



# 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 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
<http://www.waterboards.ca.gov/sandiego>

Supporting Document No. 3

November 17, 2010

**Certified Mail-Return Receipt Requested**  
# 7009 1410 0002 2000 0514

Healthy Times Inc.  
13200 Kirkham Way, Bldg 104  
Poway, CA 92064

**In reply refer to:**  
WDID: 9 371017603  
642570: ranson, jhaas

Mr. Prescott:

### **NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2010-0126 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST HEALTHY TIMES INC. FOR VIOLATIONS OF STATE BOARD ORDER NO. 97-03-DWQ, NPDES NO. CAS000001**

Enclosed find Complaint No. R9-2010-0126 for Administrative Civil Liability against Healthy Times Inc. (Healthy Times) in the amount of \$9,492 for violations of requirements established by the State Water Resources Control Board Order No. 97-03-DWQ, NPDES No. CAS000001. The violations addressed in the Complaint result from the failure to submit the Fiscal Years (FY) 2007-2008 and 2008-2009 annual monitoring reports and failure to pay the FY 2007-2008, 2008-2009 and 2009-2010 annual fees. California Water Code (Water Code) sections 13399.33(2)(c) and (d) require the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) to impose civil liability in an amount that is not less than one thousand dollars (\$1,000) plus staff costs for each failure to submit an annual report required by Order No. 97-03-DWQ. Water Code section 13261 provides the San Diego Water Board with discretion to impose Administrative Civil Liability for failure to pay fees.

### **Waiver of Hearing**

Pursuant to Water Code section 13323, the San Diego Water Board will hold a hearing on the Complaint no later than 90 days after it is served. Healthy Times may elect to waive its right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$9,492 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of Healthy Times' right to a public hearing, Healthy Times must submit the following by 5 P.M., Wednesday, January 12, 2010:

*California Environmental Protection Agency*

1. The enclosed waiver form signed by an authorized agent of Healthy Times; and
2. A cashier's check for the full amount of civil liability of \$9,492 made out to the State Water Resources Control Board.

### **Public Hearing**

Alternatively, if Healthy Times elects to proceed to a public hearing, a hearing is scheduled to be held at the San Diego Water Board meeting on February 9, 2011. The meeting is scheduled to convene at the San Diego Water Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA and will begin at 9 A.M. At that time, the San Diego Water Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will find procedures I am recommending that the San Diego Water Board follow in conducting the hearing. Please note that comments on the proposed procedures are due by 5 P.M., Wednesday, December 1, 2010 to the San Diego Water Board's advisory attorney, Catherine Hagan at the address indicated in the hearing procedures.

Please be advised that if Healthy Times elects to proceed to a public hearing the recommended liability may increase to recover additional staff costs.

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter. For questions pertaining to the subject matter, please contact Ryan Anson, at (858) 467-2968 or [ranson@waterboards.ca.gov](mailto:ranson@waterboards.ca.gov), or Jeremy Haas, at (858)467-2735 or [jhaas@waterboards.ca.gov](mailto:jhaas@waterboards.ca.gov).

Respectfully,



JAMES G. SMITH  
Assistant Executive officer

JGS:jh:ra

- Enclosures:
1. ACL Complaint No. R9-2010-0126
  2. Technical Analysis with Exhibits A-L
  3. ACL Fact Sheet
  4. Waiver of Public Hearing Form
  5. Hearing Procedures

cc: Via E-mail

Catherine Hagan, Sr. Staff Counsel, State Water Board, Office of Chief Counsel  
CHagan@waterboards.ca.gov

Jessica Newman, Staff Counsel, State Water Board, Office of Chief Counsel  
JMNewman@waterboards.ca.gov

David Boyers, Sr. Staff Counsel, State Water Board, Office of Enforcement  
DBoyers@waterboards.ca.gov

David Gibson, Executive officer, San Diego Water Board  
DGibson@waterboards.ca.gov

David Barker, Supervising WRC Engineer, San Diego Water Board  
DBarker@waterboards.ca.gov

Eric Becker, WRC Engineer, San Diego Water Board  
EBecker@waterboards.ca.gov

Greg Gearheart, Sr. WRC Engineer, State Water Board  
GGearheart@waterboards.ca.gov

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

**In the Matter Of:**

Healthy Times Inc.  
13200 Kirkham Way, Bldg 104  
Poway, CA 92064

WDID No. 9 371017603

**Complaint No. R9-2010-0126**

**For  
Administrative Civil Liability**

**Violations of Order No. 97-03-DWQ and  
Water Code Section 13260**

17 November 2010

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Healthy Times Inc. (Healthy Times) located at 13200 Kirkham Way, Bldg 104, Poway, CA 92064, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to Water Code section 13399.33 and may impose civil liability pursuant to Water Code sections 13261 and 13385.
2. On 6 November 2002 the San Diego Water Board processed a Notice of Intent, submitted by Healthy Times, for coverage under Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities.
3. Order No. 97-03-DWQ requires the submittal of an annual monitoring report by July 1<sup>st</sup> of each year.
4. Order No. 97-03-DWQ and Water Code section 13260 require the payment of an annual fee to retain coverage.
5. The integrity and effectiveness of the Industrial NPDES regulatory program relies upon discharger compliance accomplished by self-evaluation and self-reporting. Self-evaluation is accomplished by implementing the programs and provisions of Order No. 97-03-DWQ. Self-reporting is accomplished by the submission of an annual report as outlined in Order No. 97-03-DWQ Section B-14. The annual report includes a summary and evaluation of visual observations and sampling results, laboratory reports and an Annual Comprehensive Site Compliance Evaluation Report. Therefore, timely submittal of the required annual report is critically important for the evaluation of a facility's compliance with water quality standards.

## **ALLEGATIONS**

6. FY 2007-2008 Annual Monitoring Report: Healthy Times violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by failing to submit the Fiscal Year (FY) 2007-2008 annual monitoring report.

In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 8 September 2008 and 17 October 2008. The San Diego Water Board notified Healthy Times that the San Diego Water Board had not received the FY 2007-2008 annual report that was due 1 July 2008. The San Diego Water Board urged Healthy Times to submit its annual report and alerted Healthy Times that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties. Healthy Times has not submitted the FY 2007-2008 annual monitoring report as of 12 November 2010, 865 days past the initial due date of 1 July 2008.

7. FY 2008-2009 Annual Monitoring Report: Healthy Times violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by failing to submit the FY 2008-2009 annual monitoring report.

In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 1 December 2009 and 9 March 2010. The San Diego Water Board notified Healthy Times that the San Diego Water Board had not received the FY 2008-2009 annual report that was due 1 July 2009. The San Diego Water Board urged Healthy Times to submit its annual report and alerted Healthy Times that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties. Healthy Times has not submitted the FY 2008-2009 annual monitoring report as of 12 November 2010, 500 days past the initial due date of 1 July 2009.

8. FY 2007-2008 Annual Fee: Healthy Times violated Water Code section 13260(d)(1)(A), and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2007-2008. The fee of \$830 was invoiced by the State Water Board to Healthy Times on 12 October 2007 indicating that payment was due by 13 November 2007. The State Water Board then notified Healthy Times of the fee delinquency with a Demand for Payment letter on 15 November 2007 and a Notice of Violation on 19 December 2007. Both the Demand for Payment letter and the Notice of Violation informed Healthy Times that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.

9. FY 2008-2009 Annual Fee: Healthy Times violated Water Code section 13260(d)(1)(A), and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2008-2009. The fee of \$1,008 was invoiced by the State Water Board to Healthy Times on 31 October 2008 indicating that payment was due by 30 November 2008. The State Water Board then notified Healthy Times of the fee delinquency with a Demand for Payment letter on 12 December 2008 and a Notice of Violation on 27 January 2009. Both the Demand for Payment letter and the Notice of Violation informed Healthy Times that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.
10. FY 2009-2010 Annual Fee: Healthy Times violated Water Code section 13260(d)(1)(A), and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2009-2010. The fee of \$1,008 was invoiced by the State Water Board to Healthy Times on 29 October 2009 indicating that payment was due by 30 November 2009. The State Water Board then notified Healthy Times of the fee delinquency with a Demand for Payment letter on 8 December 2009 and a Notice of Violation on 25 February 2010. Both the Demand for Payment letter and the Notice of Violation informed Healthy Times that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.

#### **MAXIMUM LIABILITY**

11. Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to comply with reporting requirements of Order No. 97-03-DWQ is ten thousand dollars (\$10,000) for each day in which the violation occurs.
  - a. FY 2007-2008 Annual Monitoring Report: Healthy Times has violated Order No. 97-03-DWQ for 865 days (1 July 2008 to 12 November 2010). Therefore, the maximum administrative civil liability for failing to submit the FY 2007-2008 annual report to date is eight million six hundred fifty thousand dollars (\$8,650,000).
  - b. FY 2008-2009 Annual Monitoring Report: Healthy Times has violated Order No. 97-03-DWQ for 500 days (1 July 2009 to 12 November 2010). Therefore, the maximum administrative civil liability for failing to submit the FY 2008-2009 annual report is five million dollars (\$5,000,000).
12. Pursuant to Water Code section 13261(b)(1), the maximum administrative civil liability which could be imposed by the San Diego Water Board for the failure to pay a required fee is one thousand dollars (\$1,000) for each day in which the violation occurs.

- a. FY 2007-2008 Annual Fee: Healthy Times has violated Water Code section 13260 for 1096 days (13 November 2007 to 12 November 2010). The violation continues, therefore the maximum administrative civil liability for failing to pay the FY 2007-2008 annual fee to date is one million ninety six thousand dollars (\$1,096,000).
- b. FY 2008-2009 Annual Fee: Healthy Times has violated Water Code section 13260 for 712 days (30 November 2008 to 12 November 2010). The violation continues, therefore the maximum administrative civil liability for failing to pay the FY 2008-2009 annual fee to date is seven hundred twelve thousand dollars (\$712,000).
- c. FY 2009-2010 Annual Fee: Healthy Times has violated Water Code section 13260 for 347 days (30 November 2009 to 12 November 2010). The violation continues, therefore the maximum administrative civil liability for failing to pay the FY 2009-2010 annual fee to date is three hundred forty seven thousand dollars (\$347,000).

### **MINIMUM LIABILITY**

13. Water Code section 13399.33, subdivisions (c) and (d) require that the San Diego Water Board impose a mandatory penalty of not less than \$1,000 and recover associated staff costs for any person who fails to submit an annual report in accordance with Water Code section 13399.31. There is no mandatory or minimum liability for failure to pay annual fees.

### **PROPOSED LIABILITY**

14. It is recommended that the San Diego Water Board impose civil liability against Healthy Times in the amount of nine thousand four hundred ninety two dollars (\$9,492) for the violations described in this complaint. If the discharger elects to contest this matter, the recommended liability may increase to recover additional necessary staff costs
  - a. FY 2007-2008 Annual Report Violation: It is recommended that the San Diego Water Board impose civil liability against Healthy Times in the amount of one thousand three hundred dollars (\$1,300) for failure to submit the FY 2007-2008 annual report required by Order No. 97-03-DWQ. This includes the minimum penalty of \$1,000 plus staff costs of \$300.
  - b. FY 2008-2009 Annual Report Violation: It is recommended that the San Diego Water Board impose civil liability against Healthy Times in the amount of one thousand six hundred dollars (\$1,600) for failure to submit the FY 2008-2009 annual report required by Order No. 97-03-DWQ. This includes the minimum penalty of \$1,000 plus staff costs of \$600.

