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25 SAN FRANCISCO BAYKEEPER

26 UNITED STATES DISTRICT COURT
27
28 NORTHERN DISTRICT OF CALIFORNIA

29 BAYKEEPER, INC., d/b/a SAN FRANCISCO
30 BAYKEEPER, a California non-profit corporation,

31 Plaintiff,

32 v.

33 CITY OF SAN BRUNO, a California municipal
34 corporation,

35 Defendant.

Civil Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)**

1 San Francisco Baykeeper (“Plaintiff” or “Baykeeper”), by and through its counsel, hereby
2 alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provision of the Federal
5 Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “CWA”) (*see* 33 U.S.C. §
6 1365). This Court has subject matter jurisdiction over the parties and this action pursuant to section
7 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), and 28 U.S.C. §§ 1331 and 2201 (an action
8 for declaratory and injunctive relief arising under the Constitution and laws of the United States).

9 2. On December 19, 2009, Baykeeper issued a sixty (60) day notice letter (“Notice Letter”)
10 to the City of San Bruno (“Defendant” or “San Bruno”). The Notice Letter informed San Bruno of its
11 violations of the Clean Water Act and of Baykeeper’s intention to file suit against San Bruno. The
12 Notice Letter was sent to the Administrator of the United States Environmental Protection Agency
13 (“EPA”), the Administrator of EPA Region IX, and the Executive Director of the State Water Resources
14 Control Board (“State Board”), as required by section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. §
15 1365(b)(1)(A). The Notice Letter was also sent to the Executive Officer of the Regional Water Quality
16 Control Board, San Francisco Region (“Regional Board”). The Notice Letter is attached hereto as
17 Exhibit 1 and is incorporated herein by reference.

18 3. More than sixty (60) days have passed since the Notice Letter was issued to San Bruno
19 and the state and federal agencies.

20 4. Baykeeper is informed and believes, and thereon alleges, that neither EPA nor the state of
21 California has commenced or is diligently prosecuting an action to redress the violations alleged in the
22 Notice Letter and in this complaint under section 505(b)(1)(B) of the Clean Water Act, 33 U.S.C. §
23 1365(b)(1)(B). This action is not barred by any prior administrative penalty under section 309(g) of the
24 Clean Water Act, 33 U.S.C. § 1319(g).

25 5. Venue is proper in the Northern District of California pursuant to section 505(c)(1) of the
26 Clean Water Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this
27 judicial district.
28

1 **II. INTRADISTRICT ASSIGNMENT**

2 6. Pursuant to Local Rules 3-2(c) and (d), intradistrict assignment of this matter to the San
3 Francisco Division of the Court is appropriate because the events or omissions which gave rise to
4 Baykeeper’s claims occurred and are occurring in San Mateo County. No event or omission giving rise
5 to Baykeeper’s claims occurred in any other Division of this Court. In addition, many of Baykeeper’s
6 members reside in the City and County of San Francisco and the County of San Mateo.

7 **III. INTRODUCTION**

8 7. Baykeeper alleges the following violations of the Clean Water Act: (1) discharges of
9 pollutants to waters of the United States without National Pollution Discharge Elimination System
10 (“NPDES”) Permit authorization in violation of section 301(a) of the Clean Water Act, 33 U.S.C.
11 §1311(a); (2) violations of the NPDES permit to San Bruno’s collection system and publicly owned
12 treatment works, Regional Board, Order No. R2-2008-0094-DWQ, NPDES Permit No. CA0038130
13 (“the POTW Permit”) and NPDES Permit No. CA0038130, Regional Board Order No. R2-2003-001
14 (“the 2003 POTW Permit”), and (3) violations of the *Waste Discharge Requirements for City/County*
15 *Association Of Governments Of San Mateo County, et al.*, Regional Board, Order No. 99-058, NPDES
16 Permit No. CAS0029921, reissued as Order No. 99-059 and subsequently amended by Order Nos. R2-
17 2003-0023, R2-2004-0060, R2-2004-0062, and R2-2007-0027 (“MS4 Permit”). San Bruno’s violations
18 of the Clean Water Act and its NPDES permits are ongoing and continuous.

19 **IV. PARTIES AND BACKGROUND**

20 **A. San Francisco Baykeeper**

21 8. Baykeeper is a non-profit public benefit corporation formed in the state of California.
22 Baykeeper’s mission is to protect and enhance the water quality of the San Francisco Bay-Delta Estuary
23 and its tributaries for the benefit of its ecosystems and the surrounding human communities. Baykeeper
24 accomplishes its mission through education, advocacy, restoration, and enforcement of environmental
25 laws.

