

BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
STATE OF CALIFORNIA

In the Matter of:

OHANNES BEUDJEKIAN, HRATCH
ANDONIAN, ARATCH SARKIS, dba
B.A.S. RECYCLING, and
C. MURRAY QUANCE, Operator
B.A.S. RECYCLING, INC.,

Respondents.

Case No. 2000-77-AC
OAH No. L2000120415

DECISION

After an administrative complaint was filed in the above-captioned matter, it was submitted by the parties to the Office of Administrative Hearings for decision, pursuant to a stipulation for issuance of administrative decision. Said stipulation, executed by the parties hereto, is made Exhibit "A" to the record. As the stipulation was received March 23, 2001, the matter is deemed submitted on that date. Further, pursuant to an agreement of the parties made at a mandatory settlement conference held on March 19, 2001, Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, hereby issues the following decision.

FACTUAL FINDINGS

1. (A) On or about November 13, 2000, the California Integrated Waste Management Board (hereafter either "the Board" or "CIWMB") issued an administrative complaint against Respondents. Respondents are C. Murray Quance ("Quance"), operator of B.A.S. Recycling Inc. and president of that firm, and Ohannes Beudekian, Hratch Andonian, Hratch Sarkis, doing business as B.A.S. Recycling, Inc. (sometimes hereafter "B.A.S.")

(B) A claim of violation on the part of Respondents was filed by the Board as case number 2000-77AC against Respondents for storing waste tires with flammable materials. That claim was filed on or about November 13, 2000.

2. Respondents do business at 1400 North H Street, San Bernardino, California.

3. B.A.S. has obtained a major waste tire facility permit to store no more than 800 tons of whole tires or equivalents at the facility and in a manner that complies with the requirements of Public Resources Code (“PRC”) section 42845 and Title 14, California Code of Regulations (“CCR”) section 17354.

4. Respondents Quance and B.A.S. chronically stored waste tires with flammable materials over a period of eight months in violation of CCR section 17354, and Quance and B.A.S. have admitted such violations.

5. Respondents Quance and B.A.S. have since then separated all waste tire inventory from such flammable materials at their own expense, and they have submitted a plan detailing how such violations shall be prevented in the future.

6. (A) Quance and B.A.S., after having an opportunity to consult with independent counsel, entered into a written stipulation on or about March 19, 2001. That stipulation establishes the facts upon which the foregoing factual findings are based. Respondents have stipulated to take certain actions on their own part, and Respondents have further stipulated that the Board may issue this Decision based on their stipulation, and may take certain actions through this Decision, and to otherwise enforce the terms and conditions of the stipulation. The Respondents entered into the stipulation freely and voluntarily. No representations or promises of any kind, other than those set forth in the parties’ stipulation, were made by any party to the stipulation in order to induce any other party to enter into it.

(B) The parties agreed in writing that the stipulation could not be altered, amended or modified or otherwise changed except by a writing executed by each of the parties to the stipulation.

(C) The parties agreed in the stipulation to execute and deliver any and all documents, and to take any and all actions necessary or appropriate to consummate the stipulation and to carry out its terms and provisions.

(D) The parties agreed that the stipulation would be binding on, and inure to the benefit of the successors, heirs, and assigns of the parties to the stipulation.

(E) The parties agreed that the stipulation and Decision would constitute the entire understanding of the parties concerning settlement of the above-captioned proceeding. They agreed there were no restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth in the stipulation or in separate written documents delivered or delivered with the stipulation. The parties agreed that they had not relied on any restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth in the Stipulation.

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7. (A) Pursuant to the stipulation the Respondents have agreed to pay civil penalties on terms and conditions set forth in the stipulation. Those terms include, but are not limited to, payment of \$105,000.00 to the Board and an agreement by the Board to forego payment of most of those monies if Respondents comply with other terms and conditions set forth in the stipulation.

(B) Such conditions include but are not limited to Respondents' payment of fines of \$15,000.00 in installments, and their compliance with their permit, operation plan, and the law governing their facility.

LEGAL CONCLUSIONS

1. The Board has authority to issue the above-captioned administrative complaint for penalties, and to penalize Respondents for violations of the Public Resources Code, pursuant to sections 42850 through 42855 of the PRC, based on Factual Findings 1(A) through 7.

