

State of California  
Regional Water Quality Control Board  
San Diego Region

ENFORCEMENT SUMMARY REPORT  
August 12, 2009

ITEM: 6b

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)

- b. Settlement of Administrative Civil Liability (Tentative Order No. R9-2009-0084). In the proposed settlement the Dischargers will pay a \$61,200 ACL that includes: \$24,000 in satisfaction of ACL Complaint No. R9-2008-0019 for eight alleged mandatory minimum penalty violations of the Dickerson's General NPDES Groundwater Dewatering Permit; and \$37,200 for alleged violations of Regional Board Basin Plan Prohibitions, the Clean Water Act, and Regional Board Water Quality Certification No. 05C-041.

PURPOSE: The Regional Board will decide whether to accept the settlement proposed by the Dischargers and the Regional Board Prosecution Team (Supporting Document No. 2) by adopting or rejecting tentative Order No. R9-2009-0084 (Supporting Document No. 3). The proposed settlement will resolve ACL Complaint No. R9-2008-0019 and alleged violations of Regional Board Basin Plan Waste Discharge Prohibitions, a Regional Board issued Water Quality Certification, and the Clean Water Act. The proposed settlement includes:

- (1) payment of a \$24,000 mandatory minimum penalty by Dischargers to the State Board to address ACL Complaint R9-2008-0019;
- (2) replacement of riprap by the Dischargers;
- (3) replanting of eelgrass by Dischargers; and

(4) payment of a \$37,200 ACL to the State to address alleged violations related to the removal of riprap and erection of a seawall.

If the Regional Board rejects the proposed settlement, consideration of an ACL will be rescheduled for a future public hearing.

**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, published in the San Diego Union-Tribune on July 4, 2009 (Supporting Document No. 4), and distributed to known interested parties.

**DISCUSSION:**

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 violations alleged stem from two distinct activities: (1) construction of an underground parking garage at 501 First Street (Dickerson); and (2) removal of riprap and erection of a seawall at 501 and 505 First Street.

The violations alleged in ACL Complaint R9-2008-0019 are based upon construction dewatering discharges from the construction of an underground parking garage at the Dickerson residence. The Regional Board alleged eight violations of copper effluent limitations over a six month period of Regional Board Order No. R9-2000-0090, *General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. Under the terms of the proposed settlement, the Dischargers will pay \$24,000, the full amount of the alleged mandatory minimum penalty.

The alleged violations associated with the removal of riprap and the erection of the seawall are detailed in tentative Order No. R9-2009-0084 and in the Technical Report to Cleanup and Abatement Order Nos. R9-2006-0101 and 0102 (Supporting Document No. 5). The tentative Order also details the Regional Board Prosecution Staff analysis of

the alleged violation in determining the appropriate amount of liability to assess. To determine the appropriate amount, the Prosecution Staff considered the following: (1) evidence in the administrative record; (2) applicable legal authority; (3) the beneficial uses of the affected water body; (4) maximum amount of civil liability for each alleged violation; (5) analysis of the Water Code section 13385(e) factors; (6) economic benefit or savings resulting from the alleged violations; and (7) amount of Regional Board Staff costs. The recommended liability amount of \$37,200 is greater than the estimated economic benefit enjoyed by the Dischargers and the Regional Board's cost to prosecute this matter.

The Regional Board Prosecution Staff recommends acceptance of the proposed settlement agreement because the liability amount is appropriate and in conformance with the State Board Enforcement Policy, will allow Regional Board Staff to dedicate themselves to other enforcement actions, and will discourage other dischargers in like circumstances from violating the law.

**SUPPORTING DOCUMENTS:**

1. Site Map
2. Proposed Settlement
3. Tentative Order No. R9-2009-0084
4. Proof of Publication
5. Technical Report to Cleanup and Abatement Order Nos. R9-2006-0101 and 0102

**RECOMMENDATION(S):** Adopt tentative Order No. R9-2009-0084.