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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

THE CALIFORNIA DEPARTMENT OF
GENERAL SERVICES

Petitioners,

v.

CENTRAL VALLEY REGIONAL WATER
QUALITY CONTROL BOARD,

Respondent.

**PETITION FOR REVIEW AND
REQUEST FOR RECISSION
[Cal. Water Code §13267]**

(Cal. Water Code §13320; 23 Cal. Code
Regs. §§2050-2068)

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INTRODUCTION

On September 16, 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”, or “Petitioner”). The State Facilities, the subject property of the Order, are under the sole jurisdiction, care, custody, and control of CDCR. DGS has no right, title, or interest in, and no care, custody, or control over, the State Facilities. DGS maintains the centralized computer database of the State’s real property interests on behalf of all state agencies. DGS’ role within California’s system of state property management is purely administrative as it relates to property under the jurisdiction of other State agencies or departments, such as CDCR. In this capacity, 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 DGS serves as a recordkeeper and service provider—tracking ownership information, recording real estate transactions, and facilitating ministerial functions when requested by individual agencies. DGS does not own, occupy, operate, or control any CDCR properties, as prison facilities are under the exclusive jurisdiction, care, custody, and control of CDCR.

Consistent with this limited role, DGS’s sole involvement with the State Facilities was to assist CDCR, at CDCR’s request, with real estate services, including assistance with a Right of Entry agreement in 2017 for Forward, Inc. (“Forward”) to enter the State Facilities to conduct testing in furtherance of its remediation obligations for Forward’s contamination seeping onto the State Facilities property. DGS did not negotiate the substance of CDCR’s arrangements, nor did it exercise discretion or control over the property itself. Once the agreement was executed,

¹ See **Exhibit 14** [Declaration of Patrick Foster]. To Petitioner’s 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.

1 DGS's involvement ended.

2 The Order erroneously named DGS as a party despite its lack of ownership or operational
3 connection to the property. DGS has had no ongoing responsibility, operational authority, or
4 connection to the State Facilities. Because DGS has no authority over the State Facilities and
5 serves only as an administrative support agency with a recordkeeping function, issuance of the
6 Order to DGS is improper.
7

8 The Order also fails to meet the minimum statutory requirements for investigative orders
9 under Section 13267. It cites no evidence linking DGS to the property and imposes obligations
10 on DGS that would be immense and futile, as DGS has neither knowledge of the subject property
11 nor the ability to control or accomplish compliance with the Order.

12 For these reasons, Petitioner respectfully requests that the State Water Resources Control
13 Board should grant this Petition For Review and Request for Recission ("Petition") and rescind
14 the Order as to DGS, or, alternatively, dismiss DGS from the Order to the extent it is not
15 rescinded in its entirety. CDCR has filed a separate petition contemporaneously with this
16 Petition, and the two petitions are intended to be considered concurrently.

17 PETITION FOR REVIEW

18 I. NAME AND ADDRESS OF PETITIONER²

19 Petitioner may be contacted through their counsel of record:

20 Harrison, Temblador, Hungerford & Guernsey LLP
21 2801 T Street
22 Sacramento, California 95816

23 Mark D. Harrison
mharrison@hthglaw.com

24 Adam K. Guernsey
aguernsey@hthglaw.com
25
26 _____

27
28 ² The following section headings follow the requirements of Title 23 of the California Code of Regulations, section 2050.

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II. SPECIFIC ACTION OF THE REGIONAL BOARD

Petitioner seeks review of the Regional Board’s order entitled “Water Code Section 13267 Order for Technical Report” issued on September 16, 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 September 16, 2025, the date it issued the Order to Petitioner. The deadline to file this Petition is 5:00 P.M. on October 16, 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 two significant reasons.

First, the Order fails to cite sufficient evidence to support the issuance of the Order or demonstrate that the Petitioner has discharged, is suspected of discharging, or proposes to discharge waste. Evidentiary support is a minimum statutory requirement for a Section 13267 order. The Water Code only permits an investigative order to be issued to “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.” (Water Code, § 13267(b)(1).)

The Regional Board has presented no evidence supporting the naming of DGS in the Order. The Order does not provide any factual basis connecting DGS to the alleged releases. The absence of any evidence tying DGS to ownership, control, or custody of the subject property renders the Order invalid as to DGS. To the contrary, the Regional Board’s own language identifying “CDCR Facilities” as the potential source underscores that DGS is not a proper party. Accordingly, DGS should be dismissed from the Order to the extent it is not rescinded in its

1 entirety. (See Exhibit 14.)

