

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

**ADMINISTRATIVE CIVIL LIABILITY ORDER NO. 94-093**

**IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
CITY OF WESTMORLAND  
FOR THE DISCHARGE OF RAW SEWAGE TO THE TRIFOLIUM DRAIN  
ISSUED TO THE CITY OF WESTMORLAND  
IMPERIAL COUNTY**

The California Regional Water Quality Control Board, Colorado River Basin Region, finds that:

1. During a routine inspection of the City of Westmorland's wastewater treatment plant, on March 30, 1994, Regional Board staff noted raw sewage, scum and sludge, in an abandoned Imhoff tank. On inquiry, the staff was informed that a raw sewage discharge to the Trifolium Drain had occurred on March 22, 1994. The wetwell had an overflow line connected to an abandoned Imhoff tank, which in turn was linked to the Trifolium Drain by an overflow line. The wetwell overflowed whenever there was a pump malfunction or power failure lasting more than a few minutes. The discharge of March 22, 1994, occurred because of a malfunctioning pump.
2. On March 22, 1994, the subject facility discharged approximately 57,000 gallons of untreated sewage to the Trifolium Drain. This discharge was not reported to the Regional Board within 24 hours of its occurrence, and a written submission was not submitted within 5 days of the occurrence of the discharge.
3. On April 2, 1994, the subject facility discharged approximately 2,500 gallons of untreated sewage to the Trifolium Drain. This discharge was reported to the Regional Water Quality Control Board.
4. It is likely that other discharges of raw sewage to the Trifolium Drain may have occurred in the past and were not reported to the Regional Water Quality Control Board. The discharger is unable to provide documentation for past discharges.
5. On March 11, 1992, the Regional Board adopted revised waste discharge requirements, and a National Pollutant Discharge Elimination System (NPDES) Permit for the City of Westmorland's Wastewater Treatment Plant for the discharge of treated wastewater to Trifolium Drain, which is considered to be waters of the United States. Said Permit is assigned NPDES Permit No.CA 0105007, Board Order No. 92-014.
6. The Executive Officer on August 11, 1994, issued an Administrative Civil Liability Complaint to the City proposing a \$50,000.00 Administrative Civil Liability for the violation of Board Order No. 92-014.
7. The Regional Board has notified the discharger and all known interested agencies and persons of its intent to adopt the Administrative Civil Liability imposed on the City of Westmorland.
8. The Board in a public meeting heard and considered all comments pertaining to this discharge.
9. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321 (a)(2), Title 14, California Administrative Code.

10. The City of Westmorland is alleged to have violated Receiving Water Limitation B.1.b. of Board Order No. 92-014, NPDES Permit No. CA0105007:

**"B. Receiving Water Limitations**

- "1. Wastewater discharged to Trifolium Drain No. 6 shall not:

"b. Cause presence of oil, grease, scum, sludge, or solids."

11. The City of Westmorland is alleged to have violated Discharge Specification No. 1 of Board Order No. 92-014, NPDES Permit No. CA0105007:

**"C. Discharge Specifications**

- "1. The treatment and disposal of wastes at this facility shall not cause pollution or nuisance as defined in Section 13050(l) and 13050(m) of Division 7 of the California Water Code."

12. The City of Westmorland is alleged to have violated Prohibition No. 2 of Board Order No. 92-014, NPDES Permit No. CA0105007:

**"D. Prohibitions**

- "2. The discharger shall not discharge untreated wastewater to Trifolium Drain No. 6."

13. The City of Westmorland is alleged to have violated Provision No. 8 of Board Order No. 92-014, NPDES Permit No. CA0105007:

**"E. Provisions**

- "8. The discharger shall comply with "Standard Provisions for National Pollutant Discharge Elimination System Permit" dated October 1990."

Standard Provision No. 12(g) of the National Pollutant Discharge Elimination System Permit, dated October 1990, states that:

- "12(g) Twenty-four hour reporting. The discharger shall report any noncompliance that may endanger the health or the environment. Any information shall be provided orally within 24 hours from the time the discharger became aware of the circumstances. A written submission shall also be provided within 5 days of the time the discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

"The following shall be included as information that must be reported within 24 hours under this paragraph:

- "1. Any unanticipated bypass that exceeds any effluent limitation in the permit.

- "2. Any upset that exceeds any effluent limitation in the permit.

