

## California's Stormwater Regulations Are Themselves a Toxic Mess

Posted By [Ry Rivard](#) On January 3, 2017 @ 4:45 am In [Must Reads, Science/Environment, Environmental Regulation, State Government](#) | [No Comments](#)

*This is Part One in a three-part series examining stormwater pollution and the flawed system that polices it. [Read Part Two here](#) <sup>[1]</sup>, and [Part Three here](#) <sup>[2]</sup>.*

Thousands – perhaps tens of thousands – of California businesses are polluting streams, bays and the ocean, but state environmental regulators don't know how many companies are doing how much damage.

In places like Logan Heights or National City, industry-filled neighborhoods send metals and toxic chemicals into the water, helping to ruin it for humans and poison it for marine life.

An entire regulatory system exists to prevent this – to keep businesses honest, residents safe and fish alive. That system is a mess.

At the beginning of last year, the city of San Diego estimated that 2,400 businesses here were operating without the necessary water pollution control permit. Many business owners may not know they're violating the law; others are trying not to get caught.

At the end of the year, fewer than 400 businesses in San Diego had the permit.

By evading the law, businesses without a permit are propping up their bottom lines. The state estimates it costs [\\$188,400 over five years](#) <sup>[3]</sup> for a business to get what's known as an Industrial General Permit and comply with its requirements. The goal of the permit is to make sure companies are monitoring and reducing their water pollution.

Across the state, there could be thousands or even tens of thousands of businesses dodging these rules and sending unknown amounts of pollution into the state's waters.

One problem is the state doesn't know how many businesses it's trying to regulate. There could be [20,000](#) <sup>[4]</sup> companies in California that need to get a permit and reduce their water pollution. Or [100,000](#) <sup>[5]</sup>. Or [130,000](#) <sup>[6]</sup>.

Whatever the actual number – those are each estimates, no one knows for sure – only about 12,000 state businesses are complying with the regulations today.

"The vast majority of people, of facilities that should be doing something about water quality, are doing nothing," said S. Wayne Rosenbaum, an attorney who represents businesses covered by the permit.

That's a huge liability for them if they get caught: If 20,000 businesses should be following clean water rules, the statewide cost to comply might be about \$3.7 billion over five years. If 100,000 businesses are covered by the rules, those costs could be nearly \$19 billion.

Some current and former environmental regulators wonder if the rules that few are following even make sense.



In the early 1970s, the federal Clean Water Act created the ambitious goal of making every American waterway fishable and swimmable by the mid-1980s. That didn't happen and is a long way off.

In San Diego, about 100 miles of bays, creeks, rivers and shoreline fail to meet federal water-quality standards.

At first, an interwoven network of federal, state and local regulations targeted the biggest polluters – the heavy industries and sewage treatment plants, which had been dumping pollution straight into the nation’s waters.

Since then, environmentalists have set their sights on smaller polluters and on urban “stormwater,” which is just water on the ground after it rains.

Stormwater sweeps up all kinds of debris and bits of pollution and then carries it out to the ocean. That pollution adds up: copper from brake pads, zinc from the coating on fences and roofs, oil from parking lots, grease from restaurants, pesticides from yards and trash from everywhere.

In 2015, the State Water Resources Control Board tried to get its arms around the problem by expanding its clean water rules to cover businesses that had been exempted from regulations but were still likely sources of pollution. Businesses from scrapyards to vineyards must now get an Industrial General Permit.

Yet, these sites still tend to be a low priority for many regulators, in part because there are so many of them.

“It’s a large permit, it’s a statewide permit and we’re outnumbered,” said Laurel Warddrip, the manager of the State Water Resources Control Board’s stormwater program.

There are [about 75 stormwater regulators](#) <sup>[7]</sup> at State Water Board and nine regional boards that report to it, including the San Diego Regional Water Quality Control Board. They oversee not just industrial polluters but also pollution coming of the state’s highways, construction sites and sewer systems.

Over the past few years, though, the industrial sites have taken up a lot of their time.

The Industrial General Permit rules are supposed to be updated every five years. The new one was updated in 2014 and took effect in 2015. Before that, it hadn’t been updated since 1997.

When the state changed the rules to include more businesses, it arguably did something dumb: It made every business that already had a permit get a new permit. The businesses that had enrolled over the previous 17 years were suddenly kicked out of the system and forced to re-enroll.

