

NPDES Permit vs. WDRs and Other Legal Issues

Collection Systems in Motion

SCAP

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Background of SWRCB WDRs

Santa Ana RWQCB WDRs

SSO Guidance Committee

8/1/05 Draft WDR

8/1/05 Draft WDR Requirements

SSMPs

Reporting

Eliminated From Earlier Draft:

§ Prohibition

§ Affirmative Defense

NPDES Permit vs. WDR NGO Position

An NPDES Permit is Required

§ NPDES Permit Required for Discharges:

- ∅ From "Point Sources"
- ∅ To "Waters of the US"

The WDR Protects POTWs and Collection Systems from Citizen Suits

NPDES Permit vs. WDR Operator Response

An NPDES Permit is Not Required

§ NPDES Permit Not Required for All Collection
Systems

SARWQCB WDR & SDRWQCB WDR
Examples

WDR Does Not Preclude Citizen Suits

Affirmative Defense NGO Position

Affirmative Defense Would be Unlawful

- § CWA Prohibits Discharges of Wastewater Not Meeting Effluent Limitations
- § Water Code Incorporates CWA Requirements
- § CWA & Water Code Impose Strict Liability

Purpose of Affirmative Defense is to Preclude
Citizen Suits

Affirmative Defense Operator Response

An Affirmative Defense Would be Lawful

- § Effluent Limitations Do Not Apply to Collection Systems
- § CWA Allows Bypass & Upset Defenses

Affirmative Defense Would Not Preclude
Citizen Suits

CWA Citizen Suits

“Any Person” May Sue for CWA Violations

Violations Include:

- § Unpermitted Discharges Reaching US Waters
- § Violations of NPDES Permit Conditions

Requirements for Citizen Suits

“On Going” Violations

EPA or State Cannot be “Diligently Prosecuting” the Violation

60-Day Notice

Standing

Remedies Available in Citizen Suits

Injunctions

Civil Penalties

§ Payable to US Treasury

§ Up to \$25,000/Day

∅ Seriousness of Violation

∅ Compliance Efforts

∅ Other Factors

Attorneys' Fees to Prevailing Plaintiffs

California Sportfishing Alliance v. El Dorado Irrigation District

RWQCB Enforcement Order

\$14 Million Plant Upgrade Project

Citizen Suit for the Same Permit Violations

Settlement

- § \$140,000 for an SEP
- § \$160,000 in Attorneys Fees

Ecological Rights Foundation v. Pacific Grove

RWQCB Enforcement for Significant Spill

- § \$70,000 Fine, SEP, Collection System Upgrades

Citizen Suit

- § Most SSOs <100 Gallons
- § Majority <20 Gallons

Consent Decree

- § SSMP, Capital Improvements
 - ∅ Most Already Planned and/or Required
- § \$286,000 Attorneys Fees