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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, and THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES Petitioners, v. CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, Respondent.	**PETITION FOR REVIEW AND REQUEST FOR RECISSION AND STAY OF ORDER** **[Cal. Water Code §13267]** (Cal. Water Code §13320; 23 Cal. Code Regs. §§2050-2068)

INTRODUCTION

On July 10, 2025, the Central Valley Regional Water Quality Control Board ("Regional Board") issued an investigative order under Water Code Section 13267 ("Order") to the California Department of Corrections and Rehabilitation ("CDCR") and the California Department of General Services ("DGS") (together, "Petitioners"). The Order was unexpected because, for more than 30 years, CDCR's neighbor has been subject to cleanup and abatement orders concerning its own contamination that had undisputably migrated onto CDCR's property and other adjacent properties. The Order is duplicative of those prior orders except in a single, important regard—it is now directed at Petitioners and not CDCR's neighbor who has been the Regional Board's focus over the last 30 years. In addition, the Regional Board issued the Order without any substantive discussion with, or notice to, Petitioners. The Order, moreover, does not comply with the minimum and fundamental requirements for orders of this nature. Perhaps more importantly, this Order appears to be issued to aid the owner and operator of the adjacent contaminated landfill, Forward, Inc., a subsidiary of Republic Services, a publicly traded company with a market cap in excess of $72 billion ("Forward"), in its years-long effort to shift to the California taxpayer the burden for remediating its own significant and migrating pollution. The State Water Resources Control Board should grant this Petition For Review and Request for Recission and Stay of Order ("Petition"), and rescind the Order. While reviewing this Petition, the State Board should also grant a stay to preserve the status quo for the following reasons, which are discussed in more detail in the body of the Petition.

1. Petitioners face substantial financial and legal jeopardy. The burden of a time consuming and expensive investigation demanded by the Regional Board, without sufficient evidence explaining its rationale, outweighs any benefit to the public while the State Board resolves the merits of the Petition. Forward is already implementing remedial activities under Cleanup and Abatement Order R5-2017-0703 ("2017 CAO"). Moreover, based on CDCR's preliminary conversations with technical experts, the Regional Board severely underestimates the time and costs associated with complying with the directives in the Order. This exposes

Petitioners to significant criminal and civil penalties.

2. There is no substantial harm to the public. Forward is currently remediating the State Facilities under the 2017 CAO. This has been ongoing for 33 years. Accordingly, any contamination is currently controlled, and a short stay, relative to the three decades of ongoing cleanup, would not cause substantial harm to the public interest or other interested parties. In addition, the burden of the order bears no reasonable relationship to the need for data and will provide no benefit.

3. Third, there are substantial questions of law and fact related to the proposed Order, as discussed in detail in the Petition and Statement of Points and Authorities. Specifically, the Order is facially deficient for failing to provide evidence in support. In response to a request for records supporting the Order, the Regional Board stated that documents exist, but would not be provided to Petitioners until, at the earliest, August 12, 2025—*after* the deadline to file this Petition. No documents or data were provided with the Order itself. Failure to provide this evidence in the Order fundamentally impacts Petitioners' ability to mount a defense to the Order's unsubstantiated directives—especially in light of the Regional Board's significant deviation from its previous position concerning the source of the contamination.

Moreover, ongoing state and federal litigation will resolve the liability question once and for all. The subject of the Order—the source of carbon tetrachloride and chloroform identified in a monitoring well in and adjacent to the California Health Care Facility, N.A. Chaderjian Youth Correctional Facility, and O.H. Close Youth Correction Facility ("State Facilities")—is the subject of active litigation between the Petitioners and Forward in both state and federal court. The Order risks the Regional Board and Regional Board staff becoming embroiled in that litigation. Moreover, the litigation will determine, as a matter of law, responsibility for cleanup of the identified contaminants, and the Order may result in an inconsistent liability determination.

Lastly, Petitioners are likely to succeed on the merits. The Order is deficient on its face because it fails to provide any evidence, data, or findings in support, in violation of Water Code

section 13267(b)(1). The only rationale the Order provides is the following: "Data collected by Forward Inc. at the CDCR Facilities indicates that a secondary source and release of Carbon Tetrachloride and Chloroform from the CDCR Facilities which has the potential to comingle with the groundwater plume from the Landfill." The Regional Board bases the Order on this single statement, which is itself based upon unconfirmed and self-serving reports prepared by Forward's own consultants, which are contrary to the more than 30 years of data that indicates otherwise. For these reasons, a stay is appropriate for the pendency of the litigation or until the Order is rescinded.

As will be discussed more fully in the body of the Petition, the facts surrounding the Regional Board's Order deviate significantly from the process the Regional Board typically follows to issue 13267 orders. Since 1973, Forward has owned and operated a landfill adjacent to the State Facilities in the City of Stockton. In 2000, Forward acquired the adjacent Austin Road landfill from the City and consolidated the landfill into its own, creating what is known as the "Forward Landfill." At that time, Forward knew the landfill was contaminated with VOCs and that the contamination was migrating downgradient (i.e., north to the State Facilities and other properties), yet continued to operate the Forward Landfill, making significant profits.

Since 1992, approximately 33 years, the Forward Landfill has been under formal cleanup orders to remediate its contamination. From 1992 through 2008, Forward and its predecessors failed to make any appreciable progress toward remediation, and its contamination caused VOCs to exceed MCLs in drinking water at the State Facilities, among other things. Accordingly, in 2008, the Regional Board issued Forward Cleanup and Abatement Order R5-2008-0714 ("2008 CAO"), requiring Forward to evaluate the vertical and lateral extent of groundwater impacts in and around the State Facilities. Forward subsequently installed certain groundwater monitoring wells within the State Facilities. Forward failed, however, to take any groundwater monitoring samples from those wells for six (6) years as required by the 2008 CAO, and only began sampling the wells installed on the State Facilities in 2014. One well installed in 2008, AMW-22S, consistently shows the presence of carbon tetrachloride and chloroform. **These same**

contaminants have been historically documented in the middle of the Forward Landfill at MW-17.

