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California Regional Water Quality Control Board San Diego Region

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9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

July 16, 2008

CERTIFIED-RETURN RECEIPT REQUESTED
7007 3020 0001 0040 7386

Mario X. Sierra, Director,
General Services Department
City of San Diego
1970 B Street, MS27A
San Diego, CA 92102

In reply refer to:
CAU:14-0329
Place ID: 255226

Dear Mr. Sierra:

**CONDITIONAL EARLY SETTLEMENT OFFER NO. R9-2008-0076 for Alleged
Violations of Effluent Limitations Subject to Mandatory Minimum Penalties under
Water Code Section 13385**

**City of San Diego Convention Center: WDR ORDER NO. R9-2003-0050, Discharge
of Extracted Groundwater to San Diego Bay**

This letter is an offer to the City of San Diego (Discharger) to participate in the Regional Board's Early Settlement Program.

Background:

The City of San Diego's discharge of extracted groundwater, to the San Diego Bay through an outfall from the San Diego Convention Center, is subject to numeric effluent limitations, contained in Order No. R9-2003-0050, NPDES Permit No. CA0109029, *Waste Discharge Requirement for Groundwater Extraction Waste Discharges to San Diego Bay from the San Diego Convention Center, San Diego County.*

Between August 2004 and June 2007, the City reported violations of effluent limitations for copper, cyanide, hydrogen sulfide, and base neutral compounds (as described attached Table) in accordance with Monitoring and Reporting Program No. R9-2003-0050.

Mr. Sierra
City of San Diego
Early Settlement for potential MMPs

- 2 -

July 16, 2008

Potential Liability:

Water Code Section 13385 requires that a MMP of \$3,000 be imposed for each serious violation. Water Code 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.

Water Code Section 13385 subdivision (i) also requires that a MMP of \$3,000 be imposed for each violation (i.e. any waste discharge that violates an effluent limitation contained in waste discharge requirements and applies to surface water discharges) beginning with the fourth violations in any six-month period.

Pursuant to CWC Sections 13385 (h) and (i) of the CWC, the Regional Board must impose MMP in the amount of sixty nine thousand (\$69,000) (\$3000 for each 23 violations) on the Discharger (see attached Table). Discretionary civil liability above the mandatory minimum for the violations alleged in this Complaint is not recommended.

Please be advised, however, that section 13385 also authorizes the Regional Board, in its discretion, to assess the maximum liability for violations cited in this letter. While CWC Sections 13385(h) and (i) require certain minimum penalties, CWC Section 13385(c) gives the Regional Board authority to impose liability as high as \$10,000 per day for those violations and \$10 per gallon per gallon.¹ CWC Section 13385(e) provides factors to be considered by the Regional Board when determining the amount of any liability imposed under CWC Sections 13385(a) and 13385(c)².

Furthermore, if referred to the Attorney General for prosecution, the Superior Court may assess up to \$25,000 per violation. In addition, the Superior Court may assess up to \$25 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. In due course, an administrative or judicial

¹ CWC Section 13385(c) states: Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

² Pursuant to CWC Section 13385(e): In determining the amount of any liability imposed under CWC Sections 13385(a) and (c), the Regional Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

Mr. Sierra
City of San Diego
Early Settlement for potential MMPs

- 3 -

July 16, 2008

complaint will be issued to assess penalties for all the violations described above, in an appropriate amount, which will not be less than the mandatory minimum penalty of \$3,000 per violation required by section 13385.

The Permittee may elect to avoid the issuance of an Administrative Civil Liability Compliant (ACLC), by participating in the Regional Board's Early Settlement Program. Details of the proposed settlement are described below.

Offer:

To promote early settlement of administrative enforcement actions, the Regional Board hereby tenders this Conditional Early Settlement Offer. You are hereby informed that you may accept this offer, waive your right to a hearing, and pay the mandatory minimum penalty of \$69,000, for the relevant violations described above. In the event you elect to do so, subject to the conditions below, the Regional Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations described above. Accordingly, the Regional Board will forego issuance of a formal complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional penalties above the required mandatory minimum. To accept this offer, please complete and return the enclosed "**Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing**".

Conditions:

Federal regulations require the Regional Board to publish and allow the public 30 days to comment on any settlement of an enforcement action (40 CFR part 123.27(d)(2)(iii)). Upon receipt of your Acceptance and Waiver, the settlement will be published as required by law. If no comments are received within the 30-day period, you will be notified accordingly, and payment in the appropriate amount must be received within an additional seven (7) days. The \$69,000 penalty shall be to the "State Water Resources Control Board Cleanup and Abatement Account."

Following payment, the Regional Board will deem the matter to be final.

If, however, significant comments are received in opposition to the settlement, the matter may be set for a hearing before the Regional Board. In that event, you will be notified that this Offer and your Waiver are withdrawn, you will be free to make any arguments as to any violations that you desire, and your agreement to participate in this proposed settlement will not in any way be binding against you. Additionally, staff will ensure that your agreement to participate in this conditional settlement will be noted in the record in mitigation of any fines or additional fines that may be recommended, and your payment will be credited accordingly.

