

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

IN THE MATTER OF:)	
)	COMPLAINT NO. R8-2005-0037 (REVISED)
)	FOR
I.D.I.)	ADMINISTRATIVE CIVIL LIABILITY
18101 Von Karman Avenue)	
<u>Irvine, CA 92612</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. I.D.I. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose civil liability pursuant to Section 13385 of the California Water Code (Water Code).
2. A hearing concerning this complaint will be held before the Regional Board within 90 days of the date of issuance of this complaint, unless I.D.I. waives the right to a hearing. Waiver procedures are specified on page 4 of the complaint. If the hearing in this matter is not waived, it will be held during the Regional Board's regular meeting on April 15, 2005 at the City of Loma Linda Council Chambers, 25541 Barton Road, Loma Linda, CA. The meeting begins at 9:00 a.m. I.D.I. 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 Regional Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. If the April 15, 2005, hearing is held, the Regional 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. I.D.I. is alleged to have discharged pollutants to Day Creek (a major tributary to the Santa Ana River, a water of the United States) as a result of a discharge of runoff commingled with manure originating from the vacated dairy facility formerly operated by Edward Hoekstra (but now owned by I.D.I.) at 11355 Bellegrave Avenue, Mira Loma, without having filed a report of the (waste) discharge in violation of Water Code Section 13376.
5. The complaint is based on the following facts:
 - A. On June 14, 2002, the Regional Board was notified that I.D.I. had purchased the former dairy facility known as Hillcrest Dairy located at 11355 Bellegrave Avenue, Mira Loma, from its operator, Edward

Hoekstra, for the purpose of redeveloping the site for non-dairy land use. The dairy was vacated, and the accumulated loose manure was scraped from the corral surface area and removed from the site.

- B. On February 26, 2004, Regional Board staff observed a discharge of storm water runoff commingled with manure from the corral area of the vacated dairy facility. The discharge was observed flowing onto Bellegrave Avenue and then into Day Creek via a street storm drain catch basin.
- C. Although most of the loose, surface manure had been scraped and removed from the facility's corral area, residual manure remained loosely deposited beneath fence lines and in the compacted corral surfaces.
- D. Analysis of a sample obtained by Regional Board staff from the discharge that occurred on February 26, 2004 indicated pollutants were present in the runoff consistent with pollutants present in runoff from dairy facility corrals.
- E. Regional Board staff informed I.D.I. in a letter, dated March 22, 2004, of the observed discharge on February 26, 2004, and that the discharge of pollutants in runoff to Day Creek was a violation of the California Water Code. Enclosed with the letter was a copy of the Regional Board's guidelines for the preparation of Engineered Waste Management Plans. The letter requested that suitable runoff containment facilities be developed and implemented for the site based on these guidelines. The letter also requested that I.D.I. respond to the Regional Board with their containment plan by April 5, 2004. However, the Regional Board received no such plan until October 14, 2004. On October 20, 2004, after reviewing the design for the containment facilities, staff rejected the design because it had inadequate capacity.
- F. On October 26, 2004, Regional Board observed that a containment basin had been excavated to intercept runoff from the corrals. It appeared to have been based on the design that had been included in the October 14, 2004 submittal. On October 27, 2004, Regional Board staff observed a discharge of corral runoff overflowing from the containment basin to Bellegrave Avenue.
- G. Based on site conditions observed by Regional Board staff less than 24 hours prior to the rain storm of October 26 and 27, 2004, combined with site engineering data, it is estimated that approximately 200,000 gallons of corral runoff commingled with manure were discharged from the former dairy site to Bellegrave Avenue, and thus to Day Creek, on October 27, 2004.

- H. On December 7, 2004, Regional Board staff observed that a containment basin, which appeared to be of sufficient capacity to contain site corral runoff, had been constructed.
 - I. I.D.I. failed to file a report of (waste) discharge required by Water Code Section 13376 for the above-cited discharges of waste to the Santa Ana River.
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), the Regional Board can administratively assess civil liability in an amount not to exceed \$10,000 for each day in which the violation occurs, plus an amount not to exceed \$10 per gallon for each gallon discharged and not cleaned up exceeding the first 1,000 gallons.
 7. The maximum liability that the Regional Board could assess administratively for the discharge of wastes without filing a report of discharge with the Regional Board, in accordance with Water Code Section 13385(c), is \$2,010,000 ([200,000 – 1,000 gallons] multiplied by \$10 per gallon, plus [\$10,000 per day multiplied by 2 days]).
 8. Water Code Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. At a minimum, liability shall be assessed at a level that recovers the economic benefits derived from the act(s) that constitute the violation. An economic analysis was performed to determine what benefit there might have been to delay construction of a containment basin. Staff estimates that I.D.I. saved a maximum of \$1,000 in delaying construction of the containment basin.
 9. Based upon the consideration of the factors specified in Water Code Section 13385(e), it is proposed that administrative civil liability be imposed on I.D.I. in the amount of \$20,000.


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 with a check made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 9 above. 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 (951) 782-3284, Stephen D. Mayville at (951) 782-4922, or contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

April 13, 2005
Date



Gerard J. Thibeault
Executive Officer