

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:)
)
Solomon Colors, Inc.)
1251 W. Durst Drive)
Rialto, CA 92376)
)
Attn: Mr. Mark Freis)

ORDER No. R8-2010-0009
On Stipulation and Settlement
Agreement

This Order on Stipulation and Settlement Agreement (“Order”) is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R8-2009-0064, dated November 9, 2009 (“Complaint”). The parties to this proceeding are the California Regional Water Quality Control Board, Santa Ana Region’s (“Regional Water Board”) Prosecution Team, and Solomon Colors, Inc. (“Solomon”) (collectively hereinafter the “Parties”).

The Regional Water Board has been presented with a proposed settlement of the claims alleged in the Complaint that has been developed during negotiations between the Parties’ representatives (“Settlement Agreement”). The proposed Settlement Agreement represents a mutually agreed-upon resolution of the Prosecution Team’s claims by the payment of an administrative civil liability in the amount of \$68,000 (“Total Liability”) to the State Water Resources Control Board (“State Board”) Cleanup and Abatement Account (“CAA”). Solomon is to pay \$61,798 into the CAA in accordance with the terms of the Settlement Agreement within thirty (30) days of issuance of the Order, and will satisfy the balance of the Total Liability (the “Suspended Liability”) by remitting restitution to Toys R Us, for clean up costs incurred at its property located on Durst Drive because of the violations alleged in the Complaint, or by paying that portion of the Suspended Liability then due in accordance with the terms of the Settlement Agreement entered into by the Parties on the same date as this Order. Within thirty (30) days after Solomon timely makes restitution to Toys R Us the Suspended Liability will be permanently waived.

The Parties recommend that the Regional Water Board issue this Order to effectuate the proposed Settlement Agreement. Having provided public notice of the proposed Settlement Agreement and an opportunity for public comment, the Regional Water Board finds that:

1. Solomon Colors operates a liquid pigments (also referred to as iron oxide pigment) manufacturing and distribution facility at 1251 W. Durst Drive in Rialto, California. Pigments are generally mixed inside its building and stored in 300-gallon plastic totes outside the building prior to distribution. The pigments are used for coloring concrete. Solomon’s facility has been in operation since at least November 2003 based on a review of historical aerial photography of the site using Google Earth. The Property is subject to the requirements set forth in the State Water Resources Control Board General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-0-DWQ, National

Pollution Discharge Elimination System Permit No. CAS000001 ("General Permit"), as alleged in the Complaint.

2. The Complaint proposes liability sufficient to compensate for the violations of failing to obtain coverage under the General Permit and failing to file a report of discharge prior to the discharge of pollutants in accordance with California Water Code section 13260, as alleged in the Complaint.

3. In accepting the proposed settlement, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. Further, the proposed settlement exceeds the minimum liability required to be assessed under Water Code section 13385(e) to recover economic benefits derived from the acts that constitute the violations alleged in the Complaint.

4. Notice of the settlement and assessment of civil liability was published in the San Bernardino Sun on or before February 16, 2010 notifying the public of the review period and soliciting public comments on the terms of the settlement. The proposed settlement supports the assessment of administrative civil liability as recommended in this Order. This settlement and assessment of administrative civil liability serves the public interest and provides for the full and final resolution of each and all of the claims that were set forth in the Complaint.

5. This action is an Order to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code section 13385 and Government Code section 11415.60 that:

1. The Settlement Agreement is approved;

2. Solomon shall pay the Total Liability agreed to under the Settlement Agreement in accordance with its terms;

3. The Assistant Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Solomon fails to perform any of its obligations under the Settlement Agreement; and

4. Fulfillment of Solomon's obligations under the Settlement Agreement constitutes full and final satisfaction of any and all liability for each claim set forth in the Complaint in accordance with the terms of this Order and the Settlement Agreement.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on March 18, 2010.

Gerard J. Thibeault
Executive Officer

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:)	
)	
Solomon Colors, Inc.)	Settlement Agreement
1251 W. Durst Drive)	of
Rialto, CA 92376)	ADMINISTRATIVE CIVIL LIABILITY
)	COMPLAINT NO. R8-2009-0064
Attn: Mr. Mark Freis)	

The Assistant Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region, ("Regional Water Board") and Solomon Colors, Inc. ("Discharger") hereby agree to this Settlement Agreement ("Agreement") of Administrative Civil Liability Complaint No. R8-2008-0620, dated November 9, 2009 ("Complaint").

