

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
June 13, 2007

ITEM: 14

SUBJECT: PUBLIC HEARING: The Regional Board will consider affirming Cleanup and Abatement Orders for the unauthorized discharge of fill to San Diego Bay at 501 and 505 First Street, Coronado, San Diego County: (Frank Melbourn)

- A. Addendum No. 2 to 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 401 Water Quality Certification (File No. 05C-041). 501 First Street, Coronado, San Diego County.
- B. Addendum No. 2 to Cleanup and Abatement Order No. R9-2006-0102 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.

PURPOSE: To affirm the issuance of Cleanup and Abatement Order (CAO) Nos. R9-2006-0101 and 0102, and their Addendum Nos. 1 and 2.

PUBLIC NOTICE: Named parties to the CAOs, their legal counsel, and interested parties were notified of the public hearing in writing on May 10, 2007. A legal notice of the public hearing was published in the San Diego Union Tribune newspaper on May 17, 2007.

DISCUSSION: Hearings on the two CAOs have been combined into a single hearing with a single agenda package because the CAOs are similar. Each CAO names the same contractor, Perry & Papenhausen Construction, hired by owners of contiguous properties to remove riprap and construct a seawall that resulted in multiple violations and environmental

harm. Furthermore the CAOs have the same directives with the same deadlines:

1. By July 2, 2007, stabilize the shoreline to pre-project conditions by installing engineered riprap to Port District Specifications;
2. By May 1, 2008, cleanup and abate existing and threatened pollution associated with the construction of the seawall and the failure to replace the riprap; and
3. Submit monthly eelgrass impact assessment reports by the 15th of each month.

A full discussion of this matter has been provided in the attached Technical Analysis.

Background Discussion

In 2004, Bill and Heidi Dickerson of Las Vegas, Nevada, purchased property and a residential house along San Diego Bay at 501 First Street, Coronado. The Dickersons employed Perry & Papenhausen Construction to demolish the existing structure, and design and build a new residence. In May, 2005, the Dickersons submitted applications with the San Diego Unified Port District (Port District), the U.S. Army Corps of Engineers (ACOE), and the Regional Board to remove and replace riprap along the bayside of 501 First Street. In February, 2006, after receiving appropriate permits from the Port District, ACOE, and the Regional Board, Perry & Papenhausen Construction removed the riprap from the bayside of 501 First Street

At the same time, without applying for or receiving permits, Perry & Papenhausen Construction also removed the riprap from the bayside of 505 First Street at the direction Larry and Penny Gunning of Paradise Valley, Arizona, owners of 505 First Street.

Rather than installing the permitted riprap as proposed in the Dickersons' applications, Perry & Papenhausen Construction erected a mortarless block seawall on top of a concrete footing along the bayside of 501 and 505 First Street on April 19, 2006. Two months later, the Port District notified the Regional Board that they had discovered that the Dickersons had not installed the proposed riprap, but instead

constructed a five foot high seawall. The Port District further informed the Regional Board that the Gunnings without any permits had also removed riprap and constructed a seawall. On June 12, 2006, the Regional Board confirmed this information during an inspection of 501 and 505 First Street. The homeowners have stated their preference for keeping the seawall.

The Port District, the ACOE, the California Coastal Commission, and the Regional Board (agencies) staff met on February 16, 2007 to discuss this matter. The consensus of all of the agencies is that the seawall was built without authorization, and had the applications submitted to the agencies included this information, the process would have required California Environmental Quality Act (CEQA) review. It was agreed that the engineered riprap as originally proposed must be installed as soon as possible to stop the ongoing beach erosion and damage to the eelgrass beds, and that the seawall should be removed. If the homeowners want a seawall then they should go through the appropriate environmental review and approval process.

KEY ISSUES:

1. Does the Regional Board have justification to issue CAOs to the Dickersons, Gunnings, and Perry & Papenhausen Construction?
2. Has a Regional Board Order or Prohibition been violated?
3. Have the parties discharged waste to waters of the state?
4. Have the homeowners created or threaten to create a condition of pollution?

LEGAL CONCERNS:

See *"Key Issues."*

SUPPORTING DOCUMENTS:

1. Area Map
2. CAO R9-2006-0101 as amended by Addendum Nos. 1 and 2
3. CAO R9-2006-0102 as amended by Addendum Nos. 1 and 2
4. Technical Analysis

RECOMMENDATION(S): Affirm Cleanup and Abatement Order Nos. R9-2006-0101 and 0102.