

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

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

September 15, 2008

Mr. David Wick CV Ventures, LLC 5440 Morehouse Dr. Ste 4000 San Diego, CA 92121

Mr. Chris Zapata, City Manager City of National City 1243 National City Boulevard National City, CA 91950 In reply refer to: SSCGWU: L10009131789:BMcDaniel

Mr. Brad Raulston, Executive Director CDC of the City of National City 1243 National City Boulevard National City, CA 91950

Mr. Herbert L. Fox Boulevard Investors, Inc. 1726 Coltridge Lane Bonita, CA 91902

Dear Mssrs. Wick, Zapata, Fox and Raulston:

SUBJECT: FORMER DUCK POND LANDFILL – NATIONAL CITY ADDENDUM NO. 5 TO CLEANUP AND ABATEMENT ORDER (CAO) NO. 95-66

Enclosed is a copy of California Regional Water Quality Control Board, San Diego Region (Regional Board) Addendum No. 5 to Cleanup and Abatement Order (CAO) No. 95-66 concerning the former Duck Pond Landfill. Addendum No. 5 to Cleanup and Abatement Order (CAO) No. 95-66 is issued pursuant to Water Code section 13304 and removes SD Commercial, LLC, National Enterprises, Inc., and Rhode Island Acquisitions, No. 1, LLC from inclusion as responsible parties under the CAO. The CAO directs the remaining responsible parties to comply with the CAO's requirements, which remain unchanged by Addendum No. 5, and include the requirement to perform inspections and water quality monitoring to determine potential impacts to waters of the State. The Responsible Parties will be required to submit the water quality monitoring results and inspection reports to the Regional Board on a periodic basis.

As indicated in Addendum No. 5, any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board to review this action. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, California, 95812-0100, within 30 days of the date on which this action was taken. Copies of the law and regulations applicable to filing petitions will be provided upon request.

California Environmental Protection Agency



Mssrs. Wick, Zapata, Fox and Raulston - 2 - Duck Pond Landfill

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 Mr. Brian McDaniel at (858) 627-3927 or Mr. John Anderson at (858) 467-2975 of my staff if you have any questions regarding this matter.

Respectfully,

IOHN H. ROBERTUS Executive Officer

JHR:jpa:bkm

Enclosure: Addendum No. 5 to Cleanup and Abatement Order (CAO) No. 95-66

cc: Mr. John Lormon, Esq., Procopio, Cory, Hargeaves & Savitch, LLP, 530 B Street, Suite 2100 San Diego, CA 92101 (w/enclosure)

Mr. John L. Snyder, Department of Public Works, County of San Diego, 5201 Ruffin Road, Suite D, San Diego, CA 92123 (w/enclosure)

Mr. Bill Hooper, Asset Manager, National Enterprises Incorporated, 5440 Morehouse Drive, Suite 4000, San Diego, CA 92121 (w/enclosure)

Mr. James O'Day, Esq., County of San Diego, Office of County Counsel, 1600 Pacific Highway, Suite 355, San Diego, CA 92101 (w/enclosure)

Mr. David Wick, SD Commercial, LLC., 5440 Morehouse Dr., Ste 4000, San Diego, CA 92121(w/enclosure)

Mr. David Wick, National Enterprises, Inc., 5440 Morehouse Dr., Ste 4000, San Diego, CA 92121(w/enclosure)

Mr. David Wick, Rhode Island Acquisitions, No. 1, LLC., 5440 Morehouse Dr., Ste 4000, San Diego, CA 92121 (w/enclosure)

California Environmental Protection Agency



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION

ADDENDUM NO. 5 TO CLEANUP AND ABATEMENT ORDER NO 95-66 AS AMENDED BY STATE BOARD RESOLUTION WQ 96-02

BOULEVARD INVESTORS, THE CITY OF NATIONAL CITY, THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF NATIONAL CITY, CV VENTURES LLC

DUCK POND LANDFILL SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter "Regional Board"), finds that:

- On May 5, 1995, Boulevard Investors, the City of National City, the Community Development Commission of the City of National City, and the County of San Diego were determined to be "dischargers" responsible for cleanup and abatement of pollution and threatened pollution associated with discharges of solid waste at the Duck Pond Landfill in the City of National City (Cleanup and Abatement Order (CAO) No. 95-66 of the Regional Board, as amended by Order No. WQ 96-02 of the State Water Resources Control Board (State Water Board)).
- On October 15, 1999, CV Ventures, LLC purchased the property encompassing the former Duck Pond Landfill. At that time, Rhode Island Acquisition No. 1 LLC, SD Commercial, LLC, and National Enterprises, Inc. were member entities of CV Ventures, LLC. CV Ventures, LLC together with Rhode Island Acquisition No. 1, LLC, SD Commercial, LLC, and National Enterprises, Inc., were identified as dischargers subject to CAO No. 95-66 and were subsequently added to CAO No. 95-66 by Addendum No. 1 to Order No. 95-66.
- 3. On November 15, 2007, representatives of Rhode Island Acquisition No. 1, LLC, SD Commercial, LLC, and National Enterprises, Inc., requested in writing that the Regional Board remove these three entities from the list of dischargers named on CAO No. 95-66 and addenda thereto. They assert that none of these three entities have ever owned the subject property and none has ever operated or had control over discharge activities on the property. They assert that the Regional Board lacked the necessary factual and legal basis to name these entities in the first instance and that the corporate structures of these entities shield them from responsibility for discharges at the former Duck Pond Landfill.

- 4. CAO No. 95-66 and addenda thereto conclude, without reciting evidentiary support, that Rhode Island Acquisition No. 1, LLC, SD Commercial, LLC, and National Enterprises, Inc., became owners of the former Duck Pond Landfill in October 1999. Without factual information that these entities owned the property and/or operated or exercised control over discharge activities at the property, it is appropriate to remove Rhode Island Acquisition No. 1, LLC, SD Commercial, LLC, and National Enterprises, Inc., from CAO No. 95-66.
- This enforcement action is being taken for the protection of the environment and, as such is categorically exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.
- 6. Any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board to review this action. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, California, 95812-0100, within 30 days of the date on which this action was taken. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED, That Cleanup and Abatement Order 95-66 shall be modified as follows:

- 1. Rhode Island Acquisition, No. 1 LLC., SD Commercial LLC. And National Enterprises, Inc. are removed from the list of responsible parties for Cleanup and Abatement Order No. 95-66 and its amendments and addenda.
- 2. The directives of Cleanup and Abatement Order 95-66, as amended by Order No. WQ 96-02 of the State Water Resources Control Board remain in effect and continue to be applicable to CV Ventures LLC, Boulevard Investors, the City of National City, and the Community Development Commission of the City of National City.

Issued by: c

JØHN H. ROBERTUS Executive Officer September 15, 2008