



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

November 09, 2009

Solomon Colors, Inc.
1251 W. Durst Drive
Rialto, CA 92376

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Attn: Mr. Mark Freis

TRANSMITTAL OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT TO SOLOMON COLORS, INC., ACL COMPLAINT NO. R8-2009-0064

Dear Mr. Freis:

Enclosed is a certified copy of Administrative Civil Liability Complaint No. R8-2009-0064 (hereinafter "Complaint"). The Complaint alleges that Solomon Colors, Inc. has violated California Water Code (hereinafter "CWC") §13376 by discharging pollutants to navigable waters of the United States from its facility located at 1251W. Durst Drive in Rialto, California. The facility failed to file a report of waste discharge in compliance with the procedures set forth in CWC §13260. The Complaint proposes that administrative civil liability in the amount of seventy-eight thousand dollars (\$78,000) be imposed as authorized by CWC pursuant §13385(c). In addition to the Complaint, we are enclosing a Waiver Form and Hearing Procedures that 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

The Fact Sheet describes the Complaint process and explains what you can expect and your obligations as the process proceeds. If you prefer, you may obtain a hard copy of the Fact Sheet by contacting Stephen D. Mayville at (951) 782-4992.

Please read each document carefully. This Complaint may result in the issuance of an order by the Regional Board requiring that you pay a penalty.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on January 29, 2010. The staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

California Environmental Protection Agency



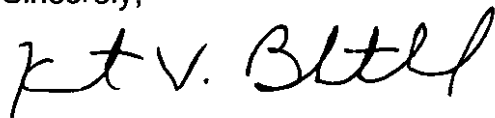
Recycled Paper

Pursuant to California Water Code Section 13323, Solomon Colors, Inc. has the option to waive its right to a hearing. Should Solomon Colors, Inc. waive its right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If Solomon Colors, Inc. chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form with a check for seventy-eight thousand dollars (\$78,000) made payable to the State Water Pollution Cleanup and Abatement Account. The Waiver Form, the check, and any other correspondence regarding this Complaint should be sent to the Regional Board office in the enclosed pre-printed envelope.

If Solomon Colors, Inc. does not wish to waive its right to a hearing, a pre-hearing meeting as set forth in the Hearing Procedure is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Steve Mayville (951-782-3238, or email: smayville@waterboards.ca.gov) prior to November 19, 2009.

If you have any questions about the Complaint or the enclosed documents, please contact Stephen D. Mayville, Chief of Enforcement, at (951) 782-4992 (smayville@waterboards.ca.gov). All legal questions should be directed to Reed Sato at (916) 341-5889 (rsato@waterboards.ca.gov), Director, Office of Enforcement.

Sincerely,



Kurt V. Berchtold
Assistant Executive Officer
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2009-0064, Waiver Form, Hearing Procedures, and pre-printed envelope

cc: Board Members
Executive Officer (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 – Bruce Fujimoto
State Water Resources Control Board, Office of Enforcement – Reed Sato
(Regional Board Prosecution Team Attorney)
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg
San Bernardino County, Public Works – Matt Yeager
City of Rialto, NPDES Coordinator – Julie Carver
Toys R Us - Jerry Keating



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

In the Matter of:

Solomon Colors, Inc.
1251 W. Durst Drive
Rialto, CA 92376

Attn: Mark Freis

**COMPLAINT NO. R8-2009-0064
for
ADMINISTRATIVE CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Solomon Colors, Inc. (hereinafter Solomon Colors) 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 administrative civil liability under California Water Code (hereinafter "CWC") §13385(c).
2. A hearing concerning this Complaint may be held before the Regional Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC §13323, Solomon Colors waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on January 29, 2010, at the Loma Linda City Council Chambers, located at 25541 Barton Road, Loma Linda, California. 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 civil liability by the Regional Board.
3. If a hearing is held on this matter, 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. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:

