

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-XXXX

IN THE MATTER OF

A GREENER GLOBE CORPORATION
BERRY STREET MALL (AKA FINGER'S) LANDFILL
PLACER COUNTY

This Order is issued to A Greener Globe Corporation (hereafter Discharger) pursuant to California Water Code section 13323, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2011-0048 and Water Code section 13267 for failing to furnish technical and/or monitoring reports necessary for the Regional Board to investigate the quality of waters within its Region.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds:

BACKGROUND

1. The Discharger owns the Berry Street Mall (AKA Finger's) Landfill, a closed 13 acre Class III landfill located along Galleria Boulevard about 0.3 miles north of Berry Street in the City of Roseville (Site or Facility).
2. The landfill operated from 1946 to November 1987, and accepted municipal solid waste (MSW), as defined in Title 27, Section 20164, and solid wastes defined as "inert" and "nonhazardous" under Title 27, sections 20230 and 20220.
3. The Site includes a single closed landfill unit with associated facilities that include drainage controls; landfill gas controls; a leachate sump; groundwater and landfill gas monitoring wells; and access roads. Along the southern side of the Site is a landscape nursery in an area formerly operated as an onsite transfer station. Approximately 95% of the disposal area is unlined, and the only lined sections are former clay pits that were once used for disposal. Volatile organic compounds (VOCs) have historically been detected in groundwater at this Site, as depicted in Finding 35 of the Discharger's Waste Discharge Requirements (WDRs).
4. William Finger, principal of Berry Street Mall, Inc. (BSMI), owned and operated the landfill for most of landfill's operating life. After Finger's death in late 1991, site ownership transferred jointly to BSMI and the Estate of William Finger.
5. In 1991, the California Department of Resources Recycling and Recovery (CalRecycle) accepted the site into its orphan sites program for the limited purpose of closing the site and implementing corrective action in accordance with regulations. In accepting the site into this program, CalRecycle noted that ultimate financial

responsibility for the costs of closure and postclosure maintenance and monitoring for the project lay with the owner.

6. In 1993, CalRecycle closed the landfill in accordance with Title 27 regulations and an approved Final Closure Plan. The project included installation of a clay cover, precipitation and drainage controls, a standby landfill gas (LFG) collection system, a perimeter leachate collection system and sump, soil gas and LFG monitoring wells, and a groundwater monitoring system.
7. In August 1996, a Greener Globe Corporation acquired ownership of the property in foreclosure proceedings. Once the Discharger purchased the landfill, the responsibility to comply with the requirements in the WDRs was exclusively the Discharger's.
8. The landfill has been regulated by the Water Board since 1972. The Board issued the most recent WDRs (Order R5-2011-0048) in June 2011. These revised WDRs included updated requirements for landfill monitoring and corrective action in accordance with California Code of Regulations (CCR), Title 27, Division 2 (Title 27 regulations).
9. WDRs Order R5-2011-0048 requires the submittal of multiple technical reports, and outlines the date by which each report shall be submitted. A table summarizing all technical reports required by Order R5-2011-0048 and the respective due date was included in the 16 June 2011 *Notice Of Adoption* letter.
10. In addition to the technical reports required by WDRs Order R5-2011-0048, the WDRs contain an updated Monitoring and Reporting Program (MRP), which specifies monitoring and reporting requirements to be implemented by the Discharger.

PREVIOUS ENFORCEMENT

11. The landfill has a history of noncompliance with regulatory and enforcement Orders issued by CalRecycle, the Central Valley Water Board, and the Local Enforcement Agency, both during and after its operational period. Violations at this Site have included: (a) Improper disposal of wastes to unlined pits; (b) Failure to control leachate; (c) Exposed waste; (d) Landfill fires; (e) Cover erosion and drainage issues; (f) Site cleanup issues; and (g) Failure to prepare, submit, or implement required technical reports or tasks. (e.g., monitoring program, corrective action plan, closure and postclosure maintenance plans).
12. On 29 January 1982 the Executive Officer issued Cleanup and Abatement Order (CAO) to the previous owner, William Finger, for violations of WDRs Order 72-17. The CAO required Mr. Finger to cease from depositing any soil or liquid waste into an excavated pit west of the main landfill, to removal and properly dispose of all waste in the pit, to immediately comply with WDRs Order 72-17, and to begin monthly monitoring and reporting.