The Regional Board determined that Forward failed to comply with the 2008 CAO, allowing the contamination to migrate northward. By 2016, the contamination had spread from the approximately 467-acre Forward Landfill to cover 858 acres. Accordingly, in 2017, the Regional Board issued the 2017 CAO, requiring further investigation of the vertical and lateral extent of contamination, and remediation of areas north of the Forward Landfill (i.e., the State Facilities), among other things. CDCR executed a number of right-of-entry agreements with Forward to facilitate Forward's remedial work under the cleanup orders.

Notwithstanding Petitioners' assistance to Forward to help it with its remediation obligations after more than 30 years, Forward appears to have devised a strategy to shift the burden of its obligations to the California taxpayer. Forward sued Petitioners—the very victims of Forward's pollution—three times seeking to have the people of the State of California pay for Forward's environmental degradation. Litigation remains ongoing in both state and federal court. Forward asserts that Petitioners are the origin of a separate source of carbon tetrachloride and chloroform contamination identified at the State property. As a basis for its litigation claims, Forward alleges that "[h]istorically, these two VOCs [carbon tetrachloride and chloroform] have not been detected at any of the compliance **wells downgradient of [Forward] Landfill's POC**." (emphasis added.) Forward's representation fails to acknowledge the fact that carbon tetrachloride has been detected in the middle of the Forward Landfill and at the State Facilities.

CDCR understandably filed a cross-complaint in superior court. CDCR's cross-complaint alleges public nuisance, private nuisance, and trespass against Forward as a result of its migrating contamination, and seeks compensatory, declaratory, and injunctive relief.

Despite 33 years of belief that Forward is the party responsible for contamination at the State Facilities, the Regional Board appears to, without independent evidence or rationale, adopt Forward's litigation claims as its own. Notably, the Order replicates the same mistake as Forward in the litigation by specifically naming DGS as a party when DGS does not own or operate the

State Facilities. Rather, DGS merely provides contractual real estate services to CDCR, like it does to many other state agencies, including the State Board and Regional Board. [1]

The timing of the Order is also peculiar. Prior to the issuance of this Order, CDCR and Forward were actively negotiating additional entry required by Forward onto the State Facilities to complete further remediation under the 2017 CAO. Forward was copying the Regional Board's counsel on communications concerning the right-of-entry, even though Regional Board counsel had no role to play in such negotiations. Suddenly, Forward went silent during the ongoing negotiations. Then, without warning or explanation, the Regional Board's counsel informed Petitioners' counsel that the Regional Board was considering issuing Petitioners a 13267 order. The Regional Board's counsel provided no basis or rationale for the threatened order. Petitioners requested, several times, to meet with Regional Board staff to discuss the rationale for the potential order. Regional Board staff and their counsel refused to meet or provide further information, other than to suggest that staff was frustrated by the pace of *Forward's* remediation.

Extensive and expansive litigation is now ongoing between Petitioners and Forward relating to the source of contamination at the State Facilities. The Order, unless rescinded or stayed indefinitely, places the Regional Board and Regional Board staff directly in the middle of the litigation. Further, the Order fails to meet the minimum statutory requirements for orders of this nature. Specifically, the Order fails to cite any evidence in support of the Order and the burden of the Order bears no reasonable relationship to the need for data and will provide no benefit, as it is duplicative of Forward's existing obligations.

Petitioners thus hereby move the State Board for review and rescission of the Order and request for an indefinite stay of the Order, allowing the litigation between Petitioners and

[1] See **Exhibit 28**. To Petitioners knowledge, DGS has never before been named in any 13267 order, and certainly has not been named in other 13267 orders issued to CDCR. DGS should be dismissed from the Order to the extent it is not rescinded in its entirety.

Forward to proceed. The Regional Board can then rely on the judicial determination to identify the appropriate party required to conduct the necessary remedial measures.

PETITION FOR REVIEW

I. NAME AND ADDRESS OF PETITIONER[2]

Petitioners may be contacted through their counsel of record:

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II. SPECIFIC ACTION OF THE REGIONAL BOARD

Petitioners seek review of the Regional Board's order entitled "Water Code Section 13267 Order for Technical Report" issued on July 10, 2025 (as defined previously, the "Order"). A copy of the Order is attached hereto, as **Exhibit 1**.

III. DATE OF THE REGIONAL WATER BOARD ACTION

The date of the Regional Water Board action was July 10, 2025, the date it issued the Order to Petitioners. The deadline to file this Petition is 5:00 P.M. on August 11, 2025. (See 23 Cal. Code Regs., § 2050(b).) The Petition is timely.

IV. SUMMARY OF REASONS WHY THE ACTION WAS INAPPROPRIATE AND IMPROPER

The Order is inappropriate and improper for three significant reasons.

First, the Order fails to cite sufficient evidence to support the issuance of the Order or

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[2] The following section headings follow the requirements of Title 23 of the California Code of Regulations, section 2050.

demonstrate that the Petitioners have discharged, are suspected of discharging, or propose to discharge waste. Evidentiary support is a minimum statutory requirement for a Section 13267 order. The Water Code requires, in relevant part, that "the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports." (Water Code, § 13267(b)(1).)

The Regional Board provided no required evidence. Rather, the Regional Board's entire rationale supporting the Order can be quoted as follows: "Data collected by Forward Inc. at the CDCR Facilities indicates a secondary source and release of Carbon Tetrachloride and Chloroform from the CDCR Facilities which has the potential to comingle with the groundwater plume from the Landfill." (Exhibit 1, p. 2.) This lack of evidence makes the Regional Board's Order patently invalid on its face. Moreover, this language, referencing the "CDCR Facilities" supports DGS's assertion that they lack control, custody, and ownership over the State Facilities, and should be dismissed from the Order, to the extent that it is not rescinded in its entirety. (See Exhibit 28.)

