

1 ELLIOT BLOCK SBN 116999
2 Chief Counsel
3 WENDY BRECKON SBN 182952
4 Senior Staff Counsel
5 Attorneys for Complainant
6 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
7 1001 I Street, 23rd Floor
8 P. O. Box 4025
9 Sacramento, CA 95812-4025
10 Telephone: (916) 341-6068
11 Facsimile: (916) 341-6082

12 STATE OF CALIFORNIA
13 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

14 IN THE MATTER OF:

15 KIRK COFER; NEVADA TIRE RECYCLING
16 INC.

17 TPID NO: 1004429

18 RESPONDENTS.

19 STIPULATION FOR ISSUANCE OF
20 ADMINISTRATIVE DECISION FOR
21 WASTE TIRE HAULER
22 ADMINISTRATIVE PENALTIES

23 AGENCY NO. 2007-010997-ADC

24 INTRODUCTION

25 The parties to this STIPULATION FOR ISSUANCE OF ADMINISTRATIVE
26 DECISION FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES ("Stipulation")
27 are the California Integrated Waste Management Board ("CIWMB") and KIRK COFER;
28 and NEVADA TIRE RECYCLING INC. (RESPONDENTS), a waste tire hauler. The
ADMINISTRATIVE COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE
PENALTIES ("Administrative Complaint") was served on RESPONDENT on October
11, 2008. RESPONDENT requested a hearing on October 15, 2008. A hearing was
scheduled for December 29, 2008 in Sacramento, California. RESPONDENT
requested a continuance on November 18, 2008, which was denied by the Office of
Administrative Hearings (OAH). RESPONDENT discussed obtaining a continuance

1 with CIWMB again on December 10, 2008. OAH approved of the parties agreement to
2 hold a settlement conference on December 29, 2008, and continued the hearing until
3 February 23, 2009. This document memorializes the agreement negotiated at the
4 settlement conference and subsequent negotiations between the parties.

5 In order to avoid the costs and uncertainties of litigation, the CIWMB and
6 RESPONDENT hereby stipulate to the following Factual Findings, Conclusions of Law,
7 and Order:

8 **STIPULATED FACTUAL FINDINGS**

9 1. The Administrative Complaint was executed by Wendy Breckon, Senior
10 Staff Counsel, CIWMB, acting in her official capacity.

11 2. The CIWMB has the authority to regulate and conduct enforcement
12 actions regarding Waste Tire Haulers within the State of California under PRC section
13 42950 et seq. and attendant regulations contained in Title 14 of the California Code of
14 Regulations (CCR).

15 PRIOR ENFORCEMENT ACTIONS

16 3. In February 2000, CIWMB also entered into a stipulation with ARGONAUT
17 ENTERPRISES, INC., NEVADA TIRE RECYCLING, et. al, which permanently revoked
18 the hauler registration for ARGONAUT ENTERPRISES, INC. and issued a probationary
19 registration for two years for NEVADA TIRE RECYCLING. Furthermore, a term in the
20 Stipulation provided that if certain conditions are not met, the NEVADA TIRE
21 RECYCLING registration will be summarily revoked for two years. These conditions
22 included proper manifesting of, and the use of registered vehicles for loads of waste
23 tires.

24 4. CIWMB issued an administrative decision on June 16, 2000 for \$225,000
25 in waste tire storage penalties pursuant to Public Resources Code section 42850.1(b)
26 for the following CIWMB cases against KIRK & SONS TIRES, and associated
27 businesses and/or individuals, OAH case number N1999040054; ARGONAUT
28

1 ENTERPRISES, INC., DBA KIRK SONS TIRE, OPERATOR, OAH case number
2 N1999120128; and ARGONAUT ENTERPRISES, INC. DBA KIRK SONS TIRES,
3 OPERATOR, OAH case number N1999120130.

