

ENFORCEMENT SUMMARY REPORT  
December 12, 2012

- ITEM: 8
- SUBJECT: Administrative Assessment of Civil Liability, Ariel Suites, L.P., Mandatory Minimum Penalty for violations of Order No. R9-2007-0034. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$138,000 mandatory minimum penalty recommended in Complaint No. R9-2012-0065 for violations of effluent limitations prescribed in *General Waste Discharge Requirements for Discharges from Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay, Tributaries Thereto Under Tidal Influence, and Storm Drains or Other Conveyance Systems Tributary Thereto (WDR)*, Order No. R9-2007-0034, NPDES No. CAG919001. (Tentative Order No. R9-2012-0071) (Frank Melbourn)
- PURPOSE: The San Diego Water Board will consider Ariel Suites L.P.'s waiver of a right to a hearing and settlement offer to pay the recommended liability in full. The San Diego Water Board may approve or reject the settlement offer. If the San Diego Water Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will consider assessment of civil liability.
- RECOMMENDATION(S): Adopt Tentative Administrative Civil Liability Order No. R9-2012-0071.
- DISCUSSION: Ariel Suites, L.P. (Ariel Suites) is the developer of a 19-story 224-unit apartment building located at 735 West Beech Street, San Diego, California 92101. See location map (Supporting Document No. 1). After receiving authorization pursuant to Order No. R9-2007-0034 (Permit) from the San Diego Water Board on August 8, 2011, Ariel Suites began discharging dewatered construction groundwater on February 23, 2012. Self-monitoring reports for February through July 2012 identified 47 effluent limit violations (22 Copper, 10 Nickel, 9 Total Suspended Solids [TSS], and 6 Tetrachloroethylene [aka Tetrachloroethene]). After reporting the first month's violations, Ariel Suites began work

with its treatment system contractor, BakerCorp, to trouble shoot the system and improve treatment processes; but without success. On July 19, 2012, Ariel Suites switched its treatment contractor and has since been in compliance with the Permit.

San Diego Water Board staff met with Ariel Suites representatives, reviewed monitoring reports, and inspected the site including the treatment system. San Diego Water Board staff concluded that Ariel Suites violation response was reasonable. Furthermore, staff found that treatment system selection was based upon site treatment footprint constraints and assurances from a nationally recognized treatment contractor that compliance would be met. Staff did not find evidence that the unsuccessful treatment selection was primarily based upon cost savings. Given Ariel Suites' open line of communication with San Diego Water Board staff and its diligent efforts to resolve the violations, San Diego Water Board staff is recommending the minimum penalty prescribed by the Water Code per violation (Mandatory Minimum Penalty [MMP]) in lieu of higher discretionary penalties for the violations. Ariel Suites accepted the allegations and the recommended liability in the Complaint (See Supporting Document No. 3) and submitted a signed waiver of hearing form (See Supporting Document No. 4) along with a check in the full amount of the penalty. San Diego Water Board staff deposited the check in the State Water Pollution Cleanup and Abatement Account. While Ariel Suites has tendered the full amount of the recommended liability in settlement of Administrative Civil Liability Complaint No. R9-2012-0065, it is within the Board's discretion to accept or reject the settlement offer.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS

1. Location Map
2. Tentative ACL Order No. R9-2012-0071
3. Complaint No. R9-2012-0065
4. Ariel Suites, L.P.'s Waiver of Hearing

PUBLIC NOTICE:

Public notice of the proposed settlement was posted on the San Diego Water Board website on November 6, 2012. Complaint No. R9-2012-0065 was posted on the San Diego Water Board website on October 1, 2012.