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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION

Petitioner,

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)

1 **I. INTRODUCTION**

2 Petitioner California Department of Corrections and Rehabilitation (“CDCR”) hereby
3 petitions the State Water Resources Control Board (“State Board”) for review and rescission of
4 an investigative order under Water Code Section 13267 (“Order”) issued to CDCR and the
5 Department of General Services (“DGS”).
6

7 Background

8 On September 16, 2025, the Central Valley Regional Water Quality Control Board
9 (“Regional Board”), rescinded and reissued an investigative Order under Water Code Section
10 13267 to CDCR and DGS.¹

11 CDCR and DGS petitioned the State Water Resources Control Board (“State Board”) for
12 review of the original order, issued July 10, 2025 (“July Order”), asserting that, among other
13 things, the order: (1) was facially deficient because it lacked the minimum requirements for such
14 an order; (2) would produce duplicative data that, at best, existing Regional Board Orders already
15 require CDCR’s neighbor to produce; and (3) appeared to be issued in an attempt to aid the
16 owner and operator of the neighboring contaminated landfill, Forward, Inc. (“Forward”), in its
17 longstanding efforts to shift its ongoing remediation obligations onto the California taxpayer.

18 The current Order contains the same defects. For more than 30 years, the Regional Board
19 has considered Forward to be the responsible party to remedy the contamination. Forward, a
20 subsidiary of Republic Services—a publicly traded company with a market cap in excess of \$72
21 billion—is subject to multiple cleanup and abatement orders. Forward’s contamination
22 undisputably migrated onto CDCR’s property and other adjacent properties, as consistently
23 confirmed by the Regional Board’s own testing. Yet, the Order is not directed towards Forward.
24 Notably, the Order is virtually duplicative of all those prior orders which held Forward
25 responsible, except in a single, important regard—it is now, for the first time, directed at CDCR
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¹ DGS has filed a separate petition to the State Board for review and rescission of the Order.

1 and not the entity that: (1) admits it is liable for polluting the regional groundwater; and (2) the
2 Regional Board has held responsible for the contamination for the last 30 years.

3 The Regional Board issued the Order to CDCR without any substantive discussion or
4 notice. In fact, during every single discussion between CDCR and the Regional Board staff over
5 a multi-year period, Regional Board staff have uniformly indicated that it did not have any reason
6 to believe CDCR had discharged the identified carbon tetrachloride and chloroform. The Order,
7 moreover, clearly failed to comply with the minimum and fundamental requirements for orders
8 of this nature. Thus, the Order, like the July Order, appears to be issued to aid Forward in its
9 years-long effort to shift the burden for remediating its own significant and migrating pollution
10 onto the victim of its pollution.
11

12 The Regional Board did not provide any documentation to support its change of course
13 in its July Order. Following the July Order, the Regional Board, on the day *after* the deadline to
14 file the Petition, produced limited documents in response to a Public Records Act (“PRA”)
15 request seeking communications related to the order and technical data/evidence in support
16 thereof. Unsurprisingly, the Regional Board has produced no documents that supported the
17 issuance of the July Order in response to the PRA request or on its own independent accord.
18 Moreover, the Regional Board has failed to respond, at all, to multiple written requests for
19 confirmation that the Regional Board has produced all responsive documents. (Declaration of
20 Adam K. Guernsey (“Guernsey Decl.”), ¶ 10.)

21 As part of the limited production, the Regional Board did, however, produce
22 communications between Forward’s counsel, Thomas Bruen, and Regional Board counsel, Dan
23 Kippen. The correspondence indicates that Forward’s counsel actively misled the Regional
24 Board concerning CDCR’s willingness to allow Forward’s access to the California Health Care
25 Facility, N.A. Chaderjian Youth Correctional Facility, and O.H. Close Youth Correction Facility
26 (“State Facilities”), and invited the Regional Board’s attorney to call him on his cell phone while
27 on vacation to discuss “next steps.” Notably, CDCR’s counsel was not copied on this
28 communication, as was Mr. Bruen’s prior practice concerning access negotiations. While

Petitioner is not yet aware whether further communications took place, the Regional Board's next public step on this matter was to issue the July Order.

The State Board should grant this Petition For Review and Request for Rescission 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. We summarize CDCR's argument in favor of rescission and reasons necessitating a stay below.

A. Summary of Argument

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, has consistently shown 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 previously concluded that Forward failed to comply with the 2008

1 CAO, which allowed the contamination to migrate northward. By 2016, the contamination had
2 spread from the approximately 467-acre Forward Landfill to cover 858 acres. Accordingly, in
3 2017, the Regional Board issued Cleanup and Abatement Order R5-2017-0703 (“2017 CAO”),
4 requiring further investigation of the vertical and lateral extent of contamination, and
5 remediation of areas north of the Forward Landfill (i.e., the State Facilities), among other things.
6 CDCR executed a number of right-of-entry agreements with Forward to facilitate Forward’s
7 remedial work under the cleanup orders. Forward has yet to comply with its 2017 CAO
8 obligations.