4. 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. This facility has been in operation since at least November 2003. This determination is based on a review of historical aerial photography of the site using Google Earth.
5. The State's General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (hereinafter 'NPDES') Permit No. CAS000001 (hereinafter 'General Permit') regulates storm water discharges from industrial facilities. The Standard Industrial Classification (SIC) code for the Solomon Colors manufacturing activity is 3295. Facilities with SIC code 3295 are required to get coverage under the General Permit. Solomon Colors' corporate headquarters is located in

Springfield, Illinois. Solomon Colors was aware of the requirement for NPDES permit coverage as they had obtained coverage for its operations in Springfield in July 1993. However, Solomon Colors operated its Rialto facility from November 2003 to July 14, 2009 without obtaining coverage under the General Permit. This is a violation of the General Permit and the CWC. On July 14, 2009, Solomon Colors obtained coverage under the General Permit.

6. A review of historical aerial photographs for the facility indicates evidence of spilled pigment within the facility's storage yard and tracking of this material onto the nearby streets (as evidenced by red coloration). The aerial photographs also indicate that the facility did not have adequate control measures to prevent the spill of this material to the ground or to prevent tracking onto the streets.
7. In April 2009, during the investigation of a spill cleanup incident at the nearby Toys R Us warehouse, Regional Board staff became aware of the Solomon Colors facility operating without coverage under the General Permit. On March 23, 2009, a City of Rialto inspector noted red stains on Durst Drive coming from Solomon Colors, and on April 3, 2009, the San Bernardino County Fire Department (hereinafter Haz-Mat) responded to this incident. Regional Board staff was notified of the incident on April 6, 2009 by Haz-Mat. Investigations by Regional Board staff confirmed that one of the 300 gallon totes containing the liquid pigment had leaked its contents to the paved storage yard due to a valve failure on or around March 15, 2009. Solomon Colors made no attempt to contain the discharge or to clean it up.
8. The records from the Rialto Channel precipitation station indicate that there was a 0.24 inches storm event on March 22, 2009. Storm water runoff, comingled with the spilled pigment, was carried from the Solomon Colors facility to Durst Drive and thence into the neighboring Toys R Us warehouse facility. The flow travelled approximately 0.25 miles through the Toys R Us property before discharging into a municipal storm drain that is tributary to Cactus Channel. Cactus Channel discharges into Rialto Channel, a tributary to Reach 4 of the Santa Ana River. Photographs taken after the storm event show red stains all along the flow path including the curbs and gutters on Durst Drive, Toys R Us property, the municipal storm drain and Cactus Channel. The designated beneficial uses of Reach 4 of the Santa Ana River include: groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat and wildlife habitat. According to a copy of an invoice obtained from Toys R Us, it spent \$6,202 to pressure wash and cleanup the stained portions of its facility.
9. Solomon Colors discharged liquid pigment into storm water conveyance systems and ultimately to waters of the United States on March 22, 2009 and on at least 62 prior storm events of the same or higher intensity. The facility operated without getting coverage under the General Permit from at least November 2003 to July 2009. Regional Board staff used historical rainfall data from the Rialto Channel precipitation station and aerial photographs from Google Earth to determine the number of days of discharge. These discharges constitute a discharge of pollutants to waters of the United States. Solomon Colors is alleged to have violated CWC §13376 by failing to file a report of discharge prior to the discharge of pollutants in accordance with CWC §13260.
10. Pursuant to CWC §13385(c) , the Regional Board may impose civil liability administratively for violations of CWC §13376 on a daily basis at a maximum of ten thousand dollars (\$10,000) for each day in which the violation occurs in accordance with CWC §13385(c)(1); or where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to

exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharge but not cleaned up exceeds 1,000 gallons in accordance with CWC §13385(c)(2); or both. The Assistant Executive Officer proposes to impose civil liability in accordance with CWC §13385 (c)(1).

