

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:)	
)	
KDG Investments and Sampson)	COMPLAINT NO. R8-2004-0029
Industrial Park, Inc.)	FOR
114 Pacifica, Suite 340)	ADMINISTRATIVE CIVIL LIABILITY
Irvine, CA 92618)	
)	

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 March 12, 2004 at the Orange County Sanitation District in Fountain Valley, 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 March 12, 2004 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, KDG Investments submitted an application for Clean Water Act Section 401 Water Quality Standards Certification (application) 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 that application and subsequent submittals, the discharger alleged that discharges of fill to waters of the US would be 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 observed that the riparian drainage tributary to the previously identified area of impact (described in 5.A, above) had been excavated and was in the process of being filled by heavy equipment. This work was done on behalf of KDG Investments and the Sampson Industrial Park project. KDG Investments did not file a report of this fill activity with the Board, in violation of Water Code Section 13376.
 - C) Regional Board staff has assembled documentation, including rough grading plans dated January 27, 2003 and March 24, 2003, and CEQA documentation, that indicates that the discharger had prior knowledge of the need for additional discharge of fill as early as January 27, 2003, and failed to report it in their 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 appears that discharges of fill likely occurred from June 5, 2003 through June 15, 2003, a period of 11 days.
 - E) During discussions on January 30, 2004, the discharger asserted that the discharge occurred for a period of only 4 days based on their own interviews with staff of the grading company.
 - F) Regional Board staff has estimated the net economic benefit gained by the discharger through the avoided opportunity cost of delaying the project 120 days, in order to submit a Report of Discharge, as \$360,000. An additional economic benefit of \$1,300 has been calculated from the delayed implementation of mitigation for impacts to waters of the US.
6. Pursuant to Water Code Section 13385(a)(2), those who violate Water Code Section 13376 are liable civilly. As provided by Water Code Section 13385(c)(1) the Board can administratively assess civil liability in an amount not to exceed \$10,000 for each day in which the violation occurs.
7. The maximum liability that the Board could assess administratively under Water Code Sections 13385(c)(1) for 4 days of violation of Water Code Section 13376, is \$40,000.

8. Regional Board staff has considered staff costs in determining the amount of the civil liability. These costs have been calculated at \$7,500.00 for the investigation, enforcement, and administration of the civil liability in this matter.
9. 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 an administrative civil liability be imposed on KDG Investments and Sampson Industrial Park, Inc. in the amount of \$40,000.

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 for \$40,000. Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
 3737 Main Street, Suite 500
 Riverside, CA 92501-3339

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.

 Date

 Gerard J. Thibeault
 Executive Officer

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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. R8-2004-0029. KDG Investments and Sampson Industrial Park, Inc. have enclosed a check in the amount of \$40,000.00. 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. R8-2004-0029, and against the imposition of, and amount of the civil liability.

Date

For KDG Investments and Sampson
Industrial Park, Inc.