2 Second, the burden of the Order’s directives bears no reasonable relationship to the need
3 for the requested data, information, or reports, particularly as applied to DGS. DGS has no
4 established ownership, control, or custody over the State Facilities at issue, and without such
5 connection, DGS lacks both the knowledge and the ability to comply with the directives.
6 Imposing obligations on DGS—who has no role in the contamination, no means of compliance,
7 and no demonstrated nexus to the alleged releases—is unreasonable and unduly burdensome.
8

9 **V. MANNER IN WHICH PETITIONER IS AGGRIEVED**

10 Petitioner is aggrieved for the reasons set forth above. Petitioner is not the responsible
11 party, and should not be required to comply with onerous and expensive directives.

12 **VI. SPECIFIC ACTION REQUESTED BY PETITIONER**

13 Pursuant to section 2053 of the California Code of Regulations (“Regulations”), Petitioner
14 requests that the State Water Resources Control Board review and rescind the Order. Further,
15 given DGS’s lack of control, custody, possession, or jurisdiction over the State Facilities, DGS
16 should be dismissed from the Order, to the extent that it is not rescinded in its entirety. (See
17 Exhibit 14.)

18 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF**
19 **PETITION**

20 Petitioner’s Statement of Points and Authorities in support of this Petition is submitted
21 herewith, attached hereto, and incorporated by reference.

22 **VIII. SERVICE ON INTERESTED PARTIES**

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

25 State Water Resources Control Board
26 Office of Chief Counsel
27 Adrianna M. Jerome
28 P.O. Box 100
Sacramento, CA 95812-0100
waterqualitypetitions@waterboards.ca.gov

Central Valley Regional Water Quality Control Board
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Rancho Cordova, CA 95670-6114
centralvalleysacramento@waterboards.ca.gov

Howard Hold
Howard.Hold@waterboards.ca.gov

Brendan Kenny
Brendan.Kenny@waterboards.ca.gov

**IX. PETITIONER WAS UNABLE TO RAISE SUBSTANTIVE ISSUES BEFORE
THE REGIONAL BOARD**

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

In connection with any hearing on this matter, Petitioner reserves 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: October 16, 2025

HARRISON, TEMBLADOR, HUNGERFORD
& GUERNSEY LLP



MARK D. HARRISON
ADAM K. GUERNSEY
KIMBERLY A. GAMBRALL
Attorneys for Petitioner California Department of
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14 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

15 CALIFORNIA DEPARTMENT OF
16 CORRECTIONS AND REHABILITATION,
17 and THE CALIFORNIA DEPARTMENT OF
18 GENERAL SERVICES

19 Petitioners,

20 v.

21 CENTRAL VALLEY REGIONAL WATER
22 QUALITY CONTROL BOARD,

23 Respondent.

24 **STATEMENT OF POINTS AND
25 AUTHORITIES IN SUPPORT OF
26 PETITION FOR REVIEW AND
27 REQUEST FOR RECISSION AND STAY
28 OF ORDER**

[Cal. Water Code §13267]

(Cal. Water Code §13320; Cal. Code Regs.
§§2050-2068)

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I. INTRODUCTION

This Statement of Points and Authorities is submitted contemporaneously with, and incorporated by reference into, Department of General Services' ("DGS", or "Petitioner") Petition for Review and Request for Recission ("Petition").

II. FACTUAL BACKGROUND

Forward Inc., a subsidiary of 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 California Department of Corrections and Rehabilitation ("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").

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 2** [Right of Entry Permit & Monitoring Well Agreement dated February 19, 2021], at pp. 2 - 3.) Forward agreed to indemnify the Petitioner 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 2, at Exhibit A.) Notwithstanding its agreement to indemnify Petitioner, Forward subsequently filed three separate lawsuits against Petitioners.

First, on July 31, 2023, Forward filed its first lawsuit against Petitioner 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 3** [*Forward, Inc. v. State of California*, Case No.:23-CV-01567-DAD-DB].) Petitioner filed a motion to dismiss, based on Petitioner's sovereign immunity, which Forward did not oppose. (**Exhibit 4** [Forward's Notice of Non-Opposition to Motion to Dismiss].)

1 Second, on November 21, 2023, Forward filed a lawsuit in Sacramento County Superior
2 Court naming Petitioner as a responsible party for an independent release of VOCs
3 (“Complaint”). (**Exhibit 5** [*Forward, Inc. v. State of California*, Case No.: 23CV012125].)

4 Third, on March 3, 2024, Forward filed another lawsuit in in the Eastern District of
5 California seeking an injunction and declaration that Petitioner was responsible for the
6 contamination at the State Facilities under RCRA. (**Exhibit 6** [*Forward, Inc. v. Jeff Macomber*,
7 Case No: 2:24-at-00252). The court dismissed the case based on Petitioner’s sovereign immunity.
8 The case is currently awaiting oral argument before the Ninth Circuit Court of Appeal. (See
9 **Exhibit 7** [Notice of Appeal].)

