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OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition of Terrapure Environmental Ltd. by GFL Environmental Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

GFL ENVIRONMENTAL INC.

Respondent

RESPONSE

I. OVERVIEW

1. GFL opposes this Application by the Commissioner pursuant to section 92 of the *Act* and denies that the Commissioner is entitled to any of the relief sought. All capitalized terms not defined in this Response have the meaning given to them in the Application.
2. GFL denies that its Acquisition of Terrapure has resulted or is likely to result in a substantial lessening of competition. The Commissioner has improperly defined the relevant product and geographic markets and asserted anticompetitive effects where there are none.
3. Industrial waste management is a very broad industry, which provides differentiated services in relation to numerous and distinct types of non-hazardous and hazardous wastes to a vast array of commercial, industrial, and institutional customers. This is a highly fragmented industry served by diverse firms, ranging from large, international enterprises with numerous business lines to smaller businesses with specialized service offerings relating to specific waste streams and customers. The industry is dynamic, with low barriers to

entry and expansion. Competitors' service offerings evolve over time in response to changing types of waste being generated, customer needs, and regulatory requirements. In many geographical locations, service providers rely on competitors' facilities in order to meet the processing needs for a particular waste stream.

4. Within this industry, GFL and Terrapure were engaged in largely complementary businesses. The only area in which their activities minimally overlapped was within GFL's liquid waste segment ("**GFL Liquids**"). Even within that segment, there were significant differences between the companies' offerings and customers. In the regions at issue in the Application, Terrapure generally provided more complex services requiring a high degree of technical sophistication to industrial customers (e.g. mine sites), while GFL typically serviced commercial customers who required less complex services (e.g. commercial septic waste and automotive shops).
5. The Acquisition was not a means for GFL to remove a close competitor, as the Commissioner alleges, but to enhance the capabilities and reach of the GFL Liquids business, by complementing existing service offerings in some regions, and by providing GFL with a presence in other regions where GFL Liquids was either not present or present only to a limited degree.
6. By defining the relevant product markets too broadly, the Application ignores important differences between GFL and Terrapure's service offerings and customer bases in different regions, which meant that in some cases there was limited direct competition between GFL and Terrapure. Thus, the Acquisition did not remove an effective competitor in those regions. Where GFL and Terrapure offer overlapping services, other vigorous competitors remain.
7. By defining the relevant geographic markets too narrowly, the Application ignores that many competitors do or can provide services competitive with those of GFL and the legacy Terrapure business, from facilities located outside the specific regions identified by the Commissioner. The Application also ignores that many industrial customers have their own tailings pond and keep their industrial waste onsite. The industrial waste industry relies extensively on trucking waste from its point of origin to facilities for storage, aggregation and processing specialized for particular waste streams. The distance service

providers are willing to travel is dependent on the nature and volume of the waste stream being collected.

8. Certain regions at issue in the Application generate significant volumes of waste as a result of the intensity of local industrial and energy activity, such that numerous vigorous competitors are present. Competition in these regions has been and remains intense for all industrial waste streams following the Acquisition. There were and are multiple other competitors or potential competitors which face low barriers to entry or expansion, ranging from the large international firms Clean Harbors, Inc., including its Safety-Kleen division (referred to herein as “**Clean Harbors**” or “**Safety-Kleen**”), and Veolia Environnement S.A. (“**Veolia**”), and the recently merged Canadian public companies Tervita Corporation and Secure Energy Services (“**Secure/Tervita**”), to medium-sized and smaller local businesses.
9. Other regions at issue have relatively low industrial waste volumes. In each of these regions, GFL and Terrapure typically provided differentiated offerings. Notwithstanding the low industrial waste volumes, there were and continue to be multiple competitors including the large international firms and a significant number of smaller local players in each of these regions that continue to compete post-Acquisition in respect of all service offerings.
10. Notably, with no landfills, deep wells, incinerators or other similar final disposal assets of their own in Western Canada, both GFL and Terrapure rely on major competitors such as Clean Harbors, Secure/Tervita, Plains Environmental (“**Plains**”), Miller Waste Systems (“**Miller**”) and others for end disposal of virtually all of the industrial waste streams at issue in Western Canada, other than used oil and antifreeze.
11. In any case, the Acquisition has generated significant efficiencies that will be lost in the event of a divestiture order, which dwarf any alleged anticompetitive effects (which are denied). These efficiencies include cost savings that have already been realized from a single provider offering the same range of differentiated services that GFL and Terrapure delivered separately prior to the Acquisition. Notable benefits of the Acquisition also include a reduction in greenhouse gas emissions, and hence, in the environmental impact of those services.