David Gibson, executive director of the San Diego Regional Water Quality Control Board, said the state effectively doubled everybody’s workload. Now, regulators were not only trying to find new businesses that had to comply with the new rules but making sure the old ones got back in line.

Gibson is among those who believe all the attention on small industrial sites is sometimes misplaced. He favors figuring out the biggest threats to water quality and working to reduce those, rather than making sure everybody is doing their paperwork. But he doesn’t call the shots – the state does, and the state wanted everybody to get a new permit.

“It’s interesting, unfortunately, that we set out these goals of working on a watershed basis and identifying the pollutants of concern,” he said of his board’s own goals, “but it’s ultimately a bureaucratic decision that drives what you actually spend your time on.”

The state admits it doesn’t have the resources to make sure every business gets a permit. In fact, it doesn’t even think it can take a basic step that would ensure that most businesses at least know the permit exists: Send them a piece of mail saying so.

Warddrip said the state has thought about doing outreach to all the businesses that might need to get an Industrial General Permit, but is worried that effort will be more trouble than it’s worth.

"We dance around it, because to implement a statewide non-filer outreach effort is very expensive and is a huge staff workload," she said.

If the state sent, say, 10,000 letters, it might have to answer 10,000 of replies or 10,000 phone calls. It would be totally swamped trying to enforce its own regulations.



It sometimes costs a lot to control a little pollution. Some pollution-control technologies are simple and inexpensive. A business can avoid stormwater rules if it's operating indoors, out of the rain. A roof counts, a tarp might also work.

On the expensive end of the spectrum are high-end water treatment devices that use the same technologies desalination plants use to make ocean water drinkable.

Some businesses also try to capture all the water that comes on their property and then they pay truckers to carry it away. Others create small ponds for stormwater to run into, then they let it evaporate.

Some of the biggest companies – shipbuilders, like General Dynamics, for instance – are praised by environmentalists for doing the most to control their pollution, in part because of previous efforts by environmentalists to clean up those industries.

It's now the smaller businesses that have environmentalists' attention. In the past few years, several environmental groups have begun filing dozens of lawsuits against smaller industrial sites that are not complying with stormwater rules.

There's plenty of places to go after.

In San Diego, a few thousand light industrial facilities are escaping oversight by the San Diego Regional Water Quality Control Board, according to the city's own pollution control team.

In January 2016, the city produced a list of about 2,400 businesses that it believes should get a pollution control permit but had not. They included bakeries, breweries, furniture-makers, printers, machine shops, limousine services, storage facilities and scrapyards.

At the end of the year, only about 260 businesses in the city had gotten a permit. About another 110 businesses in the city have gotten a "no exposure certification," which means they are technically covered by the permit but don't release any pollution. It costs \$200 a year to get this certification, which is essentially the cost of telling the government one of its regulations doesn't apply to you.

Even though the city identified businesses it thinks are breaking the law, the city's job stops there. It doesn't make them get a permit. Instead, it just sends its list to the regional board.

"The city is very diligent in our inspection process in making sure that we refer these businesses to the regional board to make sure they follow through on this state requirement," said Drew Kleis, the deputy director of the city's Division of Stormwater.

The board has found the city's lists to be a waste of time.

Cynthia Gorham, an environmental engineer at the San Diego Regional Water Quality Control Board, said her team has visited businesses on the city's lists and found they are "not conducting industrial activities that are actually subject" to the regulation.

In any case, neither the city nor the board will find much love as they go about doing their job, which is identifying small business owners that may suddenly be on the hook for mounds of paperwork and tens of thousands of dollars in new regulatory costs.

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[3] \$188,400 over five years: <https://www.documentcloud.org/documents/3245921-Igp-cost2013.html#document/p2/a332757>

[4] 20,000: <https://www.documentcloud.org/documents/3245922-Factsheet.html#document/p14/a332793>

[5] 100,000: <https://www.documentcloud.org/documents/3245989-Exchange-With-Strategic-List.html#document/p1/a332795>

[6] 130,000: <https://www.documentcloud.org/documents/3245991-StormwaterWorkshop-August26-27.html#document/p1/a332794>

[7] about 75 stormwater regulators:

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

## In the Absence of State Enforcement, Private Attorneys Have Become Pollution Police

Posted By [Ry Rivard](#) On January 4, 2017 @ 4:45 am In [Must Reads](#), [Science/Environment](#), [Environmental Regulation](#) | [No Comments](#)

*This is Part Two in a three-part series examining stormwater pollution and the flawed system that polices it. [Read Part One here](#) <sup>[1]</sup>, and [Part Three here](#) <sup>[2]</sup>.*

The system for enforcing federal and state clean-water standards is in such disarray that outside environmental groups have become a sort of private police force. They've begun a crackdown on companies that are fouling up creeks and coasts, and they are using the government's own records to do the government's job for it.