2. Respondents have violated 14 CCR section 17354, based on Factual Findings 3 and 4.

3. Respondents have established some rehabilitation and mitigation, based on Factual Finding 5.

4. The terms and condition of the stipulation should become the decision of this tribunal and the Board pursuant to Government Code section 11415.60, PRC section 42851(b), based on Factual Findings 1 through 7.

5. To facilitate enforcement, some language of the stipulation may be modified herein, and especially in the order following, so that words of agreement may become words of command. In the event there is any question of interpretation of the parties' obligations and rights under this Decision, the stipulation may be referenced for purposes of interpretation. This conclusion is based on Factual Finding 6(E), and Civil Code section 1642, and the terms of the parties' stipulation.

ORDER

1. Pursuant to the parties' stipulation and the foregoing Findings and Conclusions, Quance and B.A.S. shall pay to the Board the sum of \$105,000 as fines and civil penalties. However, the Board shall not collect that amount if Respondents comply, in a timely manner, with the terms and conditions of the parties' Stipulation, and the following terms and conditions.

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2. Quance and B.A.S. shall operate within the terms of their existing Waste Tire Facility Permit, and the operation plan.

3. Notwithstanding Paragraph 1 of this order, B.A.S. shall pay a fine in the amount of \$15,000.00 to the Board, per the following payment schedule:

(A) Five thousand dollars (\$5,000.00) shall be paid to the Board by May 31, 2001;

(B) Five thousand dollars (\$5,000.00) shall be paid to the Board by July 31, 2001;

(C) Five thousand dollars (\$5,000.00) shall be paid to the Board by September 30, 2001;

(D) If any payment is not received by the Board within five (5) days of the particular due-date, then the Quance and/or B.A.S. shall be deemed in default under the stipulation and this Decision, and the Board may enforce the stipulation and this Decision, including the obligation of B.A.S. to pay the \$105,000.00 penalty described in paragraph 1 of the order, less credit for any payments previously received.

(E) Payments shall be made to the CIWMB at 8800 Cal Center Drive, Sacramento, California, attention Kim Kotey, or to such other agent or at such other place as the Board or its authorized agent may designate in writing.

4. If Quance or B.A.S. should commit any other violations of CCR section 17354 or the operations plan between the time of the parties' stipulation and February 13, 2003, then the Board shall be entitled to collect the balance of the \$105,000.00 set forth in paragraph 1 of this order, provided, however, that such violations must be:

(A) documented by a Board inspector during an inspection prior to February 13, 2003, and,

(B) Each party shall have an opportunity to request a hearing on the claimed violations before an Administrative Law Judge of the Office of Administrative Hearings, pursuant to Public Resources Code section 42852.

5. The failure of Respondents Quance and/or B.A.S. to comply with any of the terms of the parties' stipulation, or this Decision, shall be deemed a default, entitling the Board to commence immediate action to enforce the terms of the stipulation, or Decision, or both, including but not limited to the right to collect the sums due under the stipulation and this Decision. The Board may also seek further penalties and fines as are indicated by the relevant circumstances.

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6. No covenant, promise, term, condition, breach, or default by Respondents Quance and/or B.A.S. under the stipulation or this Decision shall be deemed as waived by the Board except as expressly so stated in writing by the Board. Any waiver by the Board of any breach or default by Respondents Quance or B.A.S. under the stipulation or this decision shall not constitute or be deemed a waiver of any preceding or subsequent breach by Respondents, or any of them, of the stipulation or the orders and conditions set forth in this Decision. Acceptance by the Board of any payments due the Board under the stipulation or this Decision which payments are either untimely, or in an amount less than is then due, or both, shall not be deemed as a waiver of any preceding or subsequent breach or default. Nor shall such action by the Board (*i.e.*, acceptance of a late or partial payment) deprive the Board of its remedies under paragraph 6 of the stipulation or under the terms of this Decision.

7. Each party hereto shall execute and deliver any and all documents and shall take any and all actions necessary or appropriate to consummate the stipulation and to carry out its terms and provisions.

April 17, 2001

Joseph D. Montoya,
Administrative Law Judge,
Office of Administrative Hearings