11. Based on the aerial photographic history of Solomon Colors' storage yard and parking lot, red stains and tracking from the facility were observed in aerial photographs since November 14, 2003. There were sixty three (63) storm events of 0.24-iches or greater that likely carried this material to waters of the United States. Regional Board staff investigated the one incident indicated above. The exact volume of the polluted discharge (liquid pigment comingled with storm water) could not be estimated for all the discharge events. Therefore, Regional Board staff is proposing only a per day penalty for this discharge. In accordance with CWC §13385(c)(1), the total maximum liability for sixty-three days of violation is \$630,000 (63 daysX\$10,000/day=\$630,000). If the penalty is assessed based on the total number of days the facility operated without getting coverage under the General Permit (from November 14, 2003 to July 14, 2009, a total of 2,066 days), the maximum penalty would be \$20.66 million.
12. CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
<p>A. Nature, Circumstances, Extent and Gravity of Violation</p>	<p>The Solomon Colors facility in Rialto has been in operation since at least November 14, 2003. During this time, liquid pigment residue has been discharged in storm water runoff from its facility on several occasions. Solomon Colors' corporate office was aware of storm water permit requirements, including requirements for obtaining coverage under a NPDES permit. Solomon Colors failed to obtain permit coverage and failed to take measures to eliminate the discharge of pollutants from its Rialto facility.</p> <p>Based on records of historic rainfall events and the aerial photographs, it appears that Solomon Colors discharged polluted storm water on at least 63 occasions since November 2003.</p> <p>Regional Board staff is not aware of any impacts to receiving waters from the liquid pigment discharges. However, the potential existed for the pigment to have impacts considering the beneficial uses of Reach 4 of the Santa Ana River.</p>

B. Culpability	<p>Solomon Colors failed to take responsible actions to control the discharge of liquid pigment from its facility. It failed to enroll in the General Permit for approximately six years, thus delaying the implementation of appropriate control measures to control the discharge of pollutants in storm water runoff. The corporate owners of the facility were aware of the permit requirements and had obtained coverage for their facility in Springfield, Illinois.</p> <p>City of Rialto and Regional Board staff repeatedly advised Solomon Colors, beginning on April 2, 2009, to obtain General Permit coverage and to implement pollution control measures at the site. Solomon Colors delayed the development and implementation of a site-specific Storm Water Pollution Prevention Plan (SWPPP), during which time pollutants continued to be exposed to storm water. On May 19, 2009, Solomon Colors' consultant stated that a Notice of Intent for General Permit coverage was being prepared for submittal to the State Water Resources Control Board. Solomon Colors, however, did not obtain General Permit coverage until July 14, 2009, 104 days after the first request from the City of Rialto.</p> <p>After the discharge of liquid pigment on March 22nd, Solomon Colors made no attempt to clean the stained curb and gutter of Durst Drive or its neighbors' property. In fact, Toys R Us spent \$6,202 to clean the stained paved surfaces affected by the pigment discharge.</p>
C. Economic Benefit or Savings	<p>Solomon Colors saved at least \$43,053 by not obtaining General Permit coverage and by not developing and implementing a SWPPP and monitoring and reporting program as required by the General Permit and by not responding to spills and leaks. This amount includes \$6,202 that Toys R Us paid to a contractor to remediate the after effects of the March 2009 discharge, savings from not paying the annual permit fees for six years from 2003 to 2009, and expenses related to permit compliance such as for preparation and implementation of a SWPPP and developing and implementing a monitoring and reporting program.</p> <p>The Standard Industrial Classification (SIC) code for Solomon Colors' business activity is 3295. There are five other permitted businesses within the Regional Board's jurisdiction with this SIC code, and thirteen other permitted businesses statewide. By failing to obtain General Permit coverage and implement a site-specific SWPPP, Solomon Colors gained an unfair economic advantage over other facilities conducting similar business activity regulated under the General Permit.</p>

