

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 99-128
FOR
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
NILAND SANITARY DISTRICT WASTEWATER TREATMENT PLANT
FOR FALSIFICATION OF MONITORING DATA AND FOR FAILURE TO MEET THE REQUIREMENTS
OF BOARD ORDER NOS. 93-036 AND 98-017
NPDES NO. CA0104451
ISSUED TO NILAND SANITARY DISTRICT
IMPERIAL COUNTY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Niland Sanitary District (hereinafter known as the discharger) is alleged to have violated orders and provisions of the law for which the California Regional Water Quality Control Board, Colorado River Basin Region, may impose civil liability under Section 13385(a) of the California Water Code.
2. Unless waived, a public hearing on this matter will be held before the Board within sixty (60) days of the issuance of this complaint. The discharger, or its representative(s), will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of Civil Liability by the Regional Board. An agenda showing the location, date, and time of the hearing will be mailed to the discharger not less than ten (10) working days before the hearing date.
3. Niland Sanitary District owns and operates a wastewater treatment facility (WWTF) which provides a sewerage service to the community of Niland. The treatment system at the wastewater treatment plant consists of a grit chamber, manual bar screen, three lined partial-mix aerated stabilization ponds connected in series, and a chlorination/dechlorination system. Treated effluent from the WWTF is discharged to Imperial Irrigation District's "R" Drain which flows for four miles and then discharges into the Salton Sea. The Imperial Irrigation District's Drains, and the Salton Sea are both waters of the United States.
4. On June 30, 1993, the Regional Board adopted Waste Discharge Requirements, Board Order No. 93-036 (NPDES No. CA0104451).
5. On May 14, 1998, the Regional Board adopted revised Waste Discharge Requirements, Board Order No. 98-017 (NPDES No. CA0104451), which allows discharge of a maximum of 0.50 million gallons-per-day (MGD) of treated wastewater to the "R" Drain. Current discharge to the drain is around 0.30 MGD.

ALLEGATIONS

6. The discharger is alleged to have violated:
 - A. Effluent Limitation No. 5, of Board Order No. 98-017, which states that:

" Wastewater at the point of discharge to 'R' Drain shall not have an Escherichia Coli (E. Coli) concentration in excess of a geometric mean of Most Probable Number (MPN) of 126 per 100 milliliters (based on a minimum of not less than five samples for any 30-day period) nor shall any sample during any 30-day period exceed 400 MPN per 100 milliliters."

B. Effluent Limitation No. 5, of Board Order No. 93-036, which states that:

"Wastewater at the point of discharge to 'R' Drain shall not have an Escherichia Coli (E. Coli) concentration in excess of a log mean of Most Probable Number (MPN) of 126 per 100 milliliters (based on a minimum of not less than five samples for any 30-day period) nor shall any sample during any 30-day period exceed 400 MPN per 100 milliliters."

C. Receiving Water Limitation No. 1(d), of Board Order Nos. 93-036 and 98-017, which state that:

"Wastewater discharged to 'R' Drain shall not:

d. Contain metals, chemicals, pesticides, or other constituents in concentrations which are toxic to or which produce detrimental physiological responses in human, plant, animal, or indigenous aquatic life."

D. Prohibition No. 1 of Board Order No. 98-017, which states that:

"The direct discharge of any untreated or partially treated wastewater to any surface waters or surface drainage courses is prohibited."

E. Discharge Specification No. 1 of Board Order Nos. 93-036 and 98-017, which state that:

"The treatment or disposal of wastes at this facility shall not cause pollution or nuisance as defined in Section 13050 of Division 7 of the California Water Code."

"California Water Code Section 13050(l) states that 'pollution' may include 'contamination'. It defines each of these terms and 'nuisance' as:

"(k) 'Contamination' means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. 'Contamination' includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

"(l) 'Pollution' means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

- (1) The waters for beneficial uses.
- (2) Facilities which serve these beneficial uses.

"(m) 'Nuisance' means anything which meets all of the following requirements:

- (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to 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."

- F. Item No. 1 of Monitoring and Reporting Program No. 98-017 and Item B of Monitoring and Reporting Program No. 93-036, which states that:

"The collection, and preservation and holding times of all samples shall be in accordance with U.S. Environmental Protection Agency approved procedures. All analyses shall be conducted by a laboratory certified by the State Department of Health Services to perform the required analysis".

- G. Item No. 1 of the Standard Provisions which states that:

"Duty to Comply

- a. The discharger must comply with all of the conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [40 CFR Part 122.41(a)].
- b. The discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not been modified to incorporate the requirement. [40 CFR Part 122.41 (a)(1)]."

- H. Item No. 10(a) of the Standard Provisions which states that:

"Duty to Mitigate

Monitoring and Records

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity."