Second, the burden of the Order's directives bears no reasonable relationship to the need for the requested data, information, or reports. Petitioners cannot provide new or useful data beyond that which has been developed, and will continue to be developed, under the orders that have applied to Forward for decades. Forward has been subject to cleanup directives and orders for more than 33 years for pollution it caused, which has migrated onto the State Facilities and beyond. Never during that time has the Regional Board named Petitioners as responsible parties, or suggested Petitioners were, in any way, responsible. In fact, Regional Board staff has consistently communicated to CDCR in meetings that they did not consider Forward's claims to be credible. The burden, costs, and directives set forth in the Order are largely, if not entirely, duplicative of other Regional Board directives issued to Forward.

Third, responsibility for the cleanup of the carbon tetrachloride and chloroform is the

subject to two pending lawsuits in state and federal court.[3] Litigation remains pending in Sacramento County Superior Court, Case Number 23CV012125, filed on November 21, 2023. In that case, Forward seeks to impose liability for cleanup of the carbon tetrachloride and chloroform on Petitioners under the Hazardous Substances Account Act. The case is in active discovery and the Order places the Regional Board and staff in the middle of the ongoing proceedings.

Litigation also remains pending in the Ninth Circuit Court of Appeals, Case No. 24-4983, originally filed in the Eastern District of California on February 2, 2024. In that case, Forward seeks to impose liability for cleanup of the carbon tetrachloride and chloroform on Petitioners under the Resource Conservation and Recovery Act ("RCRA"). If Forward is successful on appeal, the matter will be remanded back to District Court, where additional significant discovery will undoubtedly commence. The State Board should rescind the Order to let this litigation reach a resolution.

Resolution of these cases will, as a matter of law, impose liability for cleanup of the carbon tetrachloride and chloroform. This Order thus has the potential to result in inconsistent liability determinations.

V. MANNER IN WHICH PETITIONER IS AGGRIEVED

Petitioners are aggrieved for the reasons set forth above. The Order represents a sharp departure from the Regional Board's prior determinations of Forward's responsibility. Never in the more than three decades of cleanup of pollution attributed to the Forward Landfill has the Regional Board suspected or determined Petitioners were responsible for the contamination. Neither Forward's obligations nor the underlying facts have changed, marking the Order as an unforeseeable shift from the Regional Board's established course of action—and issued without any cited evidence or support. The Order gives the impression some new facts have arisen that

[3] A third lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") was already dismissed by a federal court in the Petitioners' favor.

suggests Petitioners are liable. This is an utter fabrication. Petitioners are not the responsible parties, and should not be required to comply with onerous and expensive directives based merely on conclusory assertions in Forward's self-serving reports.

VI. SPECIFIC ACTION REQUESTED BY PETITIONER

Pursuant to section 2053 of the California Code of Regulations ("Regulations"), Petitioners request that the State Water Resources Control Board review and rescind the Order. Further, with respect to DGS, given DGS's lack of control, custody, or ownership over the State Facilities, DGS should be dismissed from the Order, to the extent that it is not rescinded in its entirety. (See Exhibit 28.)

Petitioners also request a stay pending the resolution of the litigation or recission of the Order, as allowed under the State Board's regulations. The Regulations provide that the State Board may grant a stay:

> [O]nly if petitioner alleges facts and produces proof of all of the following:
>
> (1) substantial harm to petitioner or to the public interest if a stay is not granted,
> (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted, and
> (3) Substantial questions of fact or law regarding the disputed action.

(23 Cal. Code Regs., § 2053.)

Petitioners have alleged facts and produced proof of all three elements, as discussed in this Petition, Statement of Points and Authorities, and the Declaration of Adam K. Guernsey ("Guernsey Decl."), attached as **Exhibit 2**.

First, Petitioners and the people of the State of California will face substantial harm if the stay is not granted. Petitioners have been ordered to submit an investigatory workplan and submit a soil and gas groundwater investigation report by October 1, 2025, and February 6, 2026, respectively. The Regional Board estimates the cost for these directives to be approximately $238,000.00. The first deadline for compliance will pass prior to the State Board's Petition Review deadline. Thus, absent a stay Petitioners (and in reality, the California taxpayer) must incur substantial costs when there is a very high likelihood this Petition will be rescinded, based

on its facial defects. (Guernsey Decl., ¶ 2.) The public's scarce resources should not be squandered in such a way.

Moreover, based on Petitioners' conversations with a third-party professional engineer with significant experience responding to similar directives, the Regional Board's deadlines are not feasible. We understand that Petitioners would not likely be able to submit an investigative workplan for 18 weeks, assuming no unforeseen delays. This includes Petitioners procurement (a unique task for state agencies), project setup, preparation of a work plan, Petitioners' review of work plan, revisions to the workplan based on Petitioners' review, and submittal to the Regional Board. (Guernsey Decl., ¶ 3.) This would not comply with the timeline included in the Order and would subject Petitioners to monetary penalties.

Following submittal of the workplan, there is an unknown duration during which the Regional Board will review the workplan, which could take up to 12 weeks based on prior experience. If there are significant comments from the Regional Board, potentially nine weeks may be needed to update and submit the work plan for final approval. Only then can Petitioners begin the second required activity. (Guernsey Decl., ¶ 4.)

