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8 **BEFORE THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD**  
 9 **STATE OF CALIFORNIA**

<p>10 In the Matter of:</p> <p>11 DOROTHY J. AND BENJAMIN H. SMITH,          JR. PROPERTY OWNERS; AND</p> <p>12 MICHAEL SMITH, JR., OPERATOR AND          13 WASTE TIRE HAULER</p> <p>14 RE:/d.b.a., Central Valley Tire Disposal</p>	) OAH No. N-2003090290 ) STIPULATION FOR ISSUANCE OF ) ADMINISTRATIVE DECISION ) AGENCY NO. 2003-010477 ) TIRE SITE FACILITY NO. 10-TI-1316 ) WASTE TIRE HAULER REGISTRATION ) NO. 1005598-01
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 19 The parties to this STIPULATION are the CALIFORNIA INTEGRATED WASTE  
 20 MANAGEMENT BOARD (the "CIWMB"), and DOROTHY J. AND BENJAMIN H. SMITH,  
 21 JR., Property Owners and MICHAEL SMITH, Operator and Waste Tire Hauler ("Respondents")  
 22 of that certain property located at 1661 North Grantland Avenue, Fresno, CA 93722, Assessor's  
 23 Parcel Number (APN) 312-290-21 (the "Subject Property"), on the other hand.  
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25 The CIWMB and Respondents have entered into a settlement of the complaint herein,  
 26 pursuant to which they hereby stipulate as follows:

- 27 1. Respondents stipulate to an administrative penalty in favor of the CIWMB in the  
 28 sum of Five Thousand Dollars (\$5,000.00), for the violations set forth in the  
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1 Administrative Complaint. Respondents further authorize an Administrative Law  
2 Judge to sign and issue the proposed Decision forthwith.

- 3 2. Respondents shall pay to the CIWMB the sum of Five Thousand Dollars  
4 (\$5000.00), as follows: Respondents shall make monthly payments in the sum of  
5 ONE HUNDRED THIRTY-EIGHT DOLLARS AND EIGHTY-NINE CENTS  
6 (\$138.89) on the first day of each month for a period of thirty-six (36) months,  
7 commencing on July 1, 2004, through and including June 1, 2007.

8 (a) All payments shall be made to the CIWMB, Attn: Kim Beard, at P.O. Box  
9 4025, Sacramento, CA 95812, or to such other person and/or place as the  
10 CIWMB or its agent may from time to time designate in writing. If any  
11 payment by Respondents hereunder is not received within five days of the  
12 due date, then Respondents shall be deemed in default of this STIPULATION  
13 and the CIWMB or its agent may enforce the Decision.

- 14 3. Said amount shall constitute the full amount of the penalty in this action unless  
15 Respondents default under the terms of this STIPULATION in which case the  
16 penalty shall consist of the FOURTEEN THOUSAND DOLLARS (\$14,000.00).  
17 Payment of said penalty shall be due on the date of default minus any amounts  
18 previously paid. Interest shall accrue at the modified adjusted rate per annum  
19 pursuant to Revenue and Taxation Code Section 6591.5, from the date of default.  
20 Respondents authorize an Administrative Law Judge to sign a revised Decision  
21 stating the revised penalty due on the date of default in the Decision.

- 22 4. **Waste Tire Removal Schedule:** Respondents shall complete the removal of all  
23 waste tires (whole and/or tire equivalents) from the Subject Property by no later  
24 than July 26, 2004. All tires removed from the premises must be legally  
25 transported by a Registered Waste Tire Hauler to a CIWMB approved facility.  
26 Copies of destination receipts and waste tire manifest forms must accompany  
27 each load and be submitted by August 1, 2004 to the CIWMB, Attn: Wendy A.  
28 Breckon, Staff Counsel, P.O. Box 4025, MS 5, Sacramento, CA 95812.

