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## Central Valley Regional Water Quality Control Board

20 January 2015

### VIA FedEx Overnight

Daniel Sheehan  
A Greener Globe Inc.  
5009 Southside Ranch Road  
Rocklin, CA 95677

### VIA FedEx Overnight

Richard D. Steffan,  
A Greener Globe Inc.  
Agent for Service of Process  
389 Auburn Ravine Road  
Auburn, CA 95603

### **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0503, BERRY STREET MALL (AKA FINGER'S) LANDFILL, PLACER COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) sections 13267, 13268, and 13323. The Complaint alleges that A Greener Globe Incorporated (Discharger) failed to submit technical reports or failed to submit complete reports as required by Waste Discharge Requirements (WDRs) Order R5-2011-0048, Monitoring and Reporting Program (MRP) R5-2011-0048, and the 9 April 2014 Notice of Violation, for the Berry Street Mall (Aka Finger's) Landfill, and recommends an administrative civil liability in the amount **six hundred seventy seven thousand five hundred thirty one dollars (\$677,531)**.

The Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver by **18 February 2015**, a hearing will be scheduled for the **16/17 April 2015** Board meeting in Fresno. This hearing will be governed by the attached Hearing Procedure, which has been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedure must be received by Patrick Pulupa, whose contact information is listed in the Hearing Procedure, by **5 p.m. on 26 January 2015**.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day public comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the

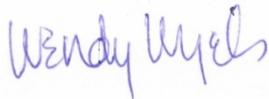
Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/).

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Paul Sanders at (916) 464-4817 or [paul.sanders@waterboards.ca.gov](mailto:paul.sanders@waterboards.ca.gov).



WENDY WYELS, Supervisor  
Compliance and Enforcement Section

Enclosure: ACL Complaint R5-2015-0503  
Hearing Procedure  
Waiver Form

cc w/o enc: Pamela Creedon, Central Valley Water Board, Rancho Cordova  
Andrew Altevogt, Central Valley Water Board, Rancho Cordova  
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento  
Vannessa Young, Office of Enforcement, SWRCB, Sacramento  
Glenn Young, CalRecycle, Closed, Illegal, & Aband. Sites Unit, Sacramento  
Paul Holloway, Placer County Environmental Health, Auburn  
Thomas Ballard, Geological Analytics, Antelope

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0503

IN THE MATTER OF

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

This administrative civil liability complaint (Complaint) is issued to A Greener Globe Corporation (hereafter Discharger) pursuant to California Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code Division 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on allegations 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 Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

**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. Additionally, a table summarizing all technical reports required by Order R5-2011-0048 and the date by which each report was to be submitted 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 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 the work plan, requested in item 3, 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 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 2<sup>nd</sup> Quarter 2007 nor the 3<sup>rd</sup> 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 date by which that report was to have been submitted.

Table 1

<b>Technical Reports Required by WDRs</b>	<b>Due Date</b>	<b>Days of Violation<sup>1</sup></b>
Report describing the operational status of all landfill monitoring and control facilities	<b>15 August 2011</b>	<b>1,254</b>
Updated Postclosure Maintenance and Monitoring Plan	<b>1 December 2011</b>	<b>1,146</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>31 July 2012</b>	<b>903</b>
Report describing status of financial assurance	<b>31 December 2012</b>	<b>750</b>
Amended Report of Waste Discharge for a Revised Corrective Action Plan	<b>31 July 2013</b>	<b>538</b>
Report describing status of financial assurance	<b>31 December 2014</b>	<b>20</b>

<sup>1</sup> 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 is to 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, other than submitting two incomplete monitoring reports (the 2011 Second Semiannual/Annual report and the 2012 First Semiannual monitoring report), the Discharger has failed to submit the required semiannual monitoring reports. 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 First Semiannual monitoring report did not contain any groundwater analytical results.

The submitted 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.

Table 2

<b>MRP Required Reports</b>	<b>Due Date</b>	<b>Days of Violation<sup>1</sup></b>
2011 Second Semiannual/Annual Report/ COC Report and Aerial Survey & Update Topographic map (incomplete)	<b>31 January 2012</b>	<b>1,085</b>
2012 First Semiannual Report (Incomplete)	<b>31 July 2012</b>	<b>903</b>
2012 Second Semiannual/Annual Report (not submitted)	<b>31 January 2013</b>	<b>719</b>
2013 First Semiannual Report (not submitted)	<b>31 July 2013</b>	<b>538</b>
2013 Second Semiannual/Annual Report (not submitted)	<b>31 January 2014</b>	<b>354</b>
2014 First Semiannual Report (not submitted)	<b>31 July 2014</b>	<b>173</b>

<sup>1</sup>As of 20 January 2015

19. On 9 April 2014, a NOV for Delinquent Reports was issued to the Discharger for failure to submit the reports required by the WDRs<sup>1</sup>. 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**

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

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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 Complaint.

