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9 **STATE OF CALIFORNIA**

10 **DEPARTMENT OF RESOURCES RECYCLING & RECOVERY**

11 **In the Matter of:**

12 **GILTON SOLID WASTE**
13 **MANAGEMENT, INC.,**

14 **TPID NO. 1001979-01**

15 **RESPONDENT.**

Case No. IH13-010-TIR

**ADMINISTRATIVE DECISION
PURSUANT TO STIPULATION
FOR WASTE TIRE HAULER
ADMINISTRATIVE PENALTIES**

**PUBLIC RESOURCES CODE
SECTION 42950, ET SEQ.**

Agency No: 2013-011148-ADC

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18
19 **INTRODUCTION**

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21 The California Department of Resources Recycling and Recovery
22 ("CALRECYCLE") has authority to regulate and conduct enforcement actions regarding
23 waste tire haulers and waste tire facilities within the State of California pursuant to
24 Public Resources Code ("PRC") sections 42800 et seq., 42962 et seq., and attendant
25 regulations contained in Title 14 of the California Code of Regulations ("CCR"). This
26 **ADMINISTRATIVE DECISION PURSUANT TO STIPULATION FOR WASTE TIRE**
27 **HAULER ADMINISTRATIVE PENALTIES ("Administrative Decision")** is based on the
28 **STIPULATION FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES**

1 ("Stipulation") signed by Richard Gilton, owner, GILTON SOLID WASTE
2 MANAGEMENT INC. ("GILTON"), and Bart Barringer, Attorney for GILTON, Mark De
3 Bie, Deputy Director for CALRECYCLE, and Martha Perez, Attorney for CALRECYCLE.

4 On July 29, 2013, an ADMINISTRATIVE COMPLAINT FOR WASTE TIRE
5 HAULER ADMINISTRATIVE PENALTIES ("Administrative Complaint") for \$142,500.00
6 was issued to RESPONDENT GILTON. To avoid the time, expense, and uncertainties
7 of litigation, GILTON and CALRECYCLE stipulated to the Factual Findings, Conclusions
8 of Law, and Order set forth in the Stipulation to resolve the issues contained in the
9 Administrative Complaint.

10 Pursuant to the Stipulation, and good cause appearing therefore, the following
11 Findings of Fact and Conclusions of Law are made:

12 **FINDINGS OF FACT**

13 1. CALRECYCLE has authority to inspect, permit, regulate and conduct
14 enforcement actions against waste tire haulers and waste tire facilities within the State
15 of California under PRC sections 42800 et seq., 42950 et seq., and attendant
16 regulations contained in Title 14 of the California Code of Regulations ("CCR").

17 2. GILTON operates a solid waste facility, Gilton Solid Waste Management,
18 Inc., Tire Program Identification (TPID) number 1001979, located at 800 South McClure
19 Road, Modesto, California 95357 (hereafter, referred to as "the facility").

20 3. GILTON has been a registered waste and used tire hauler since
21 December 16, 1997. GILTON's current waste and used tire hauler registration expires
22 on December 31, 2013.

23 4. At the time of the initial waste tire hauler registration and annually during
24 the hauler registration renewal process, GILTON was provided instruction regarding the
25 proper completion, retention, and delivery of California Uniform Waste and Used Tire
26 Manifests, also known as Comprehensive Trip Log (CTL) forms or "Manifest Forms."
27 The waste tire hauler instruction materials provided to Gilton included, but were not
28 limited to: (1) instructions on transporting waste/used tires; (2) a complete list of hauler

1 and manifesting regulations (Title 14, California Code of Regulations, Chapter 6); (3) a
2 training compact disc (CD) on the proper storage and transportation of waste/used tires;
3 (4) Comprehensive Trip Log (CTL) Guidance Manual; and (5) numerous hauler alerts
4 and advisories informing GILTON of the zero tolerance policy applicable to late
5 renewals, improper manifesting using an incorrect TPID number, and transporting waste
6 tires to unauthorized locations.

7 5. On December 10, 2012, Inspector Troy Weber of CalRecycle's Solid
8 Waste Enforcement Section inspected the facility. On this day, the facility was storing
9 approximately 35,000 waste tires at the facility, and therefore, currently operating as a
10 "Major Waste Tire Facility."¹

11 6. On January 4, 2013, CALRECYCLE issued a letter to Dennis Shuler,
12 Environmental Affairs Manager for GILTON. The letter informed GILTON that the facility
13 was in violation of PRC Section 42824 and Title 14 CCR section 18420(a) because it
14 was operating as a Major Waste Tire Facility without having obtained a Major Waste
15 Tire Facility permit. GILTON was notified that it was "greatly exceeding" the 150-tires-
16 per-day annual limit set forth in PRC section 42808, and thus, was required to possess
17 a separate valid Waste Tire Facility permit. GILTON was given 30 days to bring the
18 facility into compliance by reducing the number of tires received to less than 150-tires-
19 per-day averaged on an annual basis, and was provided notice that failure to bring the
20 facility into compliance within 30 days would subject GILTON to CALRECYCLE taking
21 direct enforcement action. The letter also specifically informed GILTON that manifesting
22 violations had occurred because GILTON had not properly documented all tires arriving
23 or leaving the facility using CTL forms, and these violations were referred to
24 CALRECYCLE's Waste Tire Enforcement Section.

