

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

4/5 JUNE 2015 BOARD HEARING REGARDING

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0503
A GREENER GLOBE CORPORATION, BERRY STREET MALL LANDFILL, PLACER COUNTY

PROSECUTION TEAM'S REBUTTAL TO A GREENER GLOBE'S EVIDENCE SUBMITTAL

I. Introduction

On 20 January 2015, the Assistant Executive Officer, lead prosecutor, for the Central Valley Regional Water Board (Central Valley Water Board or Board) issued Administrative Civil Liability (ACL) Complaint R5-2015-0503 (Complaint) in the amount of \$677,531 to A Greener Globe Corporation (AGG or Discharger) for the failure to submit six technical reports and six complete monitoring reports as required by the waste discharge requirements for its Berry Street Mall landfill. (Prosecution Team Evidence Submission, Exhibit 30). In the interest of settlement, the matter was rescheduled from the April 2015 Board meeting to the 4/5 June 2015 Board meeting. The revised Hearing Procedures state that AGG's evidence, legal and technical analysis, and witness list was to be submitted by 4 May 2015. The Discharger did not submit any information on that date, but submitted late evidence on 12 May 2015. The Discharger did not include an evidence list or witness list.

The Advisory Team has ruled that the late evidence will be admitted into the record, and has extended the rebuttal deadline until 22 May 2015.

II. The Proposed Administrative Civil Liability Amount of \$677,531 is Appropriate.

A. Facility Background and Ongoing Noncompliance with Water Board Requirements

AGG's recalcitrance undermines the Water Board's ability to adequately protect water quality.

Background

AGG owns a closed, unlined, 13 acre landfill. The landfill is located on a 26 acre parcel along Galleria Blvd. in the City of Roseville (Assessor's Parcel Number 015-100-048), in an area characterized by high-end retail stores. The landfill operated from 1946 to November 1987, and in 1991 was abandoned by the estate of the original owner. In 1993, the California Department of Resources Recycling and Recovery (CalRecycle) closed the landfill in accordance with Title 27 regulations. In 1996, AGG acquired ownership of the property in foreclosure

proceedings. Since 1996, the Discharger has received income from leasing the developed portion of the property. The current lessee is Green Acres Nursery.

Title 27 of the California Code of Regulations contains specific regulations for landfills, which are implemented by the Water Board through adoption of waste discharge requirements. The landfill is currently regulated by WDRs Order R5-2011-0048 (Prosecution Team Evidence Submission, Exhibit 16).

Groundwater monitoring conducted prior to 2012 confirms that there has been a release of waste constituents from the landfill to the underlying groundwater. Groundwater is found about 120 feet below ground surface, and contains volatile organic compounds including carbon tetrachloride, and elevated concentrations of inorganic constituents including chloride, bicarbonate alkalinity, sulfate, and total dissolved solids. Title 27 requires that landfills which have allowed a release of waste be placed under "corrective action" and that steps be taken to define the plume of contamination, stop the source of contamination, and clean up the groundwater. The WDRs require that these actions be taken at AGG's landfill.

Ongoing Noncompliance

There is a lengthy history of noncompliance. AGG bought the property in 1996, and was required to fulfill the monitoring and reporting requirements of WDRs Order 89-115. Central Valley Water Board staff reminded AGG on numerous occasions of its obligation to comply with the monitoring and reporting requirements of WDRs Order No. 89-115. (see Prosecution Team's Evidence Submission, Exhibits 7, 11, 13, 14). However, this did not occur, and in 1999, the Board issued Cleanup and Abatement Order (CAO) 99-724 for AGG's failure to comply with both the WDRs and with the requirements of Title 27. AGG did not comply with CAO 99-724, as AGG failed to monitor and sample, failed to pay annual fees, and failed to address the groundwater contamination. The Board referred the matter to the Attorney General's office for civil enforcement. In 2003, a Stipulated Final Judgment was filed enjoining AGG from violating WDR Order 89-115, CAO 99-724, and requiring, in part, that AGG pay \$45,000 in past due annual fees.