II. ADMISSIONS AND DENIALS

12. GFL admits the description of the parties and the Acquisition in paragraphs 7 through 10 of the Application.
13. GFL denies all other allegations in the Application, unless expressly admitted herein.

III. GROUNDS ON WHICH THE APPLICATION IS OPPOSED

A. The Relevant Markets

a. Relevant Product Markets

14. The relevant product markets alleged in the Application are overbroad, lumping together collections of highly differentiated and specialized services that are not substitutable.
15. The Application conflates industrial cleaning services (“**ICS**”) and liquid waste and wastewater management services (“**LWMS**”) under the label “Industrial Waste Services” (“**IWS**”), although these involve distinct service offerings, with distinct customers and competitors.
16. ICS consists of cleaning and maintenance services that use specialized equipment and techniques, including high-pressure water cutting, jetting and blasting, steaming, and vacuuming to clean and decontaminate equipment, buildings, pipelines, storage tanks, water and sewage works, and other applications. ICS also includes the maintenance and operation of vacuum trucks, which are specialized vehicles used to manipulate, load, and transport a broad range of materials, including flammable materials, sludges, chemicals and by-products, water, sewage and sediment.
17. LWMS consists of the collection, onsite packaging, supply of containers for, transportation, processing and disposal or recycling of liquid wastes produced by industry, institutions, and households. Importantly, the waste streams include hazardous liquid waste such as chemicals, reagents, and solvents, and non-hazardous liquid waste, such as wastewater. These varied streams of industrial waste cannot be mixed together and service providers often use one another’s storage and processing facilities depending on the nature of the

waste stream. From these storage and processing facilities, the waste is then bulked or repackaged into larger containers based on the particular waste type and transported to locations for final disposal which, depending on the nature of the waste, may be outside of Western Canada, and in most cases, to competitors that own final disposal facilities.

18. The other category of services at issue in the Application – oil recycling services (“**ORS**”) – consists of the collection, transport, and processing for reuse, resale, or safe disposal of automotive fluids (e.g. used motor oil, transmission fluid, and antifreeze) and materials contaminated with such fluids (e.g. used filters, absorbents, oily rags, and containers). ORS providers can earn revenues from three sources:
 - a. customers from whom they collect used oils and other fluids (e.g. lube centres, repair shops, construction sites, dealerships, farmyards, and industrial operations). The value of the oil or other fluid collected for recycling from these customers is an immaterial input relative to the services provided by the shops to their customers;
 - b. provincial stewardship programs, which offer return incentives to collectors to offset collection costs, in order to encourage proper waste disposal; and
 - c. sale of the processed fluids.
19. The relevant product markets are not simply the collection and processing levels of the supply chain for each of IWS (or ICS and LWMS) and ORS, as alleged in the Application. Each of these broad categories of services includes many activities that are not functionally interchangeable.
20. For instance, vacuum truck services may include:
 - a. residential septic tank maintenance by specialized vacuum trucks;
 - b. removal of coolant waste using wetvacs; and
 - c. the use of hydrovacs as excavators in digging and daylighting (i.e. exposure of underground pipes).

These services treat different waste streams using in some cases differently trained personnel and different specialized equipment, and are delivered to different customers. In some instances, the waste generated by these cleaning services is managed by the customer.

21. As another example, ORS processing includes the processing of used oil and used antifreeze. These are entirely different waste streams and require different specialized facilities, including re-refineries for used oil and re-processing facilities for used antifreeze.
22. Within the broad categories of IWS and ORS, and in the regions at issue in the Application, GFL and Terrapure often provided differentiated services that were not functionally interchangeable or substitutable.

b. Relevant Geographic Markets

23. GFL denies that each of the regions identified in the Application constitutes a relevant geographic market. There are many IWS and ORS providers who operate in multiple regions and could readily expand both collection and processing services into other regions if it were to become profitable to do so. Examples discussed below include:
 - a. GFL and other competitors, including Safety-Kleen, providing IWS on Vancouver Island from facilities on the mainland; and
 - b. ORS collection in multiple B.C. mainland regions being conducted by trucks driving in from and returning to larger centres located as far as Alberta. These trucks are often scheduled on overnight routes, requiring them to leave their base for more than a day at a time.
24. GFL denies that collection markets in particular are necessarily limited to the territory that can be covered by a collection truck in a day. The size of the relevant geographic market depends, among other things, on the nature and volume of the waste and the value of the work.
25. For instance, complex ICS may be performed by service providers from outside of the region that are prepared to transport and provide considerable infrastructure and equipment to be used on a longer-term basis on or adjacent

to their customer's facility, with the resulting waste disposed of onsite. This service model was used by Terrapure, but not by GFL. The relevant geographic market for these services would not be limited to a day's driving distance from the provider's closest facility, which may be nothing more than an administrative office. ICS providers from outside of a particular geographic region can establish a semi-permanent site or create overnight routes to service these large projects.