9
10 Notwithstanding CDCR’s assistance to Forward related to its remediation obligations,
11 Forward now, after more than 30 years, attempts to shift the burden of its obligations to the
12 California taxpayer. Forward sued CDCR—the victim of Forward’s pollution—three times
13 seeking to have the State of California pay for Forward’s environmental degradation. Litigation
14 remains ongoing in both state and federal court. Forward asserts that CDCR is the origin of a
15 separate source of carbon tetrachloride and chloroform contamination identified at the State
16 property. As a basis for its litigation claims, Forward alleges, “[h]istorically, these two VOCs
17 [carbon tetrachloride and chloroform] have not been detected at any of the compliance **wells**
18 **downgradient of [Forward] Landfill’s POC.**” (emphasis added.) Forward’s representation
19 fails to acknowledge that carbon tetrachloride has been detected in the middle of the Forward
20 Landfill and at the State Facilities.

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

24 As part of the ongoing litigation, extensive discovery is underway. CDCR has examined
25 its historical records and there is no evidence, whatsoever, that CDCR used, handled, transported,
26 or otherwise touched carbon tetrachloride or chloroform at the State Facilities. Given this lack
27 of evidence, Regional Board staff has absolutely no basis to believe that CDCR is the potential
28 discharger of these contaminants, when the undisputed record conclusively demonstrates that

Forward's landfill has contaminated the CDCR Facilities and neighboring properties for decades.

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 position. Notwithstanding the undisputed facts discussed above, the Regional Board now contends that CDCR is a potentially responsible party due to groundwater data collected from monitoring well AMW-22S,² which demonstrates levels of carbon tetrachloride and chloroform at concentrations exceeding those historically identified upgradient of the State Facilities. What the Order fails to explain, however, is how Forward's groundwater remediation program (essentially injecting clean water into the groundwater upgradient of the State Facilities) will necessarily show lower levels of contamination near or at Forward's point of compliance, as the injected clean groundwater pushes contaminated groundwater downgradient to the center of the State Facilities. Moreover, Order fails to explain how CDCR's alleged surface use of carbon tetrachloride and chloroform (again, for which absolutely no evidence exists), has somehow contaminated groundwater at a depth between 60 and 80 feet below ground surface ("bgs"), without evidence of any surficial contamination. If the contamination came from use at the State Facilities, it is only logical that the contamination would be identified through data at shallower groundwater depths or surface sources. Thus, the only logical conclusion is that the contamination has migrated through the groundwater to the State Facilities from the Forward Landfill.

The timing of the Orders is also peculiar. Prior to the issuance of the orders, CDCR and Forward were actively negotiating additional entry required by Forward onto the State Facilities to complete further remediation under the 2017 CAO. Forward copied 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

² Data that the Regional Board has been aware of since 2014.

1 negotiations. Then, without warning or explanation, the Regional Board’s counsel informed
2 CDCR’s counsel that the Regional Board was considering issuing CDCR a 13267 order. The
3 Regional Board’s counsel provided no basis or rationale for the threatened order. CDCR
4 requested, several times, to meet with Regional Board staff to discuss the rationale for the
5 potential order. Regional Board staff and their counsel refused to meet or provide further
6 information, other than to suggest that staff was frustrated by the pace of *Forward’s* remediation.
7

8 Following issuance of the July Order, the Regional Board, in response to a PRA request,
9 produced communications between Forward’s counsel and Regional Board counsel confirming
10 that Forward’s counsel actively misled the Regional Board concerning CDCR’s willingness to
11 allow Forward’s access to the State Facilities, and invited the Regional Board’s attorney to call
12 him on his cell phone while on vacation to discuss “next steps.” Notably, CDCR’s counsel was
13 not copied on this communication, as was Mr. Bruen’s prior practice concerning access
14 negotiations.

15 The Order, unless rescinded or stayed indefinitely, places the Regional Board, Regional
16 Board staff, and the State Water Board’s Office of Enforcement directly in the middle of the
17 litigation.

18 Given the foregoing, the State Board should rescind the improvidently issued Order.

19 **B. A Stay is Necessary to Preserve the Status Quo.**

20 The State Board should grant a stay to preserve the status quo while it considers this
21 Petition for the following four reasons.

22 First, CDCR faces substantial financial and legal jeopardy. The burden of a time
23 consuming and expensive investigation demanded by the Regional Board, without providing **any**
24 evidence explaining its new rationale, outweighs any benefit to the public while the State Board
25 resolves the merits of the Petition. Forward is already subject to the 2017 CAO, which requires
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Forward to implement remedial activities.³ Moreover, based on CDCR's preliminary conversations with technical experts, the Regional Board underestimates the time and costs associated with complying with the directives in the Order. This exposes CDCR to significant criminal and civil penalties.