Since 2014, the Coastal Environmental Rights Foundation and San Diego Coastkeeper have filed or threatened to file at least 43 lawsuits against area companies for violating clean water laws, according to state records. The groups are mostly targeting light industrial sites, particularly scrapyards.

For years, thousands of businesses across the state have spent thousands of dollars testing water that runs off their sites after it rains. They send those lab results to the State Water Board. If the results show there's too much pollution, the state is supposed to force polluters to clean up and punish them if they don't.

There are a few big holes in this system, though. For one thing, [the government doesn't even know how many businesses it is trying to regulate](#) <sup>[1]</sup>. That means an untold amount of pollution is going unchecked by the agencies paid to clean up the state's waters.

There's another startling hole: In recent years, officials at the San Diego Regional Water Quality Control Board, a regional arm of a state agency, were not even looking at all the lab results it received from possible polluters.

People paid to read mounds of paperwork where companies self-report water-quality violations were not doing it.

"We may have some students going through them or interns going through them, or something like that," Wayne Chiu, a staffer at the San Diego Regional Board, told me last spring. "But for the most part we have not been able to do a real comprehensive review of all the data that has been submitted."

So even companies that were admitting to violating clean water standards could pass unnoticed beneath the nose of state regulators.

A fresh pair of eyes has been going over those files for the last several years: private attorneys. The regulatory paperwork is public, so outside environmental groups are combing through it, looking for companies to take to court.

That's resulting in a patchwork of costly settlements for the businesses that actually submit lab reports about how much pollution is coming off their property, in accordance with state law.

But that doesn't include companies that evade the system entirely. That could be thousands of companies or even tens of thousands – nobody really knows.



In recent years, environmentalists turned to a provision of the federal Clean Water Act that invites anyone to step in if government regulators aren't doing their job.

It's sort of like a citizen's arrest, but for environmentalists. Attorneys have threatened legal action over 300 times in the past three years, including the several dozen threats made in San Diego alone.

State officials say their problem is simply staffing. There are several dozen staffers statewide to handle a pollution control system that covers tens of thousands of possible polluters, including not just industrial sites but freeways, sewer systems and construction sites.

Matt O'Malley, the executive director of San Diego Coastkeeper, doesn't buy this lack-of-resources excuse, which pretty much every government agency that has ever faced scrutiny turns to.

His small nonprofit went through scores of filings by businesses at the same time the Regional Board admits it wasn't reading everything it got.

"You saw industry get complacent or not really pay attention to the regulations they are supposed to comply with," O'Malley said.



Before, the lab results that businesses provided to the state came in a variety of formats, including forms full of hard-to-read handwriting.

Since late 2015, companies have started to file their lab results electronically, which makes it easier for regulators to find polluters. It also closes one of the biggest holes in the system, which is that reports were simply going unread.

That, however, does not itself make the water any cleaner. About 10,000 businesses are submitting lab results to the state. Currently, about a fifth of them are producing more pollution than is allowed.

It's easy for environmentalists to find a target, said S. Wayne Rosenbaum, an attorney who represents the businesses being subject to legal actions.

"There is no facility that is 100 percent compliant, 100 percent of the time," he said.

Rosenbaum said he advises clients to quickly settle when they are put on notice by environmental groups. That's because the stakes are so high. The law allows for penalties of up to \$37,500 per violation.

To give one recent example, [in June](#) <sup>[3]</sup> the Coastal Environmental Rights Foundation filed a Clean Water Act violation notice against Aztec Technology Corporation, a shipping container company with a two-acre lot in Vista.

Water running off the company's property exceeded water-quality benchmarks for iron, zinc, aluminum and other pollutants. The company's own lab tests said that water coming off its property contained 20 times as much zinc and 110 times as much iron as water quality standards allow.

The company self-reported 27 different readings that exceeded benchmarks. Because each violation for each pollutant is counted separately, Aztec theoretically faced \$1.1 million in fines.

