

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**ADDENDUM NO. 2
TO
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 (hereafter Regional Board), finds that:

1. This addendum includes new or corrected facts as determined during the course of the Regional Board's ongoing investigation.
2. On October 13, 2006, the Regional Board Executive Officer issued Addendum No. 1 to Cleanup and Abatement Order (CAO) No. R9-2006-0102.
3. All of the editorial changes found in these directives are to be made upon CAO No. R9-2006-0101 as amended by addendum No. 1.
4. Fred C. Perry presented himself as doing business as "Perry & Papenhausen Construction." Upon review of the State of California Contractor's Licensing database and the Secretary of State's Incorporation database, Mr. Perry is conducting business as "Perry & Papenhausen, Inc." The first directive of this Order reflects that fact.
5. 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 21000 et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

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

1. Perry & Papenhausen, Inc. shall be named as a discharger and added to the title of CAO No. R9-2006-0102 as follows:

**CLEANUP AND ABATEMENT ORDER NO. R9-2006-0102
FOR
LARRY & PENNY GUNNING
AND
PERRY & PAPENHAUSEN, INC. (AKA PERRY & PAPENHAUSEN
CONSTRUCTION)**

2. Insert the following findings as numbered:
 1. ~~On August 23, 2006, the Regional Board Executive Officer issued Cleanup and Abatement Order (CAO) No. R9-2006-0102 to Larry and Penny Gunning and Perry and Papenhausen Construction (hereinafter *Dischargers*) for unauthorized discharge of fill to San Diego Bay.~~
 2. On October 13, 2006, the Regional Board Executive Officer issued Addendum No. 1 to CAO R9-2006-0102.
 3. This second addendum to CAO No. R9-2006-0102 (Order) has been prepared to address the continued discharge of fill into San Diego Bay that has resulted from the unauthorized removal of riprap at 505 First Street in the City of Coronado and the construction of an unauthorized seawall at the same address. This Order supersedes and amends all previously issued version of CAO No. R9-2006-0102.
3. Renumber Finding No. "1" to "4"; and add to the end of the finding prior to the period "; and all other applicable legal authority".
4. Renumber Finding No. "2" to "5"; and delete "(hereinafter Dischargers)".
5. Renumber Finding No. "3" to "6"; add "Contractor" before "License"; replace "351216" with "830775"; and delete "(hereinafter Dischargers)".
6. Renumber Finding No. "4" to "7"; and renumber Finding No. "5" to "8".
7. Insert the following findings as numbered:
 9. On or about May 1, 2006, Dischargers began removal of the existing riprap on the shoreline fronting 505 First Street using an excavator.
 10. On or about May 8, 2006, Dischargers excavated soils, natural sand and debris about 48 inches wide and along the entire length of the northern property line for 505 First Street to accommodate the forms for the footing associated with the construction of an unauthorized seawall.

8. Renumber Finding No. "6" to "11"; replace "January 1" with "May 15".
9. Renumber Finding No. "7" to "12"; move the last sentence from this finding to the last sentence of new Finding No. 13; and add "and failure to replace riprap" after "footing" and before "created" in the moved sentence.
10. Insert the following findings as numbered:
 13. ~~On June 12, 2006, a compliance inspection was conducted by Regional Board Staff. The inspection found that Dischargers had removed riprap from the shoreline on the bayside of 505 First Street and that an unauthorized seawall had been constructed along the property line of 501 and 505 First Street. The construction of the seawall and concrete footing and removal of riprap created an area of unstabilized sandy beach in San Diego Bay between approximately +2.0 ft. and +7.0 ft. MLLW.~~
 14. Section 13304(a) of the California Water Code provides that:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.
 15. Clean Water Act (CWA) section 404 requires any person proposing to discharge dredge or fill material into navigable waters of the United States to obtain a Section 404 permit prior to such discharge. Section 401 of the CWA requires that any person obtaining a section 404 permit, obtain

water quality certification from the state in which the discharge occurs. Section 13376 of the CWC requires that any person who is proposing to discharge pollutants or dredged or fill material into waters of the state to submit a report of waste discharge pursuant to CWC section 13260 prior to such discharge. The Dischargers failed to obtain a section 404 permit and section 401 certification, and failed to file a Report of Waste Discharge for the dredge and fill activities associated with the construction of the seawall. Furthermore, Dischargers unauthorized activities are in violation of Basin Plan Prohibitions.

