



# California Regional Water Quality Control Board San Diego Region



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Secretary for  
Environmental  
Protection

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July 17, 2008

CERTIFIED RETURN RECEIPT REQUESTED  
7008 0150 0003 7457 7615

Mr. Michael Katz  
Promenade Mall Development Corporation  
4150 Mission Boulevard, Suite 211  
San Diego, CA 92109

In reply refer to:  
CAU:14-0588:jhaas  
Place ID: 249321

Dear Mr. Katz:

**Amended Complaint No. R9-2008-0056 for Civil Liability Including Mandatory Minimum Penalties under California Water Code Section 13385; Violation of Order No. R9-2001-0096, NPDES No. CAG919002 Promenade at Pacific Beach, City of San Diego, San Diego County, California**

Enclosed is Amended Complaint No. R9-2008-0056, *Assessment of Civil Liability with Mandatory Minimum Penalties (MMPs) to Promenade Mall Development Corporation for discharges of extracted groundwater from the Promenade at Pacific Beach in the City of San Diego, San Diego County, California.*

The Amended Complaint recommends that the California Regional Water Quality Control Board, San Diego Region (Regional Board), impose a civil liability of \$15,000 for violations between December 1, 2005 and December 31, 2007 of effluent limitations established by Order No. R9-2001-0096.

Revisions to the original complaint, issued dated May 20, 2008, are in response to further evaluation of monitoring reports and applicable water quality standards. Specifically, review of the complete data for the fourth quarterly 2005 monitoring report has resulted in two revisions to violations subject to mandatory minimum penalties; the addition of one violation (chronic nickel concentrations in January 2006) and the deletion of one previously alleged violation (chronic copper concentrations in December 2005).

July 17, 2008

As noted in your monitoring reports, extracted groundwater is discharged daily from the Promenade facility to the City of San Diego's municipal storm sewer. The City of San Diego has previously reported that a portion of the storm drain flow is pumped to the City's sanitary sewer. The remainder of the daily flow in the storm drain, which includes the discharge from Promenade, is discharged to the waters of Mission Bay.

Since the Complaint has been amended, the Regional Board has established the following revised deadlines.

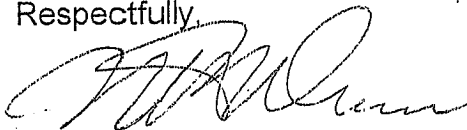
If you intend to waive your right to a hearing before the Regional Board, you must sign and return the enclosed waiver form with a \$15,000 cashier's check made out to the "State Water Resources Control Board," by 5:00 p.m. Thursday **August 7, 2008**. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$18,000. In addition, you must publish the enclosed public notice in the San Diego Union-Tribune newspaper no later than **August 7, 2008**. Verification that the notice has been published must be submitted to the Regional Board no later than **August 12, 2008**.

Public Hearing

If you do not elect to waive your right to a public hearing, or verification that the newspaper notification has not been received by **August 7, 2008**, a hearing is tentatively scheduled to be held at the Regional Board meeting on **September 10, 2008**. In order for the Regional Board to fully consider any argument on your behalf, you should submit 20 copies of all documents, including exhibits, you intend to provide the Regional Board by 5:00 p.m. Tuesday, **August 20, 2008**. Copies of materials submitted will be forwarded to the Regional Board members. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

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. If you have any questions or need further clarification, please contact Jeremy Haas directly at 858-467-2735 or [jhaas@waterboards.ca.gov](mailto:jhaas@waterboards.ca.gov).