Again, we understand, based on conversations with a third-party professional engineer, the Regional Board's deadline is not feasible. Once an investigative workplan is approved, we estimate that it would take up to 35 weeks to submit the final report, which includes the following tasks: field work, laboratory data analysis, a summary report, Petitioners' review and comments, submittal to the Regional Board, revisions based on Regional Board comments, and final approval. In total, compliance with both directives may take up to 78 weeks from the date of commencement. (Guernsey Decl., ¶ 5.) Similar to the workplan, this would not comply with the Order timelines and would expose Petitioners to monetary penalties.

If Petitioners do not complete the directives by the Order's deadlines, Petitioners face both criminal penalties and administrative civil liability penalties up to $5,000 per day. (Guernsey Decl., ¶ 5.)

Accordingly, Petitioners and the public face substantial monetary and legal jeopardy

unless the Order is stayed.

Second, there is a lack of substantial harm to the public and other interested parties if the stay is granted. As noted, the Forward is currently remediating the State Facilities under the 2017 CAO. This has been ongoing for 33 years. Accordingly, any contamination is currently controlled, and a short stay, relative to the three decades of ongoing cleanup, would not cause substantial harm to the public interest or other interested parties. (Guernsey Decl., ¶ 7.)

Third and finally, there are substantial questions of law and fact related to the proposed Order, as discussed in detail in the Petition and Statement of Points and Authorities. Specifically, the Order is facially deficient for failing to provide evidence in support, the burden of the order bears no reasonable relationship to the need for data and will provide no benefit, and ongoing state and federal litigation will resolve the liability question once and for all. (Guernsey Decl., 8.) Accordingly, the State Board should grant the stay until the litigation is resolved or the Order is rescinded.

VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

Petitioners' Statement of Points and Authorities in support of this Petition is submitted herewith, attached hereto, and incorporated by reference.

VIII. SERVICE ON INTERESTED PARTIES

A true and correct copy of this Petition and all supporting documents were sent via U.S. mail and electronic mail to the following:

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IX. PETITIONERS WERE UNABLE TO RAISE SUBSTANTIVE ISSUES BEFORE THE REGIONAL BOARD

Petitioners have not yet been afforded a meaningful opportunity to be heard on the substantive issues set forth in the Order. The Order was issued unilaterally by Regional Board staff without a hearing, without evidence, and without discussion with Petitioners. Petitioners diligently sought to discuss with the Regional Board the basis and rationale for the Order prior to its issuance. A meeting of this type would be normal process, especially for a sister state agency. Regional Board staff, however, refused to meet with Petitioners or provide further explanation for the Order. (See **Exhibits 3-8**.)

In addition, Petitioners filed a Public Records Act Request with the Regional Board on July 14, 2025, after receiving the Order. (**Exhibit 9**.) Petitioners sought documents, reports, studies, assessments, data, analyses, or other materials the Regional Board considered or relied upon in preparing or issuing the Order, as no evidence was provided with the Order itself, in violation of state law. On July 24, 2025, counsel for the Regional Board responded, indicating that such documents did exist, but that production would not begin until August 12, 2025, at the earliest—*after* the deadline to file this Petition. (**Exhibit 10**.) Thus, not only were Petitioners precluded from raising substantive issues with the Regional Board, but Petitioners are also unable to raise all substantive issues to the State Board in this Petition.

Petitioners will be without an adequate remedy unless the State Board grants this Petition.

In connection with any hearing on this matter, Petitioners reserve the right to present additional evidence or testimony to the State Board and will submit to the State Board, if appropriate, statements regarding evidence pursuant to Code of California Regulations, Title 23, section 2050(b).

Respectfully submitted,

DATED: August 8, 2025

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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, and THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES Petitioners, v. CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, Respondent.	**STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR REVIEW AND REQUEST FOR RECISSION AND STAY OF ORDER** **[Cal. Water Code §13267]** (Cal. Water Code §13320; Cal. Code Regs. §§2050-2068)

I. INTRODUCTION

This Statement of Points and Authorities is submitted contemporaneously with, and incorporated by reference into, California Department of Corrections and Rehabilitation ("CDCR") and Department of General Services ("DGS") (together, "Petitioners") Petition for Review and Request for Recission and Stay of Order ("Petition").

II. FACTUAL BACKGROUND

Forward Inc., a subsidiary or Republic Services ("Forward"), owns and operates the Forward Landfill, a landfill located near the City of Stockton ("City"). The Forward Landfill is located immediately south of, and adjacent to, state-owned real property that currently houses the following facilities maintained and operated by CDCR: (1) California Health Care Facility; (2) N.A. Chaderjian Youth Correction Facility; and (3) O.H. Close Youth Correction Facility ("OH Close") (together, "State Facilities").

The Forward Landfill is comprised of two historically separate landfills: the Austin Road landfill and the Forward landfill. The City began operating the Austin Road landfill on approximately 410-acres directly south of the State Facilities in 1954. Historically, the Austin Road landfill did not contain an engineered base liner or leachate collection and removal system that would prevent downward migration of pollution. Forward began operating the Forward landfill on 157-acres directly south of the Austin Road landfill in 1973. Forward purchased the Austin Road landfill from the City and combined the two operations into a single 567-acre parcel (i.e., the Forward Landfill) in 2000. The State Facilities are downgradient (i.e., north) of the Forward Landfill. (**Exhibit 11** [Cleanup and Abatement Order R5-2008-0714]; **Exhibit 12** [Cleanup and Abatement Order R5-2017-0703].)

Volatile organic compounds ("VOCs") including, but not limited to, dichloroethane, dichloroethylene, tetrachloroethylene, and trichloroethylene associated with waste discharged from the Forward Landfill were initially detected downgradient of the Forward Landfill in 1989. (Exhibit 11, at ¶ 11, Exhibit 12,at ¶ 4.) By 1991, it was determined that chlorinated hydrocarbon impacts extended as far as 1,000 feet north of the Forward Landfill. (Exhibit 11, at ¶ 11.) In 1998

VOCs had migrated up to 4,000 feet northeast of the Forward Landfill. (*Id.* at ¶ 11, Exhibit 12, at ¶ 4.) Thus, Forward purchased the Austin Road landfill knowing that it was contaminated, knowing that the contamination had migrated northward onto neighboring lands, and knowing that the property was subject to corrective action under the Regional Board's jurisdiction. (See Exhibit 11, at ¶ 11, Exhibit 12, at ¶¶ 2, 4.) Forward admits this and has never previously disputed its obligations, notwithstanding its failure to comply with cleanup orders.