- c. FY 2007-2008 Annual Fee Violation: It is recommended that the San Diego Water Board impose civil liability against Healthy Times in the amount of one thousand nine hundred sixty dollars (\$1,960) for failure to pay the FY 2007-2008 annual fee. This includes staff costs to date of \$300.
- d. FY 2008-2009 Annual Fee Violation: It is recommended that the San Diego Water Board impose civil liability against Healthy Times in the amount of two thousand three hundred sixteen dollars (\$2,316) for failure to pay the FY 2008-2009 annual fee. This includes staff costs to date of \$300.
- e. FY 2009-2010 Annual Fee Violation: It is recommended that the San Diego Water Board impose civil liability against Healthy Times in the amount of two thousand three hundred sixteen dollars (\$2,316) for failure to pay the FY 2009-2010 annual fee. This includes staff costs to date of \$300.

The proposed liability for the annual fee violations are based on the penalty calculation methodology in the Enforcement Policy and consideration of the factors within Water Code section 13227. The proposed liability includes a substantial downward adjustment for "other factors as justice may require" in order to assess a reasonable civil liability for the subject violations. The penalty calculation methodology is detailed in the attached Technical Analysis for Complaint No. R9-2010-0126.

Dated this 17th day of November 2010.



JAMES G. SMITH

Assistant Executive Officer

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

Attachments: Technical Analysis for ACL Complaint No. R9-2010-0126

SMARTS: Violation ID 842759, 842760, 842761, 783259, 840410  
Enforcement ID 402599  
WDID No. 9 37I017603

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

**TECHNICAL ANALYSIS**

**Proposed Administrative Civil Liability Contained in  
Complaint No. R9-2010-0126  
Healthy Times Inc.**

**Noncompliance with**

**State Water Resources Control Board Order No. 97-03-DWQ, National  
Pollutant Discharge Elimination System General Permit No. CAS000001,  
Waste Discharge Requirements (WDRs) for Discharges of Storm Water  
Associated With Industrial Activities Excluding Construction Activities**

**And**

**California Water Code Section 13260**

**17 November 2010**

**Prepared by**

**Ryan Anson  
Compliance Assurance Unit  
San Diego Water Board**

## **A. INTRODUCTION**

This technical analysis provides a summary of factual and analytical evidence that support the findings, allegations and proposed liability in Complaint No. R9-2010-0126 for an Administrative Civil Liability (Complaint) in the amount of \$9,492 against Healthy Times, Inc. (Healthy Times) for violations of California Water Code section 13260 and State Water Resources Control Board, Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities.

The Complaint alleges the acts or failures to act that constitute violations of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

The recommended liability of \$9,492 includes a mandatory penalty of \$1,000 for the late submittal of the Fiscal Year (FY) 2007-2008 annual report, a mandatory penalty of \$1,000 for the late submittal of the FY 2008-2009 annual report, combined staff costs of \$900 associated with the late annual reports and a discretionary penalty of \$6,592 for failure to pay the FY 2007-2008, 2008-2009 and 2009-2010 annual fees. Section C of this technical analysis addresses the discretionary penalty associated with the failure to pay the annual fees. A Penalty Methodology Decisions Summary Sheet (Exhibit A) is attached to this Technical Analysis.

Healthy Times is a manufacturer and distributor of "Premium Organic Products for Babies and Toddlers." Healthy Times has a distribution facility in Poway, California and ships its products nationwide. Until March of 2010 the facility in Poway was a manufacturing and distribution facility.

On 6 November 2002 the San Diego Water Board processed a Notice of Intent (NOI) (Exhibit B) submitted by Healthy Times for coverage under Order No. 97-03-DWQ. In filing the NOI, Healthy Times agreed to timely submittals of annual reports and annual fees. The NOI was submitted by, and prepared under the direction of, Mr. Richard Prescott, President.

Healthy Times submitted a Notice of Termination (NOT) request on 24 September 2004. The NOT request was denied on 5 August 2005 with the attached letter (Exhibit C). The NOT was denied because Soap Manufacturing (SIC Code 2841) was in progress at the location, which is an activity that requires coverage under Order No. 97-03-DWQ as identified in Attachment 1 of Order No. 97-03-DWQ.

San Diego Water Board inspector, Tony Felix, inspected Healthy Times on 13 July 2010. Richard Prescott acknowledged not submitting multiple years' annual reports and informed Mr. Felix that soap manufacturing had ceased in March of 2010.

## **B. VIOLATIONS**

The ACL Complaint proposes a discretionary penalty for failing to pay the annual fees for FY 2007-2008, 2008-2009 and 2009-2010 and mandatory penalties for the failure to submit the FY 2007-2008 and 2008-2009 annual reports. All penalty and number of day calculations have an end date of November 12, 2010.

### **1. Failure to Submit FY 2007-2008 Annual Report**

Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ require the submittal of an annual monitoring report by July 1st of each year.

Healthy Times violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by failing to submit the FY 2007-2008 annual monitoring report by 1 July 2008. As of 12 November 2010 the report is 865 days late.

In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 8 September 2008 (Exhibit D) and 17 October 2008 (Exhibit E). The San Diego Water Board notified Healthy Times that the San Diego Water Board had not received the FY 2007-2008 annual report. The San Diego Water Board urged Healthy Times to submit its annual report and alerted Healthy Times that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties.

Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to submit the annual report is ten thousand dollars (\$10,000) for each day in which the violation occurs. The violation has continued for 865 days (1 July 2008 to 12 November 2010). Therefore, the maximum administrative civil liability for the non-submittal of the FY 2007-2008 annual report is eight million six hundred fifty thousand dollars (\$8,650,000).

Water Code section 13399.33, subdivisions (c) and (d) require that the San Diego Water Board impose a penalty of not less than \$1,000 and recover San Diego Water Board staff costs associated with this enforcement action for any person who fails to submit an annual report in accordance with Water Code section 13399.31. The San Diego Water Board staff costs for enforcement of this violation are \$300.

## 2. Failure to Submit FY 2008-2009 Annual Report

Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ require the submittal of an annual monitoring report by July 1st of each year.

Healthy Times violated Monitoring and Reporting Requirements in Section 14 of Order No. 97-03-DWQ by failing to submit the FY 2008-2009 annual monitoring report by 1 July 2009. As of 12 November 2010 the report is 500 days late.

In accordance with Water Code section 13399.31, the San Diego Water Board issued Notices of Violation dated 1 December 2009 (Exhibit F) and 9 March 2010 (Exhibit G). The San Diego Water Board notified Healthy Times that the San Diego Water Board had not received the FY 2008-2009 annual report that was due 1 July 2009. The San Diego Water Board urged Healthy Times to submit its annual report and alerted Healthy Times that continued failure to submit the report would trigger an administrative civil liability complaint assessing monetary penalties.

Pursuant to Water Code section 13385, the maximum administrative civil liability which could be imposed by the San Diego Water Board for failing to submit the annual report is ten thousand dollars (\$10,000) for each day in which the violation occurs. The violation has continued for 500 days (1 July 2009 to 12 November 2010). Therefore, the maximum administrative civil liability for the non-submittal of the FY 2008-2009 annual report is five million dollars (\$5,000,000).

Water Code section 13399.33, subdivisions (c) and (d) require that the San Diego Water Board impose a penalty of not less than \$1,000 and recover San Diego Water Board staff costs associated with this enforcement action for any person who fails to submit an annual report in accordance with Water Code section 13399.31. The San Diego Water Board staff costs incurred for the enforcement of this violation are \$300.

## 3. Failure to Pay FY 2007-2008 Annual Fee

In 2007, Order No. 97-03-DWQ required the payment of an \$830 annual fee. Water Code section 13260(d)(1)(A) requires the payment of an annual fee if required by an applicable order.

Healthy Times violated Water Code section 13260(d)(1)(A), and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2007-2008. The fee of \$830 was invoiced by the State Water Board to Healthy Times on 12 October 2007 indicating that payment was due by 13 November 2007. The State Water Board then notified Healthy Times of the fee delinquency with a Demand for Payment letter on 15 November 2007 (Exhibit H) and a Notice of Violation on 19 December 2007 (Exhibit I). Both the Demand for Payment letter and the Notice of Violation informed Healthy Times that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.

The payment was initially due on 13 November 2007 and as of 12 November 2010 the fee has not been submitted. Therefore the days of violation are 1096 and will continue until the fee is paid.

#### 4. Failure to Pay FY 2008-2009 Annual Fee

Paragraph 3 and Attachment 3 of Order No. 97-03-DWQ require the payment of a \$1,008 annual fee. Water Code section 13260(d)(1)(A) requires the payment of an annual fee if required by an applicable order.

Healthy Times violated Water Code section 13260(d)(1)(A), and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2008-2009. The fee of \$1,008 was invoiced by the State Water Board to Healthy Times on 31 October 2008 indicating that payment was due by 30 November 2008. The State Water Board then notified Healthy Times of the fee delinquency with a Demand for Payment letter on 12 December 2008 (Exhibit J) and a Notice of Violation on 27 January 2009 (Exhibit K). Both the Demand for Payment letter and the Notice of Violation informed Healthy Times that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.

The payment was initially due on 30 November 2008 and as of 12 November 2010 the fee has not been submitted. Therefore the days of violation are 712 and will continue until the fee is paid.

#### 5. Failure to Pay FY 2009-2010 Annual Fee

Paragraph 3 and Attachment 3 of Order No. 97-03-DWQ require the payment of a \$1,008 annual fee. Water Code section 13260(d)(1)(A) requires the payment of an annual fee if required by an applicable order.

Healthy Times violated Water Code section 13260(d)(1)(A), and Paragraph 3 and Attachment 3 of Order No. 97-03 by failing to pay the annual permit fee for coverage under Order No. 97-03-DWQ for FY 2009-2010. The fee of \$1,008 was invoiced by the State Water Board to Healthy Times on 29 October 2009 indicating that payment was due by 30 November 2009. The State Water Board then notified Healthy Times of the fee delinquency with a Demand for Payment letter on 8 December 2009 (Exhibit L) and a Notice of Violation on 25 February 2010 (Exhibit M). Both the Demand for Payment letter and the Notice of Violation informed Healthy Times that failing to pay the fee could result in imposition of administrative civil liability of up to \$1,000 per day of violation.

The payment was initially due on 30 November 2009 and as of 12 November 2010 the fee has not been submitted. Therefore the days of violation are 347 and will continue until the fee is paid.

### **C. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY**

#### **Failure to Submit Annual Reports**

The proposed liability for the violation of failing to submit each annual report is the mandatory penalty of \$1,000 plus staff costs required by Water Code section 13399.33. No discretionary penalty pursuant to section 13385 is proposed.

#### **Failure to Pay Annual Fees**

Pursuant to Water Code section 13261(b)(1), civil liability for failing to pay a required annual fee "may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."

Water Code section 13327 requires the San Diego Water Board to consider several factors when determining the amount of civil liability to impose under Water Code section 13261. These factors include: "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require."

## Water Quality Enforcement Policy

The 2009 State Water Resources Control Board Water Quality Enforcement Policy, Section VI, provides a penalty calculation methodology for Regional Water Boards to use in administrative civil liability cases. The penalty calculation methodology enables the water boards to fairly and consistently implement liability provisions of the Water Code for maximum enforcement impact to address, correct, and deter water quality violations. The penalty calculation methodology provides a consistent approach and analysis of factors to determine liability based on the applicable Water Code section.

