

Combined Sewer System/NPDES Permit: City/County of San Francisco U.S. EPA Environmental Appeals Board Petition for Review



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The City and County of San Francisco (collectively “San Francisco”) filed a January 13th pleading before the United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) titled:

Petition for Review of City and County of San Francisco’s Oceanside Wastewater Treatment Plant’s NPDES Permit Issued by EPA Region 9 (“Petition”)

The Petition challenges certain components of a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit issued to San Francisco by EPA Region 9.

San Francisco states it is operating a combined sewer system that:

... is on the leading edge of Combined Sewer Overflow Control Policy (“CSO Policy”) process.

The *Petition* further states that perhaps “because of this frontrunner status,” EPA appears unsure of the appropriate scope of its authority on issues of water quality based effluent limitations (“WQBELs”), the long term control plan (“LTCP”), and isolated sewer overflows. The alleged uncertainty is stated to have resulted in EPA including certain provisions in the NPDES permit which San Francisco finds objectionable:

1. Section V and Attachment G.I.I.1, imposing generic WQBELs;
2. Section VI.C.5.d, requiring an “LTCP Update”; and
3. Section VI.C.5.a.ii.b, requiring the reporting of isolated sewer overflows.

San Francisco argues that the inclusion of these provisions are based on:

- erroneous findings of fact;
- conclusions of law; and
- involve important policy considerations that warrant review.

Examples of arguments set forth in the *Petition* include:

- EPA failed to identify factual information to support its statement that existing WQBELs will not necessarily protect water quality standards
- EPA failed to give due consideration to prior findings that San Francisco-Pacific WQBELs protect receiving water quality

- EPA failed to provide fair notice to San Francisco of what constitutes compliance with the Clean Water Act
- EPA's inclusion of generic WQBELs in a Post-Phase II Permit raises important policy considerations in regards to the Combined Sewer Overflow Policy
- EPA imposes Combined Sewer Overflow Policy requirements that are not applicable to San Francisco and are contrary to law
- Contested NPDES permit requirements relate to isolated sewer overflows that do not reach surface waters
- EPA does not have jurisdiction over isolated sewer overflows that do not reach surface waters
- EPA's regulation of isolated sewer overflows resulting from design capacity exceedances is an abuse of discretion
- EPA's reliance on the agency's 1995 Combined Sewer Overflows Guidance for Nine Minimum Controls to justify reporting requirements for isolated sewer overflows that do not reach surface waters is misplaced

A link to the *Petition* can be found [here](#).