13. On 15 October 1999 the Executive Officer issued Cleanup and Abatement Order (CAO) 99-724 to the Discharger for violations of WDRs Order 89-115. The CAO included a time schedule for completion of work to bring the Discharger back into compliance. The CAO required the Discharger to: submit \$12,000 in past due annual fees, pay future annual fees in a timely manner, conduct quarterly groundwater monitoring as required by the WDRs, complete an investigation to determine the lateral and vertical extent of groundwater contaminated by the landfill, clean up a small fuel spill, and remove waste material located near the sedimentation pond. The Discharger petitioned the CAO to the State Water Board, and State Board subsequently rejected the petition.
14. Due to noncompliance with CAO 99-724, on 1 February 2000, the Executive Officer filed a request with the State Water Board to refer the case to the Attorney General's office for injunctive relief. A Stipulated Final Judgment was filed with Placer County by the Attorney General on 14 July 2003. The Stipulated Final Judgment required the Discharger to: 1) submit \$35,000 in past due fees, 2) not violate WDRs 89-115 and CAO 99-724, 3) submit a work plan to determine the lateral and vertical extent of groundwater contamination and background water quality, 4) submit a report documenting the results of the work plan, 5) submit a report documenting the installation of any additional wells that may be necessary to monitor the dimensions of the plume and fully characterize impacts to water quality, 6) begin submitting annual "Judgment Compliance Reports" describing actions taken to comply with the requirements of the Judgment, and 7) ensure all reports are prepared by an appropriate professional as provided in Title 27.
15. Following the Stipulated Final Judgment, the Discharger began paying fees, resumed monitoring and reporting, and installed two groundwater monitoring wells. However, by late 2005, the Discharger had failed to submit multiple monitoring reports, and in August 2006, a Notice of Violation (NOV) was issued to the Discharger for failure to submit monitoring reports from April 2005 to July 2006.
16. Following the August 2006 NOV, monitoring resumed in the fourth quarter 2006; however, as noted in March and April 2009 letters prepared by Water Board staff, reviewed reports were submitted late, the information was not uploaded to GeoTracker, and the 2009 Annual Report, in addition to being late, did not contain surface water sampling results or a signed transmittal page. In addition, neither the 2nd Quarter 2007 nor the 3rd Quarter 2010 monitoring reports were submitted.

CURRENT ENFORCEMENT

17. Since the WDRs were adopted in June 2011, none of the technical reports required by the WDRs have been submitted. Failure to submit required reports is a violation of the WDRs and of California Water Code section 13267. Table 1, below, outlines each technical report required by the WDRs and the respective due date of each report.

Table 1

Technical Reports Required by WDRs	Due Date	Days of Violation ¹
Report describing the operational status of all landfill monitoring and control facilities	15 August 2011	1,254
Updated Postclosure Maintenance and Monitoring Plan	1 December 2011	1,146
Report containing: 1. Proposed statistical and nonstatistical data analysis methods, 2. Updated Water Quality Protection Standard Report, 3. Corrective Action Plan and Revised Evaluation Monitoring Plan	31 July 2012	903
Report describing status of financial assurance	31 December 2012	750
Amended Report of Waste Discharge for a Revised Corrective Action Plan	31 July 2013	538
Report describing status of financial assurance	31 December 2014	20

¹ As of 20 January 2015

18. In addition, the MRP requires semiannual monitoring and reporting with the First Semiannual report due each year by **31 July** and the Second Semiannual/Annual report due each year by **31 January**. The semiannual reports are necessary for the Regional Board to assess whether there are VOCs in groundwater, and the magnitude of any impacts, as well as an assessment of whether the corrective action of covering the landfill has resulted in decreased groundwater impacts. In addition to groundwater monitoring, the Discharger must monitor the leachate, landfill gas, soil gas, and surface water, and report the results in the semi-annual reports. The monitoring and reporting is also designed to demonstrate whether all of the landfill facilities are functioning as designed, whether site winterization has been completed, and to identify any releases of waste.

Since the issuance of the Discharger's WDRs, the Discharger has failed to submit semiannual monitoring reports on time or complete as required by the WDRs. Instead of submitting semi-annual reports as required by WDRs Order R5-2011-0048, the Discharger has submitted separate quarterly groundwater elevation and gradient reports and annual groundwater sampling reports, as was required by rescinded WDRs Order 89-115. However, even when the data from these separate quarterly and annual reports is combined, they significantly fail to meet the semi-annual and annual monitoring requirements required by WDRs Order R5-2011-0048, rendering them materially deficient.

Additionally, the 2011 Second Semiannual/Annual report did not contain the results of a complete 5-year constituent of concern sampling suite or the results of an aerial survey and updated topographic map. The 2012 and 2013 Annual Reports were not signed by a registered professional, did not contain chain-of-custody forms for the samples collected, and the laboratory used to analyze the groundwater samples was

not a California State Certified Laboratory. Submittal of non-qualified data by a non-certified laboratory is a violation of the WDRs, renders the results unusable, and the reports materially deficient.

The submitted, but materially deficient reports lack the necessary information for Regional Board staff to assess the water quality impacts from the covered landfill. The failure to submit adequate reports is a violation of the Discharger's WDRs. Table 2, below, outlines the date by which each monitoring report, as required by the WDRs, was to have been submitted and the resulting total days of violation.

