David T. Truslow
[redacted]

San Francisco Bay Regional Water Quality Control Board 18 June, 2012
Attn: Mr. Laurent Meiller
1515 Clay St. Suite 1400
Oakland, CA 94612

Ref: Order R2-2012-0032

Dear Mr. Meiller:

Thank you for sending the toxicity report. I've revised my comments based on this information, and this replaces my letter of 12 June.

I'm writing to protest the proposed fine of $167,285 (less than 80% of the originally proposed $882,200 fine) against Waste Management dba Guadalupe Rubbish Disposal Co. The Water Quality Control Board's proposed fine is stunningly low. It fails to include material aspects that were unknown or evidently not considered by WQCB investigative staff.

The following presents significant new information as described in Section 13 – Public Notice of the Proposed Settlement. Page and Step references relate to this document.

1. Santa Clara County Reimbursement
   The settlement fails to reimburse Santa Clara County (SCC) for direct and opportunity expenses incurred due the Almaden Quicksilver County Park 9 day closure. SCC's FY2013 Parks budget is approximately $47,220,000. Almaden's 4,147 acres comprise slightly more than 14% of SCC's non-aquatic recreational space (29,541 acres).

   Opportunity cost can be determined as: (9 days/365 days) * 14.04% * $47,220,000 or $163,450. Additional costs would include SCC's cost of money (interest expense) for the time period the expense remains unpaid. There may be additional costs such as SCC Environmental Services assistance, etc. This amount could be reduced as Page A1 states that the western portion of the park was closed and not the entire park.

   Santa Clara County should be reimbursed for direct and indirect costs.

2. Unknown GEH-Waste Management Settlement Offset
   Waste Management's spokesperson Karen Stern is quoted by the San Jose Mercury News (8 June) as stating that "GEH has since settled with Waste Management". Presumably Waste Management obtained economic benefit (direct reimbursement, payment-in-kind, etc.) from GEH as a result of the spill.

   This aspect is material, but not included in the proposed WQCB settlement as the arrangement between GEH and Waste Management is unknown to WQCB investigators. Without including the Waste Management-GEH settlement details, it's entirely possible that Waste Management is profiting from toxic spills or would incur negligible economic

loss due GEH reimbursement.

3. Paltry Multiplier Despite History of Violations
   Waste Management / GEH was cited and fined on two previous occasions yet the minimum multiplier of 1.1 was used. While the previous discharges were relatively small, their repeated violation history suggests a cavalier response to water quality.

   The December 2010 discharge was entirely predictable and preventable. Despite a clear threat, Waste Management failed to ensure that an automatic shutoff, secondary containment, or even proper labeling were employed. Only after the spill, have usual, customary, and reasonable precautions been adopted.

   Given this pernicious and egregious negligence, the minimum multiplier should be dramatically larger.

4. Incentivizing Unlawful Behavior
   Step 9 (page 12) employs the minimum economic benefit rate of 10%. Waste Management's Return On Equity (ROE) is 15.19%. WQCB should be using a factor substantially greater than 10% – say 25% i.e., 10 points higher than their ROE. Otherwise the 5% difference (15% - 10%) represents a gift to Waste Management.

   The low 10% rate incentivizes unlawful behavior. Coupled with other factors, the proposed penalty fails under section 13385 to recover economic benefits that accrue to Waste Management.

5. Toxicology Analysis: Reductio ad absurdum
   The claim of a 95% survival rate is predicated upon a trout mortality study conducted by a Waste Management contractor: "Acute Toxicity Testing of the Guadalupe Landfill Effluent" – Supplement dated 5 January, 2011 and conducted per EPA standards.

   The study's assertion of a "95% survival rate...indicating that the Guadalupe Landfill effluent was not acutely toxic" is misleading.

   The claim of a 95% survival rate is dubious as it used the absolute minimum of 2 observations of sample size 10. The EPA reference specifies that at least 90% of the control fish survive – i.e. up to 2 fish could die in the unpolluted water control sample.

   Given the same effluent test results of 1 fish fatality and 90% permissible control survival, Waste Management's study could then claim the toxic effluent is healthier than pure water – an absurd claim that refutes Waste Management's misleading assertion and flawed methodology.

Thank you for your consideration of this new information. Please let me know the outcome.
Sincerely,

David T. Truslow