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By L. WHITFIELD
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. **MCM CONSTRUCTION, INC. and DOES 1-50, Inclusive,** Defendants.	CASE NO. 06AS00151 **SECOND AMENDED COMPLAINT FOR CIVIL PENALTIES, INJUNCTION, AND OTHER EQUITABLE RELIEF** Action Filed: January 12, 2006

COPY

Plaintiff, the People of the State of California, appearing through its attorneys, Bill Lockyer, Attorney General of the State of California by William Brieger, Deputy Attorney General, Norman L. Vroman, District Attorney of Mendocino County, and Gregory D. Totten, District Attorney of Ventura County, by Mitchell F. Disney, Senior Deputy District Attorney, are

informed and believe and based thereon allege:

1. Plaintiff's attorneys, acting in the public interest to protect the general public and the environment against violation of California's air and water pollution control laws and against unlawful and unfair business advantage gained from illegal practices, bring this action in the name of the People of the State of California pursuant to Government Code section 12607, Health and Safety Code Section 42403 subd. (a), and Business of Professions Code Section 17204. Plaintiff, by this action, seeks to enjoin the Defendant from engaging in the anti-competitive, unfair, and unlawful business acts and practices alleged herein and seeks civil penalties for the Defendant's violations.

2. The actions of the Defendant as hereinafter set forth are in violation of the laws and public policies of the State of California.

3. Defendant MCM Construction, Inc. ("MCM"), is now and was at all times herein a corporation organized and existing under the laws of the State of California, with corporate offices located at 6413 32nd Street, North Highlands, CA 95660, and doing business in the State of California, including but not limited to Sacramento County, as a general construction contractor specializing in heavy highway and bridge construction.

4. Plaintiff does not know the true names, capacities and liability of defendants DOES 1 through 50, inclusive, and therefore sues them by those fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when they have been ascertained. Each of these defendants was in some manner legally responsible for the acts alleged in this complaint.

5. At all times mentioned in this complaint, the defendants, and each of them, were the members, partners, officers, agents employees, servants, or alter-egos of their co-defendants and were acting in the course and scope of such agency, employment, and/or relationship. Whenever in this complaint reference is made to any act of any defendant, such allegation shall be deemed to mean the act of each defendant acting individually, jointly, and severally as defined by Civil Code Section 1430 et seq.

6. Whenever an allegation regarding any act of a defendant is made herein, such allegation shall be deemed to mean that defendant, or agents or employees of said defendant, did

or authorized such acts while actively engaged in the affairs of the defendant and while acting within the scope and course of their employment or agency.

Background

7. Under California laws designed to protect air quality, local air pollution control districts (APCDs) have power to issue permits for sources of air pollution other than vehicles. (Cal. Health & Saf. Code §§ 39002, 42300.) In each APCD relevant to the allegations of this Complaint, there is a rule requiring operators of internal combustion engines over a stated horsepower rating, usually fifty horsepower, that are not self-propelled (i.e., not vehicles) to apply for and obtain a permit before placing such engines in service. When such engines are portable, such as a generator or a drilling rig attached to a trailer, operators have the alternative of registering such equipment once with the California Air Resources Board (ARB), provided it meets ARB standards, rather than obtaining a permit from each air district. (Cal. Health & Saf. Code § 41750 et seq.) Either ARB registration or a local APCD permit is required.

8. At all times relevant hereto, MCM was engaged in the business of performing construction projects throughout the State of California pursuant to contracts awarded by the California Department of Transportation (CalTrans) and other public entities. CalTrans contracts uniformly require contractors to obtain all necessary environmental permits, and meet applicable environmental standards. MCM's competitors presumably include any costs associated with the required compliance in their competing bids, putting them at a competitive disadvantage compared to any company that neither obtains nor obeys necessary permits.

