



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold
Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

July 2, 2009

Certified Mail – Return Receipt Requested
Article Number: 7008 1140 0002 8455 9947

In reply refer to:
740524:jebsen

David Merk
Director, Environmental Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488

Dear Mr. Merk:

SUBJECT: Action on Request for Clean Water Act Section 401 Water Quality Certification for Emergency Outfall Stabilization at McCall Street Water Quality Certification No. 09C-049

Enclosed find Clean Water Act Section 401 Water Quality Certification (Certification) with acknowledgment of enrollment under State Water Resources Control Board Order No. 2003-017 DWQ for Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have received State Water Quality Certification for Emergency Outfall Stabilization at McCall Street project. A description of the project and location can be found in the project information sheet and on location and site maps compiled by the California Regional Water Quality Control Board, San Diego Region (Regional Board), which are included as Attachments 1 through 3.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the Regional Board including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

Recycled Paper



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David Merk
San Diego Unified Port District
401 Certification 09C-049

- 2 -

July 2, 2009

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.

If you have any questions regarding this notification, please contact Ms. Jody Ebsen directly at 858-636-3146 or by email via jebsen@waterboards.ca.gov.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

Enclosure:

Clean Water Act Section 401 Water Quality Certification No. 09C-049 for Emergency Outfall Stabilization at McCall Street, with 3 attachments

cc: Refer to Attachment 2 of Certification 2 for Distribution List.

File No.	09C-049
WDID:	9 000001857
<i>CIWQS</i>	
Reg. Measure ID:	368023
Place ID:	740524
Party ID:	281794
Person ID:	90692



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Acting Secretary for
Environmental
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California Regional Water Quality Control Board San Diego Region

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Action on Request for
Clean Water Act Section 401 Water Quality Certification
and Waste Discharge Requirements
for Discharge of Dredged and/or Fill Materials

PROJECT: Emergency Outfall Stabilization
Certification No. 09C-049 WDID No. 9000001857

APPLICANT: Allison Gutierrez
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488

File No.	09C-049
WDID:	9 000001857
<i>CIWQS</i>	
Reg. Measure ID:	368023
Place ID:	740524
Party ID:	281794
Person ID:	90692

ACTION:

<input checked="" type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

PROJECT DESCRIPTION:

The project proposes to stabilize the sand and the immediate area surrounding a 24" storm drain outfall along the beach at the foot of McCall Street in San Diego. The project will excavate a 10'x10'x4' area of sand around the storm drain until the invert elevations of the pipe is exposed and an additional 2 ft underneath. The excavated area will be filled with approximately 180 cubic feet of rocks (3-4 inch thick rock layer) at the outfall and immediate area, and then the backfilled with the excavated sand. A surrounding chain link fence will also be removed and replaced.

STANDARD CONDITIONS:

The following three standard conditions apply to all Certification actions, except as noted under Condition 3 for denials (Action 3).

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

Recycled Paper



1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This Certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action (Actions 1 and 2) must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

ADDITIONAL CONDITIONS:

In addition to the three standard conditions, the San Diego Unified Port District must satisfy the following:

A. GENERAL CONDITIONS:

1. The San Diego Unified Port District must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the California Regional Water Quality Control Board, San Diego Region (Regional Board), to support this 401 Water Quality Certification (Certification) and all subsequent submittals required as part of this Certification and as described in Attachment 1. The conditions within this Certification must supersede conflicting provisions within such plans submitted prior to the Certification action. Any modifications thereto, would require notification to the Regional Board and reevaluation for individual Waste Discharge Requirements and/or Certification amendment.
2. During construction, the San Diego Unified Port District must maintain a copy of this Certification at the project site so as to be available at all times to site personnel and agencies.
3. San Diego Unified Port District must permit the Regional Board or its authorized representative at all times, upon presentation of credentials:
 - a. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Certification.

- c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
 - d. Sampling of any discharge or surface water covered by this Order.
4. The San Diego Unified Port District must notify the Regional Board within 24 hours of any unauthorized discharge, including hazardous or toxic materials, to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional best management practice (BMPs) or other measures that will be implemented to prevent future discharges.
5. The San Diego Unified Port District must, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the U.S. and/or State.
6. This Certification is not transferable to any person except after notice to the Executive Officer of the Regional Board. San Diego Unified Port District must notify the Regional Board of any change in ownership of the project area. Notification must include, but not be limited to, a statement that the property owner has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands the permit requirements and must implement them; the seller and purchaser must sign and date the notification. The notification for transfer of mitigation responsibility shall include a signed statement from the new party demonstrating acceptance and understanding of the responsibility to meet the mitigation conditions and applicable requirements of the Certification. Notification must be provided within **10 days** of the sale of the property.
7. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
8. In response to a suspected violation of any condition of this Certification, the Regional Board may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate, provided that the burden, including costs, of the reports must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

9. In response to any violation of the conditions of this Certification, the Regional Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.

