

1 TODD KIM  
 Assistant Attorney General  
 2 SHEILA McANANEY (ILBN 6309635)  
 BRIAN D. SCHAAP (DCBN 1780655)  
 3 SAMANTHA M. RICCI (CABN 324517)  
 Trial Attorneys  
 4 Environmental Enforcement Section  
 Environment & Natural Resources Division  
 5 United States Department of Justice  
 P.O. Box 7611  
 6 Washington, D.C. 20044  
 Telephone: (202) 616-6535 (McAnaney)  
 7 Emails: Sheila.McAnaney@usdoj.gov  
 Brian.Schaap@usdoj.gov  
 8 Samantha.Ricci@usdoj.gov  
 9 MARK C. ELMER (DCBN 453066)  
 Senior Counsel  
 10 Environmental Enforcement Section  
 U.S. Department of Justice  
 11 999 18<sup>th</sup> Street, South Terrace, Suite 370  
 Denver, Colorado 80202  
 12 Telephone: (303) 844-1352  
 13 Email: Mark.Elmer@usdoj.gov  
 14

15 *Attorneys for Plaintiff United States of America*

16 (Counsel cont'd on next page)

17  
 18  
 19 UNITED STATES DISTRICT COURT  
 20 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 DIVISION

21 UNITED STATES OF AMERICA and )  
 22 PEOPLE OF THE STATE OF CALIFORNIA )  
 by and through CALIFORNIA REGIONAL )  
 23 WATER QUALITY CONTROL BOARD, )  
 24 SAN FRANCISCO BAY REGION, )  
 )  
 25 Plaintiffs, )  
 )  
 26 v. )  
 )  
 27 CITY AND COUNTY OF SAN FRANCISCO, )  
 28 Defendant. )  
 )

Case No.

**COMPLAINT**

1 ISMAIL J. RAMSEY (CABN 189820)

2 United States Attorney

3 MICHELLE LO (NYRN 4325163)

4 Chief, Civil Division

5 EKTA DHARIA (NYRN 5219860)

6 MICHAEL T. PYLE (CABN 172954)

7 Assistant United States Attorneys

8 450 Golden Gate Avenue, Box 36055

9 San Francisco, California 94102-3495

10 Telephone: (415) 436-7276

11 Facsimile: (415) 436-6748

12 Email: Ekta.Dharia@usdoj.gov

13 *Attorneys for Plaintiff United States of America*

14 ROB BONTA

15 Attorney General of California

16 TRACY L. WINSOR

17 Senior Assistant Attorney General of California

18 MYUNG J. PARK

19 Supervising Deputy Attorney General

20 BRYANT B. CANNON (SBN 284496)

21 MARC N. MELNICK (SBN 168187)

22 Deputy Attorneys General

23 1515 Clay Street, 20th Floor

24 P.O. Box 70550

25 Oakland, CA 94612-0550

26 Telephone: (510) 879-0750

27 Fax: (510) 622-2270

28 E-mail: Marc.Melnick@doj.ca.gov

*Attorneys for Plaintiff People of the State of  
California by and through the California Regional  
Water Quality Control Board, San Francisco Bay  
Region*

1 **COMPLAINT**

2 Plaintiffs, the United States of America (“the United States”), by the authority of the  
3 Attorney General of the United States, acting at the request of the Administrator of the United  
4 States Environmental Protection Agency (“EPA”), and the People of the State of California by  
5 and through the California Regional Water Quality Control Board, San Francisco Bay Region  
6 (“Regional Water Board”), by and through the undersigned attorneys, file this Complaint, and  
7 allege as follows:

8 **NATURE OF ACTION**

9 1. This matter is brought pursuant to the federal Clean Water Act (“CWA”) and  
10 analogous California laws against the City and County of San Francisco (the “City”), through  
11 its Public Utilities Commission (“SFPUC”), for its repeated and widespread failures to operate  
12 its two combined stormwater-sewer systems and sewage treatment plants in compliance with  
13 the law and its permits, and in a manner that keeps untreated sewage off the streets and beaches  
14 of San Francisco, and other areas with risk of human contact. The City’s failures to comply  
15 with its permits or properly operate its system significantly increases the risk that members of  
16 the public, including, for example, surfers, swimmers, and others recreating on beaches,  
17 unknowingly come into contact with untreated sewage, which contains pathogens and high  
18 enterococci and E.coli bacteria levels.

19 2. The City’s combined sewer systems transport untreated domestic sewage,  
20 industrial and commercial wastewater, and stormwater run-off (together, “combined sewage”)  
21 through single-pipe systems for treatment prior to discharge in the Pacific Ocean, San Francisco  
22 Bay, and its tributaries. In periods of rainfall, as the volume of stormwater in the pipes rises,  
23 total flows in the systems can exceed the systems’ capacities, at which point the City discharges  
24 the combined sewage into San Francisco Bay and its tributaries or over beaches into the Pacific  
25 Ocean. These discharges are known as Combined Sewer Overflows (“CSOs”). The City’s  
26 CWA permits require it to operate and maintain its combined sewer systems in a manner that  
27 minimizes CSOs and to take affirmative steps to prevent the public from contacting combined  
28 sewage, including by clearly notifying the public where CSOs occur and of the risks of contact

1 with combined sewage. This action concerns the City’s failure to operate and maintain its  
2 systems in compliance with its CWA permits; the City’s unauthorized discharges of billions of  
3 gallons of combined sewage each year onto the beaches of San Francisco and into San  
4 Francisco Bay and its tributaries; and the City’s failure to adequately plan and prepare for,  
5 respond to, report, or provide public warnings for releases, overflows and backups of combined  
6 sewage and other pollutants to homes, yards, streets, and sidewalks.

7 3. This is a civil action for injunctive relief and civil penalties brought under  
8 Sections 309(b) and (d) of the federal CWA, 33 U.S.C. § 1319(b) and (d), and supplemental  
9 state claims brought pursuant to Sections 13385 and 13386 of the California Water Code  
10 (“Water Code”). The United States and the Regional Water Board allege that the City, through  
11 SFPUC, violated and continues to violate conditions and limitations established in National  
12 Pollutant Discharge Elimination System (“NPDES”) permits issued to it by the Regional Water  
13 Board and EPA under 33 U.S.C. § 1342, and violated and continues to violate Section 301 of  
14 the CWA, 33 U.S.C. § 1311, by discharging pollutants without NPDES permit authorization.

15 4. The Regional Water Board has joined this action as a plaintiff pursuant to  
16 Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

17 **JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

18 5. This Court has jurisdiction over the subject matter of this action and the parties  
19 pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and  
20 1355.

21 6. In addition, this Court has supplemental jurisdiction over the state law claims  
22 alleged herein pursuant to 28 U.S.C. § 1367(a), because the state law claims are related to the  
23 federal claims and form part of the same case or controversy.

24 7. This Court also has jurisdiction over the parties in this action.

25 8. Venue is proper in the Northern District of California pursuant to Section 309(b)  
26 of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1397, because the City is  
27 located in this judicial district and the causes of action alleged in this Complaint arose in this  
28 district.



1 **STATUTORY AND REGULATORY BACKGROUND**

2 **Federal Clean Water Act**

3 18. The purpose of the CWA is to “restore and maintain the chemical, physical, and  
4 biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The CWA established a  
5 national goal to eliminate the discharge of pollutants to navigable waters. 33 U.S.C.  
6 § 1251(a)(1).

7 19. To achieve that goal, the CWA prohibits the “discharge of any pollutant” by any  
8 person to navigable waters of the United States except as authorized by an NPDES permit.  
9 33 U.S.C. § 1342.

10 20. The CWA defines “discharge of a pollutant” to include “any addition of any  
11 pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

12 21. The CWA defines “pollutant” to include sewage and municipal and industrial  
13 waste. 33 U.S.C. § 1362(6).

14 22. The CWA defines “navigable waters” to be “the waters of the United States,  
15 including the territorial seas.” 33 U.S.C. § 1362(7). “Waters of the United States” has been  
16 defined to include, *inter alia*, all waters which are currently used, were used in the past, or may  
17 be susceptible to use in interstate or foreign commerce; and tributaries to such waters. 88 Fed.  
18 Reg. 61,964 (Sept. 8, 2023) (amending 88 Fed. Reg. 3004 (Jan. 18, 2023)).

19 23. The CWA defines a “point source” as “any discernible, confined and discrete  
20 conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which  
21 pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

22 24. The CWA authorizes the Administrator of EPA to require the owner or operator  
23 of any point source to provide such information as the Administrator may reasonably need to  
24 carry out the objectives of the CWA. 33 U.S.C. § 1318.

