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California Regional Water Quality Control Board San Diego Region

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October 14, 2008

CERTIFIED – REGISTERED MAIL
7007 0710 0000 5763 4892

Kris McFadden
Deputy Director, Pollution Prevention Division
City of San Diego, Storm Water Department
9370 Chesapeake Drive, Suite 100, MS 1900
San Diego, CA 92123

In reply refer to:
CAU:14-0329
Place ID: 255226

Dear Mr. McFadden:

**TENTATIVE ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R9-2008-0140 FOR
MANDATORY MINIMUM PENALTIES AGAINST CITY OF SAN DIEGO, SAN DIEGO
CONVENTION CENTER FOR VIOLATIONS OF ORDER NO. R9-2003-0050, NPDES
CA0109029**

Enclosed is a copy of tentative Administrative Civil Liability Order No. R9-2008-0140, which is scheduled to be considered by the Regional Board at its meeting on November 12, 2008. The November 12, 2008, meeting will begin at 9:00 a.m. and will be held at the San Diego Water Quality Control Board, 9174 Sky Park Court, San Diego, California. Please review the revised tentative Order at your earliest convenience. The final deadline for submittal of written comments is Wednesday, November 5, 2008.

Should you have any questions about this tentative Order, please contact Joann Cofrancesco at (858) 637-5589/ JCofrancesco@waterboards.ca.gov or Jeremy Haas at (858) 467-2735/ jhaas@waterboards.ca.gov.

Respectfully,

MICHAEL McCANN
Assistant Executive Officer

MPM:ma:jh:jc

Enclosure: Tentative Administrative Civil Liability Order No. R9-2008-0140

cc:

Karan L. Zopatti, 2135 Coast Avenue, San Marcos, CA 92178
Cynthia Conger, 4425 Point Loma Avenue, San Diego, CA 92107
Reed Sato, Office of Enforcement, State Water Resources Control Board (by email)
Brian Kelley, Core Regulatory Unit, San Diego Regional Water Quality Control Board (by email)
Ken Greenberg, U.S. Environmental Protection Agency, Region IX (by email)

California Environmental Protection Agency

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

TENTATIVE

ORDER NO. R9-2008-0140

**ADMINISTRATIVE ASSESSMENT CIVIL LIABILITY
FOR
MANDATORY MINIMUM PENALTIES
AGAINST
CITY OF SAN DIEGO
SAN DIEGO CONVENTION CENTER
FOR
VIOLATIONS OF ORDER NO. R9-2003-0050, NPDES CA0109029**

The California Regional Water Quality Control Board, San Diego Region (Regional Board), having considered in a public meeting on November 12, 2008, evidence and comments on the issuance of liability against the City of San Diego (City) regarding violations alleged in Early Conditional Early Settlement Offer No. R9-2008-0076, dated July 16, 2008 (Offer), having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of Civil Liability in the amount of \$69,000 finds as follows:

1. The City's discharge of extracted groundwater, to San Diego Bay through an outfall from the San Diego Convention Center, is subject to numeric effluent limitations, contained in Order No. R9-2003-0050, NPDES Permit No. CA0109029, *Waste Discharge Requirement for Groundwater Extraction Waste Discharges to San Diego Bay from the San Diego Convention Center, San Diego County.*
2. Between August 2004 and June 2007, the City reported violations of effluent limitations for copper, cyanide, hydrogen sulfide, and base neutral compounds (as specified in Table 1 of this Order) in accordance with Monitoring and Reporting Program No. R9-2003-0050.

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 City of San Diego
 Convention Center Dewatering

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Table 1. Summary of Reported Effluent Violations between August 2004 and June 2007.