Following Forward's purchase of the Austin Road landfill and consolidation of the Forward Landfill, the Regional Board approved a Revised Feasibility Study proposing a variety of activities to mitigate groundwater impacts, including groundwater extraction and treatment, enhanced landfill gas control systems, installation of additional groundwater monitoring wells, and installation of an interim cover on the Austin Road landfill portion of the Forward Landfill. (Exhibit 12, at ¶ 19.) The Regional Board subsequently adopted Waste Discharge Requirements ("WDRs") Orders R5-2003-0049 and R52003-0080 to implement the remedial actions from Revised Feasibility Study. (Exhibit 11, at ¶ 14, Exhibit 12, at ¶ 21.)

In 2007, VOCs exceeded maximum contaminant levels in drinking water at the State Facilities. (Exhibit 11, at ¶ 17, Exhibit 12, at ¶ 22.) The Regional Board attributed the source of the VOC contamination to the Forward Landfill and, in 2008, issued Cleanup and Abatement Order R5-2008-0714 ("2008 CAO") to Forward. (See generally Exhibit 11; Exhibit 12 at ¶ 22.) The 2008 CAO, now issued more than 15 years ago, noted that the wastes detected "are solvents used in the dry cleaning and other processes and breakdown products that are not naturally occurring," and required Forward to provide the State Facilities with an alternative source of drinking water and:

> (a) evaluate the vertical and lateral extent of groundwater impacts; (b) upgrade the corrective action system such that it prevents the constituents of concern associated with waste from the landfill from passing the point of compliance of the waste management unit; [and] (c) restore the water quality of the polluted aquifer.

(Exhibit 11, at ¶¶ 21 Exhibit 12, at ¶ 22.)

In accordance with the 2008 CAO, Forward installed two additional groundwater

extraction wells and installed a number of groundwater monitoring wells in the area, including groundwater monitoring well AMW-22S, which is located directly in the middle of the State Facilities. (Exhibit 12, at ¶ 23, Exhibit 13[Right of Entry Permit & Monitoring Well Agreement] at p.2, Ex. A & Ex. 4 Figure 2.) Forward did not collect groundwater monitoring samples from all of the additional monitoring wells until the second quarter of 2014, nearly six years after installation, despite being required by the 2008 CAO to do so. (Exhibit 12, at ¶ 23.) Relevant here, Forward did not collect groundwater monitoring samples from AMW-22S, the well located in the middle of the State Facilities, until June 3, 2014. (**Exhibit 14** ["Remedial Investigation Update and Revised Feasibility Study Addendum prepared by Arcadis U.S. Inc. on behalf of Forward, Inc." dated June 30, 2023] at Appendix D, p. 47.) From 2014 to the present, Forward's quarterly groundwater monitoring sampling data from AMW-22S consistently shows the presence of carbon tetrachloride and chloroform, as wells as other VOCs subject to Forward's cleanup obligations, such as PCE and TCE. (*Id*. at Appendix D, pp. 47-48.)

By 2016, groundwater sampling data confirmed that Forward had failed to define and control the lateral extent of the contamination because VOCs from the Forward Landfill had continued to migrate northward, now contaminating more than 858 acres. (Exhibit 12, at ¶¶ 24-25.) Having found that Forward failed to comply with the 2008 CAO's requirement to define the extent of the contamination and that the existing corrective action systems were inadequate to fully characterize, capture, and remediate contamination from the Forward Landfill, the Regional Board rescinded the 2008 CAO, except for enforcement purposes, and issued Cleanup and Abatement Order R5-2017-0703 ("2017 CAO"). (*Id.* at ¶¶ 7, 9, 60.) The 2017 CAO required, among other actions, that Forward: (1) conduct further investigation to determine the vertical and lateral extent of the contamination; (2) remediate areas north of the Forward Landfill (i.e., State Facilities) where total VOC concentrations in groundwater exceeded 25 ug/l; and (3) continue to operate existing and updated corrective action systems "until the groundwater plume is remediated to comply with concentration limits within the WDRs." (*Id.* at pp. 12-13.) Forward proposed drilling additional monitoring wells within the State Facilities to further characterize the

vertical and lateral extent of the contamination. (*Id.* at Attachment E pp. 1, 6.)

On February 19, 2021, the State, acting through DGS with the consent of CDCR, and Forward executed a Right of Entry Permit & Monitoring Well Agreement ("ROE") that allowed for Forward's entry on the State Facilities for the purpose of further investigation of the onsite contamination, at Forward's sole cost and expense. (Exhibit 13, at pp. 2 - 3.) Forward agreed to indemnify the Petitioners for Forward's activities while being aware that carbon tetrachloride and chloroform had consistently been documented during groundwater sampling of AMW-22S, located in the center of the State Facilities. (See Exhibit 14, at Appendix D.) Notwithstanding its agreement to indemnify Petitioners, Forward subsequently filed three separate lawsuits against Petitioners.

First, on July 31, 2023, Forward filed its first lawsuit against Petitioners in the Eastern District of California seeking cost recovery indemnity, contribution, damages, and a declaration that Petitioners were responsible for the contamination at the State Facilities under CERLCA. (**Exhibit 15** [*Forward, Inc. v. State of California*, Case No.:23-CV-01567-DAD-DB].) Petitioners filed a motion to dismiss, based on Petitioners' sovereign immunity, which Forward did not oppose. (Exhibit 16 [Forward's Notice of Non-Opposition to Motion to Dismiss].)

