August 23, 2006

In reply, refer to:
SWU:18-2005041.02:meanc

Certified Mail No. (return receipt requested)
7006 0100 0002 8367 2798

7006 0100 0002 8367 2804

Larry and Penny Gunning
6550 East El Moro Circle
Paradise Valley, AZ 85253

Fred C. Perry, Jr.
Perry & Papenhausen Construction
9211 Bellagio Road
Santee, CA 92071

SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R9-2006-0102 FOR THE UNAUTHORIZED DISCHARGE OF FILL TO SAN DIEGO BAY. 505 FIRST STREET, CORONADO, SAN DIEGO COUNTY.

Dear Mr. & Mrs. Gunning and Mr. Perry:

Enclosed is Cleanup and Abatement Order (CAO) No. R9-2006-0102 of the California Regional Water Quality Control Board, San Diego Region (Regional Board) concerning the unauthorized discharge of fill to San Diego Bay including the construction of an seawall at 505 First Street in the City of Coronado.

The CAO is issued pursuant to California Water Code(CWC) Section 13304 and directs you to cleanup and abate the pollution associated with the unauthorized discharge of fill from the construction of a seawall and concrete footing. The construction of this project was completed without reporting the proposed discharge to the Regional Board as required by CWC Section 13260.

Please note the deadlines contained within the CAO. Failure to meet the deadlines may subject you to substantial civil liability. You may contest the issuance of this CAO by requesting a public hearing on the matter within 30 days of the issuance of the CAO and no later than September 22, 2006. In order to schedule a hearing at the next Regional Board meeting, you must submit a written request to this office. The next available scheduled meeting of the Regional Board is October 11, 2006. Be aware that a request for a hearing does not stay any of the deadlines in the CAO.

California Environmental Protection Agency
I strongly urge a prompt and complete response to each directive in the CAO. Please contact Christopher Means at (858) 657-5581 or cmeans@waterboards.ca.gov if you have any questions regarding this matter.

The heading portion of this letter includes a Regional Board code number noted after "in reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,

[Signature]

JOHN H. ROBERTUS
Executive Officer
San Diego Regional Water Quality Control Board

JHR:dwg:cm

Enclosures:

Cleanup and Abatement Order No. R9-2006-0102
Attachment No. 1, Port Survey

cc:

Ms. Karl Coler, U.S. Army Corps of Engineers
Larry & Penny Gunning
505 First Street
Coronado, CA 92118

Eileen Maher
Environmental Services
Port of San Diego
3165 Pacific Highway
San Diego, CA 92101

David R. Catilano
Deputy Port Attorney
Port of San Diego
3165 Pacific Highway
San Diego, CA 92101

John C. Swanson
Department of Community Development
City of Coronado
1825 Strand Way
Coronado, CA 92118

Bill Orme, Section 401 Program;
State Water Resources Control Board;
Division of Water Quality

Ellen Blake, US EPA
John Richards, OCC, SWRCB

California Environmental Protection Agency
The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. This Cleanup and Abatement Order is based on: (1) Chapter 5, Enforcement and Implementation commencing with Section 13300, cf the Porter-Cologne Water Quality Control Act (Water Code) (Division 7 of the Water Code, commencing with Section 13000); (2) Water Code Section 13267, Investigations and Inspections, Chapter 4, Regional Water Quality Control; (3) all applicable provisions of the Water Quality Control Plan for the San Diego Basin (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board Resolution No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California); (5) State Water Board Resolution No. 92-49 (Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304).

2. Larry and Penny Gunning (hereinafter Discharger) are the owners of the property located at 505 First Street, Coronado, San Diego County.

3. Perry & Papenhausen Construction, License No. 351216 (hereinafter Discharger), is the construction firm hired by the Larry and Penny Gunning to remove existing shoreline riprap and construct a seawall and associated concrete footing at the shore side of the property at 505 First Street, in the City of Coronado, San Diego County.