4 WASTE TIRE HAULER REGISTRATION

5 5. RESPONDENT applied for and obtained from CIWMB for the years 2002,
6 2003, 2004, 2005, 2006, and 2007, a Waste and Used Tire Hauler Registration (hauler
7 registration) in accordance with PRC sections 42955 and 42956, and implementing
8 regulations.

9 MANIFEST ERROR VIOLATIONS

10 6. Out of 101 manifests submitted by RESPONDENTS for the pick-ups or
11 deliveries of waste tires from on or about April 1, 2007 to September 1, 2007,
12 RESPONDENTS submitted 28 incorrect and/or incomplete manifests for an error rate of
13 27.7%. The submittal of incorrect or incomplete manifests is a violation of PRC section
14 42961.5. The parties agreed that RESPONDENT committed the following violations:

Manifest/CTL Number	Receipt	Date	Errors
3036429	B	8-27-08	Load Type Checked Twice, Missing Facility Address, Incorrect date
3036437	B	7-28-07	Invalid TPID #
3036442	A	7-17-07	Missing TPID#
3036413	C	6-28-07	Invalid/Illegible TPID #
3036805	B,C	7-28-07	Multiple: Missing Load Type, Pick Up or Delivery Not Checked, Missing Address
3036808	A,B,C	4-17-07; 4-18-07	Multiple: Missing Load Type, Missing Address, Missing Facility Phone Number, Illegible TPID#
3035810	A,B	4-11-07	Multiple: Missing TPID#, Missing Facility Phone Number, Missing Facility Address
3036427	B	4-5-07	Missing Facility TPID#
3036880	A,B,C	5-1-07; 5-3-07	Multiple Missing Load Types, Missing Load Amount, Missing Facility Addresses

26 7. CIWMB also alleged the following allegations at paragraphs 8 through 18,
27 which RESPONDENTS dispute. However, the parties agree that this Stipulation
28 resolves these allegations:

1 8. CIWMB alleged the following manifests violations, which RESPONDENTS
 2 dispute:

3 Manifest/CTL 4 Number	Receipt	Date	Errors
5 3036804	C	6-27-07	Invalid TPID #
6 3036446	A	7-3-07	Invalid TPID #
7 3036441	A,B	5-21-07, 7- 8 75-07	Invalid TPIDS # illegible date
9 3036430	A	8-19-07	Invalid TPID #
10 3036436	A	7-31-07	Invalid TPID #
11 3036443	A	7-10-07	Invalid TPID #
12 3036413	C	6-28-07	Invalid/Illegible TPID #
13 3036801	A,B,C	4-25-07;4- 14 26-07	Multiple: Invalid/Illegible TPID #, Illegible 15 Facility Name & Address, Missing Load 16 Information Amount
17 3035811	A,B	4-4-07;4-10- 18 07	Missing TPID#, Missing Facility Phone 19 Number, Missing Facility Address, Missing 20 Load Type
21 3036813	B,C	4-2-07	Missing Load Type, Missing Load Amount, 22 Invalid TIPD#
23 3036428	A, 24 Header	Unknown	Missing Load Date, Illegible License#
25 3036431	B,C	8-15-07;8- 26 24-07	Missing Load Type, Load Type Checked 27 Twice, Invalid TPID#
28 3036432	A,B	8-4-07;8-10- 07	Multiple: Missing Load Type
3036433	B	8-7-07	Missing Load Type

Manifest/CTL Number	Receipt	Date	Errors
3036435	Header	8-1-07	Illegible Decal #, Illegible License#
3036438	B,C	7-27-07	Multiple: Missing Load Type
3036446	B	7-2-07	Load Pick up or Delivery Not Checked
3036876	A, Header	4-6-07	Missing Load Type, Missing License Plate State
3036878	B, Header	5-7-07	Illegible License #, Missing Load Date
3036881	Header	5-4-07	Illegible License #

MISREPRESENTATION OF VEHICLE INFORMATION ON WASTE TIRE HAULER APPLICATION

9. RESPONDENTS misrepresented on the waste and used tire hauler applications for 2005, 2006, and 2007, that a trailer was in fact a pick-up truck with Nevada License no. D21SHJ, in violation of 14 CCR section 18831, Form CIWMB 60, and as a result, CIWMB issued an invalid registration for the trailer.

