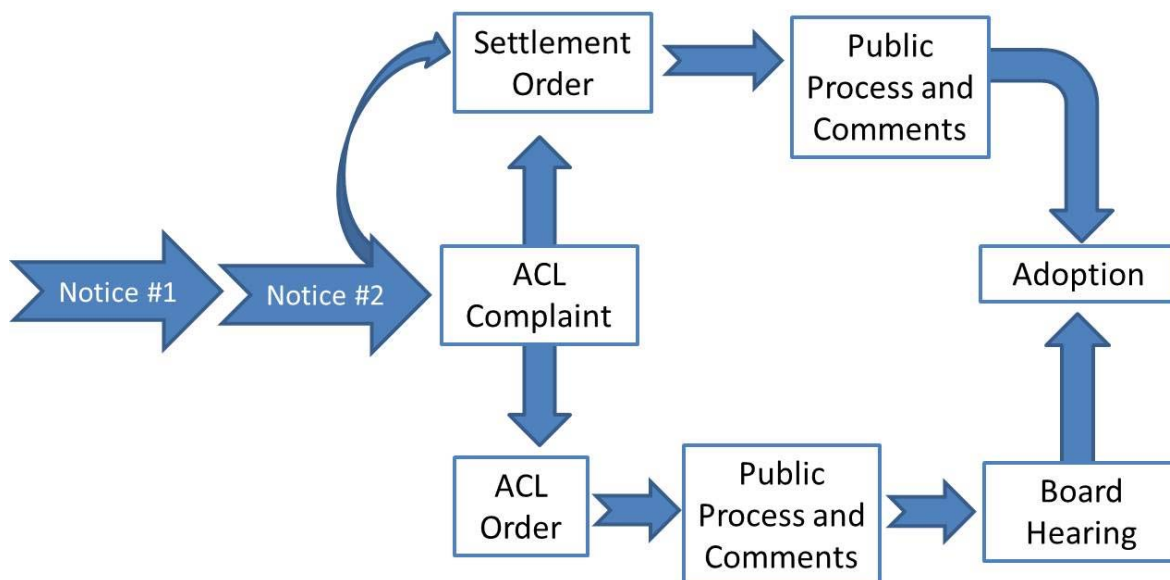
- Notice to comply (NTC).
- Notice of non-compliance (NNC) - e.g. Annual Report or a facility/site non-filer.
- Technical Reports and Investigations (California Water Code 13267 Letter).
- Cleanup and Abatement Order (CAO).
- Sections 13300 and 13308 Time Schedule Order (TSO).
- Cease and Desist Order (CDO).
- Administrative Civil Liability (ACL).
- Mandatory Minimum Penalties (MMP)
- Referrals for civil and criminal prosecutions (to Attorney General, District Attorney, U.S. Attorney, etc.).

### Public Involvement

The public can review enforcement actions and penalties, comment on them before issuance, attend public hearings regarding enforcement cases, and appeal to the State Water Resources Control Board within 30 days following the action. Pending enforcement actions are considered confidential and not all enforcement orders require a public comment process. The public can also report possible storm water violations or complaints to the Water Boards.

### Formal Enforcement Process

Regional Water Quality Control Board Authorities are listed in IGP Section XIX. The chart below is an example of a formal enforcement action (ACL) and penalty process. Each Regional Water Quality Control Board's enforcement process may vary. For example in some cases multiple notices or multiple lower level violations are not filed prior to developing an ACL.



## Other Enforcement (Not an Inclusive List)

### Municipalities and Local Land Use Agencies

Municipalities and local land use agencies may have local ordinances that include requirements that apply to IGP Dischargers (e.g. storm water BMP design criteria, authorized non-storm water discharges, hydromodification, etc.). Violations may occur such as a failure to comply with local discharge ordinances and/or the common law (e.g. by creating a nuisance and/or trespass). Violations may result in criminal penalties, civil penalties, and/or injunctive relief.

### Citizen Suits

#### Roles

- Defendant – Discharger, Water Boards, U.S. EPA
- Plaintiff – Any citizen or Non-Governmental Organization

Section 505 of the CWA<sup>3</sup> authorizes citizens to bring suits to federal district courts against persons alleged to be in violation of an effluent standard, limitation, or an order (e.g. the IGP) issued by the U.S. EPA, the U.S. EPA Administrator (Administrator), or a State with respect to such a standard or limitation. This provision allows citizens to sue for violations of the terms and conditions set forth by the NPDES program. The Administrator, if not a party, may intervene in the citizen suit process as a matter of right.

Citizen suits under Section 505 begin with the issuance of a 60 Day Notice to the Administrator, the State in which the alleged violation occurs, and the alleged violator of the standard, limitation, or order. The Discharger may respond to the plaintiff and settlement without litigation or litigation may result.

The defendant may be subject to civil penalties and/or injunctive relief. The defendant is generally required to pay the litigation costs and fees of the plaintiff if the defendant loses the case.

### Additional Information

#### Clean Water Act

<https://www.epa.gov/laws-regulations/summary-clean-water-act>

#### Industrial General Permit Program Page

[http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/industrial.shtml#igp\\_2014-0057-dwg](http://www.swrcb.ca.gov/water_issues/programs/stormwater/industrial.shtml#igp_2014-0057-dwg)

#### State Water Board – Office of Enforcement

[http://www.swrcb.ca.gov/water\\_issues/programs/enforcement/](http://www.swrcb.ca.gov/water_issues/programs/enforcement/)

#### California Water Code

[http://www.leginfo.ca.gov/html/wat\\_table\\_of\\_contents.html](http://www.leginfo.ca.gov/html/wat_table_of_contents.html)

#### Regional Water Boards Enforcement Coordinators

[http://www.swrcb.ca.gov/water\\_issues/programs/enforcement/docs/coordinators.pdf](http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/coordinators.pdf)

Each Regional Water Board Website has an Enforcement Page:

Regional Water Board lookup: [http://www.waterboards.ca.gov/waterboards\\_map.shtml](http://www.waterboards.ca.gov/waterboards_map.shtml)

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<sup>3</sup> 33 U.S.C. 1365.