



## Association of California Water Agencies

Leadership Advocacy Information *Since 1910*

July 12, 2011

Submitted via email: [hsinger@waterboards.ca.gov](mailto:hsinger@waterboards.ca.gov)

Harold Singer  
Executive Officer  
California Regional Water Quality Control Board  
Lahontan Region  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150

Re: **Draft Amended Cleanup and Abatement Order No. R6V-2011-0005A1**

Dear Mr. Singer:

The Association of California Water Agencies appreciates the opportunity to comment on the Draft Amended Cleanup and Abatement Order No. R6V-2011-0005A1 requiring Pacific Gas and Electric Company (PG&E) to clean up and abate waste discharges of total and hexavalent chromium to the groundwaters of the Mojave Hydrologic Unit (the Draft Order).

ACWA represents nearly 450 public water agencies in California that collectively supply over 90% of the water delivered in California for domestic, agricultural and industrial uses. ACWA and its member agencies' highest priority is to protect public health while ensuring a reliable water supply for consumers. ACWA has an extensive history of working cooperatively with the Office of Environmental Health Hazard Assessment (OEHHA) on the development of Public Health Goals (PHGs) and with the California Department of Public Health (CDPH) on the development of drinking water standards (maximum contaminant levels or MCLs). We consistently support and encourage efforts by the responsible parties to remediate contamination and ensure the water delivered to our customers meets all primary and secondary drinking water standards.

In addition, ACWA has been actively involved in the development of a drinking water standard for hexavalent chromium (chromium-6) including research on treatment technologies for water systems to remove chromium-6 from the state's water supplies.

ACWA is concerned about several of the provisions in the draft order and the unintended consequences of adopting this order as currently proposed.

### **Public Health Goal as a Regulatory Standard**

As noted by Regional Board staff in the Draft Order, OEHHA, the office responsible for establishing the PHGs, has not finalized a PHG for chromium-6. This is particularly important as there continues to be ongoing scientific debate related to the health risks when ingesting chromium-6 through drinking water supplies. It is premature to use draft risk assessments when adopting enforcement orders.

The Draft Order states that the Lahontan Regional Board utilizes SWRCB Order WQ 2005-0007. p. 5 when determining it can use the 0.02 µg/L draft chromium-6 PHG as an appropriate safe drinking water standard to require replacement water for affected wells. However, PHGs are not the drinking water standards under state law. Rather, PHGs serve as the basis for the development of the drinking water standard (the Maximum Contaminant Level or MCL) by CDPH. Under Health and Safety Code Section 116365, the state (CDPH) is required to consider technological and economic feasibility when the set the drinking water standards. Consideration of these factors is critical in the development of drinking water requirements.

Additionally, SWRCB Order WQ 2005-0007 concludes that “where new water replacement orders are considered, or where existing agreements or orders provide for reconsideration of replacement water levels, regional water boards should defer to OEHHA and DHS [CDPH] in determining safe drinking water levels,” and OEHHA clearly states in their PHG technical documents that PHGs are not appropriate target levels for remediation of groundwater.

The circumstances of the order for perchlorate remediation that were the subject of SWRCB Order WQ 2005-0007 were markedly different. A proven technology existed to remove perchlorate to the ordered cleanup level, and there was no uncertainty regarding the level of naturally occurring perchlorate at the site. Furthermore, in a November 16, 2010 memo to Board members, Lahontan Regional Board staff incorrectly stated that in the reference case the 4 µg/L cleanup level for perchlorate contamination was the PHG at the time. There was no PHG prior to the adoption of a 6 µg/L PHG in 2007--the 4 µg/L was a CDPH notification level.

In the case of chromium-6, the laboratory analytical method has only been recently modified to address the proposed PHG, and it has not been certified by CDPH. There is also no approved or demonstrated treatment method to remove chromium-6 to the proposed PHG. It is also important to note that the proposed PHG level (and the 0.06 µg/L level referenced in the draft order) is at or below naturally occurring levels in many areas of the state including the high desert region of the Mojave Desert.

### **Legal Definition**

We urge the Regional Board to review the California Supreme Court's decision in the matter of Hartwell v. Superior Court and the Court of Appeals decision in In Re Groundwater. Both of those cases make it clear that MCLs are the regulatory standard to be met for the supply of drinking water. The Courts rejected the arguments that PHGs or Notification Levels are regulations that must be followed in terms of compliance with State and Federal Safe Drinking Water Law.

### **Inhalation Risks**

It was noted in the proposed order that OEHHA did not take into account certain studies related to the inhalation risks when using chromium-6 contaminated water in domestic appliances that could create vaporized water. It is not appropriate for Regional Board staff to make assertions about toxicological health risks, particularly risks that OEHHA chose not to include after careful consideration in multiple drafts of the chromium-6 PHG.

### **Timeline**

The Draft Order outlines a compliance timeline for the discharger that we do not think is appropriate based on a number of factors. We believe this is the case for both the 0.02 ppb and 0.06 ppb levels described in the draft order. These factors include:

- 1) the absence of a final PHG, and/or a draft or a final MCL;
- 2) the lack of approved methods to detect and effectively remove chromium-6 to the proposed PHG;
- 3) in many parts of the state, the naturally occurring chromium-6 levels that are at or above the proposed PHG,
- 4) the inability of PG&E (or any other entity) to guarantee that the interim bottled water supply meets a draft PHG that the state office (OEHHA) responsible for developing the risk assessment acknowledges should not be used in order to remediate groundwater contamination.

### **Conclusion**

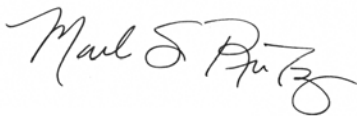
ACWA supports the Regional Board's efforts to ensure that responsible parties remediate the contamination of the state's drinking water supply caused by their activities. As with all sites contaminated through anthropogenic sources, we feel it is appropriate that the responsible party clean up drinking water supplies to the background concentrations in the designated areas and provide replacement water for affected residents until that time. However, directing the discharger to provide residents and businesses with an interim, then permanent water

supply that meets the draft PHG level for chromium-6, is overriding the processes carefully developed by both OEHHA and CDPH.

The Regional Board is essentially proposing to set a drinking water standard for compliance using a PHG that: 1) is a draft PHG; 2) is not a drinking water standard (i.e., is not a Maximum Contaminant Level); and 3) may not be attainable with currently approved technology. To adopt this order as it is written would set a dangerous precedent and would be a disservice to all involved parties, including the residents of Hinkley.

We would welcome the opportunity to discuss this matter further with Regional Board staff and work together to find the most appropriate solution to protect the health of Hinkley's residents while not setting a precedent that is counter to the State's drinking water requirements and program. If you have questions or would like additional information, please contact Danielle Blacet, ACWA senior regulatory advocate, at 916-441-4545 or [danielleb@acwa.com](mailto:danielleb@acwa.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Rentz". The signature is written in a cursive, flowing style.

Mark S. Rentz  
Director of Regulatory Affairs