26 9. Baykeeper’s office is located at 785 Market Street, Suite 850, San Francisco, California,
27 94103.

28 10. Baykeeper’s members use and enjoy San Francisco Bay and its shoreline and beaches to

1 sail, swim, windsurf, picnic, fish, hike, observe wildlife, and/or for aesthetic enjoyment.

2 11. San Bruno's illegal discharges of raw and/or partially treated sewage to San Francisco
3 Bay and its tributaries degrades water quality and harms aquatic life in these waters, and thus impairs
4 Baykeeper's members' use and enjoyment of San Francisco Bay.

5 12. The interests of Baykeeper's members have been, are being, and will continue to be
6 adversely affected by San Bruno's failure to comply with the MS4 Permit and the Clean Water Act. The
7 relief sought herein will redress the harms to Baykeeper caused by San Bruno's activities. Continuing
8 commission of the acts and omissions alleged above will irreparably harm Baykeeper's members, for
9 which harm they have no plain, speedy, or adequate remedy at law.

10 **B. City of San Bruno**

11 13. San Bruno is a municipality incorporated under the laws of the state of California.

12 **1. The Sewage Collection System**

13 14. San Bruno owns the sewage collection system ("Collection System") located within San
14 Bruno city limits.

15 15. The Collection System consists of pipes and other manmade conveyances, and is a point
16 source under the Clean Water Act. *See* 33 U.S.C. § 1362(14).

17 16. All wastewater collected within San Bruno is transported to the South San Francisco and
18 San Bruno Water Quality Control Plant (hereinafter "WWTP").

19 17. San Bruno owns and operates the WWTP in conjunction with the City of South San
20 Francisco. The WWTP and San Bruno's Collection System are regulated by the POTW Permit.

21 18. San Bruno is responsible for operating and maintaining the Collection System, tasks
22 which include, but are not limited to: collecting and conveying sewage through the Collection System;
23 conducting routine maintenance, cleaning, and inspection of the Collection System; and responding to
24 citizens' complaints regarding discharges of raw and/or partially treated sewage.

25 19. As owner and operator of the Collection System, San Bruno is responsible for violations
26 of the Clean Water Act alleged herein that have occurred from December 19, 2004 to the present.

27 20. As owner and operator of the Collection System, San Bruno is responsible for violations
28 of the POTW Permit alleged herein that have occurred from December 19, 2004 to the present.

1 21. As owner and operator of the Collection System, San Bruno is responsible for violations
2 of the MS4 Permit alleged herein.

3 **2. Sanitary Sewer Overflows From the Collection System**

4 22. San Bruno has reported numerous overflows and discharges of raw and/or partially
5 treated sewage from its Collection System since December 19, 2004. These overflows and discharges
6 are referred to as sanitary sewer overflows (“SSOs”). San Bruno’s SSOs are documented in its internal
7 SSO reports, call out reports, service requests, spreadsheets and tables summarizing SSOs from the
8 Collection System, SSO reports submitted by San Bruno to the State Board, the Regional Board, and the
9 Office of Emergency Services (“OES”), in annual SSO reports submitted to the Regional Board, and in
10 other correspondence to and from San Bruno indicating SSOs from its Collection System.

11 23. Of the SSOs from the Collection System since December 19, 2004, San Bruno has
12 reported that many have discharged to surface waters and/or into the municipal separate storm sewer
13 systems (“MS4”) operated by San Bruno.

14 24. An MS4 is defined as “a conveyance or system of conveyances (including roads with
15 drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm
16 drains)” owned or operated by a state, city, or town that is designed or used for collecting or conveying
17 storm water and that discharges to waters of the United States. *See* 40 C.F.R. §§ 122.26(b)(8)(i)-(iv);
18 *see also* 40 C.F.R. § 122.26(b)(18).

19 25. The MS4 owned and operated by San Bruno is a point source under the Clean Water Act.
20 *See* 33 U.S.C. § 1362(14).

21 26. SSOs from the Collection System, as well as SSOs that enter San Bruno’s MS4 from the
22 Collection System and/or from privately-owned lateral lines, are discharged to San Francisco Bay and/or
23 its tributaries, and/or to the MS4 that then discharges to waters of the United States.

24 27. San Bruno has failed to adequately operate, maintain, repair, and/or update the Collection
25 System, thus resulting in SSOs.

26 28. San Bruno has reported that many of the SSOs from the Collection System are dry
27 weather spills caused by fats, oil and grease in sewer lines, and blockages caused by roots and debris.

28 29. Another major source of San Bruno’s SSOs is wet weather spills caused by the Collection

1 System's inadequate capacity to handle peak wet weather flows. Flows through the Collection System
2 increase considerably during wet weather due to the infiltration and inflow of rainwater into sewer pipes,
3 thus overwhelming the capacity of the Collection System and causing SSOs.