Second, on November 21, 2023, Forward filed a lawsuit in Sacramento County Superior Court naming Petitioners as the responsible parties for an independent release of VOCs ("Complaint"). (**Exhibit 17** [*Forward, Inc. v. State of California*, Case No.: 23CV012125].) On August 5, 2024, CDCR filed a cross-complaint against Forward (**Exhibit 18** [Defendant and Cross-Plaintiff California Department of Corrections and Rehabilitation's Cross-Complaint Against Forward, Inc.].)

Third, on March 3, 2024, Forward filed another lawsuit in in the Eastern District of California seeking and injunction and declaration that Petitioners were responsible for the contamination at the State Facilities under RCRA. (**Exhibit 19** [*Forward, Inc. v. Jeff Macomber*, Case No: 2:24-at-00252). The court dismissed the case based on Petitioners sovereign immunity. The case is currently awaiting oral argument before the Ninth Circuit Court of Appeal. (See

Exhibit 20 [Notice of Appeal].)

In each of these cases, two of which remain ongoing, Forward alleges data obtained from the entry and sampling of State property shows carbon tetrachloride and chloroform contamination at the State Facilities. (See e.g., Exhibit 17, at ¶ 17; Exhibit 14, at p. ES-3.) Forward alleges that "[h]istorically, these two VOCs [carbon tetrachloride and chloroform] have not been detected at any of the compliance wells along or downgradient of the [Forward] Landfill's POC." (Exhibit 14, at pp. ES-3, 20-21.) Yet at the time Forward submitted this information to the Regional Board, Forward and the Regional Board already knew of the presence of the same pollutants—carbon tetrachloride and chloroform—discovered in the Forward Landfill in years prior. Specifically, the groundwater monitoring well MW-17 located in the middle of Forward Landfill detected carbon tetrachloride and chloroform above reporting limits in 2018. (**Exhibit 21,** at p. IV.G-12 [Final SEIR: Forward Inc. Landfill 2018 Expansion Project].)

Subsequently, Forward requested an amended right of entry agreement to install a water treatment system on the State Facilities. CDCR attempted to negotiate a new agreement to permit Forward's entry, but Forward refused to agree to indemnify Petitioners for its entry or activities stemming therefrom. (See **Exhibits 22-27**.) Forward stopped responding or attempting to further negotiate. On June 30, 2025, CDCR unexpectedly received an email from Daniel S. Kippen, counsel for the Regional Board, advising of a forthcoming 13267 order to Petitioners. (Exhibit 5.) Mr. Kippen and Board Staff refused to meet with Petitioners to discuss the rationale for the threatened order, despite several requests from Petitioners. (See Exhibits 6-8.)

On July 10, 2025, the Regional Board issued the order entitled "Water Code Section 13267 Order for Technical Report" issued on July 10, 2025 ("Order"). (Exhibit 1.) Meanwhile, Petitioners and Forward remain embroiled in significant ongoing litigation. The parties are currently in the middle of discovery and the Order will inevitably entangle the Regional Board and Regional Board staff in the ongoing litigation.

III. STANDARD OF REVIEW

California Water Code Section 13267 only authorizes orders to be issued against persons who have discharged or who threaten to discharge waste. It provides, in relevant part:

> In conducting an investigation specified in subdivision (a), 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, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.

(Water Code § 13267(b)(1) [emphasis added].)

In reviewing a water quality monitoring and reporting order entered by a Regional Water Quality Control Board pursuant to Section 13267, the State Board must first determine if the party to whom the monitoring order is directed has discharged, is discharging, is suspected of discharging, or proposes to discharge waste. (See State Water Resources Control Board Order WQ 2001-14.) If the State Board determines this, then the State Board must examine if the burden, including the costs of preparing the required monitoring reports, bears a reasonable relationship to the need for the report and the benefits to be obtained. (*Ibid*.)

IV. ARGUMENT

Having presented the relevant facts where the Order fails to do so, we next present our argument. The Order is inappropriate and improper for three significant reasons. First, the Order fails to cite evidence to support the issuance of the Order or demonstrate that the Petitioners have discharged, are suspected of discharging, or propose to discharge waste. Evidentiary support is a minimum statutory requirement for a Section 13267 order. The Regional Board has provided none.

Second, the burden of the Order's directives bears no reasonable relationship to the need for the requested data, information, or reports. Petitioners cannot provide new or useful data beyond that which has been developed, and will continue to be developed, under the orders applying to Forward for decades.

Third, responsibility for the cleanup of the carbon tetrachloride and chloroform is the subject to two pending lawsuits in state and federal court. Resolution of these cases will, as a matter of law, impose liability for cleanup of the carbon tetrachloride and chloroform. This Order thus has the potential to result in inconsistent liability determinations. We discuss each in turn below.

A. The Regional Board Failed to Cite Evidence To Support Its Order.

The Regional Board failed to meet the minimum requirements to support the Order because the Order cites no credible evidence or factual basis to attribute the discharge to Petitioners.

The Water Code requires that, in order to require technical or monitoring reports, a regional board "shall identify the evidence that supports requiring that person to provide the reports." (Water Code, § 13267(b)(1).) The State Board has vacated these orders where there was no "substantial evidence" in the record supporting their issuance. (See E.g., *In re Chevron Products Co*. [State Water Resources Control Board Order WQ 2004-0005]. The State Board will vacate orders that lack supporting evidence precisely because the regional board must justify that the burden of providing reports, including costs, bear a reasonable relationship to the need for the reports and the benefits obtained. (*Edwards Lifesciences LLC v. Reg'l Water Quality Control Bd.-Santa Ana Region*, 2020 Cal. Super. LEXIS 73540, *11.) The standard for "evidence" under Section 13267 is "any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (See Water Code § 13267(f).)

