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County of Placer  
Department of Health and Human Services

Raymond J. Merz  
Director of Health and Human Services



Environmental Health Services

Richard Burton, M.D.  
Public Health Officer

Brad Banner, R.E.H.S.  
Environmental Health Director

**NOTICE AND ORDER TO CEASE AND DESIST**

LEA No. 2002-01

JUNE 14, 2002

California Integrated Waste Management Board  
Solid Waste Local Enforcement Agency,  
ex rel. Placer County Environmental Health Services  
11454 B Avenue  
Auburn, CA 95603

vs.

Ken Whitmire, Operator  
Capitol Waste  
P.O. Box 276430  
Sacramento, CA 95827

Jacklyn Sheehan  
A Greener Globe Corporation  
6355 Dornes Road  
Lincoln, CA 95648

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Property Description: Capitol Recycling Center, SWIS #31-AA-0623  
Berry Street Mall Landfill, SWIS #31-AA-0120  
901 Galleria Blvd.  
Roseville, CA 95678  
APN: 015-100-048

**Authority and Background**

Placer County Environmental Health Services has been designated the Local Enforcement Agency (LEA) for solid waste matters. Pursuant to Division 30 Public Resources Code (PRC), Section 45000 et seq. and Title 14 California Code of Regulations, Section 18304, the LEA is authorized to order a solid waste facility operator and/or owner to cease and desist any improper action and to take corrective action of any outstanding violations within a time limit specified.

The LEA for the County of Placer, State of California previously filed and served Notice & Order to Cease & Desist, LEA No. 2000-01, against the Respondents Lee Baker/Capitol Waste, Jim Gutierrez/Pride Industries, and Daniel Sheehan/A Greener Globe. Respondents requested an

Appeal Hearing and Stay of Enforcement of the Notice & Order pursuant to PRC Sections 44307 and 44310(a)(1). An administrative hearing was set for March 9, 2001. This Hearing was continued to allow the parties to explore settlement. On February 28, 2001, the parties entered into an Agreement to Enter into a Stipulated Order of Compliance that could allow resolution of the issues raised in Notice & Order to Cease & Desist, LEA No. 2000-01, without necessity of further proceedings. To this end, the parties negotiated and agreed to the terms of Stipulated Order of Compliance, LEA No. 2001-01 (hereinafter "STIP"). The STIP was served on or about November 27, 2001. As the effective date for compliance on a number of the issues contained in the STIP had passed at the time the STIP was signed by all parties, the respondents were notified that the LEA would be looking for compliance of those items.

On May 21, 2002, representatives of Capitol Waste and A Greener Globe received notification of non-compliance with a number of tasks outlined the STIP. Pursuant to the Penalties Section, Item A, of the STIP, Capitol Waste and A Greener Globe were directed to cure/complete the outstanding tasks within 14 days of receipt of the notification. Thus the cure period ended June 11, 2002. The following outlines the status of each task contained in STIP Order 1.:

Task A. - "Center shall be operated as a recycling center as defined at 14 CCR 17402.5 and not as any other regulated use, unless properly permitted or otherwise licensed to do so, including but not limited to a Transfer/Processing Facility/Operation."

**Status:** During an inspection on 6-13-02, the LEA observed a load on the tipping floor consisting of concrete rubble, dimensional lumber, cardboard, cement bags, sheet plastic, work gloves, a porcelain sink, vinyl coving, paint cans, ceramic tile, tarps, optical cable, and household waste including a frozen vegetable box, cereal box, cracker box, newspapers, a plastic hair conditioner bottle, a light bulb, a plastic window blind, a partially filled mouthwash bottle, a plastic milk bottle and a dog food bag. The on-site manager stated that the load had come from a blue [Capitol Waste] drop box tipped by one of the drivers. Such a load does not meet the definitions of "source separated" or "separated for reused". 14 CCR 17402.5(d)(7)(A) states, "A business that accepts loads of material that are not separated for reuse or source separated does not qualify as a recycling center." It is therefore the LEA's determination that the facility continues to operate as an unpermitted transfer station in violation of the STIP.