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 Complaint alleges the Discharger violated WDRs R5-2011-0048 and seeks 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 Complaint 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 Attachment A, the Discharger has failed to submit 10 reports, and has submitted two incomplete reports. As of 20 January 2015 (the date of issuance of this Complaint), 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 Attachment A, 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. The Regional Board Prosecution Team estimates that economic benefit plus 10% is approximately \$107,326.

### **PROPOSED 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](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 Complaint. 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 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, the Assistant Executive Officer of the Central Valley Water Board proposes 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 Complaint, 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.
36. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue administrative civil liability complaints.

**A GREENER GLOBE CORPORATION IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **six hundred seventy seven thousand five hundred thirty one dollars (\$677,531)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13268, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **16/17 April 2015**, unless one of the following occurs by **18 February 2015**:
  - a) The Discharger waives the hearing by completing the attached form (checking the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **six hundred seventy seven thousand five hundred thirty one dollars (\$677,531)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or

- c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option #3 on the attached form, and returns it to the Prosecution Team along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.
5. Payment of the assessed liability amount does not absolve the Discharger from complying with WDRs Order R5-2011-0048, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with these orders, and/or future orders issued by the Central Valley Water Board.

*Andrew Altevogt*

ANDREW ALTEVOGT, Assistant Executive Officer

*1/20/15*

DATE

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

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent A Greener Globe Corporation (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2015-0503 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **six hundred seventy seven thousand five hundred thirty one dollars (\$677,531)** by check that references "ACL Complaint R5-2015-0503" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **18 February 2015**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public *notice and comment period*. *Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.*
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Attachment A**  
**Administrative Civil Liability Complaint R5-2015-0503**  
**Potential Maximum Liability**

<b>CWC section 13268 Liability Assessment for Non-Submittal of Reports or Submittal of Incomplete Reports</b>					
<b>Due Date</b>	<b>Reports</b>	<b>Liability Assessment Date</b>	<b>Days Late</b>	<b>Maximum Liability</b>	<b>Item Status</b>
8/15/2011	Operational status of all landfill monitoring and control facilities report	1/20/2015	1,254	\$1,254,000	Delinquent
12/1/2011	Updated Post closure Maintenance and Monitoring Plan (PCMP)	1/20/2015	1,146	\$1,146,000	Delinquent
7/31/2012	1. Technical report proposing statistical and non-statistical data analysis methods	1/20/2015	903	\$903,000	Delinquent
	2. Updated Water Quality Protection Standard Report				
	3. Corrective Action Plan and Revised Evaluation Monitoring Plan				
12/31/2012	Report of status of required financial responsibility	1/20/2015	750	\$750,000	Delinquent
7/31/2013	Amended Report of Waste Discharge	1/20/2015	538	\$538,000	Delinquent
12/31/2014	Report of status of required financial responsibility (2-year update)	1/20/2015	20	\$20,000	Delinquent
1/31/2012	2011 Second Semiannual/Annual/COC Report/ Aerial Survey & Update Topographic map	1/20/2015	1,085	\$1,085,000	Incomplete
7/31/2012	2012 First Semiannual Report	1/20/2015	903	\$903,000	Incomplete
1/31/2013	2012 Second Semiannual/Annual Report	1/20/2015	719	\$719,000	Delinquent
7/31/2013	2013 First Semiannual Report	1/20/2015	538	\$538,000	Delinquent
1/31/2014	2013 Second Semiannual/Annual Report	1/20/2015	354	\$354,000	Delinquent
7/31/2014	2014 First Semiannual Report	1/20/2015	173	\$173,000	Delinquent
			<b>Total</b>	<b>8,383</b>	<b>\$8,383,000</b>

Liability Assessment through 20 January 2015

**Attachment B – ACL Complaint R5-2015-0503**  
**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 only two monitoring reports were submitted but were deemed incomplete 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 Complaint, the Central Valley Water Board Prosecution Team 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 Complaint, the Central Valley Water Board Prosecution Team 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 all but two of the technical and monitoring reports required by the WDRs, and the two monitoring reports that were submitted did not contain all sampling and analysis which is crucial to the significance and value of such reports. Additionally no groundwater monitoring reports have been submitted since the First Quarter 2012 report. 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 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 Prosecution Team has elected to reduce the days of violation as allowed by the Enforcement Policy.

The Prosecution Team 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 Complaint) through 20 January 2015, the date of issuance of this Complaint.