4. Designated existing beneficial uses of coastal waters for San Diego Bay in the Water Quality Control Plan for the San Diego Basin (Basin Plan) include, Industrial Service Supply (IND), Navigation (NAV), Contact Water Recreation (REC 1), Non-contact Water Recreation (REC 2), Commercial and Sport Fishing (COMM), Preservation of Biological Habitats of Special Significance (BiOL), Estuarine Habitat (EST), Wildlife Habitat (WILD), Rare, Threatened or Endangered Species (RARE), Marine Habitat (MAR), Migration of Aquatic Organisms (MIGR) and Shellfish Harvesting (SHELL).
5. The San Diego Unified Port District (The Port) 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 the authority to act as trustee for the administration and protection of these tidelands in San Diego Bay.

6. On or about January 1, 2006, the Dischargers initiated 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 construction of the seawall and concrete footing is a discharge of waste to waters of the U.S./State in violation CWC Section 13280.

7. On May 22, 2006, a Port of San Diego survey crew determined that the 162 foot seawall's north edge roughly follows the Mean High Tide Line (MHTL) for its entire length. The Port survey also found that the poured concrete footing encroaches onto Port of San Diego property by approximately 1 foot for the entire length of the footing. Attachment No. 1 is a diagram depicting the results of the Port of San Diego survey of the site. The construction of the seawall and concrete footing created an area of unstabilized sandy beach in San Diego Bay between approximately +2.0 ft. and +7.0 ft. MLLW.

8. Eelgrass (Zostera Marina) beds occur in shallow water directly adjacent to the sandy beach created by the project. Eelgrass vegetated areas are recognized as important ecological communities in shallow bays and estuaries because of their multiple biological and physical values. Eelgrass habitat functions as an important structural environment for resident bay and estuarine species, offering both predation refuge and a food source. Eelgrass functions as a nursery area for many commercially and recreational important finfish and shellfish species that are resident within bays and estuaries, as well as oceanic species that enter estuaries to breed or spawn. Eelgrass is a major food source in near shore marine systems, contributing to the system at multiple trophic levels. In addition to the habitat and resource value of Eelgrass, it serves beneficial physical roles in bays and estuaries. Eelgrass beds dampen wave and current action, trap suspended particulates, and reduce erosion by stabilizing the sediment. Eelgrass beds also improve water clarity, cycle nutrients, and generate oxygen during daylight hours.

9. The discharge of fill and creation of a sandy beach causes and threatens to cause a condition of pollution by directly affecting waters used for beneficial uses. Shoreline

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3 Pursuant to CWC section 13280, “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. The Regional Board has not received a 401 application or report of waste discharge for wastes discharged at the site.

California Environmental Protection Agency
erosion of the newly exposed beach threatens beneficial uses by reducing water clarity necessary for the growth of eelgrass. Additionally, the redistribution of sediment from shoreline erosion threatens to degrade the eelgrass beds by covering and smothering the beds within the shallow waters of San Diego Bay.

10. Cleanup and abatement action is necessary to ensure that the unauthorized discharges from the project cease to cause and threaten to cause conditions of pollution. Because cleanup and abatement activity will occur within and adjacent to San Diego Bay, best management measures during remedial action are necessary to prevent further conditions that threaten beneficial uses of San Diego Bay.

11. Pursuant to Water Code Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

12. In accordance with Water Code section 13267 (b) these findings provide Dischargers with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports.

13. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 et seq.) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to Section 13304 and Section 13267 of Division 7 of the California Water Code, the Dischargers shall:

1. By October 23, 2006, cleanup and abate existing and threatened pollution associated with the unauthorized discharge of til to San Diego Bay by removing all unauthorized structures (including but not necessarily limited to the seawall and concrete footing) placed within waters of the U.S./State (below +7.79 ft. MLW).

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, the Dischargers shall submit a Cleanup and Abatement Progress Report that documents that the required on-site cleanup and abatement
actions have been completed and that the stabilization measures consisting of
engineered riprap and filter fabric lining have been constructed.

