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Members of the Hinkley Public and/or property owners

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the matter of:) PETITION FOR REVIEW
California Regional Water Quality Control Board,) CLEANUP AND ABATEMENT ORDER
Lahontan Region) NO. R6V-2015-0068

Introduction

The Petitioners listed above are petitioning Cleanup and Abatement Order No. R6V-2015-0068, adopted November 4, 2015 by the California Regional Water Quality Control Board ("Regional Board") because (1) the adoption process at the hearing was inappropriate and improper, and unfair to the public, as well as not reflecting the Board member comments, (2) the public comment periods were discriminated towards the discharger and against the interested public, and (3) the Regional Board failed to include and adopt orders that allowed for environmental justice.

The Petitioners do seek a stay of the Order at this time for the reason that the Order...

I. Name and Address of Petitioners

The Petitioners names and contact information are listed at the beginning of this Petition. The lead person for contact is Daron Banks. ✓

I. The Regional Board Action for Which This Petition For Review is Sought

The Regional Board action for which this petition is filed is Cleanup and Abatement Order No. R6V-2015-0068 ("Order") (Exhibit 1). ✓

I. The Date the Regional Board Acted

The date the Regional Board adopted the Order is November 4, 2015. ✓

I. Statement of the Reasons the Action is Inappropriate and Improper

A. **The adoption of the CAO at the November 4, 2015 hearing of the Regional Board was inappropriate and improper, and unfair to the public. The adopted CAO also did not reflect the comments of the Board members.**

After the Regional Board closed the public comment period and Board members gave their own comments, the Board's Advisory Team proposed alternate language in many sections of the proposed CAO that was confusing and deceptive to the public present by refusing to mention the heading topics being discussed. For instance, the Advisory Team would direct the Board members to turn to a specific page in the Prosecution Team's "strikeout and underline" CAO version, dated November 3, 2015, and recommended accepting a sentence, parts of a sentence, or paragraph but not other parts. In a hurried manner, the Advisory Team then quickly directed the Board to turn to another page, and repeated the same pattern. At no time did the Advisory Team mention the subject matter of the finding or order being discussed. Us and many members of the Hinkley public were not able to follow the recommended changes because only a few copies of the handouts had been made for the hearing and they had run out. Following the Board's adoption of the CAO, none of the Hinkley public could understand what orders had been changed or not changed, and adopted or not adopted. At no time did the Advisory Team summarize the changes for us and identify topics that were changed.

During the hearing, many people provided comments to the Regional Board about making changes to the proposed CAO. For example, except for the discharger, all comments to the Regional Board requested that the original chromium plume mapping requirements from the 2013 CAO (Order No. R6V-2008-0002A4) be continued in the final order until evidence from the on-going U.S. Geological Survey's Background Study indicated otherwise. Even a majority of the Board members stated they wanted to see these requirements continue, either on their own, or in conjunction with PG&E's alternate interpretative plume maps. These comments led the Hinkley public to believe the Board was supporting the public position on this matter and adopting a CAO that included these requirements. The resulting final CAO, however, did not contain this language. Instead, the final CAO contained language consistent with the proposed CAO dated October 16, 2015. This action supports our contention that the adopted CAO was inappropriate and improper, and unfair to the public. It also points to the fact that the Board members themselves were not following or understanding the language changes proposed at the last minute by the Advisory Team or if they were, they intentionally misled the public by a majority stating they agreed with the recommendations to the original chromium plume mapping requirements from the 2013 CAO but then voted to do the opposite. While this action may not be illegal, it was certainly unprofessional and unethical, and probably a violation of the California Business and Professional Code, section 17500-17509. Since the CAO does not reflect the Board's comments made in a public setting, the CAO should be rejected.