11. Renumber Finding No. "8" to "16".
12. Renumber Finding No. "9" to "17"; insert "unauthorized" before discharge in the first sentence; and replace "creation" with "exposure" in the first sentence.
13. Insert the following findings as numbered:
 18. The discharge or deposit of sand, soil and sediment into waters of the state constitute "waste" as defined in CWC section 13304. The Dischargers, through this activity, have discharged waste and created a condition where waste continues to be discharged into waters of the U.S./state where it has caused and/or threatens to cause a condition of pollution or nuisance by increasing levels of sediment, and settleable and suspended material. The discharge of waste to the waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance is also a violation of Basin Plan Prohibitions.
 19. Dischargers have been required by this Order to clean up and abate the impacts of their unauthorized discharges since August 23, 2006. Nevertheless, Dischargers have yet to stabilized the shoreline and prevent further discharge.
14. Renumber Finding No. "10" to "20"; renumber Finding No. "11" to "21"; renumber Finding No. "12" to "22"; and renumber Finding No. "13" to "23".
15. Insert the following directive as numbered:
 1. Cease the discharge of sand, soil and sediment to waters of the state and clean up and abate the condition of unauthorized discharge of fill to San Diego Bay in accordance with the schedule below.
16. Renumber Directive No. "1" to "2"; replace "October 23, 2006" with "May 1, 2008"; replace "removing all unauthorized structures (including but not necessarily limited to the seawall and concrete footing) placed within waters of the U.S./State" with "restoring and stabilizing the affected area to its pre-project

- condition or receive written approval from the Regional Board for an alternative Cleanup and Restoration Plan and Schedule”.
17. Renumber Directive No. “2” to “3”; replace “October 23, 2006” with “July 2, 2007”; replace “return” with “stabilize”; insert “by returning it” after “shoreline” and before “to”; and replace “stabilization of the shoreline at the site with” with “replacing”.
 18. Renumber Directive No. “3” to “4”; delete “By November 22, 2006,”; capitalize the letter “t” in “the”; insert “within sixty days of completion of Directive No. 2,” after “submit” and before “a”; delete “consisting of engineered riprap and filter fabric lining”; add “as authorized” to the end of the sentence; and insert as the last sentence “If Directive No. 2 is not completed by May 1, 2008, then the Dischargers shall submit a report by June 1, 2008, and monthly thereafter until Directive No. 2 is completed.”
 19. Renumber Directive No. “4” to “5”; and delete the last two sentences.
 20. Insert the following directive as numbered:
 6. Continue to submit monthly Eelgrass Impact Assessment Reports by the 15th of each month with the first monthly assessment report being due on June 15, 2007, for the area of the Bay impacted by the discharge as determined by the Regional Board. If the Regional Board determines that eelgrass has been negatively impacted by the unauthorized discharge, then Dischargers shall prepare and submit an eelgrass mitigation plan consistent with the Southern California Eelgrass Mitigation Policy (adopted July 31, 1991). This mitigation plan shall be prepared by a qualified Biologist/Environmental Consultant with at least five years of experience in the field of eelgrass mitigation/restoration.
 21. Renumber Directive No. “5” to “7”; delete “of Completion” and “identifying that directives of this Order have been met” from the first sentence; delete “of Completion” from the second paragraph; and add “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.” to the end of the certification statement.
 22. Add “, including but not limited to, violations” after “violations” and before “of” in Notification No. 2.

23. Insert the following notification as numbered:

11. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY SUBJECT YOU TO FURTHER ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO, ASSESSMENT OF CIVIL LIABILITY UNDER SECTIONS 13268 AND 13350 OF THE CALIFORNIA WATER CODE AND REFERRAL TO THE DISTRICT ATTORNEY OR ATTORNEY GENERAL FOR INJUNCTIVE RELIEF AND CIVIL OR CRIMINAL LIABILITY.



JOHN H. ROBERTUS
Executive Officer