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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Sierra Pacific Industries')
Petition for Review of Cleanup and Abatement.)
Order R5-2011-0710 by the California Regional)
Water Quality Control Board, Central Valley)
Region.)

PETITION FOR REVIEW;
PRELIMINARY POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION; REQUEST FOR
ABEYANCE (WATER CODE
SECTION 13320)

INTRODUCTION

Petitioner Sierra Pacific Industries ("SPI"), in accordance with section 13320 of the Water Code, hereby petitions the State Water Resources Control Board ("State Water Board") to review the October 11, 2011 decision by the Regional Water Quality Control Board, Central Valley Region's ("Regional Board") Executive Officer, issuing SPI a Cleanup and Abatement Order ("CAO"). The CAO is based on incomplete, inaccurate or improper facts and includes operative provisions that are unreasonable. There is no ongoing threat of a discharge of waste to waters of the state, as required by Water Code section 13304, to authorize the order. Further, because the requirements under Water Code sections 13000 and 13267 have not been met, the Regional Board does not have the authority to issue the CAO. SPI respectfully requests the State Water Board rescind the CAO.

1 The issues and a summary of the bases for the Petition follow. At such time as the full
2 administrative record is available and any other material has been submitted, SPI reserves the right
3 to file a more detailed memorandum in support of the Petition and/or in reply to the Regional
4 Board's response.¹

5 **1. NAME, ADDRESS, TELEPHONE, AND EMAIL FOR PETITIONER:**

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7 Environmental Affairs & Compliance Manager
8 Sierra Pacific Industries
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10 Redding, CA 96049-6028
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13 In addition, all materials in connection with this Petition for Review should also be provided
14 to SPI's counsel at the following address:

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21 **2. THE SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE
22 BOARD IS REQUESTED TO REVIEW:**

23 SPI requests the State Water Board review the Regional Board's CAO, Order No. R5-2011-
24 0710, for Sierra Pacific Industries' Martell Division Ash Disposal Area Waste Management Unit in
25 Amador County, dated October 11, 2011. A copy of the CAO is attached hereto as **Attachment "A"**
26 and hereby incorporated herein.

27 ¹ The State Water Board's regulations require submission of a statement of points and authorities in support of a petition
28 (23 C.C.R. §2050(a)(7)), and this document is intended to serve as a preliminary memorandum. However, it is
impossible to prepare a thorough statement or a memorandum that is entirely useful to the reviewer in the absence of the
complete administrative record, which is not yet available.

1 On November 9, 2011, SPI submitted to the Regional Board's Executive Officer, Pamela
2 Creedon, a Petition for Reconsideration of the CAO. A copy of the letter is attached hereto as
3 **Attachment "B"**.

4
5 **3. THE DATE ON WHICH THE REGIONAL BOARD ACTED:**

6 The Regional Board's Executive Officer issued SPI the CAO on October 11, 2011, Order
7 No. R5-2011-0710.

8 **4. A STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR**
9 **IMPROPER:**

10 The CAO alleges facts that are incomplete, inaccurate or improper. These erroneous facts
11 provide the basis of the CAO's operative provisions, which are inefficient and unreasonable. The
12 history of remedial efforts at the ash disposal area are included to provide context.

13 **A. History of Ash Disposal Area**

14 SPI owns property that once operated as a saw mill. The property was purchased in 1997
15 from Georgia-Pacific Corporation, and had an existing 5.3 acre unlined ash disposal area. The ash
16 waste was created by the previous owners of the property, the American Forest Products Company
17 and Georgia-Pacific Corporation, between 1941 and 1990.

18
19 Prior to issuance of the Waste Discharge Requirements ("WDRs"), Order No. R5-2009-
20 0100, for the site, on December 10, 2008, SPI submitted an Engineering Feasibility Study to the
21 Regional Board. This Study evaluated five engineering measures that could be undertaken to
22 improve groundwater quality near the ash disposal area. Installation of a prescriptive cover on the
23 disposal area, combined with natural attenuation of groundwater impacts (low concentrations of
24 calcium, magnesium and bicarbonate), was selected as the preferred alternative. It was assumed
25 that the ash-containing waste already was, or readily could be, separated from groundwater. Also
26 on December 10, 2008, SPI submitted a conceptual closure plan for the ash disposal area. The
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1 conceptual closure plan called for the installation of an engineered alternative liner to cap the upper
2 surface of the ash disposal area to prevent infiltration of water into the waste.

3 On January 29, 2009, a field meeting was held at the Martell facility, between Regional
4 Board staff and SPI representatives. During that meeting, SPI stated that comparisons of
5 topographic contours from the 1954 USGS map (before the canyon was filled by a prior owner) and
6 recent groundwater elevation data from monitoring wells indicated that groundwater might be in
7 contact with waste. SPI indicated that installation of drainage trenches along the disposal area
8 perimeter might lower the peripheral water table enough to create separation between groundwater
9 and the waste material.
10

11 On April 16, 2009, SPI submitted a workplan for the installation of four piezometers in the
12 disposal area. The purpose of the piezometers was to evaluate groundwater elevation and to
13 facilitate the design of drainage trenches along the disposal area perimeter. The piezometers were
14 installed in late April 2009. Given the timing, no wet season monitoring occurred between the
15 installation of the piezometers and adoption of the WDRs in October 2009.
16

17 On October 8, 2009, new WDRs were adopted for the ash disposal area. Among other
18 things, the WDRs required: (1) separation between the waste and the high groundwater level; (2)
19 control of water intrusion into the disposal area; and (3) submittal of a report by June 30, 2010, to
20 evaluate the piezometer data and the causes and solutions for high groundwater levels beneath the
21 disposal area. (*See* Order No. R5-2009-0100 at pp. 18, 22.) The WDRs assumed that groundwater
22 concerns could be resolved and closure in-place could be achieved. The Final Closure Plan was to
23 be submitted by November 30, 2010. (*Id.* at p. 22) The cap was to be installed by December 31,
24 2011. (*Id.*)
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1 SPI submitted a report on the piezometer results on June 30, 2010. The Piezometer Study
2 concluded that groundwater was in contact with the waste during the winter season. Four
3 recommendations were provided for the control of local recharge. The report also recommended
4 control of regional recharge by installation of a test subdrain upgradient of the disposal area to
5 verify the efficacy of a subdrain system, followed by design of a subdrain system. It was estimated
6 that the subdrains would need to be excavated to 15 feet below ground surface to be effective in
7 achieving separation between the waste and groundwater.
8

9 Also on June 30, 2010, SPI began excavation of the test subdrain. However, the subdrain
10 could only be excavated to a depth of 7 to 8 feet below ground surface before it met refusal on
11 underlying bedrock. Based on a comparison between the elevation of the bottom of the test
12 subdrain and groundwater levels in the piezometers, it was determined that a subdrain excavated to
13 a depth of 7 to 8 feet would not be effective in achieving separation between the waste and
14 groundwater.
15

16
17 On October 27, 2010, in a meeting between SPI representatives and Regional Board staff,
18 SPI stated that the conceptual closure plan had become infeasible because: (1) the Piezometer
19 Study showed that groundwater was in contact with the waste; and (2) the subdrain test excavation
20 showed that it would not be possible to create separation between the waste and groundwater
21 through the installation of subdrains. Regional Board staff stated that notwithstanding this
22 development, the Final Closure Plan remained due on November 30, 2010, but that SPI could
23 submit an Amended Report of Waste Discharge containing a new closure plan, and apply for
24 revised WDRs.
25

26 SPI submitted the Amended Report of Waste Discharge ("AROWD") on November 29,
27 2010. The purpose of the AROWD was to amend the corrective action plan and the conceptual
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1 closure plan, and provide a basis for new WDRs that would reflect the updated understanding of
2 groundwater conditions beneath the ash disposal area. The AROWD proposed three interim
3 remedial measures: (1) abatement of local recharge to minimize the amount of local recharge
4 entering the subsurface in the ash disposal area; (2) excavation of the waste material from the low-
5 lying areas of the ash disposal area; and (3) a pilot waste segregation study to determine whether
6 rock and wood waste in the waste material could be segregated and re-used. The AROWD
7 proposed time frames and schedules to address the groundwater concerns identified in the
8 Piezometer Study, in addition to closure of the facility.
9

10
11 On December 13, 2010, SPI began the local recharge abatement interim remedial measure
12 by excavating bedrock highs in the northeastern drainage and redirecting drainage from the Ampine
13 culvert in the northeast corner of the ash disposal area to the eastern (retail center) drainage instead
14 of the northern drainage.

15
16 SPI began the pilot waste segregation study on January 31, 2011.² SPI determined that there
17 was not enough material with sufficiently low concentrations of dioxins/furans to support a waste
18 segregation program. The report describing the pilot study was submitted on May 31, 2011.

19
20 On April 1, 2011 the Regional Board provided comments on the AROWD, indicating the
21 report, as submitted, was technically deficient because it did not include a completed Form 200 and
22 did not meet the Title 27 requirements for a closure plan.

23
24 On April 14, 2011, in a meeting between the Regional Board staff and SPI representatives,
25 SPI stated that interim remedial measures described in the AROWD were underway. SPI reported
26 that the pilot waste segregation study had been unsuccessful and that it would be necessary to close
27 the ash disposal area in place by excavating waste material that contacted groundwater and
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² Regional Board provided concurrence with the pilot waste segregation study via email on January 26, 2011.