4 30. SSOs from the Collection System are also caused by the deterioration of sewage
5 infrastructure, under-funding of repairs, and mismanagement.

6 3. The Municipal Separate Storm Sewer System

7 31. San Bruno is one of twenty cities and towns in San Mateo County that is covered under
8 the MS4 Permit.

9 32. San Bruno owns the MS4 within San Bruno city limits.

10 33. San Bruno operates the MS4 within San Bruno city limits.

11 34. Under the terms of the MS4 Permit, San Bruno has jurisdiction over and/or maintenance
12 responsibilities for the MS4 within San Bruno city limits. MS4 Permit, Order No. 99-059, Finding 2.

13 35. San Bruno's MS4 serves the areas also served by the Collection System. The MS4
14 contains numerous storm drain inlets that lead to underground storm drain pipes, which discharge to San
15 Francisco Bay and/or its tributaries.

16 36. As owner and operator of the MS4, San Bruno is responsible for violations of the Clean
17 Water Act alleged herein that have occurred from December 19, 2004 to the present.

18 C. The Local Waterways that Receive San Bruno's Illegal Discharges and the 19 Environmental Impacts from those Discharges

20 37. The Collection System is located in several major watersheds that drain to San Francisco
21 Bay and its tributaries, including but not limited to San Bruno Creek and El Zanjon Creek and their
22 tributaries, and unnamed tributaries and seasonal creeks. The storm pipes in the MS4 owned by San
23 Bruno also discharge to these waters.

24 38. SSOs from the Collection System, as well as SSOs that enter the MS4 from the
25 Collection System and/or from privately-owned lateral lines, are discharged to San Francisco Bay and/or
26 its tributaries.

27 39. San Francisco Bay and its tributaries, including but not limited to San Bruno Creek and
28 El Zanjon Creek and their tributaries are waters of the United States, and/or have a significant nexus to

1 waters of the United States and thus are navigable waters as defined by the Clean Water Act and
2 controlling authority.

3 40. San Francisco Bay is an ecologically sensitive water body and a defining feature of
4 Northern California. San Francisco Bay is an important and heavily used resource, with special
5 aesthetic and recreational significance for people living in the surrounding communities. The San
6 Francisco Bay shoreline has numerous highly valued lagoons with beaches and points of public access
7 that offer unique recreational opportunities for swimmers, kayakers, windsurfers, hikers and other
8 recreational users.

9 41. SSOs harm San Francisco Bay and pose a serious risk to fisheries, wildlife habitat, and
10 human health. SSOs contain human waste, viruses, protozoa, mold spores and bacteria. In addition,
11 SSOs contain chemicals that cause cancer or reproductive toxicity. These chemicals come from
12 solvents, detergents, cleansers, inks, pesticides, paints, pharmaceuticals, and other chemicals used by
13 households and businesses and then discarded to sewage collection systems. SSOs from the Collection
14 System that discharge to San Francisco Bay and/or its tributaries, as well as SSOs that enter the MS4
15 and subsequently flow directly or with storm water to San Francisco Bay and/or its tributaries, result in
16 the addition of these pollutants to these waters.

17 42. The intensive use of San Francisco Bay and its tributaries for commercial and sport
18 fishing, shellfish harvesting, and water-contact recreation increases the likelihood that people will come
19 into direct contact with SSOs and the pollutants they contain. SSOs also affect people who eat fish
20 caught in these waters. Toxic chemicals bio-accumulate in the San Francisco Bay's food web; i.e.,
21 contaminants absorbed by plankton accumulate in fish and birds farther up the food chain, and
22 ultimately transfer in higher doses to human consumers.

23 43. San Francisco Bay, which receives San Bruno's SSOs, is listed on the State of
24 California's 2006 Clean Water Act Section 303(d) list of impaired water bodies. A water body that is
25 listed as impaired cannot support its designated beneficial uses. The beneficial uses of the waters that
26 receive San Bruno's SSOs include habitat support for commercial fishing and sport fishing, estuarine
27 habitat, wildlife habitat, fish migration, fish spawning, preservation of rare and endangered species,
28 shellfish harvesting, contact and non-contact water recreation, industrial service and process supply, and

1 navigation. *See* Water Quality Control Plan, San Francisco Basin (Region 2), Chapter 2. San Francisco
2 Bay is listed as impaired for chlordane, dichlorodiphenyltrichloroethane, dieldrin, dioxin compounds,
3 furan compounds, mercury, polychlorinated biphenyls, and selenium. Some or all of these pollutants are
4 in San Bruno's SSOs.

