

**Attachment B – ACL Order R5-2015-XXXX**  
**Specific Factors Considered for Administrative Civil Liability**  
**A Greener Globe Corporation**  
**Berry Street Mall (Aka Finger's) Landfill, Placer County**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf).

**Violations of WDR Order R5-2011-0048: Failure to submit six technical reports and six complete monitoring reports.**

WDRs Order R5-2011-0048, issued by the Board on 10 June 2011, required the Discharger to submit six technical reports. The accompanying Monitoring and Reporting Program requires the submittal of semiannual monitoring reports, six of which have been due to date. Despite several Notices of Violation by Regional Board staff, none of the technical reports have been submitted, and the monitoring reports submitted but were deemed materially deficient by Regional Board staff. The reports are required to be submitted pursuant to Water Code section 13267. Water Code section 13268 authorizes a liability of up to \$1,000 per day for each missing or incomplete report required pursuant to Water Code section 13267. Because each reporting requirement is similar in nature, they have been considered together instead of individually.

**Step 1 – Potential for Harm for Discharge Violations**

For this Order, the Central Valley Water Board is not alleging any illegal discharge of waste by the Discharger. Therefore, the evaluation of this factor has been omitted from the following calculation.

**Step 2 – Assessment for Discharge Violations**

For this Order, the Central Valley Water Board is not alleging any illegal discharge of waste by the Discharger. Therefore, the evaluation of this factor has been omitted from the following calculation.

**Step 3 – Per Day Assessment for Non-Discharge Violation**

The "per day" factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

**Potential for Harm**

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, the failure to submit technical and monitoring reports as required by WDRs Order R5-2011-0048 prevents the assessment of the nature and extent of the threat to water quality. In addition, the failure to have a corrective action financial assurance in place means that funds have not been set aside to implement corrective actions if there is an impact to water quality, and funds have not been set aside for postclosure maintenance of the landfill.

A release of waste constituents, including carbon tetrachloride and other volatile organic compounds (VOCs), has been confirmed at the Site with regular detections in monitoring well GW-5 and intermittent detections in monitoring well GW-6, at least during the period in which groundwater was monitored (prior to 2012). Elevated concentrations of select inorganic constituents, including chloride, bicarbonate alkalinity, sulfate, TDS, and specific conductance, have also be detected in downgradient wells GW-2, GW-3 and GW-5, and a soil gas sample collected from historically dry well GW-2 near the water table contained VOCs. It is known that impacts from the Site's residual waste mass have impacted deep soil gas and groundwater. However, because the Discharger has failed to collect groundwater samples for more than two years, the current magnitude of the impacts is unknown. The beneficial uses of

groundwater in the City of Roseville include municipal and domestic supply, agricultural supply, industrial service supply and industrial process supply, and the WDRs require that these uses be protected. Furthermore, no active soil gas extraction or groundwater treatment systems have been installed at the site to limit/control the offsite migration of impacted groundwater or soil gas.

In general, the failure to submit the reports required by WDRs Order R5-2011-0048 prevent Water Board staff, and other agencies charged with monitoring/regulating this facility, from assessing the Discharger's compliance with Title 27 and the WDRs, and the residual waste's threat to water quality and human health. More specifically, failure to submit these reports prevent Water Board staff and other agencies from assessing the conditions of the landfill's monitoring and control facilities, including the site's groundwater monitoring wells, soil gas probes, leachate collection system, storm water controls, and the conditions of the engineered cover, including slope stability.

Additionally, without a post closure maintenance plan, no mechanism is in place to ensure that the landfill's monitoring and control facilities are maintained to ensure that they are working properly and/or that representative monitoring data can be obtained. Without properly maintained facilities, the controls put in place to both contain waste and prevent the further releases of waste constituents may be compromised, ultimately leading to further impacts from waste constituents to ground and surface waters.

Two of the reports required by 2011 WDRs require the Discharger to re-evaluate how Water Quality Protection Standards for the site are calculated, and to then update the Site's Water Quality Protection Standards to establish valid concentration limits. The data required by these two reports was needed to establish a baseline from which impacts to groundwater from non-VOC constituents can be determined. Without this data and the evaluations required by these two reports, no means exists to determine background water quality and whether the Site's remaining waste mass is impacting groundwater.

The failure to submit evidence that the Discharger has obtained financial assurances jeopardizes the funding necessary to maintain all aspects of the Site, including the monitoring and control system necessary to contain the remaining waste mass, prevent any further release of waste constituents, and monitor the Site for compliance with the Site's WDRs and Title 27.

Therefore, the characteristics of the violation present a "substantial threat to beneficial uses" because the Water Board is deprived of the essential technical evaluations, monitoring, and data reporting to determine the extent and severity of the water quality impacts. A value of "**Moderate**" is therefore warranted.

