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EPA Says Berkeley Violated Water Act

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The East Bay Municipal Utility District and Berkeley are in trouble with the Environmental Protection Agency for violating the federal Clean Water Act.

The EPA charged EBMUD and nine East Bay cities, including Berkeley, with discharging illegal flows through their sanitary sewer systems during rainy weather.

During excessive rain, a combination of storm water and sewage from Berkeley, Oakland, Emeryville, Piedmont, Alameda, El Cerrito, Kensington, Richmond and Albany ends up at EBMUD's wet weather facilities, designed to handle storm water runoff, choking them and ultimately flowing out into the bay.

EPA San Francisco's Water Division Director Alexis Strauss

told the Planet that the agency had issued a draft administrative order of compliance to all the cities involved, asking them to monitor flows with an eye to future upgrades. Berkeley City Attorney Zack Cohen told the Planet Tuesday that the city was expecting to receive the formal administrative order Nov. 18.

Strauss said EPA was expecting cities to take additional action to identify key areas of wet weather flows, including infrastructure repair and renewal, in addition to an existing city ordinance that asks homeowners to inspect and repair pipes.

"Their collection systems are old, and some haven't been replaced in a while," Strauss said of Berkeley's existing infrastructure.

A number of the city of Berkeley's main and lateral pipes

have deteriorated over the years, and some of its sewers are more than 100 years old.

As part of the order issued by EPA, EBMUD is required to "enter into negotiations" with all nine cities to ask them to stop sewage overflows from their collection systems.

An Oct. 13 report from Berkeley's Public Works Department Director Claudette Ford to the City Council said that the city manager would evaluate EBMUD's offer to develop a Regional Collection System Assessment Plan, among other improvements.

Strauss said that Berkeley was already doing its part to work with EBMUD to fix these problems.

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However, that hasn't stopped independent environmental organizations from threatening lawsuits.

Bay Area nonprofit Our Children's Earth Foundation issued a 60-day notice on Oct. 5 of its intention to file suit against the city of Berkeley for "serious and ongoing violations of the federal Clean Water Act at the city's publicly owned treatment works."

OCE is planning to sue eight of the nine cities admonished by EPA.

Christopher Sproul, an attorney at Environmental Advocates, one of the law firms representing OCE, said OCE's members are concerned that they are continuing to be adversely affected by Berkeley's sewage discharge violations.

"We are waiting to see what Berkeley's proposal is to resolve the matter," Sproul said. "EPA's administrative order is not legally binding so we want to push the process along. It's great EPA is doing what they are doing but sometimes agencies are slow."

The foundation's members use the San

Francisco Bay for water sports, wildlife watching, educational purposes and other kinds of recreation.

"We don't want raw sewage falling into the San Francisco Bay where we swim," Sproul said. "We are talking about millions of gallons of waste from toilets and sinks."

A letter to Berkeley Mayor Tom Bates from OCE's lawyers alleges that Berkeley has repeatedly violated the Clean Water Act by discharging raw sewage from treatment facilities without the proper permits.

According to the letter, the raw sewage has repeatedly overflowed or spilled from Berkeley's sewer lines, manholes and pump stations, which Sproul said was a result of "poor or inadequate system maintenance, operation or repair."

The letter further charges that the city has dispensed wastewater "at a location or in a manner different from that" authorized.

A recent audit by the city of Berkeley's auditor, Ann-Marie Hogan, found that the city has had a large number of sanitary sewer spills and noted that Public Works has been unable to identify the sewer loca-

tions that "have significant root, grease or debris problems," which cause the majority of the spills.

According to the most recent American Water Works Association Survey available, Berkeley has more spills per mile of sewer line than most other waste water service providers.

Of the city's sewer spills, 20 percent are repeat spills, the report said, and it attributed them to the lack of a closed circuit television system to monitor the cause.

Berkeley employs 20 people to perform sewer maintenance work. The city's 2009 budget for the Sanitary Sewer Maintenance Unit is \$3.7 million.

Public Works reported to the audit that it cleans the city's sewer lines approximately every three to six years.

A 1986 order from the state Regional Water Quality Board led Berkeley to replace and upgrade 61 percent of its 388-mile sewer system.

The audit also recorded a lack of communication among different divisions at Public Works and poor coordination among workers, which it warned could lead to idleness and decreased efficiency.

In one recorded instance on Dec 11, 2008, crew members wasted an hour and a half waiting for other members of their group to show up.

In another instance on the same day, a sewer repair crew violated excavation procedures and traffic safety laws, which the audit said could lead to civil penalties of \$50,000.

The audit also revealed that supervisors were not reviewing work orders for accuracy and completeness or signing off on them to indicate their approval. In one case sewer funds were inappropriately used to pay for a storm drain expense.

Hogan told the Planet that this was the first time an audit had been carried out on the city's sewer division.

"This is a green issue, not just an issue about taxpayers' dollars," Hogan said. "It's about how we protect our environment—we need to do a better job of taking care of our bay. Public Works has taken the audit very seriously and is taking steps to make sure these things don't happen again."

Calls to Public Works Deputy Director Andrew Clough for comment were not returned by press time.