

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

Complaint No. R3-2004-0061

In the matter of:

Bardex Corporation

6338 Lindmar Drive

Goleta, California 93117

Administrative Civil Liability

For

Violations of the California Water Code

Section 13267

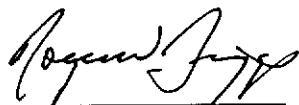
YOU ARE HEREBY GIVEN NOTICE THAT:

1. Bardex Corporation, (hereafter "Discharger") is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Central Coast Region (hereinafter, Regional Board), may impose civil liability pursuant to Section 13268 of the California Water Code (CWC).
2. Unless waived, a hearing on this matter will be held before the Regional Board during a public meeting on May 14, 2004, that begins at 8:30 a.m., at 895 Aerovista Place, Suite 101, San Luis Obispo, California. You and/or your representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, decrease or increase the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability, or any other appropriate action as a result of the hearing.
4. On May 12, 2003, pursuant to CWC, Section 13267, Regional Board issued Monitoring and Reporting Program (MRP) No. R3-2003-0088 to the Discharger. MRP No. R3-2003-0088 requires Discharger to conduct groundwater monitoring in March and October of each calendar year, with monitoring reports submitted by the 30th day of May and January, respectively, for each monitoring event. In a letters dated November 21 and 25, 2003, Mr. Bruce Burke, the Discharger's representative, requested that semi-annual groundwater monitoring be omitted in 2003. Mr. Burke indicated that the Discharger would perform groundwater monitoring in first quarter 2004, after one additional groundwater monitoring well is installed at the subject facility. In a teleconference on December 4, 2003, with Mr. Burke, Regional Board staff stated that the Executive Officer's November 19, 2003, work plan review letter concurred with the

Discharger's plan to perform groundwater monitoring of all wells (new and existing) in first quarter 2004; however, MRP No. R3-2003-0088 required groundwater monitoring in October 2003 (fourth quarter 2003). During the teleconference and in the Executive Officer's December 9, 2003 letter response to the Discharger's November 2003 letters, Regional Board staff indicated that the Discharger was in violation of MRP No. R3-2003-0088. As stated during the teleconference and directed in the December 9, 2004, letter to the Discharger, Regional Board staff agreed that if groundwater monitoring was performed by December 31, 2003, and a groundwater monitoring report submitted to the Regional Board by January 30, 2004, Regional Board staff would not pursue administrative civil liabilities against the Discharger for the incorrect sampling period.

5. The Regional Board did not receive a response from the Discharger after the teleconference or receive the requested groundwater monitoring report by January 30, 2004. On March 1, 2004, and March 8, 2004, respectively, the Regional Board issued a "Failure to Submit" letter and "Notice of Violation" letters to the Discharger for the late technical report.
6. On March 9, 2004, the Discharger sent an email stating that groundwater monitoring had not been performed in fourth quarter 2003 and understood during the teleconference that groundwater sampling would be performed in first quarter 2004. Therefore, the Discharger failed to comply with the Regional Board's December 9, 2003, requirement pursuant to CWC, Section 13267, because groundwater monitoring was not performed in fourth quarter 2003 and the monitoring report was not submitted. Therefore, Discharger is in violation of Section 13267 of the CWC.
7. Discharger failed to submit the fourth quarter 2004 monitoring report in compliance with this Regional Board's requirement in Monitoring and Reporting Program No. R3-2003-0088 dated May 12, 2003. Discharger is in violation of Section 13267 of the CWC.
8. Discharger has been in violation for 67 days (January 30, 2004 to April 6, 2004) and is civilly liable for a total of 67 days of violation.
9. Section 13268 of the CWC provides that any person failing or refusing to furnish technical or monitoring program reports required by the Regional Board pursuant to Section 13267, may be civilly liable. Civil liability may be administratively imposed by a Regional Board in an amount not to exceed one thousand dollars (\$1,000) for each day the violation occurs. The total maximum liability that may be assessed for this violation is \$67,000.
10. In determining any liability to be imposed, CWC Section 13327 requires the Regional Board to consider the following factors:
 - a. Nature, circumstances, extent, and gravity of the violations: The Discharger is aware of the Regional Board's groundwater monitoring requirements because it performed groundwater monitoring activities at the subject site on January 17, 2002, September 13, 2002, and June 23, 2003. However, the October 2003 (fourth quarter 2003) sampling would be the first monitoring report directed in accordance with MRP No. R3-2003-0088. While compliance with self-reporting is essential to Regional Board regulation, this consideration does warrant liability that is less than maximum because it is a single reporting violation.

- b. Whether the discharge is susceptible to cleanup or abatement and the degree of toxicity of the discharge: The violation involves failure to perform required monitoring activities and failure to submit a technical report. Therefore, the susceptibility to cleanup or abatement carries relatively minor consideration. The report is necessary to measure the effect of chlorinated solvent associated contaminants, which are toxic; therefore, no reduction of civil liability is warranted.
 - c. The ability to pay and the effect on ability to continue in business: The Regional Board has no specific information on Discharger's financial health. However, there is no evidence to suggest the Discharger would have difficulty paying the proposed liability nor the maximum liability or go out of business.
 - d. Any prior history of violations and any voluntary cleanup efforts: The Discharger has no previous violations; therefore, reduction in the civil liability is warranted. The violation involves non-submittal of a technical report therefore whether there has been any voluntary cleanup efforts carries relatively minor consideration.
 - e. Degree of culpability and economic benefit or savings: The Discharger is culpable because it knew about the requirements to perform semi-annual monitoring activities and submit complete reports, and still did not comply. Also, the discharger realized cost savings of approximately \$3,500 by failing to perform required sampling, analyses, and reporting. Therefore, no reduction in the civil liability is warranted.
 - f. Other matters as justice may require: Staff time to prepare this Complaint is estimated to be \$900 (12 hours at \$75 per hour).
12. **Recommended Civil Liability:** Upon consideration of the foregoing factors as required by CWC Section 13327, the Executive Officer recommends a civil liability of \$1,500 for violation of this Regional Board's Monitoring Reporting Program No. R3-2003-0088 dated May 12, 2003, for violation of a directive from January 30, 2004 to April 6, 2004.



Roger W. Briggs
Executive Officer

Dated: 4-7-04