Message

From: Torres, Tomas Ex. 6 Personal Privacy
Ex. 6 Personal Privacy
Sent: 10/4/2019 6:21:17 PM
To: Sawyers, Andrew [Sawyers.Andrew@epa.gov]
Attachments: IG Request SF.pdf

FYI

Tomás Torres

From: Marincola, Jamie <Marincola.JamesPaul@epa.gov>
Sent: Friday, October 4, 2019 11:18 AM
To: Torres, Tomas <Torres.Tomas@epa.gov>
Cc: Mitschele, Becky <Mitschele.Becky@epa.gov>
Subject: FW: Greenwire: "San Francisco violation comes after EPA backed permit"

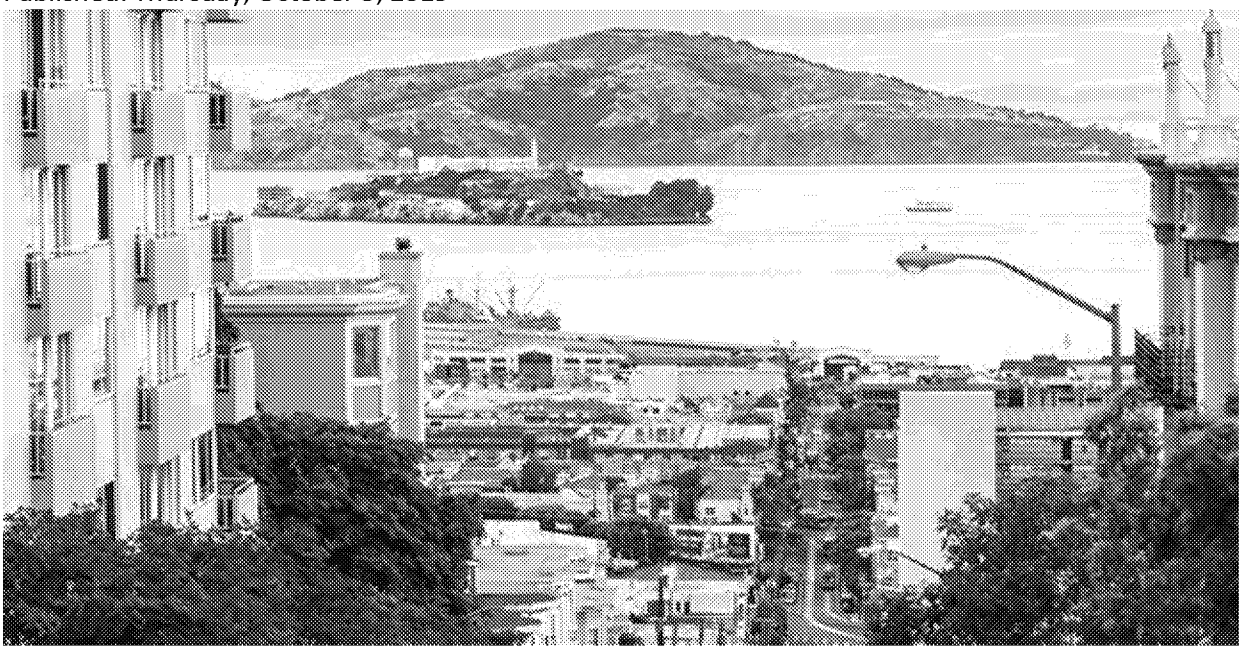
See detailed article below which mentions Becky and Elizabeth by name.

https://www.eenews.net/greenwire/2019/10/03/stories/1061195961

WATER POLLUTION

San Francisco violation comes after EPA backed permit

Ariel Wittenberg, E&E News reporter
Published: Thursday, October 3, 2019



A view of San Francisco Bay. Francoise Gaujour/Flickr

EPA slapped San Francisco with a notice of violation for all three of the city's wastewater treatment facilities yesterday, the latest shot in a monthlong battle between city, state and federal officials over California's enforcement of environmental regulations, despite earlier support from the agency.