5 44. By discharging SSOs and their associated pollutants directly to San Francisco Bay and/or
6 its tributaries in violation of the Clean Water Act, as well as discharging SSOs to the MS4 which
7 subsequently flow untreated to San Francisco Bay and/or its tributaries, San Bruno contributes to the
8 continuing impairment of these waters. As such, San Bruno's violations of the Clean Water Act directly
9 harm Baykeeper's members' use and enjoyment of the San Francisco Bay environment.

10 **V. STATUTORY AND LEGAL REQUIREMENTS**

11 **A. The Clean Water Act**

12 45. Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of
13 any pollutant into waters of the United States unless the discharge complies with various enumerated
14 sections of the Clean Water Act. Among other things, section 301(a) prohibits discharges not authorized
15 by, or in violation of, the terms of a NPDES permit issued pursuant to section 402 of the Clean Water
16 Act, 33 U.S.C. § 1342.

17 46. Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p), requires an NPDES Permit
18 for municipal storm water discharges.

19 47. The POTW and MS4 Permits are NPDES permits issued by the Regional Board pursuant
20 to section 402 of the Clean Water Act, 33 U.S.C. § 1342. *See* POTW Permit, Order No. 99-059, Finding
21 C, *see also* MS4 Permit, Order No. 99-059, Finding 23.

22 48. Any violation of the POTW Permit or the MS4 Permit is a violation of the Clean Water
23 Act. *See* MS4 Permit, Order No. 99-059, Appendix A; *see also* 40 C.F.R. 122.41(a) (2001).

24 49. Section 505(a) of the Clean Water Act provides for citizen enforcement actions against
25 any "person," for violations of (1) any effluent standard or limitation or (2) an order issued by the
26 Administrator or a State with respect to such a standard or limitation. *See* 33 U.S.C. §§ 1365(a),
27 1365(f), 1362(5).

28 50. San Bruno is a "person" within the meaning of Clean Water Act section 502(5), 33

1 U.S.C. § 1362(5).

2 51. Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), authorizes an action for
3 injunctive relief.

4 52. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to
5 \$32,500 per day per violation for violations occurring from March 15, 2004 through January 12, 2009,
6 and \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d);
7 40 C.F.R. § 19.4 (2009) (Adjustment of Civil Monetary Penalties for Inflation).

8 53. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing or
9 substantially prevailing parties to recover litigation costs, including attorneys' and experts' fees.

10 **B. The Requirements of the POTW Permit**

11 54. The most recent POTW Permit, issued November 2008, includes effluent limitations set
12 according to the level of pollutant reduction attainable via the application of secondary treatment. CWA
13 § 301(b)(1)(B), 33 U.S.C. § 1311(b)(1)(B) and more stringent effluent limitations necessary to meet
14 state water quality standards. CWA §301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C). As further described
15 below, the POTW Permit included various discharge prohibitions and other requirements and
16 restrictions.

17 55. Prior to the 2008 POTW Permit, San Bruno's WWTP and Collection System was
18 regulated by the 2003 POTW Permit, which contained similar effluent limitations, discharge
19 prohibitions and other requirements and restrictions.

20 **1. Discharge Prohibitions**

21 56. Discharge Prohibitions, § III.A of the POTW Permit prohibits discharging wastewater "at
22 a location or in a manner different from that" authorized by the Permit.

23 57. The POTW Permit prohibits any SSOs that results in a discharge of untreated or partially
24 treated wastewater to waters of the United States. *See* POTW Permit, Discharge Prohibition § III.E.

25 58. The POTW Permit also mandates that San Bruno "at all times properly operate and
26 maintain all facilities and systems of treatment and control (and related appurtenances) which are
27 installed or used by the Permittee to achieve compliance with the conditions of this Order." NPDES
28 Permit's Attachment D, Standard Provisions - Permit Compliance, subsection I.D.

1 **2. SSO Reporting Requirements**

2 **a. 2003 POTW Permit SSO Reporting Requirements**

3 59. The 2003 POTW Permit’s monitoring requirements are set out in Parts A and B of the
4 Self-Monitoring Program (“SMP”), and the 2008 POTW Permit’s monitoring requirements are set out in
5 the Monitoring and Reporting Program and in Part A of the SMP. 2003 POTW Permit, SMP Parts A
6 and B; 2008 POTW Permit, Attachment E and SMP Part A.

7 60. San Bruno must provide written report of each SSO in excess of 1,000 gallons that
8 occurred during to the Regional Board. 2003 POTW Permit, SMP Part B, § IV.F.1.

9 61. San Bruno must provide an annual summary of SSOs less than 1,000 gallons that
10 occurred in that reporting year to the Regional Board. 2003 POTW Permit, SMP Part B, § IV.F.2.c.

