

Only You Can Prevent Stormwater Pollution (Because the State Can't Keep Up)

Posted By [Andrew Keatts](#) On May 17, 2016 @ 4:45 am In [Environmental Regulation, Land Use, Science/Environment](#) | [No Comments](#)

Riley Recycling is one of Logan Heights' many industrial businesses. People pull in all day with trucks full of scrap metal looking to unload it for cash.

The company's also facing possible legal penalties if it doesn't change the way it runs its business, to keep it from dumping illegal levels of hazardous metals like zinc, lead and nickel into the city's stormwater system. Other nearby businesses will soon face the same pressure.

But it isn't a state or city agency that's forcing those changes. The state water resources board, which regulates the stormwater runoff management of industrial businesses to protect local waters from pollution, says it doesn't have the resources for proactive enforcement.

Instead, attorneys from the Coast Law Group are pushing the issue. They're using a provision in the federal Clean Water Act that lets citizens enforce stormwater rules, and threatening a lawsuit to force the business to comply with state and federal law.

Coast says it's about to do the same thing to three other businesses on Commercial Street, where city planners recently unveiled new long-term development plans that would [maintain a bleak stretch between 28th and 32nd streets for industrial businesses](#) ^[1] like Riley.

"We've been clear that our long-term goal is to shut them down and make them move, to make it financially impossible for them to comply so that they have to move," said Livia Borak, one of Coast's attorneys.

The U.S. attorney's office this month announced criminal charges against another nearby operator, SoCal Plating, for even more egregious violations, investigated by the Environmental Protection Agency and the FBI, for dumping toxic doses of metals into sewers.

In heavy doses, certain metals in waterways can kill plants and animals and endanger residents, said Dave Gibson, director of the local office for the state's water resources board.

He said the Chollas Creek watershed near Logan Heights, and the San Diego Bay it feeds into, have both been plagued by contaminated run-off from industrial businesses that don't work to limit their effect.

"Is this a bureaucratic exercise? Absolutely not," Gibson said. "These metals are present and do accumulate in the natural environment, which can kill fish and arthropods, and they can bio-accumulate in tissues, and that can move up the food chain."

[When it rains, water picks up material from the urban environment and drains into the storm system and flows untreated into local waterways](#). The San Diego Coastkeeper, a nonprofit group focused on San Diego water quality, says, unequivocally, that this stormwater and this urban runoff is the single biggest threat to San Diego water quality. It's the reason you're not supposed to get in the ocean within 72 hours after it rains.

And a concentration of polluting businesses in one area exacerbates the problem, Gibson said. One bad actor in an area might not meaningfully harm nearby water sources, but a handful can be a different story.

Riley Recycling

Late last year, Borak notified Mike Riley of her firm's intent to file a lawsuit against his recycling

facility for violations of the Clean Water Act. The firm gave the company 60 days to fix policies that led to the violations, as required by law.

They're now in negotiations to fix problems that lead to hazardous levels of certain metals running through the business's stormwater systems.

Coast lawyers decided to target industrial businesses around the county, including Riley, because they knew runoff was the county water's biggest threat, and because industrial businesses hold permits that require annual self-monitoring.

They became familiar with Commercial Street's businesses after spending time in the area related to the Barrio Logan community plan.

"That got us thinking of large-scale enforcement in the area," Borak said.

Borak examined Riley Recycling's annual stormwater self-monitoring reports, finding it had eight times the copper, 100 times the lead and five times the zinc than legal limits allow.

She then scheduled a walk-through with Riley, and found the business wasn't doing nearly enough to prevent the hazardous materials — in addition to certain metals, also oil, fuel and brake fluids — at the site aren't swept into waterways after it rains.

Those sorts of things could be as simple as making sure hazardous materials are contained, cleaning up debris regularly or installing complex technological systems.

"At the Riley Facility, virtually no (prevention practices) are in place to prevent storm water and non-storm water from contacting the aforementioned pollutant sources," Coast's 60-day notice reads. They also took [photos to demonstrate the infractions](#) ^[2].

Riley says he's been cooperating with Coast Law Group, and appreciates the extra set of eyes to ensure he doesn't pollute.

He denies breaking the law, but says he's willing to work with them to prevent further action.

"My working with them is acknowledgment there are areas of improvement, but do I agree with the allegations? I don't want to say yes or no to that," he said. "My reaction is, you look at it, digest it and then you re-evaluate and say where you can improve."

Coast is now getting ready to launch the same type of suits against Ecko Metals, Trolley Auto Parts and SA Recycling, three other heavy-duty industrial businesses on Commercial Street.

Outsourced Enforcement

Policing the stormwater effects of industrial businesses falls to the state's water resources board.

But the agency — yes, despite having the word "resources" in its name — doesn't have nearly enough resources to actively monitor all potentially violating businesses, Gibson said. (SoCal Plating, the company charged with federal criminal violations, fell under federal jurisdiction because it dumped chemicals into sewers, rather than the stormwater system, which are entirely different systems).

Gibson said his office appreciates all the help it can get from citizen enforcement.

"I don't think we have nearly the resources we need to do on-ground inspections," Gibson said.

"There's a lot of work to be done and nobody to do it," Borak said.

The board's responsibilities range from ensuring industrial businesses get a permit to become part of the system, to ensuring those who do have a permit conduct proper self-monitoring, to evaluating prevention procedures for those businesses.

The enforcement actions the board does take usually stem from specific complaints, leading them to check a business's annual self-monitoring reports and, if they show elevated levels of hazardous materials, whether the company has taken any corrective steps.

Chiara Clemente, who works in enforcement and compliance for the water board, said a total of 880 businesses were enrolled in the system in San Diego within the last two years.

The board's currently aware of 60 businesses that haven't enrolled, mostly because of cities that notified it that they should be. But in the last two years, the board formally notified just 16 of those companies that they needed to enroll, and just seven faced penalties for failing to do so.

Only 63 total companies were penalized for violations for their on-site practices and procedures.

In short, there isn't a lot of enforcement going on.

"If (Coast) can resolve issues with their citizen enforcement power, we love that," Gibson said. "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."

Different Approaches

Coast and the water board have different interpretations of when a company should be subject to a financial penalty.

The state water board has a more lenient view.

If a monitoring report shows you're above legal levels, that triggers a review of your prevention practices. Then you need to conduct more monitoring to see if the practices work. A company must ignore the whole process for there to be a violation.

"As far as we're concerned, with a proper reaction, that's what we're looking for," he said.

Coast's view is simpler: **If a company's monitoring reports show excess contaminants, they've polluted the water and it's a violation.**

"Ninety-nine percent of the time I haven't seen someone who notes a violation and works to correct it," Borak said. "They just note it and ignore it."

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[1] maintain a bleak stretch between 28th and 32nd streets for industrial businesses: <http://www.voiceofsandiego.org/topics/land-use/planners-leave-logan-heights-out-of-smart-growth-push/>

[2] photos to demonstrate the infractions: <http://www.voiceofsandiego.org/wp-content/uploads/2015/04/CERF-photos.pdf>