Second, there is no substantial harm to the public. This has been an ongoing dispute for 33 years. Forward is currently trying to remediate the State Facilities under the 2017 CAO. 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. As discussed, the Order seeks data that Forward is already required to produce, and cleanup that Forward is already required to complete, under the 2017 CAO.

Third, there are substantial questions of law and fact related to the Order, as discussed in detail in the Petition and Statement of Points and Authorities. Specifically, the Order remains facially deficient for failing to provide any evidence in support. Limited data is referenced, but no documents or data such as Regional Board investigative reports were provided with the Order itself, as one would usually expect in these matters. Failure to provide this evidence in the Order fundamentally impacts CDCR's 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.

Additionally, ongoing state and federal litigation is expected to resolve the liability question. The subject of the Order—the source of carbon tetrachloride and chloroform identified in a monitoring well in and adjacent to the State Facilities—is the subject of active litigation between the CDCR and Forward in both state and federal court. The Order, especially in light

³ Forward and its predecessors have been under Regional Board cleanup orders **since 1992**.

1 of communications between Mr. Kippen and Mr. Bruen, ensures that the Regional Board,
2 Regional Board staff, and State Board's Office of Enforcement become embroiled in that
3 litigation. Moreover, the litigation will determine, as a matter of law, responsibility for cleanup
4 of the identified contaminants, and the Order may result in an inconsistent liability
5 determination.⁴

6
7 Fourth, CDCR is likely to succeed on the merits. As discussed above in the summary of
8 CDCR's argument, the Order remains deficient on its face because it fails to provide any
9 evidence, data, or findings in support, in violation of Water Code section 13267(b)(1). The Order
10 offers little more than a bare assertion of its rationale stating that there is "a significant amount
11 of carbon tetrachloride and chloroform in the shallow groundwater near the center of the CDCR
12 Facilities, but the shallow groundwater migrating towards the CDCR Facilities from the Landfill
13 contains little to no carbon tetrachloride and chloroform." The Order, without citation to any
14 relevant evidence, concludes that "(1) the Landfill is not contributing a significant amount of
15 carbon tetrachloride or chloroform to the shallow groundwater migrating under the CDCR
16 Facilities and (2) there is at least one separate source of carbon tetrachloride and chloroform on
17 the CDCR Facilities contributing to groundwater contamination." The Regional Board bases the
18 Order upon unconfirmed, misconstrued, and self-serving reports prepared by Forward's
19 consultants, which are contrary to the more than 30 years of data that indicates otherwise.

20 The Regional Board's position completely ignores the fact that: (1) there is no evidence
21 that CDCR ever used or handled carbon tetrachloride or chloroform on the State Facilities; (2)
22 there is understandably less contamination currently migrating from the Landfill, compared to
23 what exists downgradient at the State Facilities, precisely because Forward has, for many years,
24 been injecting clean water that has pushed contaminated groundwater onto the State Facilities,
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27 ⁴ The Order states that it does not apportion or assign liability. That is categorically false. The Order requires, among
28 other things, CDCR and DGS to prepare an Engineering Feasibility Study that evaluates remedial options for the
affected aquifer. The only logical conclusion is that the Regional Board intends to force CDCR and DGS to
implement those remedial options—thus assigning liability.

as confirmed by Regional Board staff on numerous occasions; and (3) there is no explanation as to how any alleged surficial use of carbon tetrachloride or chloroform at the State Facilities would now contaminate groundwater at depth, without evidence of any surficial contamination.

For these reasons, a stay is appropriate for the pendency of the litigation or until the Order is rescinded.

DGS has filed a separate petition contemporaneously with this Petition, and the two petitions are intended to be considered concurrently.

PETITION FOR REVIEW

I. NAME AND ADDRESS OF PETITIONER⁵

CDCR may be contacted through its counsel of record:

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II. SPECIFIC ACTION OF THE REGIONAL BOARD

CDCR 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 BOARD ACTION

The date of the Regional Board action was September 16, 2025, the date it issued the Order to CDCR. The deadline to file this Petition is 5:00 P.M. on October 16, 2025. (See

⁵ The following section headings follow the requirements of Title 23 of the California Code of Regulations, section 2050.

1 Cal. Code Regs., § 2050(b).) The Petition is timely.

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

4 The Order is inappropriate and improper for three significant reasons.

5 First, the Order fails to cite sufficient evidence to support the issuance of the Order or
6 demonstrate that CDCR has discharged, is suspected of discharging, or proposes to discharge
7 waste. Evidentiary support is a minimum statutory requirement for a Section 13267 order. The
8 Water Code requires, in relevant part, that “the regional board shall provide the person with a
9 written explanation with regard to the need for the reports, and shall identify the evidence that
10 supports requiring that person to provide the reports.” (Water Code, § 13267(b)(1).)