MERCED COUNTY VIOLATIONS

10. On thirteen occasions, RESPONDENTS hauled waste tires to GOLDEN BY-PRODUCTS, located at 13000 Newport Road, Ballico, CA 95303, and an end-use facility. RESPONDENTS failed to submit manifests or comprehensive trip logs (CTLs) to the end-use facility in violation of PRC section 42961.5 for the following loads of waste tires:

///

///

///

///

Date	Quantity of Tires	License Plate #
9/8/06	2.08 tons	D21SHJ
9/13/06	2.09 tons	D21SHJ
10/9/06	16.84 tons	TP00042
3/19/07	2 tons	6J92767
4/3/07	1.08 tons	6J92767
4/5/07	2.66 tons	6J92767
4/5/07	2.46 tons	6J92767
4/11/07	2.32 tons	6J92767
4/13/07	2.90 tons	6J92767
4/16/07	3.02 tons	6J92767
4/17/07	2.30 tons	6J92767
4/17/07	2.48 tons	6J92767
4/17/07	3.08 tons	6J92767

11. On October 9, 2006, RESPONDENTS used a vehicle that is not registered with CIWMB for hauling waste tires, license plate no. TP00042, to transport 16.84 tons of waste tires to GOLDEN BY-PRODUCTS, Inc. located at 13000 Newport Road, Ballico, CA 95303, in violation of PRC section 42956(b).

SACRAMENTO COUNTY VIOLATION

12. On November 8, 2007, RESPONDENTS used a vehicle that is not registered with CIWMB for hauling waste tires, Nevada license plate no. 80269S, to transport at least 100 waste tires while driving southbound on Highway 5 in the Sacramento area in violation of PRC section 42956(b).

1 BUTTE COUNTY VIOLATIONS

2 13. On or about September 23, 2008, Scot Johnson, an inspector for Butte
3 County, determined that more than 500 waste tires were located at 2593 South 5th Ave.,
4 Oroville, CA 96965. RESPONDENTS were operating an unpermitted minor (WTF)
5 Waste Tire Facility at this location pursuant to PCR § 42808 and 42835, and have
6 ignored requests to remove the trailers and the waste tires from the property.

7 YUBA COUNTY VIOLATIONS

8 14. On or about April 2007, RESPONDENTS transported 200 waste tires in
9 violation of PRC section 42951(b) to CLUTCH CARGO, a customer of RESPONDENTS
10 and an unpermitted facility, located at 5544 Feather River Blvd, Marysville, California
11 95901. Mr. COFER promised to pick the waste tires up, but instead illegally provided a
12 temporary CIWMB registration to the owner of Clutch Cargo in violation of 14 CCR
13 sections 18456.4, and 18831, Form 60. As of November 20, 2007, at least 150 waste
14 tires remained on the premises.
15

16
17 15. RESPONDENTS violated PRC section 42961.5 when they failed to
18 manifest the waste tires on or about April 2007 that were transported to CLUTCH
19 CARGO, located at 5544 Feather River Blvd, Marysville, California 95901.
20

21 16. On or about June 2007, RESPONDENTS transported 12 waste tires to
22 JOE'S TRUCKING, a customer of RESPONDENTS and an unpermitted facility, located
23 at 2754 Pacific Ave., Nicolaus, CA 95659 in violation of PRC 42951(b).
24

25 17. RESPONDENTS violated PRC section 42961.5 when they failed to
26 manifest the waste tires on or about June 2007 that were transported to JOE'S
27 TRUCKING, located at 2754 Pacific Ave., Nicolaus, CA 95659.
28

