



Santa Ana Regional Water Quality Control Board

February 11, 2014

John Burns
Fortus Property Group
18301 Von Karman Avenue, Suite 850
Irvine, CA 92612
(By Regular Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Cindi Sinchak
cs@remarc.biz
(By E-mail Only)

Patty Chin (Agent for Service of Process)
18301 Von Karman Avenue, Suite 850
Irvine, CA 92612
(By Certified Mail)

TRANSMITTAL OF MANDATORY MINIMUM PENALTY (MMP) COMPLAINT NO. R8-2014-0027, FORTUS PROPERTY GROUP

Dear Mr. Burns:

Enclosed is Mandatory Minimum Penalty Complaint No. R8-2014-0027 (hereinafter "Complaint"). The Complaint alleges that you have violated the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014 as amended by Order No. 2012-0006, by failing to submit a 2012-2013 annual report by September 1, 2013 for your Valley View Center construction project located in the City of Yorba Linda. Pursuant to California Water Code Section 13399.33, the Complaint proposes that the Regional Board impose one thousand seven hundred fifty dollars (\$1,750) in mandatory minimum penalty and staff costs.

A public hearing on this matter has been scheduled for the Regional Board meeting on April 25, 2014 at the Orange County Water District, located at 18700 Ward Street in Fountain Valley. A tentative order, staff report regarding this Complaint, and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

Pursuant to California Water Code Section 13323, Fortus Property Group has the option to waive its right to a hearing. Should Fortus Property Group waive its right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If Fortus Property Group chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form. Please make the check payable to the Waste Discharge Permit Fund for one thousand seven hundred fifty dollars (\$1,750) and include the Complaint Number on the memo line. Please send the following information to the appropriate location:

Mail Waiver Form to:
RWQCB
Attn: Michael Kashak
3737 Main Street, Suite 500
Riverside, CA 92501

Mail Payment to:
SWRCB – Accounting Office
Attn: Sarah Fong
P.O. Box 1888
Sacramento, CA 95812-1888

If Fortus Property Group does not wish to waive its right to a hearing, a pre-hearing meeting is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Michael Kashak at (951) 782-4469 or Michael.Kashak@waterboards.ca.gov prior to March 28, 2014.

A Hearing Procedure pertaining to this Complaint is also enclosed. The Hearing Procedures set forth important requirements and deadlines for participation in the hearing. Additionally, a Fact Sheet describing the Complaint process is available at: http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml. Please read the Hearing Procedure carefully. The Board may adopt an Order requiring that you pay a penalty.

If you have any questions about the Complaint or the enclosed documents, please contact Michael Kashak at (951) 782-4469 (Michael.Kashak@waterboards.ca.gov), Michelle Beckwith at (951) 782-4433 (Michelle.Beckwith@waterboards.ca.gov), or me, Hope Smythe, at (951) 782-4493 (Hope.Smythe@waterboards.ca.gov). All legal questions should be directed to Julie Macedo, at (916) 323-6847 (Julie.Macedo@waterboards.ca.gov), Office of Enforcement.

Sincerely,



Hope A. Smythe
Division Chief
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2014-0027
Hearing Procedures
Waiver Form
Exhibit 1 (Notice of Non-Compliance dated October 31, 2013)
Exhibit 2 (Notice of Non-Compliance dated December 5, 2013)

cc: Regional Board
Executive Officer – Kurt Berchtold (Regional Board Advisory Team)
State Water Resources Control Board, Office of Chief Counsel – David Rice
(Regional Board Advisory Team Attorney)
State Water Resources Control Board, Division of Water Quality – Diana Messina
State Water Resources Control Board, Office of Enforcement – Julie Macedo
(Regional Board Prosecution Team Attorney)
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg
Orange County, Public Works – Richard Boon
City of Yorba Linda, NPDES Coordinator – Matt Bennett

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

In the matter of:)	Complaint No. R8-2014-0027
)	for
Fortus Property Group)	Mandatory Minimum Penalty and Staff Costs
18301 Von Karman Avenue #850)	
Irvine, CA 92612)	
)	
Attention: John Burns)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's meeting on April 25, 2014, at the Orange County Water District, located at 18700 Ward Street in Fountain Valley. 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 a mandatory penalty and staff costs by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Mandatory Minimum Penalty and assessment of staff costs pursuant to Section 13399.33 of the Water Code, to assess discretionary penalties pursuant to Section 13385 of the Water Code, or to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Valley View Center, managed by Fortus Property Group, located at 17474 Yorba Linda Boulevard, in the City of Yorba Linda, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014 as amended by Order No. 2012-0006, NPDES No. CAS000002 (General Permit). The site's WDID Number is 8 30C364388. The General Permit requires submittal of an annual report by September 1 of each year.
5. Fortus Property Group's 2012-2013 annual report was not received by Board staff by the September 1, 2013 deadline. Therefore a Notice of Non-Compliance (NNC) was issued to Fortus Property Group, by certified mail, on October 31, 2013. The return receipt showed it was received on November 4, 2013.
6. On November 22, 2013, Board staff received email correspondence from Ms. Cindi Sinchak, with a copy to Mr. John Burns, identifying herself as the property manager and acknowledging receipt of the NNC dated October 31, 2013. Ms. Sinchak stated that the Legal Responsible Person (LRP) identified on the site's Notice of Intent (NOI), Keith Ray, was no longer with the company. Ms. Sinchak requested guidance on how to complete the 2012-2013 annual report. On November 27, 2013, Board staff contacted Ms. Sinchak and

