



FOLEY & LARDNER LLP

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD
June 6, 2008

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CLIENT/MATTER NUMBER
037591-0101

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VIA E-MAIL AND U.S. MAIL

Mr. Jeremy Haas
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court #100
San Diego, CA 92123

Re: Complaint No. R9-2008-0056

Dear Mr. Haas:

We have received your latest correspondence (via voice mail and email) regarding the above-noted complaint issued to Promenade at Pacific Beach ("Promenade"). In an effort to keep this matter moving forward, this letter provides some additional information regarding the issues raised in the complaint and in your messages.

1. No Discharge to Mission Bay: As noted in our letter dated May 29, 2008, Promenade asserts that for there to be a violation of the waste discharge requirements Order, there must first be a discharge to a water of the state. Because there were no precipitation events on or near either of the dates identified in the complaint, it is Promenade's belief that there were no discharges to a water of the state. Promenade's belief is based on the fact that the City of San Diego's low flow interceptor at Santa Clara Point is designed to divert all low flow discharges into the Municipal Separate Storm Sewer System, and away from discharge points into Mission Bay. The complaint provides no evidence to the contrary.

Indeed, the City's own Urban Runoff Management Program, Municipal Facilities Operation and Management manual (the "Manual") is in line with Promenade's understanding of the low flow interceptor system. According to the Manual, the goal of low flow diversion facilities is to **eliminate** (i.e., not just reduce) a bacterial contamination source at our local beaches. To accomplish that goal, the diversion program objectives are to intercept low dry weather flows from storm drains and divert them to the sanitary sewer system, and to intercept sewage overflows during dry weather conditions on storm drain outlets to prohibit sewage from reaching public waters. These low flow facilities are to be controlled remotely by a telemetry system known as COMNET, which allows the City to receive "alarms" notifying of rain events or sewer spills. In addition, unanticipated non-storm water discharges are to be reported to the Regional Board, and corrective action is required to be taken.

Promenade believes that the City's own Manual makes it clear that **all** low flow discharges are intended to enter the sanitary sewer system. To read the Manual otherwise provides for a built-in violation of the Manual's own terms and requirements. Promenade strongly believes that if the City

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Mr. Jeremy Haas

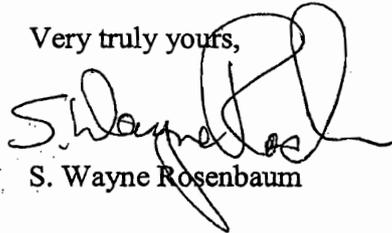
June 6, 2008

Page 2

or the Regional Board have evidence to the contrary, it is their burden alone to provide such evidence. Otherwise, Promenade believes the City's own policies and procedures should stand as evidence that Promenade has not made any discharges to a water of the state during the relevant periods, and therefore cannot be in violation of the terms of its waste discharge requirements Order.

2. Additional Mandatory Minimum Penalty. In your email dated June 2, 2008, you made reference to potential additional mandatory minimum penalty violations, and noted that we could expect a revised complaint in the coming days. Promenade respectfully reserves its right to review the additional violations and respond to the revised complaint at that time.

Very truly yours,



S. Wayne Rosenbaum

cc: Elizabeth Cason