26. With respect to ORS, the incentives and rebates offered by provincial stewardship programs are intended to offset transportation costs and incentivize collection efforts. These programs successfully encourage aggressive competition from many participants located outside of the geographic area in which the oil is located.
27. With respect to paragraph 41 of the Application, which alleges that the geographic market for the sale of industrial fuel oil ("**IFO**") is regional, GFL states that road paving companies generally buy IFO in large volumes and may be prepared to drive it long distances – including between provinces – in order to obtain a better total cost of oil plus transportation.
28. As a note, while the Application does not define the terms used for different regions, GFL interprets these terms as encompassing the following GFL / Terrapure facilities:
 - a. "B.C. Interior" as referring to facilities in the Prince George, B.C. area;
 - b. "Central Alberta" as referring to facilities in the Edmonton and Onoway, Alberta area;
 - c. "B.C. Lower Mainland" as referring to facilities in the Vancouver, Delta and Surrey, B.C. area;
 - d. "Okanagan" as referring to facilities in the Kelowna, B.C. area;
 - e. "Peace Region" as referring to a facility in the Fort St. John, B.C. area;
 - f. "Southern Alberta and the Kootenays" as referring to facilities in the Nobleford, Big Valley, and Airdrie, Alberta area; and

- g. “Central Saskatchewan” as referring to facilities in the Maidstone, Saskatchewan area and Lloydminster, Alberta areas (given that Lloydminster straddles the Alberta/Saskatchewan border).

B. No Substantial Lessening of Competition

- 29. The Acquisition did not result, and is not likely to result, in a substantial lessening of competition with respect to IWS or ORS in any of the regions identified in the Application, as detailed below.
- 30. Contrary to paragraph 57 of the Application, the section 93 factors do not support the conclusion that the Acquisition is likely to lessen competition substantially with respect to IWS or ORS in any of the identified regions:
 - a. The Acquisition did not result in the removal of a vigorous and effective competitor or reduce effective competition, as:
 - i. in some of the identified regions, GFL and Terrapure provided differentiated services and were not direct competitors or competed with each other only to a limited extent; and
 - ii. in regions where GFL and Terrapure did provide similar services, notably Central Alberta, there is a vigorous competitive landscape with many remaining competitors following the Acquisition;
 - b. In all of the identified regions, acceptable substitutes remain following the Acquisition; and
 - c. There are low barriers to entry or to expansion by any of numerous IWS and ORS providers, as follows:
 - i. For waste collection, the barriers to entry or expansion may be as low as buying a specialized truck or sending trucks to collect from a greater distance. Collection is often not conducted under contract, such that any service provider with an appropriate truck can pick up the waste and customers have low switching costs;
 - ii. For waste storage and processing, the barriers to entry or expansion may be as low as obtaining an amended permit for an

existing facility. In some locations, there are abandoned industrial sites with existing permits for storage and processing of industrial waste streams. In other locations, there are temporary storage solutions including storing waste on vehicles, which can be used to facilitate aggregation. For new facilities, regulatory barriers are not generally multi-year for many types of waste storage and processing. For example, obtaining a new permit for oil storage would not be expected to take longer than a year; and

- iii. GFL denies having a strong incumbency position or an ability to entrench itself with customers across many waste streams, particularly since it relies on major competitors such as Clean Harbors, Secure/Tervita, Plains and Miller for end disposal for virtually all of the waste streams at issue in Western Canada, other than used oil and antifreeze. Without any end disposal sites of its own, GFL is vulnerable to its competitors for both access to their final processing outlets as well as to pricing for final disposal. Ultimately, GFL competitors that own end disposal sites – whether landfills, deep wells, incinerators or otherwise – benefit from having critical and material assets in the waste industry, allowing them to compete vigorously and exert significant competitive discipline in the pricing of collection and processing of industrial waste.

a. Industrial Waste Services (IWS)

- 31. The Acquisition did not result, and is not likely to result, in a substantial lessening of competition with respect to either industrial cleaning services (ICS) or any segment of liquid waste management services (LWMS) in any of the three geographic areas at issue in the Application: Vancouver Island, the B.C. Interior, or Central Alberta.

i. Vancouver Island

- 32. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for industrial waste generators on Vancouver Island, as GFL and Terrapure generally offered differentiated, complementary services at their facilities on the island. There also remains vigorous competition

following the Acquisition, including from competitors who have and can continue to deliver services cost-effectively from mainland facilities.