The Enforcement Policy suggests that the penalty calculation methodology apply to discretionary penalties subject to consideration of the factors in Water Code section 13227 or 13385, but not mandatory penalties such as those required by Water Code section 13399.33. Since the prosecution team is proposing a mandatory penalty for the late annual report violation, the following analysis only applies the methodology to the violations of failing to pay the annual fees.

### 1. Step 1 - Potential for Harm for Discharge Violations

The failure to pay annual fees is a "non-discharge violation." Therefore this step does not apply.

### 2. Step 2 – Assessments for Discharge Violations

The failure to pay annual fees is a "non-discharge violation." Therefore this step does not apply.

### 3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the San Diego Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

Potential for Harm is determined to be minor because the failure to pay annual fees presents no direct threat to beneficial uses and does only minor harm to the regulatory program. The Extent of Deviation from applicable requirements was determined to be major because no portion of the annual fee was submitted.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of minor and an Extent of Deviation of major results in a factor of **0.3**.

To calculate the Initial Base Liability the total number of days in violation are needed.

$$\begin{aligned} \text{FY 08 Fee days} + \text{FY 09 Fee days} + \text{FY 10 Fee days} &= \text{Total Days in Violation} \\ 1,096 \text{ days} + 712 \text{ days} + 347 \text{ days} &= 2,155 \text{ days} \end{aligned}$$

As a result, the Initial Base Liability for failing to pay the annual fee is:

$$\begin{aligned} \text{Initial Base Liability} &= \text{Per Day Factor} \times \text{Total Days} \times \text{Statutory Maximum} \\ \text{Initial Base Liability} &= (0.3) \times (2,155 \text{ days of violation}) \times (\$1,000) = \$646,500 \end{aligned}$$

#### 4. Step 4 – Adjustment Factors

The Enforcement Policy describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

##### a. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.5 has been selected for each violation.

Healthy Times verified its understanding of, and commitment to, the annual fee requirement in Order No. 97-03-DWQ when the Notice of Intent was filed. In addition, the State Water Board notified Healthy Times that the annual fee was late with a delinquent notice and notice of violation in each of three consecutive years.

The continued failure to pay the annual fees is negligent behavior. Therefore, an adjustment for culpability factor of **1.5** is appropriate.

##### b. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation.

c. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this.

A multiplier of **1.0** is proposed for the FY 2007-2008 violation because this is the first violation being considered. A multiplier of **1.1** is proposed for the FY 2008-2009 violation to reflect continuing noncompliance. A multiplier of **1.2** is proposed for the FY 2009-2010 violation to reflect continuing noncompliance.

d. Adjustment for Multiple Violations Resulting from the Same Incident

The Enforcement Policy provides that for situations not addressed by statute, a single base liability amount can also be assessed for multiple violations resulting from the same incident at the discretion of the water boards under certain, specific circumstances. Except where statutorily required, however, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Failure to pay the annual fee violates both Order No. 97-03-DWQ and Water Code section 13260. Both violations will be grouped and considered as a base liability under Water Code section 13261, rather than section 13385 because the plain language of section 13261 indicates the legislative intent for it to be used when considering administrative civil liability for failing to pay annual fees.

e. Adjustment for Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the San Diego Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

FY 2007-2008 annual fee: The failure to pay the FY 2007-2008 annual fee has continued for 1096 days since 13 November 2007.

The continuance of the violation is not causing daily detrimental impacts to the environment; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for days 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 660, 690, 720, 750, 780, 810, 840, 870, 900, 930, 960, 990, 1020, 1050 and 1080 of violation. This results in the consideration of **42** days in violation.

FY 2008-2009 annual fee: The failure to pay the FY 2008-2009 annual fee has continued for 712 days since 30 November 2008.

The continuance of the violation is not causing daily detrimental impacts to the environment; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for days 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 660 and 690 of violation. This results in the consideration of **29** days in violation.

FY 2009-2010 annual fee: The failure to pay the FY 2009-2010 annual fee has continued for 347 days since 30 November 2009.

The continuance of the violation is not causing daily detrimental impacts to the environment; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for days 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300 and 330 of violation. This results in the consideration of **17** days in violation.

**5. Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability amount is determined by adding the initial liability amounts (from Steps 1-3) for each applicable violation and applying the adjustment factors from Step 4. Accordingly, the Total Base Liability Amount for failing to pay the annual fees is calculated as follows:

$$(\text{Statutory Maximum}) \times (\text{Per Day Factor}) \times (\text{Culpability Adjustment}) \times (\text{History of Violations}) \times (\text{Multiple Day Adjustment}) = (\text{Total Base Liability Amount})$$

**Table 1: Total Base Liability Amount**

Violations	Statutory Maximum	Per Day Factor	Culpability Adjustment	History of Violations	Multiple Day Adjustment	Total Base Liability Amount
Failure to pay FY 2007-2008 Annual Fee	\$1,000	0.3	1.5	1	42	\$18,900
Failure to pay FY 2008-2009 Annual Fee	\$1,000	0.3	1.5	1.1	29	\$14,355
Failure to pay FY 2009-2010 Annual Fee	\$1,000	0.3	1.5	1.2	17	\$9,180
					Total	\$42,435

#### 6. Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the San Diego Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward.

The San Diego Water Board Prosecution Team has sufficient information to suggest that Healthy Times has the ability to pay the Total Base Liability Amount. Healthy Times is an active business and, according to its website (healthytimes.com), Healthy Times has been a manufacturer and distributor of "Premium Organic Products for babies and Toddlers" since 1980. Healthy Times has a distribution facility in Poway, California and ships its products nationwide.

#### 7. Step 7 – Other Factors As Justice May Require

The Enforcement Policy provides that if the San Diego Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

The prosecution staff recommends the Total Base Liability amount of \$42,435 should be adjusted downward because \$42,435 is more than fourteen times the total value of the original fees, which is disproportionate to the magnitude and effect of the violations.

The prosecution staff recommends a reduction of \$36,743 to the Total Base Liability amount, resulting in an adjusted amount of \$5,692, which is twice the value of the original fees. This amount bears a reasonable relationship to the gravity of the violations and the harm to the regulatory program resulting from the violations, and it deters similar conduct in the future.

In addition, the San Diego Water Board staff costs of \$900 associated with these violations should be added to the liability amount.

### 8. Step 8 – Economic Benefit

The Enforcement Policy directs the San Diego Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The economic benefit of each violation was estimated to be the unpaid fee of value plus a time value calculated using the USEPA Economic Benefit Calculator. The calculations of the economic benefit of each violation and the total economic benefit are presented below.

**Table 2: Economic Benefit Calculation**

<b>Violation</b>	<b>Original Fee</b>	<b>Additional Time Value</b>	<b>Total</b>
FY 08 Fee	\$830	\$94	\$924
FY 09 Fee	\$1,008	\$97	\$1,105
FY 10 Fee	\$1,008	\$11	\$1,019
Totals	\$2,846	\$202	\$3,048

Therefore the adjusted total base liability amount should be greater than \$3,048.

The adjusted total base liability amount suggested would recover the economic benefit.

### 9. Step 9 – Maximum and Minimum Liability Amounts

The Enforcement Policy directs the San Diego Water Board to determine the maximum and minimum liability amounts set forth in the applicable statutes.

Water Code 13261(b)(1) establishes that a discharger failing to pay a required fee is liable in an amount that may not exceed \$1,000 for each day of violation.

The longest continuing annual fee violation has continued for 1096 days (13 November 2007 to 12 November 2010) so the maximum liability is \$1,096,000.

There is no statutory minimum liability for failure to pay a fee. However, the enforcement policy directs the San Diego Water Board to recover, at a minimum, ten percent more than the economic benefit of \$3,048. In this case that would be three thousand three hundred fifty three dollars (\$3,353).

The proposed liability falls within the maximum and minimum liability amounts.

### 10. Step 10 – Final Liability Amount for Failure to Pay Annual Fees

The final liability amount for the failure to pay annual fees consists of the added amounts for each fee violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violations of failing to pay the annual fees was performed as follows.

$$(\text{Total Base Liability Amount}) + (\text{Staff Costs}) - (\text{Adjustment for Other Factors as Justice May Require}) = (\text{Final Liability Amount})$$

$$\text{Final Liability Amount for Failure to Pay Annual Fees} = \\ (\$42,435) + (\$900) - (\$36,743) = \$6,592$$

A Penalty Methodology Decisions Summary Sheet (Exhibit A) is attached to this Technical Analysis.

### **D. CONCLUSION**

To calculate the total recommended amount of civil liability, the liability amounts for all violations, both annual report and annual fee violations, are added together as follows.

**Table 3: Total ACL Amount Calculation**

<b>Violation</b>	<b>Penalty</b>	<b>Staff Costs</b>	<b>Total</b>
Failure to Pay FY 08 Annual Fee	\$1,660	\$300	\$1,960
Failure to Pay FY 09 Annual Fee	\$2,016	\$300	\$2,316
Failure to Pay FY 10 Annual Fee	\$2,016	\$300	\$2,316
Failure to Submit Annual Report FY 08	\$1,000	\$300	\$1,300
Failure to Submit Annual Report FY 09	\$1,000	\$600	\$1,600
Total	\$7,692	\$1,800	<b>\$9,492</b>

The final Assessment of Civil Liability amount recommended by the Prosecution Team Staff is nine thousand four hundred ninety two dollars (\$9,492).

**E. EXHIBITS**

- A Penalty Methodology Decisions Summary Sheet
- B Notice of Intent for Facility ID: 9 37I017603 (Processed 6 November 2002)
- C Notice of Termination Denial Letter - 5 August 2005
- D Notice of Violation - 8 September 2008
- E Notice of Violation - 17 October 2008
- F Notice of Violation - 1 December 2009
- G Notice of Violation - 9 March 2010
- H Demand for Payment Letter - 15 November 2007
- I Notice of Violation - 19 December 2007
- J Demand for Payment Letter - 12 December 2008
- K Notice of Violation - 27 January 2008
- L Demand for Payment Letter - 8 December 2009
- M Notice of Violation - 25 February 2010

**Step 1: Potential Harm Factor = n/a for non-discharge violations**

**Step 2: Assessments for Discharge Violations = n/a for non-discharge violations**

**Step 3: Per Day Assessments for Non-Discharge Violations**

Violations	Per Day Factor			Days of Violation	Statutory Maximum Per Day [sec. 13350]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor		
Failure to pay FY 2007-2008 Annual Fee	minor	major	0.3	1096	\$1,000
Failure to pay FY 2008-2009 Annual Fee	minor	major	0.3	712	\$1,000
Failure to pay FY 2009-2010 Annual Fee	minor	major	0.3	347	\$1,000

**(Per Day Factor) x (Total Days of Violation) x (Statutory Maximum) = Initial Liability From Steps 1 - 3**  
 $(0.3) \times (2,155) \times (\$1,000) = \$646,500$

**Step 4: Adjustments**

Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Failure to pay FY 2007-2008 Annual Fee	1.5	n/a	1	n/a	41
Failure to pay FY 2008-2009 Annual Fee	1.5	n/a	1.1	n/a	28
Failure to pay FY 2009-2010 Annual Fee	1.5	n/a	1.2	n/a	16