25 **NPDES Permit Program and Combined Sewer Overflow Control Policy**

26 25. The CWA provides that the Administrator of EPA may issue NPDES permits to  
27 authorize the discharge of pollutants into waters of the United States, subject to the conditions  
28 and limitations set forth in such permits. 33 U.S.C. § 1342(a).

1           26.     The CWA provides that a state may establish its own permit program, and after  
2 receiving EPA’s authorization of that program, may issue NPDES permits within its  
3 jurisdiction. 33 U.S.C. § 1342(b).

4           27.     At all times relevant to this Complaint, EPA has authorized the State of  
5 California, through its State Water Resources Control Board (“State Water Board”) and nine  
6 Regional Water Quality Control Boards (collectively “Water Boards”), to administer the  
7 NPDES program for regulating discharges of pollutants to navigable waters within its  
8 jurisdiction. Approval of California’s Revisions to the State National Pollutant Discharge  
9 Elimination System Program, 54 Fed. Reg. 40,664 (Oct. 3, 1989); Discharges of Pollutants to  
10 Navigable Waters: Approval of State Programs, 39 Fed. Reg. 26,061 (July 16, 1974).  
11 Navigable waters within California’s jurisdiction include territorial seas, which are defined to  
12 extend three miles from the coast. 33 U.S.C. § 1362(8).

13           28.     EPA retains concurrent enforcement authority for navigable waters within the  
14 jurisdiction of the State of California. 33 U.S.C. § 1342(i).

15           29.     EPA is the NPDES permit-issuing agency for discharge points more than three  
16 miles offshore.

17           30.     The CWA directs the Administrator of EPA or authorized NPDES permit  
18 authority to prescribe conditions and limitations, including effluent limitations, for NPDES  
19 permits to ensure compliance with the requirements of the CWA. 33 U.S.C. § 1342(a)(2).  
20 Effluent limitations, as defined by the CWA, are restrictions on the quantity, rate, and  
21 concentration of chemical, physical, biological, and other constituents that are discharged from  
22 point sources into navigable waters. 33 U.S.C. § 1362(11).

23           31.     The CWA provides that each permit, order, or consent decree issued after  
24 December 21, 2000, for discharges from a combined sewer system, must conform to U.S.  
25 EPA’s Combined Sewer Overflow Control Policy (“CSO Policy”), 59 Fed. Reg. 18,688 (April  
26 19, 1994). 33 U.S.C. § 1342(q).

27           32.     Combined sewer systems are wastewater collection systems owned by a state or  
28 municipality designed to carry wastewaters (domestic, commercial, and industrial wastewaters)

1 and stormwater (surface drainage from rainfall or snowmelt) through a single-pipe system to a  
2 treatment plant for treatment and discharge. CSO Policy at 18,688. In periods of rainfall or  
3 snowmelt, total wastewater flows can exceed the capacity of the system. The result of such  
4 excess flow can be a CSO or the discharge from a combined sewer system at a designated point  
5 *prior to* treatment. *Id.* at 18,689. CSOs often contain high levels of suspended solids,  
6 pathogenic microorganisms, toxic pollutants, floatables, nutrients, oxygen-demanding organic  
7 compounds, oil and grease, and other pollutants which may pose risks to human health and  
8 threaten aquatic life and its habitat. *Id.*

9 33. The CSO Policy prescribes the steps that municipalities with combined sewer  
10 systems and CSOs must take to plan, select, and implement CSO controls that achieve  
11 compliance with water quality standards and protection of designated uses for receiving waters.

12 34. The CSO Policy requires that NPDES permits issued to permittees with CSOs  
13 include a requirement to implement the Nine Minimum Controls, which are measures to reduce  
14 the frequency and volume of CSOs and their effects on receiving water quality. *Id.* at 18,690.  
15 The Nine Minimum Controls include the proper operation and maintenance of combined sewer  
16 systems, maximizing flow to treatment facilities, prohibition of CSOs in dry weather,  
17 notification of the public of CSOs, and monitoring and reporting of CSOs.

18 35. The CSO Policy also requires that any NPDES permit issued to a permittee with  
19 CSOs include a requirement to develop and implement a Long-Term Control Plan (“LTCP”)  
20 that details how the permittee will minimize or prevent CSOs and achieve compliance with the  
21 CWA, including compliance with water quality standards and protection of designated uses. *Id.*  
22 at 18,691, 18,694.

23 36. The CSO Policy identifies controlling overflows to sensitive areas, such as  
24 waters with primary contact recreation, as the highest priority when controlling combined sewer  
25 overflows. *Id.* at 18,692.



1           **State Law**

2           37.     The Water Boards have primary responsibility for the coordination and control  
3 of water quality in California. Cal. Water Code §§ 13001, 13200 (defining the boundary of San  
4 Francisco Bay region).

5           38.     No provision of Division 7 of the Water Code, Cal. Water Code §§ 13000-  
6 16104, or any ruling of the Water Boards is a limitation on, among other things, “the power of  
7 the [California] Attorney General, at the request of a regional board, the state board, or upon his  
8 own motion, to bring an action in the name of the people of the State of California to enjoin any  
9 pollution or nuisance.”

10          39.     Chapter 5.5 of the Water Code, Cal. Water Code §§ 13370-13389, “shall be  
11 construed to ensure consistency with the requirements for state programs implementing the  
12 [CWA] and acts amendatory thereof or supplementary thereto.” Cal. Water Code § 13372.

13          40.     The terms “navigable waters,” “administrator,” “pollutants,” “biological  
14 monitoring,” “discharge,” and “point sources” “shall have the same meaning as in the [CWA]  
15 and acts amendatory thereof or supplementary thereto.” Cal. Water Code § 13373.

16          41.     The term “waste discharge requirements” is the equivalent of the term “permits”  
17 (*e.g.*, NPDES permits) as used in the CWA. Cal. Water Code § 13374.

18          42.     Section 13376 of the Water Code provides that “[a] person who discharges  
19 pollutants or proposes to discharge pollutants to the navigable waters of the United States within  
20 the jurisdiction of this state . . . shall file a report of the discharge in compliance with the  
21 procedures set forth in Section 13260.” Except as authorized by waste discharge requirements,  
22 the discharge of pollutants or the operation of a publicly owned treatment works treating sewage  
23 is prohibited. Cal. Water Code § 13376.

24          43.     Section 13377 of the Water Code provides that “the state or the regional boards  
25 shall . . . issue waste discharge requirements . . . which apply and ensure compliance with all  
26 applicable provisions of the [CWA] . . . together with any more stringent effluent standards or  
27 limitations necessary to implement water quality control plans, or for the protection of  
28 beneficial uses, or to prevent nuisance.” Cal. Water Code § 13377.

1           44. Section 13383(a) of the Water Code authorizes the Regional Water Board to  
2 “establish monitoring, inspection, entry, reporting, and recordkeeping requirements . . . for any  
3 person who discharges, or proposes to discharge, to navigable waters, . . . [or] any person who  
4 owns or operates . . . a publicly owned treatment works . . . treating domestic sewage . . .” Cal.  
5 Water Code § 13383(a).

6           **Federal and State Enforcement Provisions**

7           45. The CWA authorizes EPA to commence a civil action for appropriate relief,  
8 including a permanent or temporary injunction, against any person who violates, among other  
9 provisions, 33 U.S.C. §§ 1311 and 1318, or who violates any condition or limitation of an  
10 NPDES permit issued pursuant to 33 U.S.C. § 1342. 33 U.S.C. § 1319(b).

11           46. The CWA provides that any person who violates, among other provisions,  
12 33 U.S.C. §§ 1311 and 1318, or who violates any condition or limitation of an NPDES permit  
13 issued pursuant to 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000  
14 per day of violation, as adjusted over time, with each day in which a violation occurs  
15 constituting a separate violation. 33 U.S.C. § 1319(d).

16           47. Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended  
17 by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation  
18 Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note: Pub. L. 114-74, § 701,  
19 CWA statutory penalties have been adjusted for inflation through 40 C.F.R. § 19.4. As adjusted  
20 for inflation pursuant to statute, the relevant maximum civil penalties under Section 309(d) of  
21 the CWA are:

- 22           • \$37,500 per day per violation for violations occurring from January 13, 2009  
23           through November 2, 2015; and
- 24           • \$66,712 per day per violation for violations that occurred on or after November 3,  
25           2015.

