

California Regional Water Quality Control Board
Colorado River Basin Region

Linda S. Adams
Acting Secretary for
Environmental Protection

73-720 Fred Waring Drive, Suite 100, Palm Desert, California 92260
(760) 346-7491 • FAX (760) 341-6820
<http://www.waterboards.ca.gov/coloradoriver>

Edmund G. Brown Jr.
Governor

July 26, 2011

Pamela S. Innis, Remedial Project Manager
U.S. Department of the Interior
Office of Environmental Policy and Compliance
P.O. Box 2507 (D-108)
Denver Federal Center, Building 56
Denver, CO 80225-0007
pamela_innis@ios.doi.gov

Dear Ms. Innis:

**LETTER AGREEMENT TO ENFORCE COMPLIANCE WITH APPLICABLE OR RELEVANT
AND APPROPRIATE REQUIREMENTS (ARARs) FOR THE WASTE DISCHARGE FROM THE
PACIFIC GAS AND ELECTRIC (PG&E) TOPOCK COMPRESSOR STATION INTERIM
MEASURES-3 (IM-3) FACILITY**

On behalf of my client, the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board) and its Executive Officer, Robert Perdue, I am writing for four reasons:

1. To notify the U.S. Department of the Interior (DOI) about the attached substantive Applicable or Relevant and Appropriate Requirements (ARARs) (Attachment A) for the PG&E Topock Compressor Station IM-3 Facility's waste discharge that we believe must be enforced to adequately protect water quality consistent with the substantive requirements of California law;
2. To seek DOI's concurrence with these ARARs;
3. To confirm DOI's agreement to enforce compliance with these ARARs as part of the "Work," a term defined by an Administrative Consent Agreement, dated July 11, 2005, entered into by DOI and other federal agencies under DOI's jurisdiction, and PG&E (Consent Agreement)¹, that PG&E is required to conduct at the Topock Site² consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9601 et seq.), rather than having the Regional Water Board regulate the discharge by issuing new Waste Discharge Requirements (WDRs) through adoption of a Board Order to replace the current Board Order No. R7-2006-0060, which expires on September 20, 2011; and,

¹ The Consent Agreement defines the term "Work" as "all response actions and corrective actions associated with releases of hazardous substances at the Site performed by PG&E, including all activities to be performed by PG&E as described in Article IX (Work To Be Performed) and all activities conducted by PG&E pursuant to the CACA." Consent Agreement, Article 7.2.

² The Consent Agreement defines the term "Site" as "all areas where hazardous substances released at or from the Compressor Station have come to be located, including areas where hazardous substances are discovered in the course of performing the Work." Consent Agreement, Article 7.1.

4. To seek DOI's concurrence with the division of roles and responsibilities of staff of the Regional Water Board and DOI described below.

To assist DOI in its preparation of a response, the relevant regulatory history of the IM-3 Facility and its predecessors follows.

In January 2004, PG&E was ordered by the California Department of Toxic Substances Control (DTSC), the lead state agency involved at the Topock Site, to prepare an Interim Measures Workplan (identified as IM-1) to mitigate potential impacts of chromium in groundwater on the Colorado River. DTSC's authority to issue this order is based on a Corrective Action Consent Agreement (CACA) entered into between DTSC and PG&E, dated February 26, 1996. DTSC required PG&E to take this action as an interim corrective measure until such time as a permanent remedy could be identified and selected for the Topock Site.

The following month, DTSC ordered PG&E to prepare a follow-up Interim Measures Workplan (IM-2) to address pumping, transport, and disposal of groundwater from existing monitoring wells at a location identified as the MW-20 bench in order to prevent and/or mitigate potential impacts to the Colorado River from the chromium in the groundwater. The IM-2 Workplan called for the extraction of groundwater from existing monitoring wells and off-site transport and disposal of the groundwater at a permitted facility. IM-2 pumping began in March 2004. PG&E began batch treatment of the extracted groundwater prior to off-site transport in July 2004.

Computer groundwater modeling was conducted at the Topock Site to evaluate the pumping rates needed to maintain an inward (i.e., away from the Colorado River) gradient over all anticipated conditions of annual river flow. Based on the groundwater model projection, it was determined that extraction rates up to approximately 130 gallons per minute (gpm) would be needed to provide this desired gradient. Due to physical limitations associated with the extraction and batch treatment system at the MW-20 bench, however, the conclusion was reached that the system at the MW-20 bench did not allow for sufficient capacity to handle and treat the substantially larger volumes of pumped water necessary to maintain a landward gradient.