Here, the Regional Board cites no evidence in the Order demonstrating that Petitioners discharged any contaminants or contributed to any discharge. Rather, the Regional Board's entire rationale for the Order is as follows: "Data collected by Forward Inc. at the CDCR Facilities indicates that a secondary source and release of Carbon Tetrachloride and Chloroform from the CDCR Facilities which has the potential to comingle with the groundwater plume from the Landfill." (Compare Exhibit 1, p. 2, with *Sweeney v. California Regional Water Quality Control Bd*., 61 Cal. App. 5th 1093, 1114-1115 [finding that a Regional Water Board had

included sufficient explanation of its need for reports from a duck hunting club and sufficient evidence supporting its demand because the Regional Water Board included dozens of findings to explain the need for technical reports, including a finding of an unauthorized discharge of fill material into tidal waters among other unauthorized activities related to unauthorized levee construction].) The Order contains no references or citations to any findings, test results, or any other evidence sufficient to meet the minimum statutory obligation. Thus, there is no basis for anyone to determine whether Petitioners caused the discharge or whether the Order's burden bears a reasonable relationship to the need for the directives and the benefits to be obtained. This facial defect alone requires the State Board to rescind the Order.

In contrast to this conclusory assertion based on Forward' own self-serving data, a complete examination of decades worth of data conclusively shows that Forward, not Petitioners, is responsible for the contamination at issue. Publicly available data concerning the Forward Landfill can be found on Geotracker at the following links:

- https://geotracker.waterboards.ca.gov/profile_report?global_id=L10008827999
- https://geotracker.waterboards.ca.gov/profile_report?global_id=L10004525906

The publicly available data on the above-referenced websites, including the thousands of uploaded files, are hereby incorporated by reference.

In re Chevron presents analogous facts to the current situation. *In re Chevron* involved two neighboring former gas station sites, Chevron and Opal Cliffs. Opal Cliffs had been the subject of ongoing investigation and remediation for releases of petroleum hydrocarbons since 1992. In 1995, contaminated groundwater was discovered on the former Chevron site. Upon this discovery, the Regional Water Board assigned responsibility for investigation to both Chevron and Opal Cliffs. Chevron submitted an analysis stating that the evidence showed only one plume (i.e., one source of contamination) migrating from the Opal Cliffs site that had completely enveloped the former Chevron site. The Regional Water Board maintained that there were two sources of contamination and Chevron petitioned for State Board review.

The State Board held that there was no substantial evidence to support the Regional Water Board's finding that the contamination of the soil at the Chevron site resulted from discharges from the Chevron facility. The State Board determined that the Regional Water Board's two source theory depended upon a finding that the former Chevron site was not downgradient of the Opal Cliffs release. The State Board analyzed the evidence in the record to determine the Chevron site was directly downgradient from the Opal Cliffs site, with groundwater flowing toward the Chevron site. Accordingly, the State Board reasoned that evidence proved Opal Cliffs was responsible for the contamination at the Chevron site. In other words, the evidence established during Opal Cliffs' ongoing investigation and remediation did not support an order that Chevron investigate and remediate contamination at its former site. (*Id*. at 7.)

It is undisputed that Forward is the responsible source for contamination and release of VOCs that has migrated onto the State Facilities and other properties. (See, Geotracker links cited above.) Like *In re Chevron*, the State Facilities are located downgradient from the Forward Landfill, and the data shows a single plume of contamination emanating from the Forward Landfill. Evidence from Forward's clean-up responsibilities does not support a requirement for Petitioners to investigate, and it is unreasonable for the Regional Board to now require further investigation by Petitioners.

Accordingly, the Regional Board improperly issued the Order without evidence and the Order should be rescinded.

B. The Burden of the Order Bears No Reasonable Relationship to the Need for Data and Will Provide No Benefit.

Even if the State Board determines there was evidence to support the Order, which there was not, the burden of the Order's directives bears no reasonable relationship to the need for the data requested and will not provide a benefit to the Regional Board. As previously discussed, Water Code requires, in relevant part, that "[t]he 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." (Water Code, § 13267(b)(1).

Where the burden exceeds the need for the report and benefits to be obtained, the State Board can rescind or modify the requirement. (See *Pacific Grove*, Order No. WQ 82-8 [SWRCB 1982]; *Atlantic Richfield Company, Texaco, Inc. and Union Oil Company*, Order No. WQ 83-2 [SWRCB 1983].)

Here, there are no investigations or other measures that Petitioners could perform that would provide new or useful data beyond that data which has been provided, or will be provided, through Forward's compliance with its longstanding investigation orders. Forward has been subject to cleanup directives and orders for more than three decades for pollution from the Forward Landfill that has migrated onto the State Facilities and other surrounding properties. Currently, the 2017 CAO requires, among other actions, that Forward: (1) conduct further investigation to determine the vertical and lateral extent of the contamination; (2) remediate areas north of the Forward Landfill (i.e., State Facilities) where total VOC concentrations in groundwater exceeded 25 ug/l; and (3) continue to operate existing and updated corrective action systems "until the groundwater plume is remediated to comply with concentration limits within the WDRs." (Exhibit 12, at pp. 12-13.)

Never in that span of time has the Regional Board named the Petitioners as responsible parties. The burden, costs, and directives set forth in the Order are largely, if not entirely, duplicative of Regional Board directives to Forward. Specifically, the Order's stated goals of identifying the source of the VOC release overlaps with Forward's decades-old remediation obligations. (*Ibid.*) Forward's compliance with the 2017 CAO would moot the need for the Order. Accordingly, the Order's burden on Petitioners bears no reasonable relationship to the need for data, information, or reports and provides no benefit to be obtained therefrom.