Most of the time, those sorts of eye-popping numbers don't amount to anything. The government rarely, if ever, seeks that kind of penalties. Instead, those big numbers are used as leverage by the environmental groups, according to a 2011 report by the State Water Resources Control Board's enforcement office. In fact, it's not in the environmental groups' interest to have those fines paid, because the money would go to the U.S. Treasury, not to clean up dirty water.

Instead, the environmental groups ask for money for themselves and for other environmental groups in the area. They also require companies to begin buying technology to reduce the pollution running off their sites.

Rosenbaum said he's settled about 20 cases this year for about \$40,000 apiece. Those cases were mainly settled out of court, so the figures could not easily be verified.

But that would be a far steeper price than government regulators typically extract. Since 1999, the San Diego Regional Water Quality Control Board has only taken civil action against these kinds of industrial polluters 33 times, imposing a total of [\\$112,000 in penalties](#) <sup>[4]</sup>.

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When they think about filing a lawsuit against a polluter, environmental groups have to first notify the state and federal government and the companies. The agencies and the business all have 60 days to remedy the problems.

If the government steps in to try to hold the business accountable, their action shields the business from a lawsuit and it puts the government – rather than a third party – in charge of what happens next.

Except nobody can recall that happening in California. Instead, the government does nothing and leaves the next move up to environmental groups. Sometimes they go to court, sometimes they get companies to settle the cases and collect thousands in attorneys' fees and sometimes they force companies to take steps to reduce the pollution coming off their property.

Rosenbaum said the State Water Resources Control Board and the nine regional boards that report to it, including the San Diego board, are leaving business to "sink or swim on their own." For that, he said, the government should bear a "great deal of shame."

At times, the San Diego Regional Water Quality Control Board has seemed to encourage these lawsuits, including when Voice of San Diego [first reported on them over a year ago](#) <sup>[5]</sup>.

"If (Coast Law Group) can resolve issues with their citizen enforcement power, we love that," David Gibson, the head of the San Diego agency, told us. "I'm sure they're wondering why we aren't offering more enforcement. I wish we had boots on the ground to do inspection and enforcement."

At other times, though, Gibson has expressed concern that businesses are being forced to follow rules that don't make much sense to begin with.

Instead of singling out a business, Gibson prefers an approach that finds the worst toxins in the region's waters and then works to clean up that pollution.

That's fundamentally different from the approach handed down by the state. The State Water Resources Control Board has been working to expand the number of businesses covered by its regulations and is working to hold each one accountable for the pollution coming off its property.

"We are stuck with facility-by-facility monitoring, for which we've historically found relatively little value," Gibson said.

It's that monitoring data that the environmental groups are using to target businesses.

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Coastal Environmental Rights Foundation is led by prolific public accountability attorney Marco Gonzalez.

Gonzalez took a look at the industrial water pollution control system a few years ago and started threatening lawsuits against polluters because the state wasn't taking them to task. He has threatened more of these lawsuits, by far, than anybody in the San Diego region.



[6]

Photo by Sam Hodgson  
Attorney Marco Gonzalez

Gonzalez says he chooses to target businesses not just because they are polluting but because they are operating in already neglected parts of the county, like Barrio Logan and National City.

On some residential streets, Gonzalez said, trucks full of scrap metal circle neighborhoods, and the scrapyards send bits of metal into creeks. That sort of pollution would never be allowed in more affluent places, like La Jolla or Rancho Peñasquitos.

"We're like, look, if you're going to put the dirty shit in the middle of a residential area, you've got to be at least the ones who comply with the law," Gonzalez said.

Even though the state now has an electronic filing system that allows officials to quickly look at lab tests from businesses instead of wading through piles of paper, Gonzalez doesn't expect that to spur the regional board to action.

"If history is any evidence of what we can expect now, no one is going to do anything," he said.

Since the database of lab results is public, Gonzalez and others can now easily find companies that are polluting the state's waters.

They are also trying to find businesses that should be in the system but are not.

The foundation has notified and threatened legal action against 15 businesses that failed to enroll in the pollution control program, said Livia Borak Beaudin, an attorney for the group.

She said cities and the regional board are both reluctant to act against polluters for political reasons: They could be perceived as picking on small businesses.

"They don't want to fine them, they don't want to lose their businesses," Beaudin said.

