



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

February 7, 2020

VIA ELECTRONIC FILING, EMAIL, AND REGULAR MAIL

Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M

Michael Carlin
Deputy General Manager
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

Re: Notice of Stay of Contested Conditions for National Pollutant Discharge Elimination System (NPDES) Permit No. CA0037681, Order No. R2-2019-0028, EAB Appeal No. NPDES 20-1

Dear Ms. Durr and Mr. Carlin,

On January 13, 2020, the San Francisco Public Utilities Commission (“San Francisco” or “SF PUC”) filed a Petition with the Environmental Appeals Board (“EAB” or “Board”) requesting review of the Oceanside Water Pollution Control Plant, Wastewater Collection System, and Westside Recycled Water Project, City and County of San Francisco, National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0037681 (“Oceanside Permit”).

The Petition seeks Board review of the following provisions: 1) receiving water limitations at Section V. and Attachment G, Section I.I.1.; 2) the Long Term Control Plan Update at Section VI.C.5.d.; and 3) the reporting and other regulation of sewer overflows at Section VI.C.5.a.ii.b. San Francisco does not seek Board review of any other provisions of the Oceanside Permit.

The Oceanside Permit was jointly issued by the U.S. Environmental Protection Agency (“EPA”), Region 9 and the California Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB”). Pursuant to 33 U.S.C. § 1342(b), the State of California is authorized to implement the NPDES Program through the State Water Resources Control Board and the nine RWQCBs. California issues NPDES permits for discharges into state waters pursuant to its authorized NPDES program. EPA is authorized to enforce California-issued NPDES permits pursuant to 33 U.S.C. § 1342(i).

The Oceanside Permit was jointly issued by EPA Region 9 and the RWQCB because San Francisco discharges into federal waters more than three miles off shore in the Pacific Ocean through Discharge Point No. 001, and discharges to near shore state waters through CSDs 001-007.¹ See 40 C.F.R. §124.4(c)(2). The Oceanside Permit was adopted by the RWQCB on September 11, 2019, signed on September 12, 2019, and effective as an NPDES permit for state water discharges on November 1, 2019.² EPA Region 9 signed the Oceanside Permit, NPDES No. CA0037681, on December 10, 2019, and it will be enforceable, except for the stayed provisions noted below, as to federal water discharges 30 days from the date of this letter.

After a permit appeal is filed under 40 C.F.R. §124.19, “contested conditions” are stayed pending final agency action pursuant to 40 C.F.R. §124.16(a)(1), and for NPDES permits, pursuant to 40 C.F.R. §124.60(b)(1). “Uncontested conditions” of NPDES permits shall become enforceable 30 days after the Region notifies “the discharger and all interested parties of the uncontested conditions of the final permit that are enforceable obligations of the discharger” pursuant to 40 C.F.R. §124.60(b)(1) and 40 C.F.R. §124.60(b)(5) (*see also* 40 C.F.R. §124.16(a)(2)(i) and (ii)).

Region 9 hereby provides notice that, in light of the federal permit conditions that have been challenged in the EAB, the following permit conditions are contested and therefore stayed pending final agency action on the federal Oceanside Permit, NPDES No. CA0037681: 1) receiving water limitations at Section V. and Attachment G, Section I.I.1.; 2) the Long Term Control Plan Update at Section VI.C.5.d.; and 3) the reporting and other regulation of sewer overflows at Section VI.C.5.a.ii.b. All other provisions of the federal Oceanside Permit, NPDES No. CA0037681, are effective 30 days from the date of this notice.

EPA notes, however, that the California-issued NPDES Oceanside Permit, Order No. R2-2019-0028, is currently in effect for all discharges to state waters pursuant to issuance by the RWQCB, and this stay has no impact on the California-issued NPDES Oceanside Permit, Order No. R2-2019-0028. Since the RWQCB Oceanside Permit, Order No. R2-2019-0028, was issued pursuant to California’s authorized NPDES program pursuant to 33 U.S.C. § 1342(b), U.S. EPA Region 9 is authorized to enforce it pursuant to 33 U.S.C. § 1342(i).

¹ As noted on page 5 of the Oceanside Permit:

A. Legal Authorities. This Order serves as WDRs pursuant to California Water Code . . . This Order is also issued pursuant to federal Clean Water Act (CWA) section 402 and implementing regulations adopted by U.S. EPA and Water Code chapter 5.5 . . . It shall serve as a NPDES permit authorizing discharge into waters of the United States as listed in Table 2 subject to WDRs and NPDES permit requirements in this Order.

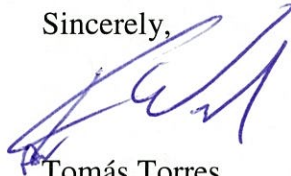
² On October 29, 2019, the RWQCB sent a letter to San Francisco clarifying that November 1, 2019, is the effective date of the Oceanside Permit except for provisions relating only to discharges to federal waters which were not effective on November 1, 2019. (*See*, attached Letter from Michael Montgomery, Executive Officer, RWQCB to Michael Carlin, SF PUC at pages 4-5, identifying the federal only provisions of the Oceanside Permit.)

Moreover, San Francisco must comply with the conditions of the existing permit, signed by EPA and the RWQCB on August 12, 2009 (“2009 Permit”), which correspond to the stayed conditions, with respect to discharges to federal waters,³ in addition to all the conditions of the California-issued NPDES Oceanside Permit, Order No. R2-2019-0028, with respect to discharges to state waters (*see* 40 C.F.R. § 124.16(c)(2)).

EPA Region 9 hereby provides notice that, except for the stayed conditions noted herein, NPDES Permit No. CA0037681 is enforceable as to federal water discharges 30 days after the date of this notice, which is March 9, 2020 (*see* 40 C.F.R. § 124.20).

If you have any questions regarding this notification, please contact Marcela von Vacano, Assistant Regional Counsel, at (415) 972-3905.

Sincerely,



Tomás Torres
Director, Water Division

Enclosure: Letter from Michael Montgomery, Executive Officer, RWQCB to Michael Carlin, San Francisco, Public Utilities Commission

cc: Tom Boer, Hunton Andrews Kurth
Samuel L. Brown, Hunton Andrews Kurth
Michael Montgomery, RWQCB

³ The following provisions apply from the 2009 Permit in lieu of the stayed provisions: “Section V.A. - Receiving Water Limitations - Surface Water Limitations” and “Attachment G.I.I.1.”

Certificate of Service

I hereby certify that I caused a copy of the attached *NOTICE OF STAY* to be served upon the persons listed below.

February 7, 2020

Respectfully submitted,

S/ Dustin Minor

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