

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
October 11, 2006

- ITEM: 12
- SUBJECT: Public Hearing: Cleanup and Abatement Order No. R9-2006-0102 issued to Larry and Penny Gunning and Perry and Papenhausen Construction for the unauthorized discharge of fill to San Diego Bay, 505 First Street, Coronado, San Diego County. (*Christopher Means*).
- PURPOSE: To affirm the issuance of Cleanup and Abatement Order No. R9-2006-0102.
- 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 (CAO) No. R9-2006-0102 (Document No.1) to Larry and Penny Gunning and Perry and Papenhausen Construction for the unauthorized discharge of fill to San Diego. The Gunning's contractor for the project was Perry and Papenhausen Construction. The Gunnings and Perry and Papenhausen Construction are hereinafter referred to as Dischargers.
- On or about January 1, 2006, the Dischargers initiated removal of the existing riprap and construction of a 4 - 5 ft. high stacked, mortarless, concrete block wall (seawall), and a poured concrete footing directly adjacent to the seawall within waters of the U.S/ State (below +7.79 ft. MLLW). Construction of the seawall was initiated in concert with the adjacent property at 501 First Street, in Coronado.
- 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. Results of a May 22, 2006, Port District survey of the project indicated that the concrete footing in front of the seawall encroaches onto Port District property by one foot for the length of the wall.

The construction of the seawall and concrete footing is a discharge of waste to waters of the U.S./State in violation CWC Section 13260. Pursuant to CWC section 13260, "any person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge.

Prior to the removal of the existing riprap and construction of the seawall, the Dischargers should have applied for and secured a Clean Water Act Section 404 Permit from the Army Corps of Engineers. The Dischargers actions would also have required them to submit an report of waste discharge to the Regional Board and subject the project to obtaining a Section 401 Water Quality Certification and issuance or waiver of waste discharge requirements. The project would also have required environmental review by the Port District and compliance with the California Environmental Quality Act (CEQA).

The Dischargers have acknowledged that they failed to obtain the 401 Certification from the Regional Board. In a letter (Document No. 3) from Fred Perry in response to the June 12, 2006 Regional Board inspection of the site (Document No. 2), Mr. Perry states:

"We erred in not getting a 401 permit for 505, it seemed since the work was the same it was logical to use the same techniques to protect the environment and complete the work when the weather was favorable."

The removal of the riprap and contouring of the underlying sandy material de-stabilized the sandy beach, 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 the beach and shoreline erosion of the beach 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.

In response to the Port District referral, Cleanup and Abatement Order No. R9-2006-0102 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 San Diego Bay shoreline adjacent to their property consistent with the stabilization measures occurring at 510 First Street, and other shoreline stabilization projects within the vicinity of their property (409, 411 & 413 First Street , Coronado). The Dischargers shall obtain all necessary approvals and permits prior to commencing shore stabilization activities
- (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.

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 501 First Street did apply for a 401 certification for riprap replacement, and then constructed the seawall in violation of the certification conditions.

Affirmation of the CAO will ensure that the shoreline stabilization measures are constructed at 505 First Street, consistent with the stabilization measures required at 501 First Street, and other shoreline stabilization projects within the vicinity of their property (409, 411 & 413 First Street , Coronado) and 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 obtain the necessary permits to stabilize the shoreline

LEGAL CONCERNS: NONE

**SUPPORTING
DOCUMENTS:**

1. Cleanup and Abatement Order No.R9-2006-0102
2. Location Map
3. Regional Board inspection Report, June 12, 2006
4. Letter from Fred Perry responding to June 12, 2006 inspection report
5. Inspection Report, September 14, 2005
6. Email correspondence from Larry Gunning, September 18, 2006

COMPLIANCE:

Since issuance of the Cleanup and Abatement Order No. R9-2006-0102 the discharger has not taken any steps come into compliance with any of the directives of the order.

RECOMMENDATION:

Affirmation of the issuance of Cleanup and Abatement Order No. R9-2006-0102 is recommended.