*Andrew Keatts contributed to this story.*

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[3] in June: <https://www.documentcloud.org/documents/3249847-Aztec-Technology-Corporation-June-14-2016.html>

[4] \$112,000 in penalties: <http://ciwqs.waterboards.ca.gov/ciwqs/readOnly/detACLRepView.jsp?d-4021898-s=9&d-4021898-p=1&ACLPageSize=100&d-4021898-o=2>

[5] first reported on them over a year ago: <http://www.voiceofsandiego.org/topics/science-environment/only-you-can-prevent-stormwater-pollution-because-the-state-cant-keep-up/>

[6] Image: <http://www.voiceofsandiego.org/wp-content/uploads/2013/08/resignation-presser-0012-1.jpg>

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## He Tried to Follow the Rules – and He Lost His Business

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*This is the final story in our series examining stormwater pollution and the flawed system that polices it. [Read Part One here](#) <sup>[1]</sup>, and [Part Two here](#) <sup>[2]</sup>.*

Jerry Williams lost his business to the rain.

On Feb. 28, 2014, [a half-inch](#) <sup>[3]</sup> of rain fell in National City. Like state water pollution laws required, one of Williams employees at A-1 Alloys Recycling Center grabbed a sample of water running across the northwest corner of his half-acre scrapyard.

The water was sent to a lab and tested for pollution. A report was sent to the State Water Resources Control Board. The results [weren't good](#) <sup>[4]</sup>. A business like A-1 is supposed to keep the amount of copper down to .0048 milligrams per liter. The water from A-1 was 2.84 parts per million copper, nearly 600 times the target.

By February 2015, two attorneys – Matt O'Malley of San Diego Coastkeeper and Drevet Hunt of Lawyers for Clean Water Inc. in San Francisco – had seen A-1's lab results and others from the company going [back to 2009](#) <sup>[5]</sup>. They told Williams they were ready to take him to court for violating clean water laws.

Williams' attorney pleaded on his behalf. His was one of the businesses actually sending in the samples – many don't – and he'd been trying to follow the law, attorney and family friend Carol Brophy argued in a letter to Coastkeeper.

"On a personal level, your client is not targeting a large 'anonymous' corporation, but a family and members of the San Diego community who have lived and worked here all their lives," [she wrote](#) <sup>[6]</sup> to O'Malley and Hunt. "Due to both a business downturn and family medical needs, there is no money to spare on litigation."

O'Malley and Hunt sued A-1 anyway.

By February 2016, two years after it rained, A-1 Alloys Recycling Center [agreed to go out of business](#) <sup>[7]</sup> and pay \$52,000 to settle the lawsuit. Fourteen people lost their jobs. Williams' life is now in ruins.

All the while, other businesses flout the law, don't do the monitoring and likely make more in profit. Williams' story illustrates the dark lottery stormwater regulation has become in California. The enforcement action against him was supposed to clean up San Diego Bay, which receives most of the region's pollution. But there is little evidence that it did. It's unclear whether the standards he did not meet were even useful indicators of water quality problems or that a rational enforcement system would have targeted his small scrapyard, rather than a larger industrial site.



State bureaucrats are trying to regulate thousands of possible polluters, but [they don't know how many](#) <sup>[1]</sup> are even out there. Environmental groups, like Coastkeeper, are [taking the law into their own hands and filing lawsuits](#) <sup>[2]</sup> against companies like A-1 because the state has failed at basic regulatory tasks.

In the modern era of clean water laws, regulators first focused on big polluters starting in the early-1970s. [That helped](#) <sup>[8]</sup>, but America's waterways remain dirty. Now environmentalists and regulators have also set their sights on smaller polluters because small bits of pollution

add up. This is known as stormwater pollution. "Stormwater" is a fancy name for water on the ground after it rains.

In legal notices that it sends to companies, Coastkeeper has a boilerplate sentence, "The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year."

That doesn't capture a bit of nuance: It's not always clear how big of a problem a single business is. Many of the monstrous polluters have been reined in, which means there is more and more focus on smaller and smaller sources of pollution.

"The places where you can clearly find a problem and things are so bad that they directly relate to an outfall are mostly gone," said Steven Bay, the principal scientist and toxicologist at the Southern California Coastal Water Research Project, a water quality research institute.

Yet, the regulatory system is designed to go after individual businesses. So that's what environmental groups do.



Williams got slammed for copper runoff, but his business was right by Interstate 5. His scrapyard may very well have been sending trace amounts of copper into the water, but the problem may also have been bits of copper from the brake pads of the countless cars that pass by.

Williams isn't even sure the test results that he submitted were accurate.

