



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

December 14, 2012

In reply refer to:

CAU: 9 00002314: FMelbourn
CIWQS Place ID: 769449

Mr. Gordon L. Gerson, Esq.
Agent for Service of Process
Ariel Suites, L.P.
Gerson Law Firm APC
9255 Towne Center Drive
San Diego, CA 92121-3033
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ADOPTION OF ORDER NO. R9-2012-0071 ADMINISTRATIVE CIVIL LIABILITY FOR MANDATORY MINIMUM PENALTIES AGAINST ARIEL SUITES, L.P. VIOLATIONS OF ORDER NO. R9-2007-0034, NPDES NO. CAG919001

Mr. Gerson:

On December 12, 2012, the California Regional Water Quality Control Board, San Diego Region, (San Diego Water Board) pursuant to Water Code sections 13385(h) and (i), adopted Order No. R9-2012-0071, Administrative Civil Liability for Mandatory Minimum Penalties Against Ariel Suites, L.P. Violations of Order No. R9-2007-0034, NPDES No. CAG919001, *General Waste Discharge Requirements for Discharges From Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay, Tributaries Thereto Under Tidal Influence, and Storm Drains or Other Conveyance Systems Tributary Thereto*. The Order accepts Ariel Suites, L.P.'s payment of \$138,000 in satisfaction of Complaint No. R9-2012-0065 dated October 1, 2012.

In the subject line of any response, please include the reference number. For questions or comments, please contact Frank Melbourn by phone at 858-467-2973, or by email at fmelbourn@waterboards.ca.gov.

Respectfully,

DAVID W. GIBSON
Executive Officer

GARY STRAWN, ACTING CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

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DWG:jch:ftm

Enclosure: Order No. R9-2012-0071

Copies with enclosure to:

1. Mr. Steve Donlon, Ariel Suites, L.P., 850 E. Desert Inn Road, Las Vegas, NV, 89109-9382, steved@arielsuites.com
2. Mr. Ken Greenberg, CWA, Compliance Office (WTR-7), USEPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3920, greenberg.ken@epa.gov
3. Catherine Hagan, Esq., California State Water Resources Control Board, Office of Chief Counsel, chagan@waterboards.ca.gov
4. Leonard Hayden, P.E., Swinerton Builders, 16798 West Bernardo Drive, San Diego, CA 92127, lhayden@swinerton.com
5. Jessica Jahr, Esq., California State Water Resources Control Board, Office of Chief Counsel, jjahr@waterboards.ca.gov
6. Andre Monette, Esq., Best, Best, & Krieger, LLP, andre.monette@bbklaw.com
7. James Smith, California Regional Water Quality Control Board, San Diego Region, jsmith@waterboards.ca.gov
8. Vanessa Young, Esq., California State Water Resources Control Board, Office of Enforcement, vyoung@waterboards.ca.gov

Order No. R9-2012-0071

File: 14-2314.01 & 02

NPDES No. CAG919001

WDID No. 9 000002314

Regulatory Measure: 380682 WDR

Regulatory Measure: 387519 MMP

Place ID: 769449

Party ID: 528287

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

ORDER NO. R9-2012-0071

**ADMINISTRATIVE CIVIL LIABILITY
FOR
MANDATORY MINIMUM PENALTIES
AGAINST
ARIEL SUITES, L.P.
VIOLATIONS OF
ORDER NO. R9-2007-0034
PLACE ID: 769449**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), having considered in a public meeting on December 12, 2012, all comments received on the issuance of liability against Ariel Suites, L.P. regarding violations alleged in Complaint No. R9-2012-0065, dated October 1, 2012 (Complaint), having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation of administrative assessment of Mandatory Minimum Penalties (MMPs) in the amount of \$138,000 finds as follows:

1. Ariel Suites, L.P. is the developer of a 19-story 224-unit apartment building located at 735 West Beech Street, San Diego, California 92101. The downtown San Diego construction site is bordered by the trolley tracks on the West, West Beech Street to the North, Kettner Boulevard to the East, and the U.S. Bank building on the South.
2. Extracted groundwater discharged to San Diego Bay is subject to San Diego Water Board Order No. R9-2007-0034, National Pollutant Discharge Elimination System (NPDES) Permit No. CAG919001 (Permit). The Permit prescribes effluent limitations for the discharge of extracted groundwater directly into San Diego Bay or indirectly via a storm water conveyance system.
3. On July 6, 2011, Ariel Suites, L.P. submitted a Notice of Intent (NOI) to discharge construction dewatering of groundwater to San Diego Bay via a City of San Diego storm water conveyance system inlet pursuant to the Permit.
4. On August 8, 2011, the San Diego Water Board enrolled Ariel Suites, L.P. under the Permit with a maximum permitted flow of 0.504 million gallons per day. Ariel Suites, L.P. was assigned Waste Discharge Identification (WDID) No. 9 000002314.
5. On October 4, 2011, at the request of Ariel Suites, L.P., the San Diego Water Board increased Ariel Suites, L.P.'s permitted flow rate to 0.720 million gallons per day.