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- 1           **5. Property Access Authorization:** If Respondents fail to properly remove all of  
2           the tires by July 26, 2004, as provided in paragraph 4, above, and if the CIWMB  
3           elects to perform the remainder of such cleanup, then Respondents authorize  
4           CIWMB staff, their designated contractors and representatives, and other affected  
5           State and local authorities access to the Subject Property for the purpose of  
6           removing the waste tires. Any such cleanup shall be performed under the Waste  
7           Tire Stabilization and Abatement Program pursuant to the Public Resources Code  
8           (PRC) sections 42800-42855, Waste Tires. Respondents, DOROTHY J. AND  
9           BENJAMIN H. SMITH, JR., hereby certify that they are the legal owners of the  
10          Subject Property and have authority to grant such access.
- 11          **6. Future Storage of Tires:** Respondents stipulate that after cleanup of the site has  
12          been accomplished and approved by CIWMB, no more than FIVE HUNDRED  
13          (500) used or waste tires may be allowed on the subject property at any time  
14          without first obtaining a waste tire facility permit. Any tires removed from the  
15          subject property must be legally transported by a Registered Waste Tire Hauler to  
16          a CIWMB approved facility. Copies of destination receipts and CIWMB waste  
17          tire manifest forms must accompany each load and must be maintained for three  
18          years.
- 19          **7. Inspections:** Upon presentation of proper credentials, CIWMB staff, an  
20          authorized agent of the CIWMB, or Fresno County, shall be allowed to enter the  
21          Subject Property during regular business hours to conduct inspections and  
22          investigations of the premises, to examine and copy tire manifests, and to take  
23          photographs of any and all tires on the premises.
- 24          **8. Default:** If Respondents default under the terms of this STIPULATION, then the  
25          CIWMB shall send Respondents a letter, via certified mail, notifying them of the  
26          same. Said letter shall apprise Respondents of the provision(s) of the  
27          STIPULATION of which they are in default, and will attach a copy of the  
28          Inspection Report or other report documenting the violation(s) in issue. For any

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1 CIWMB determination of a violation of the promise to cleanup the waste tire site  
2 at 1661 North Grantland Avenue, Fresno, CA, 93722, by July 26, 2004, or for any  
3 other violation of any waste tire storage or disposal laws at Chapter 16 of the  
4 Public Resources Code (section 42800 et. seq.), said letter will further relate that  
5 the Office of Administrative Hearings will immediately issue a Decision for  
6 FOURTEEN THOUSAND DOLLARS (\$14,000.00) minus any payments  
7 previously made. For any CIWMB determination that Respondents have violated  
8 any term or condition of this agreement, other than said waste tire storage or  
9 disposal laws, said letter will state Respondents will be granted a ten (10)-day  
10 period of time for any default of the agreement to be cured. If the default is not  
11 cured within ten (10) days, a second letter will be issued, which will state that the  
12 Office of Administrative Hearings will immediately issue a Decision for  
13 FOURTEEN THOUSAND DOLLARS (\$14,000.00) minus any payments  
14 previously made. The Administrative Decision may be converted into a Civil  
15 Judgment, which CIWMB may enforce as it deems appropriate. Respondents  
16 acknowledge that they understand and agree that they will not be provided with  
17 any hearing or other opportunity to contest the Office of Administrative Hearing's  
18 determination that they are in default of this STIPULATION. Respondents also  
19 acknowledge that a default of this STIPULATION shall result in permanent  
20 revocation of MICHAEL SMITH's Waste Tire Hauler Registration.

- 21 9. Waste Tire Hauler Registration: The waste tire hauler's registration no. 1005598-  
22 01 and decal nos. 04-05686, 04-05687, 04-05688, and 04-05689, heretofore  
23 issued to MICHAEL SMITH JR., dba CENTRAL VALLEY TIRE DISPOSAL,  
24 are hereby suspended pursuant to Public Resources Code section 42960 for a  
25 period of seven (7) days commencing April 21, 2004 and ending April 27, 2004.  
26 During said period of suspension, SMITH shall not haul used or waste tires or  
27 otherwise exercise any of the privileges granted under the waste tire hauler  
28 registration and decals. In addition, the waste tire hauler's registration is placed

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1 on probation for a period of three (3) year(s) from the effective date of this  
2 Agreement under the following terms and conditions:

3 (1) SMITH shall obey any waste tire storage or disposal laws at Chapter  
4 16 of the Public Resources Code (section 42800 et. seq.), and waste tire  
5 hauler laws at Chapter 19 (section 42950 et. seq.) and the rules and  
6 regulations of the CIWMB now or hereafter in effect

7 (2) Any registration issued to SMITH during a period of three (3) years  
8 shall be issued as a probationary registration and then only if it is  
9 determined that SMITH has fully complied with the terms and conditions  
10 hereof and that no cause for denial to issue, suspend or revoke has  
11 intervened or exists.

