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8
9 STATE OF CALIFORNIA

10 DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

11 In the matter of:

12 RAUL G. DURAN DBA DURAN'S TIRE
13 RECYCLING, OPERATOR and JOSE R.
14 PADILLA, PROPERTY OWNER

15 TPID NO: 1640806-01
16

17
18 RESPONDENTS.

STIPULATION FOR ISSUANCE OF
ADMINISTRATIVE DECISION
FOR WASTE TIRE STORAGE
ADMINISTRATIVE PENALTIES
PUBLIC RESOURCES CODE SECTION
42960

19 AGENCY NO: 2012-011140-ADC

20 INTRODUCTION

21 The parties to this STIPULATION FOR ISSUANCE OF ADMINISTRATIVE
22 DECISION FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES (Stipulation)
23 are the Department of Resources Recycling and Recovery (CALRECYCLE) and RAUL
24 G. DURAN DBA DURAN'S TIRE RECYCLING, OPERATOR and JOSE R. PADILLA,
25 PROPERTY OWNER (RESPONDENTS). The California Integrated Waste
26 Management Board (CIWMB) is now the Department of Resources Recycling and
27 Recovery (CALRECYCLE). CALRECYCLE succeeded to CIWMB's authority on
28 January 1, 2010, pursuant to PRC section 40401(a)(1). The ADMINISTRATIVE

1 COMPLAINT FOR WASTE TIRE STORAGE ADMINISTRATIVE
2 PENALTIES (Administrative Complaint) was served on RESPONDENT RAUL G.
3 DURAN DBA DURAN'S TIRE RECYCLING on December 14, 2012 and served on
4 RESPONDENT JOSE R. PADILLA on December 21, 2012. RESPONDENTS did not
5 request a hearing.

6 In order to avoid the costs and uncertainties of litigation, CALRECYCLE and
7 RESPONDENTS hereby stipulate to the following Factual Findings, Conclusions of
8 Law, and Order:

9 **STIPULATED FACTUAL FINDINGS**

10
11 1. The Administrative Complaint was executed by Martha Perez, Staff
12 Counsel, CALRECYCLE, acting in her official capacity.

13 2. CALRECYCLE has authority to regulate and conduct enforcement actions
14 against Waste Tire Haulers within the State of California under Public Resources Code
15 (PRC) section 42950, et seq., and attendant regulations contained in Title 14 of the
16 California Code of Regulations (CCR).

17 3. CALRECYCLE has authority to inspect, permit, regulate and conduct
18 enforcement actions against Waste Tire Facilities (WTF) within the State of California
19 under PRC section 42800, et seq., and attendant regulations contained in Title 14 of the
20 California Code of Regulations (CCR).

21 4. PRC section 42808 defines a WTF as a "location, other than a solid waste
22 facility . . . where, at any time, waste tires are stored, stockpiled, accumulated, or
23 discarded."

24 5. PRC section 42808 (c) defines a minor WTF as a WTF where, at any time,
25 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled,
26 accumulated, or discarded.

27 6. 14 CCR section 18420(a) requires the operator of a WTF to acquire a
28 WTF permit, unless specific conditions are met.

1 7. PRC section 42834 makes it unlawful to direct or transport waste tires to a
2 Minor WTF or to accept waste tires at a minor WTF unless the operator has first
3 obtained a minor WTF permit.

4 8. RESPONDENT RAUL G. DURAN DBA DURAN'S TIRE RECYLING
5 (RESPONDENT DURAN'S TIRE RECYCLING) is a registered tire hauler and operates
6 its hauler business out of the property owned by RESPONDENT JOSE R. PADILLA
7 located at 3442 La Grande Blvd., Suite C, Sacramento, California 95823 (the site).

8 9. At no time between April 1, 2011, and April 16, 2012, was RESPONDENT
9 DURAN'S TIRE RECYCLING in possession of a Minor WTF Permit for the site. Further,
10 the operation at the site is neither excluded nor exempt from needing a minor WTF
11 permit nor has it been otherwise authorized to operate without a minor WTF permit by
12 CALRECYCLE.

