

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



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The United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) addressed in a December 1st Order the City and County of San Francisco’s (collectively “San Francisco”) pleading 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 and the California Regional Water Quality Board for the San Francisco Bay (“Board”).

San Francisco’s *Petition* states that it operates a combined sewer system that:

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

The San Francisco *Petition* had further stated 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.

A CSO is the discharge from a combined sewer system at a point prior to the public owned treatment works. A combined sewer system consists of a single set of pipes that convey both sanitary sewage and stormwater. CSO discharges occur when rainfall or snow melt occurs, causing the system to be overwhelmed and discharge untreated sewage to rivers and streams. CSO’s are point sources subject to NPDES permit requirements including both technology-based and water quality-based requirements of the Clean Water Act.

EPA Region 9 and the Board jointly authorized San Francisco to discharge from the City of San Francisco’s existing Oceanside Combined Sewer System. This combined sewer system includes the wastewater treatment facility and its wastewater collection system. Such authorization was provided pursuant to an NPDES permit.

San Francisco’s *Petition* challenged three of the NPDES permit’s conditions:

1. a narrative prohibition against causing or contributing to a violation of any water quality standards;

2. a requirement to report on sewer overflows from the combined sewer system; and
3. a requirement to update the long-term control plan

The EAB denies the *Petition* in all aspects. By way of summary EAB held:

- The respective permitting processes for EPA and the California Regional Water Quality Control Board were consolidated under 40 C.F.R. § 124.4(c)(2), meaning San Francisco received dual authorizations for the continued operation of its facility. (Regardless of whether those authorizations were characterized as one permit or two.)
- San Francisco failed to carry its burden with respect to its argument that EPA lacked a legal or factual basis to include a narrative prohibition against violating water quality standards or that the prohibition deprived them of fair notice. (Noting the obligation to include in every NPDES permit conditions ensuring water quality standards will be met.)
- San Francisco's argument concerning the requirement to report on isolated sewer overflows misapprehends the function of the permit condition at issue. (Requirement to report an isolated sewer overflow is not regulating them.)
- EPA's decision to require San Francisco to update its long term control plan to ensure that up-to-date information is used to assess whether water quality standards are being met/ensure wet weather discharges are not causing unreasonable degradation of the marine environment is consistent with the aims of the Clean Water Act and its incorporation of the CSO Policy. (Permitting authorities are required to issue permits that comply with the Clean Water Act, which in the case of combined sewer systems can reasonably include updates to LTCPs [particularly where such plans are decades old])

A copy of the EAB Order can be found [here](#).