

State of California  
Regional Water Quality Control Board  
San Diego Region

ENFORCEMENT SUMMARY REPORT  
August 12, 2009

ITEM: 6a

SUBJECT: CONSIDERATION OF SETTLEMENT: William and Heidi Dickerson; Larry and Penelope Gunning; and Perry and Papenhausen, Inc. (Dischargers). Written public comments will be accepted until 5 p.m. on August 3, 2009. If the Regional Board rejects either proposed settlement, then the Petition for Writ of Mandate matter will return to Superior Court and consideration of Administrative Civil Liability (ACL) will be rescheduled for a future public hearing. (Frank Melbourn)

- a. Settlement of Petition for Writ of Mandate (San Diego County Superior Court Case No. 37-2007-00075848-CU-WM-CTL, September 27, 2007) (tentative Order No. R9-2009-0125) Dischargers challenged the Regional Board's adoption of Amended Cleanup and Abatement Order (CAO) Nos. R9-2006-0101 and R9-2006-0102. In the proposed settlement the Regional Board will rescind the CAOs in exchange for the Dischargers dismissing the Superior Court case with prejudice, paying the Regional Board \$67,000 in staff costs, replacing the riprap, and replanting the eelgrass; and

PURPOSE: The Regional Board will decide whether to accept the settlement proposed by the Dischargers and the Regional Board Prosecution Staff (Supporting Document No. 2). The proposed settlement will resolve Dischargers' Petition for Writ of Mandate against the Regional Board. The proposed settlement includes:

- (1) payment of \$67,000 by Dischargers to the State Board to recover Regional Board staff costs to oversee the CAOs;
- (2) replacement of the riprap by the Dischargers;
- (3) replanting of the eelgrass by Dischargers;
- (4) dismissal of the court case with prejudice by Dischargers within 10 days of Regional Board acceptance of the proposed settlement; and

(5) rescission of the CAOs by the Regional Board within 30 days of Regional Board acceptance.

If the Regional Board rejects the proposed settlement, the matter will return to Superior Court.

**PUBLIC NOTICE:** Notice of the Regional Board's consideration of this matter and the opportunity for public comment was posted on the Regional Board's website on July 2, 2009, and distributed to known interested parties.

**DISCUSSION:** On June 13, 2007, the Regional Board affirmed the May 10, 2007, issuance of Amended CAO Nos. R9-2006-0101 and R9-2006-0102 against the Dischargers to cleanup and abate the effects of their discharges. The CAOs were issued in response to the Dischargers removal of riprap and construction of a seawall in front of their residences along San Diego Bay. Bill and Heidi Dickerson are the homeowners at 501 First Street, Coronado. Larry and Penny Gunning are the homeowners at 505 First Street, Coronado. The Dickersons and the Gunnings are collectively referred to as the "Homeowners." Perry and Papenhausen, Inc., is the contractor hired by the Gunnings and Dickersons that removed the riprap and constructed the seawall. The Regional Board in affirming the CAOs found that the Dischargers discharged waste (concrete, sand, soil and sediment) in violation of Clean Water Act Section 401 and Basin Plan Waste Discharge Prohibition No. 7. The Regional Board further found that the Dischargers' discharges of waste created a condition of pollution or nuisance.

On September 27, 2007, the Dischargers filed a petition for writ of mandate in the Superior Court of the State of California for the County of San Diego (Case No. 27-2007-00075848-CU-WM-CTL) after their petition to the State Board challenging the Regional Board's issuance of the CAOs was denied. Almost a year later on August 19, 2008, Homeowners, United States Army Corps of Engineers (Army Corps), and San Diego Unified Port District (Port) filed a settlement in United States District Court, Southern District of California (federal settlement). In the federal settlement the following was agreed to: (1) Army Corps and Port would allow the seawall to remain; (2) Homeowners will remove toe of the seawall that lies within Port and Clean Water Act jurisdiction; (3) Homeowners will replace riprap; (4)

Homeowners will mitigate eelgrass damage by replanting eelgrass; (5) Homeowners will pay the Port \$25,000; and (6) Homeowners will pay a civil penalty of \$250,000 to the United States. Since that time the Dischargers and the Regional Board Prosecution Staff, led by the Attorney General's office, have negotiated a settlement of the writ action that is presented to the Regional Board for acceptance. The Regional Board Prosecution Staff recommends acceptance of the proposed settlement agreement because the Regional Board will recoup its staff oversight costs, the Dischargers will accomplish the directives of the CAOs, and the proposed settlement is consistent with the federal settlement of this matter.

**SUPPORTING  
DOCUMENTS:**

1. Site Map
2. Proposed Settlement of Writ Action
3. Tentative Order No. R9-2009-0125

**RECOMMENDATION(S):** Accept the proposed settlement and tentative Order.