Violation Date	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Serious Violation
8/9/2004	266619	base neutral compounds	instantaneous maximum	ug/L	10.0	10.1	No
8/9/2004	266595	cyanide	instantaneous maximum	ug/L	1.0	8.0	Yes
8/9/2004	756179	cyanide	6-month median	ug/L	1.0	4.0	Yes
12/6/2007	755962	cyanide	6-month median	ug/L	1.0	4.5	Yes
10/31/2004	756183	H2S	average monthly	ug/L	2.0	7.48	Yes
10/31/2004	266616	H2S	daily maximum	ug/L	4.0	7.48	Yes
10/4/2004	756182	Cu	average monthly	ug/L	2.45	14.0	Yes
10/4/2004	266613	Cu	daily maximum	ug/L	4.8	14.0	Yes
11/3/2004	756181	Cu	average monthly	ug/L	2.45	6.43	Yes
11/3/2004	756180	Cu	daily maximum	ug/L	4.8	6.43	Yes
12/6/2004	755970	Cu	average monthly	ug/L	2.45	8.95	Yes
12/6/2004	755963	Cu	daily maximum	ug/L	4.8	8.95	Yes
1/10/2005	755969	Cu	average monthly	ug/L	2.45	15.6	Yes
1/10/2005	755968	Cu	daily maximum	ug/L	4.8	15.6	Yes
2/7/2005	755967	Cu	average monthly	ug/L	2.45	3.7	Yes
3/7/2005	266672	Cu	average monthly	ug/L	2.45	2.8	No
8/8/2005	442859	Cu	average monthly	ug/L	2.45	3.3	Yes
2/6/2006	442875	Cu	average monthly	ug/L	2.45	4.8	Yes
2/28/2007	507669	Cu	average monthly	ug/L	2.45	2.6	No
4/30/2007	755964	Cu	average monthly	ug/L	2.45	16.3	Yes
4/30/2007	598757	Cu	daily maximum	ug/L	4.8	16.3	Yes
5/14/2007	755961	Cu	average monthly	ug/L	2.45	11.0	Yes
5/14/2007	755960	Cu	daily maximum	ug/L	4.8	20.1	Yes
6/11/2007	755555	Cu	daily maximum	ug/L	4.8	5.9	Yes
6/11/2007	598762	Cu	average monthly	ug/L	2.45	5.9	Yes

3. California Water Code (CWC) Section 13385 requires that a mandatory minimum penalty (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.
4. CWC Section 13385 subdivision (i) also requires that a MMP of \$3,000 be imposed for each violation (i.e. incomplete reports and any waste discharge that violates an effluent limitation contained in waste discharge requirements and applies to surface water discharges) beginning with the fourth violation in any six-month period.
5. On July 16, 2008, the Regional Board sent Conditional Early Settlement Offer No. R9-2008-0076 to the City to settle the 23 violations of Order No. R9-2003-0050 in Table 1 in the amount of sixty nine thousand dollars (\$69,000). The settlement offer notified City that the 23 violations were subject to MMPs. The offer was sent in lieu of an Administrative Civil Liability Complaint to promote early settlement of administrative enforcement actions for the 23 violations.
6. On August 13, 2008, the City accepted the "Offer to Participate in Expedited Payment Program" and waived the right to a hearing before the Regional Board to dispute the allegations of violations described in Offer No. R9-2008-0076.
7. Liability in the amount of \$69,000 is based on consideration of the factors prescribed in CWC Section 13385(e) as applied to the allegations contained in Offer R9-2008-0076.
8. CEQA COMPLIANCE: Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
9. The Regional Board incurred costs of \$6,500 to prosecute the enforcement action; the costs include investigation, preparation of enforcement documents, communicating with the City and preparation of materials for public review and hearing.

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IT IS HEREBY ORDERED that pursuant to Section 13385 of the California Water Code, civil liability is imposed on the City in the amount of sixty nine thousand dollars (\$69,000).

1. The City shall make a payment of \$69,000 to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account within 30 days of adoption of this Order.
2. Fulfillment of the City's obligations under this Order constitutes full and final satisfaction of any and all liability for each Claim in Offer R9-2008-0076.

I, TENTATIVE , Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on November 12, 2008.