13 10. During the time between April 1, 2011, and April 16, 2012, RESPONDENT
14 DURAN'S TIRE RECYCLING allowed waste tires to be illegally stored at 3442 La
15 Grande Blvd., Suite C, Sacramento, California 95823 (the site).

16 11. On April 1, 2011, Sacramento County Tire Enforcement Agency (TEA)
17 Inspectors Mike Simpson and Ajay Sharma, conducted an inspection of the site. As
18 documented in Inspection Report #11-1128113, Inspectors Simpson and Sharma
19 observed an estimated waste tire count of 2,808 waste tires, in violation of PRC section
20 42834 and 14 CCR section 18420. A Notice of Violation (NOV) was issued with a
21 compliance date of May 1, 2011. RESPONDENT DURAN'S TIRE RECYCLING was
22 advised to reduce his waste tire count to 499 within 30 days or apply for a WTF permit
23 within seven (7) days to comply with regulations.

24 12. On May 31, 2011, Inspectors Simpson and Sharma conducted a re-
25 inspection of the site to determine compliance with the NOV issued on April 1, 2011.
26 During re-inspection of the site and as documented in Inspection Report # 11-1172409,
27 Inspectors Simpson and Sharma observed an estimated waste tire count of
28 approximately 1,080 waste tires, in violation of PRC section 42834 and 14 CCR section

1 18420. RESPONDENT DURAN'S TIRE RECYCLING was given an extension to
2 achieve compliance and was advised to either reduce its waste tire count to 499 within
3 30 days or apply for a WTF permit within seven (7) days.

4 13. On December 9, 2011, Inspector Sharma conducted a re-inspection of the
5 site to determine compliance with the extension issued on May 31, 2011, as
6 documented in Inspection Report # 11-1227005. During the re-inspection, Inspector
7 Sharma observed an estimated waste tire count of approximately 1,688 waste tires on
8 the site, in violation of PRC section 42834 and 14 CCR section 18420. RESPONDENT
9 DURAN'S TIRE RECYCLING had not applied for a WTF permit or reduced its waste tire
10 count to 499.

11 14. On March 9, 2012, pursuant to PRC section 42845, CALRECYCLE issued
12 Clean-Up and Abatement Order No. 2012-011008-CAO (CAO), signed and mailed by
13 certified mail and served on RESPONDENT DURAN'S TIRE RECYCLING on March 15,
14 2012, directing RESPONDENT DURAN'S TIRE RECYCLING to remove all waste tires
15 in excess of 499 from the premises within 15 days from the date of the service of the
16 CAO.

17 15. During a follow-up inspection of the site on April 16, 2012, and
18 documented in Waste Tire Survey and Inspection Report number IW-1002046, John
19 Duke and Katie Bruner-Benson, Inspectors for CALRECYCLE's Compliance and
20 Enforcement Division, observed 2,182 waste tires on the site, in violation of PRC
21 section 42834, 14 CCR section 18420, and in violation of the CAO.

22 23 **STIPULATED CONCLUSIONS OF LAW**

24 16. For seventeen (17) days between March 30, 2012, and April 16, 2012,
25 RESPONDENT DURAN'S TIRE RECYCLING failed to comply with the CAO, thereby
26 violating PRC section 42845, which requires any person upon order of CALRECYCLE,
27 to clean-up, abate or otherwise take remedial action at a WTF.
28

1 17. RESPONDENT DURAN'S TIRE RECYCLING intentionally violated the
2 CAO by knowingly and purposefully storing more than 499 tires on the site.

3 18. On at least four (4) separate occasions, RESPONDENT DURAN'S TIRE
4 RECYCLING violated PRC section 42834 by storing, stockpiling, or accumulating more
5 than 499, but less than 4,999, waste tires on the site without first obtaining a Minor WTF
6 Permit. On those same four (4) occasions, RESPONDENT DURAN'S TIRE
7 RECYCLING violated 14 CCR section 18420 by operating a WTF without obtaining a
8 WTF Permit.