11 The Regional Board provided no required evidence. Rather, the Regional Board’s
12 rationale supporting the Order concludes, based on misconstrued reports prepared by Forward’s
13 consultants showing the presence of carbon tetrachloride and chloroform in the shallow
14 groundwater near the center of the State Facilities, that “(1) the Landfill is not contributing a
15 significant amount of carbon tetrachloride or chloroform to the shallow groundwater migrating
16 under the CDCR Facilities and (2) there is at least one separate source of carbon tetrachloride and
17 chloroform on the CDCR Facilities contributing to groundwater contamination.” (Exhibit 1, p.
18 3.) Notably, the Order fails to cite any evidence, whatsoever, that there is a **separate** source of
19 these contaminants at the State Facilities. This lack of evidence makes the Order patently invalid
20 on its face. The Order also acknowledges that the Regional Board had this data in its possession
21 since 2014, yet nowhere explains what has changed in the last 11 years that only now requires the
22 issuance of the Order. Additionally, the Order ignores that contaminants upgradient will
23 necessarily be reduced because Forward has active groundwater remediation pushing
24 contaminants onto the CDCR’s downgradient Facilities, as Regional Board staff has confirmed
25 to both CDCR and Forward on many occasions. Likewise, the Regional Board fails to explain
26 how alleged surficial use of carbon tetrachloride and chloroform has contaminated the
27 groundwater at a depth between 60 and 80 feet bgs without evidence of any surficial
28

1 contamination. If the contamination came from use at the State Facilities, it is only logical that
2 the contamination would be identified through data at shallower groundwater depths or surface
3 sources. The only logical conclusion is that the contaminated groundwater has migrated from
4 Forward's upgradient, contaminated landfill.

5 Second, the burden of the Order's directives bears no reasonable relationship to the need
6 for the requested data, information, or reports. CDCR cannot provide new or useful data beyond
7 that which has been developed, and will continue to be developed, under the orders that have
8 applied to Forward for decades. Forward has been subject to investigation and cleanup directives
9 and orders for more than 33 years for pollution it caused, which has migrated onto the State
10 Facilities and beyond. The investigation required by the Order will not provide any information
11 not already subject to production by Forward, were Forward finally to come into compliance with
12 its 2017 CAO obligations. The burden, costs, and directives set forth in the Order are largely, if
13 not entirely, duplicative of other Regional Board directives issued to Forward.
14

15 Third, responsibility for the cleanup of the carbon tetrachloride and chloroform is the
16 subject to two pending lawsuits in state and federal court.⁶ Litigation remains pending in
17 Sacramento County Superior Court, Case Number 23CV012125, filed on November 21, 2023.
18 In that case, Forward seeks to impose liability for cleanup of the carbon tetrachloride and
19 chloroform on CDCR under the Hazardous Substances Account Act. The case is in active
20 discovery and the Order places the Regional Board and staff in the middle of the ongoing
21 proceedings.

22 Litigation also remains pending in the Ninth Circuit Court of Appeals, Case No. 24-4983,
23 originally filed in the Eastern District of California on February 2, 2024. In that case, Forward
24 seeks to impose liability for cleanup of the carbon tetrachloride and chloroform on CDCR under
25 the Resource Conservation and Recovery Act ("RCRA"). If Forward is successful on appeal, the
26

27
28 ⁶ A third lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")
was already dismissed by a federal court in the CDCR's favor.

1 matter will be remanded back to District Court, where additional significant discovery will
2 undoubtedly commence. The State Board should rescind the Order to let this litigation reach a
3 resolution.

4 Resolution of these cases will, as a matter of law, impose liability for cleanup of the carbon
5 tetrachloride and chloroform. The Order thus has the potential to result in inconsistent liability
6 determinations between the Water Board and state and federal court.

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

8 CDCR is aggrieved for the reasons set forth above. The Order represents a sharp departure
9 from the Regional Board's prior determinations of Forward's responsibility. Never in the more
10 than three decades of cleanup of pollution attributed to the Forward Landfill has the Regional
11 Board suspected or determined CDCR was responsible for the contamination. Neither Forward's
12 obligations nor the underlying facts have changed, marking both the July Order and Order as an
13 unwarranted shift from the Regional Board's established course of action—and issued without
14 sufficient cited evidence or support. The Order gives the impression some new facts have arisen
15 that suggest CDCR is liable. This is incorrect. CDCR is not a responsible party, and should not
16 be required to comply with onerous and expensive directives without evidence, based merely on
17 conclusory assertions in Forward's self-serving reports. Absent rescission of this Order, CDCR
18 will be required to undertake significant (and duplicative) investigatory and remedial actions at
19 the State Facilities over the next 18 months at significant financial cost.

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

21 Pursuant to section 2053 of the California Code of Regulations ("Regulations"), CDCR
22 requests that the State Water Resources Control Board review and rescind the Order.

