

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re:	)	
	)	Appeal No. NPDES 20-01
City and County of San Francisco	)	
	)	
NPDES Permit No. CA0037681	)	
_____	)	

**SAN FRANCISCO’S UNOPPOSED MOTION  
FOR EXTENSION OF TIME**

Petitioner, the City and County of San Francisco (“San Francisco”) hereby requests that the Environmental Appeals Board’s (“EAB” or “Board”) grant an extension of time for the following deadlines in Appeal No. NPDES 20-01 due to unforeseen circumstances resulting from the Coronavirus 2019 Disease (“COVID-19”): (i) San Francisco’s Reply to the Petition for Review; (ii) amicus curiae participation; and (iii) San Francisco’s Reply to the Motion to Stay Contested Permit Conditions. San Francisco has consulted with counsel for the United States Environmental Protection Agency (“EPA”) Region 9 prior to filing this Motion. EPA agrees with San Francisco’s request for additional time for San Francisco to file both reply briefs and takes no position with respect to San Francisco’s request for an extension for amicus parties. San Francisco’s justification for the extensions as well as the modified proposed briefing schedule are set forth below.

1. This is an appeal of NPDES No. CA0037681 / Order No. R2-2019-0028 (“Oceanside Permit”) jointly issued by EPA and the California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”).

2. On January 13, 2020, San Francisco filed its Petition for Review of the Oceanside Permit (“Petition”).
3. On February 7, 2020, EPA issued a Notice of Stay of Contested Permit Conditions for the Oceanside Permit.
4. On February 10, 2020, San Francisco and EPA filed a Joint Motion for Extension of Time requesting an extension for EPA to file its Response to the Petition, for San Francisco to file its Reply, and for any amicus party to file any briefing. The Joint Motion was granted by the Board on February 11, 2020.
5. Consistent with the Board’s Order granting the Joint Motion, EPA filed its Response to San Francisco’s Petition and issued a notice of the Certified Administrative Record Index on February 28, 2020.
6. On that same day, February 28, San Francisco filed a Motion to Stay Contested Permit Conditions Pending Appeal, or in the Alternative, Motion to Remand Notice of Stayed Contested Permit Conditions, and Motion for Leave to Amend Petition for Review (“Motion”).
7. Fifteen (15) days later, on March 16, 2020, EPA filed a Response to San Francisco’s Motion. San Francisco intends to file a Reply pursuant to 40 C.F.R. § 124.19(f)(4).
8. In response to the outbreak of COVID-19 in the San Francisco Bay Area Region, on March 16, Tomás Aragón, Health Officer of the City and County of San Francisco, issued Order of the Health Officer No. C19-07 (“Order No. C19-07”) directing all individuals living in the County to shelter at their place of residence “because of the risk of the rapid spread of the virus, and the need to protect all members of the community.” *See* Attachment 1, Health Order No. C19-07, at p.1.<sup>1</sup> Order No. C19-

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<sup>1</sup> Six other counties in the greater San Francisco Bay Area issued similar “shelter-in-place” orders on March 16, 2020,

07 is effective from March 17, 2020 through April 7, 2020, for a total of twenty-one (21) days. *Id.*

9. The rapid spread of COVID-19 and the various “shelter-in-place” orders recently issued in the San Francisco Bay Area are having widespread impacts, affecting virtually all of the stakeholders at the San Francisco Public Utilities Commission and the San Francisco City Attorney’s Office. During this time, San Francisco must prioritize ensuring that essential services, including water, power, and sewer, are provided to the public without interruption. These efforts have affected San Francisco’s ability to dedicate sufficient resources to drafting the reply briefs in this NPDES appeal and have prolonged the time expected to obtain the necessary internal approvals for the briefings.
10. An extension for San Francisco’s reply briefs for the Petition and Motion is necessary in light of the practical impacts of Order No. C19-07 to San Francisco in addition to the extensive coordination required to address the substantively complex and distinct issues in this appeal.
11. Given the recent and unprecedented consequences of COVID-19, including Order No. C19-07, San Francisco requests that the Board grant a twenty-one (21) day extension of time – the same number of days in which the Order is in effect – for San Francisco to file its Reply Brief for the Petition and Reply Brief for the Motion.
12. San Francisco also proposes that any amicus parties must file by the date San Francisco’s Reply to the Petition is due, since the regulations provide for corresponding filing deadlines for Petitioner’s Reply and participation by amicus curiae. *See* 40 C.F.R. § 124.19(c)(2) (“petitioner may file a reply within 15 days

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including Santa Clara, San Mateo, Marin, Contra Costa, Alameda and Santa Cruz, and also the city of Berkeley.

after service of the response”); *see also id.* at § 124.19(e) (“Any interested person may file an amicus brief . . . 15 days after the filing of the response brief”).

13. The proposed briefing schedule is set forth below:

- San Francisco’s Reply to the Petition, which would otherwise be due on March 25, 2020 (as granted by the Board’s Order on the Joint Motion) shall be filed on or before April 15, 2020.
- Any amicus curiae briefs, which would otherwise be due on March 25, 2020 (as granted by the Board’s Order on the Joint Motion), shall be filed on or before April 15, 2020.
- San Francisco’s Reply to the Motion, which would otherwise be due on March 26, 2020, ten (10) days after EPA’s Response, shall be filed on April 16, 2020.

For the reasons described above, San Francisco respectfully requests that the Board approve the proposed briefing schedule, which EPA agrees to with respect to the extension of San Francisco’s Reply briefs and takes no position on regarding the amicus party extension request.

March 18, 2020

Respectfully submitted,

*/S/ J. Tom Boer*

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**Certificate of Service**

I hereby certify that I caused a copy of the attached *SAN FRANCISCO'S UNOPPOSED MOTION FOR EXTENSION OF TIME* to be served via email upon the persons listed below.

March 18, 2020

Respectfully submitted,

*/s/ J. Tom Boer*

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