D. Prior History of Violations	The March 2009 incident was a documented discharge of pollutants reported to Regional Board staff by other regulatory agencies. However, between November 2003 and the present there have been 63 additional storm events where a similar or higher amount of precipitation occurred and likely caused discharges of the pigment. In addition to avoiding enrolling in the General Permit, Solomon Colors failed to apply for a City business license each year they were in operation until mid-2009.
E. Staff Costs	Regional Board staff spent approximately 100 hours investigating and responding to this incident. The total cost for staff time is \$15,000 (100 hrsX\$150/hr=\$15,000). Justice may require the consideration of the amount of staff costs incurred by the staff in investigating and enforcing against the alleged violations.
F. Ability to pay	Solomon Colors is currently operating as a business and should be able to pay the proposed civil liability based on the economic savings it enjoyed as a result of the violations alleged in this Complaint. Solomon Colors has not provided any information to indicate that it is unable to pay the proposed assessment.

13. After consideration of the above factors, the Assistant Executive Officer proposes civil liability be imposed on Solomon Colors in the amount of seventy-eight thousand dollars (\$78,000) for the violations cited above. This amount includes \$63,000 in per day assessments and \$15,000 in staff costs.
14. California Water Code §13327 also requires consideration for economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The proposed assessment is consistent with these provisions.

WAIVER OF HEARING

Solomon Colors may waive its right to a hearing. If Solomon Colors chooses to do so, please sign the attached waiver form and return it, together with a check for \$78,000 payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992.

11/9/09
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer
Regional Board Prosecution Team



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
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WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

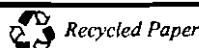
By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Solomon Colors, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2009-0064 (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."

(**OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.**)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of seventy-eight thousand dollars (\$78,000) by check that references "Complaint No. R8-2009-0064" made payable to the State Water Pollution Cleanup and Abatement Account. Payment must be received by the Regional Board office no later than **November 30, 2009** 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 Assistant Executive Officer 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 the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- 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 the Discharger to further enforcement, including additional civil liability.

California Environmental Protection Agency



(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R8-2009-0064
ISSUED TO
Solomon Colors, Inc.
1251 W. Durst Drive
Rialto, CA 92376
San Bernardino County

SCHEDULED FOR JANUARY 29, 2010

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 Assistant Executive Officer has issued an Administrative Civil Liability Complaint (hereinafter "COMPLAINT") pursuant to California Water Code Section 13323 against Solomon Colors, Inc. (hereinafter "Discharger") alleging that it has violated Water Code Section 13376 by discharging pollutants to navigable waters of the United States associated with its industrial activity and failing to file a report of discharge in compliance with the procedures set forth in CWC §13260. The Complaint proposes that administrative civil liability in the amount of \$78,000 be imposed as authorized by Water Code Section 13385(c). A hearing is currently scheduled to be held before the Regional Board during its January 29, 2010 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 January 29, 2010 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 City Council Chambers, 25541 Barton Road., City of Loma Linda, California. 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.

California Environmental Protection Agency



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 NOVEMBER 19, 2009 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) Solomon Colors, Inc., also referred to as the Discharger

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 November 16, 2009 by Advisory Team Attorney David Rice, Davidrice@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 November

30, 2009. The parties will be notified by 5 p.m. on December 7, 2009 in writing whether the request has been granted or denied.

Primary Contacts

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

Prosecution Team: **Reed Sato (email: rsato@waterboards.ca.gov)**
Phone: 916-322-3227
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Discharger: **Mark Freis**
Email: (currently not available)
Phone: 909-873-9444
Solomon Colors, Inc.
1250 Durst Drive
Rialto, CA 92376

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 Gerard Thibeault, Executive Officer, Santa Ana Regional Water Quality Control Board. Members of the Prosecution Team are: Reed Sato, Office of Enforcement, State Water Resources Control Board; Kurt Berchtold, Assistant Executive Officer, Santa Ana Regional Water Quality Control Board; Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Stephen D. Mayville, Enforcement Unit Chief, Santa Ana Regional Water Quality Control Board and Mary Bartholomew, 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 January 7, 2010. 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 the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), the Discharger 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 December 30, 2009.