1 18. Between on or about 2005 and on or about October 11, 2007,
2 RESPONDENTS violated PRC section 42951(b) when they delivered approximately 70
3 truck or tractor waste tires to an unpermitted, unfenced lot on Feather River Blvd. in
4 Oroville, California, Assessor Parcel no. 035-340-022. On October 11, 2007, after Mr.
5 COFER was asked to cease dumping tires by a concerned citizen, Mr. COFER ignored
6 this request, and delivered another 10 waste tires on the property later in the day on
7 October 11, 2007. RESPONDENTS failed to submit a manifest to CIWMB pursuant to
8 PRC section 42961.5 for the October 11, 2007, delivery of 10 waste tires to Assessor
9 Parcel No. 035-340-022, which is an unpermitted, unfenced lot on Feather River Blvd. in
10 Oroville, California. A registered hauler picked up all the tires at this site on January 8,
11 2009.
12

13
14 **STIPULATED CONCLUSIONS OF LAW**

15 19. The parties stipulated to fifteen thousand dollars (\$15,000.00) in waste tire
16 hauler administrative penalties based on the above-mentioned stipulated facts and for
17 the following violations:

- 18 a. RESPONDENTS violated PRC section 42961.5 when they transported
19 used or waste tires and failed to manifest, or misrepresented or
20 omitted information in the manifests.

21 20. The CIWMB has authority to regulate and conduct enforcement actions
22 regarding Waste Tire Haulers within the State of California under Public Resources
23 Code sections 42950 et seq. and attendant regulations contained in Title 14 of the
24 California Code of Regulations ("CCR").

25 21. The CIWMB's authority to assess administrative penalties against
26 RESPONDENTS is set forth in Public Resources Code section 42962 and 14 CCR
27 section 18464.
28

1 during the three year period described above, the stay will be lifted and RESPONDENT
2 will owe the CIWMB the total stipulated administrative penalty of \$15,000.00 (fifteen
3 thousand dollars), less any payments already received by CIWMB from
4 RESPONDENTS.

5 24(b). RESPONDENTS shall pay to the CIWMB the sum of \$5,000.00 (five
6 thousand dollars). This amount can be paid immediately or in six installment payments
7 in a three year period, meaning one payment every six months where the first payment
8 is due 30 days after the decision is issued. The six installment payments must be paid
9 every six months as follows:

10 - Five payments of \$833.00

11 - One payment of \$835.00

12 i) Payment shall be made to the CIWMB, Attn: Esther Gallegos, at
13 P. O. Box 4025, Sacramento, CA 95812-4025, or to such other person
14 and/or place as the CIWMB or its agent may from time to time designate
15 in writing. If the payment by RESPONDENTS hereunder is not mailed by
16 RESPONDENTS to said addressee by the due date, then
17 RESPONDENT shall be deemed in default of this Stipulation.

18 ii) Said amount shall constitute the full amount of the penalty in this
19 action unless RESPONDENT defaults under the terms of this Stipulation.

20 24(c). For the three year time period subsequent to the issuance of an
21 ADMINISTRATIVE DECISION accepting all terms and conditions of this Stipulation,
22 RESPONDENTS or any business entity associated with RESPONDENTS, including but
23 not limited to a partnership, Limited Liability Company, or Corporation, shall not apply
24 for a CIWMB waste and used tire hauler registration. If RESPONDENTS, or business
25 entities associated with RESPONDENTS, apply for a CIWMB waste and used tire
26 hauler registration, then CIWMB may deny the hauler registration without providing a
27 hearing pursuant to PRC section 42960.
28

1 25. RESPONDENTS may be employed in the tire business, and
2 RESPONDENTS can haul up to nine retread casings. However, RESPONDENTS may
3 not haul more than nine retread waste tires as a driver for any other hauler business.
4 RESPONDENTS shall not violate waste tire hauler laws at PRC section 42950 et. seq
5 or waste tire storage laws at PRC section 42808 et. seq. and the implementing
6 regulations of these statutes. In addition, if RESPONDENTS haul less than 10 waste
7 and used tires, the tires shall be hauled to a CIWMB authorized facility, including a
8 permitted or excluded facility. This does not preclude RESPONDENTS from hauling up
9 to 5 used tires to a residence for the purpose of replacing a vehicle's tires.

