Citizen Suit Action/Clean Water Act: Two California Municipalities' Motion Alleges Spoilation of Laboratory Data by Environmental Organization



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The Towns of Sunnyvale and Mountain View, California (collectively, "Cities") filed a January 17th Pleading against San Francisco Baykeeper ("Baykeeper") styled:

Defendants' Motion for Sanctions for Spoilation of Laboratory Evidence ("Motion").

The Motion pertains to litigation in which Baykeeper has filed a Clean Water Act citizen suit action against the Cities alleging violations. See Case No. 5:209-CV-00824-EJD.

The action addresses the Cities' municipal separate sewer systems. Baykeeper had alleged that the Cities' runoff contained levels of E. coli bacteria above permissible levels, violating the National Pollutant Discharge Elimination System permits covering the Cities.

The Cities' Motion argues that Baykeeper failed to abide by discovery obligations, therefore prejudicing their ability to defend against Baykeeper's claims. They allege in part:

…The underlying raw test from that lab testing and its quality assurance/quality check data, if any, underlying the test results ("QA/QC") – testing which as the core of Plaintiff's lawsuit – were destroyed despite the initiation of litigation and during the litigation of Plaintiff's claims. The laboratory tests' raw data and QA/QC are material to Plaintiff's claims and directly responsive to discovery requests that Defendants issued. Plaintiff failed to preserve relevant, responsive, and material evidence after this litigation commenced and after Defendants sought the documents through discovery.

They alleged that Baykeeper never issued a litigation hold to Alpha Labs and the laboratory destroyed the raw data or QA/QC data underlying the test results that Baykeeper relies on in trial. This destruction of evidence is alleged to be willful spoilation.

Evidence spoilation is sometimes defined as the intentional or negligent misplacing, losing, or destroying of items so they cannot be used as evidence in a lawsuit. Alpha Labs' alleged duty to preserve and subsequent breach of that duty is stated to be imputed to Baykeeper because of what is described as the "extreme prejudicial effect it has on Defendants." The laboratory testing's raw data and QA/QC data are alleged to be central to the issues of the litigation.

As a result, the Motion asks that the Court exclude the Lab Reports, or in the alternative, issue an adverse evidentiary inference regarding the lack of credibility and reliability of the Lab Reports, affording them little to no weight.

A copy of the Motion can be downloaded here.