Based on this conclusion, DTSC ordered PG&E in July 2004 to prepare an IM-3 Workplan to increase the extraction rate to 135 gallons per minute and to implement treatment and disposal alternatives to trucking. The system that resulted is the current IM-3 Facility, which became operational in July 2005. The IM-3 Facility pumps groundwater from extraction wells, treats the groundwater, and reinjects the treated groundwater into injection wells at a design rate of 135 gpm, which has been demonstrated to be adequate to hydraulically control the hexavalent chromium contaminated groundwater plume so that the desired net landward groundwater gradient away from the Colorado River is maintained.

Because the discharge of the treated groundwater is subject to regulation under California's Porter-Cologne Water Quality Control Act,³ however, the Regional Water Board required PG&E to submit a Report of Waste Discharge before allowing the treated groundwater discharge into

³ Water Code section 13000 et seq.

the injection wells to occur. Based on the information submitted, the Regional Water Board issued WDRs through adoption of a Board order to regulate the discharge. As mentioned, the discharge is currently regulated pursuant to Board Order No. R7-2006-0060, which expires on September 20, 2011.

In 2004, DOI and other federal agencies under DOI's jurisdiction, the U.S. Fish & Wildlife Service, the Bureau of Reclamation (BOR), and the Bureau of Land Management (BLM) (the Federal Agencies), became involved with the Topock Site when it was determined, based on groundwater monitoring required by DTSC pursuant to the CACA, that groundwater underlying portions of the Havasu National Wildlife Refuge and adjacent BOR/BLM land had been contaminated with hexavalent chromium released into the soils from PG&E's Topock Natural Gas Compressor Station. In accordance with their CERCLA authorities, the Federal Agencies entered into the Consent Agreement with PG&E to require PG&E to take response actions to address the contamination in a manner consistent with CERCLA and its implementing regulations, the National Contingency Plan (NCP)⁴. The Consent Agreement also served to facilitate cooperation and coordination among the Federal Agencies, DTSC, and PG&E regarding PG&E's implementation of corrective actions PG&E was undertaking pursuant to the CACA, and to ensure that such actions under the CACA would comply with federal requirements under CERCLA and the NCP.

The CERCLA on-site response actions included developing a Corrective Measures Study/Feasibility Study (CMS/FS) jointly with DTSC to determine the preferred remedial action for providing a long-term solution to clean up the soil and groundwater contamination at the Topock Site. The CMS/FS process for addressing this contamination was bifurcated into a soils component and a groundwater component. The Consent Agreement also defined the "Work" performed by PG&E at the Topock Site as including all response actions and corrective actions associated with releases of hazardous substances at the Topock Site performed by PG&E, whether such work was performed pursuant to the Consent Agreement or the CACA.⁵ Consequently, the Consent Agreement made clear that, as provided in CERCLA section 121(e)(1),⁶ the Federal Agencies did not require a Federal, State, or local permit for any Work performed in compliance with the Consent Agreement.⁷

⁴ 40 Code of Federal Regulations Part 300.

⁵ Consent Agreement, Article 7.2.

⁶ CERCLA section 121(e)(1) provides: "No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section [121]." It is commonly referred to as the CERCLA permit exemption. See also 40 Code of Federal Regulations section 300.400(e) (no permits required for response actions).

⁷ Consent Agreement, Articles 4.2 and 11.1.

As a result of PG&E's recently completing the CMS/FS process for the groundwater component, DOI identified and approved a groundwater remedy for the PG&E Topock Compressor Station in a Groundwater Record of Decision (ROD), executed on January 20, 2011.⁸ The IM-3 Facility is not part of that ROD since the IM-3 Facility was designed and has been operated as an interim corrective measure until such time as a long-term remedy could be identified and implemented. Consequently, based on the estimated time schedules for construction and implementation of the groundwater remedy identified in the ROD, and based on PG&E's continuing need to use the IM-3 Facility to maintain hydraulic control of the hexavalent chromium contaminated groundwater plume in the interim until such time as DTSC directs PG&E that use of the IM-3 Facility is no longer needed, it is clear that the discharge will not be able to be terminated prior to the September 20, 2011 expiration date of Board Order No. R7-2006-0060. As a result, the waste discharge from the IM-3 Facility will need to be regulated either through renewed WDRs or in some other legally acceptable way in order for PG&E to avoid being in potential violation of the legal requirements specified in Porter-Cologne for the discharge of waste.