10 26. RESPONDENTS shall contract with a registered used and waste tire
11 hauler to clean up any and all waste tires at 2593 South 5th Avenue, in Oroville,
12 California. It is estimated that there are 500 waste tires at this site either on the ground
13 or in trailer(s). KIRK COFER agrees to take photos of the tires, then provide copies of
14 the manifests and destination receipts to the CIWMB Legal Office within 30 days of the
15 date of the Administrative Decision adopting this Stipulation.

16 27. Default: If RESPONDENTS default under the terms of this Stipulation,
17 then the CIWMB shall send RESPONDENTS a letter, by U.S. mail, as Notice of Default.
18 Said letter shall apprise RESPONDENTS of the provision(s) of the Stipulation of which it
19 is in default, and will attach a copy of the Inspection Report or other report, if any,
20 documenting the violation(s) in issue. RESPONDENTS shall have twenty (20) days
21 from the date of the letter to provide evidence to the CIWMB that there was no default of
22 this Stipulation. Thereafter, CIWMB staff will determine whether a default of the
23 Stipulation occurred. RESPONDENTS waive the right to an appeal of this default
24 determination for purposes of the cleanup provision at Paragraph 25. For purposes of
25 all other conditions of the Stipulation, RESPONDENTS are entitled to a hearing before
26 the Executive Director or his designee. The Executive Director's decision as to whether
27
28

1 there is a default of the Stipulation is the final decision of the Board. The suspended
2 administrative penalty of \$10,000 (ten thousand dollars) described in paragraph 24(a) is
3 hereby agreed to by the parties as a penalty to be promptly paid by RESPONDENT to
4 CIWMB should RESPONDENTS fail to comply with any of its obligations under this
5 Stipulation.

6 28. No covenant, promise, term, condition, breach or default of or under this
7 Stipulation shall be deemed to have been waived except as expressly so stated in
8 writing by the CIWMB. A waiver by the CIWMB of any breach or default by
9 RESPONDENT under this Stipulation shall not be deemed a waiver of any preceding or
10 subsequent breach or default by RESPONDENTS.

11 29. RESPONDENTS have freely and voluntarily entered into this Stipulation
12 and has been afforded the opportunity to consult with counsel prior to entering into this
13 Stipulation. It is expressly understood and agreed that no representations or promises
14 of any kind, other than as contained herein, have been made by any party to induce any
15 other party to enter into this Stipulation, and that said Stipulation may not be altered,
16 amended, modified or otherwise changed except by a writing executed by each of the
17 parties hereto. Each party hereto agrees to execute and deliver any and all documents
18 and to take any and all actions necessary or appropriate to consummate this Stipulation
19 and to carry out its terms and provisions.

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

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

26 32. This Stipulation and the ADMINISTRATIVE DECISION to be issued
27
28

1 constitute the entire understanding of the parties concerning the settlement of this
2 proceeding. There are no restrictions, promises, warranties, covenants, undertakings,
3 or representations other than those expressly set forth herein or contained in separate
4 written documents delivered or to be delivered pursuant hereto, and each party
5 expressly acknowledges that it has not relied upon any restrictions, promises,
6 warranties, covenants, undertakings, or representations other than those expressly
7 contained herein.

8 33. For purposes of this Stipulation, facsimile signatures will be treated as
9 originals until the applicable page(s) bearing non-facsimile signatures have been
10 received by the parties.

11 34. The effective date of this STIPULATION FOR ISSUANCE OF
12 ADMINISTRATIVE DECISION is the date of issuance of the ADMINISTRATIVE
13 DECISION.

14
15 Dated: 2/25/2009


16 MARK LEARY
17 Executive Director
18 CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD

19 Dated: 2/18/09


20 WENDY BRECKON
21 Senior Staff Counsel
22 CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD

23 Dated: 2/18/09


24 KIRK KENNETH COFER; NEVADA TIRE
25 RECYCLING INC. RESPONDENTS
26
27
28