1. This Agreement is entered into by the Regional Water Board Assistant Executive Officer and the Discharger (collectively hereinafter the "Parties") to resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") section 13385.
2. The Assistant Executive Officer agrees that full compliance with this Agreement constitutes settlement of the Complaint. The Complaint alleges that the Discharger failed to obtain coverage under the General Permit and failed to file a report of discharge prior to the discharge of pollutants in accordance with California Water Code section 13260 in violation CWC section 13376.
3. As authorized by CWC section 13385, the maximum administrative civil liability for violations alleged in the Complaint is either \$630,000 based on 63 storm events or \$20.66 million based on the total number of days the facility operated without obtaining coverage under the General Permit, and the minimum administrative civil liability is \$43,053. The Assistant Executive Officer initially proposed administrative civil liability in the amount of \$78,000 in the Complaint, but now makes a revised proposal for administrative civil liability in the amount of \$68,000 ("Total Liability").
4. The Parties believe that settlement of this matter is in the best interest of the people of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Agreement.
5. The Discharger hereby agrees to pay the Total Liability provided for in this Agreement in the amount of \$68,000 to the State Water Resources Control Board Cleanup and Abatement Account ("CAA"). Within 30 days of issuance of the Regional Board's Administrative Civil Liability Order approving this Agreement, Solomon Color, Inc. agrees to pay \$61,798 into the CAA, and the Regional Water Board agrees that the

Discharger can suspend payment of the remaining liability, ("Suspended Liability"), subject to the Discharger's compliance with the terms and conditions of this Agreement.

6. The Regional Water Board agrees that it will permanently waive the Discharger's obligation to pay the Suspended Liability if within thirty (30) days of issuance of the Order, the Discharger remits restitution in the amount of the Suspended Liability to Toys R Us, for clean up costs incurred at its property located on Durst Drive because of the violations alleged in the Complaint. If the Regional Water Board finds that the Discharger has failed to timely remit restitution to Toys R Us, the Discharger will remit the required portion of the Suspended Liability to the CAA within 30 days of a written demand by the Regional Water Board.

7. In consideration of the Discharger's compliance with this Agreement, the Assistant Executive Officer hereby agrees not to initiate any other administrative or judicial enforcement actions against the Discharger for the violations alleged in the Complaint.

8. In settling this matter, the Discharger does not admit to any of the findings of the Complaint or the proposed Administrative Civil Liability Order, or that they have been or are in violation of the CWC or any other federal, state, or local law or ordinance, provided, however, the Discharger agrees that in the event of any future enforcement actions by the Regional Water Board, this Agreement may be used as evidence of a settlement consistent with CWC Section 13327.

9. Subject to the qualifications set forth in paragraph 13, below, the Assistant Executive Officer has the authority to settle this matter in accordance with CWC Section 13323 and Government Code Section 11415.60. Mark Freis further warrants by signing below that he has the legal authority to bind the Discharger to the terms of this Agreement.

10. The Discharger has been informed of the rights provided by CWC Section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board.

11. The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

12. The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to violations alleged in the Complaint.

13. The Discharger understands that this Agreement and the proposed Administrative Civil Liability Order approving this Agreement must be noticed for a 30-day public review period. In the event objections are raised during the public comment

period for the proposed Administrative Civil Liability Order, the Regional Water Board, or its delegee, may under certain circumstances, require a public hearing regarding the proposed Administrative Civil Liability Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Agreement as necessary or advisable under the circumstances. The Assistant Executive Officer will consider public comments received prior to adopting the ACL Order and will retain discretion to approve or reject the settlement.

14. In the event that the proposed Administrative Civil Liability Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

15. The Discharger understands that payment in accordance with this Agreement is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

16. This Agreement is severable; should any provision be found invalid the remainder shall remain in full force and effect.

17. This Agreement may be executed in counterparts and by facsimile signature.

18. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

19. This Agreement shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications to the Agreement must be in writing and signed by all Parties.

20. Each Party to this Agreement shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers on the dates set forth, and this Agreement is effective as of the most recent date signed.

TENTATIVE

PROSECUTION TEAM

By: _____
Kurt V. Berchtold
Executive Officer

Date: _____

APPROVED AS TO FORM:

Ann K. B. Carroll
Counsel to the Prosecution Team

Date: _____

SOLOMON COLORS, INC.

By: _____
Mark Freis, Regional Operations
Director

Date: _____

APPROVED AS TO FORM:

Attorney Name
Counsel for Solomon Colors, Inc.
Law Firm

Date: _____