11 **b. 2004 Letter SSO Reporting Requirements**

12 62. In November of 2004, the Regional Board issued San Bruno a letter (“2004 Letter”)
13 requiring San Bruno to report SSOs electronically starting on December 1, 2004. 2004 Letter, p. 1.

14 63. The 2004 Letter purports to replace the 2001 POTW Permit’s SSO reporting
15 requirements with those in the 2004 Letter. 2004 Letter, p. 2. The Regional Board is required to
16 provide the public with formal notice and an opportunity for review and comment on modifications to
17 the 2001 POTW Permit. See 40 C.F.R. §§ 122.62, 123.25(a) (2009); see also 40 C.F.R. §§ 124.5,
18 124.10 (2009). The Regional Board did not provide the required notice and opportunity for comment
19 for NPDES incorporation of the 2004 Letter’s reporting requirements. Therefore, the SSO reporting
20 requirements in the 2004 Letter cannot replace those set out in the 2001 POTW Permit.

21 64. To the extent the 2004 Letter is a valid modification to the 2003 POTW Permit, however,
22 San Bruno’s violations of the 2004 Letter’s SSO reporting requirements are violations of the 2003
23 POTW Permit and the Clean Water Act.

24 65. The 2004 Letter requires San Bruno to electronically report SSOs equal to or greater than
25 100 gallons within ten (10) business days of identification of the SSO. 2004 Letter, Monitoring and
26 Reporting Program, § II and Figure 1.

27 66. San Bruno must keep records of SSOs less than 100 gallons, and include all SSOs that
28 occurred during that reporting year in a report submitted to the Regional Board by March 15 of each

1 year. 2004 Letter, Monitoring and Reporting Program, §§ II.3, II.5 and Figure 1.

2 **c. SSO WDR Reporting Requirements**

3 67. On May 2, 2006, the State Board issued the *Statewide General Waste Discharge*
4 *Requirements for Sanitary Sewer Systems*, State Water Resources Control Board Order No. 2006-0003-
5 DWQ and Monitoring and Reporting Program No. 2006-0003-DWQ, as amended by Order No. WQ
6 2008-0002-EXEC (“SSO WDR”). The SSO WDR requires San Bruno to report SSOs electronically
7 starting on May 2, 2007. SSO WDR, Provision D.15. The SSO WDR requires San Bruno to report
8 SSOs electronically starting on May 2, 2007. SSO WDR, Provision D.15.

9 68. The SSO WDR states that its requirements are intended to replace other mandatory
10 routine written reports associated with SSOs. SSO WDR, § G.2. The State Board did not provide the
11 public with the required notice and opportunity for comment when it sought to modify the 2003 POTW
12 Permit via the reporting requirements in the SSO WDR, however. See 40 C.F.R. §§ 122.62, 123.25(a);
13 see also 40 C.F.R. §§ 124.5, 124.10. Thus, the SSO reporting requirements in the SSO WDR cannot
14 replace those set out in the 2003 POTW Permit.

15 69. To the extent the SSO WDR is a valid modification to the 2003 POTW Permit, however,
16 San Bruno’s violations of the SSO WDR’s reporting requirements are violations of the 2003 POTW
17 Permit and the Clean Water Act.

18 70. The SSO WDR requires San Bruno to electronically submit an initial report within three
19 (3) business days for SSOs 1,000 gallons or more that discharge to a drainage channel and/or surface
20 water, and/or that discharge to a storm drain that are not fully captured and returned to the sanitary
21 sewer system. See SSO WDR, Monitoring and Reporting Program, §§ A.1 and A.4. A final certified
22 report is due within fifteen (15) calendar days of the completion of response and remediation, and must
23 contain certain minimum information. *Id.*, §§ A.4 and A.11.

24 71. San Bruno must report all other SSOs electronically within thirty (30) days after the end
25 of the calendar month in which the SSOs occurred. SSO WDR, Monitoring and Reporting Program, §§
26 A.2, A.5 and A.9.

27 72. San Bruno must report any SSO greater than 1,000 gallons discharged in or on waters of
28 the State to OES and the local health department. SSO WDR, § G.4, and Monitoring and Reporting

1 Program, § A.

2 73. San Bruno must report all SSOs that result in a discharge to surface waters to OES, the
3 local health officer or director of environmental health with jurisdiction over the affected water bodies,
4 and the Regional Board, within two (2) hours after becoming aware of the discharge, and electronic
5 certification within twenty-four (24) hours. SSO WDR, Monitoring and Reporting Program,
6 Notification, paragraphs 1 and 2.

