

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:

PROMENADE MALL DEVELOPMENT CORPORATION)
)
)
 Facility: Promenade at Pacific Beach)
)
 Violations of Effluent Limitations in Order)
 No. 2001-96, NPDES No. CAG919002,)
General Waste Discharge Requirements)
for Groundwater Extraction Waste)
Discharges from Construction,)
Remediation, and Permanent)
Groundwater Extraction Projects to)
Surface Waters within the San Diego)
Region Except for San Diego Bay)
)
 Mailing Address:)
 4150 Mission Boulevard, Suite 211)
 San Diego, CA 92109)
)
 Place ID 249321)
 WDID No. 9 00000058)
)

Amended
 COMPLAINT NO. R9-2008-0056
 FOR
 ADMINISTRATIVE CIVIL LIABILITY
 WITH
 MANDATORY MINIMUM PENALTIES
 July 17, 2008

PROMENADE MALL DEVELOPMENT CORPORATION IS HEREBY GIVEN NOTICE THAT:

1. Promenade Mall Development Corporation (Promenade) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to Section 13385 of the California Water Code (CWC). The violations alleged herein include violations of effluent limitations in waste discharge requirements for discharges of pollutants from point sources to navigable waters for which the Regional Board must imposed mandatory minimum penalties (MMP).

2. Effluent discharged to Mission Bay from the Promenade's permanent groundwater extraction system is subject to the Regional Board's general waste discharge requirements for groundwater extraction waste discharges, Order No. 2001-96, NPDES Permit No. CAG919002 (Groundwater Extraction Permit).¹ The Groundwater Extraction Permit prescribes effluent limitations for the discharge of extracted groundwater to surface waters, including Mission Bay.
3. Promenade's groundwater extraction system discharges to Mission Bay via the City of San Diego's storm drain infrastructure at Santa Clara Point on the western shore of the Bay. During certain times the City diverts at least a portion of storm drain flows at Santa Clara Point to its sanitary sewer for treatment and discharge to the Pacific Ocean. Promenade's monitoring reports state that "a portion" of its discharge is diverted to the sanitary sewer by the City. In May 2002 the City reported that on each of seven representative days in 2000 and 2001, flows in the storm drain at Santa Clara Point (Pump Station N) were both discharged to the Bay and diverted to the sanitary sewer.² As a result, at least a portion of Promenade's daily dewatering effluent is discharged to Mission Bay.
4. CWC Section 13385 requires that a MMP of \$3,000 be imposed for each serious violation. CWC Section 13385 subdivision (h)(2) defines a 'serious' violation, as any waste discharge that violates an effluent limitation contained in waste discharge requirements (applying to surface water discharges) for a Group I pollutant by 40 percent or more or for a Group II pollutant by 20 percent or more.
5. CWC Section 13385(i) also requires that an MMP of \$3,000 be imposed for each violation (i.e. any waste discharge that violates an effluent limitation contained in waste discharge requirements (applying to surface water discharges) beginning with the fourth violation in any six-month period.
6. In addition, every violation of an NPDES permit is subject to discretionary liability under CWC Section 13385(a)(2), including violations not subject to mandatory minimum penalties under CWC Sections 13385(h) or (i).

¹ Order No. 2001-96, NPDES No. CAG919002, *General Waste Discharge Requirements for Groundwater Extraction Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within the San Diego Region Except for San Diego Bay* (Groundwater Extraction Permit). Order No. R9-2001-96 was superseded on March 12, 2008 by Order No. R9-2008-0002.

² The City estimated that on average 43 percent of daily flows in the storm drain at Pump Station N was discharged to the Bay on those seven representative days (minimum of 25 percent and a maximum of 85 percent). See letter from Karen Henry, Deputy Director, dated May 7, 2002.

