

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-0064

IN THE MATTER OF

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

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

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

BACKGROUND

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

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

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

PREVIOUS ENFORCEMENT

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

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

CURRENT ENFORCEMENT

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

Table 1

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

¹ As of 20 January 2015

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

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

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

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

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

Table 2

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

¹As of 20 January 2015

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

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

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

26. Issuance of this Order to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13268

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

ADMINISTRATIVE CIVIL LIABILITY

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

factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385(e). The entire Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf

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

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

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

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 4 June 2015.

Original signed by

PAMELA C. CREEDON, Executive Officer

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

Attachment A
Administrative Civil Liability Order R5-2015-0064
Potential Maximum Liability

CWC section 13268 Liability Assessment for Non-Submittal of Reports or Submittal of Incomplete Reports					
Due Date	Reports	Liability Assessment Date	Days Late	Maximum Liability	Item Status
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	Materially Deficient
7/31/2012	2012 First Semiannual Report	1/20/2015	903	\$903,000	Materially Deficient
1/31/2013	2012 Second Semiannual/Annual Report	1/20/2015	719	\$719,000	Materially Deficient
7/31/2013	2013 First Semiannual Report	1/20/2015	538	\$538,000	Materially Deficient
1/31/2014	2013 Second Semiannual/Annual Report	1/20/2015	354	\$354,000	Materially Deficient
7/31/2014	2014 First Semiannual Report	1/20/2015	173	\$173,000	Materially Deficient
Total			8,383	\$8,383,000	

Liability Assessment through 20 January 2015

Attachment B – ACL Order R5-2015-0064
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.

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

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

Step 1 – Potential for Harm for Discharge Violations

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

Step 2 – Assessment for Discharge Violations

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

Step 3 – Per Day Assessment for Non-Discharge Violation

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

Potential for Harm

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

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

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

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

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

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

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

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

Deviation from Requirement

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

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

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

Step 4 – Adjustment Factors

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

Days of Violation

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

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

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

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

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

Using the reduced days of violation:

Initial Liability Amount

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

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

Total Initial Liability = \$200,750

Culpability

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

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

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

In 2014, Board staff attempted to gain compliance by issuing a 9 April 2014 Notice of Violation (NOV) for Delinquent Reports, requiring the submittal of past due reports¹. 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 received². After the NOV was issued, Water Board staff communicated by e-mail and telephone with Daniel Sheehan, Richard Steffan (authorized agent for service of process), and Tom Ballard (the Discharger's consultant), all working on behalf of A Greener Globe Corporation. However, the reports required by the WDRs and described in the NOV were not submitted.

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

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

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

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

Cleanup and Cooperation

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

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

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Discharger has an extensive history of noncompliance with regulatory and enforcement Orders issued by the Central Valley Water Board and the Local Enforcement Agency (LEA).

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

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

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

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

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

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

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

Step 5 - Determination of Total Base Liability Amount

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

Total Base Liability Amount

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

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

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

Step 6 – Ability to Pay and Continue in Business

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

Step 7 – Other Factors as Justice May Require

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

Step 8 – Economic Benefit

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

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

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

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

Step 9 – Maximum and Minimum Liability Amounts

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

Maximum Liability Amount: \$8,383,000

Minimum Liability Amount: \$107,326.

Step 10 – Final Liability Amount

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