Furthermore, the adopted CAO does not accurately reflect the degree of pollution to groundwater from historical discharges by the discharger. Board Chair Cox stated at the beginning of the hearing that the Board would not take or allow any new information. Yet, the CAO being considered contained inaccurate information in Finding 6 about the level of hexavalent chromium and total chromium in groundwater being at 3,600 parts per billion (ppb) and 3,700 ppb, respectively. But on October 15, 2015, the Water Board received a quarterly monitoring report from PG&E on the In-situ Remediation area stating that hexavalent chromium in groundwater at monitoring well SA-MW-05D was reported at 5,300 ppb and total chromium was reported at 5,600 ppb. These significant increases in chromium concentrations (above 5,000 ppb) from prior quarters in 2015 put the site into the hazardous waste category. Yet, nowhere in the adopted order are the updated concentrations acknowledged or the Hinkley Compressor Station listed as a hazardous waste site, requiring compliance with Title 22. Once again, it was inappropriate and improper for the Board to adopt an inaccurate enforcement order when Water Board staff and the discharger were aware of more current and significantly higher groundwater pollution concentrations. Also, shouldn't hazardous waste levels trigger mandatory involvement of additional state agencies, such as California Department of Toxic Substances Control (DTSC)? Hours of research of the Board's website did not reveal any notification or involvement of DTSC.

A. The public comment periods for the proposed and draft CAOs were discriminated towards the discharger and against the public.

Research showed the first version of the proposed CAO, dated January 20, 2015, was prepared by the Board's Prosecution Team with staff having extensive enforcement experience and knowledge of the Hinkley public's desires and preferences concerning clean up and abatement of the chromium discharge to the drinking water aquifer. Public comments on the proposed were allowed until March 13, 2015. This process was consistent with previous enforcement actions of the Regional Board. The public comments received by the Board were posted on their website and were overwhelming in favor of the proposed CAO—only the discharger was against most of the specific cleanup actions in the proposed order.

At the May 28, 2015 public workshop, however, things changed to an inconsistent process. The participants were divided into multiple tables, to allow an avenue for sharing goals and cleanup actions ideals to be included in a final CAO. Several of the tables were over-weighted with PG&E staff, attorneys, and consultants who argued with any and all comments by others not to PG&E's liking. This created a very intimidating atmosphere for the Hinkley residents to voice their opinions which conflicted with those of PG&E. At the end of the workshop, the Advisory Team summarized comments on a white board that greatly favored positions of the discharger in contrast with comments made by the public. The two Board members presiding at the workshop, Chair Kimberly Cox and Peter Pumprey, encouraged the participants to work

together to achieve common consensus goals for the final CAO. Such comments made no sense to the public since the comment period for the CAO closed on March 13, 2015.

Later it would be learned by the public that Board members, Chair Cox and Mr. Pumphrey, directed the Prosecution Team staff to meet with PG&E to achieve the goals summarized on the white board. From May 29 to July 8, 2015, the Prosecution Team met secretly with PG&E on multiple occasions (the exact number has not been revealed to the public) and in teleconference calls to discuss changes regarding disputed areas in CAO findings and orders. The interested public was not invited to these meetings nor made aware of their occurrences. A June 26, 2015 notice from the Executive Officer, Patty Z. Kouyoumjian stated the Regional Board was providing until July 8, 2015 for parties to submit consensus language for the Regional Board's consideration but confused the matter by adding, "This is not an additional comment period on the draft CAO, but rather an opportunity to work out issues in collaboration." Never has this process occurred in past cleanup and abatement orders under the Regional Board and provided great confusion to the public.

The resulting "consensus CAO," submitted to the Advisory Team on July 8, 2015, was an obviously watered-down version of the January 20, 2015 proposed CAO; deadlines to clean up chromium to certain concentrations in the drinking water aquifer were un-necessarily extended out in the future despite PG&E reports stating it could achieve cleanup at earlier dates. In addition, this draft order was not truly consensus because according to the cover memo signed by Lauri Kemper, Assistant Executive Officer, PG&E did not agree or concur with non-consensus language in the proposed CAO.

The "consensus CAO" was made public on July 9, 2015 but with a cover memo by the Executive Office, Patty Z. Kouyoumjian, stating that the Board would not accept public comments until its own version was released later. This made no sense. If the public was allowed to provide comments on the Prosecution Team's first proposed CAO from January 20, 2015, then the public should have been allowed to provide comments on the July 8, 2015 version released by the Prosecution Team, especially since the Regional Board incorporated many of PG&E's March 13, 2015 comments into the "consensus CAO." The Advisory Team's statement of refusal to accept any comment was also not consistent with past enforcement practices by the Regional Board.