Task B. - "Past due fees for LEA solid waste activities associated with Center, as of the 5/23/01 letter from John Miners and in the amount of \$24, 409.99, are due immediately and shall be received at Placer County Environmental Health Services before 5:00 PM no later than the date specified. Documentation supporting the amount of fees has been provided to Center by LEA."

**Status:** The compliance date for receipt of the past due fees owed by Capitol Waste was January 26, 2002. In correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02), and in response to the 14 day notice, Capitol Waste stated that the fees were not paid due to mistake and that they would be forthcoming. However, as

of the date of this Notice & Order no fees have been received. Non payment of the past due fees is a violation of the STIP.

**Task C.** - "All unapproved fill material including asphalt-concrete and commingled waste shall be removed from the areas west of the building previously proposed for bin storage."

**Status:** The materials have been removed in advance of the compliance date and thus in compliance with the STIP.

**Task D.** - "Submit to the applicable regulatory agencies, a correct and complete postclosure land use plan pursuant to 27 CCR 21190; which would include leading up to the deadline, submittal of revised and/or additional information as requested by the applicable regulatory agencies pursuant their proper authority, and/or as necessary under the applicable statutes and regulations."

**Status:** The compliance date for submittal was October 22, 2001, therefore compliance was expected by November 27, 2001. Prior to the STIP negotiations, incomplete postclosure land use plans were submitted. Correspondence, dated March 20, 2001, outlined plan deficiencies. There has been no change in the items outlined. Correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02) states, "it is Capitol Waste's and Mr. Bergman's understanding that Mr. Altman will not accept the resubmittal of the plans until A Greener Globe has brought its environmental monitoring and reporting obligations current." The LEA has made no such stipulation. The LEA has informed Daniel Sheehan that A Greener Globe is subject to a separate Notice and Order should it not comply with monitoring and maintenance requirement applicable to the landfill. It should also be noted that at no time since meeting with the LEA in July 2001 has Capitol Waste or its engineer contacted the LEA regarding the postclosure land use plan or the March 20, 2001 letter. As of the date of this Notice & Order no new or revised postclosure land use plans have been submitted to the regulatory agencies. The failure to comply with this task is a violation of the STIP.

**Task E.** - "Submit to the applicable regulatory agencies an amendment to the Berry Street Mall Landfill Final Post-Closure Maintenance Plan (27 CCR 21190(b); which would include leading up to the deadline, submittal of revised and/or additional information as requested by the applicable regulatory agencies pursuant to their proper authority, and/or as necessary under the applicable statutes and regulations."

**Status:** The compliance date for submittal was October 22, 2001 therefore compliance was expected by November 27, 2001. Prior to the STIP negotiations, an incomplete/unacceptable amendment to the Post-Closure Maintenance Plan was submitted. Correspondence, dated March 20, 2001, outlined amendment deficiencies. There has been no change in the items outlined. Correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02) states, "it is Capitol Waste's and Mr. Bergman's understanding that Mr. Altman will not accept the resubmittal of the plans until A Greener Globe has brought its environmental monitoring and reporting obligations current." The LEA has made no such stipulation. It should also be noted

that at no time since meeting with the LEA in July 2001 has Capitol Waste or its engineer contacted the LEA regarding amending the Post-Closure Maintenance Plan or the March 20, 2001 letter. As of the date of this Notice & Order, no new or revised amendment has been submitted to the regulatory agencies. The failure to comply with this task is a violation of the STIP.

**Task F.** - "Upon 48 hours notice to the LEA & after coordinating a date and time with the appropriate LEA employee, a backhoe shall be provided and in the presence of the LEA and it shall be demonstrated that all commingled wastes have been removed from the area west and southwest of the main building."

**Status:** In the presence of the LEA, and in advance of the compliance date, it has been confirmed that the commingled wastes have been removed. Thus this task has been completed in compliance with the STIP.

**Task G.** - "Submit an application and fees to Roseville Environmental Utilities for approval of connection to the sanitary sewer." This task was due effective immediately upon execution of the STIP. Thus the compliance date was November 27, 2001.

**Status:** Roseville Environmental Utilities representatives have informed the LEA that improvement plans for connection to the sewer could have been submitted at any time. However, construction cannot commence until the Army Corp of Engineers approves the installation through the wetlands area. As of June 13, 2002, 9:00 AM, improvement plans had not been received by Roseville Environmental Utilities, a violation of the STIP.