**Step 5: Total Base Liability Amount**

**(Statutory Maximum) x (Per Day Factor) x (Culpability Adjustment) x (History of Violations) x Multiple Day Adjustment = (Total Base Liability Amount)**

Violations	Statutory Maximum	Per Day Factor	Culpability Adjustment	History of Violations	Multiple Day Adjustment	Total Base Liability Amount
Failure to pay FY 2007-2008 Annual Fee	\$1,000	0.3	1.5	1	42	\$18,900
Failure to pay FY 2008-2009 Annual Fee	\$1,000	0.3	1.5	1.1	29	\$14,355
Failure to pay FY 2009-2010 Annual Fee	\$1,000	0.3	1.5	1.2	17	\$9,180
<b>Total</b>						<b>\$42,435</b>

**Step 6: Ability to Pay/Continue in Business**  
 [Yes, No, Partly, Unknown]  
 Yes

**Step 8: Economic Benefit**  
 \$3,048

**Step 7: Other Factors as Justice May Require**

Costs of Investigation and Enforcement	Other
\$900	-\$36,743

**Step 9**

Minimum Liability Amount	Maximum Liability Amount
\$3,353	\$1,096,000

**Step 10: Final Liability Amount for Annual Fee Violations**  
 (total base liability) + (other factors)  
 $(\$42,435) + (\$900) - (\$36,743) = \$6,592$

Exhibit B

State of California  
State Water Resources Control Board

NOTICE OF INTENT

017603

TO COMPLY WITH THE TERMS OF THE  
GENERAL PERMIT TO DISCHARGE STORM WATER  
ASSOCIATED WITH INDUSTRIAL ACTIVITY (WQ ORDER No. 97-03-DWQ)  
(Excluding Construction Activities)

SECTION I. NOI STATUS (please check only one box)

A  New Permittee      B.  Change of Information    WDID # \_\_\_\_\_

SECTION II. FACILITY OPERATOR INFORMATION (See instructions)

A NAME: HEALTHY TIMES Phone: 858-513-1550

Mailing Address: 13200 KIRKHAM WAY 1104

City: POWAY State: CA Zip Code: 92064

Contact Person: RICHARD J. PRESCOTT

B OPERATOR TYPE (check one) 1.  Private    2.  City    3.  County    4.  State    5.  Federal    6.  Special District    7.  Gov. Combo

SECTION III. FACILITY SITE INFORMATION

Fax: 858-513-1533

A FACILITY NAME: HEALTHY TIMES Phone: 858-513-1550

Facility Location: 13200 KIRKHAM WAY 1104 County: SAN DIEGO

City: POWAY State: CA Zip Code: 92064

B MAILING ADDRESS: 13200 KIRKHAM WAY 1104

City: POWAY State: CA Zip Code: 92064

Contact Person: RICHARD J. PRESCOTT

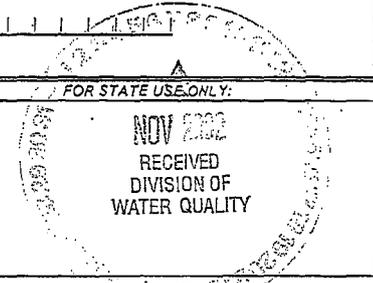
C FACILITY INFORMATION (check one)      Percent of Site Impervious (including rooftops)

Total Size of Site: <u>2500</u>	Acre: <input type="checkbox"/>	Sq. Ft.: <input checked="" type="checkbox"/>	<u>100</u> %
---------------------------------	--------------------------------	--	--------------

D SIC CODE(S) OF REGULATED ACTIVITY:      E. REGULATED ACTIVITY (describe each SIC code):

1. <u>5141</u>	<u>GROICIFBY ADMINISTRATION</u>
2. <u>2841 manufacturers</u>	<u>SOAP MANUFACTURE</u>
3. _____	_____

WDID: 9 37S017603  
Processing Date: November 06, 2002  
Fee Paid: \$250.00



**SECTION IV. ADDRESS FOR CORRESPONDENCE**

Facility Operator Mailing Address (Section II)       Facility Mailing Address (Section III, B.)       Both

**SECTION V. BILLING ADDRESS INFORMATION**

SEND BILL TO       Facility Operator Mailing Address (Section II)       Facility Mailing Address (Section III, B.)       Other (enter information below)

Name \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person \_\_\_\_\_

**SECTION VI. RECEIVING WATER INFORMATION**

Your facility's storm water discharges flow: (check one)       Directly      OR       Indirectly to waters of the United States:

Name of receiving water: BEELER CREEK  
(river, lake, stream, ocean, etc.)

**SECTION VII. IMPLEMENTATION OF PERMIT REQUIREMENTS**

**A STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (check one)**  
 A SWPPP has been prepared for this facility and is available for review.  
 A SWPPP will be prepared and ready for review by (enter date): 5/1/03

**B MONITORING PROGRAM (check one)**  
 A Monitoring Program has been prepared for this facility and is available for review.  
 A Monitoring Program will be prepared and ready for review by (enter date): 5/1/03

**C PERMIT COMPLIANCE RESPONSIBILITY**  
 Has a person been assigned responsibility for:

1 Inspecting the facility throughout the year to identify any potential pollution problems? .....	<u>NA</u>	YES	NO
2 Collecting storm water samples and having them analyzed? .....	<u>NA</u>	YES	NO
3 Preparing and submitting an annual report by July 1 of each year? .....	<u>NA</u>	YES	NO
4 Eliminating discharges other than storm water (such as equipment or vehicle wash-water) into the storm drain? .....	<u>NA</u>	YES	NO

**SECTION VIII. REGULATORY STATUS (Go to Section IX if not applicable)**

A WASTE DISCHARGE REQUIREMENT ORDER NUMBER: \_\_\_\_\_ B. NPDES PERMIT CA \_\_\_\_\_

**SECTION IX. SITE MAP**

I HAVE ENCLOSED A SITE MAP      YES       A new NOI submitted without a site map will be rejected.

**SECTION X. CERTIFICATION**

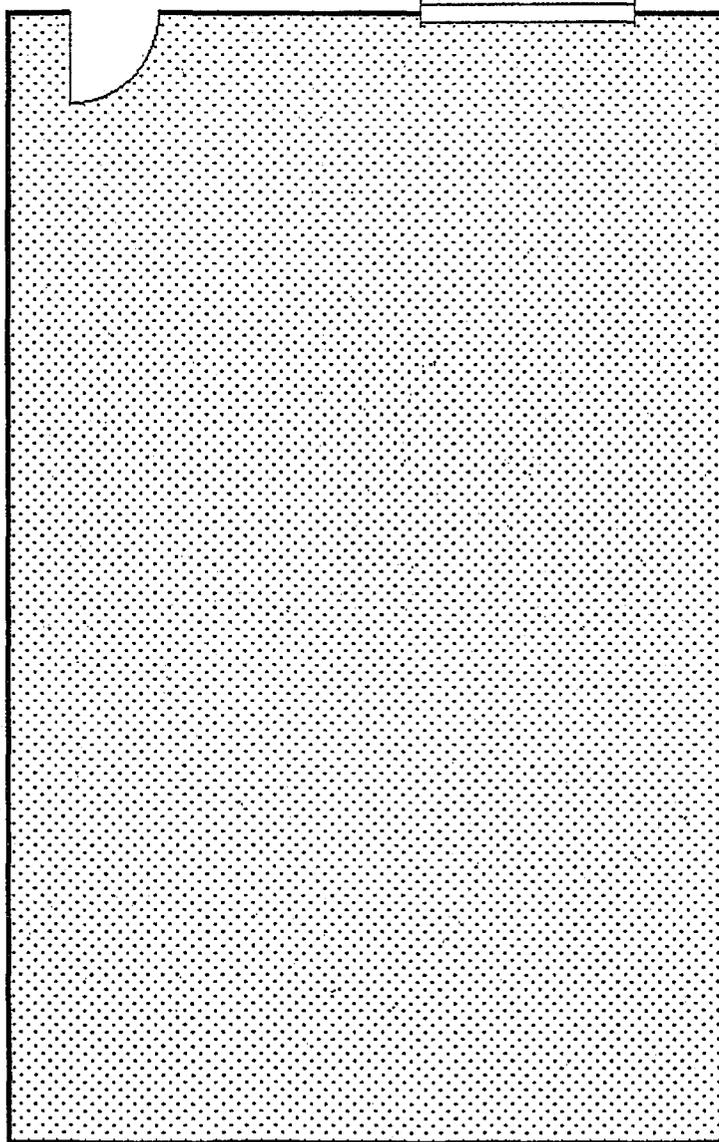
I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan, will be complied with.

Printed Name: Richard J. Prescott  
 Signature: \_\_\_\_\_ Date: 11/1/02  
 Title: \_\_\_\_\_

**BUILDING PLOT PLAN**

RE: HEALTHY TIMES

AAC Job No. AC98003



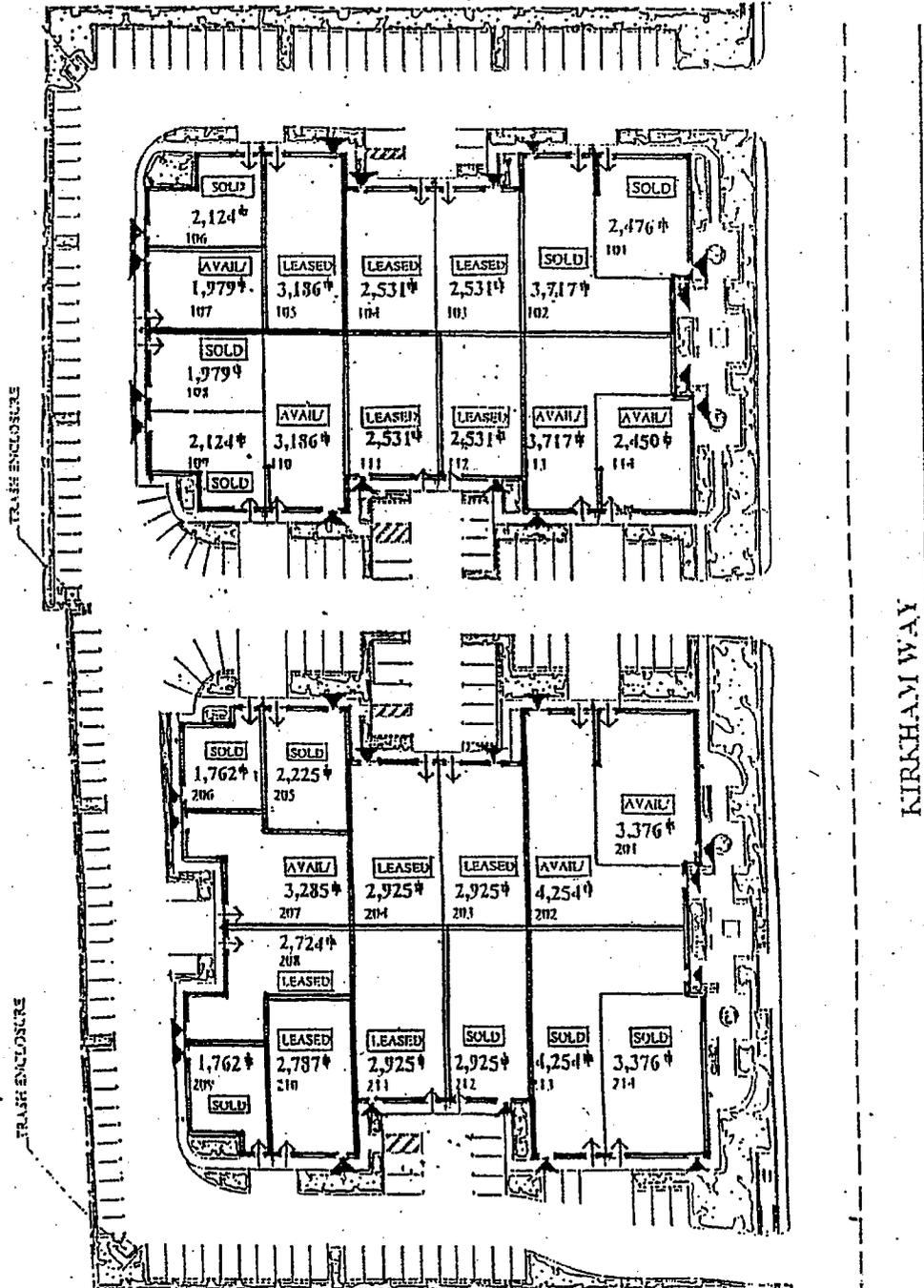
63'