1 replacing it with clean fill. SPI also reported that excavation at and below the water table would be
2 tenuous because the waste was saturated. Regional Board staff suggested that it might be possible
3 to actively dewater the excavated waste. Regional Board staff stated that SPI should submit the
4 closure plan as soon as possible and that SPI should proceed *as quickly and as best as possible* to
5 meet the unchanged December 2011, closure deadline.
6

7 On May 26, 2011, there was a meeting at the Martell site between Regional Board staff and
8 SPI representatives. SPI provided a general description of the excavation work that was to
9 commence in June 2011. SPI stated that the purpose of the work was to raise the elevation of the
10 bottom of the waste above the highest recorded winter groundwater elevation.
11

12 On June 17, 2011, SPI moved into full mobilization to complete the excavation of waste
13 material below the water table during the 2011 construction season, so as to comply as
14 expeditiously as possible with the WDRs' December 31, 2011 deadline for installation of the cap.
15

16 On September 29, 2011, in a meeting between Regional Board staff and SPI representatives,
17 SPI described the status of the two on-going interim remedial measures described in the AROWD.
18 The abatement of local recharge work was nearly complete. This work directed local recharge
19 away from the ash disposal area and resulted in a lower water table. The excavation of waste and
20 placement of clean fill was also nearly complete. This work provided separation between the waste
21 and groundwater. Regional Board staff stated that the interim remedial measures should not have
22 been undertaken without an approved workplan. Regional Board staff asked questions about the
23 work (*e.g.*, source of fill, documentation that waste material was removed down to native soil
24 during excavation), and SPI responded. SPI agreed to submit a report documenting the excavation
25 work.
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1 During the September 29th meeting, SPI invited Regional Board staff to tour the site to
2 observe the ongoing and completed work, and to discuss the engineering basis for the interim
3 measures identified in the field. Regional Board staff accepted the invitation and SPI agreed to
4 provide a full tour of the disposal area on October 5, 2011. Due to the subsequent unavailability of
5 one of SPI's team members, SPI sought to cancel and reschedule the October 5, 2011, tour. The
6 Regional Board staff refused to reschedule and proceeded to visit the disposal area on that day
7 despite SPI representatives being unavailable. Regional Board staff indicated the visit was for a
8 stormwater inspection only, and that the full site tour would be rescheduled; however, the
9 observations made during the visit are the underlying basis of the CAO, which is not focused on
10 stormwater. No inspection reports were provided to SPI and no concerns were indentified for SPI
11 to address in the field. Regional Board staff indicated to SPI that suitable BMPs appeared to be in
12 place and that the site looked good. On October 11, 2011, the Regional Board issued the CAO to
13 SPI.

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17 As of November 7, 2011, SPI has removed all of the ash waste in the ash disposal area that
18 was in contact with groundwater. SPI has installed effective BMPs at the site to prevent runoff
19 from both the ash disposal area and the excavation area. Based on Regional Board staff's October
20 5, 2011, inspection and the CAO findings, "these BMPs appear effective in preventing
21 contaminated runoff from leaving both the ADA [ash disposal area] and unpermitted ash pile." (*See*
22 *Order No. R5-2011-0710 at finding 19(e).*) The BMPs were "installed prior to the 1.4" of rain that
23 fell on 4-5 October 2011" and were effective. (*Id.*)

24
25 It is anticipated that by November 30, 2011, SPI will have completed the work to elevate the
26 waste to at least one foot above the highest historical water level. Base rock has been installed at the
27 bottom of the excavation to provide for groundwater movement. The ash waste has been placed
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1 above the base rock and additional fill material at an elevation at least 1 foot above the highest
2 known historical groundwater elevation. A temporary cap/cover will be placed on the ash disposal
3 area by the end of November 2011, to prevent surface infiltration during the winter. Winter 2011-
4 12 will be the first winter that waste will not be in contact with groundwater since the first disposal
5 of ash in 1976.
6

7 As this chronology indicates, SPI has been diligently working, in cooperation with the
8 Regional Board, to provide separation between the waste and groundwater.
9

10 **B. Inaccurate and Unsupported Factual Findings**

11 A number of statements in the factual findings are incomplete or inaccurate, and a
12 number of the findings are not supported by available information. Several of the findings
13 are conclusions, rather than factual statements. The list of items below are a broad sampling
14 of factual findings that are incomplete, inaccurate or improper; therefore, the CAO is not
15 supported by the record or by the evidence.
16

17 In paragraph Four of the factual findings, the Regional Board states that waste
18 material was discharged into the ash disposal area from 1976 to 1990. For completeness,
19 this paragraph should state that SPI purchased the property in 1997 (*i.e.*, many years after
20 final placement of waste into the ash disposal area).
21

22 In paragraph Nine, the Regional Board states that prior to any construction, 100%
23 design plans must be submitted for design and approval. This statement, which is taken
24 from the WDRs, refers only to the installation of the cap required by section (E) of the
25 WDRs. The WDRs assumed closure-in-place and contemplated that a Final Closure Plan
26 would be submitted before an engineered cover was placed on the ash disposal area.
27

28 Various types of remedial construction work have been on-going at the ash disposal area

1 since before the WDRs were signed and there has never been an understanding or
2 requirement that 100% design plans would be submitted prior to undertaking any other type
3 of construction.

4
5 In paragraph Ten, the Regional Board states that a Final Closure Plan and Final
6 Construction Quality Assurance Plan that complies with the WDRs has not been submitted.
7 A Final Closure Plan and a Final Construction Quality Assurance Plan were submitted on
8 August 26, 2011, and revised Plans addressing staff comments were submitted on
9 September 29, 2011. It was not plausible to submit these Plans by the dates specified in the
10 WDRs because actual field conditions, as reported in the Piezometer Study (timely
11 submitted on June 30, 2010), were materially different than the field conditions assumed by
12 the WDRs.
13

14 In paragraph Eleven, the Regional Board states that excavation of the waste material
15 to ensure separation between groundwater and the waste was discussed at a meeting on
16 April 14, 2011. For completeness, this paragraph should state that SPI submitted a
17 document entitled, "Amended Report of Waste Discharge" (AROWD) on November 29,
18 2010 (the due date for submittal of the Final Closure Plan), which described an interim
19 remedial measure to excavate inundated waste material. SPI proceeded to implement this
20 interim remedial measure during the 2011 dry season. At the meeting on April 14, 2011,
21 SPI stated that one of the three interim remedial measures described in the AROWD was
22 completed (waste segregation pilot study) and that a second (re-direction of local recharge)
23 was underway.
24
25

26 In paragraph Thirteen, the Regional Board states that the Final Closure Plan and
27 Final Construction Quality Assurance Plan as originally submitted were incomplete and did
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1 not contain information required by 15 paragraphs of the WDRs. This statement is
2 inaccurate.

3 In paragraph Fourteen, the Regional Board states that SPI did not notify the Regional
4 Board about the excavation of inundated materials until September 16, 2011, and did not
5 submit any documents describing the excavation. This statement is inaccurate. The
6 AROWD submitted on November 29, 2010, described the excavation. At the April 14,
7 2011, meeting with Regional Board staff, SPI representatives stated that SPI planned to
8 begin the excavation in June, as stated in the AROWD.
9

10 In paragraph Sixteen, the Regional Board states that an interim cover had not been
11 placed over the waste material. For completeness, this paragraph should state that
12 excavation work to remove all waste material from below the water table, with a goal of
13 providing separation of groundwater and waste prior to Winter 2011-12, was on-going at the
14 time.
15

16 In paragraph Seventeen, the Regional Board states that at the September 29, 2011
17 meeting: (1) SPI stated that it would take 8 to 12 weeks to complete the excavation work;
18 (2) the WDRs do not provide for excavation as a means to separate waste from groundwater;
19 (3) SPI should have submitted a Final Closure Plan describing the excavation work; (4) the
20 parties had discussed submittal of a Final Closure Plan containing such a description at the
21 April 14, 2011 meeting; and (5) that Regional Board staff could not review the Final Closure
22 Plan prior to receiving information set forth in 15 paragraphs of the WDRs. These
23 statements are inaccurate or incomplete. The excavation work was completed on November
24 7, 2011. The WDRs were based on the assumption of closure-in-place, and it has been
25 known since Summer 2010 that closure-in-place would not separate groundwater from the
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1 waste. The WDRs do not require the Final Closure Plan to describe waste excavation work
2 or other types of interim remedial measures. The parties had not discussed including a
3 description of the excavation work in the Final Closure Plan at the April 14, 2011 meeting;
4 at that meeting, SPI had stated that excavation work was imminent. The revised Final
5 Closure Plan contains all of the elements required by the WDRs.
6

7 In paragraph Nineteen, the Regional Board states that: (1) interim cover had been
8 removed from the ash disposal area; (2) piezometers had been removed; and (3) the type of
9 surface underlying the ash stockpile is unknown. These statements are inaccurate or
10 incomplete. It would not be possible to provide separation between the waste and
11 groundwater without removing the cover and piezometers to excavate low-lying waste
12 materials; thus, these actions were necessary and reasonable. The surface under the ash
13 stockpile is similar to the surface adjacent to the ash stockpile, which is visible.
14