#### Deviation from Requirement

The Enforcement Policy requires determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements. For the Deviation from Requirement, a "**Major**" factor is appropriate in this case: "*The requirement has been rendered ineffective (e.g., "discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential function.)"*" The Discharger has failed to submit each required technical report required by the WDRs, and each monitoring report submitted was late and was determined by staff to be materially deficient since they did not contain all sampling and analysis which is crucial to the significance and value of such reports. The Discharger's repeated failure to submit adequate reports and conduct monitoring and reporting as required by the WDRs shows the Discharger's complete disregard for compliance with regulatory requirements. The failure to submit reports has rendered the requirements outlined in the WDRs completely ineffective in their essential function to ensure compliance with Title 27. Without such data, the Central Valley Regional Board cannot keep current the Discharger's waste discharge

requirements and is unable to assess the Discharger's compliance with WDR prohibitions and requirements, such as the prohibition against pollution or nuisance.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.55** is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

#### **Step 4 – Adjustment Factors**

The Enforcement Policy states that additional factors should be considered, including (a) allowing for multi-day violations to be consolidated provided specific criteria are satisfied, (b) the violator's culpability, (c) the violator's efforts to clean up or cooperate with regulatory authorities after the violation, and (d) the violator's compliance history. After each of these factors is considered for the violations alleged, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

#### **Days of Violation**

The Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

Typically, the Per Day factor (0.55) would be multiplied by the maximum statutory liability per day (\$1,000 per day) and by the number of days of violation (8,383 days). However, in this case the initial liability would be excessive (over \$4.6 million), so the Central Valley Water Board has elected to reduce the days of violation as allowed by the Enforcement Policy.

The Central Valley Water Board finds that the failure to submit technical and monitoring reports results in no economic benefit that can be measured on a daily basis. Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: first day of violation, every fifth day of violation until the 30<sup>th</sup> day, and every 30 days thereafter. For example, a violation lasting 62 days would be compressed to 8 days (counting days 1,5,10,15,20,25,30,60).

The following table show the actual days of violation and the reduced days. The days of violation are calculated from the due date of the reports (see Findings 17 and 18 of the Order) through 20 January 2015, the date of issuance of Administrative Civil Liability Complaint R5-2015-0503.

<b>Technical and Monitoring Reports Required by the WDRs</b>	<b>Actual Days of Violation</b>	<b>Compressed Days of Violation</b>
Report describing the operational status of all landfill monitoring and control facilities	<b>1,254</b>	<b>48</b>
Updated Postclosure Maintenance and Monitoring Plan	<b>1,146</b>	<b>44</b>
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	<b>903</b>	<b>36</b>
Report describing status of financial assurance	<b>750</b>	<b>31</b>
Amended Report of Waste Discharge for a Revised Corrective Action Plan	<b>538</b>	<b>24</b>
Report describing status of financial assurance	<b>20</b>	<b>20</b>
2011 Second Semiannual/Annual Report/ COC Report and Aerial Survey & Update Topographic map (Materially Deficient)	<b>1,085</b>	<b>42</b>
2012 First Semiannual Report (Materially Deficient)	<b>903</b>	<b>36</b>
2012 Second Semiannual/Annual Report (Materially Deficient)	<b>719</b>	<b>30</b>
2013 First Semiannual Report (Materially Deficient)	<b>538</b>	<b>24</b>
2013 Second Semiannual/Annual Report (Materially Deficient)	<b>354</b>	<b>18</b>
2014 First Semiannual Report (Materially Deficient)	<b>173</b>	<b>12</b>
Total:	<b>8,383 days</b>	<b>365 days</b>

Using the reduced days of violation:

**Initial Liability Amount**

The initial liability amount for the violations calculated on a per-day basis is as follows:

$$365 \text{ days} \times \$1,000/\text{day} \times 0.55 = \$200,750$$

Total Initial Liability = \$200,750

### Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of 1.5. The Discharger is fully culpable for the failure to submit the required reports, as follows:

The Discharger has owned the landfill since 1996, and since that time has been required to submit technical and monitoring reports to the Central Valley Water Board. However, the Discharger failed to do so, and the Executive Officer issued a Cleanup and Abatement Order to bring the Discharger into compliance with its WDRs and Title 27, which included monitoring the groundwater and the investigating the extent of groundwater contaminated. The Discharger failed to comply, and the case was referred to the Attorney General's office. A Stipulated Judgment was then negotiated and entered by the Placer County Superior Court requiring the Discharger to comply with WDR 89-115 and the accompanying MRP, as well as CAO 99-724. Therefore, the Discharger was fully aware of the Water Board's regulatory requirements.