23 CDCR also requests a stay pending the resolution of the litigation or rescission of the Order,
24 as allowed under the State Board's Regulations. The Regulations provide that the State Board
25 may grant a stay:
26

27 [O]nly if petitioner alleges facts and produces proof of all of the following:

28 (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.)

CDCR has 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, attached as **Exhibit 2**.

First, CDCR and the people of the State of California will face substantial harm if the stay is not granted. CDCR has been ordered to submit an investigatory workplan and submit a soil and gas groundwater investigation report by February 1, 2026, and January 15, 2027, respectively. The Regional Board estimates the cost for these directives to be approximately \$238,000.00. The first deadline for compliance will pass just two weeks prior to the State Board's Petition Review deadline. Absent a stay, CDCR (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.

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

1 the second required activity. (Guernsey Decl., ¶ 4.)

2 Again, CDCR understands, based on conversations with a third-party professional
3 engineer, the Regional Board's deadline is not feasible. Once an investigative workplan is
4 approved, CDCR estimates that it would take up to 35 weeks to submit the final report, which
5 includes the following tasks: field work, laboratory data analysis, a summary report, CDCR's
6 review and comments, submittal to the Regional Board, revisions based on Regional Board
7 comments, and final approval. In total, compliance with both directives may take up to 78 weeks
8 from the date of commencement. (Guernsey Decl., ¶ 5.) Similar to the workplan, this would not
9 comply with the Order's timelines and would expose CDCR to monetary penalties.
10

11 If CDCR does not complete the directives by the Order's deadlines, CDCR faces both
12 criminal penalties and administrative civil liability penalties up to \$5,000 per day. (Guernsey
13 Decl., ¶ 6.)

14 Accordingly, CDCR and the public face substantial monetary and legal jeopardy unless
15 the Order is stayed.

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

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

26 Fourth, CDCR is likely to succeed on the merits. The Order remains deficient on its face
27 because it fails to provide any evidence, data, or findings in support, in violation of Water Code
28 section 13267(b)(1). The Order offers little more than a bare assertion of its rationale stating

1 that there is “a significant amount of carbon tetrachloride and chloroform in the shallow
2 groundwater near the center of the CDCR Facilities, but the shallow groundwater migrating
3 towards the CDCR Facilities from the Landfill contains little to no carbon tetrachloride and
4 chloroform.” The Order, without citation to any relevant evidence, concludes that “(1) the
5 Landfill is not contributing a significant amount of carbon tetrachloride or chloroform to the
6 shallow groundwater migrating under the CDCR Facilities and (2) there is at least one separate
7 source of carbon tetrachloride and chloroform on the CDCR Facilities contributing to
8 groundwater contamination.” The Regional Board bases the Order upon unconfirmed,
9 misconstrued, and self-serving reports prepared by Forward’s consultants, which are contrary to
10 the more than 30 years of data that indicates otherwise.
11

12 The Regional Board’s position completely ignores the fact that: (1) there is no evidence
13 that CDCR ever used or handled carbon tetrachloride or chloroform on the State Facilities
14 (Guernsey Decl., ¶ 9); (2) there is less contamination currently migrating from the Landfill,
15 compared to what is currently located on the State Facilities, because Forward’s injection of
16 clean water has pushed contamination onto the State Facilities, as confirmed by Regional Board
17 staff on numerous occasions; and (3) there is no explanation as to how any alleged surficial use
18 of carbon tetrachloride or chloroform at the State Facilities would now contaminate groundwater
19 at a depth of between 60 and 80 feet bgs, yet there is no evidence of any surficial contamination.
20

21 Accordingly, the State Board should grant the stay until the litigation is resolved or the
22 Order is rescinded.

23 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF** 24 **PETITION**

25 CDCR’s Statement of Points and Authorities in support of this Petition is submitted
26 herewith, attached hereto, and incorporated by reference.

27 **VIII. SERVICE ON INTERESTED PARTIES**

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

State Water Resources Control Board
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**IX. PETITIONER WAS UNABLE TO RAISE SUBSTANTIVE ISSUES BEFORE
THE REGIONAL BOARD**

CDCR 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 the Regional Board without a hearing, without evidence, and without explanation to CDCR as to why it was being issued. CDCR diligently sought to discuss with the Regional Board the basis and rationale for the July 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 CDCR or provide further explanation for the July Order and subsequent Order. (See **Exhibits 4-9.**)

In addition, CDCR's counsel filed a Public Records Act request with the Regional Board on October 7, 2025, after receiving the Order. (**Exhibit 10.**) CDCR's counsel sought documents, reports, studies, assessments, data, analyses, or other materials the Regional Board considered or relied upon in preparing or issuing the Order. The Regional Board has yet to respond to this request. Thus, not only was CDCR precluded from raising substantive issues with the Regional Board, but CDCR is also unable to raise all substantive issues to the State Board in this Petition.