The alternate regulatory approach described here, for which DOI's agreement is sought, is to have DOI enforce PG&E's compliance with the attached ARARs for its IM-3 Facility's waste discharge through DOI's CERCLA authority and to rely on the CERCLA section 121(e)(1) permit exemption as the basis for not renewing the current WDRs permit. As mentioned, DOI has been exercising that CERCLA response authority at the Topock Site since 2005 when it entered into the Consent Agreement with PG&E to address its release of hexavalent chromium and other hazardous substances into the soils and groundwater at the Topock Site.

DOI elaborated on the scope and effect of the CERCLA section 121(e)(1) permit exemption with respect to the Topock Site in general in a memo dated November 16, 2007, from Ms. Melissa Derwart, Office of the Solicitor, to Ms. Kris Doebbler, Remedial Project Manager, PG&E Topock CERCLA Site. A copy of that memo is enclosed. Because that memo only discussed DOI's view as to the scope and effect of the CERCLA permit exemption with respect to the Topock CERCLA Site in general, however, I requested further clarification from Mr. Casey Padgett, Assistant Solicitor, DOI, by letter dated April 7, 2011, as to whether DOI viewed the CERCLA permit exemption as also applying to the IM-3 Facility operations in particular. A copy of this letter is also enclosed. Mr. Padgett replied by letter the following day to express DOI's view that the CERCLA permit exemption "clearly extends to the IM-3 facility." A copy of Mr. Padgett's reply is enclosed.

In follow-up telephone conversations about this alternate regulatory approach with Mr. Padgett, Mr. Perdue, Mr. Juan Jayo, Senior Counsel, PG&E, and Ms. Janice Schneider, outside counsel for PG&E with Latham & Watkins, Mr. Padgett confirmed that PG&E's waste discharge from the IM-3 Facility is subject to DOI's oversight and enforcement pursuant to DOI's CERCLA authorities and the requirements of the Consent Agreement, and that the waste discharge activities fall within the scope of the CERCLA section 121(e)(1) permit exemption.

⁸ DTSC also selected a groundwater remedy for the Topock Site, which is embodied in a Statement of Decision and Resolution of Approval for the PG&E Topock Compressor Station Groundwater Remediation Project, executed by DTSC on January 31, 2011.

Mr. Padgett also requested that the Regional Water Board prepare a letter to identify and document the necessary Regional Water Board substantive requirements that PG&E would have to satisfy as CERCLA ARARs. Mr. Padgett explained that since DTSC required PG&E to construct the IM-3 Facility pursuant to the CACA, and since all corrective actions undertaken under the CACA are defined as "Work" in the Consent Agreement that PG&E is required to conduct,⁹ the IM-3 Facility operations and its waste discharge are part of an on-going CERCLA "response action" PG&E is undertaking at the Topock Site.

Mr. Padgett pointed out that response actions include both removal and remedial actions, citing 40 Code of Federal Regulations section 300.5, and that while many of the provisions of CERCLA section 121 apply only to remedial actions (including the section 121(e)(1) permit exemption requirement that a *remedial* action be "selected and carried out in compliance with this section [121]"), the first part of the permit exemption in CERCLA section 121(e)(1) applies to both *removal* and remedial actions conducted entirely on-site ("No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite,...."). He also noted that consistent with applicable EPA Guidance¹⁰ and the NCP,¹¹ removal actions must attain ARARs to the extent practicable (and in the absence of a waiver), considering site-specific circumstances, including among other things, the urgency of the situation and the scope of the removal action. Because here the existing circumstances at the Topock Site allow for the identification and attainment of ARARs for the continued operation of the IM-3 Facility, Mr. Padgett said that it would be appropriate under these site-specific circumstances to require the IM-3 Facility to attain ARARs. Consequently, Mr. Padgett indicated that DOI would direct PG&E to comply with the Regional Water Board's ARARs provided herein as part of the "Work" PG&E is required to perform under the Consent Agreement.

