



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

OFFICE OF THE  
REGIONAL ADMINISTRATOR

**FEB 02 2011**

Mr. Robert E. Perdue  
Executive Officer  
California Regional Water Quality Control Board  
Colorado River Basin Region  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, California 92260

RE: Approval of the Use of Freshwater Aquatic Life Criteria City of Westmorland NPDES Permit, NPDES No. CA0105007

Dear Mr. Perdue:

The U.S. Environmental Protection Agency ("EPA") has reviewed the City of Westmorland's request to apply the water quality standards for freshwater instead of the water quality standards for saltwater to implement the permit issued by the Colorado River Regional Water Quality Control Board for a number of pollutants at the facility's discharge point. We find that it is appropriate to apply the freshwater criteria to the City of Westmorland's permit. Therefore, we tentatively approve the request to use the freshwater aquatic life criteria in the City of Westmorland's National Pollutant Discharge Elimination System (NPDES) permit to discharge to the Trifolium Drain.

In 2000, EPA established Federal Water Quality Standards in California (known as the California Toxics Rule or CTR) for a number of toxic pollutants. 40 CFR 131.38. These standards, technically referred to as water quality criteria, include both freshwater and saltwater criteria. For waters with salinity less than 1 part per thousand (ppt), freshwater criteria apply, while for waters with salinity greater than 10 ppt, saltwater criteria apply. For waters with salinity between 1 ppt and 10 ppt, the more stringent of the freshwater and saltwater criteria apply. For these waters, however, the EPA Regional Administrator has discretion to approve the use of less stringent freshwater or saltwater criteria based on information and data that demonstrates that the dominant biology of the water body is either freshwater or saltwater aquatic life.

On August 11, 2010, the City of Westmorland requested that freshwater criteria be applied to its wastewater discharge into the Trifolium Drain. The City indicated that its request applied to the receiving waters of the Trifolium Drain at the discharge point from the City of Westmorland's wastewater treatment facility. This segment of the Trifolium Drain had salinity between 1 and 10 ppt at the time the permit was issued.

For waters with salinities between 1 and 10 ppt, 40 CFR 131.38(c)(3)(iii) provides as follows:

"For waters in which the salinity is between 1 and 10 parts per thousand as defined in paragraphs c(3)(i) and (ii), the applicable criteria are the more stringent of the freshwater or saltwater criteria. However, the [EPA] Regional Administrator may approve the use of the alternative freshwater or saltwater criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the water body is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the water body is dominated by saltwater aquatic life and that saltwater criteria are more appropriate. Before approving any change, EPA will publish for public comment a document proposing the change."

Pursuant to this requirement, the Colorado River Basin Regional Water Quality Control Board adopted an NPDES permit for the City of Westmorland with the most stringent of the freshwater or saltwater criteria based on the information that salinity was between 1 and 10 ppt.

The City of Westmorland submitted a *Biological Assessment* (the "Bioassessment") to EPA in support of its request for approval for the use of freshwater criteria. The Bioassessment, conducted by Barrett's Biological Surveys on behalf of the City, is a site-specific assessment of the biology of the Trifolium Drain surrounding the discharge location to determine whether the species observed are more typical of a freshwater or saltwater environment. Three sampling stations were established in the vicinity of the outfall. At each sampling station the following data were collected: water salinity, dominant vegetation, and aquatic life. The water salinity was measured at zero parts per thousand at all three sampling locations. According to the Bioassessment, red shiners were observed in the vicinity of the discharge. Red shiners are not known to be tolerant of saline conditions. In addition, the Bioassessment identified freshwater vegetation.

EPA agrees with the conclusion that the Trifolium Drain in the vicinity of the wastewater treatment facility is more typical of a freshwater ecosystem than a saltwater system. Therefore, EPA believes that the requested freshwater criteria are appropriate for that segment of the Trifolium Drain, defined as the City of Westmorland's Wastewater Treatment Plant discharge point. EPA's approval would only apply to this segment and not to the Trifolium Drain in its entirety.

Prior to a final decision, in accordance with 40 CFR 131.38(c)(3)(iii), EPA will give public notice that it is proposing to approve the use of alternative freshwater aquatic life criteria for this portion of the Trifolium Drain. EPA will jointly public notice this letter with the Colorado River Basin Regional Water Quality Control Board's public notice for the proposed re-opening of the City of Westmorland's NPDES Permit No. CA0105007. EPA will take into consideration and respond to comments received during the public comment period. This proposed decision will become final unless EPA receives comments on the proposal prior to the close of the comment period in the public notice.

If there are any questions regarding our tentative approval action, please contact Matthew Mitchell, of the Standards and TMDL Office, at (415) 972-3508. As always, we look forward to continued cooperation with the Colorado River Basin Regional Water Quality Control Board in achieving our mutual environmental goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Blumenfeld". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jared Blumenfeld  
Regional Administrator

cc: Mayor Henry Graham, City of Westmorland  
Sally Traylor, City of Westmorland  
Lucas Agatep, City of Westmorland  
John Carmona, Colorado River Basin Regional Water Quality Control Board