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10 **STIPULATED ORDER**

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12 19. RESPONDENT DURAN'S TIRE RECYCLING and CALRECYCLE
13 stipulate to the following terms and conditions in full and complete settlement of this
14 matter:

15 (a) Pursuant to the terms and conditions of this Stipulation, and subject to the
16 limitations hereunder, RESPONDENT DURAN'S TIRE RECYCLING stipulates to an
17 administrative penalty against RESPONDENT DURAN'S TIRE RECYCLING, and in
18 favor of CALRECYCLE, in the sum of twenty one thousand two hundred and fifty dollars
19 (\$21,250.00) for the violations set forth in this Stipulation. Payment of the penalty shall
20 be satisfied in the following manner:

21 i) RESPONDENT DURAN'S TIRE RECYCLING shall pay fifteen
22 thousand dollars (\$15,000.00) to CALRECYCLE in accordance with the following:

- 23 1. RESPONDENT DURAN'S TIRE RECYCLING shall pay to
24 CALRECYCLE the initial sum of one thousand five hundred
25 dollars (\$1,500.00) on or before the 30th day after the issuance
26 of this Administrative Decision in accordance with the
27 Stipulation.
28

- 1 2. RESPONDENT DURAN'S TIRE RECYCLING shall make
2 monthly payments to CALRECYCLE of three hundred seventy-
3 five dollars (\$375.00) until the total amount of
4 said payments, together with the initial one thousand five-
5 hundred dollar (\$1,500.00) payment, totals fifteen thousand
6 dollars (\$15,000.00).
- 7 3. All payments shall be made to CALRECYCLE, Attn: Esther
8 Gallegos, at P. O. Box 4025, Sacramento, CA 95812-4025, or
9 to such other person and/or place as CALRECYCLE or its agent
10 may from time to time designate in writing.
- 11 4. If any payment by RESPONDENT DURAN'S TIRE
12 RECYCLING is not mailed by RESPONDENT DURAN'S TIRE
13 RECYCLING to said addressee by the due date, or a date later
14 issued by CALRECYCLE, and if RESPONDENT DURAN'S
15 TIRE RECYCLING fails to cure the missed payment(s) within
16 twenty (20) days of said missed payment, RESPONDENT
17 DURAN'S TIRE RECYCLING shall be found in partial default of
18 the Stipulation.

19 ii) Six thousand two hundred and fifty dollars (\$6,250.00 dollars) of
20 this administrative penalty shall be suspended and stayed for a period of three (3)
21 years. The stayed penalty shall be deemed terminated and shall not be paid by
22 RESPONDENT DURAN'S TIRE RECYCLING to CALRECYCLE following the three-
23 year period absent a default as described below.

24 (b) RESPONDENT DURAN'S TIRE RECYCLING shall comply with all waste
25 tire storage and waste tire hauler laws set forth in PRC section 42800 et seq., PRC
26 section 42950 et seq., and attendant regulations in Title 14 of the CCR.

27 (c) If RESPONDENT DURAN'S TIRE RECYCLING fails to comply with any
28 waste tire laws set forth in PRC sections 42800 et seq., 42950 et seq., or attendant

1 regulations in Title 14 of the CCR, immediate suspension of RESPONDENT DURAN'S
2 TIRE RECYCLING hauler registration shall go into effect for a period not to exceed
3 three (3) calendar months.

4 (d) RESPONDENT DURAN'S TIRE RECYCLING shall abide by all the terms
5 and conditions set forth in this Stipulation; failure to abide by all the terms and
6 conditions set forth in this Stipulation shall result in immediate suspension of
7 RESPONDENT DURAN'S TIRE RECYCLING hauler registration for a period not to
8 exceed three (3) calendar months.

9 (e) RESPONDENT DURAN'S TIRE RECYCLING shall maintain a manifest
10 error rate of 7% or less for the three-year abeyance period (violation of this term
11 constitutes a full default).

12 (f) RESPONDENT DURAN'S TIRE RECYCLING shall apply for a Minor WTF
13 permit from CALRECYCLE no later than thirty (30) days from the date of this
14 Stipulation. RESPONDENT'S application for a Minor WTF permit shall comply with all
15 attendant regulations set forth in Title 14 CCR Section 18431 et seq.