7 **d. 2008 POTW Permit SSO Reporting Requirements**

8 74. The 2008 POTW Permit properly incorporates the SSO reporting requirements of the
9 SSO WDR. 2008 POTW Permit, Special Provision VI.C.5.c. A violation of the SSO WDR's reporting
10 requirements is also a violation of the 2008 POTW Permit and the Clean Water Act.

11 **C. The Requirements of the MS4 Permit**

12 75. The MS4 Permit was originally issued in 1993, reissued in 1999, and subsequently
13 amended in 2003, 2004, and 2007.

14 76. The MS4 Permit contains prohibitions and limitations on the discharge of pollutants into
15 San Bruno's MS4.

16 77. The MS4 Permit requires that San Bruno effectively prohibit discharges of non-storm
17 water into its MS4. MS4 Permit, Discharge Prohibition A.1.

18 **VI. FAILURES TO COMPLY WITH LEGAL REQUIREMENTS**

19 **A. San Bruno's Unpermitted Discharges of SSOs From the Collection System**

20 78. San Bruno has discharged and continues to discharge SSOs from the Collection System
21 to waters of the United States, and/or into its MS4 that then discharges to waters of the United States
22 without NPDES permit coverage, in violation of section 301(a) of the Clean Water Act, 33 U.S.C. §
23 1311(a) and the POTW Permit.

24 79. San Bruno has taken inadequate steps to eliminate its violations of the Clean Water Act.
25 Specifically, San Bruno has failed to adequately operate, maintain, repair, or update the Collection
26 System, thus resulting in SSOs.

27 80. San Bruno's Collection System is deteriorating, and deferral of repairs allows the
28 continued discharge of SSOs to waters of the United States in violation of the Clean Water Act.

1 through this enforcement action. Each additional SSO that discharges to waters of the United States will
2 be a separate Clean Water Act violation.

3 90. By committing the acts and omissions alleged above, San Bruno is subject to an
4 assessment of civil penalties pursuant to Clean Water Act sections 309(d) and 505(a), 33 U.S.C. §§
5 1319(d), 1365(a), occurring from at least December 19, 2004 to the present.

6 91. An action for declaratory judgment is authorized by 28 U.S.C. § 2201.

7 92. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C. §
8 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
9 Baykeeper and the public, for which harm they have no other plain, speedy, or adequate remedy at law

10 WHEREFORE, Baykeeper prays for relief as set forth herein.

11 **SECOND CAUSE OF ACTION**
12 **Violations of the CWA**
13 **33 U.S.C. § 1311(a); and,**
14 **NPDES Permit, Discharge Prohibitions**

15 93. Baykeeper realleges, as if set forth fully herein, each and every allegation contained in
16 the preceding paragraphs.

17 94. San Bruno's SSOs constitute discharges of wastewater at a location or in a manner
18 different from that described by the NPDES Permit, which only authorizes discharge of treated
19 wastewater from WWTP Discharge Point E-002 in violation of Discharge Prohibition B.3 of the POTW
20 Permit.

21 95. San Bruno has discharged and continues to discharge SSOs from the Collection System
22 to waters of the State and/or the United States in violation of Discharge Prohibition III.E of the POTW
23 Permit.

24 96. All such discharges of raw or inadequately treated sewage have thus constituted the
25 unauthorized discharge of pollutants in violation of an NPDES permit condition, hence a violation of
26 CWA section 301(a), 33 U.S.C. § 1311(a).

27 97. San Bruno has taken inadequate affirmative steps to eliminate these violations by
28 repairing, replacing and/or upgrading its defective collection system that is the cause of these violations.
Because San Bruno has failed to take these steps, San Bruno's SSO discharge violations will continue in

1 the future.

2 98. San Bruno's discharges of contaminated raw or inadequately treated sewage and other
3 pollutants are adversely affecting human health and the environment.

4 99. Each day since December 19, 2004 that San Bruno has discharged, and continues to
5 discharge raw or inadequately treated sewage and other pollutants to waters of the United States in
6 violation of NPDES Permit, Discharge Prohibitions, § III.A and III.E is a separate and distinct violation
7 of CWA section 301(a), 33 U.S.C. § 1311(a).

8 100. By committing the acts and omissions alleged above, San Bruno is subject to an
9 assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

10 101. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C. §
11 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff,
12 for which harm Plaintiff has no plain, speedy or adequate remedy at law.

13 WHEREFORE, Baykeeper prays for relief as set forth herein.

14 **THIRD CAUSE OF ACTION**
15 **Violations of the CWA**
16 **33 U.S.C. § 1311(a); POTW Permit's**
17 **Standard Provisions - Permit Compliance, subsection I.D.;**
18 **and, POTW Permit Provision § VI.5.c**

19 102. Baykeeper realleges, as if set forth fully herein, each and every allegation contained in
20 the preceding paragraphs.

