



# California Regional Water Quality Control Board

## San Diego Region



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August 23, 2006

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

**Certified Mail No. (return receipt requested)**  
**7003 1680 0000 7397 7233**

Bill & Heidi Dickerson  
501 First Street  
Coronado, CA 92118

**7003 1680 0000 7397 7226**

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

**SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R9-2006-0101 FOR THE UNAUTHORIZED DISCHARGE OF FILL TO SAN DIEGO BAY IN VIOLATION OF SECTION 401 WATER QUALITY CERTIFICATION (FILE NO. 05C-041). 501 FIRST STREET, CORONADO, SAN DIEGO COUNTY.**

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

Enclosed is Cleanup and Abatement Order (CAO) No. R9-2006-0101 of the California Regional Water Quality Control Board, San Diego Region (Regional Board) concerning violation of the Section 401 Water Quality Certification (File No. 05C-041) resulting in the construction of an unauthorized sea wall at 501 First Street in the City of Coronado.

The CAO is issued pursuant to California Water Code 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 and to comply with the conditions of the 401 certification issued for the project.

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.

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. R9-2006-0101  
Attachment No. 1 Port Survey

cc:

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

Ms. Ellen Blake, US EPA

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

John Richards, OCC, SWRCB

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

**CLEANUP AND ABATEMENT ORDER NO. R9-2006-0101**

**FOR**

**BILL & HEIDI DICKERSON  
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. Bill and Heidi Dickerson (hereinafter *Dischargers*) are the owners of the property at 501 First Street, Coronado, San Diego County (Assessors Parcel Number 536-030-0100).
3. Perry & Papenhausen Construction, License No. 351216 (hereinafter *Dischargers*), is the construction firm hired by the Bill and Heidi Dickerson to construct a residence and perform riprap replacement at the shore side of the property at 501 First Street, in the City of Coronado, San Diego County.
4. On July 28, 2005, the Regional Board issued Section 401 Water Quality Certification (File No. 05C-041) and a Waiver of Waste Discharge Requirements (WDR) to the *Dischargers* for proposed discharges of fill associated with the Riprap Replacement at their residence located at 501 First Street, in the City of Coronado. The project, as certified by the Regional Board, was to replace approximately 450 cubic yards of existing riprap with approximately 404 cubic yards of engineered riprap within the existing riprap footprint. The new riprap was to be placed between +1 ft. and +4 ft. Mean Lower Low Water (MLLW) over approximately 80 linear feet of shoreline. A filter fabric liner was to be installed beneath the riprap.

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. The 401 certification issued for the proposed project authorized permanent impacts to waters of the U.S., limited to 0.01 acre of previously impacted bay waters and 80 linear feet of previously impacted shoreline. The United States Army Corps of Engineers has defined Waters of the U.S. in San Diego Bay to be the area below +7.79 MLLW.
7. 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).
8. 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) in violation of Condition A.1 of the Section 401 Water Quality Certification issued for the project. Construction of the 162 foot long seawall and concrete footing was initiated in concert with the adjacent property at 505 First Street, in Coronado. Condition A.1 of the 401 certification issued by the Regional Board required the *Dischargers* to:

“...at all times, fully comply with the engineering plans, specifications and technical reports submitted with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification.”

The plans and specifications submitted with the application for 401 Certification called for riprap replacement only. Construction of the seawall and concrete footing is in violation of Condition A.1 of the 401 certification issued by the Regional Board.
9. 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.

10. 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.
11. 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 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.
12. 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.
13. 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.
14. 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.
15. 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 shoreline at the site, in accordance with the design plans and specifications authorized by the Section 401 Water Quality Certification issued for the project, including filter fabric lining and engineered riprap replacement in accordance with any Port of San Diego specifications.
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 as authorized pursuant to Section 401 Water Quality Certification No. 05C-041.
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 Section 401 Water Quality Certification No. 05C-041 or 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.