15 In paragraph Twenty, the Regional Board states that: (1) SPI had not submitted any
16 document to describe the recent construction activities, (2) SPI has not submitted a Final
17 Closure Plan; and (3) SPI will need to show that all of the waste was removed and that the
18 imported fill was appropriate. This first statement is inaccurate in that the AROWD
19 describes the three interim measures that SPI subsequently undertook. The second statement
20 is inaccurate in that SPI has submitted a Final Closure Plan and a revised Final Closure Plan
21 that comply with the requirements in the WDRs. The third statement is a conclusion, not a
22 factual statement.
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25 In paragraphs Thirty-two through Forty the Regional Board lists alleged violations
26 and potential violations of the WDRs and the regulations. The alleged violations listed in
27 paragraphs Thirty-two to Forty primarily comprise actions that were necessary to achieve
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1 the principal stated goal and requirement of the WDRs – separation of waste material from
2 groundwater. (See Order No. R5-2009-0110 at pp.10, 11.) In light of this, and the factual
3 description set forth in Sections A and B, above, none of the listed items comprise violations
4 of the WDRs or regulations.
5

6 **C. Operative Provisions**

7 The CAO contains eleven operative provisions on pages 8 through 11 (not including
8 certain reporting and notification provisions.)
9

10 Provision Two requires weekly stormwater inspection reports. The provision
11 provides that the first weekly inspection is for the week of October 16 to 22, with the
12 inspection report due on Monday, October 24 (the first business day after the inspection
13 period). A reporting date one business day after the inspection period is unrealistic and
14 inefficient.
15

16 In conjunction with the reports, the same provision requires weekly inspections
17 through May 1, 2012; however, weekly inspections are not necessary following installation
18 of the interim cap and clean closure of the ash stockpile because the opportunity for waste to
19 contact stormwater will have been eliminated.
20

21 Provision Seven requires the submittal of certain plans, drawings and specifications
22 related to interim remedial measures to redirect local recharge away from the ash disposal
23 area and the excavation of waste material from below the high groundwater elevation. At
24 the September 29, 2011, meeting between Regional Board staff and SPI representatives,
25 Regional Board staff requested that SPI prepare a report describing both interim remedial
26 measures, including documentation that all ash material had been removed from below the
27 high groundwater elevation. SPI agreed to prepare this additional report describing the two
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1 interim remedial actions as completed. One report documenting the interim remedial
2 measures should be sufficient. Reports that are submitted in piecemeal fashion are
3 inefficient and often lead to confusion.

4
5 Provision Eight requires re-submittal of a Final Closure Plan containing items in
6 addition to those required in the WDRs. At the September 29, 2011, meeting between
7 Regional Board staff and SPI representatives, SPI already submitted a revised Final Closure
8 Plan responding to all comments made on its initial submittal of the Final Closure Plan. The
9 Final Closure Plan describes the final cap, covers future actions only, and has already been
10 reviewed, commented upon and revised. Re-submittal of the Final Closure Plan, as required
11 by Provision Eight, will duplicate effort and create confusion.

12
13 **5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:**

14 SPI is aggrieved by the Regional Board's issuance of the CAO because the Regional Board
15 is seeking to impose unreasonable requirements beyond its jurisdictional authority. The CAO
16 requires unrealistic deadlines and imposes requirements that are unwarranted and inefficient. Such
17 measures are unauthorized and wasteful.

18 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH**
19 **PETITIONER REQUESTS:**

20 SPI requests the State Water Board rescind the CAO.

21 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
22 **ISSUES RAISED IN THE PETITION:**

23 SPI incorporates by reference the information presented in Section 4 above. SPI also
24 reserves the right to supplement this statement of points and authorities upon receipt and review of
25 the administrative record.

26 **A. The CAO is Not Warranted Under Water Code section 13304**

27 The issuance of a CAO under Water Code section 13304 is appropriate where a
28 person "has caused or permitted, causes or permits, or threatens to cause or permit any waste

1 to be discharged or deposited where it is, or probably will be, discharged into the waters of
2 the state and creates, or threatens to create, a condition of pollution or nuisance.” See Water
3 Code §13304(a). The jurisdictional requirement that there be a discharge or threatened
4 discharge of “waste” to a “waters of the state” is not ongoing in this case; therefore, the
5 CAO is not warranted.
6

7 As of November 7, 2011, SPI had completely separated all the ash waste from
8 contact with groundwater. By November 30, 2011, SPI will have raised all of the excavated
9 ash waste above the highest historical groundwater level and covered the ash disposal area
10 with a cap for the winter. The excavation work, and the remediation efforts to fill the
11 excavated area with base rock and fill materials to an elevation of at least 1 foot above the
12 highest known historical groundwater elevation, have removed the threat of a discharge to
13 waters of the state.
14

15 Regional Board staff inspected the excavation site on October 5, 2011, during a time
16 in which the area had received 1.4 inches of rain. Based on that inspection, Regional Board
17 staff reported that BMPs are in place and that the BMPs are effectively preventing runoff
18 from both the ash disposal area and from the unpermitted area where ash was stored during
19 excavation.³ There is no threat of discharge from the excavation site.
20

21
22 The Regional Board cannot maintain the CAO on the premise that there is a threat to
23 waters of the state, because there is no *continuing* threat that waste will be discharged. SPI
24 has diligently secured the ash disposal area and the excavation site. If the Regional Board
25 desires assurances that the efforts to close the ash disposal area are effective, then the
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28 ³ In paragraph 19(e) of the CAO, the Regional Board states that at the site, stormwater BMPs have been installed and that “these BMPs appear effective in preventing contaminated runoff from leaving both the ADA [ash disposal area] and unpermitted ash pile.” This statement indicates the absence of a threat to waters of the state.

1 Regional Board should exercise its authority under Water Code section 13267, not 13304.
2 SPI has complied with the WDRs providing separation between the ash waste and the
3 groundwater. (See Order No. R5-2009-0110 at p.5 ¶ 21.) Additional concerns regarding
4 SPI's efforts should be addressed through other correspondence with SPI, rather than a
5 baseless CAO. The State Water Board should rescind the CAO because there is no threat of
6 a discharge to waters of the state.
7

8 **B. The CAO is Not Reasonable as Required by Water Code section 13000**

9 The California Legislature has found and declared that activities affecting water
10 quality "shall be regulated to attain the highest water quality which is *reasonable*,
11 considering all demands being made and to be made on those waters and the total values
12 involved, beneficial and detrimental, economic and social, tangible and intangible." See
13 Water Code §13000 (emphasis added). This section sets state policy and imposes an
14 overriding requirement on the Regional Boards that all orders be reasonable considering all
15 circumstances.
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18 The Regional Board's issuance of the CAO is unreasonable considering all of the
19 related circumstances. As outlined above, SPI has been diligently working with the
20 Regional Board to separate the waste from groundwater. As of September 29, 2011, SPI
21 had provided the Regional Board a revised Final Closure Plan which addressed *all* of the
22 comments made on the initial submittal of the Final Closure Plan. SPI agreed to supplement
23 the information in the revised closure plan with a report on the completed interim remedial
24 measures. The revised Final Closure Plan is responsive, describes the plans for placement
25 of the final cover, and meets the requirements of the WDRs. It is unreasonable for the
26 Regional Board to require another Final Closure Plan or the myriad of other reports spelled
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1 out in the operative provisions. The provisions in light of SPI's agreement at the September
2 29, 2011, meeting to provide an additional report on the re-direction of local recharge and
3 the excavation of the inundated waste, appear punitive rather than purposeful.

4
5 As outlined above, the requirement of weekly storm water inspections and reports is
6 unnecessary once the interim cap is placed on the ash disposal area and ash stockpile is
7 clean closed. As reported by Regional Board staff, the BMPs in place at the excavation site
8 are suitable and were effective during the early October rains. As such, the requirement of
9 weekly inspections as outlined in Provision Two are unreasonable.

10
11 Any perceived delays in the implementation of the closure plan or submission of the
12 Final Closure Plan are directly related to the fact that the actual field conditions are
13 materially different than what was assumed by the WDRs. SPI has responded reasonably
14 and responsibly. The Regional Board's issuance of the CAO under these circumstances is
15 unreasonable and violates Water Code section 13000.

16
17 **C. The CAO Was Not Supported by Findings, and the Factual Findings Were Not**
18 **Supported by the Record or by the Evidence**

19 All administrative orders must be supported by the findings, and such findings must be
20 based upon the evidence in the record. Orders not supported by the findings or findings not
21 supported by the evidence constitute an abuse of discretion. See *Topanga Association for a Scenic*
22 *Community v. County of Los Angeles*, 11 Cal.3d 506, 515 (1974); *California Edison v. SWRCB*, 116
23 Cal. App. 751, 761 (4th Dt. 1981); see also *In the Matter of the Petition of City and County of San*
24 *Francisco, et al.*, State Board Order No. WQ-95-4 at 10 (Sept. 21, 1995). In this case the Regional
25 Board issued a CAO containing provisions not supported by findings or based on findings not
26 supported by evidence.
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1 As noted above, the Regional Board's factual findings are inaccurate, incomplete and/or
2 improper. SPI has undertaken substantial efforts to protect groundwater from the impacts of waste
3 disposed of by American Forest Products Company and Georgia-Pacific Corporation long before
4 SPI became owners of the property. SPI has submitted a Final Closure Plan and a revised Final
5 Closure Plan that comply with the requirements in the WDRs. Excavation of all waste materials
6 below or within the highest historical water level was completed on November 7, 2011, and the ash
7 disposal area will be secured with a temporary cap by the end of November 2011. Regional Board
8 staff have inspected the excavation site and have reported that SPI has implemented effective
9 BMPs, securing the site for winter. Winter 2011-12 will be the first winter that waste will not be in
10 contact with groundwater since the first disposal of ash in 1976.

