

**FILED/ENDORSED**  
MAY 22 2008  
By: M. PIPE  
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MCM CONSTRUCTION, INC.

Defendant

Case No.: 06AS00151

JUDGMENT FOR PERMANENT  
INJUNCTION, CIVIL PENALTIES,  
AND OTHER RELIEF

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, by and through EDMUND G. BROWN JR., Attorney General for the State of California, GREG TOTTEN, District Attorney for Ventura County, and MEREDITH LINTOTT, District Attorney for Mendocino County, and Defendant MCM CONSTRUCTION, INC. (hereinafter "Defendant") have stipulated and consented to the entry of this Judgment for Permanent Injunction, Civil Penalties and Other Relief and Final Judgment ("Judgment").

The Court finds that this Judgment is in the best interests of justice, and that GOOD CAUSE exists for the entry of this Judgment,

**JUDGMENT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER RELIEF**

1 IT IS ORDERED, ADJUDGED, AND DECREED as follows:

2 1. This Court has jurisdiction of the subject matter of this action and each of the  
3 parties hereto.

4 2. This Judgment settles all claimed violations of law by MCM CONSTRUCTION,  
5 INC. that are alleged in the Second Amended Complaint.

6 3. The injunctive provisions of this Judgment are applicable to Defendant, its  
7 officers, directors, managing and supervising employees, its subsidiaries and divisions, and any  
8 agent, employee, representative thereof, and all persons, partners, corporations, or other entities  
9 acting by, through, under, or on behalf of Defendant and all persons acting in concert with or  
10 participating with said Defendant with actual or constructive knowledge of this injunction,  
11 insofar as they are doing business in the State of California. Defendant shall inform its  
12 successors, assigns, officers, directors, agents and employees who are responsible for managing  
13 and/or supervising matters covered by the injunctive provisions in this Judgment of the terms and  
14 conditions of this Judgment.

15 **PERMANENT INJUNCTION**

16 4. Pursuant to section 12607 of the Government Code and section 17203 of the  
17 Business and Professions Code, Defendant is permanently enjoined and restrained from engaging  
18 in or performing any of the following acts or omissions from or within the State of California:

19 a. Operating any Portable Equipment anywhere within California unless at  
20 least one of the three following conditions has been satisfied: (1) the Portable Equipment is  
21 registered with the California Air Resources Board's ("CARB") Portable Equipment Registration  
22 Program ("PERP"), and MCM has complied with all applicable PERP regulations relating to the  
23 Portable Equipment in question; (2) MCM has already obtained a permit to operate from the  
24 local air pollution control district in which the Portable Equipment is operated and will operate in  
25 compliance with all permit conditions; or (3) in the location where the Portable Equipment is  
26 operated, no local governmental agency requires a permit to operate or otherwise restricts the  
27 character or operation of the Portable Equipment in question or imposes reporting requirements,  
28

JUDGMENT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER RELIEF

1 or if such restrictions/requirements exist, the restrictions/requirements are complied with prior to  
2 and during the Portable Equipment's use at that location.

3 b. MCM shall obtain copies of all required storm water permit(s), waste  
4 discharge requirement(s), NPDES permit(s) ("Water Permits") or written project specification(s)  
5 for the subject project. Defendant's superintendent for the project in question and any of  
6 Defendant's engineers assigned to the project in question shall read, review and familiarize  
7 themselves with the terms of Water Permits and/or written project specifications applicable to  
8 the project in question, and to make all good faith efforts to educate all construction personnel  
9 concerning those Water Permits and written project specifications.

10 5. Defendant MCM shall pay the total sum of Six Million Dollars (\$6,000,000.00) in  
11 Civil Penalties, Restitution, Attorneys Fees, Costs and Supplemental Environmental Projects, as  
12 follows:

13 a. Four Million Dollars (\$4,000,000.00) as civil penalties, costs and  
14 attorneys fees, to be paid to the Ventura County District Attorney, and secured by an  
15 irrevocable standby letter of credit in the form of Exhibit "A" attached hereto, or a surety  
16 bond secured by a qualified California surety in a form approved by plaintiff's counsel as  
17 follows:

18 (1) The first payment of Eight Hundred Thousand (\$800,000.00) shall  
19 be paid on or before June 30, 2008;

20 (2) The second payment of Eight Hundred Thousand (\$800,000.00)  
21 shall be paid on or before May 31, 2009;

22 (3) The third payment of Eight Hundred Thousand (\$800,000.00) shall  
23 be paid on or before May 31, 2010;

24 (4) The fourth payment of Eight Hundred Thousand (\$800,000.00)  
25 shall be paid on or before May 31, 2011.