Despite prior efforts by the Central Valley Water Board to compel AGG to comply, AGG continues to violate Water Board requirements. AGG has not paid its annual permit fees to the State Water Board since at least 2007, and currently owes over \$108,000. (see Prosecution Team's Evidence Submission, Exhibit 39). AGG has failed to submit six technical reports

required by waste discharge requirements Order R5-2011-0048 (2011 WDRs). The outstanding reports include a description of the operational status of all landfill monitoring facilities, an updated post-closure maintenance and monitoring plan, an evaluation of groundwater conditions and constituent concentrations, a proposal for a revised groundwater monitoring plan, verification that AGG has created and funded a financial assurance account, and a Report of Waste Discharge including a proposal for corrective action. AGG is also required by the 2011 WDRs to submit semi-annual monitoring reports, as described in the Monitoring and Reporting Program (MRP). While documents have been submitted, staff's review finds that they are materially deficient reports because the reports contain only a small portion of the information required by the MRP, are not signed by a registered professional, and a non-certified laboratory was used to analyze the groundwater samples. Without the monitoring reports required by the 2011 WDRs, Board staff cannot assess the current impacts to groundwater, cannot determine whether the landfill's cover is being maintained, and cannot determine whether other landfill facilities are functioning as designed to prevent a release of waste.

AGG has been aware of the monitoring and reporting requirements in WDRs Order R5-2011-0048 since its adoption. The WDRs and the monitoring program for AGG are no different than those for other dischargers with similar unlined, closed landfills in this Region. AGG provided comments on the tentative order but did not contest the adoption. The 16 June 2011 *Notice of Adoption* letter contains a table summarizing each required technical report and the respective due date. To date, the Board has not received any of the required technical reports.

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

B. AGG has the Ability to Pay the Proposed Liability Amount

A discharger's ability to pay and continue in business is a consideration that the Board must weigh when assessing administrative civil liability. (Water Code sections 13327 and 13385(e)). The ability to pay and continue in business is Step 6 of the State Water Board's Enforcement Policy. The Enforcement Policy provides that the Prosecution Team conduct a "simple preliminary asset search" to meet the initial burden of proof. (State Water Board Enforcement Policy, p. 19). The burden then shifts to the discharger to offer proof and demonstrate an inability to pay. The discharger must substantiate claims of inability to pay supported by financial documentation (e.g. information not publicly available).

Step 6 in the Complaint contains an initial assessment based on information that is publicly available (e.g. county tax assessor's office). The Complaint relies on AGG's ability to generate rental income from leasing the property to Green Acres Nursery along with the finding that the total assessed value of the property owned by AGG is over one million dollars and located on prime real estate. The Prosecution Team has met its initial burden that AGG has the ability to pay the proposed liability.

The Discharger submitted documentation on 12 May 2015. Included in the submission are, notably, IRS Tax Forms for the years 2009 through 2013, lease contracts between AGG and Green Acres, and loan documents. A Greener Globe has not raised in this proceeding that it cannot afford the proposed penalty.

Information in AGG's 12 May 2015 evidence submission further supports the Prosecution Team's initial assessment set forth in the Complaint. The State Water Board economist has prepared the attached memorandum containing an analysis of AGG's ability to pay. As explained further in the memorandum, the Prosecution Team concludes that AGG has sufficient equity in the land to pay the proposed liability amount.

C. A Greener Globe Has Been Cited By the Local Enforcement Agency and the California Attorney General's Office. A Greener Globe Paid Damages to Its Lessee.

The following activities call into question whether AGG is a responsible 501(c)(3) organization.

Beyond violations of Water Board requirements, AGG has a history of not complying with other solid waste facility laws and regulations. In 2002, Placer County Environmental Health Services

(the Local Enforcement Agency) issued a "Notice and Order to Cease and Desist" requiring AGG, in part, to complete a Final Post-Closure Maintenance Plan and to submit past-due fees for LEA solid waste activities. Between March 2011 and December 2014, Placer County Environmental Health Services conducted 18 inspections and cited AGG for violations 83% of the time. (see Prosecution Team's Evidence Submission, Exhibit 43).

On March 17, 2015 the California Attorney General's Office¹, Registry of Charitable Trusts, issued AGG a notice, warning AGG of the assessment of penalties and late fees, and suspension or revocation of registered status for the delinquent submission of Registration Renewal Fee Reports. (see Prosecution Team's Evidence Submission, Exhibit 44).

In a lawsuit between AGG and its former tenant, Capitol Waste, a judgment was entered by Superior Court of Placer County on October 5, 2006 finding that AGG was responsible for \$17,500 in damages to Capitol Waste for intentional and negligent interference of prospective economic advantage due to AGG's delay to approve subleases. The Court also found that AGG has the obligation to regulatory agencies to fulfill landfill and monitoring obligations pertaining to the landfill gas and water wells as required by the post closure maintenance plan and environmental regulatory agencies. (A Greener Globe's Evidence Submission, Tab 2, Notice of Entry of Judgment, p.8-9).

D. The Technical Documents included in the Discharger's Tab 4 Evidence Submission Have No Bearing on ACL Complaint R5-2015-0503.

Tab 4 of the Discharger's evidence contains three technical documents. The technical documents have no bearing on the calculation of the civil liability assessment as proposed by the Prosecution Team.