26           48. Sections 13385(b) and 13386 of the Water Code authorize the Regional Water  
27 Board to commence a civil action for appropriate relief, including a preliminary and/or  
28 permanent injunction, upon any threatened or continuing violation of, among other provisions,

1 Sections 13376 and 13383 of the Water Code, a requirement of 33 U.S.C. §§ 1311 and 1318, or  
2 a waste discharge requirement issued pursuant to Chapter 5.5 of the Water Code, Cal. Water  
3 Code §§ 13370-13389.

4 49. A person who violates Sections 13376 and 13383 of the Water Code, a  
5 requirement of 33 U.S.C. §§ 1311 or 1318, or a waste discharge requirement issued pursuant to  
6 Chapter 5.5 of the Water Code, Cal. Water Code §§ 13370-13389, shall be subject to civil  
7 liability not to exceed \$25,000 per day of violation and, where there is a discharge, \$25 per  
8 gallon discharged and not cleaned up in excess of 1,000 gallons. Cal. Water Code § 13385(a)-  
9 (b).

### 10 **GENERAL ALLEGATIONS**

11 50. The San Francisco Peninsula is home to many beaches and recreational areas on  
12 San Francisco Bay and the Pacific Ocean. These scenic areas draw tens of millions of residents  
13 and tourists each year, year-round, to both enjoy the views and take part in water recreation  
14 activities such as swimming, surfing, and boating.

15 51. San Francisco Bay is also home to many aquatic species including the  
16 endangered tidewater goby, threatened and endangered salmonids, and other fish species;  
17 shellfish; and prey species consumed by estuarine mammals, waterfowl, and shorebirds.

18 52. The City is responsible for the operation and management of its stormwater and  
19 wastewater collection, treatment, and discharge facilities.

20 53. Since 2016, the City has discharged an average of 1.8 billion gallons of  
21 combined sewage, which includes untreated sewage, each year from its combined sewer  
22 systems into the Pacific Ocean and San Francisco Bay and its tributaries, including from  
23 outfalls on Ocean Beach, near Crissy Field Beach, and other recreated locations in San  
24 Francisco. In the 2022-2023 wet weather season alone, which extends from October to March,  
25 the City discharged over four billion gallons of combined sewage.

26 54. Infectious organisms contained in combined sewage can cause a number of  
27 adverse health effects on people, ranging from minor illnesses such as sore throats and mild  
28

1 gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as  
2 cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

3 55. Incidental ingestion of water contaminated by combined sewage can result in  
4 gastrointestinal illness, especially in areas with primary contact recreation, such as swimming,  
5 surfing, or water sports. Respiratory illness and eye, ear, skin, and wound infections can also  
6 result from contact with water contaminated by CSOs.

7 56. Children, the elderly, people with weakened immune systems, and pregnant  
8 women are at greater risk for adverse consequences from such infections than the general  
9 population. People who acquire infections from pathogens in combined sewage may become  
10 infectious and transmit disease to the community, putting susceptible populations at risk.

11 57. Combined sewage also contains elevated levels of metals such as copper and  
12 elevated levels of ammonia, which may be toxic to aquatic life including fish, shellfish, and  
13 prey species consumed by estuarine mammals, waterfowl, and shorebirds. The impacts can be  
14 lethal or sublethal, including interfering with reproduction and thereby reducing populations.

15 58. At all times relevant to this Complaint, the City has owned and operated two  
16 distinct and separately permitted combined sewer systems that collect, store, transport, and treat  
17 combined sewage: the Bayside System and the Oceanside System. These systems are depicted  
18 below in Figure 1.

19 59. The Bayside System collects approximately 80 percent of the City's combined  
20 sewage from eastern San Francisco and portions of Brisbane and Daly City. The Bayside  
21 System comprises the Southeast Water Pollution Control Plant ("Southeast Plant"), the North  
22 Point Wet Weather Facility ("North Point Facility"), twenty-nine permitted CSO Outfalls (some  
23 of which are part of CSO discharge structures ("CSD Structures")), and the associated  
24 collection system (including pump stations, transport and storage structures, and approximately  
25 600 miles of sewer pipes).

26 60. The Oceanside System collects approximately 20 percent of the City's combined  
27 sewage from western San Francisco and portions of Daly City. The Oceanside System  
28 comprises the Oceanside Water Pollution Control Plant ("Oceanside Plant"), seven permitted

1 CSO Outfalls (some of which are part of CSD Structures), and the associated collection system  
2 (including pump stations, transport and storage structures, and approximately 300 miles of  
3 sewer pipes).

4 61. The Bayside System and the Oceanside System are each “treatment works” as  
5 that term is defined in 33 U.S.C. § 1292(2), and “publicly owned treatment works” as that term  
6 is defined in 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3).

7 62. Components of the Bayside System and the Oceanside System were designed to  
8 transport combined sewage to achieve particular flow capacities. Meeting these design  
9 capacities requires proper operation, regular maintenance and cleaning, as well as rehabilitation,  
10 repair, or replacement of elements of the combined sewer systems such as pipes or pump station  
11 components.

12 63. In wet weather, when flows exceed the capacity of the systems, both the Bayside  
13 System and the Oceanside System transport combined sewage to CSD Structures for discharge  
14 through CSO Outfalls. Discharges of combined sewage are referred to as CSOs, Combined  
15 Sewer Discharges, or Combined Sewer Overflow Discharges (hereinafter “CSOs”).

16 64. The combined sewage transported through the Bayside and Oceanside Systems  
17 contains “pollutants” within the meaning of 33 U.S.C. § 1362(6) and (12).

18 65. Flow in excess of the combined sewer systems’ capacity and restrictions in  
19 capacity caused by improper maintenance can also result in releases, overflows, backups, and  
20 unauthorized discharges of combined sewage in places where the public can come into contact  
21 with the untreated sewage, such as streets, yards, and parks.