33. In respect of ICS, GFL offered limited, specialized services, distinct from Terrapure's offerings, and did not compete directly:
 - a. Terrapure offered complex ICS, including confined space and tank entry, and worked with hazardous materials; and
 - b. GFL focused on elementary non-hazardous services, primarily servicing commercial septic tanks from Victoria.
34. Multiple other firms offered ICS on Vancouver Island in competition with either GFL or Terrapure, and continue to do so post-Acquisition, including Safety-Kleen and McRae's Environmental ("**McRae's**"), as well as Hetherington Environmental and Nucor Environmental Solutions ("**Nucor**"), which are recent entrants.
35. In respect of the various segments of LWMS, there was no overlap between the service offerings or geographic locations of the GFL and Terrapure facilities.
36. Terrapure had three LWMS facilities, with the following service offerings:
 - a. a facility in Victoria that received and processed certain liquid hazardous waste originating at sea (e.g. from cruise ships); and
 - b. two facilities that could process hazardous liquid waste, one located in Nanaimo and one located in Port Alberni that was being wound down independently of the Acquisition due to low volumes. While the Nanaimo location processed and packaged liquid waste into bulk for shipping to the B.C. mainland, the Port Alberni location focused primarily on oil storage and filter processing.
37. In contrast, GFL's single wastewater recovery facility in Langford receives non-hazardous waste from septic and farm and agricultural waste streams. The site is primarily a sewage processing site and the waste is treated and then discharged after processing. The Langford facility has no hazardous waste

storage or treatment capabilities and could not receive the liquid waste originating at sea that was being processed by Terrapure.

38. GFL and Terrapure's facilities on Vancouver Island therefore did not compete in respect of LWMS to any material degree.
39. Moreover, there is effective competition for LWMS from firms with facilities on the B.C. mainland, because there are no final disposal options on the Island and the waste has to be removed to the mainland in any event. These firms include Safety-Kleen, Veolia, and Secure/Tervita.
40. While paragraph 44 of the Application claims that "GFL succeeded in ending Terrapure's ten year incumbency as the hazardous waste services provider to the City of Victoria", this is an illustration of the low barriers to entry in this space for competitors from the mainland. GFL successfully competed with Terrapure and North Western Environmental Group for the Capital Region District ("**CRD**") contract prior to the Acquisition or its announcement, even though GFL had no facility for hazardous liquid waste on Vancouver Island and had to ship the waste back to the mainland for storage. Under this contract, on a monthly basis, GFL packages up waste that is already collected from across the CRD and aggregated at one site, and ships it to a bulking facility on the Lower Mainland. From there, GFL then sends the bulked-up waste to competitor-owned end disposal outlets across Western Canada, including in Alberta. Other competitors with facilities only on the mainland could bid on the same contract and would be in a position to compete for similar contracts today.
41. Contrary to paragraph 46 of the Application, GFL's application for a hazardous waste permit for its Chemainus facility was not driven by competition with Terrapure. The Chemainus facility operates within the GFL Solids business, whose activities are unrelated to the GFL Liquids business that overlapped with Terrapure. The Chemainus facility primarily receives construction and demolition debris. GFL applied for a hazardous waste permit to store contaminated debris, such as asbestos and wood treated with lead paint, as well as to store (but not collect) a small quantity of used oil generated from commercial demolition.

42. Contrary to paragraph 46 of the Application, GFL had no intention to add a sludge treatment facility in the Greater Victoria area.

ii. B.C. Interior

43. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for industrial waste generators in the B.C. Interior. There was limited or no direct competition between GFL and Terrapure in respect of ICS or LWMS in that area prior to the Acquisition, and effective competition from multiple firms remains following the Acquisition.
44. GFL and Terrapure did not compete with respect to ICS in the Prince George area. Terrapure offered 24 hour-a-day ICS requiring a high degree of technical aptitude onsite at mines and pulp and paper mills. In contrast, GFL did not offer ICS of any kind in the B.C. Interior.
45. Terrapure competed to provide ICS with other firms that continue to provide those services in the B.C. Interior, including Safety-Kleen, CEDA, McRae's, Nucor, Spruce City and D&L Environmental.
46. In respect of LWMS, GFL and Terrapure generally did not focus on the same market segments: Terrapure's Prince George facility typically served large industrial clients, including the mines and pulp mills serviced by its vacuum trucks, while GFL generally served smaller, more local commercial clients, such as garages. GFL was not focused on industrial clients for two reasons: i) it lacked capacity to take on industrial LWMS; and ii) Terrapure benefitted from long-standing relationships with industrial clients, which allowed it to obtain and maintain most of the industrial work without an RFP process.
47. A number of other firms offered LWMS in the B.C. Interior in competition with either GFL or Terrapure, and continue to do so post-Acquisition. Sumas Environmental Services Inc. ("**Sumas**"), for instance, has a facility in Prince George, and also ships liquid waste to its larger facility with hazardous waste permitting in Kamloops. Other competitors include Safety-Kleen, Secure/Tervita, RBW, and Nucor. As there are no final disposal options in this region, many competitors will broker waste to facilities outside the region.