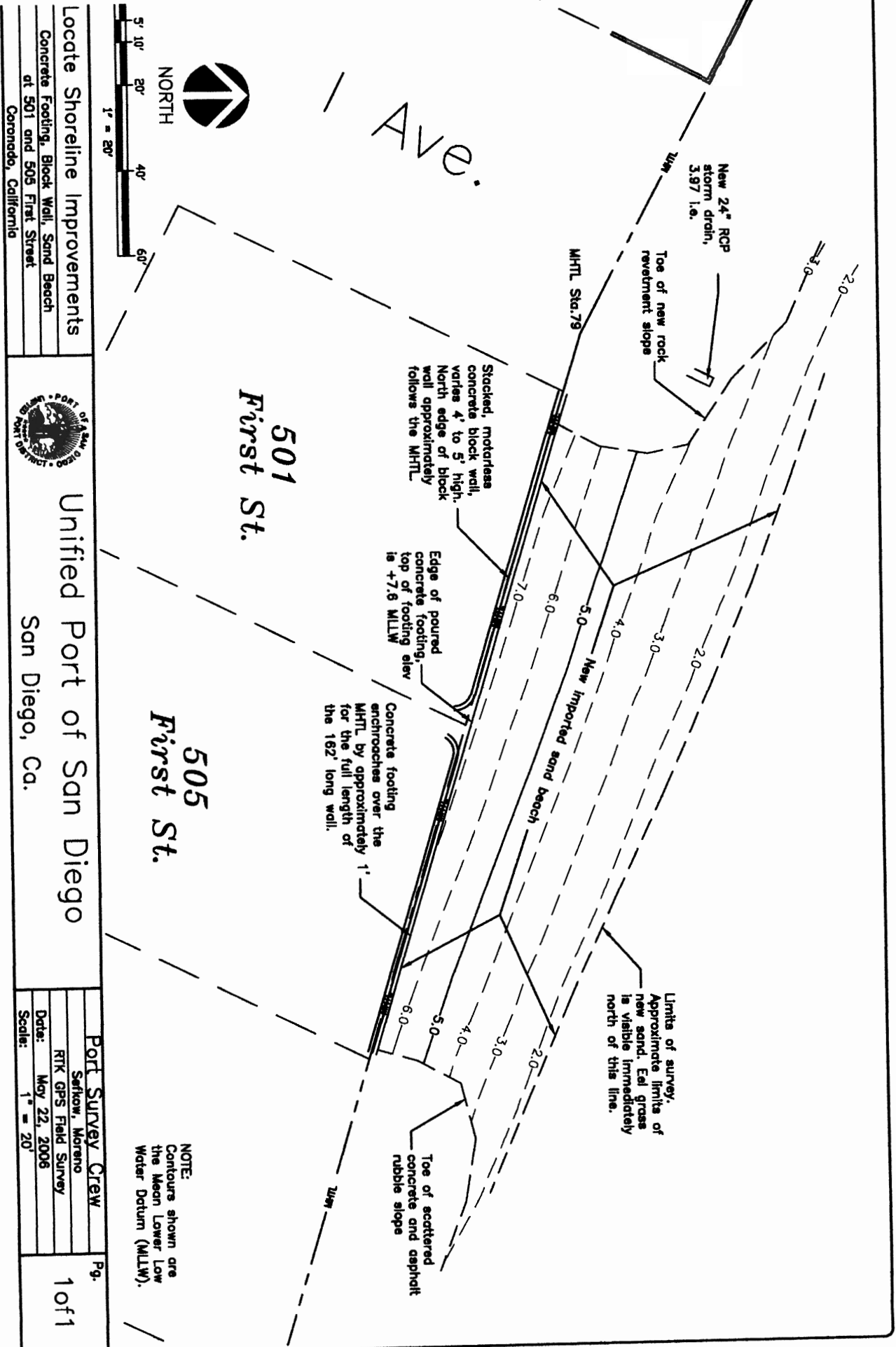
7. The Discharger(s) shall provide documentation that plans and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code Sections 6735, 7835 and 7835.1 require that engineering and geologic 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**  
 Seflow, Morano  
 RTK GPS Field Survey  
 Date: May 22, 2006  
 Scale: 1" = 20'



**NOTE:**  
 Contours shown are  
 the Mean Lower Low  
 Water Datum (MLLW).