

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. R4-2008-0120-M
)	Mandatory Minimum Penalty
)	for
Mammoth Apartments, LLC)	Violation of California Water Code § 13376
Mammoth Apartments)	and
4328 Mammoth Avenue)	Order No. R4-2003-0111
Sherman Oaks, CA 91423)	(NPDES No. CAG994004)

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385 (h) and (i) is issued to Mammoth Apartments, LLC (hereinafter Permittee) based on a finding of violation of waste discharge requirements prescribed in Order No. R4-2003-0111 (NPDES No. CAG994004, CI No. 8172).

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

1. The Permittee operates the Mammoth Apartments (facility) located at 4328 Mammoth Avenue, Sherman Oaks, California. The Permittee discharged up to 800 gallons per day (gpd) of seepage groundwater into a nearby storm drain (Latitude 34° 08' 45", Longitude 118° 25' 55"). The wastewater was susceptible of containing selenium, sulfate, total dissolved solids (TDS), and other pollutants that 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 flowed through the storm drain system into Los Angeles River (upstream of Sepulveda Flood Control Basin), a navigable water of the United States.
2. On August 4, 2004, the Executive Officer of the Regional Board determined that the waste discharges from the Permittee's facility met the conditions to be enrolled under Order No. R4-2003-0111 adopted by the Regional Board on August 7, 2003. The facility was so enrolled effective on August 4, 2004. Order No. R4-2003-0111 serves as General National Pollutant Discharge Elimination System (NPDES) Permit No. CAG994004 (Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties).

3. Order No. R4-2003-0111 (Part E.1.b.1, page 17 & Attachment B.7.a, page B-1) includes the following effluent limitations for selenium, sulfate and TDS:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Selenium	µg/L	8	4
Sulfate	mg/L	300	--
TDS	mg/L	950	---

µg/L = micrograms/liter; mg/L = milligrams/liter

4. 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.
5. Seventy (70) effluent violations of Order No. R4-2003-0111 were noted in the Permittee's self-monitoring reports during the period September 2006 through April 2008.
6. On November 21, 2008, the Chief Deputy Executive Officer of the Regional Board issued the Permittee Offer to Participate in Expedited Payment Program (EPP) No. R4-2008-0120-M, which included a Notice of Violation notifying the Permittee of the seventy (70) effluent limitations that occurred between September 2006 and April 2008 that were subject to mandatory minimum penalties.
7. Subsequent to issuance of the EPP, four (4) additional violations of Order No. R4-2003-0111 were reported by the Permittee in its self-monitoring reports for the 3rd Quarter 2008. Furthermore, the Regional Board received the Permittee's 4th Quarter 2005 self-monitoring report on October 4, 2006, a total of 231 days after the due date of February 15, 2006. The Regional Board also received the Permittee's 1st Quarter 2006 and 2nd Quarter 2006 self-monitoring reports on October 4, 2006, a total of 142 days late and 50 days late, from the due dates of May 15, 2006 and August 15, 2006, respectively. These late reporting violations constitute twelve (12) serious violations and are subject to mandatory minimum penalties.
8. The seventy-four (74) effluent limit violations include violations of selenium, sulfate and TDS effluent limits. Out of the seventy-four (74) effluent limit violations, seventy-three (73) are subject to mandatory minimum penalties. These violations are identified in Exhibit "A" attached hereto and incorporated herein by reference.
9. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.

10. 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.
11. Sulfate and TDS are Group I pollutants.
12. 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.
13. CWC § 13385.1 (a)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for a "serious violation" defined by that section as "a failure to file a discharge monitoring report required pursuant to Section 13323 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance limitations contained in waste discharge requirements that contain effluent limitations. This section applies to violations occurring on or after January 2004.
14. The maximum amount of administrative civil liability assessable pursuant to CWC § 13385 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:

15. The Assistant Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$255,000 for the violations that occurred during the September 2006 through July 2008 monitoring periods. Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.
16. 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 \$255,000 (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.
17. 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.
18. 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.
 19. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations 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.)
 20. 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.
 21. 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.
 22. 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 thirty 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 Mammoth Apartments, LLC (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2008-0120-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 Permittee may have to a hearing before the Regional Board.
- b. I certify that the Permittee will remit payment for the proposed civil liability in the full amount of **\$255,000** by check that references "ACL Complaint No. R4-2008-0120-M" made payable to the "*State Water Pollution Cleanup and Abatement Account*". Payment must be received by the Regional Board by **March 18, 2010** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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 Permittee 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	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
09/29/2006	3 rd Quarter 2006	Daily Maximum	TDS	1,320	950	mg/L	1	39%	Chronic	(i)(1)	\$0
09/29/2006	3 rd Quarter 2006	Daily Maximum	Sulfate	529	300	mg/L	1	76%	Serious	(h)(1)	\$3,000
09/29/2006	3 rd Quarter 2006	Monthly Average	Selenium	7.9	4	µg/L	2	96%	Serious	(h)(1)	\$3,000
10/31/2006	4 th Quarter 2006	Monthly Average	Selenium	6.70	4	µg/L	2	68%	Serious	(h)(1)	\$3,000
11/22/2006	4 th Quarter 2006	Daily Maximum	Selenium	10.1	8	µg/L	2	26%	Serious	(h)(1)	\$3,000
11/22/2006	4 th Quarter 2006	Daily Maximum	TDS	1,310	950	mg/L	1	38%	Chronic	(i)(1)	\$3,000
11/22/2006	4 th Quarter 2006	Daily Maximum	Sulfate	528	300	mg/L	1	76%	Serious	(h)(1)	\$3,000
11/22/2006	4 th Quarter 2006	Monthly Average	Selenium	10.1	4	µg/L	2	153%	Serious	(h)(1)	\$3,000
12/01/2006	4 th Quarter 2006	Daily Maximum	TDS	1,240	950	mg/L	1	31%	Chronic	(i)(1)	\$3,000
12/01/2006	4 th Quarter 2006	Daily Maximum	Sulfate	495	300	mg/L	1	65%	Serious	(h)(1)	\$3,000
12/15/2006	4 th Quarter 2006	Daily Maximum	Selenium	11.8	8	µg/L	2	48%	Serious	(h)(1)	\$3,000
12/31/2006	4 th Quarter 2006	Monthly Average	Selenium	8.2	4	µg/L	2	104%	Serious	(h)(1)	\$3,000
01/04/2007	1 st Quarter 2007	Daily Maximum	Selenium	8.7	8	µg/L	2	9%	Chronic	(i)(1)	\$3,000
01/04/2007	1 st Quarter 2007	Daily Maximum	TDS	1,300	950	mg/L	1	37%	Chronic	(i)(1)	\$3,000
01/04/2007	1 st Quarter 2007	Daily Maximum	Sulfate	453	300	mg/L	1	51%	Serious	(h)(1)	\$3,000
01/11/2007	1 st Quarter 2007	Daily Maximum	Selenium	11.1	8	µg/L	2	39%	Serious	(h)(1)	\$3,000
01/18/2007	1 st Quarter 2007	Daily Maximum	Selenium	10.9	8	µg/L	2	36%	Serious	(h)(1)	\$3,000
01/26/2007	1 st Quarter 2007	Daily Maximum	Selenium	9.0	8	µg/L	2	13%	Chronic	(i)(1)	\$3,000
01/31/2007	1 st Quarter 2007	Monthly Average	Selenium	9.9	4	µg/L	2	148%	Serious	(h)(1)	\$3,000
02/08/2007	1 st Quarter 2007	Daily Maximum	Selenium	10.9	8	µg/L	2	36%	Serious	(h)(1)	\$3,000
02/08/2007	1 st Quarter 2007	Daily Maximum	TDS	1,220	950	mg/L	1	28%	Chronic	(i)(1)	\$3,000
02/08/2007	1 st Quarter 2007	Daily Maximum	Sulfate	372	300	mg/L	1	24%	Chronic	(i)(1)	\$3,000
02/15/2007	1 st Quarter 2007	Daily Maximum	Selenium	10.3	8	µg/L	2	29%	Serious	(h)(1)	\$3,000
02/22/2007	1 st Quarter 2007	Daily Maximum	Selenium	10.7	8	µg/L	2	34%	Serious	(h)(1)	\$3,000
02/28/2007	1 st Quarter 2007	Monthly Average	Selenium	9.9	4	µg/L	2	148%	Serious	(h)(1)	\$3,000
03/01/2007	1 st Quarter 2007	Daily Maximum	Selenium	9.7	8	µg/L	2	21%	Serious	(h)(1)	\$3,000
03/08/2007	1 st Quarter 2007	Daily Maximum	Selenium	14.5	8	µg/L	2	81%	Serious	(h)(1)	\$3,000
03/08/2007	1 st Quarter 2007	Daily Maximum	TDS	1,180	950	mg/L	1	24%	Chronic	(i)(1)	\$3,000