9. MCM successfully bid on numerous projects in recent years. These projects typically were for the replacement or construction of bridges and highways. In the course of performing these construction projects, MCM brought onto the project sites, maintained and operated various pieces and types of portable non-vehicular equipment (*e.g.* cranes, pile-drivers, generators and air compressors) having internal combustion engines. MCM knew that the operation of these engines produces emissions of air contaminants, including oxides of nitrogen and particulate matter. These pieces of equipment are subject to regulation by local air quality districts under Health and Safety Code sections 39002, 40001(a) and 42300.

10. MCM placed these pieces of equipment, maintained them, and operated them, at project sites within the APCDs set forth below without the required permission or authorization, in violation of California law as more fully alleged herein. The pertinent APCDs and the governing rules are: Amador Air District [Rules 401, 501], Feather River Air Quality Management District [Rule 4.1], Glenn County Air Pollution Control District [Section 50.1], Mendocino Air Quality Management District [Rule 1-240], North Coast Unified Air Quality Management District [Rules 200, 240], Northern Sierra Air Quality Management District [Rule 501], Placer County Air Pollution Control District [Rule 501-302], Sacramento Metropolitan Air Quality Management District [Rules 201-302], San Diego County Air Pollution Control District [Rule 10], San Joaquin Valley Unified Air Pollution Control District [Rule 2010, 4.0], San Luis Obispo County Air Pollution Control District [Rule 202], Santa Barbara County Air Pollution Control District [Rule 201], South Coast Air Quality Management District [Rule 203], Ventura County Air Pollution Control District [Rule 10], Yolo-Solano Air Pollution Control District [Rule 3.1]. MCM also willfully, intentionally, and negligently continued to place these pieces of equipment, maintain them, and operate them, at these project sites despite receipt of notice from governmental agencies that permits were required. By operating the equipment, MCM caused and continues to cause emissions that degrade air quality and harm human health.

11. In 2005, during the course of demolishing and rebuilding a bridge over the Van Duzen River, a navigable waterway in Humboldt County, MCM deposited debris, silt, and pollutants into the river without a permit to do so. The discharges violated the Clean Water Act, 33 U.S.C. section 1311, and California Water Code section 13376.

12. During the Van Duzen River project, MCM drove construction equipment across the river channel, left a cofferdam in the river longer than allowed, and created a working area by placing fine-grained materials and other pollutants on a gravel bar, all in violation of permits issued by the California Coastal Commission and in violation of MCM's contract with CalTrans.

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FIRST CAUSE OF ACTION

(Injunction to Protect Natural Resources)

13. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 12, inclusive, as though fully set forth herein.

14. California Government Code section 12607 provides, "[T]he Attorney General may maintain an action for equitable relief in the name of the people of the State of California against any person for the protection of the natural resources of the state from pollution, impairment, or destruction."

15. Defendants, through the actions, omissions, and negligence alleged in this complaint, have impaired California air quality by allowing emissions of pollutants.

16. In order to protect state natural resources, the Attorney General is entitled to an order requiring defendants to undertake any steps necessary to prevent further harm to air and water quality, including an order that MCM immediately cease using all unpermitted internal combustion engines other than self-propelled vehicles.

SECOND CAUSE OF ACTION

(Willful and Intentional Emissions of Air Contaminants;
Health and Safety Code section 42402.3(a))

17. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 16, inclusive, as though fully set forth herein.

18. Within the last three (3) years, Plaintiff discovered the defendants have engaged in acts and omissions in violation of Health and Safety Code section 42402.3(a) by willfully and intentionally emitting air contaminants, including but not limited to oxides of nitrogen and particulate matter, in violation of an order, rule, regulations or permit of the state board or of an air district pertaining to emission regulations or limitations. Specifically, MCM operated dozens of internal combustion engines at multiple locations without required permits on hundreds of days.

19. The unlawful conduct, acts and omissions of defendants in violation of Health and Safety Code section 42402.3(a), as alleged herein, demonstrate the necessity and legal basis for the imposition of a $75,000 civil penalty pursuant to section 42403 of the Health and Safety

Code for each piece of unpermitted equipment for each day on which it was operated.

THIRD CAUSE OF ACTION

(Knowing Emissions of Air Contaminants;
Health and Safety Code section 42402.2)

20. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 16, inclusive, as though fully set forth herein.