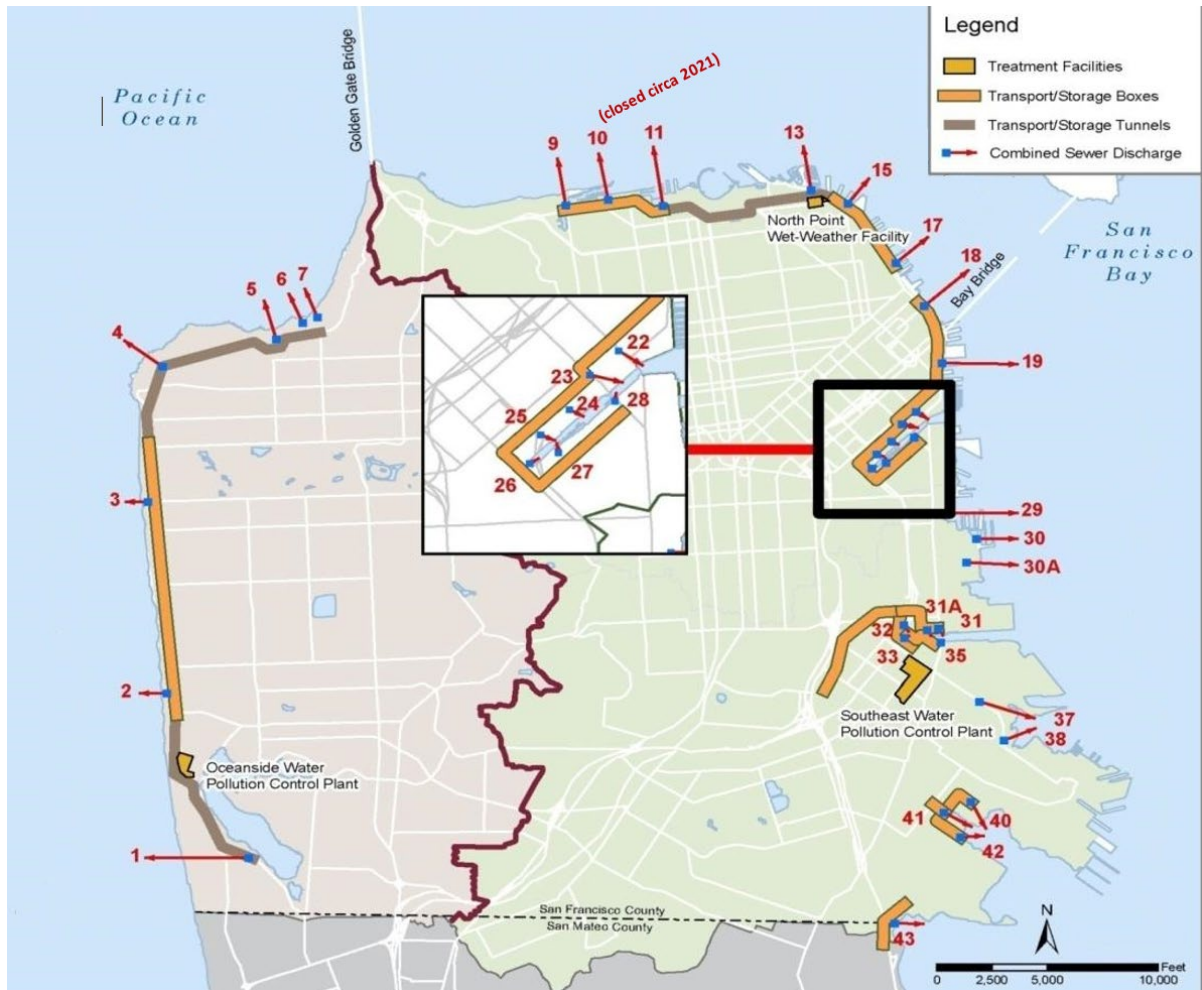


Figure 1: The City's Bayside and Oceanside Systems

**Bayside System and Southeast Plant: Background and NPDES Permits**

66. In dry weather, the Bayside System conveys wastewater flows to the Southeast Plant, which provides secondary treatment and discharges the treated wastewater to San Francisco Bay through a deep water outfall (“Southeast Bay Outfall”).

67. In wet weather, when combined sewage flows exceed the capacity of the Southeast Bay Outfall, the City is permitted to discharge excess flows of secondary-treated effluent through a shallow water outfall into Islais Creek, a tributary of San Francisco Bay.

68. In wet weather, as combined sewage flows approach the storage capacity of the collection system in the northern area of the Bayside System, the City is permitted to discharge

1 combined sewage from the North Point Wet Weather Facility to San Francisco Bay after  
2 combined sewage receives some primary treatment and disinfection.

3 69. In wet weather, when combined sewage flows exceed Bayside System storage,  
4 treatment, and pumping capacity, the City is permitted to discharge the excess combined  
5 sewage as CSOs through twenty-nine CSO Outfalls into San Francisco Bay and its tributaries,  
6 including Islais Creek and Mission Creek. These discharges receive minimal removal of solids  
7 and no disinfection to destroy bacteria or other pathogens.

8 70. Since at least October 2016, the City has discharged approximately eleven billion  
9 gallons of combined sewage from the Bayside CSOs. Approximately 83% of those discharges,  
10 or almost nine billion gallons, have been to Mission and Islais Creeks. These discharges  
11 eventually flow into San Francisco Bay.

12 71. The receiving waters for the Bayside System's permitted outfalls, including the  
13 twenty-nine CSO Outfalls, are all "waters of the United States" and "navigable waters" within  
14 the meaning of 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2 (1993), as well as "waters of the  
15 state" within the meaning of Section 13050(e) of the Water Code, Cal. Water Code § 13050(e).

16 72. The Southeast Bay Outfall, the shallow water outfall into Islais Creek, and each  
17 of the CSO Outfalls on the Bayside are each a "point source" within the meaning of 33 U.S.C. §  
18 1362(14).

19 73. The Regional Water Board is the NPDES permitting authority for all discharge  
20 points for the Bayside System, including the CSO Outfalls, pursuant to 33 U.S.C. § 1342(b).

21 74. On May 8, 2013, the Regional Water Board reissued NPDES Permit No.  
22 CA0037664 through Order No. R2-2013-0029 (the "Bayside Permit") to the City. The Bayside  
23 Permit became effective on October 1, 2013 and was set to expire on September 30, 2018.  
24 However, the terms and conditions of the Bayside Permit continue pending issuance of a new  
25 permit, pursuant to Section 2235.4 of Title 23 of the California Code of Regulations. As of the  
26 date of the filing of this complaint, no new permit for the Bayside System has been issued.



1           75. At all times relevant to this Complaint, the Bayside Permit has authorized the  
2 City to discharge pollutants from the Bayside System, subject to conditions and limitations in  
3 the permit.

4           **Oceanside System and Oceanside Plant: Background and NPDES Permits**

5           76. In dry weather, the Oceanside System conveys wastewater flows to the  
6 Oceanside Plant, which provides secondary treatment, and discharges the treated wastewater  
7 through a deep water outfall to the Pacific Ocean approximately 3.5 miles offshore (“Southwest  
8 Ocean Outfall”).

9           77. In wet weather, when combined sewage flows exceed Oceanside System storage,  
10 treatment, and pumping capacity, the City is permitted to discharge the excess combined  
11 sewage as CSOs through seven CSO Outfalls, subject to conditions, to the Pacific Ocean and  
12 Golden Gate Channel.

13           78. The Pacific Ocean at the discharge point for the Southwest Ocean Outfall is a  
14 “water of the United States” and a “navigable water,” within the meaning of 33 U.S.C.  
15 § 1362(7) and 40 C.F.R. § 122.2 (1993), but is not a “water of the state” within the meaning of  
16 Section 13050(e) of the Water Code because it is more than three miles offshore.

17           79. The receiving waters for the Oceanside CSO outfalls, which comprise the Pacific  
18 Ocean and Golden Gate Channel, are all “waters of the United States” and “navigable waters,”  
19 within the meaning of 33 U.S.C. § 1362(7) and 88 Fed. Reg. 61,964 (Sept. 8, 2023) (amending  
20 88 Fed. Reg. 3004 (Jan. 18, 2023)) and are “waters of the state” within the meaning of Section  
21 13050(e) of the Water Code, Cal. Water Code § 13050(e).

22           80. In 2009, EPA and the Regional Water Board, through Order No. R2-2009-0062,  
23 jointly issued NPDES Permit No. CA0037681 (the “2009 Oceanside Permit”) to the City for  
24 discharges from the Oceanside System. The 2009 Oceanside Permit became effective on  
25 October 1, 2009 and its terms and conditions continued in force until 2019, pursuant to 40  
26 C.F.R. § 122.6 and Cal. Code Regs., tit. 23, § 2235.4.

27           81. In September 2019, the Regional Water Board, through Order No. R2-2019-  
28 0028, reissued NPDES Permit No. CA0037681 (the “2019 State Oceanside Permit”) to the City



1 for discharges from the Oceanside System. The 2019 State Oceanside Permit became effective  
2 on November 1, 2019.

3 82. In December 2019, EPA reissued NPDES Permit No. CA0037681 (the “2019  
4 EPA Oceanside Permit”) to the City for discharges from the Oceanside System. The 2019 EPA  
5 Oceanside Permit is identical to the 2019 State Oceanside Permit (together, the “2019  
6 Oceanside Permit”). The 2019 Oceanside Permit remains in effect as of the filing of this  
7 Complaint.

8 83. The City petitioned EPA’s Environmental Appeals Board (“EAB”), and later the  
9 Ninth Circuit, for review of the 2019 EPA Oceanside Permit pursuant to 40 C.F.R. § 124.19.  
10 As is relevant to this Complaint, the contested conditions included Section VI.C.5.a.ii.b –  
11 Reporting.

12 84. Pursuant to 40 C.F.R. § 124.60(b)(1) and (5), the uncontested conditions of the  
13 2019 EPA Oceanside Permit became effective on March 9, 2020, which included, as relevant to  
14 this Complaint, conditions and limitations related to the operation and maintenance of the  
15 system and public notification requirements.

16 85. The EAB denied the petition for review, after which the contested terms became  
17 effective on February 1, 2021. 40 C.F.R. § 124.60(b)(1); *In re: City and County of San*  
18 *Francisco*, NPDES Appeal No. 20-01 Environmental Appeals Board (Dec. 1, 2020). The Ninth  
19 Circuit upheld the EAB’s decision in 2023. *City and County of San Francisco v. U.S.*  
20 *Environmental Protection Agency*, 75 F.4th 1074 (9th Cir. 2023). The City has filed a petition  
21 for certiorari with the Supreme Court, seeking review of the Ninth Circuit’s ruling on effluent  
22 limitations in the 2019 Oceanside Permit. *City and County of San Francisco v. U.S.*  
23 *Environmental Protection Agency*, petition for cert. pending, No. 23-753 (filed Jan. 8, 2024).