ALLEGATIONS

- 7. Effluent Limitation Violations. Between December 1, 2005 and December 31, 2007, Promenade reported, pursuant to the Monitoring and Reporting schedule for Order No. R9-2001-0096, effluent sampling results that document violations of effluent limitations prescribed by Order No. R9-2001-0096. See Attachment 1, *Revised Summary of Reported Effluent Violations*.
- 8. Sampling events conducted on January 1 and January 2, 2006 occurred outside the December 2005, fourth quarter 2005, and semi-annual 2005 monitoring and reporting periods. Therefore, such samples are not appropriately considered with samples collected in December 2005 for purposes of assessing compliance with effluent limitations within the 2005 monitoring and reporting periods of Order R9-2001-0096.
- 9. Under CWC Section 13385 subdivisions (h) and (i), certain reported effluent violations are subject to mandatory penalties as determined by the following:
 - a. In December 2005 Promenade discharged effluent with an average concentration of nickel at 27.83 µg/L, in violation of the chronic effluent limitation of 8.2 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.

Sample Date	Reported Nickel Concentration
12/01/2005	10.2 µg/L
12/30/2005	60.9 µg/L
12/31/2005	12.4 µg/L

- b. On December 1, 2005, Promenade discharged effluent with a concentration of copper at 6.36 µg/L, in violation of the maximum effluent limitation of 4.8 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.

- c. In January 2006 Promenade discharged effluent with an average concentration of nickel at 12.2 µg/L, in violation of the chronic effluent limitation of 8.2 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.

Sample Date	Reported Nickel Concentration
01/01/2006	13.0 µg/L
01/02/2006	11.4 µg/L

- d. On December 13, 2006 Promenade discharged effluent with a concentration of tributyltin at 0.02 µg/L, in violation of the average monthly effluent limitation of 0.005 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.
- e. On December 13, 2006 Promenade discharged effluent with a concentration of nickel at 10.21 µg/L, in violation of the chronic effluent limitation of 8.2 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.

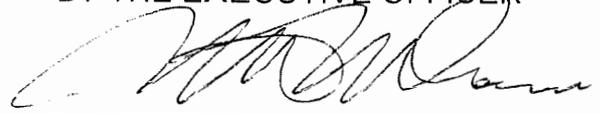
July 17, 2008

PROPOSED CIVIL LIABILITY

10. Pursuant to CWC Sections 13385 (h) and (i), the Regional Board must impose mandatory minimum penalties in the amount of fifteen thousand dollars (\$15,000) on Promenade Development Corporation. Discretionary civil liability above the mandatory minimum for effluent violations alleged in this Complaint is not recommended.

Dated this 17th day July 2008

BY THE EXECUTIVE OFFICER



MICHAEL McCANN
Assistant Executive Officer

Signed pursuant to the authority
delegated by the Executive
Officer to the Assistant Executive
Officer

Attachment: Revised Summary of Effluent Violations

CIWQS Entries

Regulatory Measure: 344366

Place ID: 249321

Party ID: 34992

Violation IDs: Effluent 427818, 427816, 427815, 473050, 473049, 774926

Attachment 1. Revised Summary of Reported Effluent Violations

Complaint No. R9-2008-0056
Promenade at Pacific Beach
 4150 Mission Boulevard, San Diego, California

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit	Reported Value	Serious Violation ^a	Mandatory Minimum Penalty (MMP)
December 2005	427818	Nickel	CTR Chronic Concentration	µg/L	8.2	27.83	Yes	\$3,000
12/01/2005	427815	Copper	CTR Maximum Concentration	µg/L	4.8	6.36	Yes	\$3,000
December 2005	427816	Copper	CTR Chronic Concentration	µg/L	3.1	3.45	No	\$0
January 2006	774926	Nickel	CTR Chronic Concentration	µg/L	8.2	12.20	Yes	\$3,000
12/13/2006	473050	Tributyltin	Average Monthly Effluent Limitation	µg/L	0.005	0.02	Yes	\$3,000
12/13/2006	473049	Nickel	CTR Chronic Concentration	µg/L	8.2	10.21	Yes	\$3,000
TOTAL MMP PENALTY								\$15,000

^a CWC Section 13385(h)(1) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

1. Copper, Nickel, and Tributyltin are Group II pollutants. A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.