



California Regional Water Quality Control Board San Diego Region

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<http://www.waterboards.ca.gov/sandiego>

January 5, 2009

CERTIFIED-RETURN RECEIPT REQUESTED
7006 2760 0000 1615 5536

Anna Scott
Project Manager
Studio 15 Housing Partners, LLC
13520 Evening Creek Drive North, Suite 360
San Diego, California 92128

In reply refer to:
CAU:fmelbourn
Place ID: 655225

Dear Ms. Scott:

Issuance of Amended Complaint No. R9-2008-0121 for Administrative Civil Liability of \$42,000 against Studio 15 Housing Partners, LLC for Violations of Order No. R9-2000-0090, NPDES CAG919001

Enclosed find Amended Administrative Civil Liability Complaint No. R9-2008-0121 against Studio 15 Housing Partners, LLC (Discharger) for effluent violations at the construction site at 70 15th Street, San Diego, California. The Amended Complaint recommends that the California Regional Water Quality Control Board, San Diego Region (Regional Board), impose a civil liability of \$42,000 for violations of effluent limitations established by Order No. R9-2000-0090, NPDES CAG919001, *General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. Effluent limitation violations reported by the Discharger in monitoring reports submitted to the Regional Board to comply with Order No. 2000-0090 included the following: total coliform, fecal coliform, and dissolved oxygen. These violations are subject to a \$3,000 Mandatory Minimum Penalty per violation pursuant to the Water Code section 13385(h) and (i).

Waiver of Hearing

Pursuant to Water Code section 13323, the Regional Board will hold a hearing on the Amended Complaint no later than 90 days after it is issued. The Discharger may elect to waive its right to a hearing before the Regional Board. Waiver of the hearing constitutes admission of the validity of the allegations of violation and acceptance of the assessment of civil liability in the amount of \$42,000 as set forth in the Amended Complaint. For the Regional Board to accept the waiver of the Discharger's right to a public hearing, the Discharger must submit the following by 5 p.m., **January 20, 2009**.

1. The enclosed waiver form signed by an authorized agent of the Discharger; and

2. A check for the full amount of civil liability of \$42,000 made out to the "State Water Resources Control Board Cleanup and Abatement Account." If you are unable to submit payment with the signed waiver, please provide a written explanation.

If your waiver is timely received, the Regional Board will consider settlement of the Amended Complaint at the Regional Board meeting on February 11, 2009. The meeting is scheduled to convene at 9 a.m. at the Regional Board Office, 9174 Sky Park Court, Suite 100, San Diego, California. At that time, the Regional Board will decide whether to affirm, or reject the settlement. If the settlement is rejected by the Regional Board, then a public hearing will be scheduled at a future Regional Board meeting.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Should you have any questions about this matter, please contact Frank Melbourn at (858) 467-2973 or fmelbourn@waterboards.ca.gov.

Respectfully,



MICHAEL P. McCANN, P.E.
Assistant Executive Officer

MPM;jh:ftm

- Enclosures: 1. Amended ACL Complaint No. R9-2008-0121
2. Waiver of Hearing Form

CIWQS Entries:

Reg Msr: 351992

Place ID: 655225

Party ID: 392085

Copies with enclosures to:

Ken Greenberg, U.S. Environmental Protection Agency, Region IX greenberg.ken@epa.gov
Catherine Hagan, OCC, State Water Resources Control Board chagan@waterboards.ca.gov
Brian Kelley, San Diego Regional Water Quality Control Board, bkelly@waterboards.ca.gov

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

IN THE MATTER OF:

**STUDIO 15 HOUSING PARTNERS, LLC)
)
VIOLATIONS OF EFFLUENT LIMITATIONS)
IN GENERAL ORDER NO. R9-2000-0090,)
NPDES NO CAG919001, *GENERAL WASTE*)
DISCHARGE REQUIREMENTS FOR)
TEMPORARY GROUNDWATER)
EXTRACTION AND SIMILIAR WASTE)
DISCHARGES TO SAN DIEGO BAY AND)
STORM DRAINS OR OTHER)
CONVEYANCE SYSTEMS TRIBUTARY)
THERE TO)
)
Place ID: 655225)
WDID NO. 9 000001692)**

**AMENDED
COMPLAINT NO. R9-2008-0121
FOR
ADMINISTRATIVE CIVIL LIABILITY

WITH

MANDATORY MINIMUM PENALTIES**

January 5, 2009

STUDIO 15 HOUSING PARTNERS, LLC IS HEREBY GIVEN NOTICE THAT:

1. On July 27, 2007, Studio 15 Housing Partners, LLC (hereinafter Discharger) applied for enrollment under Order No. R9-2000-0090, NPDES No. CAG919001, *General Waste Discharge Requirement for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drain or Other Conveyance Systems Tributary Thereto*, for the temporary discharge of extracted and treated groundwater to San Diego Bay from the construction site located at 70 15th Street, San Diego, California. On August 23, 2007, the California Regional Water Quality Control Board, San Diego Region (Regional Board) sent an acknowledgement letter of the permit application, specified the discharge requirements for the temporary discharge, and enrolled the Discharger under Order No. R9-2000-0090.
2. The Discharger is alleged to have violated provisions of law for which the Regional Board may impose civil liability pursuant to Section 13385 of the Water Code. The violations alleged herein include violations of effluent limitations in waste discharge requirements for discharges of pollutants from point sources to water of the United States. The Regional Board must impose Mandatory Minimum Penalties (MMPs) for the violations alleged in this complaint.
3. Extracted and treated groundwater was discharged from the construction site, located at 70 15th Street, San Diego, California, into San Diego Bay, and was subject to numeric effluent limitations contained in Order No. R9-2000-0090.