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
03/08/2007	1 st Quarter 2007	Daily Maximum	Sulfate	380	300	mg/L	1	27%	Chronic	(i)(1)	\$3,000
03/15/2007	1 st Quarter 2007	Daily Maximum	Selenium	11.30	8	µg/L	2	41%	Serious	(h)(1)	\$3,000
03/22/2007	1 st Quarter 2007	Daily Maximum	Selenium	16.10	8	µg/L	2	101%	Serious	(h)(1)	\$3,000
03/29/2007	1 st Quarter 2007	Daily Maximum	Selenium	17.50	8	µg/L	2	119%	Serious	(h)(1)	\$3,000
03/31/2007	1 st Quarter 2007	Monthly Average	Selenium	13.80	4	µg/L	2	245%	Serious	(h)(1)	\$3,000
04/05/2007	2 nd Quarter 2007	Daily Maximum	Selenium	15.60	8	µg/L	2	95%	Serious	(h)(1)	\$3,000
04/05/2007	2 nd Quarter 2007	Daily Maximum	TDS	1,230	950	mg/L	1	29%	Chronic	(i)(1)	\$3,000
04/05/2007	2 nd Quarter 2007	Daily Maximum	Sulfate	423	300	mg/L	1	41%	Serious	(h)(1)	\$3,000
04/12/2007	2 nd Quarter 2007	Daily Maximum	Selenium	14.9	8	µg/L	2	86%	Serious	(h)(1)	\$3,000
04/20/2007	2 nd Quarter 2007	Daily Maximum	Selenium	13.0	8	µg/L	2	63%	Serious	(h)(1)	\$3,000
04/26/2007	2 nd Quarter 2007	Daily Maximum	Selenium	13.0	8	µg/L	2	63%	Serious	(h)(1)	\$3,000
04/30/2007	2 nd Quarter 2007	Monthly Average	Selenium	14.1	4	µg/L	2	253%	Serious	(h)(1)	\$3,000
05/04/2007	2 nd Quarter 2007	Daily Maximum	Selenium	11.9	8	µg/L	2	49%	Serious	(h)(1)	\$3,000
05/04/2007	2 nd Quarter 2007	Daily Maximum	TDS	1,170	950	mg/L	1	23%	Chronic	(i)(1)	\$3,000
05/04/2007	2 nd Quarter 2007	Daily Maximum	Sulfate	416	300	mg/L	1	39%	Chronic	(i)(1)	\$3,000
05/04/2007	2 nd Quarter 2007	Monthly Average	Selenium	11.90	4	µg/L	2	198%	Serious	(h)(1)	\$3,000
06/08/2007	2 nd Quarter 2007	Daily Maximum	Selenium	17.5	8	µg/L	2	119%	Serious	(h)(1)	\$3,000
06/08/2007	2 nd Quarter 2007	Daily Maximum	TDS	1,130	950	mg/L	1	19%	Chronic	(i)(1)	\$3,000
06/08/2007	2 nd Quarter 2007	Daily Maximum	Sulfate	355	300	mg/L	1	18%	Chronic	(i)(1)	\$3,000
06/08/2007	2 nd Quarter 2007	Monthly Average	Selenium	17.5	4	µg/L	2	338%	Serious	(h)(1)	\$3,000
07/11/2007	3 rd Quarter 2007	Daily Maximum	Selenium	13.6	8	µg/L	2	70%	Serious	(h)(1)	\$3,000
07/11/2007	3 rd Quarter 2007	Daily Maximum	TDS	1,180	950	mg/L	1	24%	Chronic	(i)(1)	\$3,000
07/11/2007	3 rd Quarter 2007	Daily Maximum	Sulfate	349	300	mg/L	1	16%	Chronic	(i)(1)	\$3,000
07/11/2007	3 rd Quarter 2007	Monthly Average	Selenium	13.6	4	µg/L	2	240%	Serious	(h)(1)	\$3,000
08/10/2007	3 rd Quarter 2007	Daily Maximum	Selenium	19.7	8	µg/L	2	146%	Serious	(h)(1)	\$3,000
08/10/2007	3 rd Quarter 2007	Daily Maximum	TDS	1,250	950	mg/L	1	32%	Chronic	(i)(1)	\$3,000
08/10/2007	3 rd Quarter 2007	Daily Maximum	Sulfate	406	300	mg/L	1	35%	Chronic	(i)(1)	\$3,000
08/10/2007	3 rd Quarter 2007	Monthly Average	Selenium	19.7	4	µg/L	2	393%	Serious	(h)(1)	\$3,000

