

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

**TENTATIVE**

**ORDER NO. R9-2008-0104**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY  
FOR  
MANDATORY MINIMUM PENALTIES  
AGAINST  
PROMENADE MALL DEVELOPMENT CORPORATION  
PROMENADE AT PACIFIC BEACH  
4110 to 4170 MISSION BOULEVARD, SAN DIEGO, CALIFORNIA  
PERMANENT GROUNDWATER DEWATERING SYSTEM  
FOR  
VIOLATIONS OF ORDER NO. 2001-96, NPDES NO. CAG919002**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), having held a public hearing on November 12, 2008, to hear evidence and comments on the allegations contained in Amended Complaint No. R9-2008-0056, dated July 17, 2008, and further amended by letter dated October 2, 2008, and deliberating on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, having provided public notice thereof and not less than thirty (30) days for public comment and on the recommendation for administrative assessment of Civil Liability for mandatory minimum penalties in the amount of \$9,000 finds as follows:

1. Promenade Mall Development Corporation (Promenade) discharges groundwater to Mission Bay via the City of San Diego's storm water conveyance system in accordance with waste discharge requirements contained in Order No. 2001-96, NPDES Permit No. CAG919002, *General Waste Discharge Requirements for Groundwater Extraction and Similar Waste Discharges from Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within the San Diego Region Except for San Diego Bay*.
2. Order No. 2001-96 established effluent limitations for chronic concentrations of nickel at 8.2 µg/L. Promenade reported violations of the nickel chronic concentration effluent limitation in January 2006 and December 2006 that are subject to Mandatory Minimum Penalties pursuant to Water Code Section 13385(h).
3. Order No. 2001-96 established an average monthly effluent limitation concentration of tributyltin at 0.005 µg/L. Promenade reported a violation of the

tributyltin monthly average effluent limitation in December 2006 which is subject to mandatory minimum penalties pursuant to Water Code Section 13385(h).

4. Promenade reported one violation of the nickel chronic concentration effluent limitation and two violations of the copper effluent limitations that occurred in December 2005. Prior to January 2006, violations of effluent limitations for discharges that occurred while regulated by NPDES permits that do not contain specific information about the point of discharge, such as this Regional Board's general extraction discharge permit, were not subject to mandatory minimum penalties. Therefore, mandatory minimum penalties do not apply to the three violations of effluent limitations for nickel and copper that occurred prior to January 2006.
5. California Water Code (CWC) section 13385 requires that a mandatory minimum penalty 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.
6. On July 17, 2008 the Regional Board issued Amended Complaint No. R9-2008-0056 to Promenade Mall Development Corporation to correct three of the reported violations. These corrections did not change the recommended mandatory minimum penalty of \$15,000.
7. Promenade Mall Development Corporation reported three violations that occurred in December 2005. Prior to January 2006, violations of effluent limitations for discharges that occurred while regulated by NPDES permits that do not contain specific information about the point of discharge, such as this Regional Board's general extraction discharge permit, were not subject to mandatory minimum penalties. On October 2, 2008 the Regional Board revised Amended Complaint No. R9-2008-0056 by removing the recommended mandatory minimum penalty for the violations reported prior to January 2006, revising the total recommended mandatory minimum penalty to \$9,000.
8. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
9. The Regional Board incurred costs of \$5,082 to prosecute the enforcement action. The costs include investigation, preparation of enforcement documents,

communicating with the Discharger and preparation of materials for public review and hearing.

**IT IS HEREBY ORDERED** that pursuant to section 13385 of the California Water Code that:

1. Civil Liability is imposed on Promenade Mall Development Corporation in the amount of \$9,000.
2. Promenade Mall Development Corporation shall provide evidence to the Regional Board of payment in the amount \$9,000 to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of adoption of this Order.
3. Fulfillment of Promenade Mall Development Corporation's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Amended Complaint No. R9-2008-0056.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on November 12, 2008.

**TENTATIVE**

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JOHN H. ROBERTUS  
Executive Officer