

## MEMO

**To:** Kim Sackett, FASIS Assistant Executive Director  
**From:** William J. Arnone, Jr.  
**Subject:** PG&E Training Agreement  
**Date:** April 5, 2019

*Bill Arnone*

You requested a Memorandum concerning my comments to the FASIS Board of Directors at its March 21, 2019 meeting regarding a Training Agreement recently proposed by PG&E as a condition for participation in its "Natural Gas Incidents" class. The class, offered at no charge, is described as "a one-day course of instruction on using a multi-gas detection device and taking action in a variety of field-based scenarios." It is offered at PG&E's Gas Safety Academy located in Winters, California. To sign up for the class, both the public safety entity ("Agency") and the student to be trained must sign various documents. The master "PG&E Training Agreement" is a contract between the Agency and PG&E. Students attending on behalf of an Agency must sign both a "PG&E Enrollment Form," and a separate "On-Site Access Agreement."

While it is understandable that PG&E wants to protect itself from damages or claims arising from use of its facility, or application of its practices, questions have been raised about whether those legitimate interests justify requirements that individuals waive privacy rights, submit to medical examinations, and disclose sealed or expunged court records. Moreover, stringent confidentiality terms raise legitimate concerns about whether students can actually practice what they learn, given the breath of the non-disclosure obligations.

The PG&E Training Agreement understandably prohibits use, sale or possession of controlled substances or alcohol at PG&E facilities. But it also authorizes PG&E to exclude and deny access to any students who have been found guilty, pled guilty or pled nolo contendere to a charge of sale or distribution of illegal drugs over the last five years, whether or not the criminal record was later expunged or sealed by court order. Moreover, if the Agency has reasonable cause to believe that PG&E policies have been violated, the Agency is required to do the following:

1. Inform PG&E;
2. Search the student;
3. Search the student's vehicle, locker, storage area and personal effects, and
4. Require a fitness for duty examination that includes obtaining urine and/or blood specimens for drug and alcohol analysis.

The Enrollment Form to be signed by the student requires a waiver of any claims for harm, injury or damage that may befall the student in connection with the training, regardless of whether PG&E was responsible in any way for the harm. The Enrollment Form also contains overly broad confidentiality provisions that prohibit a student from disclosing or sharing any materials received, or information learned, concerning technology or practices developed by PG&E. Thus, the students are prohibited from sharing with their respective Agencies

any information regarding best practices or procedures learned during the course of the training. While PG&E has every right to protect its ownership of materials and technics developed by the company, prohibiting students from disclosing or sharing what they learned at the training seems to defeat the whole purpose of offering the class. Finally, in the On-Site Access Agreement, students agree to submit to the invasive search, and fitness for duty examination, requirements imposed on the Agency in the Training Agreement.

So as it stands currently, public safety entities must weigh the pros and cons of participating in the PG&E training. While the requirements may not be illegal per se, they do raise many policy questions that call in to question the advisability of participating in the classes. The California Fire Chief's Association has taken an interest in this matter and may propose modifications to the agreement terms. But for now, the training is offered on a take it or leave it basis.