For one thing, he lovingly calls his former employees who took the samples "idiots," which is simply an acknowledgement of cold, hard reality: The people he had working at his scrapyard were not environmental engineers or laboratory scientists who went to college to learn how to collect water samples.

Williams says they were sampling in the wrong place: He had a pit on his property to catch runoff. His employees should have been sampling the water coming out of the pit. Instead, they were sampling water before it went into the pit, which means it was likely dirtier.

All of this is hearsay since the case never went to trial, but it gets to a powerful point about a vast uncertainty. Despite all the testing requirements imposed by the state, regulators and scientists don't know everything about what is messing up the state's waters, but the rules don't always acknowledge that.

Because of that, stormwater rules can seem to lack a certain sensitivity and logic.

"A quarter-acre junkyard in San Diego is subject to the same rule as the San Diego airport – that doesn't make sense to me," said Xavier Swamikannu, a UCLA professor who used to be the head of the stormwater program for the Los Angeles Regional Water Quality Control Board.

Swamikannu also worked on [a 2009 report](#) <sup>[9]</sup> by the National Academy of Sciences about stormwater regulations. The report, requested by the U.S. Environmental Protection Agency, was critical of both the EPA and state agencies. It concluded these agencies' hope of cleaning up the nation's waters by focusing on individual businesses was futile.

Take, for example, the tests A-1 had to do. Often, these tests show that pollution in the water exceeds limits set by the EPA or the state. Sounds bad. But [the report found](#) <sup>[10]</sup> "it is unclear whether these exceedances provide useful indicators of potential water quality problems."

Here in San Diego, for instance, the San Diego Regional Water Quality Control Board spent about a decade setting limits on the amount of metals allowed in Chollas Creek, one of the most polluted waterways in the region. They realized a milligram here and a milligram there adds up to thousands of pounds of metals heading right into San Diego Bay. But a decade after the limits took effect, the board is preparing to [largely reverse its decision because its limits are now considered to be unscientific](#) <sup>[11]</sup>.

The National Academy of Sciences recommended that states start to collect better data so they can create better rules. A new round of industrial regulations in California could help the state do that.

In the meantime, a set of older rules is being used statewide, and it's being used to file lawsuit against businesses like A-1.



A-1 was easy to catch because it was reporting lab results to the state.

Not every business does that – in fact, it's possible more businesses are ignoring clean water rules than attempting to follow them. Those businesses don't have a required permit to operate. Over 2,000 businesses in San Diego likely lack these required permits, according to the city of San Diego.

Laurie Walsh, the head of the San Diego Regional Water Quality Control Board's stormwater program, recently told the board that unpermitted businesses "are probably" causing more pollution than those that do have a permit. That's because everyone with a permit is at least making some effort to follow the law. They're doing lab tests and taking steps to keep their sites clean or to prevent dirty water from ending up in nearby gutters or creeks and eventually the ocean.

David Gibson, executive director of the board, said the disparity between people trying to follow the law and those flaunting it creates problems for everybody.

"If you're an auto dismantler who runs an absolutely clean yard, it's just got to gall you that the guy next door is saving a lot of money not having to do that [pollution control] – not having to do those monitorings and not having to run a very clean shop," Gibson said. "He's making a higher profit margin because he's not carrying on the cost you are."

The Coastal Environmental Rights Foundation has also notified and threatened legal action against [15 businesses](#) <sup>[12]</sup> in San Diego that failed to get necessary permits. A judge recently fined one of those businesses, National Steel & Metals in Barrio Logan, [\\$3.1 million](#) <sup>[13]</sup> and ordered it to pay about \$12,000 in attorneys' fees.

The lawsuit and dozens of others was filed under a provision of the Clean Water Act, which allows anyone to step in and enforce clean water laws if regulators are lax. The foundation's 15 legal actions aside, environmentalists have mostly been using that law to go after businesses that have a permit but are still polluting – a problem, but perhaps not the biggest problem.

O'Malley, the executive director of Coastkeeper, said his group is using the tools available to do what it can.

"Not being the regional board, not being a state agency, it's really difficult for us to do it any other way," he said.

S. Wayne Rosenbaum, an attorney who represented Williams during settlement negotiations with Coastkeeper, said environmentalists are using these lawsuits to fill their coffers.

"Other than a transfer of wealth, I am not aware that any of these cases have improved water quality, have improved general compliance with the permit," he said. "So one has to ask: Is this really what Congress intended when they gave citizens the power to enforce the Clean Water Act?"



