

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
October 11, 2006

- ITEM: 11
- SUBJECT: Public Hearing: Cleanup and Abatement Order No. R9-2006-0101 to Bill and Heidi Dickerson and Perry and Papenhausen Construction for the unauthorized discharge of fill to San Diego Bay in violation of Section 401 Water Quality Certification (File No. 05C-041). 501 First Street, Coronado, San Diego County. (*Christopher Means*).
- PURPOSE: To affirm the issuance of Cleanup and Abatement Order No. R9-2006-0101.
- PUBLIC NOTICE: The Agenda notice for the October 11, 2006, Regional Board meeting serves as the public notice for this item. Copies of the Agenda notice were provided to interested parties via email on September 15 & 18, 2006.
- DISCUSSION: On August 23, 2006 and pursuant to California Water Code section 13304, the Executive Officer issued Cleanup and Abatement Order No. R9-2006-0101 (Document No.1) to Bill and Heidi Dickerson and Perry and Papenhausen Construction for the unauthorized discharge of fill to San Diego Bay in violation of the Section 401 Water Quality Certification issued for the project.
- On July 28, 2005, the Regional Board issued a Water Quality Certification, pursuant to Section 401 of the Clean Water Act, and a Waiver of Waste Discharge Requirements (Document No. 3) to Bill and Heidi Dickerson. The 401 certification was issued for the proposed discharge of fill associated with a riprap replacement project at the Dickerson's residence construction project, located at 501 First Street, in the City of Coronado. The project as proposed to the Regional Board was to replace approximately 450 cubic yards of existing riprap with 404 cubic yards of engineered riprap within the existing riprap footprint. A filter fabric liner was to be installed beneath the riprap. The Dickerson's contractor for the project was Perry and Papenhausen Construction. The Dickersons and Perry and

Papenhausen Construction are hereinafter referred to as Dischargers.

On or about January 1, 2006, the Dischargers removed the existing riprap that was protecting the shoreline from erosion and initiated construction of a 4 - 5 ft. high stacked, mortarless, concrete block wall (seawall) and a poured concrete footing within waters of the U.S/ State in violation of Condition A.1 of the Section 401 Water Quality Certification issued for the project. The application materials submitted to the Regional Board in no way describe the project that was eventually constructed.

The unauthorized discharge of fill (seawall and footing) violates Condition A.1 of the 401 certification issued for the project by failing to comply with the engineering plans and specifications submitted with the 401 application (Document No. 2).

In addition to violating the 401 certification, the removal of the riprap and contouring of the underlying sandy material into a beach, de-stabilized the shoreline, which causes and threatens to cause a condition of pollution by directly affecting the beneficial uses of San Diego Bay. Eelgrass beds occur in shallow water directly adjacent to site and shoreline erosion of the unprotected sediments threatens to degrade these beds by reducing the water clarity necessary for the growth of eelgrass, and the redistribution of sediment from shoreline erosion threatens to smother the beds.

The San Diego Unified Port District (Port District) has jurisdiction over tidelands below the Mean High Tide Line (MHTL) in San Diego Bay, including those directly adjacent to the property at 501 First Street. The State Legislature has conveyed to the Port District the authority to act as trustee for the administration and protection of these tidelands in San Diego Bay.

Construction of the 162 foot long seawall and concrete footing was initiated in concert with the adjacent property at 505 First Street, in Coronado. Results of a May 22, 2006 survey of the project by the Port District indicated that the concrete footing in front of the seawall encroaches onto Port District property by one foot for the length of the wall.

In response to the Port District referral, Cleanup and Abatement Order No. R9-2006-0101 was issued by the Executive Officer on August 23, 2006. The CAO requires the Dischargers to:

- (1) By October 23, 2006, cleanup and abate the waste discharged by removing all unauthorized structures (seawall and concrete footing) placed within waters of the U.S./State.
- (2) By October 23, 2006, stabilize the shoreline in accordance with the design plans and specifications authorized by 401 Certification No. 05C-041.
- (3) By November 22, 2006, submit a Cleanup and Abatement Progress Report documenting that the onsite cleanup and abatement actions have been completed.
- (4) By December 22, 2006, submit an Eelgrass Impact Assessment report documenting any impacts to offshore eelgrass beds as a result of the project.

On July 18, 2005, the Port District determined that the project as proposed was Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15302 (Class 2), and Resolution 97-191 (Document No. 4). However, as outlined in a July 10, 2006 Port District inter-staff communication (Document No. 5), construction of the actual seawall and footing as actually constructed would not have qualified as an exempt project under CEQA, and instead would have required application to the Port District Land Use Planning Division for environmental review. Thus, the Dischargers circumvented the CEQA process by avoiding the disclosure of any significant environmental effects of the actual project to the public and Responsible Agencies, denying the opportunity for public comment and Responsible Agency deliberation on the merits of the project.

It is apparent that the dischargers knowingly engaged in actions that were in violation of the 401 certification. In a September 18, 2006 e-mail from Bill Dickerson (Document No. 9) he states:

“We had a permit to clean up the beach, we just decided that after cleaning it up, placing rift raft (sic) was not necessary, in fact, more of a liability for the City and the Port Authority”.

In fact, the Dischargers were not issued a permit to “clean up the beach”. They were issued a 401 certification to replace and improve existing shoreline stabilization measures by replacing existing riprap with new riprap in the same footprint.

Agenda items 11 & 12 share similar issues. The Regional Board issued two almost identical CAO's to the owners of adjacent properties at 501 & 505 First Street, Coronado, CA, and Perry and Papenhausen Construction, the contractor responsible for constructing the project on both properties. The main difference between the two items is that the owner of 505 First Street failed to apply for or 401 certification or waste discharge requirements from the Regional Board or comply with CEQA to remove the existing riprap and build their portion of the seawall.

Affirmation of the CAO will compel the Dischargers to comply with the original 401 certification issued for the project and ensure that sensitive, eelgrass habitat is protected and preserved.

**KEY ISSUE:** Should the Regional Board require the Dischargers to remove the unauthorized seawall and concrete footing and install the riprap as required by the 401 certification.

**LEGAL CONCERNS:** NONE

**SUPPORTING DOCUMENTS:**

1. Cleanup and Abatement Order No.R9-2006-0101
2. 401 Certification Application for 505 First Street, Coronado
3. Low Impact 401 Certification No. 05C-041
4. Port of San Diego CEQA exemption letter
5. Port of San Diego Inter-staff Communication, July 10, 2006
6. Chronology of Events
7. Regional Board Inspection Report, June 12, 2006
8. Letter from Fred Perry responding to June 12, 2006 inspection report
9. Inspection Report, September 14, 2005
10. Email correspondence from Bill Dickerson, September 18, 2006
11. Location Map

**COMPLIANCE:** Since issuance of the Cleanup and Abatement Order No. R9-2005-033 the discharger has not taken any steps to come into compliance with any of the directives of the order.

RECOMMENDATION: Affirmation of the issuance of Cleanup and Abatement Order No. R9-2006-0101 is recommended.