Mr. Sierra
City of San Diego
Early Settlement for potential MMPs

- 4 -

July 16, 2008

Should you have any questions about this Conditional Early Settlement Offer, please contact Joann Cofrancesco at (858) 637-5589/ JCofrancesco@waterboards.ca.gov or Mark Alpert at (858)467-2963/ MAlpert@waterboards.ca.gov..

Sincerely,



MICHAEL McCANN
Assistant Executive Officer

Attachment: Summary of Violations Subject to Mandatory Minimum Penalties
Acceptance and Waiver Form 7232

cc by email:

Reed Sato, Office of Enforcement, State Water Resources Control Board

Brian Kelley, Core Regulatory Unit, San Diego Regional Water Quality Control Board

Summary of Effluent Violations Subject to Mandatory Minimum Penalties
 Complaint No. R9-2008-0076
 San Diego Convention Center

| Violation Date/Period | Violation ID | Constituent | Effluent Limitation | Unit | Permitted Limit | Reported Value | Serious Violation | Mandatory Minimum Penalty | Notes |
|-----------------------|--------------|------------------------|---------------------|------|-----------------|----------------|-------------------|---------------------------|-----------------------------|
| 8/9/2004 | 266619 | base neutral compounds | instantaneous max | ug/L | 10.0 | 10.1 | No | \$0 | not fourth (or >) violation |
| 8/9/2004 | 266595 | cyanide | instantaneous max | ug/L | 1.0 | 8.0 | Yes | \$3,000 | cat 2 |
| 8/9/2004 | 756179 | cyanide | 6-month median | ug/L | 1.0 | 4.0 | Yes | \$3,000 | cat 2 |
| 12/6/2007 | 755962 | cyanide | 6-month median | ug/L | 1.0 | 4.5 | Yes | \$3,000 | cat 2 |
| 10/31/2004 | 756183 | H2S | average monthly | ug/L | 2.0 | 7.48 | Yes | \$3,000 | cat 1 |
| 10/31/2004 | 266616 | H2S | daily max | ug/L | 4.0 | 7.48 | Yes | \$3,000 | cat 1 |
| 10/4/2004 | 756182 | Cu | average monthly | ug/L | 2.45 | 14.0 | Yes | \$3,000 | cat 2 |
| 10/4/2004 | 266613 | Cu | daily max | ug/L | 4.8 | 14.0 | Yes | \$3,000 | cat 2 |
| 11/3/2004 | 756181 | Cu | average monthly | ug/L | 2.45 | 6.43 | Yes | \$3,000 | cat 2 |
| 11/3/2004 | 756180 | Cu | daily max | ug/L | 4.8 | 6.43 | Yes | \$3,000 | cat 2 |
| 12/6/2004 | 755970 | Cu | average monthly | ug/L | 2.45 | 8.95 | Yes | \$3,000 | cat 2 |
| 12/6/2004 | 755963 | Cu | daily max | ug/L | 4.8 | 8.95 | Yes | \$3,000 | cat 2 |
| 1/10/2005 | 755969 | Cu | average monthly | ug/L | 2.45 | 15.6 | Yes | \$3,000 | cat 2 |
| 1/10/2005 | 755968 | Cu | daily max | ug/L | 4.8 | 15.6 | Yes | \$3,000 | cat 2 |
| 2/7/2005 | 755967 | Cu | average monthly | ug/L | 2.45 | 3.7 | Yes | \$3,000 | cat 2 |
| 3/7/2005 | 266672 | Cu | average monthly | ug/L | 2.45 | 2.8 | No | \$3,000 | 6th violation w/in 6 mo |
| 8/8/2005 | 442859 | Cu | average monthly | ug/L | 2.45 | 3.3 | Yes | \$3,000 | |
| 2/6/2006 | 442875 | Cu | average monthly | ug/L | 2.45 | 4.8 | Yes | \$3,000 | |
| 2/28/2007 | 507669 | Cu | average monthly | ug/L | 2.45 | 2.6 | No | \$0 | not fourth (or >) violation |
| 4/30/2007 | 755964 | Cu | average monthly | ug/L | 2.45 | 16.3 | Yes | \$3,000 | |
| 4/30/2007 | 598757 | Cu | daily max | ug/L | 4.8 | 16.3 | Yes | \$3,000 | |
| 5/14/2007 | 755961 | Cu | average monthly | ug/L | 2.45 | 11.0 | Yes | \$3,000 | |
| 5/14/2007 | 755960 | Cu | daily max | ug/L | 4.8 | 20.1 | Yes | \$3,000 | |
| 6/11/2007 | 755555 | Cu | daily max | ug/L | 4.8 | 5.9 | Yes | \$3,000 | |
| 6/11/2007 | 598762 | Cu | average monthly | ug/L | 2.45 | 5.9 | Yes | \$3,000 | |
| TOTAL MMP | | | | | | | | \$69,000 | |