

**Note: This document has been prepared by the
Central Valley Water Board's Prosecution Team**

ITEM: 7

SUBJECT: A Greener Globe Corporation, Berry Street Mall (Aka Finger's) Landfill,
Placer County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO)*

BACKGROUND: A Greener Globe Corporation (A Greener Globe) owns a closed, unlined, 13 acre landfill. The landfill is located on a 26 acre parcel along Galleria Blvd. in the City of Roseville, in an area characterized by high-end retail stores. The landfill operated from 1946 to November 1987, and in 1991 was abandoned by the estate of the original owner. In 1993, the California Department of Resources Recycling and Recovery (CalRecycle) closed the landfill in accordance with Title 27 regulations. In 1996, A Greener Globe acquired ownership of the property in foreclosure proceedings. A Greener Globe leases a portion of the property to Green Acres Nursery.

Landfills contain high levels of constituents that could degrade groundwater. California Code of Regulations (CCR) Title 27 (Title 27) contains specific requirements for waste management unit design, such as liners, covers, and closure. Regional Board waste discharge requirements (WDRs) incorporate the provisions of Title 27 relative to the specific conditions at a permitted landfill.

Groundwater monitoring conducted prior to 2012 confirms that there has been a release of waste constituents from the landfill to the underlying groundwater. Groundwater is found at about 120 feet below ground surface, and contains volatile organic compounds including carbon tetrachloride, and elevated concentrations of inorganic constituents including chloride, bicarbonate alkalinity, sulfate, and total dissolved solids.

A Greener Globe was regulated by WDRs 89-115, which the Board subsequently updated and replaced in June 2011 with Order R5-2011-0048. These revised WDRs include updated requirements for landfill monitoring and corrective action, and require the submittal of six technical reports. A Greener Globe provided comments on the tentative Order but did not contest the adoption. The 16 June 2011 *Notice of Adoption* letter contains a table summarizing each required technical report and the respective due date. The WDRs and the monitoring program for A Greener Globe are no different than those for other dischargers with similar unlined, closed landfills in this Region.

Traditionally, when WDRs are revised, Permitting staff work with a discharger to obtain updated information about the facility, which is then incorporated into the WDRs. However, A Greener Globe did not provide information to Permitting staff, so the revised WDRs require submittal of

six technical reports, culminating in a Report of Waste Discharge. The intention is to compel A Greener Globe to produce the information and then revise the WDRs once the site characteristics are fully known. To date, the Regional Board has not received any of the required technical reports. The outstanding reports include, a description of the operational status of all landfill monitoring facilities, an updated postclosure maintenance and monitoring plan, an evaluation of groundwater conditions and constituent concentrations, a proposal for a revised groundwater monitoring plan, verification that A Greener Globe has created and funded a financial assurance account, and a Report of Waste Discharge including a proposal for corrective action.

A Greener Globe is also required to submit semi-annual monitoring reports, as described in the Monitoring and Reporting Program (MRP). The Prosecution Team alleges that A Greener Globe has submitted materially deficient reports because the reports contain only a small portion of the information required by the MRP, are not signed by a registered professional, and a California State Certified Laboratory was not used to analyze the groundwater samples. Without adequate reports, Board staff cannot assess the current impacts to groundwater from this landfill.

In April 2014, Board staff attempted to gain compliance by issuance of a Notice of Violation (NOV) for delinquent reports. The NOV informed A Greener Globe that they were subject to potential liability exceeding \$6.4 million and asked for a schedule by which the outstanding reports would be submitted. Board staff followed-up with telephone calls to the owner, consultant and attorney but nothing was submitted. A second letter in August 2014 notified A Greener Globe of the reporting requirements and the potential for civil liability, and suggested that A Greener Globe meet with Board staff to prioritize the work necessary to return to compliance. There is no record of A Greener Globe requesting a meeting.

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

On 20 January 2015, the Assistant Executive Officer issued an Administrative Civil Liability Complaint in the amount of \$677,531. In addition, an Administrative Subpoena and Special Interrogatories were issued on the same date, requiring information related to A Greener Globe's finances.

The Complaint is based on the penalty calculation methodology in the State Water Board's Enforcement Policy. The Complaint alleges that A Greener Globe failed to submit six technical reports and failed to submit six complete monitoring reports as required by the WDRs. The maximum penalty is \$8,383,000. The minimum penalty is the economic benefit plus 10%, which is estimated to be \$107,326.