Respectfully,



MICHAEL P. McCANN  
Assistant Executive Officer

Mr. Michael Katz  
Complaint R9-2008-0056

- 3 -

July 17, 2008

MPM:majh

- Enclosures
1. AMENDED MMP Complaint No. R9-2008-0056
  2. Waiver of Public Hearing Form
  3. Public Hearing Notice

cc w/ enclosures [via email only]:

Ken Greenberg, USEPA, Region 9, [greenberg.ken@epa.gov](mailto:greenberg.ken@epa.gov)

Kris McFadden, City of San Diego, [kmcfadden@sandiego.gov](mailto:kmcfadden@sandiego.gov)

S. Wayne Rosenbaum, Foley Lardner LLP, [SRosenbaum@foleylaw.com](mailto:SRosenbaum@foleylaw.com)

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

IN THE MATTER OF:

PROMENADE MALL DEVELOPMENT CORPORATION )

*Amended*

Facility: Promenade at Pacific Beach )

COMPLAINT NO. R9-2008-0056

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 )*

FOR  
ADMINISTRATIVE CIVIL LIABILITY  
WITH  
MANDATORY MINIMUM PENALTIES

July 17, 2008

Mailing Address: )

4150 Mission Boulevard, Suite 211 )

San Diego, CA 92109 )

Place ID 249321 )

WDID No. 9 00000058 )

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**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).<sup>1</sup> 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.<sup>2</sup> 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).

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<sup>1</sup> 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.

<sup>2</sup> 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.

Table 2. Reported Nickel Concentrations from December 2005

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.

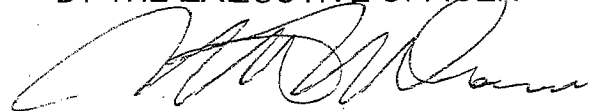
July 17, 2008

**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 17<sup>th</sup> 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 <sup>a</sup>	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
<b>TOTAL MMP PENALTY</b>								<b>\$15,000</b>

<sup>a</sup> 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.



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

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## WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Michael Katz  
Promenade Mall Development Corporation  
4150 Mission Boulevard, Suite 211  
San Diego, CA 92109

*REVISED*  
Complaint No. R9-2008-0056  
for  
Administrative Civil Liability  
With  
Mandatory Minimum Penalties

**\$15,000**

Promenade at Pacific Beach  
Place ID 249321  
WDID No. 9 000000588501

By signing below, I agree to waive Promenade Mall Development Corporation's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region regarding the violations alleged in the above referenced Complaint and to remit payment for the imposed civil liability. I understand that I am authorized to give up Promenade Mall Development Corporation's right to be heard and to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the proposed civil liability. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the imposed civil liability.

\_\_\_\_\_  
Signature Title Date

\_\_\_\_\_  
Print your name

Send this signed form to:  
Michael P. McCann, Assistant Executive Officer  
C/O Compliance Assurance  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

*California Environmental Protection Agency*

## NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region  
Issuance of Administrative Civil Liability (ACL) Order  
With Mandatory Minimum Penalties against  
Promenade Mall Development Corporation  
Promenade at Pacific Beach, San Diego, California**

On July 17, 2008, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued REVISED Complaint No. R9-2008-0056 to Promenade Mall Development Corporation in the amount of \$15,000 for alleged violations of Regional Board Order No. R9-2001-0096, 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*. Promenade Mall Development Corporation has elected to waive its right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$15,000 as set forth in the Complaint. The Regional Board will consider accepting the waiver at its September 10, 2008 meeting.

Written comments regarding the allegations contained in Complaint No. R9-2008-0056, and/or acceptance of the waiver, will be accepted through Tuesday, August 20, 2008.

The Regional Board's September 10, 2008 meeting will be at the Regional Board office located at 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter please call Jeremy Haas at (858) 467-2735 or visit the Regional Board's web site at [www.waterboards.ca.gov/sandiego/](http://www.waterboards.ca.gov/sandiego/)

Michael P. McCann  
Assistant Executive Officer

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Mr. Michael Katz  
 4150 Mission Blvd, suite 211  
 San Diego, CA 92109

2. Article Number  
(Transfer from service label)

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**COMPLETE THIS SECTION ON DELIVERY**

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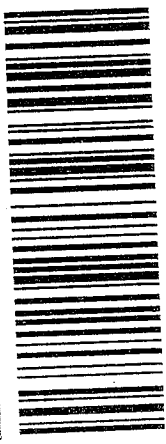
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 Mr. Michael Katz  
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 City, State, ZIP+4 San Diego, CA 92109

PS Form 3800, August 2005 See Reverse for Instructions

