

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION

In the matter of:	)	Complaint No. R4-2008-0056-M
	)	Mandatory Minimum Penalty
	)	for
750 Garland, LLC	)	Violation of California Water Code § 13376
750 Garland Avenue	)	and
Los Angeles, CA 90017	)	Order Nos. 97-095 & R4-2006-0053 (NPDES No. CA0053490)

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385 (h) and (i) is issued to 750 Garland, LLC (hereinafter Permittee) based on a finding of violation of waste discharge requirements prescribed in Order Nos. 97-095 and R4-2006-0053 (NPDES No. CA0053490, CI No. 5569).

**The Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds the following:**

1. The Permittee operated "The Flats" (facility) located at 750 Garland Avenue, Los Angeles, CA. The Permittee discharged up to 320 gallons per day (gpd) of swimming pool filter backwash and up to 39,000 gallons of pool drainage water during repairs and maintenance into a nearby storm drain (Latitude 34° 08' 16", Longitude 118° 25' 46"). The wastewater is susceptible of containing settleable solids, biochemical oxygen demand (BOD<sub>5</sub> 20°C), methylene blue active substances (MBAS), total residual chlorine, pH, copper, zinc, and other pollutants which can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The wastewater flows through the storm drain system into Ballona Creek above the Estuary, a navigable water of the United States.
2. The facility was formerly owned and operated by Holiday Inn, Incorporated. On July 21, 1997, the California Regional Water Quality Control Board (Regional Board) adopted Order No. 97-095 (NPDES No. CA0053490) NPDES Permit and Waste Discharge Requirements (WDRs) for the former Holiday Inn. From July 25, 1997 to July 7, 2006, the facility discharged wastewater under Order No. 97-095.
3. On July 14, 2004, the facility was acquired by 750 Garland, LLC. The Permittee operated the facility using the old name "Holiday Inn" until remodeling and renovation commenced in the summer of 2005. After the renovation the Permittee changed the name of the hotel from "Holiday Inn" to "The Flats."

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4. On June 8, 2006, the Regional Board adopted Order No. R4-2006-0053 (NPDES No. CA0053490) NPDES Permit and WDRs for "The Flats."
5. Order No. 97-095 (Part B.1, Page 5) includes the following effluent limitation for residual chlorine:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Residual chlorine	mg/L	0.5	--

mg/L = milligrams/liter; lbs/day = pounds/day; µg/L = micrograms/liter

6. Order No. R4-2006-0053 (Part IV.A.1 Page 11) includes the following effluent limitations for biochemical oxygen demand (BOD<sub>5</sub> 20°C), pH, total residual chlorine, methylene blue active substances (MBAS), settleable solids, copper, selenium, and zinc:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
BOD <sub>5</sub> 20°C	mg/L	30	--
	lbs/day <sup>1</sup>	0.08	
pH	s. u.	6.5	8.5 <sup>2</sup>
Total residual chlorine	mg/L	0.5 <sup>4</sup>	--
	lbs/day <sup>1</sup>	0.0013	
MBAS	mg/L	0.5	--
	lbs/day <sup>1</sup>	0.0013	
Settleable solids	ml/L	0.3	--
Copper	µg/L	24 <sup>6</sup>	--
	lbs/day <sup>1</sup>	0.000064	--
Selenium	µg/L	5 <sup>6</sup>	--
	lbs/day <sup>1</sup>	0.0000133	--
Zinc	µg/L	304 <sup>6</sup>	--
	lbs/day <sup>1</sup>	0.000811	--

mg/L = milligrams/liter; lbs/day = pounds/day; µg/L = micrograms/liter

<sup>1</sup>The mass-based effluent limitations are based on the pool filter backwash water flow of 320 gpd (0.00032 mgp) and shall be calculated using the pool drainage flow of 39,000 gpd (0.039 mgp) during repair and maintenance.

<sup>2</sup>The pH shall remain in this range at all times.

<sup>4</sup>The wastewater traverses approximately 8 miles of lined storm drain to Ballona Creek and additional 3.7 miles along the Creek Channel prior to reaching the Estuary. The discharge concentration (0.5 mg/L) allowed for residual chlorine at the point discharge to the storm drain will dissipate by the time the wastewater reaches areas of beneficial uses within Ballona Creek.

<sup>6</sup>This is the waste load allocation (WLA), according to the Ballona Creek Metals TMDL. Resolution No. 2005-007, adopted by the Regional Board in July 7, 2005, and became effective on January 11, 2006. The WLA serves as the effluent limitation for the discharge.