21. Within the last three (3) years, Plaintiff discovered that defendants have engaged in acts and omissions in violation of Health and Safety Code section 42402.2 by emitting air contaminants, including but not limited to oxides of nitrogen and particulate matter, in violation of an order, rule, regulation or permit of the state board or of an air district pertaining to emission regulations or limitations, and defendants knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances. Specifically, MCM operated dozens of internal combustion engines at multiple locations without required permits on hundreds of days.

22. The unlawful conduct, acts and omissions of defendants in violation of Health and Safety Code section 42402.2, as alleged herein, demonstrate the necessity and legal basis for the imposition of a $40,000 civil penalty pursuant to section 42403 of the Health and Safety Code for each piece of unpermitted equipment for each day on which it was operated.

FOURTH CAUSE OF ACTION
(Negligent Emissions of Air Contaminants;
Health and Safety Code section 42402.1(a))

23. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 16, inclusive, as though fully set forth herein.

24. Within the last three (3) years, Plaintiff discovered that defendants have engaged in acts and omissions in violation of Health and Safety Code section 42402.1(a) by negligently emitting air contaminants, including but not limited to oxides of nitrogen and particulate matter, in violation of an order, rule, regulation, or permit of the state board or of an air district pertaining to emission regulations or limitations. Specifically, MCM operated dozens of internal combustion engines at multiple locations without required permits on hundreds of days.

25. The unlawful conduct, acts and omissions of defendants in violation of Health and

Safety Code section 42402.1(a), as alleged herein, demonstrate the necessity and legal basis for the imposition of a $25,000 civil penalty pursuant to section 42403 of the Health and Safety Code for each piece of unpermitted equipment for each day on which it was operated.

FIFTH CAUSE OF ACTION
(Strict Liability Violations of Air District Rules;
Health and Safety Code section 42402(b)(1))

26. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 16, inclusive, as though fully set forth herein.

27. Within the last three (3) years, Plaintiff discovered that defendants have engaged in acts and omissions in violation of Health and Safety Code section 42402(b)(1) by violating provisions of Part 4 (Nonvehicular Pollution Control) of Division 26 of the Health and Safety Code, and/or an order, rule, regulation, or permit of the state board or of an air district. Specifically, MCM operated dozens of internal combustion engines at multiple locations without required permits on hundreds of days.

28. The unlawful conduct, acts and omissions of defendants in violation of Health and Safety Code section 42402(b)(1), as alleged herein, demonstrate the necessity and legal basis for the imposition of a $10,000 civil penalty pursuant to section 42403 of the Health and Safety Code for each piece of unpermitted equipment for each day on which it was operated or was present on the site.

SIXTH CAUSE OF ACTION

(Strict Liability Violation of Air District Rules;
Health and Safety Code section 42402(a)(1))

29. Plaintiff realleges and incorporated herein by reference paragraphs 1 through 16, inclusive, as though fully set forth herein.

30. Within the last three (3) years, Plaintiff discovered that defendants have engaged in acts and omissions in violation of Health and Safety Code section 42402(a)(1) by violating provisions of Part 4 (Nonvehicular Pollution Control) of Division 26 of the Health and Safety Code, and/or an order, rule, regulation, or permit of the state board or of an air district. Specifically, MCM operated dozens of internal combustion engines at multiple locations without required permits on hundreds of days.

31. The unlawful conduct, acts and omissions of defendants in violation of Health and Safety Code section 42402(a)(1), as alleged herein, demonstrate the necessity and legal basis for the imposition of a $1,000 civil penalty pursuant to section 42403 of the Health and Safety Code for each piece of unpermitted equipment for each day on which it was operated or was present on the site.

SEVENTH CAUSE OF ACTION

(Unfair Competition; Business and Professions Code section 17200)

32. Plaintiff realleges and incorporates herein by the reference paragraphs 1 through 25, inclusive, as though set forth in full here.