21 103. San Bruno's SSOs have resulted from a variety of poor or inadequate system
22 maintenance, operation, repair, replacement and rehabilitation practices. These poor practices have led
23 to sewer line blockages (generally caused by build-up of grease, accumulation of sediment and debris,
24 and root intrusion), unaddressed defects in sewer lines such as extensive line cracking, sags in lines, and
25 misaligned joints; broken sewer lines, pump station equipment failures, undersized sewer lines or pump
26 station pumping and/or storage capacity, and the overwhelming of system capacity due to excessive
27 infiltration and inflow of storm water and ground water during wet weather.

28 104. In allowing SSOs from such poor system operation and maintenance, San Bruno has
violated the NPDES Permit's Standard Provisions - Permit Compliance, subsection I.D., which

1 provides: “The Discharger shall at all times properly operate and maintain all facilities and systems of
2 treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve
3 compliance with the conditions of this Order.”

4 105. San Bruno’s Collection System and WWTP constitute facilities and systems, and related
5 appurtenances, installed or used by San Bruno to comply with the NPDES permit. Thus, in maintaining
6 collection system conditions that have allowed SSOs, San Bruno has violated the NPDES Permit’s
7 Standard Provisions - Permit Compliance, subsection I.D’s requirement to “at all times properly operate
8 and maintain” San Bruno’s POTW.

9 106. In addition, in maintaining collection system conditions that have allowed SSOs, San
10 Bruno has violated the NPDES Permit’s Provisions, § VI.5.c., which provides that “the Discharger must
11 properly operate and maintain its collection system.”

12 107. All such discharges of raw or inadequately treated sewage have thus constituted the
13 unauthorized discharge of pollutants in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

14 108. San Bruno has taken inadequate affirmative steps to eliminate these violations by
15 repairing, replacing and/or upgrading its defective Collection System that is the cause of these
16 violations. Because San Bruno has failed to take these steps, San Bruno’s SSO discharge violations will
17 continue in the future.

18 109. San Bruno’s discharges of contaminated raw or inadequately treated sewage are
19 adversely affecting human health and the environment.

20 110. Each day since December 19, 2004 that San Bruno has maintained and continues to
21 maintain Collection System conditions that have allowed or are allowing for collection system SSOs
22 constitutes a separate and distinct violation of violation of NPDES Permit Standard Provisions - Permit
23 Compliance, subsection I.D. and NPDES Permit Provision § VI.5.c.

24 111. Alternatively, each day since December 19, 2004 that San Bruno has discharged, and
25 continues to discharge raw or inadequately treated sewage to waters of the United States in violation of
26 NPDES Permit Standard Provisions - Permit Compliance, subsection I.D. and NPDES Permit Provision
27 § VI.5.c. is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

28 112. By committing the acts and omissions alleged above, San Bruno is subject to an

1 assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

2 113. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).
3 Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff, for
4 which harm Plaintiff has no plain, speedy or adequate remedy at law.

5 WHEREFORE, Baykeeper prays for relief as set forth herein.

6 **FOURTH CAUSE OF ACTION**
7 **Failure to Comply with SSO Reporting Requirements in Violation of**
8 **the POTW Permits and the Clean Water Act**

9 114. Baykeeper realleges, as if set forth fully herein, each and every allegation contained in
10 the preceding paragraphs.

11 115. San Bruno has been underreporting and/or misreporting the number of SSOs from the
12 Collection System in violation of the reporting requirements imposed by its NPDES Permits. *See* 2003
13 POTW Permit, SMP Part B, § IV.F.2.c.; *see also* 2004 Letter, Monitoring and Reporting Program, § II
14 and Figure 1; SSO WDR, Monitoring and Reporting Program, § A.2, A.5 and A.9; SSO WDR,
15 Monitoring and Reporting Program, §§ A.2, A.5 and A.9; 2008 POTW Permit, Special Provision
16 VI.C.5.c.

17 116. Baykeeper alleges that San Bruno has failed to comply with the POTW Permit and 2003
18 POTW Permit's record keeping requirements on several occasions since September 30, 2004.

19 117. San Bruno's violations of the POTW Permit's SSO Reporting requirements are ongoing
20 and continuous.

21 118. Every time that San Bruno failed and continues to fail to comply with the SSO reporting
22 requirements specified in the POTW Permit and 2003 POTW Permit is a separate and distinct violation
23 of the Clean Water Act.

24 119. San Bruno's violations will continue each time it fails to report SSOs as required by the
25 POTW Permit and the Clean Water Act.