- 16 • The application for a minor WTF permit shall include verification that all
17 applicable local, State, and federal permits and approvals have been
18 acquired, as well as include the following CALRECYCLE forms: (1)
19 Waste Tire Facility Permit Application, (2) Operation Plan, (3)
20 Environmental Information, and (4) Emergency Response Plan.
21 Respondent must submit an original and two copies of the completed
22 forms to CALRECYCLE. Within 30 days of receipt, CALRECYCLE will
23 either accept or reject the application. Within 180 days (in most cases)
24 of accepting a completed application, CALRECYCLE will issue or deny
25 the WTF permit.

26 (g) If at any time during the abeyance period, CALRECYCLE determines that
27 RESPONDENT DURAN'S TIRE RECYCLING has violated any waste tire laws, waste
28 tire hauler laws, or the terms set forth in this Stipulation, CALRECYCLE shall inspect

1 the site at an increased frequency until RESPONDENT DURAN'S TIRE RECYCLING
2 remedies the new violations and brings the site into compliance. RESPONDENT
3 DURAN'S TIRE RECYCLING shall reimburse CALRECYCLE for the cost of these
4 additional inspections (including costs for the time spent preparing for the inspection,
5 traveling to the site, and preparing and writing any Inspection Report).

6 i. Failure to grant access to inspectors or agents designated by
7 CALRECYCLE, or failure to reimburse CALRECYCLE for the costs of an additional
8 inspection within thirty (30) days of an invoice shall be deemed a default of this
9 Stipulation.

10 ii. The cost of the additional inspections shall be billed at the rate
11 approved by CALRECYCLE's accounting and budgets offices for enforcement agent
12 inspections for that fiscal year.

13 (h) Unless otherwise specified in the subsections above, failure to comply
14 with any of the above terms shall constitute a partial default of this Stipulation and the
15 abeyance amount determined by CALRECYCLE shall become immediately due and
16 payable by RESPONDENT DURAN'S TIRE RECYCLING.

17 i. CALRECYCLE shall base any abeyance amount due on the
18 penalty amounts set forth in PRC sections 42850, 42850.1, 42962, and 14 CCR
19 sections 18429 and 18464, taking into account the nature, circumstances, extent and
20 gravity of the partial default.

21 ii. If RESPONDENT DURAN'S TIRE RECYCLING is ordered to pay a
22 partial default fine and fails to do so within 30 days, the failure shall constitute a full
23 default and the remaining abeyance amount of six thousand two hundred and fifty
24 dollars (\$6,250.00), less any amount already paid to CALRECYCLE, shall become
25 immediately due and payable.

26 20. Default: If RESPONDENT DURAN'S TIRE RECYCLING defaults under
27 any of the terms of this Stipulation, CALRECYCLE shall send a Notice of Default to
28 RESPONDENT DURAN'S TIRE RECYCLING; said Notice of Default shall state the

1 paragraphs or provisions of this Stipulation of which RESPONDENT DURAN'S TIRE
2 RECYCLING is in default and the abeyance amount owed. RESPONDENT DURAN'S
3 TIRE RECYCLING shall have fifteen (15) days from the date of the issuance of the
4 Notice of Default to provide evidence refuting CALRECYCLE's claim of default. After a
5 review of the evidence provided by RESPONDENT DURAN'S TIRE RECYCLING,
6 CALRECYCLE shall make a determination regarding the default and, if appropriate,
7 shall issue a Supplemental Decision regarding any remaining penalties due.
8 RESPONDENT DURAN'S TIRE RECYCLING may appeal CALRECYCLE's
9 determination and subsequent Supplemental Decision within thirty (30) days of the
10 issuance of the Supplemental Decision; any such appeal shall be heard by
11 CALRECYCLE's Director, or an agent designated by the Director.

