CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	Order R2-2012-0032
Guadalupe Rubbish Disposal Co., Inc.	)	~~(Proposed)~~
	)	
	)	**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER; AND ORDER ~~(PROPOSED)~~**
Guadalupe Recycling and Disposal Facility San Jose, Santa Clara County	)	
	)	

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and Guadalupe Rubbish Disposal Co., Inc. (Discharger) (collectively Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. The Discharger owns and operates the Guadalupe Recycling and Disposal Facility (Landfill). During the period of time relevant to these proceedings, the Discharger leased to Guadalupe Energy Holdings, LLC (GEH)[1] a portion of the Landfill property where GEH operated a landfill gas recovery facility (LFG Facility). The Discharger is required to operate and maintain its Landfill and related appurtenances to prevent the discharge of waste (including, but not limited to landfill gas condensate or storm water contaminated with landfill gas condensate) to waters of the State and United States in compliance with requirements of Waste Discharge Requirements (WDRs) Regional Water Board Order No. 01-050, and State Water Resources Control Board (State Water Board) Water Quality Order No. 97-03-DWQ, WDRs for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (Industrial Storm Water General Permit).

2. On November 16, 2011, pursuant to California Water Code section 13323, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint R2-2011-0066 (the Complaint) to the Discharger. The Complaint sought to assess administrative civil liability pursuant to California Water Code section 13385, subdivision (c).

3. The Complaint alleges, inter alia, that the Discharger violated Prohibitions 4, 6, 7, and 8 of WDRs Order No. 01-050; Prohibitions 1 and 2 of the Industrial Storm Water General Permit; Clean Water Act section 301; and Water Code section 13376 on or about and between December 20 and December 23, 2010, when the following occurred: landfill gas condensate discharged

[1] GEH was a subsidiary of Fortistar Methane Group, LLC

from the LFG Facility, flowed to the Landfill's stormwater detention basin, and mixed with stormwater, which then discharged to an unnamed tributary of McAbee Creek without authorization under a National Pollution Discharge Elimination (NPDES) Permit. McAbee creek is a water of the State of California and a water of the United States. The discharge of condensate-contaminated stormwater was initially estimated to be approximately 86,220 gallons.

4. Based on evidence provided to the Prosecution Team by the Discharger during settlement discussions conducted subsequent to the issuance of the Complaint, the Prosecution Team agrees to the following: (1) the volume of condensate-contaminated stormwater alleged to have been discharged is estimated to be 31,202 gallons (revised from 86,220 gallons); and (2) the alleged potential for harm factor is 4 (revised from 5 in consideration of new evidence that acute toxicity tests on 15-day old rainbow trout resulted in a 95 percent survival rate and that the multiday closure of the Almaden Quick Silver Park occurred due to factors other than residual threat or harm from the discharge). These changes are reflected in this Stipulation and Order and are addressed in detail in the Amended Enforcement Policy Methodology, attached hereto as Exhibit A and incorporated herein by reference.

5. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violations set forth in the Complaint without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to California Government Code section 11415.60. The liability imposed by this Order is consistent with a reasonable liability determination using the methodology in the Enforcement Policy (see Exhibit A, attached hereto and incorporated herein by this reference). The Prosecution Team believes that the resolution of the alleged violations set forth in the Complaint is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning those violations, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

6. To resolve by consent and without further administrative proceedings the alleged violations set forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the amount of $167,285 against the Discharger, which includes $20,100 for staff costs.

Section III: STIPULATIONS

The Parties stipulate to the following:

7. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

8. **Administrative Civil Liability:** No later than 30 days following the Regional Water Board's, or its delegee's, execution of this Order, the Discharger shall pay a total of $167,285, which includes $20,100 in Regional Water Board staff costs, in stipulated administrative civil liability by check made payable to the "State Water Resources Control Board" to be deposited into the State Water Pollution Cleanup and Abatement Account. The check shall reference the Order number listed on page one of this Stipulation. The original signed check shall be sent to

the San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612, with a copy to: Ann Carroll, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and Laurent Meillier, San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612.

9. **Compliance with Applicable Laws**: The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including but not limited to additional administrative civil liability.

10. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board:

Brian Thompson
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
BRThompson@waterboards.ca.gov
(510) 622-2422

For the Discharger:

William Spence
District Manager
Guadalupe Rubbish Disposal Company, Inc.
15999 Guadalupe Mines Road
San Jose, CA 95120
wspence@wm.com
(408) 323-6311

Andrew M. Kenefick
Senior Legal Counsel
Waste Management, Western Group
720 4th Avenue, Suite 400
Kirkland, WA 98033
akenefick@wm.com
(425) 825-2003

11. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

12. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in the Complaint or which could have been asserted based on or related to the specific facts alleged in the Complaint against the Discharger and/or GEH, as of the effective date of the Order. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of administrative civil liability by the deadline specified in Paragraph 8 herein and upon satisfaction of this condition the release of all claims as referenced in this paragraph shall be effective to and binding on the Parties and GEH.

13. **Public Notice:** The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board for adoption. If the Regional Water Board Assistant Executive Officer

receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegee for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Regional Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

14. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

15. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

16. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board, or its delegee.

17. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing should this Order not take effect. Although oral and written agreements made during settlement negotiations shall not be admissible as evidence in any subsequent proceeding, the Parties agree to waive any and all objections based on the occurrence of settlement communications in this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

18. **Waiver of Hearing:** The Discharger has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waive its right to a hearing before the Regional Water Board prior to the adoption of the Order.

19. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waive its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

20. Discharger's Covenant Not to Sue: The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

21. Authority to Bind: Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

22. Counterpart Signatures: This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

23. Effective Date: This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board, or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

California Regional Water Quality Control Board,
San Francisco Region Prosecution Team

Date: 6/4/2012 By: Dyan C. Whyte

Dyan C. Whyte,
Assistant Executive Officer

Guadalupe Rubbish Disposal Co., Inc.

Date: 5/31/2012 By:

Barry Skolnick
Vice President

ORDER

HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD, OR ITS DELEGEE, FINDS THAT:

24. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 23 above, by this reference, as if set forth fully herein.

25. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13385, subsection (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint, or otherwise provided to the Regional Water Board. This settlement also recovers the costs incurred by the Prosecution Team in investigating and pursuing enforcement of the allegations set forth in the Complaint as "other matters as justice may require."

26. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 *et seq.*), in accordance with section 15321(a)(2), title 14, of the California Code of Regulations..

27. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

28. Fulfillment of the Discharger's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

IT IS HEREBY ORDERED on behalf of the California San Francisco Bay Regional Water Quality Control Board, pursuant to California Water Code section 13323 and California Government Code section 11415.60, that the foregoing Stipulation is accepted in settlement of this action.

Digitally signed by Bruce H. Wolfe
Date: 2012.09.20 20:20:10 -07'00'

Bruce H. Wolfe
Executive Officer

Date

EXHIBIT A

AMENDED ENFORCEMENT POLICY METHODOLOGY

Violation: Guadalupe Rubbish Disposal Co., Inc. (Discharger) is alleged to have violated Prohibitions 4, 6, 7, and 8 of Waste Discharge Requirements (WDRs) Order No. 01-050; Prohibitions 1 and 2 of the State Water Resources Control Board (State Water Board) Water Quality Order No. 97-03-DWQ, WDRs for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (Industrial Storm Water General Permit); Clean Water Act section 301; and Water Code section 13376 on or about and between December 20, 2010, and December 23, 2010, when landfill gas condensate discharged from an on-site landfill gas recovery facility operated by a lessee, Guadalupe Energy Holdings, LLC ("GEH"), flowed to the Landfill's stormwater detention basin where it mixed with stormwater, which then resulted in the discharge of approximately 31,202 gallons of condensate-contaminated stormwater to an unnamed tributary of McAbee Creek without authorization under a National Pollution Discharge Elimination.

Step 1: Potential for Harm for Discharge Violations:

The "potential harm" factor considers the harm to beneficial uses that resulted or that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the harm or potential harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5). In this case, the Prosecution Team determined the harm or potential harm to beneficial uses to be above moderate (i.e., a score of 4).

The discharge of landfill gas condensate-contaminated stormwater to waters of the State and the United States caused above-moderate impacts (i.e., temporary restrictions on beneficial uses) to the water contact recreation (REC1) and noncontact water recreation (REC2) beneficial uses of McAbee Creek. The discharge resulted in the presence of a strong odor, noted by park rangers and visitors, and the identification of a sheen at SW-2 by the Discharger, which prompted the closure of the western portion of Almaden Quicksilver County Park. From on or about and between December 21, 2010, and December 29, 2010, a total of nine days following the discharge, the Santa Clara County Department of Parks and Recreation closed the western section of the Park, including the trails near McAbee Creek. On December 29, 2010, the western section of the Park was reopened based on the Regional Water Board statement that there was no threat to human health according to the regulatory review of the sampling results. The reopening of the park may have been delayed due to time needed to analyze water samples, the holiday season, and/or the caution exercised by Santa Clara County Department of Parks and Recreation.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. In this case, the Prosecution Team determined the risk or threat of the discharged material to be moderate (i.e., a score of 2).