iii. Central Alberta

48. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for industrial waste generators in Central Alberta. There was limited or no direct competition between GFL and Terrapure in respect of ICS, and effective competition from multiple firms remains following the Acquisition in respect of both ICS and LWMS.
49. The large industrial and energy sectors in Central Alberta generate significant volumes of waste, fostering a highly competitive waste management industry.
50. Within this geographic area, GFL and Terrapure offered differentiated, non-overlapping ICS. Terrapure serviced the heavy industry and energy sectors, specializing in large, complex jobs that could take weeks to complete, such as refinery shutdowns and turnarounds, or that were co-located on a customer's facility on a long-term basis. GFL was not active in this space, focusing on smaller, less complex industrial cleaning, requiring less sophistication.
51. GFL and Terrapure competed against numerous firms, including Clean Harbors/Safety-Kleen, Badger Daylighting, CEDA, Recycle West and One Environmental. GFL has continued to compete against these firms following the Acquisition.
52. GFL and Terrapure also offered differentiated LWMS. GFL's Onoway facility mainly processes containerized oilfield hazardous waste from Northern Alberta, and does not process bulk waste streams. In contrast, Terrapure's Edmonton facility operates a sludge pad that accepts bulk hazardous and non-hazardous waste for processing from local customers in the Greater Edmonton area and also collects ORS waste streams – such as filters and plastics – which are shipped to Calgary for further processing. However, it does not collect or process any containerized waste. Accordingly, GFL's Onoway facility and Terrapure's Edmonton facility serve different customers with distinct needs. In addition, customers in the Edmonton area seeking liquid waste processing have a wide array of potential receivers operating sludge pads from which to choose, including One Environmental, Secure/Tervita, Clean Harbors and Recycle West.

53. The Central Alberta region was and remains an extremely competitive and dynamic space. By way of example, there are at present approximately ten bulk waste facilities in and around Edmonton. Entry barriers are extremely low, and facilities regularly open and close. GFL's competitor Recycle West is in the process of opening another LWMS facility in close proximity to the Terrapure facility to process the same types of waste.
54. For containerized waste, there are major national and international industry players that also have final disposal options near Edmonton, including Clean Harbors and Secure/Tervita, who each own Class 1 landfills that can accept 80% of the hazardous waste generated in British Columbia, Alberta, and Saskatchewan.
55. Following the Acquisition, GFL has continued to compete against Recycle West and other LWMS providers, including Clean Harbors/Safety-Kleen and Secure/Tervita, and the barriers to entry or expansion by other competitors into this area are low.

b. Oil Recycling Services (ORS)

56. The Acquisition did not result, and is not likely to result, in a substantial lessening of competition with respect to ORS in any of the geographic areas at issue in the Application.

i. Vancouver Island

57. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for ORS waste generators on Vancouver Island, as there was limited competition between GFL and Terrapure in respect of ORS, and effective competition remains following the Acquisition.
58. Prior to the Acquisition, Terrapure's ORS assets on Vancouver Island consisted of an oil collection facility in Nanaimo, a second oil collection facility in Port Alberni that was being wound down independently of the Acquisition due to low volumes, and three collection trucks.

59. GFL had no permanent physical presence on Vancouver Island for ORS. The extent of GFL's ORS offerings consisted of a single truck that collected waste and transported it to the mainland via the ferry.
60. Terrapure's major competitor for ORS on the Island was not GFL, but Safety-Kleen. Safety-Kleen, not GFL, has the only other permitted and active ORS facility on the island, located in Duncan, B.C. GFL now competes with Safety-Kleen to the same extent as Terrapure did prior to the Acquisition.
61. To the extent that GFL did represent limited additional competition for Terrapure on Vancouver Island, its ability to compete with no physical presence in the region demonstrates the very low barriers to entry. Without a facility, GFL was able to grow its collection program of ORS on the island from zero to nearly 750,000 litres in just over a year. Other competitors can also provide ORS services using trucks ferried to and from the mainland. Doing so requires only the purchase or lease of an appropriate truck.