1. Consultant's Report: The first page of Tab 4 is the cover page from a 2001 consultant's report titled *Phase I Site Assessment Update, Berry Street Mall Landfill, Roseville, California*. It is unknown why this one page was included in the evidence, as AGG has not provided a discussion about its relevance to the ACL Complaint. The waste discharge requirements were updated in 2011 and took into account the previous investigations at the landfill. The Prosecution Team asserts that this document is not relevant to the case at hand.

¹ The Attorney General regulates charities. Such oversight is to protect charitable assets for their intended use and ensure that the charitable donations contributed by Californians are not misapplied and squandered through fraud or other means. (see <http://oag.ca.gov/charities>)

2. Laboratory Report for Groundwater Samples. The second set of documents is a 15 January 2015 report from Alpha Analytical Laboratories. It contains the results for groundwater samples collected from the five groundwater monitoring wells at AGG's Berry Street Mall landfill on 29 December 2014.

The Monitoring and Reporting Program (MRP) of the WDRs describe the monitoring and reporting required of AGG. However, the evidence submitted by AGG is simply a "data dump" and does not contain any of the discussion or supporting information required by the MRP. It also does not contain the results of other monitoring required by the MRP, for example, leachate monitoring, landfill gas monitoring, unsaturated zone monitoring, surface water monitoring, and general facility monitoring.

One of the reasons that the ACL Complaint was issued was that since the Board adopted the 2011 WDR, AGG has not submitted *any* complete monitoring reports. Board staff attempted to work with the Discharger during 2014 with the issuance of a Notices of Violation and a letter, telephone calls, and an offer to meet to discuss how to return to compliance. The Prosecution Team notes that the 29 December 2014 groundwater samples were collected *after* staff's attempts to work with the Discharger, and once again, the Discharger has failed to appropriately monitor or report its results. Proper reporting is critical to demonstrate that the samples were collected and analyzed accurately so that both the Board and the Discharger know that the analytical results truly represent the conditions found at the landfill.

If the Prosecution Team were to assume that the groundwater samples were collected correctly, then the results show that groundwater contaminants are similar since the last formal monitoring events, prior to 2012. Carbon tetrachloride continues to be detected, at a concentration five times higher than the Primary Maximum Contaminant Level.

3. Landfill Gas Monitoring Report. The third set of documents is a report from Geological Analytics titled *Third Quarter 2014 Landfill Gas Monitoring Report (revised), Berry Street Mall Landfill*. AGG is required to monitor the concentrations of landfill gas at the perimeter of the landfill per Title 27 regulations. This monitoring is overseen by Placer County, who is working on behalf of CalRecycle, and is necessary for the protection of public health and safety. This landfill gas monitoring report has no bearing on the ACL Complaint, as the 2011 WDRs require that landfill gas be monitored at different locations than those in the submitted report (i.e., within the landfill, not at the property boundaries). However, the Prosecution Team finds it interesting

that AGG apparently conducts the monitoring required by CalRecycle's permit but does not conduct the monitoring required by the Water Board's permit.

III. Conclusion

Regional Board staff's goal is for A Greener Globe to comply with its WDRs. To date, compliance assistance has not been effective. AGG has refused to complete the six technical reports required by its WDRs, including demonstrating that it has funded a financial assurance account to address corrective actions and continued post-closure maintenance and monitoring. AGG must also begin monitoring and reporting in accordance with its WDRs. AGG's evidence does not contain a proposal or timeline to reach compliance. The absence of such efforts suggests that AGG does not take Regional Board requirements seriously.

A significant administrative civil liability is necessary and appropriate. AGG has a lengthy history of noncompliance with Water Board requirements. The alleged violations in the Complaint are reporting violations that relate to real concerns about whether releases from the landfill have impacted, or have the potential to impact, surface water and groundwater in the vicinity of the landfill. This Board sought injunctive relief against AGG in 2000 for noncompliance with Water Board requirements. Yet, here we are today before the Board under very similar circumstances. AGG's defiance and disregard for the requirements of the Central Valley Water Board cannot be treated lightly. A significant penalty, in accordance with the State Water Board's Enforcement Policy, is necessary to sufficiently deter such conduct. For the reasons stated above, as well as in the Complaint and Attachment A to the Complaint, we respectfully request that the Central Valley Water Board assess administrative civil liability in the amount proposed.

Rebuttal Evidence

The attached Rebuttal Evidence List contains five documents.

Attachment: 21 May 2015 memo from Madalene Ransom to Vanessa Young, *A Greener Globe Ability to Pay, Preliminary, Administrative Civil Liability Complaint No. R5-2015-0503*

For the Prosecution Team:

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