11
12
13 These facts do not support the issuance of the CAO because there is no threat of a discharge
14 of waste to waters of the state. The Regional Board abused its discretion by basing the CAO on
15 inaccurate factual findings. For the foregoing reasons, the State Water Board should find that the
16 Regional Board failed to support issuance of the CAO with adequate findings or evidence in the
17 record, and rescind the CAO.

18
19 **D. The Regional Board Exceeded the Scope of Its Authority Under Water Code**
20 **Section 13267 When Issuing the CAO.**

21 The introductory paragraph of the CAO identifies Water Code section 13267 as authority
22 under which the CAO was issued, in addition to Water Code section 13304. Water Code section
23 13267 allows the Regional Board to "investigate the quality of any waters of the state." See Water
24 Code §13267(b). In conducting such an investigation, the Regional Board may require any person
25 discharging waste to furnish the Regional Board with technical or monitoring program reports
26 required by the Regional Board. *Id.* The burden of these reports must "bear a reasonable
27 relationship to the need for the report and the benefits to be obtained from the reports." *Id.* In
28

1 requiring such reports, the Regional Board must provide a written explanation as to the necessity of
2 the reports and must identify the evidence that supports the requirement to provide the reports. *Id.*;
3 *see also In the Matter of Napa Sanitation District, Bay Area Clean Water Agencies, and San*
4 *Francisco Baykeeper*, State Board/OCC Files A-1318, A-1318(a), A-1318(b) (Dec. 5, 2001), at
5 page 55 (requiring Regional Boards to include written findings and evidence in administrative
6 orders issued pursuant to Water Code section 13267, setting forth the required analysis and
7 rationale).

8
9 In this case, the Regional Board cites to Water Code Section 13267(b) generally, stating in
10 paragraph forty-nine that “The technical reports required by this Order are necessary to ensure
11 compliance with this Order, the WDRs, and Title 27, and are necessary to protect the waters of the
12 state.” This generic statement is the only statement offered by the Regional Board and does not
13 explain why specific reports are necessary, nor does it identify evidence that supports the Regional
14 Board’s requirements.
15

16
17 Beyond the Regional Board’s failure to provide the written explanations required by Section
18 13267(b), there is no evidence that the Regional Board made the requisite determination that any
19 requirements contained in the CAO are reasonably required and/or bear a reasonable relationship to
20 the need for the information and/or actions. Furthermore, as outlined in Section 4 above, several of
21 the reports required by the CAO are inefficient and unnecessary. The Regional Board failed to
22 comply with Water Code section 13267(b), and as a result exceeded its authority.
23

24 For the foregoing reasons, the State Water Board should rescind the CAO.

25 **8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL**
26 **BOARD AND TO THE DISCHARGER:**

27 A true and correct copy of this Petition was mailed by First Class mail on November 10,
28 2011, to the Regional Board at the following address:

1 Pamela Creedon, Executive Officer
2 California Regional Water Quality Control Board
3 Central Valley Region
4 11020 Sun Center Drive, Suite 200
5 Rancho Cordova, CA 95670

6 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES AND OBJECTIONS RAISED
7 IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN
8 EXPLANATION WHY NOT:**

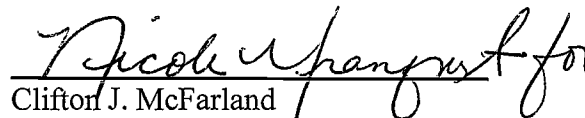
9 Pursuant to Water Code section 13304 and 13267, the CAO was issued by the Executive
10 Officer of the Regional Board, Ms. Pamela Creedon, without any public notice and/or comment
11 period. For this reason, SPI had no opportunity to formally raise the substantive issues or
12 objections contained in this Petition to the Regional Board prior to issuance of the CAO. The
13 substantive issues raised in this petition were, however, raised informally by SPI in a Request for
14 Reconsideration, submitted to Ms. Pamela Creedon on November 9, 2011.

15 **10. PETITIONER'S REQUEST FOR ABEYANCE:**

16 SPI wishes to place this Petition for Review in abeyance pursuant to 23 C.C.R. §2050.5(d)
17 to allow time for SPI to attempt to resolve its concerns with the Regional Water Board.

18 DATED: November 10, 2011

19 Respectfully submitted,

20 
21 Clifton J. McFarland

22 1195943.3

EXHIBIT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2011-0710

FOR
SIERRA PACIFIC INDUSTRIES
MARTELL DIVISION
ASH DISPOSAL AREA WASTE MANAGEMENT UNIT
AMADOR COUNTY

This Order is issued to the Sierra Pacific Industries (hereafter Discharger or SPI) pursuant to California Water Code (CWC) section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Water Board) to issue a Cleanup and Abatement Order (Order or CAO) and CWC section 13267, which authorizes the Central Valley Water Board to require the submittal of technical and monitoring reports.

The Executive Officer of the Central Valley Water Board finds that:

1. The Discharger owns, or owned, 242 acres of property known as the Martell Division Facility that includes, in part, a five acre ash disposal area (ADA). The property is located at the northwest corner of the intersection of Highway 49 and Highway 88 in the town of Martell in the north half of Section 19, Township 6 North, Range 11 East Mount Diablo Baseline and Meridian (MDB&M).
2. The Discharger's waste management units on the property are regulated under Waste Discharge Requirements (WDRs) R5-2009-0110. The WDRs implement the prescriptive standards and performance goals of Title 27 of the California Code of Regulations.
3. This Order only pertains to one of the waste management units, the 5.3 acre Ash Disposal Area (ADA).
4. The material in the ADA came from a co-generation plant and a particle board plant. According to the WDRs, material was discharged into the ADA from approximately 1976 through 1990. The ash material contains dioxins, furans, inorganics, and polynucleated aromatic hydrocarbons (PAHs). The ADA has impacted the underlying groundwater with dioxins, calcium, magnesium, bicarbonate, and total dissolved solids. Based on analytical data, the 2009 WDRs classified the material within the ADA as designated waste.
5. Title 27 requires that units which hold designated waste be constructed with a bottom liner and be elevated at least five feet above the highest anticipated elevation of underlying ground water. However, because the ADA began accepting waste before Title 27 was enacted in 1984, it is not subject to these requirements. The ADA does not have a bottom liner and, at times, groundwater rises within the waste.

6. Section 200809d) of Title 27 states that "existing units" such as the ADA must be closed according to Title 27 regulations¹. In its 2008 and 2009 submittals, the Discharger proposed to construct a closure cap that is an engineered alternative to the prescriptive design contained in Title 27. The WDRs incorporate the conceptual design and require that the Discharger submit a final design for the ADA closure by 30 November 2010 and submit a Construction Quality Assurance Report by 31 December 2011. The 31 December 2011 report is to document that the ADA has been appropriately closed per the WDRs and Title 27.
7. Prior to the summer of 2011, the ash waste was contained in a 5.3 acre waste management unit with an interim cover consisting of up to 12 inches of soil and an erosion resistant layer of vegetation. The purpose of this interim cover was to protect the ash pile during rainstorms, and prevented any designated waste from commingling with storm water and running off the unit.
8. Prior to the summer of 2011, there were five piezometers within the ADA, which the WDRs require be monitored quarterly to determine the height of groundwater within the ash waste.

**Meetings, Inspections, and
Site Conditions Prior to Construction Work in Summer 2011**

9. The WDRs classify the ash waste contained within the ADA as a designated waste subject to Title 27, and require that the Discharger close the unit in accordance with Title 27. Findings 58 through 68 of the WDRs describe how the ADA will be closed, based on the Discharger's conceptual design. Specifications E.1 through E.15 contain the requirements for closure. Prior to any construction, the Discharger must submit 100% design plans for review and approval. The ADA must be closed with a specific type of cap, and drainage systems must be installed to ensure that groundwater does not rise within the waste².
10. The WDRs require that a Final Construction Design and Construction Quality Assurance Plan be submitted by 30 November 2010. As of the date of this Order, the Discharger has not submitted a document that complies with the WDRs.
11. In a 14 April 2011 meeting with Water Board staff, the Discharger discussed a new concept for closing the ADA. As verbally proposed by SPI, the new closure concept was intended to provide a separation between the ash and high groundwater, and included: removal of ash from the thalweg³ of the ADA; temporary storage of the removed ash on

¹ Section 20080(d) also states that if an existing unit is "reconstructed" then it becomes subject to all of the Title 27 regulations. This Order requires the Discharger to evaluate whether or not the 2011 construction activity constitutes reconstruction.

² Although the waste management unit is not subject to the five foot separation from groundwater found in Title 27, the WDRs require that the waste be above the highest level of groundwater.