6. On February 23, 2012, Ariel Suites, L.P. began discharging extracted groundwater into the City of San Diego's storm drain inlet.
7. Pursuant to the Permit's Monitoring and Reporting Program, Ariel Suites, L.P. submitted Self-Monitoring Reports to demonstrate compliance with Permit effluent limitations.
8. Pursuant to the Permit and based upon a maximum flow rate of 0.720 million gallons per day, the Copper Average Monthly Effluent Limitation (AMEL) is 2.9 ug/L and 0.0174 lbs./day; and the Maximum Daily Effluent Limitation (MDEL) is 5.8 ug/L and 0.0348 lbs./day.
9. Pursuant to the Permit and based upon a maximum flow rate of 0.720 million gallons per day, the Nickel Average Monthly Effluent Limitation (AMEL) is 6.8 ug/L and 0.0408 lbs./day; and the Maximum Daily Effluent Limitation (MDEL) is 13.6 ug/L.
10. Pursuant to the Permit and based upon a maximum flow rate of 0.720 million gallons per day, the Tetrachloroethylene (aka Tetrachloroethene) Average Monthly Effluent Limitation (AMEL) is 2.0 ug/L and 0.0120 lbs./day.
11. Pursuant to the Permit, the Total Suspended Solids (TSS) Average Monthly Effluent Limitation (AMEL) is 30 mg/L and the Instantaneous Maximum is 50 mg/L.
12. Water Code section 13385 requires that an MMP of \$3,000 be imposed for each "serious violation" of an effluent limitation. Water Code section 13385 (h)(2) defines a "serious violation" as "any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."
13. Water Code section 13385(i) requires that an MMP of \$3,000 be imposed for each non-serious violation of an effluent limitation contained in waste discharge requirements, not counting the first three violations, where there are four or more violations in any period of 180 days.
14. In addition to statutorily mandated MMPs, every violation of an NPDES permit is subject to discretionary liability under Water Code section 13385(a)(2), including violations not subject to MMPs under Water Code sections 13385 (h) or (i).
15. Pursuant to Appendix A to section 123.45 of the Code of Federal Regulations, TSS is listed as a Group 1 Pollutant; and Copper, Nickel, and Tetrachloroethylene are Group 2 Pollutants.

16. Between February and July 2012, Ariel Suites, L.P. reported violations of effluent limitations for Copper, Nickel, TSS, and Tetrachloroethylene as described in Table 1, Summary of Mandatory Minimum Penalty Violations.
17. On November 1, 2012, Ariel Suites, L.P. waived its right to a public hearing before the San Diego Water Board, and paid the recommended \$138,000 MMP to the California State Water Resources Control Board's "State Water Pollution Cleanup and Abatement Account."
18. 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 45321(a)(92), 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 cause a significant effect on the environment.
19. The San Diego Water Board incurred costs totaling \$28,428 that includes investigation, preparation of enforcement documents and communication with Ariel Suites representatives and contractors regarding the enforcement action.

IT IS HEREBY ORDERED, that pursuant to Water Code section 13385(h) and (i) that civil liability is imposed on Ariel Suites, L.P. in the amount of \$138,000, and that Ariel Suites, L.P.'s waiver of its right to a public hearing and offer of \$138,000 in satisfaction of Complaint No. R9-2012-0065 is accepted.

I, David W. Gibson, 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 Control Board, San Diego Region, on December 12, 2012.



DAVID W. GIBSON
Executive Officer

CIWQS Entries

Regulatory Measure ID:	380682 WDRs	387519 ACL Complaint
Party ID:	528287	
Place ID:	769449	