7. Ten (10) violations of Order Nos. 97-095 and R4-2006-0053 were noted in the Permittee's self-monitoring reports for the 3<sup>rd</sup> Quarter 2004 through the 2<sup>nd</sup> Quarter 2007. Out of the ten (10) violations, eight (8) are subject to mandatory minimum penalties. The violations are identified in Exhibit "A" and attached hereto and incorporated by reference.
8. Furthermore, the Regional Board received the Permittee's 3<sup>rd</sup> Quarter 2004 self-monitoring report on December 24, 2004, a total of 70 days after the due date of October 15, 2004. The Regional Board also received the Permittee's 3<sup>rd</sup> Quarter 2007, 4<sup>th</sup> Quarter 2007, and 1<sup>st</sup> Quarter 2008 self-monitoring reports on October 20, 2008, a total of 354 days late, 262 days late and 172 days later, from the due dates of November 1, 2007, February 1, 2007 and May 1, 2008. These late reporting violations constitute twenty-eight (28) serious violations subject to mandatory minimum penalties. The violations are identified in Exhibit "A" and attached hereto and incorporated by reference.
9. On September 15, 2008, the Chief Deputy Executive Officer of the Regional Board issued the Permittee Offer to Participate in Expedited Payment Program (EPP) No. R4-2008-0056-M, which included a Notice of Violation notifying the Permittee of the eight (8) effluent limit violations from the 3<sup>rd</sup> Quarter 2004 through the 2<sup>nd</sup> Quarter 2007 subject to mandatory minimum penalties and the twenty-six (26) late reporting violations subject to a mandatory minimum penalty for a total of \$93,000 for the combined effluent limit violations and late reporting violations.
10. Subsequent to issuance of the EPP, an additional thirty-nine (39) effluent limit violations of Order No. R4-2006-0053 were reported by the Permittee in its self-monitoring reports for the period January 2008 through March 2009. Also, the Permittee's 2<sup>nd</sup> Quarter 2009 and 3<sup>rd</sup> Quarter 2009 self-monitoring reports have not been received by the Regional Board as of February 15, 2010. These late reporting violations constitute nine (9) serious violations subject to mandatory minimum penalties. The violations are identified in Exhibit "A" and attached hereto and incorporated by reference.
11. The effluent limitation violations include violations of BOD<sub>5</sub>, 20°C, pH, total residual chlorine, MBAS, settleable solids, copper, selenium, and zinc effluent limits.
12. Any discharge containing pollutants violating the effluent limitations set forth in the waste discharge requirements is prohibited by CWC § 13376.
13. Among the provisions in the Permittee's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit quarterly NPDES self-monitoring reports to the Regional Board pursuant to the authority of CWC § 13383.
14. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) a "serious violation" is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group

II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.

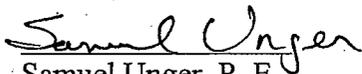
15. Copper, selenium and zinc are Group II pollutants.
16. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
17. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC § 13385 for each day of violation is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

**YOU ARE HEREBY GIVEN NOTICE THAT:**

18. The Assistant Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$252,000 for the violations which occurred for the period July 2004 through March 2009 monitoring periods cited in Exhibit "A." Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.
19. The Permittee may waive the right to a hearing and pay the recommended administrative civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on March 18, 2010. If the hearing is waived, a check in the amount of \$252,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on March 18, 2010.
20. If the Regional Board does not receive a waiver and full payment of the recommended penalty by March 18, 2010, the Complaint will be heard before the Regional Board or Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
21. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
22. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative

proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

23. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
24. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
25. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



Samuel Unger, P. E.

Assistant Executive Officer

Los Angeles Regional Water Quality Control Board

February 16, 2010

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent 750 Garland, LLC (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R4-2008-0056-M (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

*Check here if the Permittee waives the hearing requirement and will pay the recommended liability.*