**Task H.** - "Center shall maintain records of daily tonnage received and quantity or weight of salvage recovered daily. CIWMB Form 607, Voluntary Residual Percentage Reporting Form, shall be submitted to the LEA within 30 days from the end of the preceding month."

**Status:** The operator has not submitted CIWMB Form 607 for the months of November 2001 and March 2002. In addition, the submittal for December 2001 was received beyond the 30 day submittal time. Failure to submit the required form, and on time is a violation of the STIP.

**Task I.** - "Future fees, that is- fees accruing after the date of past due fees as defined in item "B" above, for LEA solid waste activities associated with Center, shall be paid no later than the 30<sup>th</sup> day after the date of billing. If fees are not postmarked or actually received by the LEA by the 45<sup>th</sup> day after billing of same, such will be considered a material breach of this Order. Any questions or objections as to the amount or propriety of any fee billed will be raised by Center in writing no later than the 20<sup>th</sup> day after billing of same."

**Status:** As reflected in quarterly billings, fees in the amount of \$8,368.60 have been accrued by Capitol Waste. Additional fees, not outlined below, will also be due for

the billing period ending 6/30/02. Invoice numbers (#), billing dates and amounts are as follows:

#26916	7/2/01	\$3,021.92
#27525	10/4/01	\$2,485.35
#29898	1/9/02	\$1,750.35
#30646	4/4/02	\$1,110.98

In correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02), and in response to the 14 day notice, Capitol Waste stated that the fees were not paid due to mistake and that they would be forthcoming. However, as of the date of this Notice & Order no fees have been received. Non payment of the past due fees is a violation of the STIP.

**Task J.** - "Submit daily tonnage records for Center transfer station operations October 1999 through February 2001 inclusive, to the extent that any record exist or are available to the operators or can be prepared based on information in the operator's control." The records were due by December 12, 2001.

**Status:** In correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02) the LEA was informed that the information is not available to produce these reports. Thus this task is in conformance with the STIP.

**Task K.** - "Submit copy of Log of Special Occurrences October 1999 through February 2001 inclusive, to the extent that any records exist or are available to the operators or can be prepared based on information in the operator's control." The records were due by December 12, 2001.

**Status:** In correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02) the LEA was informed that the information is not available to produce these reports. Thus this task is in conformance with the STIP.

**Task L.** - "Submit list of complaints received by the Center from the public and how the complaints were resolved, October 1999 through February 2001 inclusive, to the extent that any records exist or are available to the operators or can be prepared based on information in the operator's control." The records were due by December 12, 2001.

**Status:** In correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02) the LEA was informed that the information is not available to produce these reports. Thus this task is in conformance with the STIP.

**Task M.** - "Submit training records for all employees who worked at the Center April 1999 through February 2001 inclusive, to the extent that any records exist or are available to the operators or can be prepared based on information in the operator's control." The records were due by December 12, 2001.

**Status:** In correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02) the LEA was informed that the information is not available to produce these reports. Thus this task is in conformance with the STIP.

**Task N.** - "Operator shall permit monthly and unannounced inspections by the LEA to determine compliance with this Order, conformance with the definition of a recycling center pursuant to 14 CCR 17402.5(d), and to confirm that postclosure activities are being operated consistent with the approved postclosure land use plan." This task became effective December 12, 2001.

**Status:** Although a postclosure land use plan has not yet been approved, the LEA has been permitted to conduct the referenced compliance inspections in general compliance with the STIP.

**Task O.** - "When connection to the Roseville sewer lines is approved by the City of Roseville, the Center shall obtain all required permits and commence necessary construction for the sewer lines." This task is due within 30 days of receipt of approval from City of Roseville.

**Status:** Because approvals from the City have not been given, this task is not yet due for compliance.

**Task P.** - "Center shall be connected to and using the community sewer for all relevant purposes and the septic tank and gray water holding tank shall be properly decommissioned." This task is due within 45 days of completion of item 'O'.

**Status:** Because item "O" is not yet due, this task also is not yet due.

**Task Q.** - "Postclosure Land Use Plan approval complete and Postclosure Maintenance Plan properly amended to allow for the operation of a recycling center on the property." This task was due December 31, 2001.

