



# California Regional Water Quality Control Board San Diego Region

Supporting Document No. 3

Linda S. Adams  
Secretary for  
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from U.S. EPA

Governor

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

November 25, 2008

**CERTIFIED-RETURN RECEIPT REQUESTED**  
**7007 3020 0001 0040 6914**

Mr. Rob Jones  
Property Manager  
America Plaza Owners Association  
600 West Broadway, Suite 920  
San Diego, California 92101

In reply refer to:  
CA:246018:rstewart

Dear Mr. Jones:

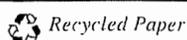
**COMPLAINT NO. R9-2008-0127 FOR ADMINISTRATIVE CIVIL LIABILITY FOR MANDATORY MINIMUM PENALTIES UNDER WATER CODE SECTION 13385, VIOLATION OF ORDER NO. 2000-90, NPDES CO. CAG919001**

Enclosed is Complaint No. R9-2008-0127, Administrative Civil Liability with Mandatory Minimum Penalties, for the amount of \$12,000 for violations of effluent limitations established by Order No. 2000-90, NPDES No. CAG919001, *General Waste Discharge Requirements for Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. The violations addressed in the Complaint result from the discharge of treated groundwater from the permanent dewatering operation from the One America Plaza site.

If America Plaza Owners Association intends to waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board), you or an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of civil liability indicated in the Complaint by 5:00 p.m. **Friday, January 9, 2009**. 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 \$12,000 as set forth in the Complaint. In addition, America Plaza Owners Association must publish the enclosed public notice in a newspaper circulated in the San Diego area no later than **Friday January 2, 2009**. Verification that the notice has been published must be submitted to the Regional Board no later than **Friday, January 9, 2009**.

If America Plaza Owners Association does not elect to waive its right to a public hearing or verification that the newspaper notification has not been received by **Friday, January 9, 2009**, a hearing is tentatively scheduled to be held at the Regional Board meeting on

*California Environmental Protection Agency*



Mr. Rob Jones  
America Plaza Owners Association

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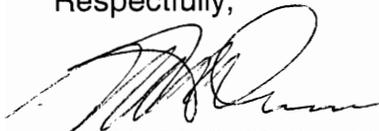
November 25, 2008

**February 11, 2009.** In order for the Regional Board to fully consider any argument on your behalf, you should submit twenty copies of all documents, including exhibits, you intend to provide the Regional Board by 5:00 p.m. **Wednesday, January 14, 2009.** Copies of material submitted will be forwarded to the Regional Board. 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.

Please contact Rebecca Stewart at (858) 467-2966 or via e-mail at [Rstewart@waterboards.ca.gov](mailto:Rstewart@waterboards.ca.gov) if you have any questions concerning this matter.

Respectfully,



MICHAEL P. McCANN  
Assistant Executive Officer

MPM;jh:rls

Enclosures: Complaint R9-2008-0127  
Waiver of Public Hearing  
Notice of Waiver of Public Hearing

cc: Dan McCurdy, America Plaza Owners Association, 600 West Broadway, Suite 920, San Diego, CA 92101 (with enclosures)

Ken Greenberg, Water Division (WTR-7), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105 (with enclosures)

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

**IN THE MATTER OF:** )

AMERICA PLAZA OWNERS )  
ASSOCIATION )

Facility: One America Plaza Dewatering )

Violations of Effluent Limitations in Order )  
No. 2000-90, NPDES No. CAG919001, )  
*General Waste Discharge Requirements for* )  
*Temporary Groundwater Extraction and* )  
*Similar Waste Discharges to San Diego* )  
*Bay and Storm Drains or Other* )  
*Conveyance Systems Tributary Thereto* )

Mailing Address: )  
600 West Broadway, Suite 920 )  
San Diego, California 92101 )

**Place ID 246018** )  
**WDID No. 9 000000469** )

**COMPLAINT NO. R9-2008-0127  
FOR  
ADMINISTRATIVE CIVIL LIABILITY  
WITH  
MANDATORY MINIMUM PENALTIES**

**November 25, 2008**

**AMERICA PLAZA OWNERS ASSOCIATION IS HEREBY GIVEN NOTICE  
THAT:**

1. America Plaza Owners Association (America Plaza) 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 impose mandatory minimum penalties (MMP).
2. Effluent discharged to San Diego Bay from America Plaza's permanent groundwater extraction system is subject to the Regional Board's general waste discharge requirements for groundwater extraction waste discharges, Order No. 2000-90, NPDES Permit No. CAG919001 (Groundwater Extraction Permit).<sup>1</sup> The Groundwater Extraction Permit

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<sup>1</sup> Order No. 2000-90, NPDES No. CAG919001, *General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto* (Groundwater Extraction Permit). Order No. 2000-90 was superseded on October 10, 2007 by Order No. R9-2007-0034.

prescribes effluent limitations for the discharge of extracted groundwater to San Diego Bay and tributaries thereto.

