



California Regional Water Quality Control Board Santa Ana Region



Matthew Rodriquez
Secretary for
Environmental Protection

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

Edmund G. Brown Jr.
Governor

December 23, 2011

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Chad Warren
Pacific Clay Products, Inc.
14741 Lake Street
Lake Elsinore, CA 92530

**TRANSMITTAL OF HEARING PROCEDURE PERTAINING TO ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT (ACLC) ISSUED TO PACIFIC CLAY PRODUCTS, INC. - ACLC NO.
R8-2011-0056/ORDER NO. R8-2012-0010**

Dear Mr. Warren:

On September 23, 2011, this office sent you ACLC No. R8-2011-0056. You agreed to settle this matter as proposed in the ACLC and the settlement terms were noticed for public comments. During the 30-day comment period, we received a few comments and they are posted on our website at:

http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml.

Based on the comments received, the Prosecution Team has scheduled a public hearing for this item at the regularly scheduled Regional Board meeting on February 10, 2012. Enclosed is a Hearing Procedure that sets forth important requirements and deadlines for participation in the hearing. Additionally, a Fact Sheet describing the Complaint process is available at:

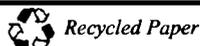
http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml. The Fact Sheet describes the complaint process and explains what Pacific Clay can expect and its obligations as the process proceeds. If preferred, a hard copy of the Fact Sheet may be obtained by contacting Milasol G. Gaslan at (951) 782-4419.

Please read the Hearing Procedure carefully. The Board may adopt an Order requiring that you pay a penalty.

A copy of the proposed order, Order No. R8-2012-0010, the meeting agenda and the staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing.

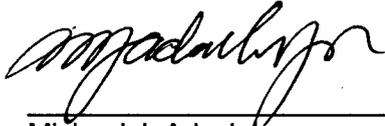
If you wish, you may request a pre-hearing meeting, as set forth in the Hearing Procedure. Should you wish to schedule a pre-hearing meeting, please contact Milasol Gaslan, Chief, Inland Storm Water, at (951) 782-4419 (mgaslan@waterboards.ca.gov) by January 12, 2012.

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If you have any questions about the Complaint or the Hearing Procedure, please contact Milasol G. Gaslan (951-782-4419, mgaslan@waterboards.ca.gov). All legal questions should be directed to Cris Carrigan at (916) 341-5896 (CCarrigan@waterboards.ca.gov), Director, Office of Enforcement.

Sincerely,



Michael J. Adackapara
Division Chief

Enclosures: Hearing Procedure

Cc (by electronic mail only):

Regional Board
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 – Cris Carrigan, Director
(Regional Board Prosecution Team Attorney)
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg
City of Lake Elsinore – Rita Thompson, rthompson@Lake-Elsinore.org
Inland Empire Waterkeepers – Colin Kelly, colin@coastkeeper.org
Paulie and Sharon – greatfull@msn.com
JMB – jmb1lab@aol.com
Jeff Jones – jones065@yahoo.com





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HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R8-2012-0010
ISSUED TO
Pacific Clay Products, Inc.
14741 Lake Street
Lake Elsinore, CA 92530

SCHEDULED FOR FEBRUARY 10, 2012

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

On September 23, 2011, the Division Chief for the Santa Ana Regional Water Quality Control Board issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 against Pacific Clay Product, Inc. alleging that it violated California Water Code Section 13385 by discharging wastes in violation of Section A.2 of the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Complaint proposed that administrative civil liability in the amount of forty thousand dollars (\$40,000) be imposed as authorized by Water Code Section 13385(c).

Pacific Clay agreed to settle the ACL and waived its right to a hearing. The ACL and related documents were publicly noticed for comments. Based on the comments received, Regional Board's Prosecution Team has decided to conduct a public hearing on this item. The comments can be accessed from:

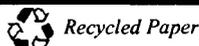
http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml

A hearing is currently scheduled to be held before the Regional Board during its February 10, 2012, meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a lower/higher

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amount, reject the proposed liability, or seek a higher liability amount through a judicial civil liability action. Here are the details regarding the public hearing:

Date of Hearing: February 10, 2012
Time: 9:00 a.m.
Location: City Council Chambers, City of Loma Linda
25541 Barton Road
Loma Linda, CA 92354

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 estimated start time for the meeting. Since the start time for this item is uncertain, all interested parties are urged to be present from the start of the Board meeting.

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 JANUARY 10, 2012 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.

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). 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 (see below) 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 oral 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 oral). 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 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, etc.). 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

Prosecution Team Members: Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Milasol Gaslan, Chief of Inland Storm Water Section, Santa Ana Regional Water Quality Control Board; Michael Roth, Water Resources Control Board, Santa Ana Regional Water Quality Control Board; and Cris Carrigan, Director, Office of Enforcement, State Water Resources Control Board.

- (2) Discharger Team

Discharger Team Members: Chad Warren, Kevin Beals, Barry Coley

(3) Advisory Team

Advisory Team Members: Kurt Berchtold, Executive Officer, Santa Regional Water Quality Control Board and David Rice, Legal Counsel, State Water Resources Control Board.

Advisory Team Primary Contact:

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 Primary Contact:

Milasol Gaslan
Email: mgaslan@waterboards.ca.gov
Phone: 951-782-4419
Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Discharger Primary Contact:

Chad Warren
Email: cwarren@pacificaggregates.com
Phone: 951-245-2460
Pacific Clay Products, Inc.
14741 Lake Street
Lake Elsinore, CA 92530

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 listed above) so that it is received by 5 p.m. on January 10, 2012 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 January 20, 2012. The parties will be notified by 5 p.m. on January 23, 2012 in writing whether the request has been granted or denied.

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 20, 2012. 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." See http://www.waterboards.ca.gov/santaana/water_issues/programs/investigations_enforcement/docs/ACLC_FACT_SHEET_3-30-09.pdf

The designated parties to the hearing shall submit all evidence in an electronic format to Advisory Team Attorney David Rice so that it is received by 5 p.m. on January 20, 2012, with a copy to all other designated parties.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit an electronic copy of their rebuttal information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on January 24, 2012 with a copy to all other designated parties. 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.

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 January 20, 2012. 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 January 31, 2012 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 February 2, 2012. 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 Milasol C. Gaslan (mgaslan@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 Discharger waived its right to a hearing.)

- December 23, 2011: Prosecution Team sends Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
- January 10, 2012: Deadline to file objections to Hearing Procedures; requests for designated party status.
- January 20, 2012: Deadline for oppositions to requests for designated party status; requests for additional time for presentation at the hearing; deadline for submitting all evidentiary documents for the hearing.
- January 23, 2012: Advisory Team issues decision on requests for designated party status, if any.
- January 24, 2012: All Designated Parties' deadline for rebuttal information.
- January 31, 2012: All parties deadline for presentation materials (PowerPoint or other materials)
- February 2, 2012: All parties deadline for objections to material submitted by other parties.
- February 10, 2012: Public Hearing.



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

12-23-11

Date

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MR. CHAD WARREN
PACIFIC CLAY PRODUCTS INC.
14741 LAKE STREET
LAKE ELSINORE, CA 92530