Accordingly, on behalf of the Regional Water Board and its Executive Officer, Mr. Perdue, I propose that DOI adopt the attached ARARs as substantive requirements with which PG&E will be required to comply in the course of discharging treated groundwater from the IM-3 Facility, and propose the following division of roles and responsibilities for staff of the Regional Water Board and DOI:

1. Regional Water Board staff would be responsible for verifying compliance, and identifying any noncompliance, with the ARARs specified for the waste discharge from the IM-3 Facility through review of monitoring reports that PG&E would submit to the Regional Water Board, with a copy to DOI, and through any on-site inspections conducted by Regional Water Board staff.
2. Upon written request by Regional Water Board staff, DOI staff would be responsible for taking any enforcement actions against PG&E for any alleged non-compliance with those ARARs, including but not limited to, informal enforcement, such as notifying PG&E by telephone

⁹ Consent Agreement, Article 7.2.

¹⁰ See, e.g., *Guidance on the Consideration of ARARs During Removal Actions*, EPA 540/P-91/011 (August 1991).

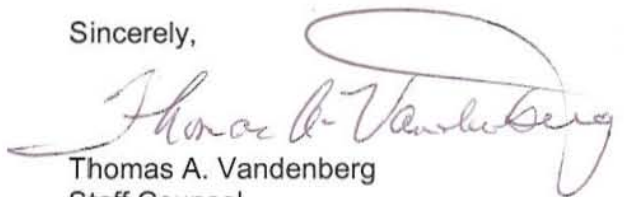
¹¹ 40 Code of Federal Regulations section 300.415(j).

and/or mail, and formal enforcement through the Consent Agreement, including but not limited to, the filing of a federal court action in accordance with federal law and any applicable governing documents, including this letter agreement.

I look forward to receiving DOI's concurrence with the attached substantive ARARs and the proposed division of roles and responsibilities of staff of the Regional Water Board and DOI, and DOI's agreement to enforce PG&E's compliance with the ARARs for its IM-3 Facility's waste discharge as part of the "Work" PG&E is conducting at the Topock Site consistent with CERCLA requirements. Upon receipt of DOI's written agreement to the requests described herein, and DOI's direction to PG&E to operate the IM-3 Facility in accordance with the attached ARARs, PG&E would be authorized to discharge from the IM-3 Facility as provided herein.

In the meantime, if you have any questions, please do not hesitate to contact me via e-mail at: tvandenberg@waterboards.ca.gov or by phone at (916) 341-5195.

Sincerely,



Thomas A. Vandenberg
Staff Counsel
Colorado River Basin Regional Water Board

Enclosures:

1. Proposed ARARs (Attachment A).
2. Memo from Melissa Derwart, Attorney-Advisor, Office of the Solicitor, to Kris Doebbler, Topock Remedial Project Manager, PG&E Topock CERCLA Site, dated November 16, 2007.
3. Letter from Tom Vandenberg, Regional Water Board, to Casey Padgett, DOI, dated April 7, 2011.
4. Letter from Casey Padgett, DOI, to Tom Vandenberg, Regional Water Board, dated April 8, 2011.
5. Administrative Consent Agreement dated July 11, 2005.

cc: See next page

Pamela S. Innis, Remedial
Project Manager

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July 26, 2011

cc: Robert Perdue **[via email only]**
Executive Officer
Colorado River Basin Regional Water
Quality Control Board
rperdue@waterboards.ca.gov

Casey S. Padgett, Assistant Solicitor
U.S. Department of the Interior
Office of the Solicitor
1849 C Street, NW
Mail Stop #5530
Washington, DC 20240
Casey.Padgett@sol.doi.gov

Melissa Derwart, Attorney-Advisor
U.S. Department of the Interior
Office of the Solicitor
Environmental Compliance
and Response Branch
1849 C Street, NW
MS #5530
Washington, D.C. 20240
Melissa.Derwart@sol.doi.gov

Juan Jayo, Esq. **[via email only]**
PG&E
JMJ8@pge.com

Janice Schneider, Esq. **[via email only]**
Latham & Watkins LLP
Janice.Schneider@lw.com

Robert Lucas **[via email only]**
Lucas Advocates
bob.lucas@calobby.com