12 (3) Should the CIWMB at any time during the existence of said  
13 probationary registration or the renewal thereof, determine upon  
14 satisfactory evidence that SMITH has violated a) any of the terms and  
15 conditions under which said registration was issued, or b) that either  
16 MICHAEL SMITH JR., or DOROTHY J. SMITH JR., property owner,  
17 OR BENJAMIN H. SMITH, JR., property owner, have defaulted on the  
18 terms and conditions of this Stipulation, the CIWMB may permanently  
19 revoke SMITH's waste tire hauler registration. A 10-day Notice to Cure  
20 will be issued to SMITH for any violation of a term or condition of the  
21 agreement other than a violation of any waste tire storage or disposal laws  
22 at Chapter 16 of the Public Resources Code (section 42800 et. seq.). No  
23 10-day Notice to Cure will be provided for any violation of any waste tire  
24 storage or disposal laws as described above. SMITH acknowledges that he  
25 understands and agrees that he will not be provided with any hearing or  
26 other opportunity to contest the CIWMB's determination that either the  
27 terms and conditions of said registration was violated or that the above-  
28 mentioned signatories to the Settlement Agreement in OAH Case No.

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1 2003090290 are in default, nor will a hearing or other opportunity to  
2 contest the permanent revocation of the waste tire hauler registration be  
3 provided in the event of said default.

4 (4) SMITH shall permit free and ready access to business records  
5 pertaining to the hauling of used and waste tires at the request of a  
6 CIWMB, City, or County inspector or investigator during normal business  
7 hours and without prior notice.

- 8 10. No covenant, promise, term, condition, breach or default of or under this  
9 STIPULATION shall be deemed to have been waived except as expressly so  
10 stated in writing by the CIWMB. A waiver by the CIWMB of any breach or  
11 default by Respondents under this STIPULATION shall not be deemed a waiver  
12 of any preceding or subsequent breach or default by Respondents.
- 13 11. Respondents have freely and voluntarily entered into this STIPULATION and  
14 have been afforded the opportunity to consult with counsel prior to entering into  
15 this STIPULATION. It is expressly understood and agreed that no  
16 representations or promises of any kind, other than as contained herein, have been  
17 made by any party to induce any other party to enter into this STIPULATION,  
18 and that said STIPULATION may not be altered, amended, modified or otherwise  
19 changed except by a writing executed by each of the parties hereto. Each party  
20 hereto agrees to execute and deliver any and all documents and to take any and all  
21 actions necessary or appropriate to consummate this STIPULATION and to carry  
22 out its terms and provisions.
- 23 12. SMITH waives the right, in the entitled matter to a hearing, any and all appeals  
24 and any and all rights that may be afforded pursuant to the Public Resources  
25 Code, the Administrative Procedure Act, or any other provision of law.
- 26 13. This STIPULATION shall be binding and inure to the benefit of their successors,  
27 heirs and assigns of the respective parties hereto.  
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14. This STIPULATION and the Decision constitute the entire understanding of the parties concerning the settlement of this proceeding. There are no restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth herein or contained in separate written documents delivered or to be delivered pursuant hereto, and each party expressly acknowledges that he has not relied upon any restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly contained herein.

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Dated: 7/23/04

*Wendy Breckon*  
WENDY BRECKON  
Staff Counsel  
CALIFORNIA  
INTEGRATED WASTE  
MANAGEMENT BOARD

Dated: 7-21-04

*Benjamin H. Smith, Jr.*  
BENJAMIN H. SMITH, JR  
Property Owner

Dated: 7-21-04

*Dorothy J. Smith*  
DOROTHY J. SMITH  
Property Owner

Dated: 7-21-04

*Michael H. Smith, Jr.*  
MICHAEL SMITH, JR.  
Operator

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