

Dear Mr Covin,

The LARWQCB has requested the removal of TMDL limits for Selenium via Resolution No. R13-010 because studies have shown that Ballona Creek is not impaired by Selenium. This Resolution has been approved by the California State Water Resources Control Board (SWRCB), the Office of Administrative Law (OAL) and as of October 2015, the United States Environmental Protection Agency (EPA). Because of this, the LARWQCB cannot logically seek to penalize DEM for violating a limit they themselves do not believe should be required. Also, Alex Carlos of the LARWQCB has recently stated in a phone conversation with our consultant, Chris Ota of EEC Environmental, that the current NPDES permit for this site will be reviewed in January 2016 to remove or amend the TMDL limit for Selenium.

Therefore, DEM respectfully requests that all the alleged violations for this site be dismissed, as well as any future violations for exceedances of the current Selenium TMDL limits. If needed, DEM will meet with the LARWQCB to discuss these matters further.

Regards,



Robert Lutes
Director of Engineering



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 26 2015

Sam Unger
Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013

Dear Mr. Unger:

Thank you for submitting the complete Los Angeles Regional Water Quality Control Board (Regional Board) Basin Plan Amendment package for the revised Metals in Ballona Creek and Toxic Pollutants in Ballona Creek Estuary Total Maximum Daily Loads (TMDL) on March 16, 2015 for approval by the U.S. Environmental Protection Agency (EPA). We find that all the federal required elements are adequately addressed, and we approve the metals and toxics TMDLs pursuant to CWA section 303(d)(2). The TMDLs, upon complete implementation, will result in attainment of the applicable water quality standards in Ballona Creek and Ballona Creek Estuary.

The Regional Board, State Water Resources Control Board (State Board), and Office of Administrative Law (OAL) took action on the BPA on the following dates:

- Regional Board adoption on December 5, 2013 (Resolution No. R13-010)
- State Board adoption on June 17, 2014 (Resolution No. 2014-0030)
- OAL approval on May 4, 2015 (2015-0320-03S)
- Regional Board signed submittal letter, dated March 16, 2015, to EPA requesting approval of the TMDLs

The State has provided adequate opportunities for public review and comment on the TMDLs and demonstrated how public comments were considered in the final TMDL.

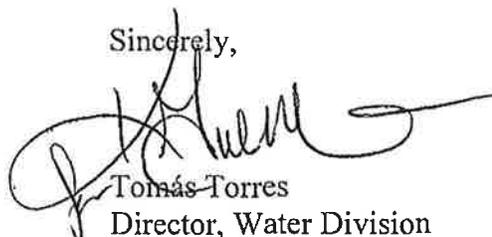
The TMDLs appropriately used an antidegradation approach to develop numeric targets and load and wasteload allocations to protect beneficial uses in the waters identified. The TMDLs include water column numeric targets for copper, lead, and zinc for Ballona Creek, and sediment numeric targets for cadmium, copper, lead, silver, and zinc, and fish tissue targets for chlordane, total DDT, and total PCBs for Ballona Creek Estuary. This revised TMDL evaluated additional flow, hardness, metals, and PAHs data collected since the original TMDLs were completed in 2006 and 2008; as a result, this reconsideration updated certain elements of the TMDL to reflect representative conditions of Ballona Creek and Ballona Creek Estuary.

The TMDL submittal contains the State's implementation strategy and schedule for the TMDL which informed EPA's approval of the TMDL. Implementation of the TMDLs is a critical next step to realize improvements in water quality in the watershed. While EPA is not taking action on the implementation strategy specifically, as we are not required by section 303(d) or its implementing regulations to approve or disapprove implementation plans submitted with TMDLs, we support the State's proposed

implementation approaches to protect and restore water quality, including use of regulatory authorities. We encourage the Regional Board to continue its work with stakeholders to implement these strategies consistent with California's Nonpoint Source Management Plan as approved by EPA under the Clean Water Act Section 319, when appropriate. We remain available to provide support where possible to assist both the regulated community and the Regional Board in fostering ongoing watershed stewardship to achieve the TMDLs.

If you have any questions concerning this approval, please call me at (415) 972-3409, or Cindy Lin (213) 244-1803.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tomás Torres', with a long horizontal flourish extending to the right.

Tomás Torres
Director, Water Division

cc: Rik Rasmussen, SWRCB
Renee Purdy, LARWQCB



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EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

November 10, 2015

Mr. Robert Lutes
Douglas Emmett 2010, LLC
9601 Wilshire Boulevard, M-300
Beverly Hills, CA 90210

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM No. 7014 2870 0001 4537 5176

Mr. Agosto Estrada
Agent for Service of Process
Douglas Emmett 2010, LLC
808 Wilshire Boulevard, Suite 200
Santa Monica, CA 90401

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7014 2870 0001 4537 5183

RESPONSE TO REQUEST FOR ALLEGED VIOLATION REVIEW – DOUGLAS EMMETT 2010, LLC, 9601 WILSHIRE BOULEVARD, BEVERLY HILLS, CA 90210 (ORDER NO. R4-2013-0095, NPDES PERMIT NO. CAG994004, CI NO. 8355)

Dear Mr. Lutes and Mr. Estrada:

Thank you for your submission dated October 15, 2015 regarding the Offer to Participate in Expedited Payment Program No. R4-2015-0155 for Douglas Emmett 2010, LLC (Permittee), which assessed mandatory minimum penalties (MMPs) for effluent violations. This letter addresses your comments in this regard.

Issue 1:

The Permittee asserts that the wet weather Average Monthly Effluent Limit (AMEL) for selenium of 2.5 µg/L sampled on November 12 was incorrectly applied. Therefore, the violation should be dismissed.