The Prosecution Team scheduled the Complaint to be heard at the April 2015 Board meeting, but A Greener Globe requested that the matter be

delayed for purposes of settlement. The Prosecution Team agreed, on the condition that settlement was reached by 3 April 2015. If not, the Prosecution Team stated that the matter would be rescheduled for the June 2015 Board meeting. The Discharger's attorney had one information-gathering meeting with staff. No settlement offers were discussed or received. No additional contact was made with the Prosecution Team, so the matter has been set for hearing at the June Board meeting.

BASIS OF ACL COMPLAINT

The Prosecution Team proposes a \$677,531 penalty, which was calculated using the State Water Board's Enforcement Policy.

Violation: A Greener Globe violated WDRs Order R5-2011-0048 by the failure to submit six technical reports and six complete monitoring reports.

Days of Violation: The total number of days of violation for all missing reports is 8,383 days. However, the Prosecution Team used the Enforcement Policy method to reduce the days of violation by the maximum amount allowed, resulting in 365 days of violation.

Potential For Harm: The Prosecution Team asserts that a "moderate" factor is appropriate, given that the characteristics of the violation present a "substantial threat to beneficial uses" because the Water Board is deprived of essential technical reports, monitoring data, and other evaluations necessary to determine the extent and severity of the landfill's impact on water quality. Groundwater contamination was confirmed through monitoring prior to 2012, but we have no recent information as to the concentration or extent of contaminants. Among the outstanding technical reports are an analysis of background contaminants and a proposal for remediating the groundwater.

Deviation From Requirement: A "major" factor was used because "the discharger disregards the requirement" to submit the technical and monitoring reports, despite repeated attempts to gain compliance.

Culpability of the Discharger: The Enforcement Policy methodology uses a factor between 0.5 and 1.5. The Prosecution Team assigned a culpability factor of 1.5 based on the fact that A Greener Globe has been regulated by the Water Board for 18 years and is fully aware of the requirements to submit technical and monitoring reports. A Greener Globe was involved during the drafting of the 2011 WDRs, providing comments and choosing not to contest the Order. Several letters and phone calls have since been made, informing A Greener Globe of their responsibility to comply with the WDRs, offering to discuss a voluntary schedule to return to compliance, and warning of the large potential penalty for continued non-compliance. Yet, A Greener Globe chose to continue to ignore the requirements of the Board.

Cleanup and Cooperation: The Enforcement Policy methodology uses a factor between 0.75 and 1.5. The Prosecution Team assigned a factor of 1.5 because of the Discharger has not exhibited any cooperation or desire to return to compliance with the WDRs, even after issuance of the NOVs and the ACL Complaint.

History of Violation: When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Prosecution Team assigned a factor of 1.5. A Greener Globe bought the landfill in 1996. In 1999, the Executive Officer issued a Cleanup and Abatement Order (CAO) for numerous violations of the WDRs. The Discharger failed to comply, and the CAO was then referred to the Attorney General's office for civil enforcement. In 2003, a Stipulated Final Judgment was filed and A Greener Globe generally complied for several years. However, by 2005, the Discharger failed to submit monitoring reports and/or submitted incomplete reports, and therefore staff issued NOV's. A Greener Globe has not paid its annual permit fees to the State Water Board since at least 2007, and currently owes over \$108,000 in past-due permit fees. In addition, A Greener Globe has a history of failing to address violations found by Placer County, who is acting on behalf of CalRecycle. Between March 2011 and December 2014, the County conducted 18 inspections and found violations 83% of the time. And finally, A Greener Globe has not complied with any aspect of the 2011 WDRs.

Ability to Pay and Continue in Business: The Prosecution Team conducted a preliminary asset search of publicly available information, and finds that A Greener Globe has the ability to pay the proposed liability. The Discharger owns the property located at 901 Galleria Blvd (the landfill site). The landfill has an assessed value of over \$1 million, and A Greener Globe generates rental income from of \$23,500 per month from leasing part of the landfill property to Green Acres Nursery. A Greener Globe has not provided any information to dispute that it can pay the proposed liability.

SUMMARY: A Greener Globe has failed to submit the technical and monitoring reports required by the 2011 WDRs. The submission of these reports is critical for Board staff to assess the landfill's impact on the environment and determine methods to remediate the impacts. The Prosecution Team recommends that the Board adopt the proposed Order assessing an administrative civil liability in the amount of \$677,531.

Mgmt. Review__WSW_____
Legal Review__VY_____

4/5 June 2015

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