4. Water Code section 13385 requires that a MMP of \$3,000 be imposed for each serious violation. Water Code 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. Water Code 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.
6. The Regional Board has discretionary authority to impose liability for every violation of an NPDES permit (Wat. Code § 13385(a)(2)). While sections 13385(h) and (i) require certain minimum penalties, section 13385(c) gives the Regional Board authority to impose liability as high as \$10,000 per day for those violations and \$10 per gallon. Section 13385(e) provides factors to be considered by the Regional Board when determining the amount of any liability imposed under sections 13385(a) and 13385(c).

ALLEGATIONS

7. The Discharger reported effluent sampling results to the Regional Board pursuant to the Order No. R9-2000-0090's Monitoring and Reporting schedule. Between September 2007 and March 2008, the Discharger reported violations of effluent limitations for total coliform, fecal coliform, and dissolved oxygen as described in Table 1, Summary of Mandatory Minimum Penalty Violations.

PROPOSED CIVIL LIABILITY

8. Pursuant to Water Code sections 13385 (h) and (i), a mandatory minimum penalty of forty-two thousand dollars (\$42,000) is recommended for the fourteen (14) alleged violations of effluent limitations as identified in attached Table 1. Discretionary civil liability above the mandatory minimum for the violations alleged in this Complaint is not recommended.

Dated this 5th day of January 2009



MICHAEL McCANN
Assistant Executive Officer

Table 1 - Summary of Mandatory Minimum Penalty Violations

Violation No.	Violation ID	Violation Date	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Mandatory Minimum Penalty	Notes ^{i, ii}
1	778818	9/5/2007	Total Coliform	instantaneous maximum	mpn/100ML	1000	>1600	\$0	1st violation in 6 month period
2	782635	9/5/2007	Fecal Coliform	instantaneous maximum	mpn/100ML	200	500	\$0	2nd violation in 6 month period
3	782633	9/12/2007	Total Coliform	instantaneous maximum	mpn/100ML	1000	>1600	\$0	3rd violation in 6 month period
4	782636	9/12/2007	Fecal Coliform	instantaneous maximum	mpn/100ML	200	>1600	\$3,000	4th violation in 6 month period
5	782634	9/19/2007	Total Coliform	instantaneous maximum	mpn/100ML	1000	>1600	\$3,000	4 or more violations in a 6 month period
6	778821	9/30/2007	Dissolved Oxygen	instantaneous minimum	mg/L	>5	2.99	\$3,000	4 or more violations in a 6 month period
7	778805	11/28/2007	Dissolved Oxygen	instantaneous minimum	mg/L	>5	2.61	\$3,000	4 or more violations in a 6 month period
8	782620	12/20/2007	Dissolved Oxygen	instantaneous minimum	mg/L	>5	4.77	\$3,000	4 or more violations in a 6 month period
9	782622	12/28/2007	Dissolved Oxygen	instantaneous minimum	mg/L	>5	3.01	\$3,000	4 or more violations in a 6 month period
10	778824	1/3/2008	Dissolved Oxygen	instantaneous minimum	mg/L	>5	3.06	\$3,000	4 or more violations in a 6 month period
11	782599	1/10/2008	Dissolved Oxygen	instantaneous minimum	mg/L	>5	3.88	\$3,000	4 or more violations in a 6 month period
12	782600	1/16/2008	Dissolved Oxygen	instantaneous minimum	mg/L	>5	3.45	\$3,000	4 or more violations in a 6 month period
13	782603	1/29/2008	Dissolved Oxygen	instantaneous minimum	mg/L	>5	4.65	\$3,000	4 or more violations in a 6 month period
14	782604	2/6/2008	Dissolved Oxygen	instantaneous minimum	mg/L	>5	4.33	\$3,000	4 or more violations in a 6 month period
15	778827	2/6/2008	Total Coliform	instantaneous maximum	mpn/100ML	1000	>1600	\$3,000	4 or more violations in a 6 month period
16	782608	2/28/2008	Dissolved Oxygen	instantaneous minimum	mg/L	>5	3.41	\$3,000	4 or more violations in a 6 month period
17	782615	3/20/2008	Total Coliform	instantaneous maximum	mpn/100ML	1000	1600	\$3,000	4 or more violations in a 6 month period
TOTAL MMP								\$42,000	

i Water Code §13385(h) requires that an MMP of \$3,000 be imposed for each serious violation.

ii In addition to MMPs for serious violations, the occurrence of four or more effluent limitation violations in any six-month period

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Studio 15 Housing Partners, LLC (hereinafter "Discharger") in connection with Amended Administrative Civil Liability Complaint No. R9-2008-0121 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within ninety (90) days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of forty-two thousand dollars (\$42,000) by check, which contains a reference to "ACL Complaint No. R9-2008-0121" and is made payable to the "State Water Resources Control Board Cleanup and Abatement Account" Payment must be received by the Regional Board by January 20, 2009, unless this waiver is accompanied by a written explanation as to when payment is likely to be received.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the thirty (30) day public notice and comment period mandated by federal regulations (40 CFR 123.27) expires. Should the Regional Board receive new information or comments during this comment period, the Regional Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. **(Check here if the Discharger will waive the ninety (90) day hearing requirement, but will not pay at the current time)** I certify that the Discharger will promptly engage the Regional Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the ninety (90) day period referenced in Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Regional Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

(Print Name and Title)

(Signature)

(Date)