In late 2010, the Board's Permitting staff began working on updating the Discharger's permit. Updated WDRs were issued in June 2011. The Discharger was aware of the Permitting staff's actions, and had the opportunity to contest the proposed WDRs but chose not to. The updated WDRs were adopted by the Board in June 2011. The Notice of Adoption letter described each technical report and its due date, as well as the requirement to submit monitoring reports. However, the Discharger knowing failed to submit reports.

In 2014, Board staff attempted to gain compliance by issuing a 9 April 2014 Notice of Violation (NOV) for Delinquent Reports, requiring the submittal of past due reports<sup>1</sup>. The NOV informed the Discharger that the potential liability for non-submittal exceeded \$6.4 million, with liability continuing to accrue on a daily basis. The NOV was sent by certified mail, return receipt requested, and the case file shows that the NOV was received<sup>2</sup>. After the NOV was issued, Water Board staff communicated by e-mail and telephone with Daniel Sheehan, Richard Steffan (authorized agent for service of process), and Tom Ballard (the Discharger's consultant), all working on behalf of A Greener Globe Corporation. However, the reports required by the WDRs and described in the NOV were not submitted.

Additionally, in a 22 August 2014 letter, Water Board staff again notified the Discharger of the reporting requirements outlined in the WDRs and in the April 2014 NOV, and informed the Discharger that all issues outlined in the NOV must be addressed. Water Board staff also recommended the Discharger contact Board staff to set up a meeting to discuss and prioritize work required to address the NOV. However, the Discharger chose not to contact Board staff to arrange a meeting.

The Discharger has been regulated by the Water Board for 18 years and is fully aware of the requirements to submit technical and monitoring reports. Despite attempts to discuss the matter with the Discharger this summer, the Discharger has chosen not to respond to Board staff and to submit materially deficient monitoring reports. Therefore, it is appropriate to use a culpability factor of **1.5**

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<sup>1</sup> 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 this Order.

<sup>2</sup> The April NOVs were sent by certified mail, return receipt requested, to Daniel Sheehan and to Richard Steffan, the authorized agent for service of process. The certified mail receipts were received from Mr. Steffan, showing that he received the mail. After the April NOVs were sent, Board staff learned that we had the wrong address for Mr. Sheehan. The correct address was used for the 22 August letter, and Mr. Sheehan signed the certified mail receipt.

### Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger has not exhibited any cooperation or desire to return to compliance with the WDRs. As noted above the Discharger knowing failed to submit reports as required by the WDRs, failed to submit reports after receiving a NOV, failed to submit reports after receiving a subsequent Water Board staff letter requesting the past due reports, and failed to respond to Water Board staff's 22 August 2014 recommendation to meet and discuss prioritizing work required by the NOV. Additionally, instead of submitting reports required by the WDRs and NOV, the Discharger recently submitted a separate work plan to conduct work that would increase the value of the site by increasing parking available for the onsite lessee.

Furthermore, the Discharger has not submitted any monitoring reports after receiving the NOV and has not presented any information or correspondence indicating any intent to submit any of the past due reports. Therefore, is appropriate to use a cleanup and cooperation factor of **1.5**.

### 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 Discharger has an extensive history of noncompliance with regulatory and enforcement Orders issued by the Central Valley Water Board and the Local Enforcement Agency (LEA).

Upon taking ownership of the site in August 1996, a Greener Globe Corporation became responsible for complying with the requirements of WDRs Order 89-115. However, the Discharger failed to do so, and in October 1999 the Executive Officer issued Cleanup and Abatement Order (CAO) 99-724 for violations of the WDRs. The Discharger petitioned the CAO to the State Water Board, but the petition was rejected and the Discharger was required to complete the tasks outlined in the CAO. However, due to continued noncompliance with CAO 99-724, on 1 February 2000, the Executive Officer referred the Discharger to the Attorney General for injunctive relief. On 14 July 2003, the Attorney General filed a Stipulated Final Judgment requiring the Discharger to comply with both the WDRs and CAO.

Following the filing of the Stipulated Final Judgment, the Discharger resumed work required by the WDRs, the CAO, and the Stipulated Final Judgment. However, by late 2005, the Discharger had failed to submit multiple monitoring reports, and in August 2006, a NOV was issued to the Discharger for failure to submit monitoring reports. Reports were then submitted for several years, although many were significantly late; however, no complete reports have been submitted since the updated WDRs were issued in June 2011.

During a 24 October 2013 site inspection, Board staff found that the Discharger was violating other aspects of its WDRs. As described in a 9 April 2014 NOV, the violations included: 1) a discharge of new/additional waste to the Site, 2) failure to remove new/additional waste in a timely manner, 3) failure to maintain stormwater control features, and 4) failure to properly secure the site and its sedimentation basin. The Discharger subsequently stated that it corrected the four areas of violation; however, as noted in a recent Local Enforcement Agency (LEA) inspection report summary, site security and unauthorized post closure land use violations continue.