Mr. Burns via email with instructions on how to assign a new LRP and how to access the 2012-2013 annual report. Board staff received what appeared to be an automatic reply email, stating that Ms. Sinchak was out of the office until December 2, 2013.

7. On December 5, 2013, a second NNC was issued. The return receipt showed it was received on December 10, 2013. In both NNCs, Board staff requested submittal of the completed annual report and reminded Fortus Property Group of the mandatory minimum penalty for late submittal of the annual report. The second NNC requested that the annual report be submitted by December 27, 2013. Neither Ms. Sinchak or Mr. Burns contacted Board staff after Ms. Sinchak's November 27, 2013 automated email. Both NNCs are attached to this Complaint as Exhibits 1 and 2.
8. On January 23, 2014, Board staff left a voicemail for Mr. Patrick Cox, a representative from Fortus Property Group's Planning Department, and informed him of the mandatory minimum penalty that would be assessed if the 2012-2013 annual report was not submitted by close of business on January 27, 2014. Board staff received a voice mail from Mr. Cox explaining that he was unaware of the annual report requirement and that he forwarded the information to Mr. Burns.
9. On January 27, 2014, Board staff was contacted by Mr. Burns where he stated that Ms. Sinchak had requested assistance in addressing the two NNCs and that Board staff had not responded to the request. Board staff explained to Mr. Burns that on November 27, 2013, both he and Ms. Sinchak were contacted via email and were provided instructions on how to assign a new LRP and how to access the 2012-2013 annual report. To date, the 2012-2013 annual report has not been submitted. Fortus Property Group violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by September 1, 2013.
10. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
11. Based on non-submittal of the 2012-2013 annual report, Fortus Property Group is alleged to have violated the General Permit for 163 days (from September 2, 2013 to February 11, 2014, the date of issuance of this complaint). The total maximum liability for this violation is \$1,630,000 (163 days at \$10,000/day).
12. Section 13399.33(c) of the California Water Code requires that the Regional Board impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code. Section 13399.33(d) of the California Water Code further requires that the Regional Board recover the costs incurred by the Regional Board with regard to those persons.

PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS

1. Pursuant to Section 13399.33(c) the Division Chief proposes that the mandatory minimum penalty of \$1,000 be imposed on Fortus Property Group for the violation cited above. In addition, the Division Chief proposes that staff costs in the amount of \$750 (5 hours at

\$150/hour) be recovered from Fortus Property Group. The total proposed mandatory minimum penalty and staff costs amount is \$1,750.

2. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of Fortus Property Group's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
3. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached Waiver Form and submit it to the Regional Board office. The check or money order made payable to the Waste Discharge Permit Fund, for the amount of one thousand seven hundred fifty dollars (\$1,750), must be submitted to the State Board office. These documents should be received by **March 14, 2013**.

If you have any questions, please contact Michael Kashak at (951) 782-4469. For legal questions, contact Julie Macedo, Office of Enforcement, at (916) 323-6847.

2/11/2014
Date



Hope A. Smythe
Division Chief

Santa Ana Regional Water Quality Control Board

HEARING PROCEDURE
FOR MANDATORY MINIMUM PENALTY COMPLAINT
NO. R8-2014-0027
ISSUED TO
Fortus Property Group
18301 Von Karman Avenue, Suite 850
Irvine, CA 92612
Orange County

SCHEDULED FOR APRIL 25, 2014

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 Division Chief has issued a Mandatory Minimum Penalty Complaint (hereinafter "Complaint") pursuant to California Water Code Section 13323 against Fortus Property Group, alleging that it has violated the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014 as amended by Order No. 2012-0006 (General Permit), by failing to submit the 2012-2013 Annual Report by December 27, 2013 for its Valley View Center construction project located in the City of Yorba Linda. The Complaint proposes that a mandatory minimum penalty in the amount of \$1,750 be imposed as authorized by Water Code Section 13385(c). A hearing is currently scheduled to be held before the Regional Board during its April 25, 2014 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on April 25, 2014 will commence at 9:00 a.m. or as soon thereafter as practicable, or as announced in the Regional Board meeting agenda. The meeting will be held at the Orange County Water District, 18700 Ward Street, in the city of Fountain Valley. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

http://www.waterboards.ca.gov/santaana/board_info/agendas/index.shtml

The agenda will include the final hearing date and location, and the start time for the meeting. Since the exact start time for this item is unpredictable, all interested parties are urged to be present from the start of the Board meeting.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 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 Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY MARCH 5, 2014 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 Participants

