

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION

100 South Main Street, Suite 1300

Los Angeles, California 90012-3702

Telephone: (213) 687-6000

Facsimile: (213) 687-8300

TDD: (213) 897-9797



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Via Overnight Mail

November 21, 2007

Attention: Ms. Susan Salinas
 Director Safety and Environmental Affairs
 Teleflex, Safety and Environmental Affairs
 4175 Guardian Street
 Simi Valley, California 93068-3882

Re: Shato Holdings, et al. v. The California Department of Transportation, et al.
 Ventura County SCC No. SC048101
 Caltrans Encroachment Permit Nos: 787-6MC-0959; 791-6SV-2038;
 and 706-6SV-2385

Dear Ms. Salinas:

The State of California, acting by and through the Department of Transportation has been served with a First Amended Complaint in the above-captioned matter. The State has filed a joint demurrer with the City of Thousand Oaks to the First Amended Complaint (Complaint). The demurrer is currently set to be heard on December 17, 2007. The Complaint alleges that the State, among others, including the City of Thousand Oaks, is responsible for damages to property arising out of a surcharge of water allegedly being deposited on a thirty-six-acre parcel of vacant land located adjacent to the intersection of Borchard Road and the U.S. 101. The Complaint contains claims for prospective damages, including injunctive relief, arising out of claims for continuing nuisance, continuing trespass and inverse condemnation.

In the course of our review of the incident, it is apparent that this claim arises from the continued discharge of water generated by the groundwater clean up project currently being undertaken by Teleflex at Wendy Drive in the adjacent area. The discharge of water generated by Teleflex and accepted into a State owned drainage ditch is governed by Caltrans Encroachment Permit Nos. 787-6MC-0959; 791-6SV-2038; and 706-6SV-2385. Initial installation of monitoring wells and an extraction system, including a discharge point, were placed on State right of way under Permit No. 787-6MC-0959 on or about June 30, 1988. Subsequent installation of monitoring wells and the current extraction system, including the current discharge point, were placed on State right of way under Permit No. 791-6SV-2038 on or about June 20, 1993. Annual monitoring of the system as currently in place is conducted annually via Permit No. 706-6SV-2835.

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Permit No. 791-6SV-2038 provides in pertinent part at paragraph 12 of the Special Provisions that Teleflex as the Permittee has agreed to, "accept the full and total responsibility of maintenance and liability for the monitoring wells, including all related appurtenances and shall hold the State of California and all of its employees harmless from any and all liability resulting from the installation or existence of said wells and appurtenances."

Additionally, Permit No. 791-6SV-2038 specifically provides that it is revocable at the sole direction of the State. Paragraph 9 of the Special Provisions states, "Upon completion of testing or when directed by CALTRANS, the permittee shall remove and abandon all wells and other related appurtenances in accordance with the Department of Water Resources standards. The State right of way shall be restored to its former condition or to a condition satisfactory to the State Permit Inspector."

Therefore, pursuant to the aforementioned permit provisions, please consider this letter a formal notice of a potential claim for damages arising out of your indemnity obligation and a request that you unconditionally stop the discharge of water onto the State right of way.

It is my understanding that the discharge of water, in any event, has been temporarily stopped since August 26, 2007, related to the ongoing soundwall construction project at Wendy Drive. It would seem feasible, therefore, that the water not be restarted until these issues can be further resolved.

I have enclosed a courtesy copy of the First Amended Complaint, as well as copies of the applicable encroachment permits.

Please contact me at your earliest convenience. I would be happy to meet with you personally regarding these issues at any time.

Thank you very much for your anticipated courtesy and cooperation.

Very truly yours,

LINDA COHEN HARREL
Deputy Chief

By: 
Julie Del Rivo
Deputy Attorney

JDR/vvg
Attachment

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