

CA Regional Water Quality Control Board
Santa Ana Region

Update to Board Order No. R8-2003-0059

**RESCISSION OF PROPOSED
MANDATORY PENALTY COMPLAINT NO. R8-2003-0059**

This enforcement action was rescinded, effective June 24, 2003

State of California
Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:)

Irell & Manella LLP)
840 Newport Center Dr., Ste. 500)
Newport Beach, CA 92660-6324)

Complaint No. R8-2003-0059
for
Mandatory Penalties

Attention: Richard Sherman)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Irell & Manella LLP (I & M) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (Board) must impose mandatory penalties pursuant to California Water Code (Water Code) Section 13385(h) and (i).
2. A hearing concerning this Complaint is scheduled for the Board's regular meeting on July 1, 2003. I & M or its representatives will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of mandatory penalties by the Board. An agenda for the meeting and the staff report related to the Complaint will be mailed to you not less than 10 days prior to the hearing date.
3. If a hearing is held, the Board will consider whether to affirm, reject or modify the proposed mandatory penalties or whether to refer this matter to the Attorney General for recovery of judicial civil liability.
4. This complaint is based on the following facts:
 - a. Wright Oil Company operated a service station at 23991 El Toro Road, Laguna Hills. I & M is the current legal owner of the facility and it operates a groundwater cleanup system at the site. On January 23, 2002, the Board adopted Waste Discharge Requirements, Order No. R8-2002-0007 (NPDES No. CAG918001), General Groundwater Cleanup Permit (Permit). The Permit includes effluent limits for a number of constituents, including limits for methyl tertiary butyl ether (MTBE). On August 15, 2002, I & M was authorized to discharge treated water under the Permit from its groundwater cleanup system to recharge wells located around the perimeter of the groundwater plume and was required to monitor the discharge in accordance with Monitoring and Reporting Program No. 02-033.

June 3, 2003

- b. I & M submitted a self-monitoring report, which indicated that it discharged MTBE at 47 micrograms per liter ($\mu\text{g/l}$) on December 31, 2002. This concentration exceeded both the maximum daily effluent limit of 20.2 and the average monthly limit of 13 ppb for MTBE. These exceedances are serious violations as defined under Water Code Section 13385(h).
5. Water Code Sections 13385(h) and (i) require the Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious and/or other specific types of violations.
 6. In accordance with Water Code Section 13385(h), the mandatory minimum penalty for the effluent limitation violations cited in Section 4, above, is \$6,000.
 7. In addition, the Board may also assess administrative civil liability of \$10,000 per day for each day of violation and \$10 per gallon for each gallon discharged in excess of 1,000 gallons in accordance with Water Code Section 13385(c). However, the system was deactivated immediately after the effluent sample was collected on December 31, 2002, due to the failure of two ultra-violet (UV) bulbs. The system was reactivated on January 6, 2003.
 8. In assessing the penalty, the Board must consider the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefits, or savings resulting from the violation, and other matters as justice may require. After consideration of these factors, the Executive Officer proposes that mandatory penalties of \$6,000 be imposed on I & M by the Board for the violations cited above.
 9. You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver form and return it together with a check for \$6,000 payable to the State Water Resources Control Board and the bottom portion of the invoice to Sacramento in the enclosed envelope.

If you have any questions regarding this complaint, please contact Ken Williams at (909) 782-4496 or Nancy Olson-Martin at (909) 782-4497, or the Board's legal counsel, Jorge Leon, at (916) 341-5180.

6/3/03

Date



Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:)

Irell & Manella LLP) Complaint No. R8-2003-0059
840 Newport Center Dr., Ste. 500) for
Newport Beach, CA 92660-6324) Mandatory Penalties

Attention: Richard Sherman)

WAIVER OF HEARING

I agree to waive the right of Irell & Manella LLP to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0059. I have enclosed a check for \$6,000 made payable to the State Water Resources Control Board. I understand that I am giving up the right of Irell & Manella LLP, to be heard and to argue against allegations made by the Executive Officer in Complaint No. R8-2003-0059, and against the imposition of, and amount of, the mandatory penalties.

Date

for Irell & Manella LLP



California Regional Water Quality Control Board

Santa Ana Region



Winston 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.*

June 3, 2003

**CERTIFIED MAIL
RETURN RECEIPT
REQUESTED**

Mr. Richard Sherman
Irell & Manella LLP
840 Newport Center Drive, Suite 500
Newport Beach, CA 92660-6324

MANDATORY PENALTY COMPLAINT NO. R8-2003-0059

Dear Mr. Sherman:

We are enclosing a certified copy of Complaint No. R8-2003-0059, proposing a mandatory penalty of \$6,000. The complaint is issued pursuant to California Water Code Section 13385(h), for multiple violations of effluent limitations established in Waste Discharge Requirements, Order No. R8-2002-0007. An invoice for this amount is also enclosed.

A public hearing on this matter is scheduled for the Regional Board meeting on July 1, 2003. The staff report regarding this complaint and a meeting agenda will be mailed to you no less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you decide to waive your right and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check or money order for \$6,000. The waiver form, the bottom portion of the invoice and the check should be mailed to Sacramento using the enclosed envelope. All other correspondence regarding this complaint should be directed to the regional board office listed on this letterhead.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please contact us prior to June 10, 2003. At that time, you may submit information that may not have been previously available to staff regarding this violation. This information should address the accuracy of the findings in the complaint.

California Environmental Protection Agency



If you have any questions regarding this complaint, you may contact Ken Williams at (909) 782-4496 or Michael Adackapara at (909) 782-3238. All legal questions should be referred to our legal counsel, Jorge Leon, at (916) 341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0059, Waiver Form, Invoice, and Envelope

cc: State Water Resources Control Board, Division of Clean Water – UST Chief
State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Kathie Moore
GeoKinetics – Glenn Tofani

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