³ The low point of the stream channel which was buried by the ash disposal area.

plastic; confirmation sampling along the thalweg; placing and compacting borrow source soil along the thalweg to provide separation of ash from groundwater; moving the stored ash onto the compacted soil; and then installing a final cover according to the WDRs specifications. During the meeting, Board staff verbally stated that this new concept might be acceptable, but that it would need to be reviewed as part of the closure plan. Board staff also questioned why the Discharger didn't propose to line the bottom of the unit after removing the ash; the Discharger responded that this concept would be discussed in the closure plan.

12. In a written 3 May 2011 summary of the 14 April 2011 meeting, Board staff stated that the final closure design for the ADA was 155 days late, and that the closure design must incorporate the requirements of the WDRs and Title 27. Staff reminded the Discharger that in order to minimize any potential civil liabilities, the closure design must be submitted immediately.
13. On 26 August 2011, the Discharger submitted a document titled *Revised Closure Plan and Post Closure Maintenance Plan* for the ash disposal area, which included a closure plan, a post-closure maintenance and monitoring plan, and a CQA plan. Board staff provided a written review of the documents in a 15 September 2011 letter. The review found that a number of items were missing, and the documents did not contain the information required by WDRs Construction Specifications E.1 through E.15.
14. In a 16 September 2011 phone call, an SPI representative stated that construction work was under way at the ADA, including excavating the ash, installing up to 12 feet of soil where ash was removed, and then replacing ash on top of the newly-installed soil. Water Board staff later learned that construction began in June 2011, but the Discharger did not notify the Board about the construction until three months later, during the phone call. In addition, SPI has not submitted any workplans or documents to describe the construction.
15. In a follow-up e-mail, Water Board staff reminded SPI that initiating closure activities prior to approval of the closure plans is a violation of the WDRs and that the most recently submitted closure plans were incomplete. Staff also asked the Discharger to describe how it would come into compliance in the shortest time possible. In response, SPI scheduled a meeting.
16. On 22 September 2011, Water Board staff performed a site inspection and observed that SPI had removed the interim cover, excavated some of the ash waste, and had piled that waste on other portions of the ADA. Staff also observed that fill material had been placed at the bottom of the ADA. Interim cover was not placed over the redistributed ash or any of the stockpiled ash.
17. In a 29 September 2011 meeting with Water Board staff, the Discharger described its recent construction work, which includes excavating 150,000 cubic yards of ash from the entire ADA (not just the thalweg); stockpiling ash within and outside the ADA; and installing backfill and ash material back into the excavation to raise the ash above groundwater. The Discharger stated that it may take eight to twelve weeks to raise the

ash out of the groundwater, and that work may stop if the rainy season starts early. Water Board staff noted that the WDRs do not contain any description of raising the ash out of the groundwater, and if the work was being completed to comply with the WDR requirement to lower groundwater below the level of the ash, then the Discharger should have submitted the Final Construction Design Plan with the description of this work, including confirmation sampling, as discussed during the 14 April 2011 meeting. The Discharger also submitted revised Construction Plans during the meeting. However, they do not contain a description of the activities underway to raise the ash, and therefore Water Board staff stated that it would not be possible to fully review and approve the document until they are amended to include information showing how the Discharger proposes to comply with WDR Specifications E.1 through E.15.

18. On 4 October 2011, Water Board staff called the Amador County Department of Environmental Health, and learned that on 4 July 2011, the Discharger submitted a request to abandon four piezometers associated with the ADA. The request was approved by the County. The Discharger did not notify the Water Board about its intent to remove these required monitoring points.
19. During a 5 October 2011 inspection, Water Board staff observed that the:
 - a. Interim cover had been completely removed from the entire waste management unit;
 - b. Piezometers had been removed;
 - c. Designated waste (ash) was stockpiled outside the designated area (the ADA) to the northeast of monitoring well B-16. The stockpile is approximately 40 feet high and occupies approximately one third of an acre. The type of surface underlying this stockpile is unknown. It is also unknown how or if the Discharger avoided tracking ash out of the ADA during the process of moving waste to this stockpile area.
 - d. Water was ponded at the base of ash stockpiles which were located within the ADA;
 - e. Storm water BMPs had been installed prior to the 1.4" of rain that fell on 4-5 October 2011. These BMPs appeared effective in preventing contaminated runoff from leaving both the ADA and unpermitted ash pile.
20. The Discharger has not submitted any workplan or other document to describe the recent construction activities. The Discharger is undertaking construction activities at its own risk and in violation of the WDRs because it has not yet submitted a complete Closure Plan for review and approval by Water Board staff. If the Discharger intends that this construction work will take the place of the groundwater drainage systems required by the WDRs, then it will need to show (i.e., through confirmation sampling) that all of the ash has been removed from the base of the ADA and that the imported fill is appropriate for its intended use. In addition, because the rainy season has already begun, the open excavation and ash stockpile discharged outside the permitted area have the potential to cause surface

water and groundwater impacts. This Order requires the Discharger to mitigate these potential impacts.

Requirements of the WDRs and Title 27

21. Provision F.11.d required that the final construction design, construction quality assurance plan, and final post closure maintenance plan be submitted by 30 November 2010. Provision F.11.f requires that a construction quality assurance report, documenting closure of the ADA, be submitted by 31 December 2011.
22. WDRs Specification E.1 states, in part: "Prior to construction, the Discharger must submit to the Central Valley Water Board staff for review and approval the 100 percent design plans and specifications for closure of the ash disposal area. Construction may proceed only after all applicable construction quality assurance plans have been approved..."
23. Attachment B of the WDRs is a map showing the extent of each waste management unit, including the ADA, which is identified as the "interim covered former ash disposal area".
24. The WDRs include by reference the Standard Provisions, dated September 2003, with which the Discharger must comply. Standard Provisions Section XI.B.4. states in part, "The discharge shall remain within the designated disposal area at all times."
25. Prohibition A.5. of the WDRs states in part, "...The discharge of "designated waste" at this facility is prohibited, except as allowed by Section A.2, Prohibitions, of this Order.⁴..."
26. Prohibition A.6 of the WDRs states, in part: "The discharge of solid waste, leachate, or liquid waste to surface waters, surface water drainage courses, or groundwater is prohibited...."
27. Construction Specification E.7 of the WDRs states, "The Discharger must install and maintain a detection monitoring network of piezometers and groundwater monitoring wells within and around the perimeter of the ash disposal area in order to monitor the effectiveness of the cap and to monitor the depth to groundwater beneath the cap." These piezometers are identified in the Monitoring and Reporting Program (MRP) as monitoring points P-1, P-2, P-3, P-4, and P-5. The MRP requires that they be sampled quarterly beginning in October 2009.
28. The Standard Provisions, Section B.1 Operations, requires that the Discharger maintain in good working order and operate as efficiently as possible any facility, control system, or monitoring device installed to achieve compliance with the waste discharge requirements.
29. Title 27 §20705(b) states: "Standards for Daily and Intermediate (Interim) cover: Minimize Percolation — Interim cover over wastes discharged to a landfill shall be designed and

⁴ Section A.2 relates to the leachate basin and has no bearing on this CAO.

constructed to minimize percolation of liquids through wastes.”

30. Discharge Specification B.3 states, in part: “Annually, prior to 15 October, any necessary erosion control measures shall be implemented. Any depressions, pot holes, tire tracks, rills or other blemishes in the wood waste landfill and ash disposal area covers that may retain water must be repaired. If necessary, these covers must be re-graded and the vegetation reestablished in order to shed storm water...”
31. Title 27 §20210 states, in part: “Designated waste....shall be discharged only at Class I waste management units....or at Class II waste management units which comply with the applicable SWRCB-promulgated provisions of this subdivision and have been approved by the RWQCB for containment of the particular kind of waste to be discharged...”

Violations and Potential Violations of the WDRs and Title 27

32. As of 5 October 2011, Water Board staff have determined that the entire interim cover has been removed from the ADA, piezometers have been abandoned, rainwater is able to contact large surface areas of ash waste, storm water/leachate has ponded at the base of ash stockpiles, and designated waste has been moved to an area not authorized or designed for its containment.
33. The excavation of designated waste from a permitted unit and the stockpiling in an unpermitted area that is not designed for its containment is a violation of WDRs Prohibition A.5, Standard Provisions Section XI.B.4, and Title 27 §20210.
34. The ash stockpile, which is located in an unpermitted area, does not contain a Title 27 compliant liner, in violation of Section 20210 of Title 27. If groundwater is impacted, then the Discharger will have violated WDRs Prohibition A.6. If leachate is generated as a result of rains, then the Discharger also has the potential to violate WDRs Prohibition A.6.
35. The lack of interim cover on both the ADA and the unpermitted ash stockpile is a violation of Title 27 §20705(b) and WDR Discharge Specification B.3.
36. The removal of the piezometers is a violation of Standard Provisions Section B.1, the Monitoring and Reporting Program, and Construction Specification E.7.
37. The Discharger started construction before it submitted the final closure plan, and before Water Board staff approved the document. This action was a violation of WDRs Specification E.1.
38. The failure to submit the final closure plan by 30 November 2010 is a violation of WDRs Provision F.11.d.
39. The ponded storm water/leachate within the open excavation in the ADA is either currently in contact with groundwater or has the potential to contact groundwater, in violation of WDRs Prohibition A.6.