<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 (incomplete)	<b>1,085</b>	<b>42</b>
2012 First Semiannual Report (Incomplete)	<b>903</b>	<b>36</b>
2012 Second Semiannual/Annual Report (not submitted)	<b>719</b>	<b>30</b>
2013 First Semiannual Report (not submitted)	<b>538</b>	<b>24</b>
2013 Second Semiannual/Annual Report (not submitted)	<b>354</b>	<b>18</b>
2014 First Semiannual Report (not submitted)	<b>173</b>	<b>12</b>
Total:	<b>8,383 days</b>	<b>365 days</b>

Using the reduced days of violation:

<b><u>Initial Liability Amount</u></b>
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 or submit the reports. Therefore, it is appropriate to use a culpability factor of **1.5**

#### 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

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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 Complaint.

<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.

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 Complaint 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. The Prosecution Team conducted a preliminary asset search of publicly available information. The Prosecution Team 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 has 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 Prosecution Team, in its discretion, is not adding this amount to the total proposed liability. The Prosecution Team has chosen to not pursue staff costs in this matter.

**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 Complaint, 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**.

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2015-0503

ISSUED TO

A GREENER GLOBE CORPORATION  
PLACER COUNTY

SCHEDULED FOR 16/17 APRIL 2015

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

**Overview**

Pursuant to Water Code section 13323, the Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to A Greener Globe Corporation, alleging violations of Water Code section 13267 for failure to submit the technical and monitoring reports required by Waste Discharge Requirements (WDRs) Order R5-2011-0048. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of \$677,531. A hearing is currently scheduled to be conducted before the Board during its 16/17 April 2015 meeting.

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

Central Valley Water Board, Fresno Office, 1685 E Street, Fresno, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Board's web page at:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings)

**Hearing Procedure**

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at:

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

### **Separation of Prosecutorial and Advisory Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Pamela Creedon, Executive Officer; Adam Laputz, Assistant Executive Officer and Patrick Pulupa, senior staff counsel. Members of the Prosecution Team are: Andrew Altevogt, Assistant Executive Officer; Wendy Wyels, Environmental Program Manager; Howard Hold, Senior Engineering Geologist; Paul Sanders, Engineering Geologist, and Vanessa Young, staff counsel.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Andrew Altevogt regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

### **Hearing Participants**

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. A Greener Globe Corporation

### **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

### **Primary Contacts**

#### **Advisory Team:**

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**Discharger**

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rsteffan@sbcglobal.net

**Ex Parte Communications**

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: the Prosecution Team shall have **45** minutes to provide case background and evidence, and each other Designated Party shall have a combined **30** minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

### **Submission of Evidence and Policy Statements**

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

**Prosecution Team:** The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

**Designated Parties (including the Discharger):** All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

**Rebuttal:** Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

**Copies:** Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

**Other Matters:** The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

**Interested Persons:** Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

**Prohibition on Surprise Evidence:** In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding.

**Presentations:** Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

**Witnesses:** All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

### **Evidentiary Documents and File**

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml)

Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above) for assistance obtaining copies.

### **Questions**

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

## IMPORTANT DEADLINES

*All required submissions must be received by 5:00 p.m. on the respective due date.*

20 January 2015	<ul style="list-style-type: none"> <li>▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.</li> </ul>
26 January 2015	<ul style="list-style-type: none"> <li>▪ Objections due on Hearing Procedure.</li> <li>▪ Deadline to request “Designated Party” status.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
30 January 2015	<ul style="list-style-type: none"> <li>▪ Deadline to submit opposition to requests for Designated Party status.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
18 February 2015	<ul style="list-style-type: none"> <li>▪ Discharger’s deadline to submit <i>90-Day Hearing Waiver Form</i>.</li> </ul> <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>
20 February 2015*	<ul style="list-style-type: none"> <li>▪ Advisory Team issues decision on requests for designated party status.</li> <li>▪ Advisory Team issues decision on Hearing Procedure objections.</li> </ul>
25 February 2015*	<ul style="list-style-type: none"> <li>▪ Prosecution Team’s deadline for submission of information required under “Submission of Evidence and Policy Statements,” above.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
17 March 2015*	<ul style="list-style-type: none"> <li>▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all information required under “Submission of Evidence and Policy Statements” above. This includes all written comments regarding the ACL Complaint.</li> <li>▪ Interested Persons’ comments are due.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
24 March 2015*	<ul style="list-style-type: none"> <li>▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.</li> <li>▪ Deadline to submit requests for additional time.</li> <li>▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
26 March 2015* <sup>†</sup>	<ul style="list-style-type: none"> <li>▪ Prosecution Team submits Summary Sheet and responses to comments.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
16/17 April 2015*	<ul style="list-style-type: none"> <li>▪ Hearing</li> </ul>

\* Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an “\*” will be revised if a settlement cannot be reached.

<sup>†</sup> This deadline is set based on the date that the Board compiles the Board Members’ agenda packages. Any material received after this deadline will not be included in the Board Members’ agenda packages.