The **notice**, signed by EPA Region 9 Administrator Michael Stoker, accuses San Francisco of seven categories of violations, including failing to clean sewer pipes, not posting adequate warning to tell the public when wastewater discharges are occurring and noncompliance with record-keeping requirements.

But the notice also comes just three weeks after EPA staff expressed support for a new permit for one of San Francisco's treatment plants, which remains unsigned by the agency.

City officials say the notice smells of partisan politics and contains information the city provided EPA during negotiations over the new permit.

"It seems like this is a very political issue at this point," San Francisco Public Utilities Commission Deputy General Manager Michael Carlin said yesterday, just a half-hour after receiving the notice. "We feel the long reach of Washington, D.C., out here in San Francisco."

The city's attorney, Dennis Herrera, said San Francisco has filed a Freedom of Information Act request to expose "what's really going on here."

SEPTEMBER 9, 2019San Francisco Public Utilities Commission sends letter to EPA and California regulators pushing back on draft permit for Oceanside Wastewater Treatment Water Pollution Control Plant.
SEPTEMBER 11, 2019California regulators approve permit for the Oceanside plant unchanged. EPA staff express support for the permit at the meeting, but the agency has yet to approve the permit.
SEPTEMBER 19, 2019President Trump complains about San Francisco's homelessness problem aboard Air Force One, says there are "tremendous things that we don't have to discuss pouring into the Ocean," including hypodermic needles.
SEPTEMBER 26, 2019EPA Administrator Wheeler sends a letter to California Gov. Gavin Newsom (D) telling the state to clean up San Francisco's sewers, giving the state 30 days to respond.
OCTOBER 1, 2019San Francisco PUC writes a rebuttal to Wheeler, countering many of his allegations about their sewage overflow system.
OCTOBER 2, 2019EPA Region 9 sends San Francisco a notice saying they have violated their pollution permits in all three of their wastewater treatment facilities, including Oceanside.

"These attacks on San Francisco are a politically-motivated ploy," he said in a statement. "The Trump administration is ignoring facts and misusing the EPA to attack people it disagrees with."

The notice of violation is the third time Trump administration officials have taken issue with San Francisco's wastewater treatment system.

The first came in mid-September when President Trump alleged the city was allowing waste from homeless people — including hypodermic needles — to enter the Pacific Ocean.

Then, two weeks ago, EPA Administrator Andrew Wheeler sent a letter to California's governor alleging the city would have to spend "billions of dollars" to prevent untreated sewage — which could be carrying, he said, fecal matter from homeless people — from entering San Francisco Bay and the Pacific Ocean (***Greenwire***, Sept. 26).

Wheeler's letter gave California 30 days to respond.

The notice came the day after San Francisco PUC sent Wheeler a rebuttal pushing back against many of his assertions.

An EPA spokeswoman said EPA issued the notice based on violations it had identified during field visits in 2015 and 2016 "and subsequently gathered data, such as monitoring data."

Asked why EPA did not wait for California's response before issuing the violation notice, she said, "Oversight of state program implementation and oversight of regulated entities are separate issues.

"EPA expects San Francisco to share its concern for the protection of public health and surface water resources and to address its ongoing Clean Water Act violations with significant and meaningful measures to ensure a prompt return to full compliance," she said. "EPA retains its enforcement authority in authorized states and can act if needed."

Oceanside

The enforcement action notably includes alleged violations at San Francisco's Oceanside Water Pollution Control Plant.

California regulators approved a new permit for that facility just three weeks ago — with EPA's blessing.

"I am here to express EPA's support for the revised tentative order as currently drafted," said EPA's Becky Mitschele, according to a webcast of the Sept. 11 meeting of the San Francisco Bay Regional Water Quality Control Board.

Mitschele, who works on water pollution permits at EPA's Region 9, attended the meeting with her supervisor, Elizabeth Sablad, and told the board that EPA staff had "worked closely" with San Francisco and state regulators to craft a permit for the Oceanside plant that would "reflect the site-specific nature of the city's combined sewage system."

