ADMINISTRATIVE CIVIL LIABILITY ASSESSMENT
COMPLAINT NO. R2-2010-0094

The Regional Water Board's Prosecution Team proposes administrative civil liability against HSR, Inc in the amount of $118,085. This proposed liability is based on an assessment of the following factors in accordance with the violations alleged in Complaint No. R2-2010-0094, requirements of CWC section 13385(e), and the penalty calculation methodology described in the Water Quality Enforcement Policy (Enforcement Policy), dated November 17, 2009.

- **CWC section 13385(e)**
  This statue requires consideration of the following factors for administrative civil liability assessments: the nature, circumstances, extent, and gravity of the violation or violations; susceptibility of the discharge to cleanup or abatement; degree of toxicity of the discharge; ability of the violator to pay and the effect on the violator's ability to continue its business; any voluntary cleanup efforts undertaken; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require.

- **Enforcement Policy**
  The State Water Resources Control Board amended the Enforcement Policy on November 17, 2009 with the adoption of Resolution No. 2009-00. The policy became effective on May 20, 2010 upon approval by the Office of Administrative Law.

  The amended policy addresses factors required by statute (above), and it provides a statewide methodology for calculating administrative civil liabilities. The methodology considers duration of the violation and volume of discharge (if applicable), and it allows for quantitative assessments of the following: 1) potential for harm to beneficial uses; 2) physical, chemical, biological or thermal characteristics of the discharged material; 3) susceptibility of the discharge to cleanup; 4) deviation from regulatory requirements; 5) culpability; 6) cleanup and cooperation; 7) history of violations; 8) ability to pay; 9) economic benefit; and (10) other factors as justice may require.

The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty calculation methodology and definition of terms that are in the policy are not replicated herein. A copy of the Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The remainder of this document discusses how the various factors that are required to be considered in the assessment of administrative civil liabilities for alleged discharges from the Landfill 8 and Landfill 10 construction sites were assessed. In most cases, the factors are addressed separately for each construction site under the LANDFILL 8 and LANDFILL 10 headings. Where there is only one discussion, the circumstances around the factor for both construction sites were similar and are therefore discussed collectively.

LANDFILL 8	LANDFILL 10
Alleged Violations	
Discharge violation assessed for 1 day, volume of the discharge not assessed.	Discharge violation assessed for 2 days at a volume of 40,827 gallons
Potential for Harm to Beneficial Uses	
Threats to beneficial uses are moderate. The discharge, which mobilized in the range of 900 to 1500 cubic yards of material, was not a minor event, but the sediment-laden discharges to storm drain systems and sedimentation in buildings and in the vicinity of protected "Lessingia germanorum" habitat would not likely cause appreciable acute or chronic effects.	The threat to beneficial uses is above moderate due to impacts to Lobos Creek which include causing temporary restrictions on the use of a drinking water source.

Characteristics of the Discharge

Sediment-laden discharges, which occurred at both the Landfill 9 and Landfill 10 construction sites, pose a moderate threat to receptors. Sediment-laden water that is transported to surface waters via overland flow or through storm drain systems can have deleterious effects on aquatic environments and a variety of aquatic organisms. Some of the most significant impacts from increased turbidity and sedimentation in surface waters include: (1) reduction of light penetration and decreased rates of photosynthesis (food generation) within the food chain; (2) reduction in the respiratory capacity and feeding efficiency of fish; and (3) smothering of aquatic habitats decreased survival rates of hatchlings and juvenile species.

Susceptibility to Cleanup and Abatement	
Much of the discharged material was sand fill and more than 50% of the solid material in the discharge was not transported far from the construction site and was subject to cleanup.	More than 50% of the storm water discharge exited the construction site and is not susceptible to cleanup or abatement.
Deviation from Requirement	
There was a major deviation from storm water pollution prevention requirements. Significant runoff onto the construction site during storm events in October 2009 required changes to Best Management Practices BMPs). HSR, Inc. addressed the issue by creating surface water impoundments over a landfill (in violation of landfill regulations). These activities were not reported to Regional Water Board staff or addressed in an amended SWPPP, and failure of the	There was moderate deviation from storm water pollution prevention requirements. There was a SWPPP for the construction project but it was determined to be inadequate upon regulatory review. There were some sediment controls installed at the site but other controls, such as mitigating storm water runoff onto the construction site and installing erosion control on a 2.4-acre, 1.75:1 (30 degree) graded slope, were not met.