B. PROJECT CONDITIONS:

1. Prior to the start of the project, and annually thereafter, the San Diego Unified Port District must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response, and BMP implementation and maintenance.
2. San Diego Unified Port District must comply with the requirements of State Water Resources Control Board Water Quality Order No. 2003-0017-DWQ, Statewide General Waste Discharge Requirements for discharges of dredged or fill material that have received State Water Quality Certification. These General Waste Discharge Requirement are accessible at:
http://www.waterboards.ca.gov/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf.
3. All debris generated from this project shall be prevented from entering San Diego Bay. Any debris discharged into the Bay shall be collected and removed from the bay and disposed of properly.
4. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.

C. REPORTING:

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.
2. San Diego Unified Port District must submit a report to the Regional Board within 30 days of completion of the project. The report should include as-built drawings no bigger than 11" x 17" and photos of the completed project.
3. All reports and information submitted to the Regional Board must be submitted in both hardcopy and electronic format. The preferred electronic format for each report submission is one file in PDF format that is also Optical Character Recognition (OCR) capable.

4. All applications, reports, or information submitted to the Regional Board must be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

5. San Diego Unified Port District must submit reports required under this Certification, or other information required by the Regional Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; Project No. 09C-049
9174 Sky Park Court, Suite 100
San Diego, California 92123

Report Topic	Certification Condition	Due Date(s)
Project Completion Report	C2	Within 30 days of project completion

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On July 1, 2009, receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.


REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Jody Ebsen
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
(858) 6363146
jebesen@waterboards.ca.gov

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Structural Upgrades to Emergency Outfall Stabilization at McCall Street (Project No. 09C-049) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017 DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the Regional Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Board's Water Quality Control Plan (Basin Plan).



JOHN H. ROBERTUS
Executive Officer
Regional Water Quality Control Board

7/3/09
Date

- Attachments:
1. Project Information
 2. Distribution List
 3. Location Maps

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant: San Diego Unified Port District
Attention: Allison Gutierrez
P.O. Box 120488
San Diego, CA 92112-0488
Telephone: 619-686-6254
Facsimile: 619-6866467
Email: agutierr@portofsandiego.org

Project Name: Emergency Outfall Stabilization

Project Location: At the end of McCall Street in San Diego.

Type of Project: Emergency storm drain outfall stabilization.

Need for Project: Sand that currently covers the storm drain outfall liquefies and becomes unstable during high tide and wet weather events. Outfall stabilization is needed to protect public health.

Project Description: The project proposes to stabilize the sand and the immediate area surrounding a 24" storm drain outfall along the beach at the foot of McCall Street in San Diego. The project will excavate a 10'x10'x4' area of sand around the storm drain until the invert elevations of the pipe is exposed and an additional 2 ft underneath. The excavated area will be filled with approximately 180 cubic feet of rocks (3-4 inch thick rock layer) at the outfall and immediate area, and then backfilled with the excavated sand. An existing chain link fence will also be removed and replaced.

Federal Agency/Permit: U.S. Army Corps of Engineers, NWP 7, Robert R. Smith.

Other Required Regulatory Approvals: Categorically Excluded Development for Coastal Development Permit, San Diego Unified Port District, April 14, 2009.

California Environmental Quality Act (CEQA) Compliance: Categorically Exempt section 15304 (Class 4), April 14, 2009, San Diego Unified Port District.

Receiving Water: San Diego Bay

Affected Waters of the United States/State: Ocean

Dredge Volume: N/A

Compensatory Mitigation: Impacts are temporary. Excavated sand will be replaced over the rocks, restoring the beach. No significant impacts to water are anticipated therefore no mitigation is required.

Public Notice: On July 1, 2009, receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.

Fees: Total Due: \$640.00
Total Paid: \$640.00 (check No. 125413)

CIWQS: Regulatory Measure ID: 368023
Place ID: 740524
Party ID: 281794

**ATTACHMENT 2
DISTRIBUTION LIST**

Mr. Robert R. Smith
U.S. Army Corps of Engineers, Regulatory Branch
San Diego Field Office
6010 Hidden Valley Rd, Ste 105
Carlsbad, California 92011

Allison Gutierrez
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488

Via email:

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

U.S. Environmental Protection Agency, Region 9
Wetlands Regulatory Office
R9-WTR8-Mailbox@epa.gov

Ms. Sally Brown
U.S. Department of the Interior
Fish and Wildlife Service
Sally_Brown@fws.gov

**ATTACHMENT 3
LOCATION MAPS**

Map 1.



Map 2.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Allison Gutierrez
 PORT of SAN DIEGO
 PO BOX 120488
 SAN DIEGO CA 92112-0488

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
X

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number 7008 1140 0002 8455 9947
 (Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.
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Sent To Allison Gutierrez, Port of SAN Diego
 Street, Apt. No., or PO Box No. PO Box 120488
 City, State, ZIP+4 SAN DIEGO CA 92112-0488

PS Form 3800, August 2006

See Reverse for Instructions