- "3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Board in this permit to be reported within 24 hours."**
14. Section 13050(m) of the California Water Code defines "nuisance" as the following:
- "(m) Nuisance means anything which meets all the following requirements:
- "1. Is injurious to human health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
  - "2. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
  - "3. Occurs during, or as a result of, the treatment or disposal of wastes."
15. Pursuant to California Water Code Section 13385(a)(2) and 13385(c), any person who violates waste discharge requirements, shall be liable for the following amounts as stated in the California Water Code Sections 13385(c)(1) and (c)(2):
- a. Ten thousand dollars (\$10,000.00) for each day in which the violation occurs.
  - b. Where there is a discharge, any portion of which is not susceptible to cleanup is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10.00) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
16. In this matter, the maximum assessment would be six hundred fifteen thousand dollars (\$615,000.00).
17. The California Water Code Section 13385(e) states:
- "In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require."
18. The Regional Board's Executive Officer considered the factors mentioned in Item 15.
19. On September 13, 1994, at the Indian Wells City Council Chambers, after due notice to the City of Westmorland and other affected persons, and agencies, the Regional Board conducted public hearings at which representatives of the City of Westmorland appeared and evidence was received concerning the discharge.
20. Based on the factors enumerated in the California Water Section 13385 (e), the Regional Board's Executive Officer proposes that an administrative civil liability be imposed by the Regional Board in the amount of \$50,000.00.

21. On September 8, 1994, the City of Westmorland submitted a proposal to settle the Administrative Civil Liability. The City proposed the construction of three additional treatment ponds, lining of the ponds with a liner system approved by the Regional Board's Executive Officer and installation of a disinfection system.
22. The City of Westmorland proposed the following compliance schedule for the actions mentioned in Finding No. 21, above and in a letter dated September 12, 1994:

<u>Task</u>	<u>Completion Date</u>	<u>Progress Report Due to the Regional Board</u>
a. Submit Final Design	May 1, 1995	July 15, 1995 October 15, 1995 January 15, 1996 April 15, 1996 July 15, 1996
b. Begin Construction	July 1, 1995	Same as above
c. Complete Construction	July 1, 1996	Same as above

23. In addition, the September 8, 1994 proposal stated that the discharger would engage the services of an engineer to prepare a program for scheduled maintenance of each item of equipment at the plant. The maintenance program will be prepared in a checklist format and a copy of the maintenance program will be forwarded to the Board.
24. Black & Veatch, consultants to the City of Westmorland, submitted a letter dated September 12, 1994, proposing the following compliance schedule for the actions mentioned in Finding No. 23, above:

<u>Task</u>	<u>Completion Date</u>	<u>Progress Report Due to the Regional Board</u>
a. Provide documentation regarding proper supervision and operation of the plant by a qualified professional	November 15, 1994	December 1, 1994
b. Submit a maintenance program for the plant including preparation of Operation and Maintenance Manual	November 15, 1994	December 1, 1994
c. Implement the Maintenance Program, until plant upgrade is complete	July 1, 1996	January 15, 1995 April 15, 1995 July 15, 1995 October 15, 1995 January 15, 1996 April 15, 1996 July 15, 1996

25. The cost of implementing the City of Westmorland's September 8, 1994 proposal would exceed \$3,000,000.00. The City has already spent \$30,000.00, toward correcting the maintenance deficiencies at the subject facility.
26. The cost of Regional Water Quality Control Board's staff time, spent in connection with the violations and the ACL including investigating the violations, communicating with the discharger, drafting the ACL complaint and staff report, consulting with the staff attorney and meeting with the Regional Board is estimated to be six thousand two hundred dollars (\$6,200.00).

IT IS HEREBY ORDERED that, pursuant to Section 13385 of the California Water Code, an Administrative Civil Liability is imposed on the City of Westmorland in the amount of \$50,000.00. The Regional Board suspends \$49,500.00 administrative civil liability, subject to the following:

1. The City of Westmorland shall pay forty-nine thousand five hundred dollars (\$49,500.00) suspended civil liability if the City fails to complete the tasks and comply with the time schedules mentioned in Findings No. 21, 22, 23 and 24, above.
2. Nothing in this Order shall be construed to relieve the City of Westmorland from additional administrative or judicial civil liabilities should further violations occur.
3. For administrative liability due to the Regional Board, the City of Westmorland shall submit a check or money order to the:

California Regional Water Quality Control Board  
Colorado River Basin Region  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260

I, Philip A. Gruenberg, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on September 13, 1994.

  
Executive Officer