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **\$252,000** by check that references "ACL Complaint No. R4-2008-0056-M." made payable to the "*State Water Pollution Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **March 18, 2010** or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- 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.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category <sup>a</sup>	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
07/28/2004	3 <sup>rd</sup> Quarter 2004	Daily Maximum	Total Residual Chlorine	0.7	0.5	mg/L	2	40	Serious	(h)(1)	\$3,000
06/23/2005	2 <sup>nd</sup> Quarter 2005	Daily Maximum	Total Residual Chlorine	9.2	0.5	mg/L	2	1,740	Serious	(h)(1)	\$3,000
06/29/2005	2 <sup>nd</sup> Quarter 2005	Daily Maximum	Total Residual Chlorine	22	0.5	mg/L	2	4,300	Serious	(h)(1)	\$3,000
07/06/2005	3 <sup>rd</sup> Quarter 2005	Daily Maximum	Total Residual Chlorine	1.6	0.5	mg/L	2	220	Serious	(h)(1)	\$3,000
03/15/2006	1 <sup>st</sup> Quarter 2006	Daily Maximum	Total Residual Chlorine	0.6	0.5	mg/L	2	20	Serious	(h)(1)	\$3,000
03/29/2006	1 <sup>st</sup> Quarter 2006	Daily Maximum	Total Residual Chlorine	1.0	0.5	mg/L	2	100	Serious	(h)(1)	\$3,000
11/08/2006	4 <sup>th</sup> Quarter 2006	Instantaneous Maximum	pH	9.0	6.5 - 8.5	pH units	N/A	N/A	Chronic	(i)(1)	\$0
06/06/2007	2 <sup>nd</sup> Quarter 2007	Instantaneous Maximum	pH	9.2	6.5 - 8.5	pH units	N/A	N/A	Chronic	(i)(1)	\$0
06/06/2007	2 <sup>nd</sup> Quarter 2007	Daily Maximum	Copper	140	24	µg/L	2	483	Serious	(h)(1)	\$3,000
06/06/2007	2 <sup>nd</sup> Quarter 2007	Daily Maximum	Copper	0.000374*	0.000064	lbs/day	2	484	Serious	(h)(1)	\$3,000
01/19/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Copper	270	24	µg/L	2	1,025	Serious	(h)(1)	\$3,000
01/19/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Copper	0.000721*	0.000064	lbs/day	2	1,027	Serious	(h)(1)	\$3,000
01/19/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Total Residual Chlorine	3.8	0.5	mg/L	2	660	Serious	(h)(1)	\$3,000
01/19/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Total Residual Chlorine	0.0101*	0.0013	mg/L	2	677	Serious	(h)(1)	\$3,000
02/06/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Copper	190	24	µg/L	2	692	Serious	(h)(1)	\$3,000
02/06/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Copper	0.000507*	0.000064	lbs/day	2	692	Serious	(h)(1)	\$3,000
02/06/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Zinc	340	304	µg/L	2	12	Chronic	(i)(1)	\$3,000
02/06/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Zinc	0.000907*	0.000811	lbs/day	2	12	Chronic	(i)(1)	\$3,000
03/05/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Copper	190	24	µg/L	2	692	Serious	(h)(1)	\$3,000
03/05/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Copper	0.000507*	0.000064	lbs/day	2	692	Serious	(h)(1)	\$3,000
03/05/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Selenium	6.3	5	µg/L	2	26	Serious	(h)(1)	\$3,000
03/05/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Selenium	0.0000168*	0.0000133	lbs/day	2	26	Serious	(h)(1)	\$3,000
03/05/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Total Residual Chlorine	2.2	0.5	mg/L	2	340	Serious	(h)(1)	\$3,000
03/05/2008	1 <sup>st</sup> Quarter 2008	Daily Maximum	Total Residual Chlorine	0.0059*	0.0013	mg/L	2	354	Serious	(h)(1)	\$3,000
05/07/2008	2 <sup>nd</sup> Quarter 2008	Daily Maximum	Copper	79	24	µg/L	2	229	Serious	(h)(1)	\$3,000
05/07/2008	2 <sup>nd</sup> Quarter 2008	Daily Maximum	Copper	0.000211*	0.000064	lbs/day	2	230	Serious	(h)(1)	\$3,000
05/07/2008	2 <sup>nd</sup> Quarter 2008	Daily Maximum	Zinc	690	304	µg/L	2	127	Serious	(h)(1)	\$3,000
05/07/2008	2 <sup>nd</sup> Quarter 2008	Daily Maximum	Zinc	0.001841*	0.000811	lbs/day	2	127	Serious	(h)(1)	\$3,000
06/04/2008	2 <sup>nd</sup> Quarter 2008	Daily Maximum	Copper	110	24	µg/L	2	358	Serious	(h)(1)	\$3,000

\*Calculated by staff.

<sup>a</sup>See paragraph 11 for a definition of Pollutant Categories.<sup>b</sup>Report not received as of 02/15/2010



