

California Regional Water Quality Control Board
North Coast Region

Complaint No. 99-49

for
Administrative Civil Liability

In the matter of

Alary Corporation
Westec Tank Company
and
Westec Industries

1402 Grove Street
Healdsburg, California

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

- 1) The Alary Corporation, Westec Tank Company, and Westec Industries (hereinafter Westec) violated a prohibition in the Water Quality Control Plan for the North Coast Region, and failed to submit a Notice of Intent to comply with the general NPDES storm water permit for industrial facilities, for which the Regional Water Board may impose civil liability under Section 13385 of the California Water Code (State Water Resources Control Board Order No. 91-13 DWQ, as amended by Order No. 92-12 DWQ and 97-03 DWQ, hereinafter "92-12 DWQ").
- 2) Violations at the Westec facility relate to the operations at the facility and to a spill of hazardous materials from an electropolish vat system to Foss Creek on September 10 and 11, 1998.
- 3) An evidentiary hearing was held before the Regional Water Board on July 22, 1999. At the conclusion of that hearing, I was directed to issue this Complaint for Administrative Civil Liability. A second evidentiary hearing on this matter may be held before the Regional Water Board in September, if requested by Westec. Westec or its representatives will have another opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Water Board at the September hearing. However, testimony at the September hearing may be limited to new evidence that was not available at the time of the July hearing. At the September hearing, the Regional Water Board will consider whether to affirm, reject, or modify this complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability or take other action.
- 4) Specific violations related to operations at Westec and the spill of hazardous materials from the electropolish vat system to Foss Creek involve inadequate compliance with the

following:

- A. Westec's two days of discharge violated both the prohibition against discharges of pollutants contained in California Water Code section 13376 and the following prohibition contained in Water Quality Control Plan for the North Coast Region, Section 4. IMPLEMENTATION PLANS, POINT SOURCE MEASURES, WASTE DISCHARGE PROHIBITIONS:

The RWQCB declares that point source waste discharges, except as stipulated by the Thermal Plan, the Ocean Plan, and the action plans and policies contained in the Point Source Measures section of this Water Quality Control Plan, are prohibited in the following locations in the Region:

4. The Russian River and its tributaries during the period of May 15 through September 30

- B. Westec violated Section 13376 of the California Water Code by failing to file a Notice of Intent (NOI) to comply with the general storm water NPDES permit, and by failing to comply with the permit. Section 13376 states that "Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260."
- 5) Regional Water Board staff inspected Foss Creek and the Westec facility on September 11, 1998. Staff monitored pH at various locations in the on September 11, 1998. Photographs were taken to document the discharge. Water samples upstream and downstream of the facility were collected from Foss Creek on September 14, 1998, by Regional Water Board staff.
- 6) Interviews were conducted with Westec staff by Department of Fish and Game, Healdsburg Fire Department, and Regional Water Board staff. Westec staff indicated that the cause of the spill was a leaky water hose nozzle which was left resting on the edge of the rinse tank in the electropolish room following close of business on September 10, 1998. The rinse tank normally contains approximately 200 gallons of orthophosphoric acid. The rinse tank overflowed at an unknown time during the evening of September 10, 1998 and the orthophosphoric acid solution discharged to both secondary containment and the concrete floor outside of secondary containment. The liquid waste entered the facility storm drain inlet approximately 25 feet away from the polishing system and discharged into Foss Creek which is approximately 100 feet from the inlet. The discharge continued until 0500 hours on September 11, 1998, when Westec staff noticed the spill.
- 7) The Regional Water Board issued Cleanup and Abatement Order 98-97 to the Alary Corporation, Westec Tank Company, and Westec Industries on September 16, 1998, to cleanup and abate the hazardous materials discharge from the spill origin to, and within, Foss Creek.
- 8) The Wildlife Loss Report completed by Department of Fish and Game staff indicates the

discharge to Foss Creek severely impacted the aquatic environment. Dead fish life were found throughout the 1200 foot stretch of creek and include steelhead trout, crayfish, green sunfish, roach, and catfish. Bioassay results for water samples collected in Foss Creek immediately downstream of the storm drain outfall by Fish and Game staff indicate a total fish kill.