The Discharger has a history of failing to address violations found by Placer County, the LEA, acting on behalf of CalRecycle. The Discharger continues to intentionally disregard the requirement to prevent public access to the landfill. Specifically, the Discharger allows the gate to the landfill to remain open so that the Discharger's Lessee (Green Acres Nursery) has additional parking space atop the landfill. Between March 2011 and December 2014, the LEA conducted 18 site inspections and found violations

and/or areas of concerns during 15 of the inspections. Additionally, most of the noted violations and/or areas of concerns noted in the LEA inspection reports are for the same or repeated violations; two violations or areas of concerns were recorded for Slope Stability, seven violations or areas of concerns were recorded for Site Maintenance, 12 violations or areas of concerns were recorded for Monitoring and Reporting discrepancies, and 25 violations or areas of concerns were recorded for Site Security and Post closure Land Use issues. Additionally, during the most recent 30 December 2014 LEA site inspection, violations were again recorded for Site Maintenance and Site Security. The gate to the landfill was open, two cars were parked behind the gate, and tire rut damage to the vegetative cover was observed at five separate locations.

The Water Board requires that every discharger who is issued Waste Discharge Requirements pay annual filing fees. A Greener Globe failed to pay its annual fees prior to 1999, and the 2003 Stipulated Judgment required that the Discharger pay \$35,000 in back fees and to pay future required annual fees. However, the Discharger has not paid its annual fees since at least 2007. As of 13 November 2007, the Discharger owes over \$108,000 in past due fees. While this Order does not assess penalties for the failure to pay annual fees, it is considered as part of the History of Violations, and Water Board staff may contact the Attorney General to follow up with the Discharger's failure to comply with the Stipulated Judgment.

Given the Discharger's history of violations with both the Water Board and the LEA, and repeated violations for intentional actions taking by the Discharger, it is appropriate to use a History of Violation multiplier of **1.5** for this factor.

#### **Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

#### **Total Base Liability Amount**

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$$\$200,750 \times 1.5 \times 1.5 \times 1.5 = \$677,531$$

Total Base Liability = **\$677,531**

#### **Step 6 – Ability to Pay and Continue in Business**

The ability to pay and to continue in business must be considered when assessing administrative civil liability. Based on a preliminary asset search of publicly available information, the Central Valley Water Board finds that the Discharger has the ability to pay the proposed liability because it owns the property located at 901 Galleria Blvd. that has an assessed total value of \$1,001,744.00, and it generates rental income from leasing part of 901 Galleria Blvd. to Green Acres Nursery.

#### **Step 7 – Other Factors as Justice May Require**

The costs of investigation and enforcement are "other factors as justice may require", and could be added to the liability amount. The Central Valley Water Board Prosecution Team incurred over \$11,250 (75 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. While this amount could be added to the penalty, the Central Valley Water Board, in its discretion, has not added this amount to the total proposed liability.

### **Step 8 – Economic Benefit**

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. In other words, the Discharger realized a gain by not expending the resources to comply with water quality laws, including submitting the technical as required by WDRs Order R5-2011-0048, and completing monitoring and reporting as required by MRP R5-2011-0048. The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations.” The Discharger incurred an economic benefit by not submitting reports as required by the Site’s WDRs. The Discharger also incurred an economic benefit by failing to conduct groundwater sampling events, site inspections, and related site maintenance work necessary to maintain the site’s monitoring and control facilities.

The economic benefit values for not completing required site work and submitting each report required by the WDRs and the NOV were estimated based on actual billed work, contract costs bid proposals, and/or estimated work costs provided by other discharges for completing similar type work and/or consulting firms that complete similar work at other landfill facilities. Each of the estimated values used were obtained from the discharges and/or consultants for cost incurred or proposed between 2012 and 2014. These costs estimates were based on the costs associated with both completing work required to generate the data required to produce each report, and the work required by professionals to produce each report.

The U.S. Environmental Protection Agency developed the BEN computer model to calculate the economic benefit a discharger derives from delaying and/or avoiding compliance with environmental regulations. The State Water Board’s Senior Economist used the BEN model and the costs estimates discussed to estimate the overall economic benefit of noncompliance.

The total economic benefit the Discharger has realized for noncompliance is estimated to be \$97,569. Pursuant to the Enforcement Policy, the total proposed liability amount should be at least 10% higher than the calculated economic benefit. Therefore, the minimum liability is at least \$107,326.

### **Step 9 – Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are calculated in the ACL Order, and the values are repeated here.

Maximum Liability Amount: \$8,383,000

Minimum Liability Amount: \$107,326.

### **Step 10 – Final Liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed Administrative Civil Liability is **\$677,531**.