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

1 In connection with any hearing on this matter, CDCR reserves the right to present
2 additional evidence or testimony to the State Board and will submit to the State Board, if
3 appropriate, statements regarding evidence pursuant to Regulations Section 2050(b).
4

5 Respectfully submitted,

6
7 DATED: October 16, 2025

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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,

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)

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I. INTRODUCTION

This Statement of Points and Authorities is submitted contemporaneously with, and incorporated by reference into, California Department of Corrections and Rehabilitation (“CDCR”, or “Petitioner”) Petition for Review and Request for Recission and Stay of Order (“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 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

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

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

On July 31, 2023, Forward filed its first lawsuit against CDCR in the Eastern District of California seeking cost recovery indemnity, contribution, damages, and a declaration that CDCR 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].) CDCR filed a motion to dismiss, based on CDCR’s 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 CDCR 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 an injunction and declaration that CDCR was 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 CDCR’s 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 CDCR for its entry or activities stemming therefrom. (See **Exhibits 22-27**.) Forward stopped responding or negotiating. 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 CDCR . (Exhibit 5.) Mr. Kippen and Board Staff refused to meet with CDCR to discuss the rationale for the threatened order, despite several requests from CDCR . (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. (Exhibit 3.) In response, CDCR filed a Public Records Act request seeking documents, reports, studies, assessments, data, analyses, or other materials the Regional Board considered or relied upon in preparing or issuing the Order. (Exhibit 9). In response to the Public Record Acts request, CDCR received a letter dated May 19, 2025, from Thomas M. Bruin, counsel for Forward, to Mr. Kippen, The correspondence indicates that Forward’s counsel actively misled the Regional Board concerning

CDCR's willingness to allow Forward's access to the State Facilities, and invited the Regional Board's attorney to call him on his cell phone while on vacation to discuss "next steps." Notably, CDCR's counsel was not copied on this communication, as was Mr. Bruen's prior practice concerning access negotiations. **(Exhibit 28.)** Then on September 16, 2025, the Regional Board rescinded the July Order and replaced it with the new order entitled "Water Code Section 13267 Order" (previously referred to as the "Order"). Meanwhile, CDCR 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, Regional Board staff, and the State Board's Office of Enforcement 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

The Order is inappropriate and improper for three significant reasons. First, the Order

1 fails to cite substantial evidence to support the issuance of the order or demonstrate that CDCR
2 has discharged, is suspected of discharging, or proposes to discharge waste. Evidentiary support
3 is a minimum statutory requirement for a Section 13267 order. The Regional Board has provided
4 insufficient evidence.

5 Second, the burden of the Order’s directives bears no reasonable relationship to the need
6 for the requested data, information, or reports. CDCR cannot provide new or useful data beyond
7 that which has been developed, and will continue to be developed, under the active orders that
8 have applied to Forward for decades.

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

13
14 **A. The Regional Board Failed to Cite Sufficient Evidence To Support Its Order.**

15 The Regional Board failed to meet the minimum requirements to support the Order
16 because the order cites insufficient credible evidence or factual basis to attribute the discharge to
17 CDCR .

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

1 Here, the Regional Board cites no evidence in the Order demonstrating that CDCR
2 discharged any contaminants or contributed to any discharge. Rather, the Regional Board's
3 perfunctory rationale for the Order describes "a significant amount of carbon tetrachloride and
4 chloroform in the shallow groundwater near the center of the CDCR Facilities, but the shallow
5 groundwater migrating towards the CDCR Facilities from the Landfill contains little to no carbon
6 tetrachloride and chloroform." Based on these findings submitted by Forward from Forward's
7 consultants, the Regional Board has somehow concluded that "(1) the Landfill is not contributing
8 a significant amount of carbon tetrachloride or chloroform to the shallow groundwater migrating
9 under the CDCR Facilities and (2) there is at least one separate source of carbon tetrachloride
10 and chloroform on the CDCR Facilities contributing to groundwater contamination." (Compare
11 Exhibit 1, p. 3, with *Sweeney v. California Regional Water Quality Control Bd.*, 61 Cal. App.
12 5th 1093, 1114-1115 [finding that a Regional Water Board had included sufficient explanation
13 of its need for reports from a duck hunting club and sufficient evidence supporting its demand
14 because the Regional Water Board included dozens of findings to explain the need for technical
15 reports, including a finding of an unauthorized discharge of fill material into tidal waters among
16 other unauthorized activities related to unauthorized levee construction].)