ii. B.C. Lower Mainland

62. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for ORS waste generators in the B.C. Lower Mainland.
63. GFL Delta is GFL's main ORS operation in the Lower Mainland. GFL Delta focuses on collecting used motor oil and oil impacted plastics, as well as re-processing used anti-freeze from the automotive industry.
64. In contrast, the Terrapure Delta and Surrey facilities have no capabilities to collect and process used motor oil or oil impacted plastics or to re-process anti-freeze. Terrapure Delta is a hazardous waste site that repacks wastes for final disposal. Terrapure Surrey is a wastewater treatment facility, which can process oil impacted waters but focuses on water treatment. Terrapure's only oil collection facilities in the Lower Mainland are located at its North Vancouver re-refinery, where it collects and consolidates the oil collected from across the Lower Mainland, in addition to volumes from other regions.
65. Competition in the Lower Mainland is intense. GFL's largest competitor before and after the Acquisition was and remains Safety-Kleen. Safety-Kleen collects

significant volumes of used oil in the Lower Mainland, which it ships to its Emerald facility in Tacoma, Washington, where it is made into marine fuel.

iii. Okanagan, B.C. Interior, and Peace Region

66. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for ORS waste generators in these regions.
67. The Okanagan, the B.C. Interior, and the Peace Region all have low ORS waste volumes. Some oil collection in these regions is completed by trucks driving in from Alberta, Vancouver, or Kamloops and returning to their points of origin, rather than using local facilities.
68. While GFL and Terrapure both had oil collection activities in the Okanagan and the B.C. Interior prior to the Acquisition, these activities were often complementary services. For example, in the B.C. Interior, Terrapure collected comparatively larger volumes from industrial waste generators such as mine sites, while GFL typically collected small volumes mainly from local commercial customers like automotive shops. GFL mainly sold the oil it collected in the Okanagan and the B.C. Interior to pavers operating in the region. Terrapure generally delivered the oil it collected in the Okanagan and the B.C. Interior to its refinery in North Vancouver with only minor volumes sold to pavers.
69. In the Peace Region, only GFL had a facility, and that facility had limited onsite capabilities, collecting oil for shipment to Edmonton. Terrapure conducted oil collection using trucks operated out of Grand Prairie, Alberta. Safety-Kleen also conducted oil collection using trucks operated out of both Edmonton and Grand Prairie.
70. Following the Acquisition, GFL continues to face effective competition for ORS in these areas from firms including Safety-Kleen, Recycle West, Secure/Tervita, Van Brabant Oil Ltd. ("**Van Brabant**"), and Pat's Off-Road Transport Ltd. ("**Pat's Off-Road**").

iv. Central Alberta

71. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for ORS waste generators in Central Alberta. This

remains a highly competitive area for ORS, with low barriers to entry. Vigorous competitors include Safety-Kleen, Recycle West, Pat's Off-Road, Van Brabant, and others.

v. Southern Alberta and the Kootenays

72. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for ORS waste generators in this region, as there was limited competition between GFL and Terrapure in respect of ORS, and a similar level of competition remains following the Acquisition.
73. Like the B.C. mainland regions, this region has relatively low ORS waste volumes. A large proportion of oil collection is completed by trucks driving in from larger centres and returning to their points of origin.
74. Prior to the Acquisition, GFL was not a vigorous and effective competitor in this region. GFL had minimal operations at Nobleford, Alberta, consisting of one shop, one oil storage tank, and a single employee. GFL's lease for the site was set to expire in January 2023, and prior to the Acquisition, GFL was already planning to consolidate the Nobleford operations into its Calgary (Mountainview) site. GFL also had two oil storage tanks at Big Valley, which were used only for overflow from its Edmonton and Calgary facilities and provided no competitive advantage.
75. Post-acquisition, there is strong remaining competition in Southern Alberta and the Kootenays from a similar set of firms as in Central Alberta.

vi. Central Saskatchewan

76. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for ORS waste generators in this region, as there was limited competition between GFL and Terrapure in respect of ORS, and effective competition from multiple firms remains following the Acquisition.
77. Prior to the Acquisition, Terrapure was not a vigorous and effective competitor in Saskatchewan. Terrapure's only ORS facility in the province was an oil tank farm at Maidstone, Saskatchewan, which was a storage facility, not an operating facility. Terrapure otherwise serviced Saskatchewan using trucks out

of its facility in Lloydminster, Alberta and one truck based out of an LWMS facility in Regina.