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 generally may not submit evidence, cross-examine witnesses, or be subject to cross-examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Interested persons who would like to submit evidence may do so if the evidence is submitted in accordance with the procedures and deadlines for submitting evidence described below. Interested persons who present evidence may be subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

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

- (1) Regional Board Prosecution Team
- (2) Fortus Property Group

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on February 18, 2014 by Advisory Team Attorney David Rice, David.Rice@waterboards.ca.gov. 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 Regional 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 received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on February 24, 2014. The parties will be notified by 5 p.m. on February 28, 2014 in writing whether the request has been granted or denied.

Primary Contacts

Advisory Team: **David Rice (email: David.Rice@waterboards.ca.gov)**
Phone: 916-341-5182
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Prosecution Team: **Michael Kashak (email: Michael.Kashak@waterboards.ca.gov)**
Phone: 951-782-4463
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

Discharger: **John Burns (email: jburns@ewmsvce.com)**
Phone: 949-221-1185, Ext. 385
Fortus Property Group
18301 Von Karman Avenue, Suite 850
Irvine, CA 92612

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 Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team).

Members of the Advisory Team are: David Rice, Staff Counsel, State Water Resources Control Board and Kurt Berchtold, Executive Officer, Santa Ana Regional Water Quality

Control Board. Members of the Prosecution Team are: Julie Macedo, Office of Enforcement, State Water Resources Control Board; Hope Smythe, Division Chief, Santa Ana Regional Water Quality Control Board; Michelle Beckwith, Coastal Storm Water Unit Chief, Santa Ana Regional Water Quality Control Board; and Michael Kashak, Environmental Scientist, Santa Ana Regional Water Quality Control Board.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

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 Team or members of the Regional Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons 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 April 7, 2014. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional 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 Regional Board to consider. Evidence and exhibits already in the public files of the Regional 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. If Fortus Property Group intends to argue an inability to pay the penalty proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), Fortus Property Group 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 15 hard copies of its information and one electronic copy of the information to Advisory Team Attorney David Rice so that it is received by 5 p.m. on February 28, 2014.

The remaining designated parties shall submit 15 hard copies of their information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on March 10, 2014.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit 15 hard copies of their rebuttal information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on March 10, 2014. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall submit (1) one copy of the above information to each of the other designated parties so that it is received 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 the Advisory Team as early as possible, but no later than March 12, 2014. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional 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 Regional 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 by April 17, 2014 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, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on April 7, 2014. 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 Regional Board office at 3737 Main Street, Suite 500, Riverside, CA 92501 by contacting August Lucas (email: August.Carter@waterboards.ca.gov; phone: 951-782-7961). 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: http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml. Although the web page is updated regularly, to assure access to the latest information, you may contact Michael Kashak (Michael.Kashak@waterboards.ca.gov).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team Attorney David Rice (David.Rice@waterboards.ca.gov).

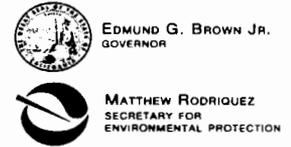
IMPORTANT DEADLINES

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the discharger waives that requirement.)

February 11, 2014	Prosecution Team issues Complaint to Discharger and Advisory Team, sends Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
February 18, 2014	Deadline for requests for designated party status
February 24, 2014	Deadline for oppositions to requests for designated party status
February 28, 2014	Advisory Team issues decision on requests for designated party status, if any
February 28, 2014	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"
March 5, 2014	Deadline for objections, if any, to proposed Hearing Procedure
March 10, 2014	Remaining Designated Parties' Deadline for all information required under "Submission of Evidence and Policy Statements"
March 12, 2014	Interested Persons' deadline for written non-evidentiary policy statements
March 14, 2014	Discharger's deadline for waiving right to hearing
April 7, 2014	Deadline for requests of additional time
April 7, 2014	All Designated Parties' deadline for rebuttal information and evidentiary objections, if any
April 17, 2014	Deadline for submission of hearing presentation material
April 25, 2014	Public Hearing


Hope A. Smythe
Division Chief
Regional Board Prosecution Team

2/11/2014
Date



Santa Ana Regional Water Quality Control Board

WAIVER FORM
FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2014-0027

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

I am duly authorized to represent Fortus Property Group in connection with Mandatory Minimum Penalty Complaint No. R8-2014-0027 (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."

Check here and sign below if Fortus Property Group waives the hearing requirement and will pay the liability in full.