18 The Order, revised from the July Order, functionally issues a cleanup order, yet without
19 support from new or additional information. The Order contains no references or citations to
20 any findings, test results, or any other evidence sufficient to meet the minimum statutory
21 obligation. For example, while the Order alleges "there is at least one separate source of carbon
22 tetrachloride and chloroform on the CDCR Facilities contributing to groundwater
23 contamination", the order fails to cite *any* evidence to support his claim. Thus, there is no basis
24 for anyone to determine whether CDCR caused the discharge or whether the Order's burden
25 bears a reasonable relationship to the need for the directives and the benefits to be obtained.
26 Moreover, the Order completely ignores the fact that there is less contamination currently
27 migrating from the Landfill, compared to the downgradient CDCR Facilities, simply because of
28 the many years of water treatment ongoing upgradient of the CDCR Facilities. That water

1 treatment is precisely what is pushing contaminants onto the State Facilities in the first place.
2 This fact has been confirmed by Regional Board staff on multiple occasions.

3
4 Moreover, the Order fails to explain how alleged surficial use of carbon
5 tetrachloride and chloroform (again, of which absolutely no evidence exists), has somehow
6 caused groundwater contamination at a depth of 60-80 feet bgs feet without evidence of any
7 surficial contamination. If the contamination came from use at the State Facilities, it is only
8 logical that the contamination would be identified through data at shallower groundwater depths
9 or surface sources. Indeed, the only logical conclusion from the undisputed facts is that this
10 contamination is migrating through the groundwater from Forward's contaminated landfill.

11 These facial defects alone require the State Board to rescind the Order.

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

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

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

20 *In re Chevron* presents analogous facts to the current situation. *In re Chevron* involved
21 two neighboring former gas station sites, Chevron and Opal Cliffs. Opal Cliffs had been the
22 subject of ongoing investigation and remediation for releases of petroleum hydrocarbons since
23 1992. In 1995, contaminated groundwater was discovered on the former Chevron site. Upon
24 this discovery, the Regional Water Board assigned responsibility for investigation to both
25 Chevron and Opal Cliffs. Chevron submitted an analysis stating that the evidence showed only
26 one plume (i.e., one source of contamination) migrating from the Opal Cliffs site that had
27 completely enveloped the former Chevron site. The Regional Water Board maintained that there
28 were two sources of contamination and Chevron petitioned for State Board review.

1 The State Board held that there was no substantial evidence to support the Regional
2 Water Board's finding that the contamination of the soil at the Chevron site resulted from
3 discharges from the Chevron facility. The State Board determined that the Regional Water
4 Board's two source theory depended upon a finding that the former Chevron site was not
5 downgradient of the Opal Cliffs release. The State Board analyzed the evidence in the record to
6 determine the Chevron site was directly downgradient from the Opal Cliffs site, with
7 groundwater flowing toward the Chevron site. Accordingly, the State Board reasoned that
8 evidence proved Opal Cliffs was responsible for the contamination at the Chevron site. In other
9 words, the evidence established during Opal Cliffs' ongoing investigation and remediation did
10 not support an order that Chevron investigate and remediate contamination at its former site. (*Id.*
11 at 7.)
12

13 It is undisputed that Forward is the responsible source for contamination and release of
14 VOCs that has migrated onto the State Facilities and other properties. (See, Geotracker links
15 cited above.) Like *In re Chevron*, the State Facilities are located downgradient from the Forward
16 Landfill, and the data shows a single plume of contamination emanating from the Forward
17 Landfill. The Order states that lower amounts of carbon tetrachloride and chloroform are
18 detected in the groundwater migrating towards the State Facilities, as if that information is
19 unexpected or significant. One would expect that there would be cleaner groundwater at the point
20 where Forward has already begun cleaning and injecting groundwater pursuant to its obligations,
21 which then pushes all groundwater, including contaminated groundwater, downgradient. More
22 significantly, and ignored by the Order, is that the groundwater contaminated by Forward
23 continues to migrate north (downgradient) onto the State Facilities as well as other neighboring
24 properties. CDCR has extensively examined its historical records and there is absolutely no
25 evidence that CDCR used, handled, transported, or otherwise touched carbon tetrachloride or
26 chloroform at the CDCR Facilities. (Guernsey Decl., ¶ 9.) Given this lack of evidence, it is
27 unreasonable for the Regional Board to now allege that CDCR is the potential discharger of these
28 contaminants, when the undisputed record conclusively demonstrates that Forward's landfill has

1 contaminated the CDCR Facilities and neighboring properties for decades, and has failed to
2 comply with its existing obligations requiring it to address the contamination.

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

5 **B. The Burden of the Order Bears No Reasonable Relationship to the Need for**
6 **Data and Will Provide No Benefit.**
7

8 Even if the State Board determines there was substantial evidence to support the Order,
9 which there was not, the burden of the Order's directives bears no reasonable relationship to the
10 need for the data requested and will not provide a benefit to the Regional Board. As previously
11 discussed, Water Code requires, in relevant part, that "[t]he burden, including costs, of these
12 reports shall bear a reasonable relationship to the need for the report and the benefits to be
13 obtained from the reports." (Water Code, § 13267(b)(1).

