

**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).¹ The Groundwater Extraction Permit

¹ 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 Order No. 2000-90 was superseded on October 10, 2007 by Order No. R9-2007-0034.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 25th 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 ¹	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
TOTAL MMP								\$12,000

¹ CWC Section 13385(h) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

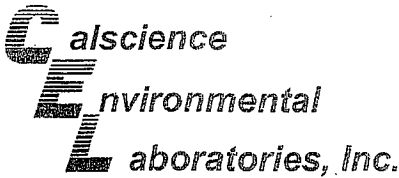
- Total phenolic compounds are a Group II pollutant.
 A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.

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 _a)	----	----	0.59	0.35	YES	NA
CHRONIC TOXICITY (Tu _c)						
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

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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

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

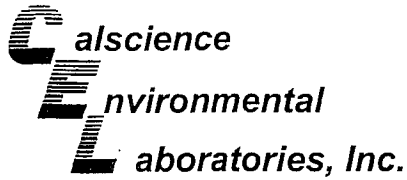
Parameter	Result	RL	DF	Qual	Units	Date Prepared	Date Analyzed	Method
Phenolics, Total	0.32	0.10	1		mg/L	06/12/07	06/12/07	EPA 420.1
Solids, Total Suspended	7.6	1.0	1		mg/L	N/A	06/12/07	SM 2540 D
Solids, Settleable	ND	0.10	1		mL/L/hr	N/A	06/12/07	SM 2540 F
pH	7.90	0.01	1		pH units	N/A	06/11/07	SM 4500 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 _a)	----	----	0.59	0.0	YES	NA
CHRONIC TOXICITY (Tu _c) 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

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Client Sample Number	Lab Sample Number	Date Collected	Matrix
6-08-Eff1	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