40'

PROJECT PLAN

RE: HEALTHY TIMES

AAC Job No. AC98003

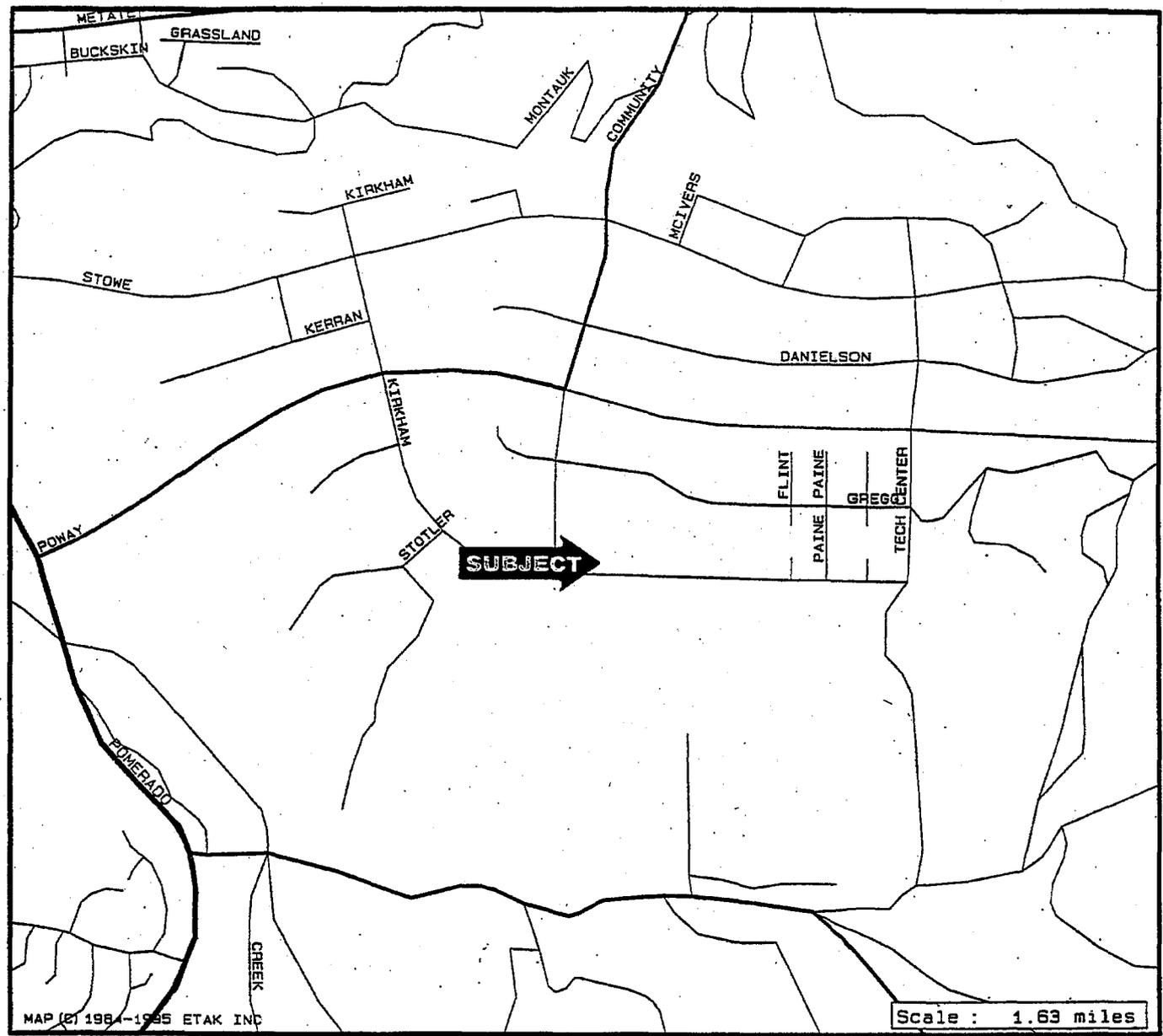




LOCATION MAP

RE: HEALTHY TIMES

AAC Job No. AC98003

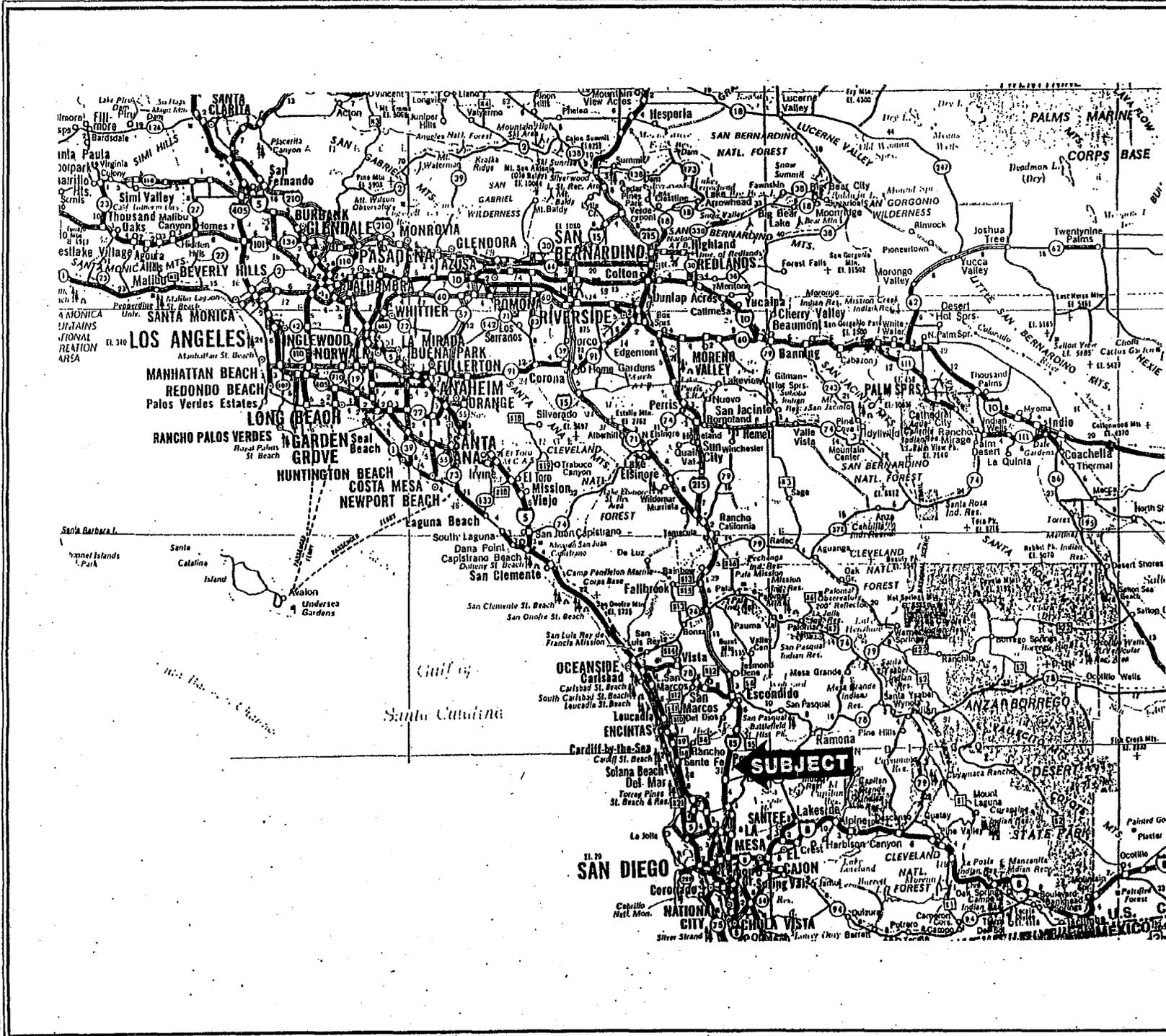


MAP © 1984-1995 ETAK INC

Scale : 1.63 miles

REGIONAL LOCATION MAP

MATA APPRAISAL COMPANY



MCS Richardson, TX 75081 (214) 698-7783

MCS Form US8



# California Regional Water Quality Control Board San Diego Region



Alan C. Lloyd, Ph.D.  
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)

August 5, 2005

in reply refer to:  
IC: 10-017603

Richard Prescott  
Healthy Times  
13200 Kirkham Way # 104.  
Poway, CA 92064

Dear Mr. Prescott:

**SUBJECT: DENIAL OF TERMINATION UNDER INDUSTRIAL STORM WATER  
PERMIT ORDER NO. 97-03-DWQ**

The Regional Board has completed its review of the Notice of Termination submitted for 13200 Kirkham Way # 104, Poway, WDID No. 9 37S017603. Based on the information you submitted we are recommending the State Water Resources Control Board not terminate your enrollment under Order No. 97-03-DWQ, NPDES General Permit For Storm Water Discharges Associated With Industrial Activity. Enclosed is a copy of the Notice of Termination (NOT) indicating that Regional Board staff has not approved the NOT. Please note, your termination was not recommended due to mandatory SIC code 2841.

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 Ms. Whitney Ghoram via e-mail at WGhoram@waterboards.ca.gov or by phone at (858) 467-2967 if you have any questions regarding the NOT.

Respectfully,

*Brian D. Kelley*  
BRIAN KELLEY  
Senior Water Resource Control Engineer

Enclosure: NOT Form

File: ~~10-017603.02~~ 10-0017603.02.n

S:\Industrial Compliance\NOTs\NOT37S017603 Denial.doc

Exhibit D

RF



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region



Arnold Schwarzenegger  
Governor

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

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

September 8, 2008

In reply refer to:  
**CIWQS Place ID: 229938**  
**Order Regulatory Measure ID: 218852**  
**Unit Initials: PPeuron**

Healthy Times  
13200 Kirkham Way Bldg 104  
Poway, CA 92064

**Subject: Notice of Violation: NPDES No. CAS000001: Order No. 97-03-DWQ:  
Discharger Name: WDID 9 371017603: Failure to Submit 2007-2008  
Industrial Storm Water Annual Report**

**Facility: Healthy Times  
13200 Kirkham Way Bldg 104  
Poway, CA 92064**

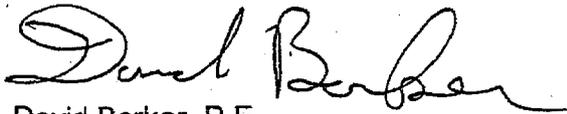
## YOU ARE HEREBY NOTIFIED THAT:

You are in violation of the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ (Order) for failure to submit the 2007-2008 Annual Report. The Annual Report was due to the California Regional Water Quality Control Board, San Diego Region (Regional Board) by July 1, 2008 as required by Section B.14 of the Order.