Moreover, according to preliminary discussions with CDCR's technical consultants, the Order underestimates the time and costs associated with complying with the directives in the Order. As the State Board surely appreciates, Petitioners must also comply with the state's rules

concerning contracting with outside entities, which adds a layer of cost and complexity. Whereas Forward has had more than 30 years to investigate and clean up its migrating pollution, the Order provides Petitioners a matter of months to comply or face significant penalties.

Lastly, Petitioners' compliance with the Order—specifically drilling in an already contaminated area—runs the risk of creating potential pathways for Forward's admitted contamination to further migrate. This could result in legal jeopardy to Petitioners, making them responsible for Forward's contamination because the mandated investigation somehow impacted Forward's own remediation efforts. Given that Forward is already responsible for the cleanup under the 2017 CAO, there is no benefit to be obtained from the Order.

Again, for these reasons, the Order must also be rescinded.

C. Ongoing Litigation Will Resolve This Issue.

The subject of the Order—the source carbon tetrachloride and chloroform identified at the State Facilities"—is the subject of active litigation between the Petitioners and Forward in both state and federal court. (See Exhibits 17-20.) The litigation will determine, as a matter of law, responsibility for cleanup of the identified contaminants. Given this ongoing litigation, the Order risks inconsistent liability determinations, which will only spawn more litigation. The Order also risks the Regional Board and Regional Board staff becoming embroiled in that litigation.

D. A Stay Should Be Issued

Petitioners request the State Board to stay enforcement of the Order pending resolution of this Petition. A stay should be issued when a petitioner establishes: (1) substantial harm to petitioner or to the public if a stay is not granted, (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted, and (3) substantial questions of fact or law regarding the disputed action. (23 Cal. Code Regs., § 2053.) Petitioners have established each element for a stay, as discussed in this Petition, Statement of Points and Authorities, and the Declaration of Adam K. Guernsey ("Guernsey Decl."), attached as Exhibit 2.

First, Petitioners and the people of the State of California will face substantial harm if the stay is not granted. Petitioners have been ordered to submit an investigatory workplan and submit

a soil and gas groundwater investigation report by October 1, 2025, and February 6, 2026, respectively. The Regional Board estimates the cost for these directives to be approximately $238,000.00. The first deadline for compliance will pass prior to the State Board's Petition Review deadline. Thus, absent a stay Petitioners (and in reality, the California taxpayer) must incur substantial costs when there is a very high likelihood this Petition will be rescinded, based on its facial defects. (Guernsey Decl., ¶ 2.) The public's scarce resources should not be squandered in such a way.

Moreover, based on Petitioners' conversations with a third-party professional engineer with significant experience responding to similar directives, the Regional Board's deadlines are not feasible. We understand that Petitioners would not likely be able to submit an investigative workplan for 18 weeks, assuming no unforeseen delays. This includes Petitioners procurement (a unique task for state agencies), project setup, preparation of a work plan, Petitioners' review of work plan, revisions to the workplan based on Petitioners' review, and submittal to the Regional Board. (Guernsey Decl., ¶ 3.) This would not comply with the timeline included in the Order and would subject Petitioners to monetary penalties.

Following submittal of the workplan, there is an unknown duration during which the Regional Board will review the workplan, which could take up to 12 weeks based on prior experience. If there are significant comments from the Regional Board, potentially nine weeks may be needed to update and submit the work plan for final approval. Only then can Petitioners begin the second required activity. (Guernsey Decl., ¶ 4.)

Again, we understand, based on conversations with a third-party professional engineer, the Regional Board's deadline is not feasible. Once an investigative workplan is approved, we estimate that it would take up to 35 weeks to submit the final report, which includes the following tasks: field work, laboratory data analysis, a summary report, Petitioners' review and comments, submittal to the Regional Board, revisions based on Regional Board comments, and final approval. In total, compliance with both directives may take up to 78 weeks from the date of commencement. (Guernsey Decl., ¶ 5.) Similar to the workplan, this would not comply with the

Order timelines and would expose Petitioners to monetary penalties.

If Petitioners do not complete the directives by the Order's deadlines, Petitioners face both criminal penalties and administrative civil liability penalties up to $5,000 per day. (Guernsey Decl., ¶ 5.)

Accordingly, Petitioners and the public thus face substantial monetary and legal jeopardy unless the Order is stayed.

Second, there is a lack of substantial harm to the public and other interested parties if the stay is granted. As noted, Forward is currently remediating the State Facilities under the 2017 CAO. This has been ongoing for 33 years. Accordingly, any contamination is currently controlled, and a short stay, relative to the three decades of ongoing cleanup, would not cause substantial harm to the public interest or other interested parties. (Guernsey Decl., ¶ 7.)

Third and finally, there are substantial questions of law and fact related to the proposed Order, as discussed in detail in the Petition and Statement of Points and Authorities. Specifically, the Order is facially deficient for failing to provide evidence in support, the burden of the order bears no reasonable relationship to the need for data and will provide no benefit, and ongoing state and federal litigation will resolve the liability question once and for all. (Guernsey Decl., 8.)

Accordingly, a stay must be granted.

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V. CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the State Board grant the relief requested in this Petition.

DATED: August 8, 2025

HARRISON, TEMBLADOR, HUNGERFORD & GUERNSEY LLP

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PROOF OF SERVICE

I, Adam K. Guernsey declare:

I am a citizen of the United States, employed in the City and County of Sacramento, California. My business address 2801 T Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the within action.

On Augst 8, 2025, I served the attached:

PETITION FOR REVIEW AND REQUEST FOR STAY OF ORDER AND MEMORANDUM OF POINTS AND AUTHORITIES & EXHIBITS

[X] (VIA EMAIL) I caused a courtesy copy of the documents to be sent to the persons at the e-mail addresses listed below.

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I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed at Sacramento, California, on August 8, 2025.

Adam K. Guernsey