78. Terrapure was not a material competitor for GFL prior to the Acquisition. Rather, GFL's competitors before and after the Acquisition included Pat's Off-Road, Recycle West, Safety-Kleen, and others.

vii. No impact of re-refinery acquisition

79. GFL's acquisition of the Terrapure oil re-refinery in North Vancouver has not had and is not likely to have anticompetitive effects.
80. The claim at paragraph 56 of the Application that "GFL now controls the only two re-refineries in Western Canada" is misleading. Prior to the Acquisition, GFL had acquired an experimental facility at Instow, Saskatchewan, which was designed to re-refine IFO into diesel fuel. The plant had a very small volume, never successfully made product, and is currently not operational due to a fire. It has never operated and was never intended to operate as a commercial re-refinery.
81. The re-refinery in North Vancouver was and remains the only functional oil re-refinery in Western Canada. As it was used exclusively by Terrapure prior to the Acquisition, the sale of the facility to GFL could not have negatively impacted other ORS providers, which did not use the re-refinery in any event.
82. The majority of the used oil collected in Western Canada is either shipped to re-refineries in the United States (including by rail as far south as Los Angeles and the Gulf Coast) or sold as IFO to paving companies, depending on oil prices.
83. Safety-Kleen, a major competitor for ORS, has its own re-refinery in Washington, in ready driving distance of British Columbia. Prior to GFL's acquisition of Terrapure, GFL collected greater volumes of used oil than each of Terrapure and Safety-Kleen, despite not having its own re-refinery. In fact, prior to Safety-Kleen's acquisition of its re-refinery in Washington in 2017, GFL would send used oil collected from the Prince George and Kelowna area to the same re-refinery in Washington. In short, GFL was able to effectively compete with – and indeed, surpass – these vertically-integrated competitors without

owning a re-refinery. To the extent that GFL now benefits from the ownership of the North Vancouver re-refinery, Safety-Kleen has derived and continues to derive the same benefit from its refinery capacity. Moreover, Safety-Kleen's extensive expertise and broad reach across North America, including Eastern Canada, makes it a strong competitor and a credible candidate for further expansion in the ORS industry in Western Canada in response to an opportunity to do so.

viii. No impact on IFO purchasers

84. The Acquisition did not result and is not likely to result in higher prices or decreased service levels for road paving companies that purchase IFO in British Columbia, Alberta, or Saskatchewan.
85. There are numerous remaining competitors in the sale of IFO in Western Canada, including the ORS providers identified above.
86. In addition, the price of IFO is only partly a product of price competition among ORS providers. It is also affected by commodity pricing, as (i) ORS providers can sell used oil either to IFO Purchasers or to re-refineries, depending on oil commodity pricing, and (ii) IFO Purchasers can switch to using propane when its price is sufficiently low.
87. Moreover, it is unclear to what extent IFO will remain a viable fuel alternative. There are, for instance, no IFO purchasers on Vancouver Island or in the B.C. Lower Mainland. Local municipalities in these regions do not permit the operation of the smaller, mobile asphalt plants that burn IFO due to emissions concerns. The traditional, large asphalt plants, which support most paving operations, do not use IFO.
88. In any event, the sale of used oil as IFO is only intermittent: it is seasonal, as road paving generally takes place in the summers, and even then it depends on whether and what road paving projects are undertaken.

C. Substantial Efficiencies Created by the Acquisition

89. To the extent that the Acquisition had any anti-competitive effects (which is denied), any such effects would be outweighed by the gains in efficiency

achieved as a result of the Acquisition and that would be lost as a result of a divestiture order.

90. In the regions in which the Commissioner seeks a divestiture, the Acquisition has permitted, or will permit, GFL to operate in a more efficient manner at significantly lower cost, including by consolidating facilities with excess capacity, vehicle routes and employees. The integration activities in these regions are proceeding according to plan, and significant cost savings have been and are likely to be achieved.
91. The integration activities will also allow GFL to significantly reduce both transportation costs and greenhouse gas emissions, resulting in substantial efficiencies and benefits (including environmental). First, GFL is now able to process the used oil it collects in nearby North Vancouver, rather than shipping almost half of its collected volume to the U.S., including as far south as the Gulf Coast. Second, GFL now has access to tank capacity to store oil during the winter months in anticipation of paving season. With limited storage capacity in the past, GFL would previously quickly run out of capacity to store used oils, and would thus have to ship any excess amounts across North America. Third, GFL has been able to consolidate several trucking routes, thereby reducing gas consumption and emissions.
92. These, as well as other efficiencies relating to integration, would be lost in the event of a divestiture order.

D. Remedies Sought by the Commissioner

93. There is no basis for the divestiture remedy sought in paragraph (a) of the Application, because the Acquisition does not substantially lessen or prevent competition. The efficiencies gained from the Acquisition, including those that would be lost in the event of a divestiture remedy, will exceed and offset any alleged anticompetitive effects (which GFL strongly denies).
94. There is also no basis for the remedy sought in paragraph (b) of the Application, requiring GFL to provide the Commissioner with at least 30 days advance written notice of any future proposed merger that would not otherwise be subject to notification pursuant to Part IX of the *Act*. GFL does not consent

to such an order and the Tribunal has no jurisdiction to make the requested order pursuant to section 92(1) of the *Act*.