General Permit Order No. R4-2013-0095 (General Permit) defines dry weather as the period from April 15th through November 14th and wet weather as the period from November 15th through April 14th. Therefore, the result of the November 12th selenium sample of 4.29 µg/L should have been evaluated against the dry weather AMEL of 4.1 µg/L. This re-evaluation would define the violation as chronic and not serious for the purposes of calculating mandatory minimum penalties.

Response 1:

Regional Board staff evaluated the Permittee's response. Based on Section V.A. footnotes 3 and 4 (page 15) of the General Permit, "...discharges occurring from April 15th through November 14th are considered dry weather discharges." The dry weather limit of 4.1 µg/L applies to the sample obtained on November 12, 2014. Therefore, the AMEL violation that occurred on November 30, 2014 has been changed to a chronic violation. Consequently, the penalty owed to the Regional Board has been reduced \$3,000 from the original amount of \$24,000 to a new total amount of \$21,000.

Mr. Robert Lutes and
Mr. Augusto Estrada
Douglas Emmett 2010, LLC

- 2 -

November 10, 2015

Since the Permittee requested an additional review of these violations, the Regional Board has established new deadlines. If you intend to participate in the Expedited Payment Program, you

must sign and return the revised Acceptance of Conditional Resolution and Waiver of Right to Hearing form by December 18, 2015. By signing the revised Acceptance and Waiver, Douglas Emmett 2010, LLC agrees to pay the penalty of \$21,000 as indicated on the revised Exhibit "1" – Notice of Violation and waives the right to a hearing.

If you do not elect to sign the revised Acceptance and Waiver, you will be contacted regarding formal enforcement action that will be initiated with regard to the contested violations.

If you have questions regarding this matter, please contact Mr. Jim Covin at (213) 576-6614 jim.covin@waterboards.ca.gov or Mr. Russ Colby at (213) 620-6370 / russ.colby@waterboards.ca.gov.

Sincerely,



Paula Rasmussen
Assistant Executive Officer

Enclosure

Amended Exhibit "1" - Notice of Violation
Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order

cc: (via e-mail)
Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board

REVISED EXHIBIT "1" - NOTICE OF VIOLATION
Effluent Limit Violations

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
11/30/14	4th Quarter 2014	Monthly Average	Selenium	4.29	4.1	µg/L	2	5%	Chronic	(i)1	\$0
12/05/14	4th Quarter 2014	Daily Maximum	Selenium	5.41	5	µg/L	2	8%	Chronic	(i)1	\$0
12/05/14	4th Quarter 2014	Monthly Average	Selenium	5.41	2.5	µg/L	2	116%	Serious	(h)1	\$3,000
01/15/15	1st Quarter 2015	Monthly Average	Selenium	4.94	2.5	µg/L	2	98%	Serious	(h)1	\$3,000
02/03/15	1st Quarter 2015	Monthly Average	Selenium	4.38	2.5	µg/L	2	75%	Serious	(h)1	\$3,000
03/11/15	1st Quarter 2015	Daily Maximum	Selenium	5.24	5	µg/L	2	5%	Chronic	(i)1	\$3,000
03/11/15	1st Quarter 2015	Monthly Average	Selenium	5.24	2.5	µg/L	2	110%	Serious	(h)1	\$3,000
05/31/15	2nd Quarter 2015	Monthly Average	Selenium	4.94	4.1	µg/L	2	20%	Serious	(h)1	\$3,000
06/05/15	2nd Quarter 2015	Monthly Average	Selenium	4.5	4.1	µg/L	2	10%	Chronic	(i)1	\$3,000
										Total	\$21,000

Settlement Offer No. R4-2015-0155
CI No. 8355, NPDES Permit No. CAG0994004

**REVISED ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

Douglas Emmett 2010, LLC
Settlement Offer No. R4-2015-0155
NPDES Permit No. CAG994004

By signing below and returning this Revised Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Los Angeles Regional Water Quality Control Board (Regional Board), Douglas Emmett 2010, LLC (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the allegations of violations described in the Revised Notice of Violation (NOV), which is attached hereto as Revised Exhibit "1" and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Permittee agrees to pay the penalties required by California Water Code section 13385, in the sum of \$21,000 (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV. The Permittee understands that this Revised Acceptance and Waiver waives its right to contest the allegations in the NOV and the amount of civil liability for such violations.

The Permittee understands that this Revised Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NOV.

Upon execution by the Permittee, the completed Acceptance and Waiver shall be returned to:

Jim Covin, Enforcement Unit
Expedited Payment Program
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, California 90013

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Regional Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that causes the Regional Board Executive Officer to question the Expedited Payment Amount, the Regional Board Executive Officer will execute the Revised Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee further understands that once the Revised Acceptance and Waiver is executed by the Regional Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Revised Acceptance and Waiver. In accordance with California Water Code section 13385(n)(1) and California Water Code section 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to sections 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$21,000 liability shall be paid by a cashiers or certified check made out to the "State Water Pollution Cleanup and Abatement Account". The payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Revised Acceptance and Waiver is executed by the Regional Board Executive Officer.

Please mail the check to:

State Water Resources Control Board
ATTN: ACL PAYMENT
Division of Administrative Services, Accounting Branch
1001 I Street, 18th Floor, [95814]
P.O. Box 1888
Sacramento, California 95812-1888

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Revised Acceptance and Waiver.

Douglas Emmett 2010, LLC

By: 
(Signed Name)

12/18/15
(Date)

Robert Lutes
(Printed or typed name)

Director of Engineering
(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

Date: _____

By: _____
Samuel Unger, P.E.