Storm water contaminated with landfill gas condensate may cause deleterious effect on the environment. Condensate is a liquid, composed principally of water and organic compounds, generated from vapor condensing within a landfill gas collection system. Often the organic compounds are not soluble in water and the condensate separates into an aqueous phase and a floating organic (petroleum distillates) fraction. Condensate typically has elevated concentrations of toxic pollutants (such as heavy metals, petroleum hydrocarbons). These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents.

The Discharger sampled the discharge at SW-2 on December 20, 22, and 23, 2010, respectively. The samples indicated that the following constituents exceeded environmental screening levels:[2] Naphthalene, 2-Methylnaphtalene, PCB-1221, Copper, Mercury, Nickel, and Zinc. The pH of the discharge did not exceed the San Francisco Bay Basin Water Quality Control Plan's (Basin Plan's) surface water quality objective of 6.5 – 8.5.

Balanced against these risks, on or about December 21, 2010, the Discharger's consultant conducted acute toxicity tests on 15-day old rainbow trout that resulted in a 95 percent survival rate. The Discharger also took additional storm water samples at SW-2 in April and May 2011, five months after the condensate spill. Analysis of the samples did not find exceedances of the environmental screening level criteria. Finally, there was no recorded wildlife lethality caused by the discharge event.

Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50 percent of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger.

In this case, the discharge occurred directly into a tributary of McAbee Creek during wet weather conditions, thereby making cleanup or abatement impracticable. Therefore, a factor of 1 is assigned.

Step 2: Assessments for Discharge Violations:

This step addresses liability for the discharge based on both a per-gallon and a per-day basis.

[2] Regional Water Board, *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater (Interim Final – May 2008)* (Revised May 2008), <http://www.waterboards.ca.gov/sanfranciscobay/water_issues/available_documents/ESL_May_2008.pdf> (as of April 9, 2012).

1. Per Gallon Assessments for Discharge Violations

When there is a discharge, the Regional Water Board is to determine an initial liability amount on a per gallon basis using the total Potential for Harm score and the Extent of Deviation from Requirement of the violation.

The Potential for Harm Score determined from the sum of the three factors in Step 1 is 7.

The Extent of Deviation is considered major because the intended effectiveness of the requirement was rendered ineffective. WDRs Order No. 01-050 and the Industrial Storm Water General Permit both prohibit the discharge of storm water contaminated with condensate. Further, the Industrial Storm Water Permit requires the Discharger to install "containment structures around storage tanks and other areas for the purpose of collecting any leaks or spills." The condensate tank at the GEH-leased landfill gas facility was neither placed within a secondary containment nor appropriately labeled with safety and contents placards.

Table 1 of the Enforcement Policy is used to determine a "per gallon factor" based on the Potential for Harm and Extent of Deviation. For this case, the resulting factor is 0.31.

2. Per Day Assessments for Discharge Volumes

When there is a discharge, the Regional Water Board is to determine an initial liability amount on a per day basis using on the same Potential for Harm score and the Extent of Deviation that were used in the per-gallon analysis. As described above, this factor is 0.31.

Initial Liability Amount

The initial liability amount for the violation calculated on a per-gallon and per-day basis, are as follows:

Per Gallon Liability: (30,202 gallons) x (0.31) x ($10) = $93,626

Per Day Liability: $10,000 x (0.31) x (3 days) = $9,300

Total Initial Liability = **$102,926**

Step 3 – Per Day Assessment for Non-Discharge Violation

In this case, this factor does not apply because the violation is related to the discharge of storm water contaminated with landfill gas condensate, and the liability was determined in Step 2.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability:

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of 1.3 based on the following:

The Discharger is responsible for the operation and maintenance of its leachate collection system facility in compliance with its WDRs, the Water Code, and the Clean Water Act. The Discharger's permits clearly prohibit the discharge of landfill gas condensate to waters of the State and United States and limit the areas at the Landfill where condensate may be managed. Additionally, past enforcement of unauthorized discharges of leachate to waters of the United States made the Discharger aware, or should have made the Discharger aware, of the need to take appropriate steps to ensure that its lessee, GEH, properly managed the landfill gas condensate—a related, but typically more toxic discharge. Appropriate steps are described in the Industrial Storm Water General Permit. Despite the Discharger's existing permits, experience, and knowledge, it is alleged that the Discharger did not take appropriate actions to ensure that condensate at its Landfill was properly managed. In addition, through its contractor and lessee, a system was constructed and operated in a way that had the potential to fail catastrophically (i.e., discharge condensate) in the absence of immediate manual intervention.