14 Where the burden exceeds the need for the report and benefits to be obtained, the State
15 Board can rescind or modify the requirement. (See *Pacific Grove*, Order No. WQ 82-8 [SWRCB
16 1982]; *Atlantic Richfield Company, Texaco, Inc. and Union Oil Company*, Order No. WQ 83-2
17 [SWRCB 1983].)

18 Here, there are no investigations or other measures that CDCR could perform that would
19 provide new or useful data beyond that data which has been provided, or will be provided, through
20 Forward's compliance with its longstanding investigation orders. Forward has been subject to
21 cleanup directives and orders for more than three decades for pollution from the Forward Landfill
22 that has migrated onto the State Facilities and other surrounding properties. Currently, the 2017
23 CAO requires, among other actions, that Forward: (1) conduct further investigation to determine
24 the vertical and lateral extent of the contamination; (2) remediate areas north of the Forward
25 Landfill (i.e., State Facilities) where total VOC concentrations in groundwater exceeded 25 ug/l;
26 and (3) continue to operate existing and updated corrective action systems "until the groundwater
27 plume is remediated to comply with concentration limits within the WDRs." (Exhibit 12, at pp.
28 12-13.)

1 The burden, costs, and directives set forth in the Order are largely, if not entirely,
2 duplicative of Regional Board directives to Forward. Specifically, the Order’s stated goals of
3 identifying the source of the VOC release overlaps with Forward’s decades-old remediation
4 obligations. (*Ibid.*) Forward’s compliance with the 2017 CAO would moot the need for the Order.
5 Accordingly, the Order’s burden on CDCR bears no reasonable relationship to the need for data,
6 information, or reports and provides no benefit to be obtained therefrom.
7

8 Moreover, according to preliminary discussions with CDCR’s technical consultants, the
9 Order underestimates the time and costs associated with complying with the directives in the
10 Order. As the State Board surely appreciates, CDCR must also comply with the state’s rules
11 concerning contracting with outside entities, which adds a layer of cost and complexity. Whereas
12 Forward has had more than 30 years to investigate and clean up its migrating pollution, the Order
13 provides CDCR a matter of months to comply or face significant penalties.

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

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

21 **C. Ongoing Litigation Will Resolve This Issue.**

22 The subject of the Order—the source of carbon tetrachloride and chloroform identified at
23 the State Facilities”—is the subject of active litigation between the CDCR and Forward in both
24 state and federal court. (See Exhibits 17-20.) The litigation will determine, as a matter of law,
25 responsibility for cleanup of the identified contaminants. Given this ongoing litigation, the Order
26 risks inconsistent liability determinations, which will only spawn more litigation. Given the
27 documented communication between Dan Kippen and Tom Bruen, the Order also ensures the
28

1 Regional Board, Regional Board staff, and State Board’s Office of Enforcement become
2 embroiled in that litigation.

3 **D. A Stay Should Be Issued**

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

11
12 First, CDCR and the people of the State of California will face substantial harm if the stay
13 is not granted. CDCR has been ordered to submit an investigatory workplan and submit a soil
14 and gas groundwater investigation report by February 1, 2026, and January 15, 2027, respectively.
15 The Regional Board estimates the cost for these directives to be approximately \$238,000.00. The
16 first deadline for compliance will pass just two weeks prior to the State Board’s Petition Review
17 deadline. Thus, absent a stay CDCR (and in reality, the California taxpayer) must incur
18 substantial costs when there is a very high likelihood this Petition will be rescinded, based on its
19 facial defects. (Guernsey Decl., ¶ 2.) The public’s scarce resources should not be squandered in
20 such a way.

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

1 Following submittal of the workplan, there is an unknown duration during which the
2 Regional Board will review the workplan, which could take up to 12 weeks based on prior
3 experience. If there are significant comments from the Regional Board, potentially nine weeks
4 may be needed to update and submit the work plan for final approval. Only then can CDCR begin
5 the second required activity. (Guernsey Decl., ¶ 4.)
6

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

15 If CDCR does not complete the directives by the Order's deadlines, CDCR faces both
16 criminal penalties and administrative civil liability penalties up to \$5,000 per day. (Guernsey
17 Decl., ¶ 5.)

18 Accordingly, CDCR and the public face substantial monetary and legal jeopardy unless
19 the Order is stayed.

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

25 Third and finally, there are substantial questions of law and fact related to the proposed
26 Order, as discussed in detail in the Petition and Statement of Points and Authorities. Specifically,
27 the Order is facially deficient for failing to provide evidence in support, the burden of the order
28 bears no reasonable relationship to the need for data and will provide no benefit, and ongoing

1 state and federal litigation will resolve the liability question once and for all. (Guernsey Decl.,
2 8.) Accordingly, a stay must be granted.

3 **V. CONCLUSION**

4 For all the foregoing reasons, CDCR respectfully requests that the State Board grant the
5 relief requested in this Petition.
6

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8 DATED: October 16, 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 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