CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

IN THE MATTER OF:	)	
	)	
KDG Investments and Sampson Industrial Park, Inc.	)	**COMPLAINT NO. R8-2003-0105**
114 Pacifica, Suite 340	)	**FOR**
Irvine, CA 92618	)	**ADMINISTRATIVE CIVIL LIABILITY**
	)	
	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. KDG Investments and Sampson Industrial Park, Inc. (hereinafter discharger), is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose civil liability pursuant to Section 13385(a) of the California Water Code (Water Code).

2. A hearing concerning this complaint will be held before the Board within 90 days of the date of issuance of this complaint, unless the discharger waives the right to a hearing. Waiver procedures are specified on page 3 of the complaint. If the hearing in this matter is not waived, it will be held during the Board's regular meeting on November 21, 2003 at the Eastern Municipal Water District's Board Room in Perris, CA. The meeting begins at 9:00 a.m. You or your representative will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.

3. If the November 21, 2003 hearing is held, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. The discharger is alleged to have violated California Water Code Section 13376, which states, in pertinent part:

   "Any person discharging or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging (or proposing to discharge) dredged or fill material into the ...waters of the United States...shall file a report of the discharge..."

5. This complaint is based on the following facts:

   A) On March 28, 2003, the discharger submitted an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the proposed Sampson Industrial Park, located between the 91 Freeway and Sampson Avenue and east of McKinley Street in the city of Corona. In subsequent supplements to that application, the discharger asserted that discharges of fill to waters of the US were limited to that area adjacent to a culvert crossing under Sampson Avenue totaling less than 0.01 acres of impact.

   B) On June 12, 2003, Regional Board staff inspected the site and observed that the northerly reach of the riparian drainage, immediately east of the discharger's site and tributary to that portion of the drainage for which the discharger had submitted an application for Certification, had been excavated by heavy equipment and was in the process of being filled without having submitted a report of the discharge required by Section 13376 and without having obtained a Certification. This drainage had previously been determined to be a water of the US by the discharger's agent.

   C) Regional Board staff has assembled documentation, including rough grading plans dated January 27, 2003 and March 24, 2003, that indicates that the discharger had prior knowledge of the proposed discharge of fill as early as January 27, 2003, and failed to report it in the application for Certification.

   D) Based on discussions on June 25, 2003 and August 6, 2003, between Regional Board staff and the staff of the grading company that completed the work summarized above on behalf of the discharger, it is apparent that discharges of fill to the drainage occurred from June 5, 2003 through June 15, 2003, a period of 11 days.

6. Pursuant to Water Code Section 13385(a)(1), those who violate Water Code Section 13376 are liable civilly. As provided by Water Code Section 13385(c)(1) the Board can administratively assess a civil liability in an amount not to exceed $10,000 for each day in which the violation occurs.

7. Regional Board staff has considered staff costs in determining the amount of the civil liability. These costs have been calculated at $7,000 for the investigation, enforcement, and administration of the civil liability in this matter.

8. Regional Board staff has considered the economic benefits that the discharger has gained through the discharge of fill. Using generally accepted economic methods, Regional Board staff has estimated that the discharger has realized $1,300 in economic benefits through the delayed implementation of mitigation efforts. In addition, an estimate completed by Regional Board staff indicates that the discharger will realize a minimum of $360,000 in economic benefit as an unfair competitive advantage through the advanced receipt of revenues from the sale of properties.

9. The maximum liability, which the Board could assess administratively under Water Code Sections 13385(c)(1) for eleven days of violating Water Code Section 13376, is $110,000.

10. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. Based upon consideration of those factors, it is proposed that administrative civil liability be imposed on the discharger in the amount of $110,000.

WAIVER OF HEARING

You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it together with a check or money order made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 8, above. Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

If you have any questions regarding this complaint, please contact Gerard J. Thibeault at (909) 782-3284, Mark Adelson at (909) 782-3234, or contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

10/23/03
Date

G J Thibeault
Gerard J. Thibeault
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

IN THE MATTER OF:	)	
	)	
KDG Investments and Sampson Industrial Park, Inc.	)	**COMPLAINT NO. R8-2003-0105**
114 Pacifica, Suite 340	)	**FOR**
Irvine, CA 92618	)	**ADMINISTRATIVE CIVIL LIABILITY**
	)	
	)	

WAIVER OF HEARING

KDG Investments and Sampson Industrial Park, Inc., agrees to waive its right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0105. KDG Investments and Sampson Industrial Park, Inc. have enclosed a check in the amount of $110,000.00. KDG Investments and Sampson Industrial Park, Inc. understands that it is giving up its right to be heard and to argue against allegations made by the Executive Officer in Complaint No. R8-2003-0105, and against the imposition of, and amount of the civil liability.

_____ _____

Date

For KDG Investments and Sampson Industrial Park, Inc.

California Regional Water Quality Control Board
Santa Ana Region

ston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb8
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

October 23, 2003

Michael Hearn
KDG Investments/Sampson Industrial Park, Inc.
114 Pacifica, Suite 340
Irvine, CA 92618

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0105

Dear Mr. Hearn:

Enclosed is Complaint No. R8-2003-0105 assessing administrative civil liability for the unauthorized discharge of fill to a water of the US. The water of the US in question is a riparian drainage outside and along the eastern boundary of your property between the 91 Freeway and Sampson Avenue and east of McKinley Street, in the City of Corona. A public hearing on this matter has been scheduled for the Regional Board regular meeting on November 21, 2003, at 9:00 a.m., at the Eastern Municipal Water District's Board Room, Perris, California. An agenda and a staff report will be provided to you not later than 10 days prior to the meeting.

You may choose to waive your right to a public hearing. If you decide to do so, please complete the enclosed waiver form and submit it to this office prior to the hearing with a check for the proposed amount of civil liability ($110,000). The check should be made payable to the State Water Resources Control Board. Should you waive your right to a public hearing and pay the proposed assessment, the November 21, 2003, hearing will not be held.

If you do not wish to waive your right to a hearing, you should contact this office to schedule a pre-hearing meeting. At that time, you may submit information that may not have been previously available to staff regarding this matter. The information should address the following items:

1. Nature, circumstances, extent and gravity of the violation;
2. Your ability to pay the proposed assessment;
3. Any prior history of violation;
4. Your degree of culpability;

5. Economic benefit, or savings, resulting from the discharge; and
6. Such matters as justice may require.

If you have any questions, or wish to schedule a pre-hearing meeting, please call Mark Adelson, Chief of the Regional Basin Planning Section, at (909) 782-3234, or Adam Fischer at (909) 320-6363.

Sincerely,

Gerard J. Thibeault
Executive Officer
Santa Ana Regional Water Quality Control Board

Enclosures: Administrative Civil Liability Complaint No. R8-2003-0105
Waiver of Hearing

cc: w/enclosures

Regional Board
State Water Resources Control Board, Office of the Chief Council – Jorge Leon
State Water Resources Control Board, Division of Water Quality – Oscar Balageur
U.S. Environmental Protection Agency, Region IX, Permits Issuance Section – Eugene Bromley (W-5-1)
U.S. Environmental Protection Agency, Region IX, Clean Water Act Compliance Office
U. S. Army Corps of Engineers, Los Angeles District—Dan Swenson
California Department of Fish & Game—Jeff Brandt

APF:401 enforcement/sampson~/ACLC R8-2003-0105 Letter