Cleanup and Cooperation:

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of 1 based on the following:

Between December 21, 2010, and January 5, 2011, the Discharger implemented cleanup measures that diverted a significant portion of the potential discharge to the sanitary sewer, and prevented a portion of the discharge from flowing to McAbee Creek. The Discharger made multiple attempts to minimize and/or prevent the discharge of storm water contaminated with condensate to the unnamed tributary (e.g., installed flow prevention systems, such as an inflatable bladder in the pipe leading to the discharge point, and installed a pumping station and piping to send uncontaminated storm water to an adjacent sedimentation basin). The Discharger also removed visually impacted soils near the condensate tank and installed a berm at the LFG Facility and in front of a Temporary Sedimentation Basin, intended to reduce the volume of storm water runoff discharging to the basin.

At the time the discharge occurred, the condensate tank neither was within secondary containment nor appropriately labeled with safety and content placards. By February 28, 2011, the Discharger's contractor completed implementation of spill prevention measures in the vicinity of the tank

comprised of a high-level tank alarm, an "automatic condensate sump shutoff control system," and a 7,400-gallon secondary containment structure around the tank.[3]

The Discharger took expected and appropriate measures in response to the discharge, thus this factor did not alter the proposed liability.

History of Violations

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.1 is to be used, and is to be increased as necessary. In this case, a multiplier of 1.1 was used because the Discharger has been issued Orders by the Regional Water Board for noncompliance with its WDRs : Order No. 95-090 assessed $23,820 to resolve the alleged unauthorized discharge of 1,090 gallons of leachate to a tributary of Guadalupe Creek; and Order No. R2-2000-072 assessed $16,000 to resolve the alleged unauthorized discharge of 500 gallons of leachate into an unnamed creek.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

Total Base Liability Amount

$102,956 (Initial Liability) x 1.3 (Culpability Multiplier) x 1 (Cleanup and Cooperation Multiplier) x 1.1 (History of Violations Multiplier) = Total Base Liability

Total Base Liability = **$147,185**

Step 6: Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Regional Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

In this case, the Regional Water Board Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed liability. Discharger is a wholly-owned subsidiary of USA Waste of California, Inc., which is a wholly-owned subsidiary of Waste Management Holdings, Inc., which is a wholly-owned subsidiary of Waste Management, Inc. According to its 2010 Annual Report, Waste Management, Inc.'s 2010 total operating revenue was about $12.5 billion, with net assets of about $21.5 billion and net income of about $953 million. The Discharger's primary source of revenue is disposal of waste.

[3] Guadalupe Rubbish Disposal Company, Inc.'s Technical Report in Response to Notice of Violation and Water Code Section 13267 Technical Report Order dated May 23, 2011. June 15, 2011.

Step 7: Other Factors as Justice May Require

Based on an average cost to the State of $150 per hour, Regional Water Board Prosecution Team incurred $20,100 in staff costs associated with the investigation and enforcement of the violations alleged in Complaint No. R2-2011-0066. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

Step 8: Economic Benefit

The Enforcement Policy directs the Regional Water Board to determine any economic benefit associated with the violation. The Discharger's economic benefit from the violations is likely well below the volume-based liability. The Discharger obtained an economic benefit by not constructing a larger condensate tank. The Discharger also received some economic benefit by delaying until after this incident, the building of secondary containment for the condensate tank, appropriate labeling of the tank, and the installation of an automatic system capable of detecting and responding to failure. The proposed liability is higher than the economic benefit incurred by the Discharger for delayed/avoided compliance with regulatory requirements.

Step 9: Maximum and Minimum Liability Amounts

Pursuant to Water Code section 13385, subdivision (c), the maximum liability that may be imposed for the unpermitted discharge of 31,202 gallons of waste to waters of the United States is $332,020. [(31,202 gallons of waste discharged and not cleaned up – 1,000 gallons) x ($10/gallon)] + [(3 days of unpermitted discharge) x ($10,000/day)])

Pursuant to Water Code section 13385, subdivision (e), the Regional Water Board shall recover, at a minimum, the economic benefits, if any, derived from the acts that constitute the violation. Further, the Enforcement Policy states that the Total Base Liability shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. As stated above, the proposed liability exceeds the economic benefit. The Regional Water Board Prosecution Team believes that the proposed liability also exceeds the economic benefit plus 10 percent.

Step 10: Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is **$167,285**.