After the regional board approved the permit, Carlin said, he "absolutely" expected EPA to follow suit. Instead, the permit remains unsigned, Wheeler sent his letter to the governor, and Region 9 sent the city PUC a notice of violation.

Indeed, the Oceanside plant has become part of the battle over California's ability to enforce environmental rules in the Golden State.

A senior EPA official told the press last week that Wheeler's letter was prompted, in part, due to concerns about the Oceanside permit.

"There are permits we are concerned are inadequate," the official said. "Conversations have been going on in the context of looking at the permit that is up for renewal from the Oceanside [treatment plant]. Those concerns are known and articulated and of course repeated in the administration's letter."

The EPA spokeswoman said this week the agency ultimately decided not to approve the permit because of a letter Carlin sent EPA and state regulators Sept. 9 — two days before Mitschele said the agency supported the permit.

The letter outlined San Francisco's objections to the draft permit and asked EPA for clarification on a 1994 sewage overflow policy.

"Those issues implicate matters of national consistency and are under review by EPA," she said.

At issue is San Francisco's combined sewage system. In many older cities where wastewater and stormwater are carried through the same pipes, treatment plants aren't able to handle everything that comes their way during heavy rains, leading to discharges of dirty water into waterways like the Pacific Ocean and San Francisco Bay.

The Oceanside plant treats 20% of San Francisco's wastewater. It typically handles 11 million gallons of sewage and runoff on dry days. During light or moderate rainstorms, the plant is able to both remove solid waste and provide "secondary treatments" for bacteria to an additional 43 million gallons of sewage per day.

But when heavy rain swamps the system, any additional combined sewage and stormwater does not receive the secondary treatments. Instead it is held in large stormwater storage tanks, built in the 1990s, to remove solid waste from the water before it is sent into the Pacific Ocean through discharge points.

The senior EPA official told reporters last week that the agency was specifically worried about water quality in the Pacific Ocean and San Francisco Bay because the city had been "pushing back on whether or not their permit should even require compliance with water quality standards."

That's not exactly the case.

The permit under consideration would require San Francisco to update its long-term control plan for the first time since the city finished construction of its stormwater storage tanks. Those tanks were built between 1976 and 1996, after California regulators told San Francisco it needed to do more to prevent raw sewage from getting into the bay and ocean.

The San Francisco PUC argued in person before state regulators, in written comments and in Carlin's letter that the requirement was duplicative because the Oceanside plant is currently meeting water quality requirements for the Pacific Ocean.

"All of the information available to us indicates that the current level of overflow control is protecting our Pacific Ocean and that further reductions are not needed to meet water quality-based requirements of the Clean Water Act," PUC's regulatory program manager, Amy Chastain, told state regulators. "We are not claiming that we did it and it's one and done."

Since 1997, Chastain said, San Francisco has averaged seven discharges per year into the Pacific Ocean — less than the EPA and California-imposed limits of eight times per year.

"The requirement to do a long-term use and control plan is not a rinse and repeat," she said. "You do it once, and you only redo it if either, one, you didn't meet the performance standards you thought you would meet or, two, the information based on post-construction monitoring shows that you are not protecting beneficial uses. Neither of those situations is applicable here."

State regulators were not convinced, with two board members specifically arguing climate change will increase the number of large rainfall events in San Francisco.

Newsha Ajami, a member of the San Francisco Bay Regional Water Quality Control Board, noted that during the winter of 2016, a "very, very bad" rain year, the Oceanside plant discharged 13 times into the ocean, not seven.

"Thirteen is a huge number, so you're still seeing years where you have a large number of overflows, and [we are] expecting more and more of the intense rains," she said. "That's a very real issue."

Ultimately, the state regulators unanimously approved the draft permit EPA had supported virtually unchanged.

They also didn't buy San Francisco's arguments that the state couldn't regulate flooding in the city that occurs when its stormwater control collection systems back up and cause flooding during rainstorms.

Chastain had tried to argue that neither the board nor EPA had authority over that issue because the floodwater would eventually be recaptured by the city's stormwater system and treated before being released into the ocean.

Mark Ryan, a former water attorney with EPA's Region 10, said it's not unusual for utilities to push back on new permit requirements.