The Advisory Team released its own version of the CAO on September 1, 2015 and stated it would accept public comments until September 30, 2015. According to the Regional Board's website, the public comments received by the Regional Board (not counting those from the discharger) opposed not only the water-downed version of the "consensus CAO" but also greatly objected to significant changes and deletions to findings and orders in the Advisory Team's recent version. Apparently, the Advisory Team took the highly unusual practice of revising many of the non-consensus language that PG&E also opposed. These significant changes and deletions were now inconsistent with past cleanup and abatement orders and investigative orders issued by the Regional Board and not supported with adequate data and evidence. They included: not holding PG&E to prescriptive chromium plume mapping

requirements, not investigating the extent of the chromium plume in all areas not clearly delineated, not conducting cleanup actions in the northern plume areas threatening domestic wells, not requiring chromium cleanup to specific deadlines in the lower aquifer and the western area, and not requiring PG&E to provide whole house water to domestic well owners whose wells get impacted above the Cr6 MCL of 10 ppb in the future. This version looked nothing like the Prosecution Team's January 20, 2015 version which rightly held PG&E to a high but achievable standard for cleanup and abatement. As before, the public provided comments to the Regional Board but they were essentially ignored.

A. The Regional Board failed to include and adopt orders that allowed for environmental justice for the Hinkley community and residents.

By adopting a confusing and unclear order that favors the discharger compared to the Prosecution Team's original January 20, 2015 proposed CAO, and does not include comments submitted by the public, the Regional Board's actions violated the State Water Board's policy on environmental justice.

Firstly, as mentioned in item I., the Regional Board failed to provide an adequate number of hearing handouts at the November 4, 2015 public meeting in which the CAO was adopted. When this subject was brought up after the hearing, one Board attorney replied that the public could have printed out the hearing documents on their own before the meeting. This comment failed to take into account those members of the public who live in the rural Hinkley area and can't afford a computer, printer, and/or internet service. Or for those public whose internet service is dial-up modem, the inability to download and print files greater than 100 KB in size. These same people also cannot afford the 40 minute drive to the Regional Board's Victorville office or take time off from work to review documents. The public therefore relies on the Regional Board to provide a sufficient number of hearing handouts at Board meetings. Before the time the hearing even began at 7:00 PM, there were no more handouts on the proposed CAO (October 16, 2015 version). In addition, late comments submitted by two members of the Hinkley public (Knott and Spasojevich) and the Prosecution Team (November 3, 2015) were not included in the handouts. There weren't that many attendees, so the lack of handouts was very unreasonable, the Hinkley public was discriminated against by the Regional Board as they could not follow along or understand what was happening.

Secondly, after a review, the Regional Board failed to include essentially all comments provided by the public for inclusion in the CAO while at the same time included almost all of PG&E's comments and statements that were poorly supported with far-flung evidence and data. With the adopted order allowing PG&E to use "best professional judgement" for drawing chromium plume lines on maps, it gives PG&E a biased opportunity to draw smaller plume lines than indicated by the data so as to conduct less chromium remediation and ensure significant cost

savings. The Prosecution Team's September 30, 2015 comments stated it clearly when relaying the history of this case and PG&E being caught on many occasions under-reporting or not reporting the extent of its chromium discharge in the drinking water aquifer.

Thirdly, the Regional Board reduced PG&E's burden from providing whole house water to domestic well owners affected by chromium waste to instead provide just clean water for drinking and cooking. The later action could be complied with by providing bottled water or reverse osmosis systems. As stated in Carmela Spasojevich's October 26, 2015 comment letter to the Regional Board, this action would not replace conditions normally in the home of affected well owners. Waiting an hour for a reverse osmosis system to generate a gallon of clean water creates an unacceptable burden by the well owner and others living in the home. As does providing 5-gallon bottled water to homes where the senior citizens residing there are unable to move, lift, or man-handle the heavy bottles. The Regional Board's attorney during the November 4 hearing callously implied it would be "unfair" to require PG&E to provide whole house water to residents with affected domestic wells (even though the Board required such actions in several cleanup and abatement orders and amendments issued in 2011). When actually it was unfair that Hinkley residents would have to wait for their domestic wells, some containing just 1 or 2 ppb chromium, to reach 10 ppb before PG&E would have to lift a finger. We do not think it is the intention of the Water Board to allow polluters to contaminate up to an MCL before action is required. When a resident can show historical documentation that the contamination in their well is increasing, the polluter should be required to provide whole house replacement water. If polluters are not held responsible in providing relief, the Water Board is setting a very dangerous precedent in leniency to polluters.