24 86. The City also challenged the 2019 State Oceanside Permit, including the  
25 contested provisions as well as additional claims, in the Superior Court of California, County of  
26 Alameda. By order of the state court, dated January 13, 2021, the state court proceedings are  
27 stayed and all terms and conditions of the 2019 State Oceanside Permit remain in force. *City*  
28 *and County of San Francisco v. San Francisco Bay Reg’l Water Quality Control Bd.*,

1 RG19042575 (Cal. Super. Ct. Jan. 13, 2021) (Order Following Joint Stipulation to Stay  
2 Proceedings).

3 87. The CWA authorizes EPA to enforce the terms and conditions of the 2019 State  
4 Oceanside Permit. 33 U.S.C. § 1342(i).

5 88. At all times relevant to this Complaint, the 2009 Oceanside Permit and the 2019  
6 Oceanside Permit (together, the “Oceanside Permits”) have authorized the City to discharge  
7 combined sewage from the Oceanside System outfalls described above, subject to conditions  
8 and limitations set forth in the permits.

9 **Additional NPDES Permit Provisions Applicable to All Permits**

10 89. The Bayside Permit and Oceanside Permits (together, the “NPDES Permits”) each  
11 require the City to comply with conditions, including provisions related to: the effect of  
12 discharges on receiving waters; monitoring; reporting; public notification; and operation and  
13 maintenance. These conditions are contained in Attachments D, E, and G to the NPDES  
14 Permits. The conditions specific to NPDES permits authorizing CSOs are required by the CSO  
15 Policy, as incorporated by 33 U.S.C. § 1342(q).

16 90. The NPDES Permits each require the City to regularly perform monitoring of its  
17 compliance with the permits, including inspection of its pipes, pump stations, outfalls, and other  
18 components of its systems, and monitoring its discharges and their impacts on receiving waters.

19 91. The NPDES Permits each require the City to submit monthly Self-Monitoring  
20 Reports to the Regional Water Board. As part of those reports, among other requirements, the  
21 City must submit to the Regional Water Board all monitoring data collected since submission of  
22 the previous report. *See* Section VIII.B of Attachment E, Section V.C.1.a of Attachment G,  
23 Bayside Permit; Section IX.B of Attachment E, Section VI.C.1.a of Attachment G, Oceanside  
24 Permits.

25 92. The NPDES Permits each require an authorized representative of the City to sign  
26 each Self-Monitoring Report and certify the accuracy of the information submitted. NPDES  
27 Permits at Section V.B of Attachment D.

28



1           100. The Bayside Permit prohibits the City’s CSOs from causing a violation of any  
2 applicable water quality standard for receiving waters adopted by the Regional Water Board or  
3 EPA, as required by the CWA and regulations adopted thereunder. *See* Bayside Permit, Section  
4 V.C.

5           101. All Bayside CSOs discharge to San Francisco Bay or its tributaries, including  
6 Mission Creek and Islais Creek.

7           102. The Bayside Permit lists Mission Creek, Islais Creek, the Central Drainage  
8 Basin, the North Shore Drainage Basin, and the Southeast Drainage Basin as receiving waters  
9 for the City’s CSOs. Bayside Permit, Table 2. Mission Creek and Islais Creek are identified as  
10 within the Central Drainage Basin. Crissy Field Beach is within the North Shore Drainage  
11 Basin.

12           103. A water quality standard consists of a beneficial use designation for a water body  
13 and an associated water quality objective to protect that use designation. 33 U.S.C. § 1313(c);  
14 40 C.F.R. § 131. Water quality objectives can be numeric, such as a limit or level of  
15 constituents or pollutants, or narrative, such as a condition that a water body must meet. *Id.*

16           104. At all times relevant to this Complaint, the Regional Water Board and EPA have  
17 adopted water quality standards for San Francisco Bay and its tributaries, encompassing the  
18 receiving waters listed in Paragraph 102. The Regional Water Board set forth its standards in  
19 the San Francisco Bay Basin Water Quality Control Plan (“Basin Plan”) and EPA set forth its  
20 standards in the California Toxics Rule, 40 C.F.R. § 131.38.

21           105. At all times relevant to this Complaint, Chapter 2 of the Basin Plan has identified  
22 the following beneficial uses, among others, for Lower San Francisco Bay, which includes  
23 Mission Creek, Islais Creek, and the Central Drainage Basin, and Central San Francisco Bay,  
24 which includes the North Shore Drainage Basin:

- 25           a. Water Contact Recreation, which includes, but is not limited to, swimming,  
26                wading, surfing and fishing; and
- 27           b. Estuarine Habitat for aquatic life use.

1           106. As relevant to the 2013 Bayside Permit, the Regional Water Board adopted, and  
2 EPA approved, numeric water quality objectives for bacteria to protect water contact recreation  
3 in Lower San Francisco Bay. Chapter 3, Basin Plan.

4           107. The Regional Water Board adopted, and EPA approved, numeric water quality  
5 objectives for un-ionized ammonia as nitrogen, to protect estuarine habitat and other aquatic life  
6 use in Lower San Francisco Bay and Central San Francisco Bay. Chapter 3, Basin Plan.

7           108. EPA adopted numeric water quality objectives for dissolved copper to protect  
8 aquatic life uses in the Lower San Francisco Bay and Central San Francisco Bay.

9           109. EPA has analyzed receiving water sampling data, CSO discharge monitoring  
10 data, and effluent sampling data for San Francisco Bay, including Mission Creek, Islais Creek,  
11 the Central Drainage Basin area near Crane Cove Park, and the North Shore Drainage Basin,  
12 including data collected, reported, and certified as accurate by the City, from November 1, 2013  
13 to the present.

14           110. From November 1, 2013 to the present, the City's Bayside System CSOs caused  
15 exceedances of one or more bacteria objectives for protection of water contact recreation  
16 contained in the Basin Plan in Lower San Francisco Bay.

17           111. From November 20, 2013 to the present, the City's Bayside System CSOs  
18 caused exceedances of one or more dissolved copper objectives for protection of aquatic life  
19 contained in the Basin Plan in Lower San Francisco Bay and Central San Francisco Bay.

20           112. From November 20, 2013 to the present, the City's Bayside System CSOs  
21 caused exceedances of one or more un-ionized ammonia as nitrogen objectives for protection of  
22 aquatic life contained in the Basin Plan in Central San Francisco Bay.

23           113. Each exceedance of a water quality objective in Bayside System receiving waters  
24 caused by a CSO after October 1, 2013 is a separate violation of the Bayside Permit, Section  
25 V.C.

26           114. The Bayside Permit also requires that CSO discharges shall not cause floating,  
27 suspended, or deposited macroscopic particulate matter or foams; or alteration of temperature,  
28

1 turbidity, or apparent color beyond present natural background levels to exist in receiving  
2 waters at any place outside the near-field mixing zone. *See* Bayside Permit, Section V.A.

3 115. Based on observations made by EPA representatives, between at least January  
4 2021 and December 2023, the City's CSOs discharged materials that altered the coloration and  
5 the concentrations of floating material in Islais and Mission Creeks. For example, on December  
6 30, 2023, an EPA representative observed increased turbidity, discoloration, scum, and floating  
7 material, including toilet paper, in Mission Creek outside the near-field mixing zone following a  
8 CSO event.

9 116. The City's Bayside System CSOs caused conditions of floating, suspended, or  
10 deposited macroscopic particulate matter or foams and alteration of turbidity, or apparent color  
11 beyond present natural background levels, outside the near-field mixing zone in Mission Creek  
12 and Islais Creek in violation of Section V.A of the Bayside Permit.

13 117. Each day that discharges from the City's Bayside System CSOs cause conditions  
14 of floating, suspended, or deposited macroscopic particulate matter or foams; or cause an  
15 alteration of turbidity, or apparent color, is a separate violation of the Bayside Permit, Section  
16 V.A.

17 118. The discharges from the Bayside System identified in Paragraphs 110, 111, 112,  
18 115, and 116 were not in compliance with a NPDES Permit and are each also a violation of 33  
19 U.S.C. § 1311(a).

20 119. Unless the City is enjoined by an order of the Court, Bayside System CSOs will  
21 continue discharging pollutants that cause violations of applicable water quality standards in  
22 San Francisco Bay or its tributaries in violation of the Bayside Permit.

23 120. As described in Paragraphs 45-49, for each violation referred to in this Claim for  
24 Relief, the United States and Regional Water Board are entitled to injunctive relief, as well as  
25 civil penalties.  
26  
27  
28

**SECOND CLAIM FOR RELIEF**

**(Bayside Permit – Unauthorized Discharges)**

121. Paragraphs 1 through 98 are realleged and incorporated herein by reference.

122. The Bayside Permit prohibits any discharge of untreated or partially treated wastewater to waters of the United States not expressly authorized. *See* Bayside Permit, Section III.F.