40. Although the 5 October 2011 inspection found that the storm water BMPs were sufficient to prevent the discharge of storm water/leachate to surface waters at that time, Board staff is concerned that if work continues during the rainy season, then ash will be tracked outside of the ADA and may be transported into the stream channel immediately downgradient of the ADA. If this occurs, then the Discharger will be in violation of Prohibition A.6 for a discharge to surface water.

Regulatory Considerations

41. The facility lies at the head of the drainage basin to Rock Creek, a tributary of the Sacramento-San Joaquin Delta. Surface drainage from the wood waste landfill, the ash disposal area, and the leachate basin is toward Rock Creek.
42. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
43. The beneficial uses for the Sacramento-San Joaquin Delta are municipal and domestic supply, agricultural supply, industrial process supply, hydropower generation, water contact recreation, non-contact water recreation, cold freshwater habitat, spawning, reproduction and/or early development, and wildlife habitat.
44. The beneficial uses of the underlying groundwater are municipal and domestic water supply, agricultural supply, industrial service supply, and industrial process supply.
45. CWC section 13304(a) states, in part:
- “Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but limited to, overseeing cleanup and abatement efforts..”
46. Cleanup and abatement of the ADA and unpermitted designated waste disposal area is necessary to prevent the discharge of waste in a manner that causes or threatens to cause a condition of pollution or nuisance and to comply with the Waste Discharge Requirements and Title 27 of the California Code of Regulations.

47. Pursuant to CWC section 13304(c)(1), the Central Valley Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abating the effects thereof, or taking other remedial action, required by this Order.

48. CWC section 13267(b)(1) states, in relevant part, that:

“ ... the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

49. The technical reports required by this Order are necessary to ensure compliance with this Order, the WDRs, and Title 27, and are necessary to protect the waters of the state. The Discharger named in this Order owns and operates the site from which waste was discharged, and thus is appropriately responsible for the reports.

50. Issuance of this Cleanup and Abatement Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code §§ 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED THAT, pursuant to CWC sections 13267 and 13304, Sierra Pacific Industries shall complete the following actions to prevent the release of waste that contains pollutants that could enter the environment and affect the beneficial uses of waters of the state. The Discharger shall complete the following actions by the specified dates:

1. The Discharger shall immediately take all actions necessary to prevent the discharge of ash, or pollutants contained within the ash, into surface water, surface water drainage courses, or groundwater.
2. The Discharger shall submit weekly storm water inspection reports to the Board. The first report is due **24 October 2011** and is for the preceding week (**16-22 October**). These reports shall either be e-mailed to Mary Boyd (mboyd@waterboards.ca.gov) or faxed to 916-464-4676, attention Mary Boyd. The reports shall be submitted each week until 1 May 2012. Each report shall describe observations from routine weekly site inspection plus site inspections before and after each storm event. Each report shall include photographs of BMPs taken during the site inspections and describe the conditions of BMPs, any maintenance required, any BMP maintenance or new BMP installation performed since the last inspection report, any discharges to surface water, and the results of any storm water monitoring.

3. By **18 October 2011**, the Discharger shall submit a technical report documenting how it will prevent ash waste at the Martell Division Facility from impacting groundwater and surface water. In the technical report, the Discharger shall describe whether it elects to (i) stop construction work for the rainy season, or (ii) continue working through the rainy season. If the Discharger will stop work for the rainy season, the technical report shall contain the information described in Item 4. If the Discharger will continue closure work through the rainy season, then the technical report will contain the information described in Item 5.

4. If the Discharger chooses to stop work for the rainy season, the technical report required by Item 3 shall include:
 - a. A description of the actions that will be taken to comply with Item 1 until construction ceases for the winter.
 - b. A description of how the ADA and the ash stockpiles located outside the permitted ADA will be covered for the rainy season (interim cover).
 - c. A technical description of the material used for the interim cover.
 - d. A description of the sequence of how the interim cover will be placed, anchored, or keyed.
 - e. A map and description of the proposed extent of the interim cover.
 - f. A description of the methods for collection, removal, storage and disposal of any water and leachate which has ponded or collected within the ADA and the ash stockpiles outside the ADA.
 - g. A copy of the most recent SWPPP showing the storm water BMPs and associated monitoring that will be put into place to ensure that no storm water containing pollutants will leave the ADA or the ash stockpiles outside the permitted ADA.
 - h. A plan for site inspections and environmental monitoring to assess the effectiveness of BMPs, drainage controls, and interim cover at protecting surface and groundwater quality throughout the rainy season and to confirm cleanup of any areas where ash was removed.

5. If the Discharger chooses to continue working in the rainy season, then the technical report required by Item 3 shall include:
 - a. A description of the actions that will be immediately taken to comply with Item 1 until the other actions required under this task are implemented.
 - b. An acknowledgement that continuing the construction work is undertaken at SPI's own risk and in violation of Construction Specification E.1 of the WDRs because construction is taking place before "all applicable construction quality assurance plans have been approved."
 - c. A description of the work planned for the rainy season, how surface water and groundwater quality will be protected during this period, and whether full or partial clean closure of the ADA or any ash stockpile is anticipated.

- d. A description how the open face of the work area will be managed to reduce and/or eliminate the area of waste exposed to the environment.
 - e. A map and description showing the sequential progress of the working face, including any clean closure activities at any ash stockpiles.
 - f. Technical description of the material used for any interim cover and how it will be placed, anchored, or keyed.
 - g. A map and description of the aerial extent and placement of the interim cover.
 - h. A description of the methods for collection, removal, storage and disposal of any water and leachate which has ponded or collected within the ADA and the ash stockpiles outside the ADA.
 - i. A copy of the most recent SWPPP showing the storm water BMPs and associated monitoring that will be put into place to ensure that no storm water containing ash will leave the ADA or the ash stockpiles outside the permitted ADA.
 - j. A plan for site inspections and environmental monitoring to assess the effectiveness of BMPs, drainage controls, and interim cover at protecting surface and groundwater quality throughout the rainy season and to confirm cleanup of any areas where ash was removed.
6. By **7 November 2011**, the Discharger shall submit a technical report describing either (a) how it has implemented Item 4 or (b) the progress it has made toward implementing Item 5.
7. By **30 November 2011**, the Discharger shall submit the following technical report:
- a. The plans, drawings, and specifications which were used for bidding purposes to construct, reconstruct, redirect, and/or install drain pipe and drainage features at the ADA.
 - b. The plans, drawings, and specifications which were used to direct all activities related to excavation, stockpiling, and redistribution of ash, including grading the excavation and placing and compacting rock, borrow source material, and ash at back into the ADA.
 - c. A Piezometer Abandonment report documenting the abandonment of the piezometers at the ash disposal area. The report contents shall include the information in Attachment A.
8. Provision F.11.d of the WDRs required that a Final Construction Design and Construction Quality Assurance/Quality Control Plan (Final Closure Plan) be submitted by 30 November 2010. As described in the Findings, a final document has not yet been submitted. The Discharger must submit a Final Closure Plan⁵ containing the information required by the WDRs as well as that listed below:

⁵ This Order does not contain a due date for this technical report because the Final Closure Plan is already overdue per the WDRs. It is expected that the Discharger will submit this document forthwith.

- a. The information contained in Attachment B of this Order. If the Discharger intends that the excavation work will take the place of the groundwater drainage systems required by the WDRs, then the Final Closure Plan will need to show that all of the ash has been removed from the base of the ADA (i.e., through confirmation sampling) and that the imported fill is appropriate for its intended use.
 - b. A discussion of whether the summer 2011 construction activities meets the definition of "reconstruction" found in Section 20080(d) and 20164 of Title 27, and whether the unit is now subject to all Title 27 regulations, including the need for a bottom liner and five feet of separation between groundwater and waste.
9. By **31 December 2011**, the Discharger shall submit a *Piezometer Installation Work Plan* for the replacement of the piezometers that were removed from the ash disposal area. The plan shall contain the information listed in the first section of Attachment C and a proposed schedule for installation, not to extend beyond 30 June 2012.
10. By **31 December 2011**, the Discharger shall submit a work plan for clean closure of the ash stockpile in the unpermitted area. The work plan must include the following: (a) a characterization of the site conditions to define the extent, concentration, and character of any soil contamination; (b) a description of the excavation and material management procedures to be followed, including the method to completely remove waste and underlying contaminated soils or asphaltic materials; and (c) a Sample Collection and Laboratory Analysis Plan to be followed in order to verify that all contamination has been removed.
11. By **30 July 2012**, the Discharger shall submit a *Piezometer Installation Report of Results* that includes the information listed in the second section of Attachment C.

Reporting Requirements

12. The following signed certification must be included with all reports submitted pursuant to this Order:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

13. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain workplans for, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not

explicitly stated. Each technical report submitted by the Discharger shall contain the professional's signature and/or stamp of the seal.

Notifications

14. The Central Valley Water Board reserves its right to take any enforcement action authorized by law. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability or may take other enforcement actions.
15. Requirements established pursuant to CWC sections 13267 and 13304 are enforceable when signed by the Executive Officer of the Water Board.
16. Pursuant to CWC section 13350, any person who violates a cleanup and abatement order issued by a regional board may be subject to administrative civil liability in an amount that shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.
17. Pursuant to CWC section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by CWC section 13267 or falsifying any information provided therein, is guilty of a misdemeanor, and may be subject to administrative civil liability in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
18. Any person aggrieved by this action of the Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.

