

E-Filed 4/14/10

1 Christopher Sproul (State Bar No. 126398)
 Jodene Isaacs (State Bar No. 226895)
 2 ENVIRONMENTAL ADVOCATES
 5135 Anza Street
 3 San Francisco, California 94121
 Telephone: (415) 533-3376, (510) 847-3467
 4 Facsimile: (415) 358-5695
 Email: csproul@enviroadvocates.com
 5 Email: jisaacs@enviroadvocates.com

6 William Verick (State Bar No. 140972)
 7 Klamath Environmental Law Center
 Fredric Evenson (State Bar No. 198059)
 8 Law Offices of Fredric Evenson
 424 First Street
 9 Eureka, California 95501
 Telephone: (707) 268-8900
 10 Facsimile: (707) 268-8901
 Email: wverick@igc.org, ecorights@earthlink.net

11 Attorneys for Plaintiff
 12 ECOLOGICAL RIGHTS FOUNDATION

13
 14 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

15 ECOLOGICAL RIGHTS FOUNDATION,

Civil No. CV-10-00121 RS

16 Plaintiff,

17 v.

18 PACIFIC GAS AND ELECTRIC COMPANY.

19 Defendant.

20 STIPULATION AND ~~PROPOSED~~
 ORDER REGARDING MOTION FOR
 LEAVE TO FILE FIRST AMENDED
 COMPLAINT AS MODIFIED BY
 21 THE COURT
 22
 23
 24
 25
 26
 27
 28

1 **STIPULATION**

2 WHEREAS, on January 11, 2010, Plaintiff Ecological Rights Foundation filed a Complaint
3 for Declaratory and Injunctive Relief and Civil Penalties (“Original Complaint”) under Clean Water
4 Act (“CWA”) section 505(a)(1), 33 U.S.C. § 1365(a)(1), seeking relief for the alleged unlawful
5 discharge of pollutants from Pacific Gas and Electric Company (“PG&E”)’s corporation yards and
6 service centers located throughout Northern California (“the Facilities”) into waters of the United
7 States in violation of the CWA. See Docket Doc. No. 1;

8 WHEREAS, on April 8, 2010, Plaintiff filed a Notice of Motion for Leave to File First
9 Amended Complaint and Memorandum of Points and Authorities in support thereof (“Motion for
10 Leave to File First Amended Complaint”), seeking to provide additional detail on the background
11 statutory law applicable to this case and the specific way in which Plaintiff alleges that PG&E has
12 violated that law at the Facilities;

13 WHEREAS, on February 9, 2010, Plaintiff served a Notice of Violation and Intent to File
14 Suit Under the CWA and Resource Recover and Conservation Act (“RCRA”) (“Notice Letter”) on
15 PG&E, the U.S. Environmental Protection Agency, and relevant State agencies as required by the
16 notice provisions of the CWA and RCRA. See CWA section 505(b), 33 U.S.C. § 1365(b); RCRA
17 section 7002(b)(2)(A), 42 U.S.C. 6972 (b)(2)(A);

18 WHEREAS, pursuant to the notice provisions of RCRA, Plaintiff is required to wait 90 days
19 from the date of service of the Notice Letter before filing suit under RCRA;

20 WHEREAS, after the expiration of the 90-day notice period, Plaintiff intends to seek leave to
21 file a Second Amended Complaint adding additional claims under RCRA section 7002(a)(1)(B), 42
22 U.S.C. § 6972 (a)(1)(B);

23 WHEREAS, prior to and after the filing of the Motion for Leave to File First Amended
24 Complaint, counsel for Plaintiff and counsel for PG&E met and conferred regarding whether PG&E
25 would or would not oppose the Motion for Leave to File First Amended Complaint;

26 WHEREAS, the parties agreed that PG&E would not oppose the Motion for Leave to File
27 First Amended Complaint provided that Plaintiff would stipulate that PG&E would not be obligated

1 to file an Answer or otherwise plead to the First Amended Complaint because of Plaintiff's intention
2 to soon file a Second Amended Complaint to incorporate new claims under RCRA;

3 NOW, THEREFORE, having reached an agreement, the parties do hereby stipulate, by and
4 through counsel, that:

5 1. PG&E has agreed not to oppose the Motion for Leave to File First Amended
6 Complaint;

7 2. Plaintiff has agreed that PG&E will not be obligated to file an Answer or
8 otherwise plead to the First Amended Complaint;

9 3. PG&E's Answer or other responsive pleading to the Second Amended
10 Complaint will be due in accordance with the schedule established by the Federal Rules of
11 Civil Procedure.

12

13 Dated: April 13, 2010

14

/s/ Bradley Rochlen

15

Bradley S. Rochlen

16

Foley & Lardner LLP

17

321 North Clark Street, Ste. 2800

18

Chicago, IL 60654

19

(312) 832.4906

20

brochlen@foley.com

21

ATTORNEYS FOR DEFENDANT

22

PG&E

23

Christopher a. sproul

24

Christopher Sproul

25

Environmental Advocates

26

5135 Anza Street

27

San Francisco, CA 94121

28

(415) 386-6709

csproul@enviroadvocates.com

ATTORNEYS FOR PLAINTIFF

ECOLOGICAL RIGHTS

FOUNDATION


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROPOSED ORDER

On April 13, 2010, Plaintiff Ecological Rights Foundation and Defendant Pacific Gas & Electric Company filed a Stipulation and Proposed Order Regarding Motion for Leave to File First Amended Complaint (“the Stipulation”). Having considered the stipulation, and good cause appearing, the Court hereby GRANTS the Stipulation and orders as follows:

PG&E will not oppose Plaintiff’s Motion for Leave to File First Amended Complaint, filed April 8, 2010. PG&E will not be obligated to file an Answer or otherwise plead to the First Amended Complaint. PG&E’s Answer or other responsive pleading to the Second Amended Complaint will be due in accordance with the schedule established by the Federal Rules of Civil Procedure. The pending motion to dismiss is denied as moot, without prejudice to the reassertion of the same or similar arguments in response to the Second Amended Complaint.
IT IS SO ORDERED.

Dated: April 14, 2010


Richard Seeborg
United States District Judge