26 (5) The fifth payment of Eight Hundred Thousand (\$800,000.00) shall  
27 be paid on or before May 31, 2012.  
28

JUDGMENT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER RELIEF

1 The Ventura County District Attorney shall allocate and distribute the  
2 funds received from Defendant pursuant to an addendum to be prepared and  
3 agreed upon by counsel for plaintiff, only, and submitted to and approved by the  
4 Court and made a part of this Judgment;

5 b. Two Million Dollars (\$2,000,000.00) as Supplemental Environmental  
6 Projects, as follows:

7 (1) Two Hundred and Twenty Five Thousand Dollars (\$225,000.00)  
8 for ISO 9000 auditing and compliance over 5 years beginning upon entry of this  
9 Judgment;

10 (2) Five Hundred Thousand Dollars (\$500,000.00) for retrofitting and  
11 improvements at MCM's facilities and buildings in North Highlands, California  
12 that reduce energy consumption and carbon emissions, on or before May 31,  
13 2010;

14 (3) One Million Two Hundred and Seventy Five Thousand Dollars  
15 (\$1,275,000.00) for repowering and/or replacing Tier 0 and Tier 1 diesel engines  
16 with replacement engines certified to the most current applicable emissions  
17 standards in its equipment fleet on or before December 31, 2012. In the event  
18 such replacement engines are not available prior to December 31, 2012,  
19 replacement or repowering shall comply with the then current California Air  
20 Resources Board regulations for such engines.

21 Provided further that compliance with the provisions of paragraph 5b(1) and (2)  
22 above shall be confirmed in an annual written report by an ISO 9000 auditor, and by MCM as to  
23 paragraph 5b(3), to be provided to the Office of the Attorney General by May 31<sup>st</sup> of each year,  
24 commencing 2009.

25 IT IS ORDERED, ADJUDGED, AND DECREED.

26 Dated: May 22, 2008

27   
28 JUDGE OF THE SUPERIOR COURT

JUDGMENT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, AND OTHER RELIEF

Exhibit A  
Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

(The Standby Letter of Credit shall preferably be on Bank Safety Paper and shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.)

Date (insert date)

Irrevocable Standby Letter of Credit No. (insert number)

Office of the Attorney General  
1300 I Street  
Sacramento, California 95814

Attn: William Brieger, Deputy Attorney General  
Mitchell F. Disney, Senior Deputy District Attorney, Ventura  
Matthew C. Maclear, Deputy District Attorney, Mendocino

RE: MCM Construction, Inc.

Dear Sirs:

We hereby establish our Irrevocable Standby Letter of Credit No. (insert number) in your favor at the request and for the account of MCM Construction, Inc. in the aggregate amount of ~~Five hundred thousand~~ in United States dollars, available upon presentation of:

1. Your sight draft(s) on us bearing reference to this Irrevocable Standby Letter of Credit No. (insert number) and
2. A signed and dated statement from one or more of you, reading as follows:

"I (We) certify that the amount of our draft drawn under (name of issuing institution) Irrevocable Standby Letter of Credit No. (insert number) is payable pursuant to the Final Judgment and Permanent Injunction entered on \_\_\_\_\_, in Sacramento Superior Court, Case No. 06AS00151."

Each draft must be marked "Drawn under (name of issuing institution) Irrevocable Standby Letter of Credit No. (insert number) dated (insert date)."

Each draft must also be accompanied by the original of this Irrevocable Standby Letter of Credit upon which we may endorse our payment. This Irrevocable Standby Letter of Credit is effective as of \_\_\_\_\_, and shall expire on June 30, 2012 ~~three~~ <sup>four</sup> years later but such expiration date shall be automatically extended for a period of at least one year on \_\_\_\_\_ and on each

successive expiration date, unless at least 120 days before the current expiration date, we notify you and MCM Construction, Inc. by certified mail that we have decided not to extend this Irrevocable Standby Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of your receipt, as shown on the signed return receipt.

Whenever this Irrevocable Standby Letter of Credit is drawn on, under, and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall convey to the Office of the Attorney General, the Ventura County District Attorney, or the Mendocino County District Attorney the amount of the draft in accordance with your instructions and the ~~Final~~ Judgment <sup>ICS</sup> and Permanent Injunction entered on \_\_\_\_\_, in Sacramento Superior Court, Case No. 06AS00151.

This credit is subject to (the most recent edition of the Uniform Customs and Practice for Documentary Credits, Published by the International Chamber of Commerce, or "The Uniform Commercial Code.") <sup>CIVIL PENALTIES AND OTHER RELIEF</sup>

\_\_\_\_\_  
(Signature(s) of official of issuing institution)

\_\_\_\_\_  
(Title(s) of official(s) of issuing institution)

\_\_\_\_\_  
(Address of official(s) of issuing institution)

\_\_\_\_\_  
(Date official(s) of issuing institution signs)