

# Litigation Support under the Clean Water Act for a Metals Recycling Facility

## Oakland, CA



EKI provided litigation support to a client that operated a non-ferrous scrap metal recycling facility in Oakland, California. The complaint was filed against the client by the California Sportfishing Protection Alliance under the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1311(a) and 1342(p). Plaintiffs alleged that the client had violated the National Pollutant Discharge Elimination System (NPDES) General Industrial Storm Water Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (General Permit). EKI reviewed and evaluated technical information regarding historical stormwater management practices at the Site performed under the General Permit and provided assistance to the Client and Counsel during settlement discussions.

The facility is listed in United States Environmental Protection Agency (U.S. EPA) NPDES Stormwater Multi-Sector General Permit (U.S. EPA, 2008) for Industrial Activities (40 Code of Federal Regulations (CFR), Subchapter N) (Multi-Sector Permit) under Subsector N1, Standard Industrial Classification (SIC) Code 5093 – Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials. Plaintiffs alleged that the exceedances of benchmarks established in the Multi-Sector Permit constituted multiple violations of the General Permit. EKI successfully demonstrated that the client had been incrementally attempting to improve their stormwater management practices and that the benchmarks were not applicable to the facility as effluent limitations in stormwater discharges.

Plaintiff also alleged that SIC Code 5015 - Auto Parts Recycling/Dismantling, which requires the sampling and analysis for mercury in stormwater runoff, applied to the facility since the facility accepted certain non-ferrous metal from automobiles. EKI successfully negotiated on behalf of the client that SIC Code 5015 was not applicable and was able to limit sampling requirements to those under the General Permit.

EKI assisted the counsel in negotiating reasonable structural and non-structural stormwater best management practices and sampling procedures and updated the facilities Stormwater Pollution Prevention Plan (SWPPP).