123. Based on an analysis of the City’s own data and on its own reporting, on multiple occasions from at least 2021 and continuing through the present day, the Bayside System discharged combined sewage, including untreated or partially treated wastewater, into streets and parks to San Francisco Bay through stormwater catch basins and other discrete conveyances, such as retaining wall gaps, near and around Marina Boulevard.

124. For example, the City reported that on October 24, 2021 and on or around December 31, 2022, the capacity of the combined sewer system in the Marina Boulevard and Marina Green area, between approximately Lyon Street and Filmore Street, was exceeded during storm events, resulting in 1.4 million gallons and 2.3 million gallons of combined sewage, respectively, flowing into separate stormwater catch basins that discharge directly to San Francisco Bay.

125. These discharges entered a busy marina, where people regularly boat, and occurred approximately half a mile from Crissy Field Beach, which is recreated year-round, including by swimmers.

126. The stormwater catch basins and other discrete conveyances each constitutes a “point source,” within the meaning of 33 U.S.C. § 1362(14).

127. None of the discharges described in Paragraph 123 was authorized by the Bayside Permit.

128. Each unauthorized discharge of untreated or partially treated wastewater from the combined sewer system to waters of the United States from a point source is a separate violation of Section III.F of the Bayside Permit and Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a).

1 129. Unless the City is enjoined by an order of the Court, unauthorized discharges of  
2 untreated or partially treated combined sewage will continue.

3 130. As described in Paragraphs 45-49, for each violation referred to in this Claim for  
4 Relief, the United States and Regional Water Board are entitled to injunctive relief, as well as  
5 civil penalties.

6 **THIRD CLAIM FOR RELIEF**

7 **(Bayside and Oceanside Permits –**

8 **Violations of Operation and Maintenance Requirements)**

9 131. Paragraphs 1 through 98 are realleged and incorporated herein by reference.

10 **General Violations of Operation and Maintenance Requirements**

11 132. The City’s NPDES Permits require that its “[c]ollection, treatment, storage, and  
12 disposal systems shall be operated in a manner that precludes public contact with wastewater,  
13 except in cases where excluding the public is infeasible, such as private property . . . .” NPDES  
14 Permits at Section I.I.2 of Attachment G.

15 133. In accordance with 40 C.F.R. § 122.41(e), the City’s NPDES Permits contain the  
16 following standard condition: “The Discharger shall at all times properly operate and maintain  
17 all facilities and systems of treatment and control (and related appurtenances) which are  
18 installed or used by the Discharger to achieve compliance with the conditions of this [Permit] . .  
19 . . .” NPDES Permits at Section I.D of Attachment D. One such condition in the Bayside Permit  
20 requires the City to “properly operate and maintain the collection system and the combined  
21 sewer discharge outfalls to reduce the magnitude, frequency, and duration of combined sewer  
22 discharges.” Bayside Permit at Section VI.C.5.i(b). It must also “repair or replace, as  
23 necessary, sewers and related equipment.” *Id.*

24 134. The 2009 Oceanside Permit also required the City to “operate and maintain its  
25 wastewater collection, treatment, and disposal facilities in a manner to ensure that all facilities  
26 are adequately staffed, supervised, financed, operated, maintained, repaired, and upgraded as  
27 necessary, in order to provide adequate and reliable transport, treatment, and disposal of all  
28



1 wastewater from both existing and planned future wastewater sources under the Discharger’s  
2 service responsibilities.” 2009 Oceanside Permit Section VI.C.4.a.1.

3 135. Based on observations made by EPA representatives, the City’s own information  
4 and reports, and information obtained by EPA and/or the Regional Water Board, at all times  
5 relevant to this Complaint, the City has failed to properly operate and maintain all facilities and  
6 systems of treatment and control (and related appurtenances) which are installed or used by the  
7 City to achieve compliance with the conditions of its NPDES Permits, including collection,  
8 treatment, and disposal facilities.

9 136. Specifically, the City has failed to adequately assess the condition of, and  
10 undertake timely repair or replacement of, certain force mains, gravity sewer pipes, pump  
11 stations, CSD Structures and CSO Outfalls, and transport and storage structures, despite being  
12 aware that the infrastructure was leaking, past its useful life, or otherwise required replacement  
13 or repairs. For example, the City failed to act following a condition assessment in 2012 which  
14 revealed advanced corrosion and signs of failure in two of its final effluent force main pipes and  
15 recommended replacing the pipes within five years. Numerous leaks from both pipes  
16 discharged effluent into Islais Creek between July 2015 and at least January 2021. The City has  
17 been aware of the leaks since July 2015 and still has not replaced the pipes.

18 137. A 2011 report prepared by SFPUC entitled “Using a Risk-Based Approach to  
19 Planning Sewer Replacement in San Francisco” stated that the rehabilitation and replacement  
20 rate of sewer pipes in both systems at that time was not keeping pace with the failure rate.  
21 Further, the report noted that the actual number of pipes in the two systems that were in a failed  
22 state was unknown, due to a historically reactive maintenance system. SFPUC’s 2012  
23 “Combined Sewer Collection System Excursion Report” and its 2014, 2015, 2016, and 2017  
24 “Bayside Combined Sewer System Excursions Annual Reports” all stated that the existing  
25 sewer replacement rate of four miles per year would result in full replacement of sewers once  
26 every 200 years, “which does not reflect the life expectancy of the system.”

27 138. Following the 2015 inspection, the City sent EPA information on the open work  
28 orders for pipe repairs as of January 8, 2016. Based on this information, EPA identified 1,761

1 open work orders for pipe repairs. Of the open work orders, 72% were older than one year and  
2 47% were more than two years old. The City reported 1,223 open work orders for pipe repairs  
3 as of April 24, 2018. During the 2022 inspection, the City also sent EPA information on the  
4 open work orders for pipe repairs as of February 28, 2022. Based on this information, EPA  
5 identified 532 open work orders for pipe repairs. Of the open work orders, 87% were older than  
6 one year and 79% were more than two years old. Of the 23 work orders that the City ranked as  
7 requiring urgent work to prevent a critical equipment failure, or an emergency, 26% were older  
8 than one year.

9 139. The City has also failed to operate certain facilities in both the Oceanside and  
10 Bayside Systems in accordance with specific wet weather operational requirements in the  
11 Permits, including, but not limited to, failing to operate facilities at the required flow rates or  
12 design capacities; failing to maximize treatment at wet weather facilities; or failing to operate  
13 the facilities at all, prior to discharging combined sewage from the Southeast Bay Outfall, the  
14 Southwest Ocean Outfall, or one of the CSO Outfalls. This means the City, at times, discharges  
15 combined sewage, which is not treated, to San Francisco Bay, its tributaries, or the Pacific  
16 Ocean when the City's systems had capacity to treat the combined sewage.

17 140. Based on the City's own information and reports, the City has not developed or  
18 implemented a plan for operating and maintaining the transport and storage structures that  
19 responds to their condition and is designed to prevent asset failure.

20 141. Based on the City's own information and reports, at certain times, the City's  
21 improper operation and maintenance of its combined sewer system has resulted in, or increased  
22 the volume of, CSOs; unauthorized discharges of combined sewage to waters; and Excursions  
23 of combined sewage from the combined sewer systems into basements, streets and sidewalks.

#### 24 Violations of Operation and Maintenance Requirements Related to the Channel Force Main

25 142. A key component of the Bayside System is the Channel Force Main, a nearly  
26 two-mile concrete and steel pipe that conveys approximately 70% of the City's dry weather  
27 sewage flow to the Southeast Plant. The Channel Force Main is in continual use and there is no  
28 alternative collection system for that flow.

1 143. When a pipe is only partially filled with sewage, gases, such as hydrogen sulfide,  
2 can collect in the void above the sewage, which can lead to corrosion of, or damage to, concrete  
3 and steel.

4 144. In 2010, the City’s consultants identified the Channel Force Main as “a serious  
5 point of vulnerability” in the Bayside System. The City’s consultants further determined that  
6 failure of the Channel Force Main would “create an operational and public health emergency”  
7 and that failure during dry weather “could result in the discharge of raw or partially treated  
8 wastewater to San Francisco Bay” while failure during wet weather “would result in serious  
9 lowland flooding, major upstream backups and the possibility of discharge of raw wastewater to  
10 the Bay.”