"It all sounds pretty typical," Ryan said, adding that California's rejection of San Francisco's suggestions "sounds like they are doing their job."

Violations

Carlin, at the San Francisco PUC, said the utility was aware of many of the issues EPA brought up in its violation notice.

In fact, he said it was San Francisco that told the agency about many of the issues during permit negotiations for the Oceanside plant.

"They took something that we would consider normal negotiations and made it into a political statement," he said. "We are waiting for EPA to approve the Oceanside permit and then we get this notice of violation. It's like, why weren't we doing this as part of the permit reevaluation?"

Indeed, some of the violations Region 9 cites in its notice to San Francisco are also addressed in the Oceanside permit. For example, while EPA is citing the city for failing to notify residents of stormwater discharges, the permit includes new requirements to ensure residents are told about the discharges in a timely manner.

Asked why EPA had not used permit negotiations to address alleged violations at Oceanside, the EPA spokeswoman said, "Renewal of a permit that authorizes discharges and violations of that permit also are separate issues."

Carlin said he didn't want to "minimize" the violations EPA outlined.

"There are things in there that we need to own up to, and those are things we are correcting," he said.

He also described many of the violations as "housekeeping things." That includes one citation for failing to activate stormwater pumps that Carlin said occurred when the treatment plant lost power and didn't have any backup.

While San Francisco has filed a FOIA request for information about whether the notice was politically motivated, the PUC already began pushing back against EPA earlier this week, when General Manager Harlan Kelly sent a rebuttal to Wheeler's letter.

He said coordination with EPA and the state on the Oceanside permit is one reason the city was taken aback by the correspondence.

"As I'm sure you know, we have recently been working with EPA staff here in San Francisco to discuss the future of our combined sewer system," Kelly **wrote**. "Given that effort, it was surprising to see San Francisco singled out in your letter."

Wheeler's letter, Kelly wrote, mischaracterized San Francisco in many ways and ignored other EPA approvals of the city's stormwater system.

For example, Wheeler alleged that wastewater pollution from San Francisco "may be contributing to the state's failure to meet water quality standards" and alleges that discharges of wastewater in San Francisco Bay and the Pacific Ocean have created "significant public health concerns."

But EPA two years ago **approved** a pollution diet for bacteria at San Francisco Bay beaches that **found** stormwater releases "are not a significant source" of bacteria to the area.
And last year, EPA agreed with state regulators' **decision** to remove a San Francisco beach from a list of "impaired" waters in the state after water quality had improved following the closure of a nearby discharge point.

For their part, environmental groups in San Francisco say they fear that EPA is politicizing real environmental concerns about the city's sewage system.

A group — Solutions not Sandbags — formed to urge the city to take action against stormwater backups that can flood the city during times of heavy rains.

Members Lisa Dunseth and David Hooper wrote in an email they were concerned by San Francisco's insistence in September that neither EPA nor California had the authority to regulate such flooding, which has plagued numerous neighborhoods for decades.

"The City of San Francisco has never viewed these sewer-floods as a violation of their ... permit," Dunseth and Hooper wrote, noting residents have sued the city numerous times over the issue. "While damages to property may vary widely, the pain and suffering of these people is the same, no matter how much their house is worth."

The group supports the new permit for the Oceanside plant because it addresses the flooding issue, calling it a "step in the right direction."

"While the letter from the EPA may have had political intent, we hope it will not be dismissed in its entirety," Dunseth and Hooper wrote. "It actually contains some very serious and accurate information about how the city of San Francisco has neglected its responsibility to provide all its citizens with a fully functioning sewer system and that is an issue which transcends politics and deserves to be prioritized."

Ian Wren, of the advocacy group San Francisco Baykeeper, agreed that the sewage overflows are serious and need to be addressed.

"EPA has expressed concern for San Francisco's sewer system in the past," Wren said. "This letter just seems to have politicized any valid concerns that they may have had and confounded any of the real issues associated with the overflows with more politically motivated concerns that have been expressed by the president and Administrator Wheeler."

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