LANDFILL 8 (cont'd)	LANDFILL 10 (cont'd)

Deviation from Requirement (cont'd)

surface impoundments during a January storm event caused significant storm water discharge (channelized erosion approximately 600 feet long, up to 60 feet wide, and up to 12 feet deep) at the construction site.

Culpability

HSR, Inc. was negligent in adequately protecting the Landfill 8 (liability increased by 1.3 multiplier) and Landfill 10 (liability increased by 1.2 multiplier) construction sites to prevent pollution from storm water runoff. HSR Inc. is a professional company providing general engineering services with adequate training in storm water pollution prevention. HSR, Inc. submitted a Notice of Intent to gain coverage by and comply with the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ, and it prepared and certified the SWPPP for the Landfill 8 and Landfill 10 construction sites. HSR, Inc. is designated as the SWPPP Manager, and it had primary responsibility for preventing storm water pollution from the construction sites. Culpability associated with Landfill 8 is higher due to actions and behavior associated with BMPs that were implemented to address runoff onto the Landfill 8 construction site.

Cleanup and Cooperation

HSR, Inc. was cooperative and responsive but not necessarily timely to comply with regulatory requirements following the discharge events. Based on cleanup and cooperation effort, no adjustment was made to the administrative civil liability.

History of Violations

HSR, Inc. prepared a single SWPPP for multiple construction projects at the Presidio including Landfills 8 and 10. HSR, Inc. received a Notice of Violation from Regional Water Board staff on November 12, 2009 for its work at the Presidio following a review of its SWPPP and after discharges and inspections of the Landfill 10 construction site. This history of violations preceded the discharge from Landfill 8 in January 2010 (liability increased by 1.1 multiplier).

No liability adjustment was made based on a history of violations.

Ability to Pay

HSR, Inc. is an engineering contractor operating out of a single facility in Santa Clara. HSR, Inc. has approximately 13 employees and makes approximately $1,200,000 in annual sales (ref. manta.com website). The facility includes an equipment storage yard with about 36 pieces of heavy construction equipment (trucks, excavators, trailers, tanks,

grading equipment, etc. based on aerial photography) considered to be company assets.

LANDFILL 8 (cont'd) **LANDFILL 10 (cont'd)**

Economic Benefit or Savings

HSR, Inc. benefited in time and materials by not adequately protecting the Landfill 8 and Landfill 10 construction sites for rain events. For construction activity in California, approximately $2,000 to $6,000 per acre[1] is needed to provide the necessary erosion and sediment control measures for construction sties depending on the slope and soil type.

The Landfill 8 and Landfill 10 construction sites are about 2.6 and 3.4 acres in size, respectively. The total cost for SWPPP BMPs to protect 6 acres of construction sites is in the range of $12,000 to $36,000.

Some protective measures were installed at both the Landfill 8 and Landfill 10 construction sites when the discharges occurred. The Landfill 8 construction site required construction of a runoff conveyance system to prevent storm water from entering the construction zone. Savings include the design and construction of this protective measure. The Landfill 10 construction site also required control of runoff into the construction zone and more effective erosion controls, particularly for the 2.4-acre graded slope that was unprotected. The savings from the latter is in the range of $4,800 to $14,000 and probably at the higher end due to slope and soil type.

Some additional BMPs were installed after the discharge events rendering the economic benefit as a delayed instead of actual savings. Considering this, the economic benefit is estimated to be no more than $10,000 to $15,000.

Other Matters As Justice May Require

Staff time to investigate the incident and prepare the Complaint and supporting evidence is estimated to be 88 hours. Based on an average cost to the State of $150 per hour, the total cost is $13,200.

[1] Soil Stabilization BMP Research for Erosion and Sediment Controls; Cost Survey Technical Memorandum; California Department of Transportation; July 2007.