10 Subsequently, Forward requested an amended right of entry agreement to install a water
11 treatment system on the State Facilities. CDCR attempted to negotiate a new agreement to permit
12 Forward’s entry, but Forward refused to agree to indemnify Petitioner for its entry or activities
13 stemming therefrom. (See **Exhibits 8-13.**) Forward stopped responding or attempting to further
14 negotiate.
15

16 On September 16, 2025, the Regional Board issued the order entitled “Water Code Section
17 13267 Order for Technical Report” issued on September 16, 2025 (“Order”). (Exhibit 1.)
18 Meanwhile, Petitioner and Forward remain embroiled in significant ongoing litigation. The
19 parties are currently in the middle of discovery and the Order will inevitably entangle the Regional
20 Board and Regional Board staff in the ongoing litigation.

21 **III. STANDARD OF REVIEW**

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

24 In conducting an investigation specified in subdivision (a), the regional board may
25 require that any person *who has discharged, discharges, or is suspected of having*
26 *discharged or discharging, or who proposes to discharge waste* within its region,
27 or any citizen or domiciliary, or political agency or entity of this state who has
28 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

The Order is inappropriate and improper for two significant reasons. First, the Order fails to cite evidence to support the issuance of the Order or demonstrate that Petitioner has discharged, is suspected of discharging, or proposes 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. Petitioner has neither knowledge of the subject property nor the ability to control or accomplish compliance with the Order. We discuss each in turn below.

A. DGS Has No Nexus to the Property and The Regional Board Improperly Named DGS in the 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 Petitioner.

The text of Water Code §13267 makes clear the statute's investigative authority is directed at "any person who has discharged, discharges, or is suspected of having discharged ..." 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

1 Water Resources Control Board Order WQ 2004-0005]. The State Board will vacate orders that
2 lack supporting evidence precisely because the regional board must justify that the burden of
3 providing reports, including costs, bears a reasonable relationship to the need for the reports and
4 the benefits obtained. (*Edwards Lifesciences LLC v. Reg'l Water Quality Control Bd.-Santa Ana*
5 *Region*, 2020 Cal. Super. LEXIS 73540, *11.) The standard for “evidence” under Section 13267
6 is “any relevant evidence on which responsible persons are accustomed to rely in the conduct of
7 serious affairs.” (See Water Code § 13267(f).)

8
9 Here, the Regional Board cites no evidence in the Order demonstrating that Petitioner
10 discharged any contaminants or contributed to any discharge. The Regional Board misnamed
11 DGS in the Order. DGS lacks any nexus, such as ownership or control, to the State Facilities.
12 The Order contains no references or citations to any title history or any other evidence to
13 demonstrate DGS has a nexus to the State Facilities. Rather, the Regional Board’s Order
14 repeatedly refers to the “CDCR facilities” and CDCR is a separate and distinct entity from DGS.
15 DGS is a purely administrative agency in this instance and merely provides contractual real estate
16 services to many state agencies, including the State Board and Regional Board. The Order
17 contains no evidence sufficient to meet the minimum statutory obligation. Thus, there is no basis
18 for anyone to determine whether Petitioner caused the discharge or whether the Order’s burden
19 bears a reasonable relationship to the need for the directives and the benefits to be obtained. This
20 facial defect alone requires the State Board to rescind the Order.

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

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

25 Even if the State Board determines there was evidence to support the Order, which there
26 was not, the burden of the Order’s directives bears no reasonable relationship to the need for the
27 data requested and will not provide a benefit to the Regional Board. As previously discussed,
28 Water Code requires, in relevant part, that “[t]he burden, including costs, of these reports shall

1 bear a reasonable relationship to the need for the report and the benefits to be obtained from the
2 reports.” (Water Code, § 13267(b)(1).

3 Where the burden exceeds the need for the report and benefits to be obtained, the State
4 Board can rescind or modify the requirement. (See *Pacific Grove*, Order No. WQ 82-8 [SWRCB
5 1982]; *Atlantic Richfield Company, Texaco, Inc. and Union Oil Company*, Order No. WQ 83-2
6 [SWRCB 1983].)

7 Here, compliance with the Order would be especially burdensome because DGS has no
8 ownership interest in, or custody or control over, the subject property. Unlike a property owner,
9 DGS has no direct knowledge of site conditions, no access to operational or historical information,
10 and no authority to direct or implement corrective measures at the State Facilities. Without the
11 ability to control the property or the means of accomplishing compliance, imposing these
12 obligations on DGS serves no regulatory purpose and only creates unreasonable, duplicative
13 burden without corresponding benefit.
14

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

16 V. CONCLUSION

17 For all the foregoing reasons, Petitioners respectfully request that the State Board grant
18 the relief requested in this Petition.
19

20 DATED: October 16, 2025

HARRISON, TEMBLADOR, HUNGERFORD
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25 MARK D. HARRISON
26 ADAM K. GUERNSEY
27 KIMBERLY A. GAMBRALL
28 Attorneys for Petitioner California Department of
General Services

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 October 16, 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 October 16, 2025.



Adam K. Guernsey