Pursuant to California Water Code (CWC) Sections 13399.33 and 13385, your noncompliance for failure to submit the Annual Report subjects you to possible enforcement action by the Regional Board. Civil liability could range from a minimum of \$1,000 and up to \$10,000 a day for each day of violation, or up to \$25,000 a day if the liability is assessed by a court. You may also be subject to criminal prosecution under Section 13387 of the CWC. The number of days of violation would be counted from July 1, 2008, up to the date the 2007-2008 Annual Report is received. To minimize the potential liability assessed, please submit the Annual Report immediately.

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Pete Peuron at (858) 637-7137, or by email at PPeuron@waterboards.ca.gov. If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



David Barker, P.E.  
Supervising Water Resources Control Engineer  
Surface Water Basins Branch

DTB:esb:jme

CIWQS:

Violation ID	783259
NOV Regulatory Measure	351763



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

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 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

October 17, 2008

In reply refer to:  
**CIWQS Place ID: 229938**  
**Order Regulatory Measure ID: 218852**  
**Unit Initials: PPeuron**

Healthy Times  
13200 Kirkham Way Bldg 104  
Poway, CA 92064

**Subject: 2nd Notice of Violation: NPDES No. CAS000001: Order No. 97-03-DWQ: Healthy Times : WDID 9 37I017603 : Failure to Submit 2007-2008 Industrial Storm Water Annual Report**

**Facility: Healthy Times  
13200 Kirkham Way Bldg 104  
Poway, CA 92064**

## **YOU ARE HEREBY NOTIFIED THAT:**

On September 8, 2008, you were notified that you are in violation of the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ (Order) for failure to submit the 2007-2008 Annual Report. The Annual Report was due to the California Regional Water Quality Control Board, San Diego Region (Regional Board) by July 1, 2008 as required by Section B.14 of the Order. To date, we have not received a report or response to this notification.

Pursuant to California Water Code (CWC) Sections 13399.33 and 13385, your continued noncompliance for failure to submit the Annual Report may subject you to escalated enforcement actions by the Regional Board. Civil liability could range from a minimum of \$1,000 and up to \$10,000 a day for each day of violation, or up to \$25,000 a day if the liability is assessed by a court. You may also be subject to criminal prosecution under Section 13387 of the CWC. The number of days of violation would be counted from July 1, 2008, up to the date the 2007-2008 Annual Report is received. To minimize the potential liability assessed, please submit the Annual Report immediately.

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Pete Peuron at (858) 637-7137, or by email at PPeuron@waterboards.ca.gov. If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



David Barker, P.E.  
Supervising Water Resources Control Engineer  
Surface Water Basins Branch

DTB:esb:jme

CIWQS:

Violation ID	783259
NOV Regulatory Measure	353880



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Diego Region

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 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

CERTIFIED MAIL  
7009 1410 0002 2347 6736

In reply refer to:  
WDID# 9 371017603  
Unit Initials: Ppeuron

December 1<sup>st</sup>, 2009

Healthy Times  
13200 Kirkham Way Bldg 104  
Poway, CA 92064

**Subject: Notice of Violation No. R9-2009-0193: NPDES No. CAS000001: Order No. 97-03-DWQ: Discharger Name: WDID 9371017603: Failure to Submit 2008-2009 Industrial Storm Water Annual Report**

**Facility: Healthy Times  
13200 Kirkham Way Bldg 104  
Poway, CA 92064**

### YOU ARE HEREBY NOTIFIED THAT:

You are in violation of the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ (Order) for failure to submit the 2008-2009 Annual Report. The Annual Report was due to the California Regional Water Quality Control Board, San Diego Region (Regional Board) by July 1, 2009 as required by Section B.14 of the Order.

Pursuant to California Water Code (CWC) Sections 13399.31-33, and 13385, your failure to submit the Annual Report subjects you to possible enforcement action by the Regional Board. Civil liability could range from a minimum of \$1,000 and up to \$10,000 a day for each day of violation, or up to \$25,000 a day if the liability is assessed by a court. You may also be subject to criminal penalties under Section 13387 of the CWC. The number of days of violation would be counted from July 1, 2009, up to the date the 2008-2009 Annual Report is received. To minimize the potential liability assessed, please submit the Annual Report immediately. Mail the Annual Report to the address at the top of this page, attention Peter Peuron. As of December 4th, 2009, your report is 156 days late and your attention to this matter is needed immediately.

December 1, 2009

Healthy Times  
NOV No. R9-2009-0193

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Peter Peuron at (858) 637-7137, or by email at [Ppeuron@waterboards.ca.gov](mailto:Ppeuron@waterboards.ca.gov). If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



David Barker, P.E.  
Supervising Water Resources Control Engineer  
Surface Water Basins Branch

DTB:esb:dpp

SMARTS:

Violation ID	840410
Regulatory ID	400563

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <b>X</b> <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span></p> <p>B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span></p>
<p>1. Article Addressed to:</p> <p><i>Healthy Times</i>  <i>13200 Kirkham Way,</i>  <i>Bldg 104</i>  <i>Poway, CA 92064</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number  (Transfer from service label)</p>	<p><b>7009 1410 0002 2347 6736</b></p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™



7009 1410 0002 2347 6736

7009 1410 0002 2347 6736

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee <small>(Endorsement Required)</small>		
Restricted Delivery Fee <small>(Endorsement Required)</small>		
Total Postage & Fees	\$	

Sent To *Healthy Times*

Street, Apt. No., or PO Box No. *13200 Kirkham Way, Bld. 104*

City, State, ZIP+4® *Poway, CA 92064*

PS Form 3800 August 2005 See Reverse for Instructions



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

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 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

**CERTIFIED MAIL NO. 7009 1410 0002 2000 0071**  
(Return receipt requested)

March 9, 2010

In reply refer to:  
**SMARTS-2 App. ID: 218852**  
**NWPU: tfelix**

Richard Prescott  
Healthy Times  
13200 Kirkham Way, Bldg 104  
Poway, CA 92064

**Subject: 2nd Notice of Violation No. R9-2010-0046: Order No. 97-03-DWQ,  
NPDES No. CAS000001 to Healthy Times, WDID No. 9 371017603:  
Failure to Submit 2008-2009 Industrial Storm Water Annual Report**

**Facility: Healthy Times  
13200 Kirkham Way, Bldg. 104  
Poway, CA 92064**

**YOU ARE HEREBY NOTIFIED THAT:**

On December 1, 2009, you were notified that you are in violation of the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ (Order) for failure to submit the 2008-2009 Annual Report. The Annual Report was due to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) by July 1, 2009 as required by Section B.14 of the Order.

Pursuant to California Water Code (CWC) Sections 13399.33 and 13385, your continued noncompliance for failure to submit the Annual Report may subject you to escalated enforcement actions by the San Diego Water Board. Civil liability could range from a minimum of \$1,000 and up to \$10,000 a day for each day of violation, or up to \$25,000 a day if the liability is assessed by a court. You may also be subject to criminal prosecution under Section 13387 of the CWC. The number of days of violation would be counted from July 1, 2009, up to the date the 2008-2009 Annual Report is received. To date, we have not received a report or response to this notification and the report is 251 days late.

To minimize the potential liability assessed, please submit the Annual Report immediately. Mail the Annual Report to the address at the top of this page.

If you have any questions pertaining to the submission of the Annual Report, and or the issuance of this NOV, please contact Mr. Tony Felix at (858) 636-3134, or by email at [tony.felix@sdwrqcb.org](mailto:tony.felix@sdwrqcb.org)

March 9, 2010

TFelix@waterboards.ca.gov. If you feel you have received this NOV in error, please contact our office immediately.

Respectfully,



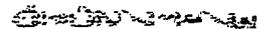
*For* David T. Barker, P.E.  
Supervising Water Resources Control Engineer  
Surface Water Basins Branch

DTB:esb:aaf

SMARTS-2:

Violation ID	841030
Enforcement ID	401204

S:\Surface Waters Basins Branch\Northern Watershed Unit\Tony\Storm Water Program\Industrial SW\2nd NOV\Healthy\_Times.doc



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span>  <b>X</b></p> <p>B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span></p>
<p>1. Article Addressed to:  <b>RICHARD PRESCOTT</b>  <b>13200 KIRKHAMWAY, BLDG 104</b>  <b>POWAY, CA 92064</b></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number          (Transfer from service label)</p>	<p><b>7009 1410 0002 2000 0071</b></p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS; FOLD AT DOTTED LINE  
**CERTIFIED MAIL™**



**7009 1410 0002 2000 0071**  
**7009 1410 0002 2000 0071**

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: **RICHARD PRESCOTT**  
 Street, Apt. No., or PO Box No. **13200 KIRKHAMWAY, BLDG 104**  
 City, State, ZIP+4 **POWAY, CA 92064**

PS Form 3800 August 2005 See Reverse for Instructions

Exhibit H



# DEMAND FOR PAYMENT

## Annual Permit Fees Required by Sections 13260 & 13269 of the California Water Code

Date: 11/15/2007  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Fiscal Year: 2007/08  
Invoice Number: SV-0712056  
Billing Period: 10/01/07 - 09/30/08  
Invoice Date: 10/12/2007  
Amount Past Due: \$ 830.00  
Region: 9  
Index Number: 002601

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

For details please refer to the original invoice

### DEMAND FOR PAYMENT OF ANNUAL STORM WATER PERMIT FEES

This is a FORMAL DEMAND FOR PAYMENT on the above delinquent invoice. Our accounting office records indicate that you have failed to pay the required annual fee. Failure to pay the required fee is considered a misdemeanor under California law (Water Code Section 13261) and could result in a civil liability assessment of up to \$1000 per day for each day that the fees go unpaid, revocation of your discharge permit, or referral to a collection agency. Please return payment in the attached envelope along with the bottom portion of the invoice. Payment must be received no later than 30 days from the date of this notice.

Please note that a transfer of ownership or relocation of a facility requires a new Storm Water Permit. If your facility is closed or project completed, please file a Notice of Termination. Forms can be accessed on our website at:

(Construction) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/constnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/constnot.doc)  
Or (Industrial) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/indusnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/indusnot.doc)

If you have any questions about this invoice, please call the  
State Water Resources Control Board at (916) 341-5247.

For payment status of your invoice, please go to the "Stormwater and Wastewater Permit Fee Invoice Information" link at  
<http://water101.waterboards.ca.gov/dwqdas/feeunit/search/DischargerInvoiceInfo.asp>

Please allow 15 business days after mailing for your payment to be posted to the database.