33. Within the last four (4) years, defendants have engaged in unlawful, fraudulent, or unfair acts or practices in the conduct of business, which acts or practices constitute unfair competition within the meaning of section 17200 of the Business and Professions Code. Such acts or practices include, but are not limited to, the following:

a. Violating Health and Safety Code section 42402.3(a) by willfully and intentionally emitting air contaminants, including oxides of nitrogen and particulate matter, in violation of an order, rule, regulation, or permit of the state board or of an air district pertaining to emission regulations or limitations;

b. Violating Health and Safety Code section 42402.2 by emitting air contaminants, including but not limited to oxides of nitrogen and particulate matter, in violation of an order, rule, regulation, or permit of the state board or of an air district pertaining to emission regulations or limitations, and defendants knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances;

c. Violating Health and Safety Code section 42402.1 by negligently emitting air contaminants, including but not limited to oxides of nitrogen and particulate matter, in violation of an order, rule, regulation, or permit of the state board or of an air district pertaining to emission regulations or limitations;

d. Violating 33 U.S.C. section 1311 and Cal. Water Code section 13376 as alleged in paragaph eleven, above; and

e. Violating the California Coastal Act, Public Resources Code sections 30300 et seq., as alleged in paragraph twelve, above.

34. The unlawful conduct, acts and omissions of defendants in violation of section 17200 of the Business and Professions Code, as set forth herein, demonstrate the necessity and legal basis for granting injunctive relief, disgorgement, and restitution to victims and imposing civil penalties pursuant to sections 17203 and 17206 of the Business and Professions Code.

WHEREFORE, Plaintiff prays judgment as follows:

1. That defendants be permanently restrained and enjoined from engaging in any act or practice in violation of the statutes, regulations, and orders alleged above, and preliminarily enjoined pending trial of this matter;

2. That pursuant to Government Code section 12607, defendants be permanently enjoined, and preliminarily enjoined pending trial of this matter, from operating any internal combustion engine without obtaining and obeying all necessary permits, and employing all pollution controls and limits necessary to protect air quality;

3. That defendants be ordered to pay one civil penalty for each piece of equipment for each day operated in violation of the law, pursuant to:

(A) sections 42402.3(a), 42402.3(d) and 42403 of the Health and Safety Code, in the amount of Seventy-Five Thousand Dollars ($75,000), according to proof;

(B) sections 42402.2(a), 42402.2(c) and 42403 of the Health and Safety Code, in the amount of Forty Thousand Dollars ($40,000), according to proof;

(C) sections 42402.1(a), 42402.1(c) and 42403 of the Health and Safety Code, in the amount of Twenty-Five Thousand Dollars ($25,000), according to proof;

(D) sections 42402(b), 42402(d) and 42403 of the Health and Safety Code, in the amount of Ten Thousand Dollars ($10,000), according to proof; or

(E) sections 42402(a), 42402(d) and 42403 of the Health and Safety Code, in the amount of One Thousand Dollars ($1,000), according to proof;

4. That pursuant to section 17206 of the Business and Professions Code, defendants be ordered to pay a civil penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) for

each violation of section 17200 of the Business and Professions Code as alleged in the Seventh Cause of Action, according to proof;

5. The Plaintiff have such other and further relief as the nature of the case may require and the Court finds appropriate to dissipate the effects of the unlawful and unfair actions complained of herein, including disgorgement of all payments from the California Department of Transportation for the projects on which unpermitted equipment was operated or other environmental standards were violated;

6. That the Court require defendants to provide restitution to all government agencies that have expended resources in investigating defendants' violations of law alleged herein;

7. That the Attorney General recover costs and attorneys fees pursuant to Code of Civil Procedure section 1021.8;

8. That Plaintiff recover all other costs incurred in this action; and

9. For such other relief as the Court deems just.

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

ELLEN M. PETER
Supervising Deputy Attorney General

Date: May 5, 2006

WILLIAM N. BRIEGER
Deputy Attorney General

[Note--Pursuant to California Code of Civil Procedure sections 446(a) and 431.30(d), your answer to this complaint is required to be verified and not a general denial.]