Original signed by

PAMELA C. CREEDON, Executive Officer

11 October 2011

Date

Attachment A-Requirements for Piezometer Abandonment Reports
Attachment B-Required Contents for Ash Excavation Technical Report
Attachment C-Piezometer Installation Workplans and Piezometer Installation Reports

MLB/SER/WSW: 11-Oct-11

EXHIBIT B

November 9, 2011

Pamela Creedon
Executive Officer
California Regional Water Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re: Cleanup and Abatement Order No. R5-2011-0710
Sierra Pacific Industries' Petition for Reconsideration

Dear Ms. Creedon:

We represent Sierra Pacific Industries ("SPI") with respect to the Cleanup and Abatement Order (the "Order") referenced above, which was signed on October 11, 2011. In general, we have relatively modest—but still important—concerns regarding the operative provisions of the Order. However, we have very significant concerns with the factual findings of the Order, which we believe are incomplete, inaccurate or improper to varying degrees.

Of particular concern to us is that SPI met with Central Valley Regional Water Quality Control Board ("Regional Board" or "RWQCB") staff for about three hours on September 29, 2011, to discuss the closure of the Martell ash disposal area, which is the specific subject matter covered by the Order. None of the items that appear as requirements under the Order were requested of SPI during the meeting on September 29, 2011. We would have agreed to most of these requirements and would have engaged in a constructive discussion of the remaining areas of disagreement. We were not informed about the Order before it arrived as an email attachment less than two weeks later on October 12, 2011. Had SPI been provided a draft copy of the Order prior to its issuance, correction of factual errors and modifications to the operative provisions would likely have occurred, and this petition for reconsideration and SPI's upcoming appeal to the State Water Resources Control Board could have been prevented..

At the September 29, 2011 meeting, SPI invited staff to tour the ash disposal area to gain a better understanding of its current status and to discuss the engineering basis for the interim measures identified in the field. Staff accepted the invitation and SPI agreed to provide a full tour of the disposal area on October 5, 2011. SPI sought to cancel and reschedule that tour due to the unavailability of two of its team members, and inclement weather. Staff proceeded to visit the disposal area on that day anyway, indicating the visit was a stormwater inspection only (and that

the full site tour would be rescheduled), and then proceeded to use observations made during that visit as the underlying foundation for this Order.

Because SPI was never afforded the opportunity to be heard on these issues, because the Order contains operative provisions that should be modified to be more efficient and effective, and because the Order, as currently drafted, contains statements in its factual findings that are incomplete, inaccurate and/or improper to varying degrees, SPI hereby submits this petition for reconsideration.

This petition contains: (1) a chronology of relevant events at the ash disposal area; (2) proposed modifications to the operative portions of the Order; and (3) a listing of factual findings that are incomplete, inaccurate or improper. We are requesting the opportunity to work with you and your staff to modify the Order. Minor modifications to the operative provisions of the Order will allow the Order to function more effectively and efficiently. Those statements in the factual findings that are incomplete, inaccurate and/or improper should be corrected.

Chronology of Events

The following chronology summarizes key dates regarding the ash disposal area. More detail is available in the documents referenced in the chronology. For context, the chronology starts about one year before the issuance of the Waste Discharge Requirements that are the subject of the Order.

December 10, 2008. SPI submits its Engineering Feasibility Study. This Study evaluated five engineering measures that could be undertaken to improve groundwater quality near the ash disposal area. Installation of a prescriptive cover on the disposal area, combined with natural attenuation of groundwater impacts (low concentrations of calcium, magnesium and bicarbonate), was selected as the preferred alternative. It was assumed that the ash-containing waste already was, or readily could be, separated from groundwater.

December 10, 2008. SPI submits a conceptual closure plan for the ash disposal area. The conceptual closure plan called for the installation of an engineered alternative liner to cap the upper surface of the ash disposal area to prevent infiltration of water into the waste.

January 29, 2009. Field meeting at the Martell facility between RWQCB staff and SPI representatives. SPI stated that comparisons of topographic contours from the 1954 USGS map (before the canyon was filled by a prior owner) and recent groundwater elevation data from monitoring wells indicated that groundwater might be in contact with waste. SPI indicated that installation of drainage trenches along the disposal area perimeter might lower the peripheral water table enough to create separation between groundwater and the waste material.

April 16, 2009. SPI submitted a workplan for the installation of four piezometers in the disposal area. The purpose of the piezometers was to evaluate groundwater elevations and to facilitate the

design of drainage trenches along the disposal area perimeter. The piezometers were installed in late April 2009. (No wet weather season monitoring occurred between the installation of the piezometers and adoption of the WDRs in October 2009).

October 8, 2009. New WDRs were adopted for the ash disposal area. Among other things, the WDRs required: (1) separation between the waste and the high groundwater level; (2) control of water intrusion into the disposal area; and (3) submittal of a report by June 30, 2010, to evaluate the piezometer data and the causes and solutions for high groundwater levels beneath the disposal area. The WDRs assumed that groundwater concerns could be resolved and closure in-place could be achieved. The Final Closure Plan was to be submitted by November 30, 2010. The cap was to be installed by December 31, 2011.

June 30, 2010. SPI submitted a report on the piezometer results. The Piezometer Study concluded that groundwater was in contact with the waste during the winter season. Four recommendations were provided for the control of local recharge. The report also recommended control of regional recharge by installation of a test subdrain upgradient of the disposal area to verify the efficacy of a subdrain system, followed by design of a subdrain system. It was estimated that the subdrains would need to be excavated to 15 feet below ground surface to be effective in achieving separation between the waste and groundwater.

June 30, 2010. SPI began excavation of the test subdrain. However, the subdrain could only be excavated to a depth of 7 to 8 feet below ground surface before it met refusal on underlying bedrock. Based on a comparison between the elevation of the bottom of the test subdrain and groundwater levels in the piezometers, it was determined that a subdrain excavated to a depth of 7 to 8 feet would not be effective in achieving separation between the waste and groundwater.

October 27, 2010. Meeting between SPI representatives and RWQCB staff. SPI stated that the conceptual closure plan had become infeasible because: (1) the Piezometer Study showed that groundwater was in contact with the waste; and (2) the subdrain test excavation showed that it would not be possible to create separation between the waste and groundwater through the installation of subdrains. RWQCB staff stated that notwithstanding this development, the final closure plan remained due on November 30, 2010, but that SPI could submit an Amended Report of Waste Discharge containing a new closure plan, and apply for revised WDRs.

November 29, 2010. SPI submits the document entitled, "Amended Report of Waste Discharge." The purpose of the AROWD was to amend the corrective action plan and the conceptual closure plan, and provide a basis for new WDRs that would reflect the updated understanding of groundwater conditions beneath the ADA. The AROWD proposed three interim remedial measures: (1) abatement of local recharge to minimize the amount of local recharge entering the subsurface in the ash disposal area; (2) excavation of waste material from the low-lying areas of the ash disposal area; and (3) a pilot waste segregation study to determine whether rock and wood waste in the waste material could be segregated and re-used. The

AROWD proposed time frames and schedules to address the groundwater concerns identified in the Piezometer Study, in addition to closure of the facility.

December 13, 2010. SPI begins the local recharge abatement interim remedial measure by excavating bedrock highs in the northeastern drainage and redirecting drainage from the Ampine culvert in the northeast corner of the ADA to the eastern (retail center) drainage instead of the northern drainage.

January 31, 2011. SPI begins the pilot waste segregation study. RWQCB provided concurrence with pilot waste segregation study via email on January 26, 2011. SPI determined that there was not enough material with sufficiently low concentrations of dioxins/furans to support a waste segregation program. The report describing the pilot study was submitted on May 31, 2011.

April 1, 2011. RWQCB provides comments on the AROWD indicating the report as submitted was technically deficient because it did not include a completed Form 200 and did not meet the Title 27 requirements for a closure plan.

April 14, 2011. Meeting between RWQCB staff and SPI representatives. SPI stated that interim remedial measures described in the AROWD were underway. SPI reported that the pilot waste segregation study had been unsuccessful and that it would be necessary to close the ash disposal area in place by excavating waste material that contacted groundwater and replacing it with clean fill. SPI also reported that excavation at and below the water table would be tenuous because the waste was saturated. RWQCB staff suggested that it might be possible to actively dewater the excavated waste. RWQCB staff stated that SPI should submit the closure plan as soon as possible and that SPI should proceed as quickly and as best as possible to meet the December 2011 closure deadline.

May 26, 2011. Meeting between RWQCB staff and SPI representatives at the Martell site. SPI provided a general description of the work that was to commence in June. SPI stated that the purpose of the work was to raise the elevation of the bottom of the waste above the highest recorded winter groundwater elevation.

June 17, 2011. SPI moved into full mobilization to complete the excavation of waste material below the water table during the 2011 construction season.

September 29, 2011. Meeting between RWQCB staff and SPI representatives. SPI described the status of the two on-going interim remedial measures described in the AROWD. The abatement of local recharge work was nearly complete. This work directs local recharge away from the ash disposal area and will result in a lower water table. The excavation of waste and placement of clean fill was also nearly complete. This work will provide separation between the waste and groundwater. RWQCB staff stated that the interim remedial measures should not have been undertaken without an approved workplan. RWQCB staff asked questions about the work (e.g., source of fill, documentation that waste material was removed down to native soil during

excavation), and SPI responded. SPI agreed to submit a report documenting the excavation work. SPI invited RWQCB staff to tour the site to observe the on-going and completed work.

