

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

TENTATIVE

ORDER NO. R9-2009-0148

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
MINSHEW BROTHERS STEEL CONSTRUCTION, INC.
FOR
VIOLATIONS OF STATE BOARD ORDER NO. 97-03-DWQ**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), having considered in a public meeting on December 16, 2009, all comments received on the issuance of liability against Minshew Brothers Steel Construction, Inc. regarding violations alleged in Complaint No. R9-2009-0058, dated July 2, 2009 (Complaint), having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of civil liability in the amount of \$20,000 finds as follows:

1. The Regional Water Board incorporates Settlement Agreement and Stipulation for Order No. R9-2009-0148 by this reference as if set forth fully herein and finds that the Recitals set forth in the Settlement Agreement and Stipulation for Order No. R9-2009-0148 are true.
2. Minshew Brothers Steel Construction, Inc. owns and operates an industrial facility located at 12578 Vigilante Road, Lakeside, California.
3. Minshew Brothers Steel Construction, Inc. submitted a Notice of Intent to comply with the terms of State Board Order No. 99-03-DWQ, *National Pollutant Discharge Elimination System General Permit No. CAS000001. Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (General Permit) on May 14, 2001.
4. On July 2, 2009, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2009-0058 to Minshew Brothers Steel Construction, Inc. proposing to impose \$62,700 in civil liability for two alleged violations of the monitoring and reporting requirements contained in Section B. Monitoring Program and Reporting Requirements of State Board Order No. 99-03-DWQ.

5. Minshew Brothers Steel Construction, Inc. has violated provisions of law for which the Regional Board may impose discretionary administrative civil liability pursuant to section 13385(a)(2) of the California Water Code (CWC).
6. Minshew Brothers Steel Construction, Inc. has violated provisions of law for which the Regional Board must impose a minimum monetary penalty pursuant to CWC sections 13399.33(c) and (d), of one thousand dollars (\$1,000) plus staff costs for each annual report not submitted.
7. The Regional Board has been presented with a proposed settlement of the claims alleged in the Complaint. 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 \$20,000 to the Waste Discharge Permit Fund within thirty (30) days of issuance of the Order.
8. The Regional Board incurred costs totaling \$4,000, which includes investigation, preparation of enforcement documents and communication with Minshew Brothers Steel Construction, Inc. regarding the enforcement action.
9. In accepting this settlement, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC section 13327. The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.
10. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that 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 California Government Code section 11415.60 that:

1. The Settlement Agreement and Stipulations for Order No. R9-2009-0148 are approved.
2. Minshew Brothers Steel Construction, Inc. shall submit a check to the Regional Board in the amount of \$20,000 payable to the "State Water Resources Control Board, Waste Discharge Permit Fund" within 30 days of adoption of this Order.

3. The Executive Officer is authorized to refer this matter to the Office of Attorney General for enforcement if Minshew Brothers Steel Construction, Inc. fails to perform any of its obligations under this Order.
4. Fulfillment of Minshew Brothers Steel Construction, Inc.'s obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2009-0058.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on December 16, 2009.

TENTATIVE

DAVID W. GIBSON
Executive Officer

CIWQS Entries
Regulatory Measure ID 366781
Place ID 240886
Party ID 293217
Violation IDs 612312, 783258

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

In the matter of:)
)
MINSHEW BROTHERS) **Order No. R9-2009-0148**
STEEL CONSTRUCTION, INC.) **Settlement Agreement and Stipulation for**
No. R9-2009-0148 for) **Order**
Administrative Civil Liability)

Section I: Introduction

This Settlement Agreement and Stipulation for Order (“Stipulation”) and Administrative Civil Liability Order (the “Order”) are issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R9-2009-0058, dated July 2, 2009 (the “Complaint”). The parties to this proceeding are the San Diego Regional Water Quality Control Board (“Regional Water Board”) Prosecution Team, and Minshew Brothers Steel Construction, Inc. (“Discharger”), collectively the “Parties”.