Please detach and return this portion with your payment

Region: 9

Fiscal Year: 2007/08

Invoice Number: SV-0712056

Index Number: 002601

(Please print the above number on check or money order)

RM #: 218852

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

SWRCB  
PO BOX 1888  
SACRAMENTO, CA 95812-1888

Amount Due: \$ 830.00  
Billing Period: 10/01/07 - 09/30/08  
Invoice Date: 10/12/2007  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064



Linda S. Adams  
Secretary for  
Environmental  
Protection

## State Water Resources Control Board

### Division of Administrative Services

1001 I Street \* Sacramento, California 95814 \* (916) 341-5247  
Mailing Address: P.O. Box 1888 \* Sacramento, California 95812-1888



Arnold  
Schwarzenegger  
Governor

December 19, 2007

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

### NOTICE OF VIOLATION FOR FACILITY ID: 9 371017603

This is a **NOTICE OF VIOLATION** for failure to pay the required annual fee issued for HEALTHY TIMES facility, located at 13200 KIRKHAM WAY BLDG 104 POWAY, CA. Failure to pay the required fee is a violation under California law (Water Code Section 13261) and could result in criminal prosecution as well as a civil liability assessment of up to \$1000 per day for each day that fees go unpaid and/or rescission of your permit. Failure to comply will make you potentially liable for the full amount of a civil liability assessment from the date of the first invoice in addition to the original invoice amount. **The Regional Board that has jurisdiction over your facility has been notified and may issue an Administrative Civil Liability complaint pursuant to Water Code Section 13261.**

If you have questions about why you are being regulated or other questions related to the above mentioned permit, please call the Regional Board or Fee Unit at the phone number on the attached invoice.

Sincerely,

David Ceccarelli  
Fee Branch Manager

# State Water Resources Control Board

## Division of Administrative Services

1001 I Street \* Sacramento, California 95814 \* (916) 341-5247  
Mailing Address: P.O. Box 1888 \* Sacramento, California 95812-1888

Date: 12/19/2007  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Fiscal Year: 2007/08  
Invoice Number: SV-0712056  
Billing Period: 10/01/07 - 09/30/08  
Invoice Date: 10/12/2007  
Amount Past Due: \$ 830.00  
Region: 9  
Index Number: 002601

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

For details please refer to the original invoice

## NOTICE OF VIOLATION OF STORMWATER REQUIREMENTS

**THIS IS A FORMAL NOTICE OF VIOLATION** on the above delinquent invoice. Our accounting office records indicate that you have failed to pay the required annual fee. Failure to pay the required fee is considered a misdemeanor under California law (Water Code Section 13261) and could result in a civil liability assessment of up to \$1000 per day for each day that fees go unpaid. The Regional Board has been notified of your delinquent account and may issue a complaint that could result in Civil Liability actions.

Please note that a transfer of ownership or relocation of a facility requires a new Storm Water Permit. If your facility is closed or project completed, please file a Notice of Termination. Forms can be accessed on our website at:

(Construction) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/constnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/constnot.doc)

Or (Industrial) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/indusnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/indusnot.doc)

If you have any questions about this invoice, please call the  
State Water Resources Control Board at (916) 341-5247.

For payment status of your invoice, please go to the "Stormwater and Wastewater Permit Fee Invoice Information" link at  
<http://water101.waterboards.ca.gov/dwqdas/feeunit/search/DischargerInvoiceInfo.asp>

Please allow 15 business days after mailing for your payment to be posted to the database.

Please detach and return this portion with your payment

Region: 9

Fiscal Year: 2007/08

Invoice Number: SV-0712056

Index Number: 002601

(Please print the above number on check or money order)

RM #: 218852

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

SWRCB  
PO BOX 1888  
SACRAMENTO, CA 95812-1888

Amount Due: \$ 830.00  
Billing Period: 10/01/07 - 09/30/08  
Invoice Date: 10/12/2007  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Exhibit J



# DEMAND FOR PAYMENT

## Annual Permit Fees Required by Sections 13260 & 13269 of the California Water Code

Date: 12/12/2008  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Fiscal Year: 2008/09  
Invoice Number: SV-0811678  
Billing Period: 10/01/08 - 09/30/09  
Invoice Date: 10/31/2008  
Amount Past Due: \$ 1,008.00  
Region: 9  
Index Number: 014921

HEALTHY TIMES  
RICHARD-PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

For details please refer to the original invoice

### DEMAND FOR PAYMENT OF ANNUAL STORM WATER PERMIT FEES

This is a FORMAL DEMAND FOR PAYMENT on the above delinquent invoice. Our accounting office records indicate that you have failed to pay the required annual fee. Failure to pay the required fee is considered a misdemeanor under California law (Water Code Section 13261) and could result in a civil liability assessment of up to \$1000 per day for each day that the fees go unpaid, revocation of your discharge permit, or referral to a collection agency. Please return payment in the attached envelope along with the bottom portion of the invoice. Payment must be received no later than 30 days from the date of this notice.

Please note that a transfer of ownership or relocation of a facility requires a new Storm Water Permit. If your facility is closed or project completed, please file a Notice of Termination. Forms can be accessed on our website at:

(Construction) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/constnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/constnot.doc)  
Or (Industrial) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/indusnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/indusnot.doc)

If you have any questions about this invoice, please call the  
State Water Resources Control Board at (916) 341-5247.

For payment status of your invoice, please go to the "Stormwater and Wastewater Permit Fee Invoice Information" link at  
<http://water101.waterboards.ca.gov/dwqdas/feeunit/search/DischargerInvoiceInfo.asp>

Please allow 15 business days after mailing for your payment to be posted to the database.



Please detach and return this portion with your payment

Region: 9

Fiscal Year: 2008/09

Invoice Number: SV-0811678

Index Number: 014921

(Please print the above number on check or money order)

RM #: 218852

SWRCB  
PO BOX 1888  
SACRAMENTO, CA 95812-1888

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Amount Due: \$ 1,008.00  
Billing Period: 10/01/08 - 09/30/09  
Invoice Date: 10/31/2008  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Exhibit K



Linda S. Adams  
Secretary for  
Environmental  
Protection

## State Water Resources Control Board

### Division of Administrative Services

1001 I Street \* Sacramento, California 95814 \* (916) 341-5247  
Mailing Address: P.O. Box 1888 \* Sacramento, California 95812-1888



Arnold  
Schwarzenegger  
Governor

January 27, 2009

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

### NOTICE OF VIOLATION FOR FACILITY ID: 9 371017603

This is a **NOTICE OF VIOLATION** for failure to pay the required annual fee issued for HEALTHY TIMES facility, located at 13200 KIRKHAM WAY BLDG 104 POWAY, CA. Failure to pay the required fee is a violation under California law (Water Code Section 13261) and could result in criminal prosecution as well as a civil liability assessment of up to \$1000 per day for each day that fees go unpaid and/or rescission of your permit. Failure to comply will make you potentially liable for the full amount of a civil liability assessment from the date of the first invoice in addition to the original invoice amount. **The Regional Board that has jurisdiction over your facility has been notified and may issue an Administrative Civil Liability complaint pursuant to Water Code Section 13261.**

If you have questions about why you are being regulated or other questions related to the above mentioned permit, please call the Regional Board or Fee Unit at the phone number on the attached invoice.

Sincerely,

David Ceccarelli  
Fee Branch Manager

# State Water Resources Control Board

## Division of Administrative Services

1001 I Street \* Sacramento, California 95814 \* (916) 341-5247  
Mailing Address: P.O. Box 1888 \* Sacramento, California 95812-1888

Date: 1/27/2009  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Fiscal Year: 2008/09  
Invoice Number: SV-0811678  
Billing Period: 10/01/08 - 09/30/09  
Invoice Date: 10/31/2008  
Amount Past Due: \$ 1,008.00  
Region: 9  
Index Number: 014921

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

For details please refer to the original invoice

## NOTICE OF VIOLATION OF STORMWATER REQUIREMENTS

**THIS IS A FORMAL NOTICE OF VIOLATION** on the above delinquent invoice. Our accounting office records indicate that you have failed to pay the required annual fee. Failure to pay the required fee is considered a misdemeanor under California law (Water Code Section 13261) and could result in a civil liability assessment of up to \$1000 per day for each day that fees go unpaid. The Regional Board has been notified of your delinquent account and may issue a complaint that could result in Civil Liability actions.

Please note that a transfer of ownership or relocation of a facility requires a new Storm Water Permit. If your facility is closed or project completed, please file a Notice of Termination. Forms can be accessed on our website at:

(Construction) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/constnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/constnot.doc)  
Or (Industrial) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/indusnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/indusnot.doc)

If you have any questions about this invoice, please call the  
State Water Resources Control Board at (916) 341-5247.

For payment status of your invoice, please go to the "Stormwater and Wastewater Permit Fee Invoice Information" link at  
<http://water101.waterboards.ca.gov/dwqdas/feeunit/search/DischargerInvoiceInfo.asp>

Please allow 15 business days after mailing for your payment to be posted to the database.

Please detach and return this portion with your payment

Region: 9

Fiscal Year: 2008/09

Invoice Number: SV-0811678

Index Number: 014921

(Please print the above number on check or money order)

RM #: 218852

SWRCB  
PO BOX 1888  
SACRAMENTO, CA 95812-1888

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Amount Due: \$ 1,008.00  
Billing Period: 10/01/08 - 09/30/09  
Invoice Date: 10/31/2008  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Exhibit L



DEMAND FOR PAYMENT

Annual Permit Fees Required by Sections 13260 & 13269 of the California Water Code

Date: 12/8/2009
Facility ID: 9 371017603
Facility Name: HEALTHY TIMES
13200 KIRKHAM WAY BLDG 104
POWAY, CA 92064

Fiscal Year: 2009/10
Invoice Number: SW-0009403
Billing Period: 10/01/09 - 09/30/10
Invoice Date: 10/29/2009
Amount Past Due: \$ 1,008.00
Region: 9
Index Number: 049119

HEALTHY TIMES
RICHARD PRESCOTT
13200 KIRKHAM WAY BLDG 104
POWAY, CA 92064

For details please refer to the original invoice

DEMAND FOR PAYMENT OF ANNUAL STORM WATER PERMIT FEES

This is a FORMAL DEMAND FOR PAYMENT on the above delinquent invoice. Our accounting office records indicate that you have failed to pay the required annual fee. Failure to pay the required fee is considered a misdemeanor under California law (Water Code Section 13261) and could result in a civil liability assessment of up to \$1000 per day for each day that the fees go unpaid, revocation of your discharge permit, or referral to a collection agency. Please return payment in the attached envelope along with the bottom portion of the invoice. Payment must be received no later than 30 days from the date of this notice.

Please note that a transfer of ownership or relocation of a facility requires a new Storm Water Permit. If your facility is closed or project completed, please file a Notice of Termination. Forms can be accessed on our website at:

(Construction) http://www.swrcb.ca.gov/water\_issues/programs/stormwater/docs/constnot.doc
Or (Industrial) http://www.swrcb.ca.gov/water\_issues/programs/stormwater/docs/indusnot.doc

If you have any questions about this invoice, please call the State Water Resources Control Board at (916) 341-5247.

For payment status of your invoice, please go to the "Stormwater and Wastewater Permit Fee Invoice Information" link at http://water101.waterboards.ca.gov/dwqdas/feeunit/search/DischargerInvoiceInfo.asp

Please allow 15 business days after mailing for your payment to be posted to the database.