- I. Item No. 11(e) of the Standard Provisions which states that:

"Signatory Requirements

The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification, in any record or other document submitted or required to be maintained under this permit including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both."

SUPPORTING INFORMATION

7. The following facts are the basis for the alleged violations in this matter:

- A. The Monitoring & Reporting Programs for Board Order Nos. 93-036 and 98-017 require the discharger to collect effluent samples and submit periodic self-monitoring reports to the Regional Board. The Effluent Monitoring Section of the Monitoring & Reporting Programs for Board Order Nos. 93-036 and 98-017, states in part that:

"Wastewater treatment plant effluent discharged to the 'R' Drain shall be monitored for constituents indicated below. A sampling station shall be established where representative samples of the effluent can be obtained.

<u>Constituent</u>	<u>Unit</u>	<u>Type of Sample</u>	<u>Sampling Frequency</u>
E. Coli	MPN/100 ml	Grab	Monthly (Minimum five samples per month) "

- B. Undisinfected secondary treated wastewater contains high levels of bacteria, viruses and pathogens, that can produce detrimental physiological responses in humans. Exposure to these disease causing organisms can occur by ingestion of contaminated water, consumption of infected fish and invasion from skin contact with contaminated water. Diseases caused by these organisms include salmonellosis (including typhoid and paratyphoid fevers), cholera, gastroenteritis, and shigellosis.
- C. Undisinfected wastewater treatment plant effluent has significant nuisance potential and contains pathogens such as E. Coli at concentrations that pose a public health hazard when it is not properly treated and disposed of. Discharge of undisinfected or improperly disinfected effluent falls in the criteria stated in California Water Code Sections (k), (l) and (m) (Item No. 6E).
- D. Discharge of undisinfected or improperly treated effluent, which is likely to contain high levels of E. Coli bacteria and can adversely affect human health, constitutes non-compliance with Board Order No. 98-017, and is a violation of Standard Provision 1 (Item No. 6G).
- E. U.S. Environmental Protection Agency procedures do not allow adding chemicals to wastewater samples for altering the analytical results. The addition of bleach to wastewater samples to enable the samples to meet the E. Coli effluent discharge limitations of the Board Order is a violation of the criteria mentioned above.
- F. Niland personnel submitted falsified monitoring reports to the Board. The reports contain data from wastewater effluent samples spiked with bleach in order to meet the effluent criteria for disinfection.
- G. Niland wastewater treatment plant personnel submitted analysis of samples spiked with chlorine bleach as those of the discharged effluent. Tampering with or spiking wastewater samples is a violation of Standard Provision No. 11(e) (Item No. 6H).
- H. In October 1998, Regional Board staff received information that the Niland wastewater treatment plant operators were discharging untreated or improperly treated wastewater to "R" Drain. In order to meet E. Coli discharge effluent limitations, Niland Sanitary District personnel were adding bleach to the wastewater samples collected from the Niland facility for self-monitoring reports. Regional Board staff investigation confirmed that the operators added bleach to the samples and filtered them prior to delivery to the ATS Laboratory located in Brawley. The alleged tampering occurred for at least two years from November 1996 until October 1998.

PROPOSED CIVIL LIABILITY

- 7. 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 California Water Code Sections 13385(c)(1) and (c)(2):
 - a. Ten thousand dollars (\$10,000) for each day in which the violation occurs.

- b. Where there is a discharge, any portion of which is not susceptible to cleanup, or 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) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
- 8. The liability available to the Regional Board based on an average daily discharge of 0.30 MGD for the two-year period ending in October 1998 is a maximum of two billion, one-hundred ninety-seven million two-hundred ninety thousand dollars (\$2,197,290,000).
- 9. 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 violation, and other matters that justice may require."
- 10. The Regional Board's Executive Officer considered the factors mentioned in the California Water Code Section 13385(e) (Item No. 9).
- 11. Based on the factors enumerated in the California Water Code 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 twenty-five thousand dollars (\$25,000).

WAIVER OF HEARING

- 12. A hearing may be scheduled unless the Niland Sanitary District agrees to waive the hearing and pay the imposed civil liability in full.
- 13. If the hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
- 14. In lieu of hearing, the Niland Sanitary District may waive the right of hearing. Any waiver will not be effective for 30 days from the date of this Complaint to allow other interested persons to comment on this action. If you wish to waive the hearing, please check and sign the waiver and return it with the amount of civil liability proposed in item No. 11 above. The check should be made out to the State Water Resources Control Board, and mailed to the following address:

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

Ordered By: Philip A. Greenberg
 EXECUTIVE OFFICER

12-10-99
 Date

WAIVER

- [] By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. 99-128 and to remit payment for the civil liability imposed. I understand that I am giving up my right to argue allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.

Date

Discharger