11 145. Based on the City’s own information and reports, the City has failed to  
12 adequately assess the condition of the Channel Force Main, because the City has not taken the  
13 Channel Force Main out of service to adequately assess its condition, including its internal  
14 condition, and perform any needed maintenance.

15 146. Each day that the City fails to properly operate and maintain the Bayside and  
16 Oceanside facilities and systems of treatment and control (and related appurtenances) installed  
17 or used to achieve compliance with the conditions of the applicable NPDES Permit, including  
18 collection, treatment, and disposal facilities, is a violation of the general operation and  
19 maintenance provisions.

20 147. Unless enjoined by an order of the Court, the City will continue to violate the  
21 general operation and maintenance conditions of the Bayside and Oceanside Permits.

22 148. As described in Paragraphs 45-49, for each violation referred to in this Claim for  
23 Relief, the United States and Regional Water Board are entitled to injunctive relief, as well as  
24 civil penalties.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Bayside and Oceanside Permits –**

27 **Violations of Public Notification Requirements)**

28 149. Paragraphs 1 through 98 are realleged and incorporated herein by reference.

1           150. The City is required by both the Bayside and Oceanside Permits to inform and  
2 notify the public of when and where CSOs or Excursions occur, particularly when the public  
3 could come into contact with combined sewage.

4           151. Compliance with public notification requirements is essential to alert the public  
5 about the risks present on beaches or other water contact areas while people are recreating and  
6 to prevent individuals from coming into contact with untreated sewage, which poses a risk of  
7 gastrointestinal illness; respiratory illness; and eye, ear, skin, and wound infections.

8                           Violations of Public Notification Requirements related to CSOs

9           152. At all times relevant to this complaint, the NPDES Permits have required the  
10 City to inform the public of when and where CSOs occur. *See* Bayside Permit, Section  
11 VI.C.5.b.viii; 2009 Oceanside Permit, Section VI.C.6.b.8; and 2019 Oceanside Permit, Section  
12 VI.C.5.a.viii. The 2019 Oceanside Permit requires the City to affix permanent signs to CSO  
13 outfalls that are visible and legible from a distance of 50 feet onshore and offshore. 2019  
14 Oceanside Permit, Section VI.C.5.a.viii(a).

15           153. Additionally, the City is required, and has been required at all times relevant to  
16 this Complaint, to post warning signs at beach locations where water contact recreation occurs  
17 whenever a CSO occurs that could affect recreational users at those locations. On the  
18 Oceanside, these signs must include “No Swimming” signs and “inform users that bacteria  
19 concentrations may be elevated.” 2019 Oceanside Permit, Section VI.C.5.a.viii(b). Warning  
20 signs must be posted on the same day as the CSO if it occurs before 4:00 pm, otherwise the City  
21 is required to post the sign by 8:00 am the next day. *See* Bayside Permit, Section VI.C.5.b.viii;  
22 2009 Oceanside Permit, Section VI.C.6.b.8; and 2019 Oceanside Permit, Section VI.C.5.a.viii.

23           154. Based on the observations of EPA representatives and on analysis of the City’s  
24 own reporting, on numerous occasions between at least November 30, 2012 and the present, the  
25 City has failed to notify the public of the location and time of actual CSO occurrences from the  
26 Bayside and Oceanside systems, including by failing to affix permanent signs to all Oceanside  
27 CSO outfalls, failing to ensure that permanent signs on Oceanside CSO outfalls are visible and  
28

1 legible from 50 feet onshore and offshore, and failing to timely post warning signs on public  
2 beaches where water contact recreation occurs on both the Bayside and Oceanside.

3 155. For example, Ocean Beach is a heavily recreated beach in San Francisco. There  
4 are three CSO outfalls located on the beach or near the beach that, at times, discharge untreated  
5 combined sewage across the beach to the Pacific Ocean. During the 2022-23 wet weather  
6 season, these outfalls discharged approximately 495 million gallons of combined sewage across  
7 the beach.

8 156. The permanent signs affixed to these CSO outfalls are not visible or legible from  
9 50 feet both onshore and offshore, as required by the 2019 Oceanside Permit. The signs are  
10 small and, in some cases, are affixed to the outfall in such a way that persons cannot read the  
11 text.



27 *Figure 2: Photo of CSD-002 on Ocean Beach taken by EPA representative, December 20, 2023*

28

1           157. For example, an EPA inspector took the picture at Figure 2 on December 20,  
2 2023, when combined sewage was discharging from the Vicente Street CSO Outfall (CSD 002).  
3 The permanent signs affixed to the outfall face outwards from the outfall platform, are small,  
4 and are far above eye-level. There are no signs on the sides of the outfalls to alert beachgoers  
5 that the discharge contains sewage. At the time this picture was taken, EPA inspectors observed  
6 people in the water and people fishing within one hundred feet of the CSO outfall.

7           158. The City also failed to post signs on Ocean Beach at times of CSO discharges  
8 that could affect recreational users during the 2022-23 wet weather season and the current wet  
9 weather season. Furthermore, when the City did post signs, those signs failed to inform  
10 recreators that the no swimming warnings were due to discharges of combined sewage or  
11 concerns regarding elevated bacteria concentrations. The signs did not inform the public of  
12 required information related to CSOs or adequately inform the public of the health risks posed  
13 by possible pathogens on the beach as required by the 2019 Oceanside Permit.

14           159. Each day that the City has failed to post a notice, or an adequate notice, of a CSO  
15 event that could affect a beach location where water contact recreation occurs is a violation of  
16 the applicable Permit.

17                   Violations of Public Notification Requirements Related to Excursions

18           160. The NPDES Permits require the City to post warning signs if public contact with  
19 wastewater could reasonably occur on public property. *See* NPDES Permits, Attachment G,  
20 Section I.I.2.

21           161. Based on the observations of EPA representatives and on information obtained  
22 by EPA or the Regional Water Board, on numerous occasions between at least January 2017  
23 and January 2023, the City failed to post warning signs where releases, overflows, backups, and  
24 unauthorized discharges of combined sewage has reached public property, including streets,  
25 where the public could come into contact with the wastewater.

26           162. For example, the City failed to post warning signs following releases, overflows,  
27 or backups of combined sewage onto streets, sidewalks, and properties at and near Cayuga  
28

1 Avenue in the Mission Terrace neighborhood on January 20, 2017 or in the Marina Boulevard  
2 and Marina Green areas on October 24, 2021.

3 163. Each of the City's failures to post a warning sign if public contact with  
4 wastewater could reasonably occur on public property is a separate violation of the applicable  
5 NPDES Permit.

6 164. Unless enjoined by an order of the Court, the City will continue to violate the  
7 public notification provisions in the NPDES Permits.

8 165. As described in Paragraphs 45-49, for each violation referred to in this Claim for  
9 Relief, the United States and Regional Water Board are entitled to injunctive relief and civil  
10 penalties (including daily penalties for violations lasting more than a day).

11 **FIFTH CLAIM FOR RELIEF**

12 **(Bayside and Oceanside Permits –**

13 **Violations of Recordkeeping and Reporting Requirements)**

14 166. Paragraphs 1 through 98 are realleged and incorporated herein by reference.

15 167. The Bayside Permit requires the City to develop and maintain a database  
16 containing specific information about each Excursion that occurs within the service area of the  
17 Southeast Plant, including, but not limited to, the location (including cross streets), the  
18 estimated volume in gallons, the date and time the Excursion was reported to SFPUC, the  
19 operator arrival date and time, the source of the Excursion, the cause of the Excursion, and  
20 corrective actions taken. *See* Bayside Permit, Section VI.C.4.c.ii(a). The Bayside Permit  
21 further requires the City to report any Excursion of more than 1,000 gallons to the Regional  
22 Water Board and the San Francisco Department of Public Health not later than two hours after  
23 becoming aware of the discharge. *See* Bayside Permit, Section VI.C.4.c.ii(b).

24 168. On multiple occasions, between at least December 3, 2014 and the present, the  
25 City failed to record either all required information or any required information regarding each  
26 Bayside System Excursion in its Excursion Database.



1 169. On multiple occasions, between at least December 3, 2014 and the present, the  
2 City failed to report Bayside System Excursions with a volume greater than 1,000 gallons to the  
3 Regional Water Board.