3. 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.
4. 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.
5. 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).

### **ALLEGATIONS**

6. Effluent Limitation Violations. Between June 15, 2007 and June 30, 2008, America Plaza reported, pursuant to the Monitoring and Reporting schedule for Order No. 2000-90, effluent sampling results that document violations of effluent limitations prescribed by Order No. 2000-90. See Attachment 1, *Summary of Reported Effluent Violations*.
7. Under CWC section 13385 subdivision (h), certain reported effluent violations are subject to mandatory minimum penalties as determined by the following:
  - a. On June 15, 2007, America Plaza discharged effluent with a concentration of total phenolic compounds at 320 µg/L, in violation of the daily maximum effluent limitation of 120 µg/L as specified in Discharge Specification B.1. of Order No. 2000-90. 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.
  - b. The June 15, 2007 sample of the discharged effluent was the only sample taken and analyzed for total phenolic compounds during the January-June 2007 semi-annual monitoring period required by Monitoring and Reporting Program No. 2000-90. As required by Provision D.26 of Order No. 2000-90, the June 15, 2007 measurement was also used to determine compliance with the 6-

November 25, 2008

month median effluent limitation of 30 µg/L, which 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.

- c. On June 2, 2008, America Plaza discharged effluent with a concentration of total phenolic compounds at 220 µg/L, in violation of the daily maximum effluent limitation of 120 µg/L as specified in Discharge Specification B.1. of Order No. 2000-90. 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.
- d. The June 2, 2008 sample of the discharged effluent was the only sample taken and analyzed for total phenolic compounds during the January-June 2007 semi-annual monitoring period required by Monitoring and Reporting Program No. 2000-90. As required by Provision D.26 of Order No. 2000-90, the June 2, 2008 measurement was also used to determine compliance with the 6-month median effluent limitation of 30 µg/L, which 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.

### **PROPOSED CIVIL LIABILITY**

- 8. Pursuant to CWC section 13385(h), the Regional Board must impose mandatory minimum penalties in the amount of twelve thousand dollars (\$12,000) on America Plaza Owners Association. Discretionary civil liability above the mandatory minimum for effluent violations alleged in this Complaint is not recommended.

Dated this 25<sup>th</sup> day of November 2008

BY THE EXECUTIVE OFFICER



MICHAEL P. McCANN  
Assistant Executive Officer

Signed pursuant to the authority  
delegated by the Executive  
Officer to the Assistant Executive  
Officer

Attachments: (1) Table 1: Summary of Effluent Violations  
(2) Monitoring and Reporting Data Submitted by America Plaza  
Owners Association

## Attachment 1

### Summary of Effluent Violations

Summary of Effluent Violations  
Complaint No. R9-2008-0127  
One American Plaza

Violation Date	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Serious Violation <sup>i</sup>	Mandatory Minimum Penalty
6/15/2007	615203	total phenolic compounds	daily maximum	ug/L	120	320	Yes	\$3,000
6/30/2007	783976	total phenolic compounds	6-month median	ug/L	30	320	Yes	\$3,000
6/2/2008	778728	total phenolic compounds	daily maximum	ug/L	120	220	Yes	\$3,000
6/30/2008	783619	total phenolic compounds	6-month median	ug/L	30	220.0	Yes	\$3,000
<b>TOTAL MMP</b>								<b>\$12,000</b>

<sup>i</sup> CWC Section 13385(h) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

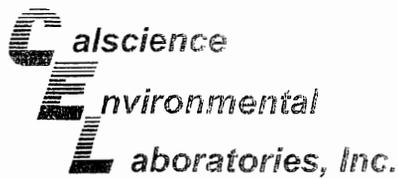
1. Total phenolic compounds are a Group II pollutant.

A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.