Section II: Recitals

1. The Discharger is located at 1278 Vigilante Road, Lakeside, California (the “Property”). On May 14, 2001, Discharger submitted a Notice of Intent for coverage under Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (“General Permit”). Order No. 97-03-DWQ requires the submittal of an annual monitoring report by July 1 of each year. Enrolled facilities are required to sample storm water runoff during two storm events per year.
2. The Complaint recommends an administrative civil liability totaling \$62,700 for alleged violations of the General Permit. That amount includes staff costs of \$4,000.
3. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code (“CWC”) and General Permit set forth in the Complaint, the Discharger shall pay \$20,000 to the State Water Resources Control Board Waste Discharge Permit Fund, which includes \$4,000 for staff costs. Payment of \$20,000 is due no later than 30 days following the Regional Water Board executing this Order.
4. The Complaint alleges that the Discharger violated the General Permit by failing to submit the Fiscal Year (FY) 2006-2007 and 2007-2008 annual monitoring reports.

5. In accordance with CWC section 13399.31, the Regional Board issued Notices of Violations on August 20, 2007 and September 28, 2007 for failing to submit the FY 2006-2007 report, and on September 8, 2008 and October 14, 2008 for failing to submit the FY 2007-2008 annual report.

Section III: Stipulations

6. The Parties incorporate Paragraphs 1 through 5 by this reference as if set forth fully herein, Stipulate to the entry of this Order, and recommend that the Regional Water Board issue this Order to effectuate the settlement.
7. This Stipulation is entered into by Parties to resolve by consent and without further administrative proceedings certain alleged violations of the CWC and General Permit set forth in the Complaint.
8. The Discharger hereby agrees to pay the administrative civil liability totaling \$20,000 as set forth in Paragraph 3 of Section II herein.
9. The Discharger understands that payment in accordance with this Order 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.
10. Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
11. In consideration of the Discharger's compliance with this Order, the Prosecution Team hereby agrees not to initiate any other administrative or judicial enforcement actions against the Discharger for the violations alleged in the Complaint.
12. The Discharger understands that settlement terms must be noticed for a 30-day public review period prior to consideration by the Regional Water Board. Settlement terms were posted on the Regional Board web site on November 16, 2009. In the event objections are raised during the public comment period for the Order, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Order as necessary or advisable under the circumstances.
13. The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such

objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

14. This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is not represented by counsel in this matter.
15. This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board.
16. This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
17. This Stipulation may be executed in counterparts and by facsimile signature.
18. In the event that this 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.
19. 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 prior to the adoption of the Order.

20. 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.
21. The Discharger is aware that Executive Officer John Robertus is no longer serving on the Advisory Team and was replaced by present Executive Officer David Gibson. The Discharger has been informed that Mr. Gibson may have participated in up to two meetings in which this enforcement matter was discussed amongst Regional Water Board enforcement staff prior to his becoming the Executive Officer. The Discharger hereby waives any right to make any separation of functions or ex parte communication objections based on Mr. Gibson's now serving on the Advisory Team.
22. 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 any covered matter.
23. 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 Order.
24. The Assistant Executive Officer warrants by signing below that he has the authority to execute the Stipulation on behalf of the Prosecution Team. Mr. James Minshew further warrants by signing below that he has the legal authority to bind the Discharger to the terms of this Order. The Parties hereto have caused this Stipulation to be executed by their respective officers on the dates set forth, and the Stipulation is effective as of the most recent date signed.
25. This Stipulation is effective and binding on the Parties upon the execution of this Order.

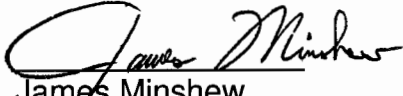
IT IS SO STIPULATED.

California Regional Water Quality Control Board,
San Diego Region Prosecution Team

By: _____
Michael P. McCann
Assistant Executive Officer

Date: _____

Minshew Brothers Steel
Construction, Inc

By: 
James Minshew
President

Date: 11/30/09

20. 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.
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25. This Stipulation is effective and binding on the Parties upon the execution of this Order.

IT IS SO STIPULATED.

California Regional Water Quality Control Board,
San Diego Region Prosecution Team

By: 

Michael P. McCann
Assistant Executive Officer

Date: 12/1/09

Minshew Brothers Steel
Construction, Inc

By: _____

James Minshew
President

Date: _____