Please detach and return this portion with your payment

Region: 9

Fiscal Year: 2009/10

Invoice Number: SW-0009403

Index Number: 049119

(Please print the above number on check or money order)

RM #: 218852

SWRCB
PO BOX 1888
SACRAMENTO, CA 95812-1888

HEALTHY TIMES
RICHARD PRESCOTT
13200 KIRKHAM WAY BLDG 104
POWAY, CA 92064

Amount Due: \$ 1,008.00
Billing Period: 10/01/09 - 09/30/10
Invoice Date: 10/29/2009
Facility ID: 9 371017603
Facility Name: HEALTHY TIMES
13200 KIRKHAM WAY BLDG 104
POWAY, CA 92064



Linda S. Adams  
Secretary for  
Environmental  
Protection

## State Water Resources Control Board

### Division of Administrative Services

1001 I Street \* Sacramento, California 95814 \* (916) 341-5247  
Mailing Address: P.O. Box 1888 \* Sacramento, California 95812-1888



Arnold  
Schwarzenegger  
Governor

February 25, 2010

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

### NOTICE OF VIOLATION FOR FACILITY ID: 9 371017603

This is a **NOTICE OF VIOLATION** for failure to pay the required annual fee issued for HEALTHY TIMES facility, located at 13200 KIRKHAM WAY BLDG 104 POWAY, CA. Failure to pay the required fee is a violation under California law (Water Code Section 13261) and could result in criminal prosecution as well as a civil liability assessment of up to \$1000 per day for each day that fees go unpaid and/or rescission of your permit. Failure to comply will make you potentially liable for the full amount of a civil liability assessment from the date of the first invoice in addition to the original invoice amount. **The Regional Board that has jurisdiction over your facility has been notified and may issue an Administrative Civil Liability complaint pursuant to Water Code Section 13261.**

If you have questions about why you are being regulated or other questions related to the above mentioned permit, please call the Regional Board or Fee Unit at the phone number on the attached invoice.

Sincerely,

David Ceccarelli  
Fee Branch Manager

# State Water Resources Control Board

## Division of Administrative Services

1001 I Street \* Sacramento, California 95814 \* (916) 341-5247  
Mailing Address: P.O. Box 1888 \* Sacramento, California 95812-1888

Date: 2/25/2010  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

Fiscal Year: 2009/10  
Invoice Number: SW-0009403  
Billing Period: 10/01/09 - 09/30/10  
Invoice Date: 10/29/2009  
Amount Past Due: \$ 1,008.00  
Region: 9  
Index Number: 049119

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

For details please refer to the original invoice

## NOTICE OF VIOLATION OF STORMWATER REQUIREMENTS

**THIS IS A FORMAL NOTICE OF VIOLATION** on the above delinquent invoice. Our accounting office records indicate that you have failed to pay the required annual fee. Failure to pay the required fee is considered a misdemeanor under California law (Water Code Section 13261) and could result in a civil liability assessment of up to \$1000 per day for each day that fees go unpaid. The Regional Board has been notified of your delinquent account and may issue a complaint that could result in Civil Liability actions.

Please note that a transfer of ownership or relocation of a facility requires a new Storm Water Permit. If your facility is closed or project completed, please file a Notice of Termination. Forms can be accessed on our website at:

(Construction) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/constnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/constnot.doc)  
Or (Industrial) [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/indusnot.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/indusnot.doc)

If you have any questions about this invoice, please call the  
State Water Resources Control Board at (916) 341-5247.

For payment status of your invoice, please go to the "Stormwater and Wastewater Permit Fee Invoice Information" link at  
<http://water101.waterboards.ca.gov/dwqdas/feeunit/search/DischargerInvoiceInfo.asp>

Please allow 15 business days after mailing for your payment to be posted to the database.

Please detach and return this portion with your payment

Region: 9

Fiscal Year: 2009/10

Invoice Number: SW-0009403

Index Number: 049119

(Please print the above number on check or money order)

RM #: 218852

HEALTHY TIMES  
RICHARD PRESCOTT  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

SWRCB  
PO BOX 1888  
SACRAMENTO, CA 95812-1888

Amount Due: \$ 1,008.00  
Billing Period: 10/01/09 - 09/30/10  
Invoice Date: 10/29/2009  
Facility ID: 9 371017603  
Facility Name: HEALTHY TIMES  
13200 KIRKHAM WAY BLDG 104  
POWAY, CA 92064

# Administrative Civil Liability Complaint

## Fact Sheet

The State Water Resources Control Board and the regional boards are authorized to issue a complaint for civil liabilities under California Water Code Section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint sets forth the violations that are alleged to have been committed, the Water Code provisions alleged to have been violated and it summarizes the evidence that supports the allegations, **If you receive a complaint, you must respond timely as directed. If you fail to do so, a default order may be issued against you.** The complaint is accompanied by a letter of transmittal, a waiver options form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

## Parties

The parties to a complaint proceeding are the regional board or state board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Board staff and management. Other interested persons may become involved and may become a "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Board (nine volunteer members) or before a panel. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by advisory staff, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the prosecution team nor the discharger or his/her representatives are permitted to communicate with the board members or the advisory team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

## Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing.

**Withdrawal:** may result if the discharger provides information to the Prosecution Staff that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

**Withdrawal and reissuance:** may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

**Payment and waiver:** may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

**Settlement:** results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the discharger of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Board's Enforcement Policy, which is available at the State Board's website at: [www.swrcb.ca.gov/plans\\_policies/docs/wqcp.doc](http://www.swrcb.ca.gov/plans_policies/docs/wqcp.doc).

**Hearing:** if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Options Form included in this package. The hearing will be conducted under rules set forth in the Hearing Notice. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide comments, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

## **Factors that must be considered by the Board**

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to

pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (California Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the discharger may submit information that it believes supports its position regarding the complaint. If the discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
  - IRS Form 1120 for C Corporations
  - IRS Form 1120 S for S Corporations
  - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB with a summary of the firm's tax returns that will be

compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;

3. The following information can be substituted if income tax returns cannot be made available:
  - Audited Financial Statements for last three years;
  - A list of major accounts receivable with names and amounts;
  - A list of major accounts payable with names and amounts;
  - A list of equipment acquisition cost and year purchased;
  - Ownership in other companies and percent of ownership for the last three years;
  - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
  - City/Town/Village;
  - County;
  - Municipality with enterprise fund;
  - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
  - Population;
  - Number of persons age 18 and above;
  - Number of persons age 65 and above;
  - Number of Individual below 125% of poverty level;
  - Median home value;
  - Median household income.
3. Current or most recent estimates of:
  - Population;
  - Median home value;
  - Median household income;
  - Market value of taxable property;
  - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding your financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

## **Petitions**

If the Board issues an order requiring payment, the discharger may challenge that order by filing a petition for review with the State Board pursuant to Water Code section 13320. More information on the petition process is available at [www.swrcb.ca.gov/public\\_notices/petitions](http://www.swrcb.ca.gov/public_notices/petitions).

An order of the State Board, including its ruling on a petition from a regional board order, can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the regional or state board may seek an order of the superior court under Water Code Section 13328, if necessary, in order to collect payment of the penalty amount.

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Healthy Times Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2010-0126 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **nine thousand four hundred ninety two dollars (\$9,492)** by check that references "ACL Complaint No. R9-2010-0126." made payable to the "State Water Resources Control Board". Payment must be received by the Regional Water Board by **Wednesday, 12 January, 2011** or this matter will be placed on the Regional Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer or the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

STATE WATER RESOURCES CONTROL BOARD, SAN DIEGO REGION

PROPOSED DRAFT

HEARING PROCEDURE FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R9-2010-0126  
ISSUED TO

HEALTHY TIMES INC.

SCHEDULED FOR FEBRUARY 9, 2011

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

**Background**

The Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 (Water Code) against Healthy Times Inc. (Discharger) for violation of Prohibitions contained in State Water Resources Control Board (State Water Board) Order No. 97-03-DWQ, by failing to submit the Fiscal Year (FY) 2007-2008 and 2008-2009 annual monitoring reports and failing to pay the FY 2007-2008, 2008-2009 and 2009-2010 annual fees. The Complaint proposes that administrative civil liability in the amount of \$9,492 be imposed pursuant to Water Code section 13399.33 and 13621. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board during its meeting of **February 9, 2011**, in San Diego.

**Purpose of Hearing**

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on **February 9, 2011**, will commence as announced in our San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA and the meeting will begin at 9 A.M. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego).

## Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN DECEMBER 1, 2010, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

## Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) San Diego Water Board Prosecution Staff
- (2) Healthy Times Inc.

## **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party, and not already be listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **January 5, 2011**, to Catherine Hagan, Senior Staff Counsel, at the address set forth above. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **January 12, 2011**. The parties will be notified by 5 p.m. on **January 19, 2011** as to whether the request has been granted or denied.

## **Contacts**

### **Advisory Staff:**

Catherine Hagan (George), Esq.  
Senior Staff Counsel  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353  
[CHagan@Waterboards.ca.gov](mailto:CHagan@Waterboards.ca.gov)

David W. Gibson, Executive Officer  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353

### **Prosecution Staff:**

James Smith  
Assistant Executive Officer  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353  
[JSmith@waterboards.ca.gov](mailto:JSmith@waterboards.ca.gov)

Jeremy Haas  
Senior Environmental Scientist of the Compliance Assurance Unit  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353  
[JHaas@waterboards.ca.gov](mailto:JHaas@waterboards.ca.gov)

Ryan Anson  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353  
[RAnson@waterboards.ca.gov](mailto:RAnson@waterboards.ca.gov)

David Boyers  
State Water Resources Control Board, Office of Enforcement  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814  
[DBoyers@waterboards.ca.gov](mailto:DBoyers@waterboards.ca.gov)

**Discharger:**

Richard Prescott  
Healthy Times Inc.  
13200 Kirkham Way, Bldg 104  
Poway, CA 92064

**Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff). Members of the Advisory Staff are: Catherine Hagan, Senior Staff Counsel, and David Gibson, Executive Officer. Members of the Prosecution Staff are: James Smith, Assistant Executive Officer, Jeremy Haas, Senior Environmental Scientist of the Compliance Assurance Unit, David Boyers, Senior Staff Counsel, and Ryan Anson.

**Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received (**January 26, 2011**). Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board Chair (at the hearing) upon a showing that additional time is necessary.

### **Submission of Evidence and Policy Statements**

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit an electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **January 19, 2011**.

The remaining designated parties shall submit 20 hard copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **January 26, 2011**.

In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **February 2, 2011**, prior to the hearing. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

#### **Request for Pre-hearing Conference**

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **January 26, 2011**.

#### **Evidentiary Objections**

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **February 2, 2011** to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

#### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 9174 Sky Park Court, Suite 100, San Diego, CA 92123. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego). Although the web page is updated regularly, to assure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

## **Questions**

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

### **IMPORTANT DEADLINES**

November 17, 2010	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team.
December 1, 2010	Objections due on proposed Hearing Procedure
December 8, 2010	Advisory Team issues Hearing Procedure *
January 5, 2011	Deadline for submission of request for designated party status.
January 12, 2011	Deadline for opposition to request for designated party status.
January 12, 2011	Discharger's deadline for waiving right to hearing.
January 19, 2011	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
January 19, 2011	Advisory Team issues decision on requests for designated party status, if any.
January 26, 2011	Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
January 26, 2011	All Designated Parties' deadline for submission of request for pre-hearing conference.
February 2, 2011	Deadline for submission of written non-evidentiary policy statements by interested persons.
February 2, 2011	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
February 9, 2011	Hearing

\*These draft hearing procedures become final without issuance by the Advisory Team if no objections to the procedures were timely submitted and the Advisory Team does not issue revised hearing procedures on or before this date.

---

David W. Gibson  
Executive Officer

---

DATE