

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO BAY REGION  
PROSECUTION STAFF'S RESPONSE TO COMMENTS ON  
SETTLEMENT AGREEMENT AND STIPULATED TENTATIVE ORDER**

for

Proposed Administrative Civil Liability Order No. R2-2012-0032  
Guadalupe Rubbish Disposal Co., Inc. (GRDC)

<b>Party Submitting Comments</b>	<b>Summary of Comments</b>	<b>Water Board Prosecution Staff Response</b>
<b>Individual:</b> Mr. David Truslow	The commenter indicates that the proposed settlement of \$167,285 fails to reimburse Santa Clara County for direct and opportunity expenses incurred during the Almaden Quicksilver County Park closure for nine days.	Santa Clara County did not inquire about assisting with our investigation or seeking reimbursement. Therefore, this matter is outside of the scope of this settlement.
<b>Individual:</b> Mr. David Truslow	The commenter notes that according to a San Jose Mercury News communication dated June 8, 2012, Guadalupe Energy Holdings, LLC (GEH) has settled with GRDC. GRDC leased to GEH a portion of the land disposal area for operating a landfill gas and condensate recovery facility. Thus, GRDC obtained economic benefit (direct reimbursement, payment-in-kind, etc.) from GEH as a result of the spill.	The alleged settlement between GRDC and GEH does not constitute an economic benefit as defined by the 2010 Water Quality Enforcement Policy. The economic benefit was calculated based on the violation itself, and the settlement between GRDC and GEH is a separate matter and much broader than this specific incident.
<b>Individual:</b> Mr. David Truslow	The commenter recommends “dramatically” increasing the History of Violations multiplier from the value set at 1.1 in the Tentative Order. This recommendation is based on GRDC’s previous discharges suggesting a “cavalier response to water quality.”	The proposed History of Violations factor of 1.1 is reasonable because the prior discharge incidents occurred more than 12 years ago.

<p><b>Individual:</b> Mr. David Truslow</p>	<p>The commenter recommends applying 10 percent above GRDC's return on equity of 15.19 percent. The commenter recommends applying a 25 percent rate so as not to incentivize "unlawful behavior."</p>	<p>Regional Water Board prosecution staff determined that the economic benefit associated with the violation is less than, and therefore does not alter, the proposed liability. Prosecution staff's determination of economic benefit is based on the following:</p> <ul style="list-style-type: none"><li>• There was an economic benefit from not taking actions to prevent a discharge from the condensation tank. Since adequate upgrades were made by February 28, 2011, there is an economic benefit associated with the delay of this capital investment. Upgrades included installing automatic shutoff control for the condensate sump and constructing secondary containment around the condensation tank, and the costs of the upgrades is estimated to be less than \$50,000.</li><li>• The economic benefit is estimated to be no more than \$107,759. This estimate assumes a maximum capital investment of \$50,000 with the deferred savings based on a 15% annual return compounded over 10 years. The amount also includes a 10% markup as a deterrent to future non-compliance (as required by the 2010 Water Quality Enforcement Policy).</li><li>• The estimate of economic benefit gained (\$107,759) is less than the amount of the proposed settlement (\$167,285). Therefore, no adjustment to the proposed liability is required for economic benefit in accordance with the 2010 Water Quality Enforcement Policy.</li></ul>
---	---	--

<p><b>Individual:</b> Mr. David Truslow</p>	<p>The commenter refutes the rainbow trout acute toxicology test result of 95 percent survival rate. The comment is based on comparing this result against the U.S. EPA permissible survival rate of 90 percent in control samples.</p>	<p>The 90 percent permissible survival cited by the commenter is the survival standard for control tests based on U.S. EPA’s “Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms”<sup>1</sup>. This percentage is used for quality control purposes to ensure that any response observed in the discharge is not a result of unhealthy test fish.</p> <p>The Regional Water Board’s Basin Plan establishes discharge standards. For acute toxicity, the discharge standard is also at 90 percent survival.</p> <p>For GDRC’s test, there was no lethality observed in the deionized water control. This means the test meets U.S. EPA’s quality control standards, is valid, and there is no basis for not considering the test result. Since the survival for rainbow trout subjected to GDRC’s undiluted condensate-stormwater was 95 percent (higher than the discharge standard of 90 percent), the proposed toxicity factor of 2 (moderate risk) is reasonable and justifiable (based on the chemical characteristics of the discharged material).</p>
---	---	--

<sup>1</sup> [http://water.epa.gov/scitech/methods/cwa/wet/disk2\\_index.cfm](http://water.epa.gov/scitech/methods/cwa/wet/disk2_index.cfm). Section 9, Subheading 9.16.1.