12 21. RESPONDENT JOSE R. PADILLA is hereby released from any and all
13 liability arising out of the violations stated in paragraphs 16 through 18 of this Stipulation
14 and based on the specific facts set forth in paragraphs 1 through 15 of this Stipulation.
15 However, nothing prohibits CALRECYCLE, CALRECYCLE's Director, or an agent
16 designated by the Director, or an Administrative Law Judge from holding
17 RESPONDENT JOSE R. PADILLA liable for any future violations of the PRC or its
18 attendant regulations that arise out of facts that occur at any future date at the site.

19 22. No covenant, promise, term, condition, breach or default of or under this
20 Stipulation shall be deemed to have been waived except as expressly so stated in
21 writing by CALRECYCLE. A waiver by CALRECYCLE of any breach or default by
22 RESPONDENTS under this Stipulation shall not be deemed a waiver of any preceding
23 or subsequent breach or default by RESPONDENTS.

24 23. RESPONDENTS have freely and voluntarily entered into this Stipulation
25 and have been afforded the opportunity to consult with counsel prior to entering into this
26 Stipulation. It is expressly understood and agreed that no representations or promises
27 of any kind, other than as contained herein, have been made by any party to induce any
28 other party to enter into this Stipulation, and that said Stipulation may not be altered,

1 amended, modified or otherwise changed except by a writing executed by each of the
2 parties hereto. Each party hereto agrees to execute and deliver any and all documents
3 and to take any and all actions necessary or appropriate to consummate this Stipulation
4 and to carry out its terms and provisions.

5 24. Except as expressly provided herein, RESPONDENTS waive the right in
6 the entitled matter to a hearing, any and all appeals, and any and all rights that may be
7 afforded pursuant to the Public Resources Code, the Administrative Procedure Act, or
8 any other provision of law regarding the express provisions of this Stipulation.


9 25. This Stipulation shall be binding and inure to the benefit of the successors,
10 heirs and assigns of the respective parties hereto.

11 26. This Stipulation and the corresponding Administrative Decision to be
12 issued constitute the entire understanding of the parties concerning the settlement of
13 this proceeding. There are no restrictions, promises, warranties, covenants,
14 undertakings, or representations other than those expressly set forth herein or
15 contained in separate written documents delivered or to be delivered pursuant hereto,
16 and each party expressly acknowledges that it has not relied upon any restrictions,
17 promises, warranties, covenants, undertakings, or representations other than those
18 expressly contained herein.

19 27. For purposes of this Stipulation, facsimile signatures will be treated as
20 originals until the applicable page(s) bearing non-facsimile signatures have been
21 received by CALRECYCLE.

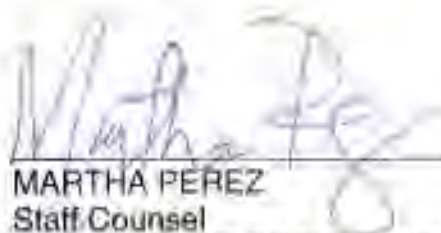
22 28. The effective date of this Stipulation is the date of issuance of the
23 Administrative Decision.

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25 Dated: April 11, 2015


26 MARK DE BIE
27 Deputy Director
28 DEPARTMENT OF RESOURCES,
RECYCLING AND RECOVERY
(CALRECYCLE)

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Dated: 3 5 2013


MARTHA PEREZ
Staff Counsel
DEPARTMENT OF RESOURCES,
RECYCLING AND RECOVERY
(CALRECYCLE)

Dated: _____

RAUL G. DURAN
DURAN'S TIRE RECYCLING,
OPERATOR

Dated: 2 4, 2013


JOSE R. PADILLA
DURAN'S TIRE RECYCLING,
PROPERTY OWNER

DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY (CALRECYCLE)

Date: _____

MARTHA PEREZ

Staff Counsel

DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY (CALRECYCLE)

Date: 8-20-13 Raul G Duran

RAUL G DURAN

DURAN'S TIRE RECYCLING,

OPERATOR

Date: _____

JOSE R. PADILLA

DURAN'S TIRE RECYCLING,

PROPERTY OWNER

Submission - Duran's Tire Recycling