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 December 30, 2009.

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 January 7, 2010. 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 November 23, 2009. 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 December 30, 2009 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 January 7, 2010. 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: alucas@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 Reed Sato (rsato@waterboards.ca.gov).

Questions

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

November 09, 2009	Prosecution Team issues Complaint to Discharger and Advisory Team, sends Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
November 16, 2009	Deadline for requests for designated party status.
November 19, 2009	Deadline for objections, if any, to proposed Hearing Procedure
November 19, 2009	Discharger's deadline for waiving right to hearing
November 30, 2009	Deadline for oppositions to requests for designated party status.
December 7, 2009:	Advisory Team issues decision on requests for designated party status, if any
December 30, 2009	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements".

December 30, 2009	Remaining Designated Parties' Deadline for all information required under "Submission of Evidence and Policy Statements."
December 30, 2009	Interested Persons' deadline for written non-evidentiary policy statements
January 7, 2010	All Designated Parties' deadline for rebuttal information, evidentiary objections, and requests for additional time at the hearing, if any
January 29, 2010	Public Hearing.

Kurt V. Berchtold
Assistant Executive Officer
Regional Board Prosecution Team

Date



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R8-2009-0064
ISSUED TO
Solomon Colors, Inc.
1251 W. Durst Drive
Rialto, CA 92376
San Bernardino County

SCHEDULED FOR JANUARY 29, 2010

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 Assistant Executive Officer has issued an Administrative Civil Liability Complaint (hereinafter "COMPLAINT") pursuant to California Water Code Section 13323 against Solomon Colors, Inc. (hereinafter "Discharger") alleging that it has violated Water Code Section 13376 by discharging pollutants to navigable waters of the United States associated with its industrial activity and failing to file a report of discharge in compliance with the procedures set forth in CWC §13260. The Complaint proposes that administrative civil liability in the amount of \$78,000 be imposed as authorized by Water Code Section 13385(c). A hearing is currently scheduled to be held before the Regional Board during its January 29, 2010 meeting.

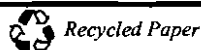
Purpose of Hearing

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 January 29, 2010 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 City Council Chambers, 25541 Barton Road,, City of Loma Linda, California. 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.

California Environmental Protection Agency



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 NOVEMBER 19, 2009 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) Solomon Colors, Inc., also referred to as the Discharger

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 November 16, 2009 by Advisory Team Attorney David Rice, Davidrice@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 November

30, 2009. The parties will be notified by 5 p.m. on December 7, 2009 in writing whether the request has been granted or denied.

Primary Contacts

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

Prosecution Team: Reed Sato (email: rsato@waterboards.ca.gov)
Phone: 916-322-3227
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Discharger: Mark Freis
Email: (currently not available)
Phone: 909-873-9444
Solomon Colors, Inc.
1250 Durst Drive
Rialto, CA 92376

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 Gerard Thibeault, Executive Officer, Santa Ana Regional Water Quality Control Board. Members of the Prosecution Team are: Reed Sato, Office of Enforcement, State Water Resources Control Board; Kurt Berchtold, Assistant Executive Officer, Santa Ana Regional Water Quality Control Board; Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Stephen D. Mayville, Enforcement Unit Chief, Santa Ana Regional Water Quality Control Board and Mary Bartholomew, 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 January 7, 2010. 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 the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), the Discharger 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 December 30, 2009.

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 December 30, 2009.

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 January 7, 2010. 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 November 23, 2009. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

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KtV. Berchtold
Kurt V. Berchtold
Assistant Executive Officer
Regional Board Prosecution Team

11/9/09
Date