Williams comes from a family of scrap metal guys. His grandfather, father, uncle, brother and son have all been in the metal business. He remembers wave after wave of regulations, each meant to clean up the state's waters.

Business was tough and so was life when Coastkeeper came along. Sales were down and his daughter was ill.

Coastkeeper said it picked A-1 based on a "data-driven model" that identifies the most egregious polluters.

The group said its goal is to make businesses comply with the law – not to rack up legal fees or put anybody out of business.

"It's in our best interest to work with all business to make sure they come into compliance," O'Malley said.

Williams doesn't see it that way. He tried to keep his site clean, he said.

"Your effort and what you do to prevent stormwater from escaping your property has no bearing on what they try to extort from you," he said.

When it was clear Coastkeeper wasn't going to back down, Williams switched lawyers and hired Rosenbaum, who generally advises his clients to settle cases.

Still, Williams also hired an environmental consultant, which he says cost tens of thousands of dollars. But it was to no avail.

"Half of my business went poof, and the ugliest part of it was I spent so much of my money trying to save it," he said.

Coastkeeper declined to comment on the specifics of the negotiations, but O'Malley said he thought everyone was nearing some sort of agreement when, "They chose to close their location rather than spend their money on compliance."

Williams said the environmental group wanted more from him than he had to give.

[Three days](#) <sup>[14]</sup> before Christmas 2015, he signed settlement papers. Williams agreed to pay \$40,000 to Coastkeeper and Lawyers for Clean Water and \$12,000 to [Friends of Famosa Slough](#) <sup>[15]</sup>, a nonprofit that protects a 37-acre wetland near Ocean Beach. He had to set up a payment plan, with a 10 percent interest rate.

Here's where Williams is not an entirely sympathetic character: He said he hoped to be able to reopen A-1 under a different name – "A to Z Recycling, or something," he said.

Environmentalists say that sort of thing happens all the time. They shut one polluter down, then the same people set up shop under a different name.

Williams couldn't make it work. He ended up turning the property over to his son, who has opened a modest business there. Whereas A-1 did a few millions of dollars a year in business and had 14 employees, Williams said his son's is probably only going to do a few hundred thousand dollars and has no employees.

Williams still has his other business, A-1 Alloys, which sells new metal. He's struggling to keep it open, and that too goes back to the lawsuit. He says one of his suppliers saw Coastkeeper's lawsuit in a trade journal and stopped doing business with him because the supplier figured Williams was going to have trouble paying his bills.

Now, to try to keep his one business afloat, 60-year-old Williams finds himself working from 8 a.m. to 2 a.m. He said his wife isn't happy about it.

He lives in fear that something else will happen to him.

"I'm just waiting for the next asshole to walk up and hand me the papers," he said during an emotional interview at his office in San Ysidro.

Williams said he'd even thought about filing lawsuits like the environmentalists do, because he knows how much money they can make.

"I've really thought hard about doing it myself," Williams said. "But I'm not that big of an asshole."

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- [6] she wrote: <https://www.documentcloud.org/documents/3252272-A-1-Alloys-Response-From-Sedgwick-4-13-15.html#document/p2/a333525>
- [7] agreed to go out of business: <https://www.documentcloud.org/documents/3252273-A-1-Alloys-Consent-Decree-Signed.html#document/p4/a333527>
- [8] That helped: <https://www.documentcloud.org/documents/3252332-727-CWA.html>
- [9] a 2009 report: <https://www.documentcloud.org/documents/3239404-Urban-Stormwater-Management-in-the-United-States.html>
- [10] the report found: <https://www.documentcloud.org/documents/3239404-Urban-Stormwater-Management-in-the-United-States.html#document/p15/a333538>
- [11] largely reverse its decision because its limits are now considered to be unscientific: <http://www.voiceofsandiego.org/topics/science-environment/san-diego-cities-will-save-1-billion-changing-regulations-avoid-chollas-creek-cleanup/>
- [12] 15 businesses: <https://www.documentcloud.org/documents/3252359-CERF-Nonfilers.html>
- [13] \$3.1 million: <https://www.documentcloud.org/documents/3252357-2016-08-18-Doc-12-Permanent-Injunction-and.html>
- [14] Three days: <https://www.documentcloud.org/documents/3252273-A-1-Alloys-Consent-Decree-Signed.html#document/p13/a333542>
- [15] Friends of Famosa Slough: <http://www.famosaslough.org/>