

**DRAFT – TENTATIVE ORDER**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

In the matter of:	)	
	)	
Chad Enniss	)	Order No. R9-2013-0135 (Proposed)
Enniss Inc.	)	
	)	
Complaint	)	
No. R9-2013-0051 for	)	Settlement Agreement and Stipulation for
Administrative Civil Liability	)	Entry of Order; Order (Proposed)
	)	

**Section I: Introduction**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the San Diego Water Quality Control Board Prosecution Staff ("Prosecution Staff") and Chad Enniss and Enniss Inc. ("Settling Respondent") (collectively "Parties") and is presented to the San Diego Regional Water Quality Control Board ("San Diego Water Board") for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

**Section II: Recitals**

1. The Settling Respondent is the owner of Enniss Inc., located at 12535 Vigilante Road, Lakeside, California (the "Property"). The Settling Respondent operates a diversified construction company with areas of specialization including sand and material sales, construction material recycling and reclamation, steel design, fabrication, assembly and erection, earth moving, grading and site work, and demolition. The Settling Respondent is identified with Standard Industrial Classification (SIC) number 3325 (Steel Foundries – NEC). This category of industrial facility is required to obtain 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)*. On 17 November 2005, the Settling Respondent submitted a Notice of Intent for coverage under the General Permit.

2. The Settling Respondent violated Monitoring and Reporting Requirements in Section 14 of the General Permit by failing to submit the required monitoring report for Fiscal Year (FY) 2010/2011 by the 1 July 2011 due date. The San Diego Water Board did not receive the report until 7 March 2012. The report was 250 days late.

3. Pursuant to Water Code section 13399.31, the San Diego Water Board issued a Notice of Violation dated 29 September 2011 for failure to submit the FY 2010/2011 annual storm water monitoring report. On 20 December 2011, San Diego Water Board Staff conducted a site inspection of the facility and requested submittal of the missing report. This inspection constituted the second notification of failure to submit the annual monitoring report.

4. Water Code sections 13399.31(d) and 13399.33 direct the San Diego Water Board to impose administrative civil liability in an amount that is not less than one thousand dollars (\$1,000) and recover the costs incurred if a discharger fails to submit the required annual report within 60 days after the San Diego Water Board issues the initial notice of noncompliance.

5. On 14 June 2013, the San Diego Water Board issued Complaint No. R9-2013-0051 to the Settling Respondent in the amount of \$5,950, which consists of the minimum liability of \$1,000 and \$4,950 in staff costs incurred to prepare the Complaint.

6. A subsequent and more accurate recalculation of staff costs indicates that the total amount of staff costs incurred to prepare the complaint should be \$3,251. Therefore, the total minimum liability is \$4,251.

7. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code and the General Order, set forth in the Complaint, the Parties have agreed to the imposition of \$4,251 against the Settling Respondent. Payment of \$4,251 to the State Water Resources Control Board Waste Discharge Permit Fund is due no later than 30 days following the San Diego Water Board's execution of this Order.

8. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the San Diego Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

### **Section III: Stipulations**

The Parties stipulate to the following:

9. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$4,251 as set forth in Paragraph 7 of Section II herein.

10. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

11. **Party Contacts for Communications related to Stipulation/Order:**

**For the San Diego Water Board:** Christopher Means

**For the Settling Respondent:** Carolyn Sandoval

12. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

13. **Matters Addressed by Stipulation:** Upon adoption by the San Diego Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint, or which could have been asserted against the Settling Respondent as of 1 July 2011 based on the specific facts alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 7 and the Settling Respondents full satisfaction of the obligations described in Paragraph 7.

14. **Public Notice:** The Settling Respondent understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the San Diego Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the San Diego Water Board, or its delegate, for adoption, the Assistant/Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the San Diego Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

15. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the San Diego 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.

16. **Interpretation:** 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.

17. **Modification:** 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 the San Diego Water Board.

18. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the San Diego Water Board, or its delegate, 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 San Diego 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 San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego 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. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of the Order.

20. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the San Diego 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. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent 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.

22. **Necessity for Written Approvals:** All approvals and decisions of the San Diego Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the San Diego Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

23. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

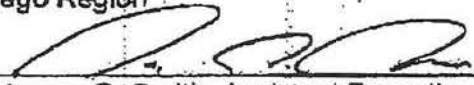
24. **Effective Date:** The obligations under Paragraph 7 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the San Diego Water Board which incorporates the terms of this Stipulation.

25. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

26. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

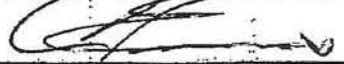
**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Team  
San Diego Region

By:   
James G. Smith, Assistant Executive Officer

Date: 5 Sep 2013

**SETTLING RESPONDENT'S NAME**

By:   
Chad Enniss,  
Owner, Enniss Inc.

Date: 10/1/13

**Order of the San Diego Water Board**

27. This Order incorporates the foregoing Stipulation.

28. In accepting the foregoing Stipulation, the San Diego Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13399. The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the San Diego Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the San Diego Water Board for this matter.

The attached Agreement between the Assistant Executive Officer and the Settling Respondents is approved pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on November 13, 2013.

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David W. Gibson, Executive Officer

Date: \_\_\_\_\_