October 5, 2011. RWQCB staff visited the Martell site to inspect stormwater BMPs. (SPI representatives were not available to provide a full tour, as described above). No inspection reports were provided to SPI and no concerns were identified for SPI to address in the field. RWQCB staff indicated that suitable BMPs appeared to be in place and that the site looked good.

October 11, 2011. RWQCB issues CAO R5-2011-0710.

By November 30, 2011. Excavation of all waste materials below (or within one foot of) the highest historical water level was completed on November 7, 2011. Base rock has been installed at the bottom of the excavation to provide for groundwater movement. The waste has been placed above the base rock and fill material at an elevation at least 1 foot above the highest known historical groundwater elevation. A temporary cap/cover will be placed on the ash disposal area to prevent surface infiltration during the winter by the end of November. Winter 2011-12 will be the first winter that waste will not be in contact with groundwater since the first disposal of ash in 1976.

Reconsideration of Operative Provisions

The Order contains eleven operative provisions on pages 8 through 11 (not including certain reporting and notification provisions). SPI respectfully requests reconsideration and modification of the following provisions.

Provision 2. Provision 2 requires weekly stormwater inspection reports. This provision states that the first weekly inspection is for the week of October 16 to 22, with the inspection report due on Monday, October 24 (the first business day after the inspection period). The provision requires weekly inspections through May 1, 2012. Due dates for inspection reports after the first week are not specified. SPI requests the following modifications: (1) that the inspection period be changed to semi-monthly following the installation of the interim cover and clean closure of the ash stockpile (*see* Provisions 4, 10); and (2) that the due date be changed to the fifth business day following the inspection period. Weekly inspections are not necessary following installation of the interim cap and clean closure of the ash stockpile because the opportunity for waste to contact stormwater will have been essentially eliminated. A reporting date one business day after the inspection period is unrealistic and inefficient.

Provision 7. Provision 7 requires the submittal of certain plans, drawings and specifications related to interim remedial measures to redirect local recharge away from the ash disposal area and the excavation of waste material from below the high groundwater elevation. At the September 29, 2011 meeting between RWQCB staff and SPI representatives, RWQCB staff requested that SPI prepare a report describing the two on-going interim remedial measures, including documentation that all ash material had been removed from below the high

groundwater elevation (*see* Provision 8). RWQCB staff stated that such a report was needed before it could evaluate SPI's closure plan. SPI requests that only one stand-alone report documenting the interim remedial measures be required. Reports that are submitted in piecemeal fashion often lead to duplication of effort and confusion.

Provision 8. Provision 8 requires re-submittal of a Final Closure Plan containing items in addition to those required in the WDRs. At the September 29, 2011 meeting between RWQCB staff and SPI representatives, SPI submitted a revised Final Closure Plan responding to all comments made on its initial submittal of the Final Closure Plan. RWQCB staff agreed to review the Final Closure Plan, but indicated that it would first need SPI to submit a report describing the interim remedial measures taken at the ash disposal area. SPI stated that it would prepare such a report. SPI requests that this provision be modified to require the submittal of a report documenting the interim remedial measures undertaken at the ash disposal area. The Final Closure Plan describes the final cap, covers future actions only, and has already been reviewed, commented upon and revised. The report describing the interim remedial measures will describe the excavation, installation of base rock and fill and emplacement of the waste above the highest historical groundwater elevation. This report will describe past actions only and has not yet been the subject of review. Combining these submittals, as required by the Order, will create duplication of effort and confusion.

Modifications to Factual Findings

A number of statements in the factual findings are incomplete or inaccurate, and a number of the findings are not supported by available information. Several of the findings are conclusions, rather than factual statements. The list of items below are a broad sampling of factual findings that are incomplete, inaccurate or improper. This list is not intended to be all-inclusive. SPI requests the opportunity to work with you or your staff to revise the factual findings.

Paragraph 4. The factual findings state that waste material was discharged into the ash disposal area from 1976 to 1990. For completeness, this paragraph should state that SPI purchased the property in 1997 (i.e., many years after final placement of waste into the ash disposal area).

Paragraph 9. The factual findings state that prior to any construction, 100% design plans must be submitted for design and approval. This statement, which is taken from the WDRs, refers only to the installation of the cap. The WDRs assumed closure-in-place and contemplated that a Final Closure Plan would be submitted before an engineered cover was placed on the ash disposal area. Various types of remedial construction work have been on-going at the ash disposal area since before the WDRs were signed and there has never been an understanding or requirement that 100% design plans would be submitted prior to undertaking any other type of construction.

Paragraph 10. The factual findings state that a Final Closure Plan and Final CQA plan that complies with the WDRs has not been submitted. A Final Closure Plan and a Final CQA Plan

were submitted on August 26, 2011, and revised Plans addressing staff comments were submitted on September 29, 2011. It was not possible to submit these Plans by the dates specified in the WDRs because actual field conditions, as reported in the Piezometer Study (timely submitted on June 30, 2010), were materially different than the field conditions assumed by the WDRs.

Paragraph 11. The factual findings state that excavation of the waste material to ensure separation between groundwater and the waste was discussed at a meeting on April 14, 2011. For completeness, this paragraph should state that SPI submitted a document entitled, "Amended Report of Waste Discharge" (AROWD) on November 29, 2010 (the due date for submittal of the Final Closure Plan), which described an interim remedial measure to excavate inundated waste material. SPI proceeded to implement this interim remedial measure during the 2011 dry season. At the meeting on April 14, 2011, SPI stated that one of the three interim remedial measures described in the AROWD was completed (waste segregation pilot study) and that a second (redirection of local recharge) was underway.

Paragraph 13. The factual findings state that the Final Closure Plan and Final CQA Plan as originally submitted were incomplete and did not contain information required by 15 paragraphs of the WDRs. This statement is inaccurate.

Paragraph 14. The factual findings state that SPI did not notify the RWQCB about the excavation of inundated materials until September 16, 2011, and did not submit any documents describing the excavation. This statement is inaccurate. The AROWD submitted on November 29, 2010 described the excavation. At the April 14, 2011 meeting with RWQCB staff, SPI representatives stated that SPI planned to begin the excavation in June, as stated in the AROWD.

Paragraph 16. The factual findings state that an interim cover had not been placed over the waste material. For completeness, this paragraph should state that excavation work to remove all waste material from below the water table, with a goal of providing separation of groundwater and waste prior to Winter 2011-12, was on-going at the time.

Paragraph 17. The factual findings state that at the September 29, 2011 meeting: (1) SPI stated that it would take 8 to 12 weeks to complete the excavation work; (2) the WDRs do not provide for excavation as a means to separate waste from groundwater; (3) SPI should have submitted a Final Closure Plan describing the excavation work; (4) the parties had discussed submittal of a Final Closure Plan containing such a description at the April 14, 2011 meeting; and (5) that RWQCB staff could not review the Final Closure Plan prior to receiving information set forth in 15 paragraphs of the WDRs. These statements are inaccurate or incomplete. The excavation work was completed on November 7, 2011. The WDRs were based on the assumption of closure-in-place, and it has been known since Summer 2010 that closure-in-place would not separate groundwater from the waste. The WDRs do not require the Final Closure Plan to describe waste excavation work or other types of interim remedial measures. The parties had not discussed including a description of the excavation work in the Final Closure Plan at the April

14, 2011 meeting; at that meeting SPI had stated that excavation work was imminent. The revised Final Closure Plan contains all of the elements required by the WDRs.

Paragraph 19. The factual findings state that: (1) interim cover had been removed from the ash disposal area; (2) piezometers had been removed; and (3) the type of surface underlying the ash stockpile is unknown. These statements are inaccurate or incomplete. It would not be possible to provide separation between the waste and groundwater without removing the cover and piezometers to excavate low-lying waste materials; thus, these actions were necessary and reasonable. The surface under the ash stockpile is similar to the surface adjacent to the ash stockpile, which is visible.

Paragraph 20. The factual findings state that: (1) SPI had not submitted any document to describe the recent construction activities, (2) SPI has not submitted a Final Closure Plan; and (3) SPI will need to show that all of the waste was removed and that the imported fill was appropriate. This first statement is inaccurate in that the AROWD describes the three interim measures that SPI subsequently undertook. The second statement is inaccurate in that SPI has submitted a Final Closure Plan and a revised Final Closure Plan that comply with the requirements in the WDRs. The third statement is a conclusion, not a factual statement.

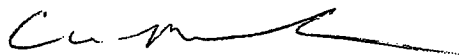
Paragraphs 32 to 40. These paragraphs list alleged violations and potential violations of the WDRs and the regulations. This list should be revisited in light of the discussion, above.

Conclusion

SPI respectfully requests that you reconsider the Order in certain respects. In particular, SPI requests the opportunity to work with you or your staff to make modest modifications to the operative provisions of the Order to make the Order more efficient and effective. In addition, the Order, as currently drafted, contains statements in its factual findings that are incomplete, inaccurate and/or improper to varying degrees. SPI requests the opportunity to work with you or your staff to revise the factual findings accordingly.

Very truly yours,

DOWNEY BRAND LLP



Clifton J. McFarland

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