IV. STATEMENT OF ECONOMIC THEORY

95. GFL's Statement of Economic Theory is attached as Schedule "A" hereto.

V. RELIEF REQUESTED

96. GFL agrees with the Commissioner's proposal that proceedings in this matter be heard in English.

97. GFL requests that this Application be dismissed with costs to GFL.

January 14, 2021

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SCHEDULE “A” – STATEMENT OF ECONOMIC THEORY

1. Prior to the Acquisition, GFL and Terrapure offered an array of largely complementary services within the industrial waste management industry to commercial, industrial, and institutional customers. Most of GFL and Terrapure’s respective service offerings did not compete with one another and were not typically substitutes for customers. The Commissioner’s Application relates only to certain categories of services that GFL Liquids and Terrapure offered to customers in Western Canada.
2. GFL and Terrapure’s liquid waste operations at issue in the Application consist of three segments: ICS, LWMS and ORS, which includes the sale of IFO. These segments are described above in paragraphs 16, 17, and 18 of the Response, respectively. GFL and Terrapure rely on competitors for final disposal for ICS and LWMS waste streams in Western Canada.
3. Within each of ICS, LWMS and ORS, customers require various differentiated and specialized services that are often not substitutable. Customers of various types and sizes have different needs depending on the type and volume of waste they produce and the nature and sophistication of services they require. The specific needs of each ICS, LWMS or ORS customer determine what equipment, facilities and/or capabilities a supplier requires in order to compete effectively for the particular customer.
4. GFL and Terrapure were not close competitors for many customers that would fall within the Commissioner’s relevant markets set out in the Application. For many ICS, LWMS and ORS (including IFO) customers throughout Western Canada, either GFL, Terrapure or both would not have been a viable option, let alone a vigorous and effective competitor.
5. Contrary to the assertion in the Application that the collection and processing levels of the IWS supply chain are relevant product markets, there are many differentiated services within these alleged markets that are not functionally substitutable for customers. Similarly, the Commissioner’s assertion that the collection and processing of used oil is a relevant product market ignores the differentiated waste streams and specialized needs of ORS customers. The Commissioner’s applications of the hypothetical monopolist test are, therefore,

too broad in that they do not consider narrower candidate product markets in which a hypothetical monopolist could profitably impose a SSNIP.

6. The Commissioner's relevant geographic markets, which are imprecisely defined as regional (and possibly broader for processing services), do not consider that competitors of all sizes provide or could easily provide IWS or ORS services (including the sale of IFO) from areas outside of the Commissioner's alleged geographic markets to defeat any attempted price increase. The Commissioner's applications of the hypothetical monopolist test therefore result in overly narrow geographic markets because they do not account for constraints outside of the alleged geographic markets that would make a SSNIP unprofitable. For ORS, one contributing factor is provincial stewardship program incentives and rebates that offset transportation costs and encourage competition from participants outside the areas in which oil is located.
7. For ICS, LWMS or ORS (including IFO) customers who viewed GFL and Terrapure offerings as substitutable prior to the Acquisition, there will be no anticompetitive effects because of the presence of effective remaining competitors and low barriers to entry and expansion. GFL continues to compete with numerous effective remaining competitors in the relevant areas identified in the Application, including both large firms and many smaller firms, which face low barriers to entry or expansion. Customers often obtain price quotes from multiple potential suppliers or issue RFPs before selecting a service provider. Any attempt by GFL to increase price would be constrained by customers' abilities to turn to numerous effective remaining competitors and/or would likely encourage the timely and sufficient entry or expansion of other effective competitors.
8. For customers that did not view GFL and Terrapure's services as viable substitutes, the Acquisition is unlikely to result in anticompetitive effects, even setting aside relevant factors such as effective remaining competition and low barriers to entry and expansion. The Acquisition has not and will not result in recaptured sales that GFL or Terrapure would have lost to each other absent the Acquisition, and thus has not and will not incentivise GFL to raise price.

9. Notably, both GFL and Terrapure rely on competitors that control the final disposal assets (and pricing) for ICS and LWMS waste streams in Western Canada, which exerts further competitive discipline on GFL and Terrapure.
10. Even if GFL has had or will have the ability and incentive to raise price with the Acquisition (which is denied), any hypothetical price increase would lead to minimal anticompetitive effects and deadweight loss. The Acquisition has, on the other hand, generated significant efficiencies (and will continue to do so) which will be lost in event of a divestiture order.

Court File No. **CT-2021-006**

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition of Terrapure Environmental Ltd. by GFL Environmental Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

GFL ENVIRONMENTAL INC.

Respondent

RESPONSE

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