## Attachment 2

Monitoring and Reporting Data Submitted by America  
Plaza Owners Association

Table 3 - Water Discharge Permit Compliance, Quarterly and Semi-Annual Non-Metals Constituent Concentrations, June 2007 (Samples Collected June 11, 13, and 15, 2007)						
CONSTITUENT	Permit Conditions			Results		
	Daily Maximum	6-Month Median	Instantaneous Maximum	Sampling Results	Comply?	MER (LBS/Day)
TOTAL PHENOLICS (µg/l)	120.0	30.0	300.0	320	NO***	1.92E-01
CHLORINATED PHENOLICS (µg/l)	4.0	1.0	10.0	ND	YES	0
BASE/NEUTRAL ORGANIC COMPOUNDS (µg/l)	----	----	10.0	ND*	YES	0
MTBE (µg/L)	----	----	----	ND	----	0
REMAINING VOLATILE ORGANIC COMPOUNDS (µg/L)	----	----	----	ND	----	0
TPH (mg/L)	----	----	0.5	ND	YES	0
CYANIDE (µg/L)	1.0	----	1.0	ND*	YES*	0
ACUTE TOXICITY (Tu <sub>a</sub> )	----	----	0.59	0.35	YES	NA
CHRONIC TOXICITY (Tu <sub>c</sub> )						
Topsmelt				1.0	YES	
Kelp	1.0	----	----	<1.33**	YES	NA
Echinoderm				<1.33**	YES	
ND = Less than the Laboratory Reporting Limit * = Laboratory Reporting Limit is greater than the instantaneous maximum for one or more constituents. ** = Hypersaline brine addition required for plant and invertebrate testing. No chronic adverse affects observable at 100 percent concentration equivalent. *** = Anomalous result for total phenolics. See Discussion of Results. ---- = Concentration not defined in the permit MER = Mass Emission Rates N/A = Not applicable LBS/day = Pounds per day						



## Analytical Report

Construction Testing & Engineering  
1441 Montiel Road  
Escondido, CA 92026-1111

Date Received: 06/11/07

Work Order No: 07-06-0767

Project: American Plaza / 10-0245

Page 1 of 1

Client Sample Number	Lab Sample Number	Date Collected	Matrix
6-07-Effluent	07-06-0767-1	06/11/07	Aqueous

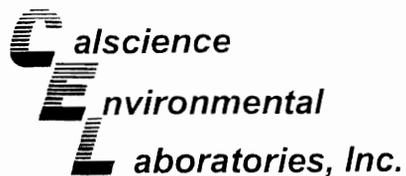
Parameter	Result	RL	DF	Qual	Units	Date Prepared	Date Analyzed	Method
Phenolics, Total	0.32	0.10	1		mg/L	06/12/07	06/12/07	EPA 420.1
Solids, Total Suspended	7.6	1.0	1		mg/L	N/A	06/12/07	SM 2540 D
Solids, Settleable	ND	0.10	1		mL/L/hr	N/A	06/12/07	SM 2540 F
pH	7.90	0.01	1		pH units	N/A	06/11/07	SM 4500 H+ B
Sulfide, Total	ND	0.050	1		mg/L	06/12/07	06/12/07	SM 4500 S2 - D
Cyanide, Total	ND	0.050	1		mg/L	06/12/07	06/13/07	SM 4500-CN E

Method Blank				N/A	Aqueous			
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Parameter	Result	RL	DF	Qual	Units	Date Prepared	Date Analyzed	Method
Phenolics, Total	ND	0.10	1		mg/L	06/12/07	06/12/07	EPA 420.1
Solids, Total Suspended	ND	1.0	1		mg/L	N/A	06/12/07	SM 2540 D
Sulfide, Total	ND	0.050	1		mg/L	06/12/07	06/12/07	SM 4500 S2 - D
Cyanide, Total	ND	0.050	1		mg/L	06/12/07	06/13/07	SM 4500-CN E