- 9) Westec staff responsible for working in the electropolish room reported they could not recall if they received any training on the facility emergency response plan.
- 10) The violations report dated April 24, 1998, completed by the Healdsburg Fire Department states Westec failed to provide a written training program for hazardous materials and hazardous waste handling pursuant to Title 22 CCR Chapter 15 Section 66265.16. During the follow up inspection on July 21, 1998, Westec still could not provide any training records to the Healdsburg Fire Department. During recorded interviews following the spill incident on September 15, 1998, Westec Supervisor, Mr. Joe Martinelli, indicated emergency response or hazardous materials handling training has never been completed for Westec staff including staff responsible for working in the electropolish room.
- 11) Westec failed to file a Notice of Intent to comply, and therefore did not achieve coverage under the General NPDES Permit for storm water from April of 1995 until December 22, 1998, and failed to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) as required by the general permit during the same time period.

Administrative Civil Liability

- 12) Section 13385(a)(4) of the California Water Code provides for the imposition of civil liabilities in accordance with Section 13385(c) against dischargers who violate a prohibition of the Regional Board, if the activity subject to the prohibition is regulated by the federal Clean Water Act.
- 13) Westec was responsible for filing a NOI beginning April of 1995. Section 13385 of the California Water Code provides for civil liability to be imposed by the Regional Water Board in an amount not to exceed ten thousand dollars (\$10,000) for each day in which a violation of section 13376 occurs.
- 14) Westec 's two days of discharge violated discharge prohibitions contained in California Water Code section 13376 and the Water Quality Control Plan for the North Coast Region. The civil liability that could be imposed against Westec in this matter is calculated as follows: 2 days of discharge of orthophosphoric acid solution to Foss Creek subject to the per day civil liability as defined in Section 13385(c). This yields a maximum civil liability of \$20,000 calculated at \$10,000 per day for violations of the discharge prohibition.
- 15) Westec is subject to the General Industrial Storm Water NPDES Permit, and was required to have filed a Notice of Intent to comply beginning in April of 1995 pursuant to section 13376 of the California Water Code. A Notice of Intent was not filed until December 22, 1998. Westec was also required to achieve compliance with the general permit by April of

1995 and compliance has not yet been achieved. Regional Water Board staff requested a copy of the SWPPP to be submitted by January 1, 1999. A copy of the SWPPP has not yet been submitted. The period of violation is approximately forty-three months or 1,290 days. This yields a maximum civil liability of \$12,900,000 calculated at \$10,000 per day for violations of Order No. 92-12 DWQ.

- 16) In determining the amount of the civil liability, the Regional Water Board took into account the nature, circumstances, extent, gravity of the violation; whether the discharger has the ability to pay; whether the discharger has any prior history of violations; the degree of culpability; whether there was any economic benefit or savings as a result of the violation; and such other matters as justice may require, as detailed in the staff report for the July 22, 1999, evidentiary hearing.
- 17) The issuance of this complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) pursuant to Title 14, California Code of Regulations, sections 15308 and 15321(a)(2), and Water Code section 13389.
- 18) The Executive Officer of the Regional Water Board was directed to issue a complaint with a proposed administrative civil liability for:
 - Alary Corporation, Westec Tank Company, and Westec Industries related to violations of the prohibition against discharge contained in the Water Quality Control Plan and California Water Code Section 13376 for failure to obtain coverage under and comply with the general industrial storm water NPDES permit in an amount equal to \$40,000. \$20,000 is due and payable within 30 days of the date of this Complaint. The remaining \$20,000 is suspended contingent upon Westec's completion of the following supplemental environmental project to the Executive Officer's satisfaction no later than July 31, 2000.
 - Supplemental Environmental Project: Westec shall conduct an environmental compliance education program for the winery and stainless steel fabrication industries. The program shall include oral and written presentations at no fewer than three meetings of industry trade groups, with a total attendance of approximately three hundred industry representatives. The presentations shall consist of an overview of all local, state, and federal environmental laws applicable to these industries, and shall include a discussion of the Westec spill event and the response to the event. Westec, in consultation with the appropriate professionals, shall be responsible for the development of the oral presentation and written materials. The materials shall be submitted to the Regional Board for review prior to the presentations. At the conclusion of the program, Westec shall submit a written report to the Executive Officer describing the presentations and the number of attendees. Failure to complete this Supplemental Environmental Project by July 31, 2000 will result in the automatic imposition of the suspended administrative civil liability.

- 19) You may waive the right to a future hearing. If you wish to waive the hearing, please check and sign the waiver and return it together with a cashier's check or money order, made payable to the State Water Resources Control Board, for the amount of civil liability proposed in finding 18 within 30 days of the date of this complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. This settlement will not become effective until after a 30-day public comment period.

Lee. A Michlin
Executive Officer

July 22, 1999