- a. I hereby waive any right Fortus Property Group may have to a hearing before the Regional Board.
b. I certify that Fortus Property Group will remit payment for the proposed penalty in the full amount of one thousand seven hundred fifty dollars (\$1,750) by check that references "Complaint No. R8-2014-0027" made payable to the Waste Discharge Permit Fund. Payment must be received by the Regional Board office no later than March 14, 2014 or the Regional Board may adopt an Order requiring payment.
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 Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief 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 of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in Fortus Property Group having waived the right to contest the allegations in the Complaint and the imposition of the penalty.
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 Fortus Property Group to further enforcement, including additional penalties.

(Print Name and Title)

(Signature)

(Date)



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

October 31, 2013

Keith Ray
18301 Von Karman Avenue STE 850
Irvine, CA 92612

Certified Mail
Return Receipt Required

NOTICE OF NON-COMPLIANCE: FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES, ORDER NO. 2009-0009-DWQ AS AMENDED BY ORDER NO. 2010-0014-DWQ, NPDES NO. CAS000002 (GENERAL PERMIT) WDID NO. 8 30C364388

Dear Keith Ray:

Your construction site located at 17474 Yorba Linda Boulevard, in the city of Yorba Linda, is regulated under the General Permit and is identified by WDID No. 8 30C364388. Section XVI.A of the General Permit requires that you prepare and electronically submit an annual report by September 1 of each year. According to our records, we have not received your 2012-2013 annual report.

Currently you are in violation of the General Permit, the California Water Code and the federal Clean Water Act for failure to submit a complete 2012-2013 annual report. We request that you submit a complete 2012-2013 annual report via the Storm Water Multiple Application and Report Tracking System (SMARTS) no later than 30 days from the date of this letter. Please note that in order to submit the annual report, there is a new electronic submittal requirement. The Legally Responsible Person (LRP) must complete the eAuthorization Form which can be accessed under the Update User Profile hyperlink once logged into SMARTS. Please note that the LRP must complete the form, sign it, and mail it to the Sacramento address. Once received and logged by the State Water Resource Control Board, only then will the report be accessible for submittal.

You must also provide a statement explaining why the annual report was not submitted by the September 1 deadline, and the measures you have taken to insure timely submittals in the future. This statement must be uploaded to SMARTS as an attachment under the Annual Report Attachments tab. Failure to submit the requested information will result in further enforcement action, which may include civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a mandatory minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

If you need assistance in completing the annual report, please contact the SMARTS Help Desk at (866) 563-3107. If you have any questions specific to your site, please contact Michael Kashak by phone at (951) 782-4469 or by e-mail at michael.kashak@waterboards.ca.gov.

Sincerely,

Hope A. Smythe
Division Chief



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

December 5, 2013

Keith Ray
18301 Von Karman Ave STE 850
Irvine, CA 92612

Certified Mail
Return Receipt Required

NOTICE OF NON-COMPLIANCE: FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES, ORDER NO. 2009-0009-DWQ AS AMENDED BY ORDER NO. 2010-0014-DWQ, NPDES NO. CAS000002 (GENERAL PERMIT) WDID NO. 8 30C364388

SECOND NOTICE

Dear Keith Ray:

Your construction site located at 17474 Yorba Linda Boulevard, in the city of Yorba Linda, is regulated under the General Permit and is identified by WDID No. 8 30C364388. Section XVI.A of the General Permit requires that you prepare and electronically submit an annual report by September 1 of each year. According to our records, we have not received your 2012-2013 annual report.

Currently you are in violation of the General Permit, the California Water Code and the federal Clean Water Act for failure to submit a complete 2012-2013 annual report. We request that you submit a complete **2012-2013 annual report** via the Storm Water Multiple Application and Report Tracking System (SMARTS) BY December 27, 2013. Please note that in order to submit the annual report, there is a new electronic submittal requirement. The Legally Responsible Person (LRP) must complete the eAuthorization Form which can be accessed under the Update User Profile hyperlink once logged into SMARTS. Please note that the LRP must complete the form, sign it, and mail it to the Sacramento address. Once received and logged by the State Water Resource Control Board, only then will the report be accessible for submittal.

This is your second notice. The first notice was send on October 31, 2013 and to date, we have not received an adequate response to that notice. Please note that Section 13399.33 of the California Water Code stipulates failure to submit the requested information by the December 27, 2013 due date will result in a mandatory minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification. Further enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation, may result.

If you need assistance in completing the annual report, please contact the SMARTS Help Desk at (866) 563-3107. If you have any questions specific to your site, please contact Michael Kashak by phone at (951) 782-4469 or by e-mail at Michael.Kashak@waterboards.ca.gov.

Sincerely,

Michelle R. Beckwith, Chief
Coastal Storm Water Unit

WILLIAM RUH, VICE-CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

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