Table 2

MRP Required Reports	Due Date	Days of Violation¹
2011 Second Semiannual/Annual Report/ COC Report and Aerial Survey & Update Topographic map (Materially Deficient)	31 January 2012	1,085
2012 First Semiannual Report (Materially Deficient)	31 July 2012	903
2012 Second Semiannual/Annual Report Materially Deficient)	31 January 2013	719
2013 First Semiannual Report (Materially Deficient)	31 July 2013	538
2013 Second Semiannual/Annual Report (Materially Deficient)	31 January 2014	354
2014 First Semiannual Report (Materially Deficient)	31 July 2014	173

¹As of 20 January 2015

- On 9 April 2014, a NOV for Delinquent Reports was issued to the Discharger for failure to submit the reports required by the WDRs¹. The NOV informed the Discharger that the reports were required pursuant to Water Code section 13267, and that the maximum liability was over \$6.4 million, with liability continuing to accrue on a daily basis. The NOV required the submittal of all delinquent reports and an amended version of all incomplete monitoring reports by 30 May 2014. If any of the delinquent reports were not available or complete, the Discharger was to provide an explanation for why each report was not available/complete, and was to provide a schedule for submitting each delinquent report. Additionally, the Discharger was to identify actions it would take to assure that all future monitoring reports would be completed and submitted as required by the WDRs. No response to this NOV has been received. None of the technical reports outlined in Table 1 were received, and no amended monitoring reports or new monitoring reports as outlined in Table 2 have been received.

REGULATORY CONSIDERATIONS

¹ A separate NOV for Inspection Violations was also issued on 9 April 2014, and was related to issues found during staff's 24 October 2013 inspection. The Discharger responded to this NOV and therefore it is not discussed in Administrative Civil Liability Complaint R5-2015-0503.

20. As described above, the Discharger has failed to submit any of the six technical reports required by WDRs Order R5-2011-0048 and has failed to conduct the monitoring and reporting as required by MRP R5-2011-0048. The WDRs require that technical and monitoring reports be submitted pursuant to Water Code section 13267.
21. The Regional Board relies on the submission of technical and monitoring reports required by the WDRs and MRP which are necessary to assure compliance with WDRs, to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
22. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. Surface drainage is to an onsite intermittent stream, which is tributary to the south branch of Pleasant Grove Creek, thence Pleasant Grove Creek; Verona Cross Canal; and the Sacramento River. The designated beneficial uses of the Sacramento River (Colusa Basin Drain to "I" Street Bridge) are municipal and domestic supply; agricultural supply (excluding stock watering); water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction and/or early development; wildlife habitat; and navigation.
23. The beneficial uses of the ground water are municipal and domestic supply, agricultural supply, industrial service supply and industrial process supply.
24. The Central Valley Regional Water Board may impose administrative civil liabilities for violations of a discharger's WDR permit and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Order finds that the Discharger violated WDRs R5-2011-0048 and imposes the imposition of administrative civil liability in accordance with Water Code section 13268.
25. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in 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 as justice may require.
26. Issuance of this Order to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code

§ 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13268

27. Water Code section 13268, subdivision (a)(1) states: *Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).*
28. Water Code section 13268, subdivision (b)(1) states: *Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.*
29. As outlined in Attachments A and B, the Discharger has failed to submit six technical reports, and has submitted six materially deficient monitoring reports. As of 20 January 2015 (the date of issuance of Administrative Civil Liability Complaint R5-2015-0503), each report is delinquent between 20 and 1,254 days, and the total number of days that all reports are delinquent is 8,383 days.
30. **Maximum Civil Liability for Failure to Submit Reports:** Per Water Code section 13268(b)(1), civil liability administratively imposed by the Central Valley Water Board may not exceed \$1,000 per violation per day. The maximum administrative civil liability that may be assessed for the failure to submit reports as required by WDRs Order R5-2011-0048, as outlined in Attachments A and B, is **eight million three hundred and eighty three thousand dollars (\$8,383,000).**
31. **Minimum Civil Liability for Failure to Submit Reports:** Pursuant to the State Water Board Enforcement Policy, the minimum civil 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. Economic benefit plus 10% is approximately \$107,326.

ADMINISTRATIVE CIVIL LIABILITY

32. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in

Water Code sections 13327 and 13385(e). The entire Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf

33. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13327 and 13268, as explained in detail in Attachment B to this Order. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
34. As described above, the Water Code's maximum penalty for the violations is \$8,383,000 and the minimum penalty is \$107,326. Based on consideration of the above facts, and after applying the penalty methodology, and considering the Discharger's ability to pay, the Central Valley Water Board has determined that civil liability be imposed administratively on the Discharger in the amount of **\$677,531**. The specific factors considered in this penalty are detailed in Attachment B.
35. Notwithstanding the issuance of this Order, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

IT IS HEREBY ORDERED that A Greener Globe Corporation shall pay a civil liability of \$677,531 as follows:

Within 30 days of adoption of the Order, the Discharger shall pay six hundred seventy seven thousand five hundred thirty one dollars (\$677,531) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written upon it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____.

PAMELA C. CREEDON, Executive Officer

Attachment A: Potential Maximum Liability
Attachment B: Penalty Calculation Methodology