4. By December 22, 2006, the Dischargers shall submit an Eelgrass Impact
Assessment Report for the area of Bay impacted by the discharge. The report shall
thoroughly map the area and distribution of existing eelgrass beds and delineate
and quantify any impacts to eelgrass as a result of construction of the project. If
impacts to eelgrass have been discovered the report will also contain a conceptual
mitigation plan consistent with the Southern California Eelgrass Mitigation Policy
(adopted July 31, 1991). This assessment shall be performed by a qualified
Biologist/Environmental Consultant with at least 5 years experience in the field of
eelgrass assessment.

5. With each report required by this Order, provide under penalty of perjury under the
laws of California a “Certification of Completion” statement to the Regional Board
identifying that directives of this Order have been met.

The “Certification of Completion” shall include the following signed statement:

I certify under penalty of law that this document and all attachments were
prepared under my direction or supervision in accordance with a system
designed to assure that qualified personnel properly gather and evaluate
the information submitted. Based on my inquiry of the person or persons
who manage the system, or those persons directly responsible for
gathering the information, the information submitted is, to the best of my
knowledge and belief, true, accurate, and complete. I am aware that
there are significant penalties for submitting false information, including
the possibility of fine and imprisonment for knowing violations.

NOTIFICATIONS

1. Requirements established pursuant to Water Code Sections 13304 and 13267(b)
are enforceable when signed by the Executive Officer of the Regional Board.

2. The Regional Board reserves its right to take any enforcement action authorized by
law for violations of the terms and conditions of this Cleanup and Abatement
Order.

3. Pursuant to California Water Code section 13350, any person who intentionally or
negligently violates a cleanup and abatement order may be liable civilly in an
amount which shall not exceed five thousand dollars ($5,000), but shall not be less
than five hundred dollars ($500), for each day in which the cleanup and abatement
order is violated

California Environmental Protection Agency
4. Pursuant to California Water Code section 13268, any person failing or refusing to
furnish technical or monitoring program reports as required by Section 13267, or
falsifying any information provided therein, is guilty of a misdemeanor, and may be
liable civilly in an amount which shall not exceed one thousand dollars ($1,000) for
each day in which the violation occurs.

5. The Discharger shall reimburse the State of California for all reasonable costs
actually incurred by the Regional Board to investigate unauthorized discharges of
waste and to oversee cleanup of such waste, abatement of the effects thereof, or
other remedial action, required by this Cleanup and Abatement Order, according to
billing statements prepared from time to time by the State Water Resources Control
Board.

6. The Discharger shall properly manage, store, treat, and dispose of contaminated
soils and ground water in accordance with applicable federal, state, and local laws
and regulations. The storage, handling, treatment, or disposal of soil containing
waste constituents and polluted groundwater shall not create conditions of
pollution, contamination or nuisance as defined in California Water Code section
13050(m). The Discharger shall, obtain, or apply for coverage under waste
discharge requirements or a conditional waiver of waste discharge requirements for
any discharge of the waste to (a) land for treatment, storage, or disposal or (b)
waters of the state.

7. The Discharger(s) shall provide documentation that plans and reports required
under this Cleanup and Abatement Order are prepared under the direction of
appropriately qualified professionals. California Business and Professions Code
Sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations
and judgments be performed by or under the direction of registered professionals.
The Discharger(s) shall include a statement of qualifications and registration
numbers, if applicable, of the responsible lead professionals in all plans and
reports required under this Cleanup and Abatement Order. The lead professional
shall sign and affix their registration stamp, as applicable, to the report, plan, or
document.

8. The Discharger shall submit both electronic and paper copies of all workplans,
technical reports, and monitoring reports required under this Cleanup and
Abatement Order in accordance with Water Code Section 13196, Electronic
Submission of Reports. Electronic submission shall be in PDF format, and include
the signed transmittal letter and professional certification.

9. All reports required under this Cleanup and Abatement Order shall be signed and
certified by the Discharger(s) or by a duly authorized representative of the
Discharger(s) and submitted to the Regional Board. A person is a duly authorized
representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

10. All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Executive Officer
Attr: Southern Watershed Protection Unit
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

[Signature]
JOHN H. ROBERTUS
Executive Officer

[Date]
8/22/2006

California Environmental Protection Agency