UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 26, 2019

THE ADMINISTRATOR

The Honorable Gavin C. Newsom
1303 10th Street, Suite 1173
Sacramento, California 95814

Dear Governor Newsom:

The U.S. Environmental Protection Agency and California Environmental Protection Agency are responsible for working together to protect public health and the environment in your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal *Clean Water Act* and *Safe Drinking Water Act* among other federal programs.[1] Congress designed these statutory frameworks for the states to take the lead role in implementation, with the EPA overseeing state actions.

Based on data and reports, the EPA is concerned that California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the state must take to address them. To ensure that appropriate steps are being taken to protect Californians, the EPA would like a remedial plan from the state detailing the steps it is taking to address the issues raised below.

The EPA is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco, and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.[2] The EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.[3] San

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[1] The EPA first authorized California's base *Clean Water Act* program in 1973. The EPA subsequently approved the state to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989 and issue general permits in 1989. California also has received primacy to exercise *Safe Drinking Water Act* responsibilities in the state.

[2] *See, e.g.*, Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces (last accessed Sept. 22, 2019).

[3] Human waste from homeless populations is a recognized source of bacteria in water bodies. *See* American Society of Civil Engineers, "Pathogens in Urban Stormwater Systems" (Aug. 2014); "The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches" (Dec. 2013); Tools for Tracking Human Fecal Pollution in Urban Storm Drains, Streams, and Beaches (Sept. 2012). These reports are

EcoRights v. EPA (3:20-CV-06893) ED_003023_00029524-00001

Francisco, Los Angeles and the state do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The state is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. The EPA is committed to helping the state address this problem. In fact, the EPA provided the San Francisco Public Utility Commission a loan of $699 million under favorable terms pursuant to authority under the *Water Infrastructure Finance and Innovation Act* in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the city into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice – allowed by CalEPA – of routinely discharging more than one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's combined sewer outfalls discharge to sensitive waters, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to remove floatables and settleable solids only and do not always achieve even that low level of treatment. These discharges may be contributing to the state's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the city allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the state has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the state's years-long approval of the discharges referenced above under its authorized CWA program raises serious questions as to whether it is administering a program consistent with federal law.[4] The city's practices endanger public health, and the EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the city into compliance.

The state's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted the EPA to review other programs

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available on the website for the San Francisco Bay Beaches Bacteria TMDL *available at* https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/SFbaybeachesbacteria.html (last accessed September 22, 2019).

[4] The EPA's current data also indicates that 15 major Publicly Owned Treatment Works are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. *See* U.S. EPA, Enforcement and Compliance History Online water facility public search tool (https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa).

administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued National Pollutant Discharge Elimination System permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious matters that warrant a strong review by California.

California has the resources to address these problems. Apart from the state's significant tax base, California received more than $1.16 billion of federal funds to implement CWA programs just in the last five years, including $253.5 million in FY2018 and $247 million in FY2019. In addition, California received more than $152 million in categorical grants over this time to improve compliance with the CWA.

The EPA also has concerns about CalEPA's administration and oversight of SDWA programs and public water systems within the state. Indeed, we are aware of numerous recent health-based exceedances: in just the most recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting more than 101,000 residents;
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting more than 10,000 residents;
- two systems with serious Ground Water Rule[5] compliance issues,[6] impacting more than 250,000 residents;
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents; and
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These exceedances call into question the state's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

Under this Administration, the EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the state to act decisively under

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[5] The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

[6] These health-based concerns are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the state has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Sincerely,

Andrew R. Wheeler