RL - Reporting Limit      DF - Dilution Factor      Qual - Qualifiers

Table 3 - Water Discharge Permit Compliance, Quarterly and Semi-Annual Non-Metals Constituent Concentrations, June 2008 (Samples Collected June 2, 4, and 6, 2008)						
CONSTITUENT	Permit Conditions			Results		
	Daily Maximum	6-Month Median	Instantaneous Maximum	Sampling Results	Comply?	MER (LBS/Day)
TOTAL PHENOLICS (µg/l)	120.0	30.0	300.0	220	YES	1.32E-01
CHLORINATED PHENOLICS (µg/l)	4.0	1.0	10.0	ND	YES	0
BASE/NEUTRAL ORGANIC COMPOUNDS (µg/l)	----	----	10.0	ND*	YES	0
MTBE (µg/L)	----	----	----	ND	----	0
REMAINING VOLATILE ORGANIC COMPOUNDS (µg/L)	----	----	----	ND	----	0
TPH (mg/L)	----	----	0.5	ND	YES	0
CYANIDE (µg/L)	1.0	----	1.0	ND*	YES*	0
ACUTE TOXICITY (Tu <sub>a</sub> )	----	----	0.59	0.0	YES	NA
CHRONIC TOXICITY (Tu <sub>c</sub> ) Topsmelt Kelp Echinoderm	1.0	----	----	1.0 <1.61** 8.0***	YES YES NO	NA
ND = Less than the Laboratory Reporting Limit * = Laboratory Reporting Limit is greater than the instantaneous maximum for one or more constituents. ** = Hypersaline brine addition required for plant and invertebrate testing. No chronic adverse affects observable at 100 percent concentration equivalent for kelp. *** = Invertebrate retesting conducted in July as required by permit see Discussion of Results ---- = Concentration not defined in the permit MER = Mass Emission Rates N/A = Not applicable LBS/day = Pounds per day						



## Analytical Report

Construction Testing & Engineering  
1441 Montiel Road  
Escondido, CA 92026-1111

Date Received: 06/02/08  
Work Order No: 08-06-0061

Project: America Plaza / 10-0245

Page 1 of 1

Client Sample Number	Lab Sample Number	Date Collected	Matrix
6-08-Effl	08-06-0061-1	06/02/08	Aqueous

Parameter	Result	RL	DF	Qual	Units	Date Prepared	Date Analyzed	Method
Phenolics, Total	0.22	0.10	1		mg/L	06/07/08	06/07/08	EPA 420.1
Solids, Total Suspended	ND	1.0	1		mg/L	N/A	06/04/08	SM 2540 D
Solids, Settleable	ND	0.10	1		mL/L/hr	N/A	06/02/08	SM 2540 F
pH	7.99	0.01	1		pH units	N/A	06/02/08	SM 4500 H+ B
Sulfide, Total	ND	0.050	1		mg/L	06/06/08	06/06/08	SM 4500 S2 - D
Cyanide, Total	ND	0.050	1		mg/L	06/06/08	06/06/08	SM 4500-CN E

Method Blank	N/A	Aqueous
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Parameter	Result	RL	DF	Qual	Units	Date Prepared	Date Analyzed	Method
Phenolics, Total	ND	0.10	1		mg/L	06/07/08	06/07/08	EPA 420.1
Solids, Total Suspended	ND	1.0	1		mg/L	N/A	06/04/08	SM 2540 D
Sulfide, Total	ND	0.050	1		mg/L	06/06/08	06/06/08	SM 4500 S2 - D
Cyanide, Total	ND	0.050	1		mg/L	06/06/08	06/06/08	SM 4500-CN E

RL - Reporting Limit , DF - Dilution Factor , Qual - Qualifiers



# California Regional Water Quality Control Board

## San Diego Region



Linda S. Adams  
Secretary for Environmental  
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger  
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

### WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Rob Jones  
America Plaza Owners Association  
600 West Broadway, Suite 920  
San Diego, California 92101

Complaint No. R9-2008-0127  
For  
Administrative Civil Liability

**\$12,000**

WDID No. 9 000000469

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

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

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

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

## NOTICE OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region  
Issuance of Administrative Civil Liability (ACL) Order  
With Mandatory Minimum Penalties against  
America Plaza Owners Association  
One America Plaza Dewatering Discharge, San Diego, California**

On November 25, 2008, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Complaint No. R9-2008-0127 to America Plaza Owners Association in the amount of \$12,000 for alleged violations of Regional Board Order No. 2000-90, NPDES No. CAG919001, *General Waste Discharge Requirements From Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. A public hearing regarding the allegations contained in Complaint No. R9-2008-0127 will be held at the Regional Board's February 11, 2009 meeting.

Written comments regarding the allegations contained in Complaint No. R9-2008-0127, and will be accepted through Monday, February 2, 2009.

The Regional Board's February 11, 2009 meeting will be held at the Regional Board's 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 Rebecca Stewart at (858) 467-2966 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