4 170. Since May 2020, the 2019 Oceanside Permit has required the City to enter  
5 information on all Oceanside Excursions (referred to in the Permit as Sewer Overflows from the  
6 Combined Sewer System) into the California Integrated Water Quality System (“CIWQS”)  
7 online database, including all required database fields. *See* 2019 Oceanside Permit, Section  
8 VI.C.5.a.ii.(b)(1). Required database fields include location and volume estimate for the  
9 Excursion. *Id.*

10 171. On multiple occasions, between approximately June 13, 2020 and the present,  
11 the City failed to enter information for each Oceanside Excursion into the CIWQS Online SSO  
12 Database.

13 172. Each of the City’s failures to fully report or record information in compliance  
14 with the requirements of the applicable NPDES Permit is a separate violation of the applicable  
15 NPDES Permit.

16 173. Unless enjoined by an order of the Court, the City will continue to violate the  
17 recordkeeping and reporting provisions in the NPDES Permits.

18 174. As described in Paragraphs 45-49, for each violation referred to in this Claim for  
19 Relief, the United States and Regional Water Board are entitled to injunctive relief and civil  
20 penalties (including daily penalties for violations lasting more than a day).

21 **SIXTH CLAIM FOR RELIEF**

22 **(Bayside and Oceanside Permits –**

23 **Inadequate Contingency and Spill Prevention Plans)**

24 175. Paragraphs 1 through 98 are realleged and incorporated herein by reference.

25 176. Each of the applicable NPDES Permits, at Section I.C.1 of Attachment G,  
26 requires the City to maintain a Contingency Plan for each combined sewer system in order to  
27 ensure that existing facilities remain in, or are rapidly returned to, operation in the event of a  
28 process failure or emergency incident. The applicable NPDES Permits require the City to



1 include provisions in its Contingency Plans related to the following: emergency standby power;  
2 expeditious action to repair failures of, or damage to, equipment and sewer lines; and programs  
3 for maintenance, replacement and surveillance of physical condition of equipment, facilities,  
4 and sewer lines.

5 177. Each of the applicable NPDES Permits, at Section I.C.2 of Attachment G,  
6 requires the City to maintain a Spill Prevention Plan for each combined sewer system in order to  
7 prevent accidental discharges from the system and minimize the effects of such discharges.  
8 This provision requires the City to identify possible sources of accidental discharges, untreated  
9 or partially treated waste bypass, and polluted drainage; evaluate the effectiveness of present  
10 facilities and procedures; and predict the effectiveness of any proposed facilities and procedures  
11 and provide an implementation schedule containing interim and final dates when the proposed  
12 facilities and procedures will be constructed, implemented, or operational.

13 178. Each of the applicable NPDES Permits, at Section I.I.2 of Attachment G,  
14 requires that the City's "[c]ollection, treatment, storage, and disposal systems shall be operated  
15 in a manner that precludes public contact with wastewater, except in cases where excluding the  
16 public is infeasible, such as private property . . . ."

17 179. Upon request, the City submitted to EPA or the Regional Water Board on August  
18 2013, June 2016, December 2018, and December 2023, versions of its Contingency Plans and  
19 Spill Prevention Plans.

20 180. From at least August 2013 to the present, the City's Contingency Plan failed to  
21 satisfy the requirements in Section I.C.1 of Attachment G to the applicable NPDES Permits,  
22 because it failed to include provisions related to emergency standby power; expeditious action  
23 to repair failures of, or damage to, equipment and sewer lines; or programs for maintenance of  
24 integral assets such as pump stations, gravity sewer mains, and force mains. For example, the  
25 City's December 2018 Contingency Plan does not describe any specific procedures to ensure  
26 that assets such as pump stations, gravity mains, or force mains are expeditiously repaired and  
27 returned to service. In addition, the 2018 Contingency Plan includes no specific procedures,  
28 whether through stockpiling of necessary physical resources to permit quick repairs or through

1 specific training, to prepare for different reasonably foreseeable failure scenarios, such as  
2 earthquakes, of the Channel Force Main, a critical asset so identified in the City's own planning  
3 documents because any failure has the potential to result in extended periods of large volumes  
4 of unpermitted discharges. The City's December 2023 Contingency Plan does not correct these  
5 deficiencies.

6 181. From at least August 2013 to the present, the City's Spill Prevention Plan failed  
7 to satisfy the requirements in Section I.C.2 of Attachment G to the applicable NPDES Permits,  
8 because it failed to identify possible sources of accidental discharge, untreated or partially  
9 treated waste bypass, and polluted drainage; failed to evaluate the effectiveness of present  
10 facilities and procedures and state when they became operational; and failed to predict the  
11 effectiveness of the proposed facilities and procedures, and provide an implementation schedule  
12 containing interim and final dates when the proposed facilities and procedures will be  
13 constructed, implemented, or operational.

14 182. From at least August 2013 to the present, the City's Contingency Plan failed to  
15 satisfy the requirements in Section I.I.2 of Attachment G to the applicable NPDES Permits  
16 because it did not contain adequate spill response measures to preclude public contact with  
17 wastewater. For example, the City's December 2023 Contingency Plan, which was self-  
18 identified as a document intended to satisfy the requirements of its NPDES Permits, contains no  
19 response actions to preclude public contact with wastewater caused by spills.

20 183. The City's failure to maintain a Spill Prevention Plan and a Contingency Plan  
21 that meet the requirements of its NPDES Permits for each combined sewer system is a violation  
22 of the applicable Permit for each day on which the plans failed to comply with such  
23 requirements.

24 184. Unless enjoined by an order of the Court, the City will continue to violate the  
25 provisions of its NPDES Permits relating to its Contingency Plan and its Spill Prevention Plan.

26 185. As described in Paragraphs 45-49, for each violation referred to in this Claim for  
27 Relief, the United States and Regional Water Board are entitled to injunctive relief, as well as  
28 civil penalties.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, the United States of America and the Regional Water Board, respectfully request that this Court grant the following relief:

a. Permanently enjoin the City from any further violations of the Clean Water Act and applicable NPDES Permits;

b. Order the City to expeditiously complete all actions necessary to ensure that it complies with the Clean Water Act and applicable NPDES Permits;

c. Order the City to pay a civil penalty to the United States of up to \$37,500 per day for each violation occurring between January 12, 2009, and November 2, 2015 and pay a civil penalty to the United States of up to \$66,712 per day per violation for violations that occurred on or after November 3, 2015;

d. Order the City to pay a civil penalty to the Regional Water Board of up to \$25,000 per day for each violation and, where there is a discharge, \$25 per gallon discharged and not cleaned up in excess of 1,000 gallons;

e. Assess a civil penalty against the City in favor of the Regional Water Board under Section 13385 of the Water Code;

f. Award the United States and the Regional Water Board their costs in this action;

g. Award the Regional Water Board its attorneys' fees and expert fees in this action, pursuant to California Code of Civil Procedure Section 1021.8; and

h. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

TODD KIM  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

By:   
SHEILA MCANANEY (ILBN 6309635)

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BRIAN D. SCHAAP (DCBN 1780655)  
SAMANTHA M. RICCI (CABN 324517)  
Trial Attorneys  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044  
MARK C. ELMER (DCBN 453066)  
Senior Counsel  
Environmental Enforcement Section  
999 18<sup>th</sup> St., South Terrae, Suite 370  
Denver, CO 80202  
Telephone: (202) 616-6535 (McAnaney)  
E-mail: sheila.mcananey@usdoj.gov

ISMAIL J. RAMSEY (CABN 189820)  
United States Attorney

*Michael T. Pyle*


By: \_\_\_\_\_  
MICHAEL T. PYLE (CABN 172954)  
EKTA DHARIA (NYRN 5219860)  
Assistant United States Attorneys  
450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7276  
Email: Ekta.Dharia@usdoj.gov

OF COUNSEL:

KIMBERLY WELLS  
DARON RAVENBORG  
ERIN BREWER  
Assistant Regional Counsels  
U.S. Environmental Protection Agency, Region IX  
CHRISNA BAPTISTA  
Attorney-Advisor  
U.S. Environmental Protection Agency,  
Office of Enforcement and Compliance Assurance

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ROB BONTA  
Attorney General of California  
TRACY L. WINSOR  
Senior Assistant Attorney General of California  
MYUNG J. PARK  
Supervising Deputy Attorney General  
BRYANT B. CANNON  
Deputy Attorney General

By:   
\_\_\_\_\_  
MARC N. MELNICK (SBN 168187)  
Deputy Attorney General  
Email: [Marc.Melnick@doj.ca.gov](mailto:Marc.Melnick@doj.ca.gov)  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612  
Telephone: (510) 879-0750

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**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatories above.

Dated: April 26, 2024

*/s/ Sheila McAnaney*

Sheila McAnaney