Table 1 - Summary of Mandatory Minimum Penalty Violations

Violation No.	Violation Date	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Serious?	Mandatory Minimum Penalty
1	2/27/2012	Copper	MDEL	ug/L	5.80	36.20	Yes ¹	\$3,000
2	2/27/2012	Copper	MDEL	lb/day	0.0348	0.0535	Yes	\$3,000
3	2/29/2012	Nickel	AMEL	ug/L	6.80	7.07	No ²	\$0
4	2/29/2012	Tetrachloroethylene	AMEL	ug/L	2.00	35.20	Yes	\$3,000
5	2/29/2012	Tetrachloroethylene	AMEL	lb/day	0.0120	0.0692	Yes	\$3,000
6	2/29/2012	Copper	AMEL	lb/day	0.0174	0.0712	Yes	\$3,000
7	2/29/2012	Copper	AMEL	ug/L	2.90	36.20	Yes	\$3,000
8	3/5/2012	Nickel	MDEL	ug/L	13.60	14.60	No	\$3,000
9	3/5/2012	Copper	MDEL	ug/L	5.80	12.80	Yes	\$3,000
10	3/5/2012	TSS	Instantaneous Max	mg/L	50.00	52.00	No	\$3,000
11	3/13/2012	Copper	MDEL	ug/L	5.80	29.90	Yes	\$3,000
12	3/31/2012	Copper	AMEL	lb/day	0.0174	0.0476	Yes	\$3,000
13	3/31/2012	Copper	AMEL	ug/L	2.90	16.05	Yes	\$3,000
14	3/31/2012	Tetrachloroethylene	AMEL	lb/day	0.0120	0.0385	Yes	\$3,000
15	3/31/2012	Tetrachloroethylene	AMEL	ug/L	2.00	12.98	Yes	\$3,000
16	3/31/2012	TSS	AMEL	mg/L	30.00	45.25	Yes	\$3,000
17	4/6/2012	Copper	MDEL	ug/L	5.80	11.10	Yes	\$3,000
18	4/6/2012	Copper	MDEL	lb/day	0.0348	0.0361	No	\$3,000
19	4/6/2012	TSS	Instantaneous Max	mg/L	50.00	66.00	No	\$3,000
20	4/12/2012	Nickel	MDEL	ug/L	13.60	24.30	Yes	\$3,000
21	4/12/2012	Copper	MDEL	ug/L	5.80	17.20	Yes	\$3,000
22	4/12/2012	Copper	MDEL	lb/day	0.0348	0.0466	Yes	\$3,000
23	4/20/2012	Nickel	MDEL	ug/L	13.60	25.80	Yes	\$3,000
24	4/20/2012	Copper	MDEL	ug/L	5.80	10.10	Yes	\$3,000
25	4/30/2012	Tetrachloroethylene	AMEL	lb/day	0.0120	0.0197	Yes	\$3,000
26	4/30/2012	Tetrachloroethylene	AMEL	ug/L	2.00	6.70	Yes	\$3,000
27	4/30/2012	Nickel	AMEL	lb/day	0.0408	0.0531	Yes	\$3,000
28	4/30/2012	Nickel	AMEL	ug/L	6.80	18.05	Yes	\$3,000
29	4/30/2012	Copper	AMEL	lb/day	0.0174	0.0323	Yes	\$3,000
30	4/30/2012	Copper	AMEL	ug/L	2.90	10.96	Yes	\$3,000
31	4/30/2012	TSS	AMEL	mg/L	30.00	38.75	No	\$3,000
32	5/4/2012	Nickel	MDEL	ug/L	13.60	15.70	No	\$3,000
33	5/4/2012	Copper	MDEL	ug/L	5.80	9.76	Yes	\$3,000
34	5/4/2012	TSS	Instantaneous Max	mg/L	50.00	59.00	No	\$3,000
35	5/11/2012	Copper	MDEL	ug/L	5.80	10.80	Yes	\$3,000
36	5/18/2012	Copper	MDEL	ug/L	5.80	6.11	No	\$3,000
37	5/25/2012	TSS	Instantaneous Max	mg/L	50.00	57.00	No	\$3,000
38	5/31/2012	Nickel	AMEL	ug/L	6.80	12.85	Yes	\$3,000
39	5/31/2012	Copper	AMEL	ug/L	2.90	7.78	Yes	\$3,000
40	5/31/2012	TSS	AMEL	mg/L	30.00	37.75	No	\$3,000
41	6/1/2012	Nickel	MDEL	ug/L	13.60	16.40	Yes	\$3,000
42	6/1/2012	Copper	MDEL	ug/L	5.80	12.90	Yes	\$3,000
43	6/1/2012	TSS	Instantaneous Max	mg/L	50.00	52.00	No	\$3,000
44	6/30/2012	Nickel	AMEL	ug/L	6.80	9.69	Yes	\$3,000
45	6/30/2012	Copper	AMEL	ug/L	2.90	5.03	Yes	\$3,000
46	6/30/2012	TSS	AMEL	mg/L	30.00	36.25	No	\$3,000
47	7/2/2012	Copper	MDEL	mg/L	5.80	8.83	Yes	\$3,000
TOTAL MMP								\$138,000

¹ See paragraph 12 of Order.

² See paragraph 13 of Order. A "serious violation" may be counted as a violation to satisfy the first three violations; though such violation is not counted twice for the purpose of assessing the penalty amount.

AMEL: Average Monthly Effluent Limitation

MDEL: Maximum Daily Effluent Limitation