**Status:** Prior to the STIP negotiations, incomplete postclosure land use plans and an unacceptable amendment to the Post-closure Maintenance Plan were submitted. Correspondence, dated March 20, 2001, outlined plan deficiencies. There has been no change in the items outlined. Correspondence (Gonzalez to Banner, 6-5-02 and Gonzalez to Banner, 6-6-02) states, "it is Capitol Waste's and Mr. Bergman's understanding that Mr. Altman will not accept the resubmittal of the plans until A Greener Globe has brought its environmental monitoring and reporting obligations current." The LEA has made no such stipulation. The LEA has informed Daniel Sheehan that A Greener Globe is subject to a separate Notice and Order should it not comply with monitoring and maintenance requirement applicable to the landfill. It should also be noted that at no time since meeting with the LEA in July 2001 has Capitol Waste or its engineer contacted the LEA regarding the postclosure land use plan, an amendment to the Post-Closure Maintenance Plan or the March 20, 2001 letter. As of the date of this Notice & Order no new or revised plan or amendment

has been submitted to the regulatory agencies. The failure to comply with this task is a violation of the STIP.

In summary, the respondents have failed to cure/complete eight of the required tasks.

### Order

1. Pursuant to the penalties outlined in the Stipulated Order of Compliance, LEA No. 2001-01, Capitol Waste and A Greener Globe shall:
  - a) No later than July 19, 2002, cease and desist any and all postclosure land use activities.
  - b) No later than July 26, 2002, pay stipulated damage penalties in the amount of \$75,000 for failure to comply with Tasks 1.A., 1.B., 1.D., 1.E., 1.G., 1.H., 1.I., and 1.Q.
2. Capitol Waste shall:
  - a) No later than July 26, 2002, pay all past due fees.

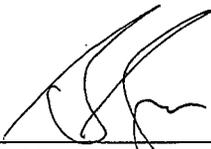
### Penalties

Failure to comply with this Notice & Order may result in one or more of the following enforcement actions:

- A. Pursuant to the PRC, Section 45011, the LEA may impose administrative civil penalties. Such penalties shall not exceed five thousand dollars (\$5,000) for each day on which a violation occurs, and shall not exceed fifteen thousand dollars (\$15,000) in any one calendar year if compliance is not achieved within the time schedule in the Notice & Order.
- B. Pursuant to the PRC, Section 45014, the LEA may petition the superior court for an injunction to restrain the owner from continuing to violate the order and to impose, assess, and recover civil penalties. Pursuant to PRC, Section 45023, any person who operates a solid waste facility without a solid waste facility permit or intentionally or negligently violates standards adopted by the California Integrated Waste Management Board is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day the violation or operation occurs.

### Effective Date

This Notice and Order shall be effective immediately.

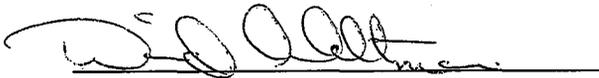
  
\_\_\_\_\_  
Brad Banner  
Environmental Health Services Director

6-14-02  
\_\_\_\_\_  
Date

**DECLARATION**

The allegations contained in this document are based on research of existing documents, inspections, or personal knowledge of David A. Altman, Registered Environmental Health Specialist:

I am duly employed as an Environmental Health Specialist with the Placer County Department of Health and Human Services.



Date: 6-14-02

David A. Altman, R.E.H.S.

CC: KEN WHITMIRE  
CAPITOL WASTE  
P O BOX 276430  
SACRAMENTO CA 95827

JACKLYN SHEEHAN  
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6355 DORNES ROAD  
LINCOLN CA 95648

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LIZBETH WEST LOCKREM  
WEINTRAUB GENSHLEA CHEDIAK SPROUL  
400 CAPITOL MALL 11<sup>TH</sup> FLOOR  
SACRAMENTO CA 95814

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ALAN BERRY  
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CAL-EPA BUILDING  
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CHRISTINE KARL  
CIWMB P&I BRANCH MS#15  
CAL-EPA BUILDING  
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SACRAMENTO CA 95812-4025

FILES: CAPITOL RECYCLING CENTER  
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SACRAMENTO CA 95827

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ENFORCEMENT LOG