



California Regional Water Quality Control Board

San Diego Region



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<http://www.waterboards.ca.gov/sandiego>

August 23, 2006

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

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

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

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

7006 0100 0002 8367 2804

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 sea wall 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) 637-5581 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,



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

JHR:dwg:cjm

Enclosures:

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

cc:

Ms. Kari Coler, U.S. Army Corps of
Engineers

Larry & Penny Gunning
505 First Street
Coronado, CA 92118

Elieen 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 REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

CLEANUP AND ABATEMENT ORDER NO. R9-2006-0102

FOR

**LARRY & PENNY GUNNING
AND
PERRY & PAPENHAUSEN CONSTRUCTION**

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, of 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 13260¹.
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

¹ 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. The Regional Board has not received a 401 application or report of waste discharge for wastes discharged at the site.

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 fill 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. MLLW).
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.

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.).

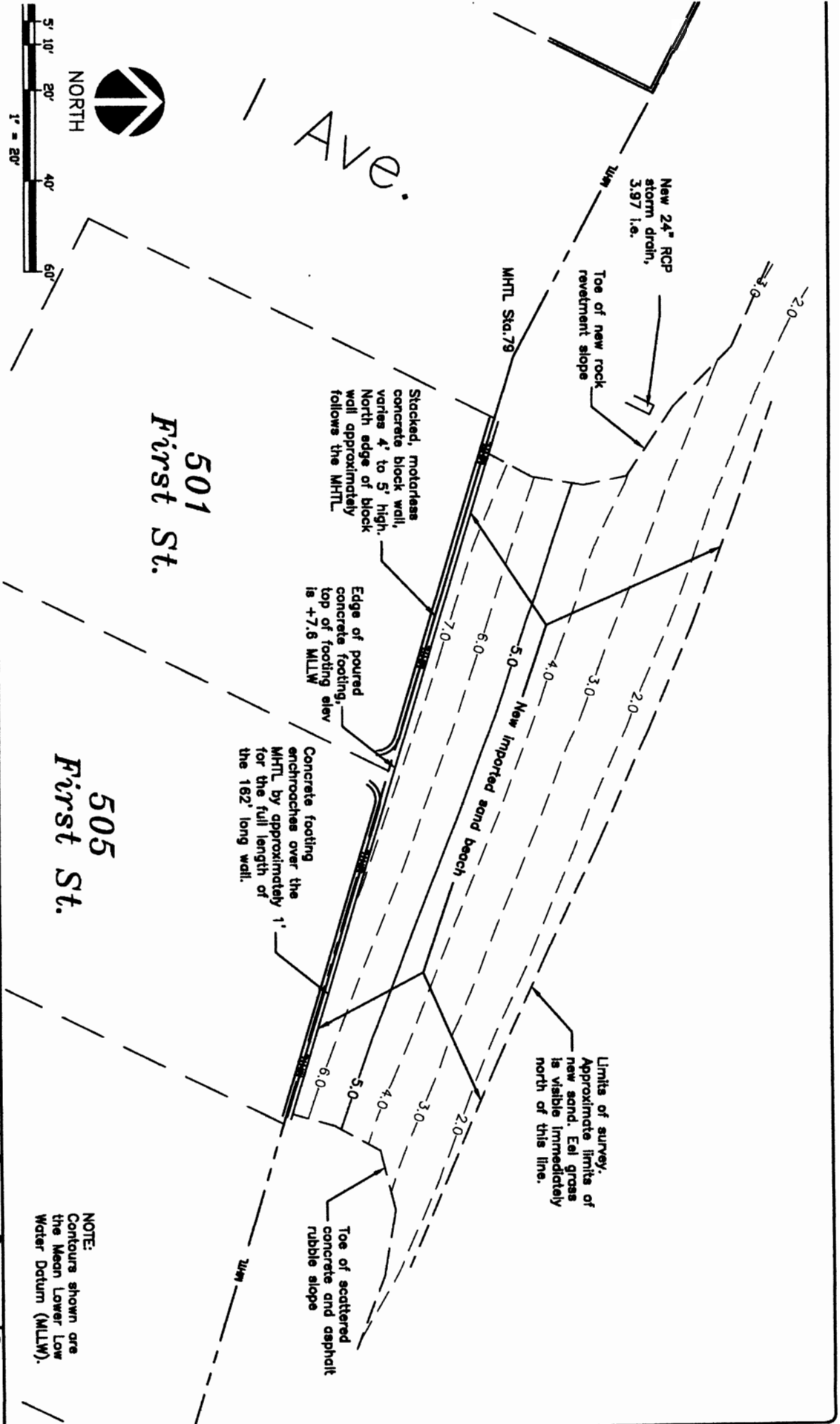
10. All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

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



JOHN H. ROBERTUS
Executive Officer

8/22/2006
Date



Locate Shoreline Improvements
 Concrete Footing, Block Wall, Sand Beach
 at 501 and 505 First Street
 Coronado, California



Unified Port of San Diego
 San Diego, Ca.

Port Survey Crew
 Serflaw, Moreno
 RTK GPS Field Survey
 Date: May 22, 2006
 Scale: 1" = 20'