26 120. Baykeeper alleges that significantly more violations of the POTW Permit and 2003
27 POTW Permit's SSO reporting requirements will be discovered through this enforcement action. Each
28 additional violation of the POTW Permit and 2003 POTW Permit's SSO reporting requirements will be

1 a separate Clean Water Act violation.

2 121. By committing the acts and omissions alleged above, San Bruno is subject to an
3 assessment of civil penalties pursuant to Clean Water Act sections 309(d) and 505(a), 33 U.S.C. §§
4 1319(d), 1365(a), occurring from at least September 30, 2004 to the present.

5 122. An action for declaratory judgment is authorized by 28 U.S.C. § 2201.

6 123. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C. §
7 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
8 Baykeeper and members of the public, for which harm they have no other plain, speedy, or adequate
9 remedy at law.

10 WHEREFORE, Baykeeper prays for relief as set forth herein.

11 **FIFTH CAUSE OF ACTION**

12 **Discharges Into the MS4 in Violation of the MS4 Permit**
13 **and the Clean Water Act**

14 124. Baykeeper realleges, as if set forth fully herein, each and every allegation contained in
15 the preceding paragraphs.

16 125. San Bruno has discharged and continues to discharge SSOs from the Collection System
17 into its MS4, in violation of Discharge Prohibition A.1 of the MS4 Permit.

18 126. San Bruno has discharged SSOs from the Collection System into its MS4 in violation of
19 the MS4 Permit's discharge prohibitions on at least 58 separate occasions since December 19, 2004.

20 127. San Bruno's discharges of SSOs from the Collection System into its MS4 in violation of
21 the MS4 Permit's discharge prohibitions are ongoing and continuous.

22 128. Each discharge of an SSO in violation of the MS4 Permit is a separate and distinct
23 violation of the Clean Water Act.

24 129. San Bruno's violations will continue each occasion it discharges SSOs into its MS4 in
25 violation of the requirements of the MS4 Permit and the Clean Water Act.

26 130. Significantly more SSOs than reported by San Bruno will likely be discovered through
27 this enforcement action. Each additional SSO that violates the MS4 Permit will be a separate violation
28 of the Clean Water Act.

1 131. By committing the acts and omissions alleged above, San Bruno is subject to an
2 assessment of civil penalties pursuant to Clean Water Act sections 309(d) and 505(a), 33 U.S.C. §§
3 1319(d), 1365(a), occurring from at least December 19, 2004 to the present.

4 132. An action for declaratory judgment is authorized by 28 U.S.C. § 2201.

5 133. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C. §
6 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
7 Baykeeper and the public, for which harm they have no other plain, speedy, or adequate remedy at law.

8 WHEREFORE, Baykeeper prays for relief as set forth herein.

9
10 **VIII. RELIEF REQUESTED**

11 134. Baykeeper respectfully requests that this Court grant the following relief:

12 a. declare San Bruno to have violated and to be in violation of section 301(a) of the
13 Clean Water Act, 33 U.S.C. § 1311(a), for its discharges of SSOs to waters of the United States
14 without a NPDES permit;

15 b. declare San Bruno to have violated and to be in violation of the Clean Water Act
16 for discharging pollutants without complying with the substantive and procedural requirements
17 of the POTW Permit;

18 c. declare San Bruno to have violated and to be in violation of the Clean Water Act
19 for discharging pollutants without complying with the substantive and procedural requirements
20 of the MS4 Permit;

21 d. enjoin San Bruno from discharging SSOs to waters of the United States without a
22 NPDES permit, in violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a);

23 e. enjoin San Bruno from violating the substantive and procedural requirements of
24 the POTW Permit and the MS4 Permit;

25 f. assess civil penalties against San Bruno of up to \$32,500 per day per violation for
26 all Clean Water Act violations occurring between December 19, 2004 and January 12, 2009, and
27 up to \$37,500 per day per violation for all Clean Water Act violations occurring since January
28 12, 2009, as permitted by 33 U.S.C. §§ 1319(d) and 1365(a), and 40 C.F.R. § 19.4 (Adjustment

1 of Civil Monetary Penalties for Inflation);

2 g. award Baykeeper its reasonable costs of suit, including attorney, witness, and
3 consultant fees, as provided for under by sections 309(d) and 505(a) of the Clean Water Act, 33
4 U.S.C. §§ 1319(d) and 1365(a) and the California Code of Civil Procedure section 1021.5; and

5 h. any such other relief as the Court deems appropriate.

6
7 Dated: February 23, 2010

8 *Christopher A. Sproul*

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11 Attorney for Baykeeper, Inc.
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