And finally, The Regional Board has failed to act on a request from the public made at the November 4, 2015 hearing under the Freedom of Information Act. Mr. Daron Banks noted at the hearing how the October 16 and September 1, 2015 versions of the proposed CAO were so in favor of the discharger that he requested a copy of all documents, comments, emails, meeting notes, and any other material related to the formation of these enforcement orders. He was informed that most of the documents he requested can be viewed on the Regional Board's webpage for the proposed CAO. As for the other material not posted, such as the comments from Mr. Knott, Ms. Spasojevich, the Prosecution Team's November 3, 2015 submittal, etc., meetings with the discharger, etc

Petitioner is Aggrieved

Petitioners are aggrieved for the reasons set forth in paragraphs IV above.

I. Petitioners' Requested Action by the State Board

We recommend that the State Board accept this Petition and set aside or vacate the November 4, 2015 adopted Order (Title 23, section 2052(a)(2)(b), for the reasons cited above. Given the obvious bias and lenient treatment towards PG&E by the Advisory Team, we welcome review by State Board professional geologists, scientists, and engineers in creating a new order that will hold PG&E to stringent cleanup actions while providing environmental justice for the Hinkley community. If these actions cannot be done, we request the State Board provide an evidentiary hearing on the Order pursuant to Water Code section 13320, after full opportunity for discovery.

I. Statement of Points and Authorities

See section 4 above, which is incorporated herein for reference. The Petitioners reserve the right to supplement its points and authorities in support of this Petition. ✓

I. Statement of Transmittal of Petition to the Regional Board

A copy of this Petition has been concurrently emailed to the Regional Board Executive Officer on December 4, 2015 at patty.kouyoumdjian@waterboards.ca.gov and to Kevin Sullivan of PG&E at kmsu@pge.com.

I. Issues and Objections Raised Before the Regional Board

The Petitioners raised the substantive issues asserted in this Petition, both verbally and in writing, before the Regional Board throughout the entire public comment period on the Order, beginning with the Regional Board's first cleanup and abatement order workshop on November 12, 2014. The last set of written comments submitted to the Regional Board make up Exhibits 3 and 4. ✓

This petition is being signed by the lead point of contact and signatures of all petitioners can be provided upon request.

Please See Attached Signature Page on faxed copy upon delivery.

Date: (11/25/15)

Daron Banks

Cc: Patty Kouyoumdian, Executive Officer, RWQCB, Lahontan Region
Kim Niemeyer, SWRCB, Office of Chief Counsel
Kevin Sullivan, PG&E

List of Exhibits:

1. Cleanup and Abatement Order No. R6V-2015-0068
2. Regional Board Agenda Announcement for November 4-5, 2015
3. Hinkley Community comments on draft cleanup and abatement order
4. Prosecution Team's comments on October 16, 2015 proposed cleanup and abatement order
5. Prosecution Team's comments on September 1, 2015 draft cleanup and abatement order
6. Advisory Team's September 1, 2015 draft cleanup and abatement order
7. July 8, 2015 Consensus cleanup and abatement order from the Prosecution Team and PG&E
8. Prosecution Team's comments on May 21, 2015 proposed cleanup and abatement order
9. Prosecution Team's January 20, 2015 draft cleanup and abatement order

Daron Banks

Signature: Daron Banks

Printed Name: Daron Banks

Carmela Spasojevich

Signature: _____

Printed Name: _____

Betty Hernandez

Signature: _____

Printed Name: _____

Barbara Ray

Signature: Barbara Ray

Printed Name: Barbara K Ray

Roger Killian

Signature: Roger Killian

Printed Name: Roger Killian

Roberta Walker

Signature: Roberta Walker

Printed Name: Roberta E Walker

Gregg Walker

Signature:



Printed Name:

Gregory Jay Walker

Reanna Walker' Banks

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Carmela Spasojevich

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