25 7. On or around January 9, 2013, Gerri Stryker, Supervisor of CalRecycle's
26 Tire Enforcement Section-Central Unit, and Keith Cambridge, Supervisor of
27 CalRecycle's Tire Hauler Compliance Unit had a phone conversation with Mr. Shuler.
28

¹ A "Major Waste Tire Facility" is defined as, "a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded." (PRC section 42808(b).)

1 Ms. Stryker discussed with Mr. Shuler the issues regarding the overage of waste tires at
2 the facility. Mr. Cambridge discussed with Mr. Shuler the issues regarding the improper
3 documentation of all waste/used tires arriving or leaving the facility. Ms. Stryker and Mr.
4 Cambridge explained to GILTON that GILTON was not allowed to transport waste/used
5 tires back to the facility until GILTON was under the waste tire authorized storage limit.
6 Mr. Cambridge also explained that GILTON's manifest forms need to be complete when
7 they are submitted to CALRECYCLE and that GILTON had not submitted any manifest
8 forms showing waste tire deliveries to the facility. Mr. Shuler stated that all the
9 waste/used tires that were picked up by GILTON were delivered to the facility and that
10 he was unaware that GILTON needed to document deliveries on the manifest forms.
11 Mr. Cambridge instructed Mr. Shuler how to properly complete a manifest form and
12 advised Mr. Shuler that all waste/used tires picked up and/or delivered must be
13 documented and shown on manifest forms.

14 8. On January 22, 2013, Mr. Cambridge conducted an audit of GILTON's
15 manifest forms for the time period from July 1, 2012 through December 31, 2012. From
16 this audit, Mr. Cambridge determined that at least 283 loads of waste tires delivered to
17 the facility were not properly manifested in accordance with the manifesting
18 requirements set forth in Title 14 CCR sections 18459, 18459.2.1, and 18460.2 for
19 waste and used tire haulers, waste and used tire generators, and waste and used tire
20 end-use facilities. GILTON failed to submit accurate and complete manifest forms
21 showing all waste/used tires that were delivered to the facility.

22 9. On January 30, 2013, Inspector Weber and Inspectors Michael Payan and
23 Cathy Blair of CALRECYCLE's Tire Hauler Compliance Unit performed a follow-up
24 inspection of the facility. As documented in Tire Inspection Report Number IW-
25 1004733, Inspectors Payan and Blair examined GILTON's CTL forms for the last three
26 years to ensure compliance with manifesting requirements. Inspectors Payan and Blair
27 found that some of GILTON's CTL forms contained errors and omissions, such as, a
28 failure to properly manifest pick-ups and deliveries of waste and used tires from
GILTON to other facilities or from generators to GILTON, and failure to accurately

1 complete information on CTL forms indicating the load type, i.e. weight in tons or whole
2 tire counts. Inspectors Payan and Blair instructed Mr. Shuler how to properly complete
3 the CTL form to accurately reflect pickups and deliveries of all waste and used tires.

4 10. As documented in SWIS Inspection Report No. 50-AA-0012, January 30,
5 2013, all waste tires that were previously observed during the December 10, 2012
6 inspection (approximately 35,000) had been removed from the facility. According to
7 statements made by Mr. Shuler, the waste tires had been removed from the facility and
8 delivered to Forward Landfill, located in Stockton, CA, using GILTON's vehicles.
9 Inspectors reviewed the CTL forms provided by GILTON showing the deliveries to
10 Forward Landfill and found that the CTL forms failed to show the pick-ups from
11 GILTON. Inspector Blair informed Mr. Shuler that a CTL form is required to show pick-
12 ups from the facility for every delivery to another location. Additionally, Inspectors Payan
13 and Blair informed Mr. Shuler of the Title 14 CCR sections 18461(b) and 18462(c)
14 requirements to use CalRecycle Form 204, *Unregistered Hauler & Comprehensive Trip*
15 *Log Substitution Form*, any time unregistered haulers make deliveries of waste or used
16 tires to the facility.

17 11. On April 5, 2013, Mr. Cambridge performed an audit of GILTON's CTL
18 forms to verify GILTON's compliance with the manifesting requirements set forth in PRC
19 section 42961.5 and Title 14 CCR sections 18449 et seq. Mr. Cambridge found that
20 during the time period from January 30, 2013 to April 5, 2013, GILTON submitted seven
21 CTL forms; two of the seven CTL forms contained errors or omissions, equating to a
22 29% error rate.

23 CONCLUSIONS OF LAW

24 12. GILTON did not comply with PRC section 42961.5, which requires a
25 generator of waste or used tires, a waste or used tire hauler, or the operator of a waste
26 facility to complete a manifest form that contains all of the information, including, but not
27 limited to, "an accurate measurement of the number of tires being shipped, the type or
28 types of the tires, the date the shipment originated, and the origin and intended final
destination of the shipment."

1 13. GILTON failed to properly manifest at least 283 loads of waste/used tires
2 in accordance with the manifesting requirements set forth in Title 14 CCR sections
3 18459, 18459.2.1, and 18460.2 for waste and used tire haulers, waste and used tire
4 generators, and waste and used tire end-use facilities.

5 14. GILTON did not comply with Title 14 CCR sections 18459, 18459.2.1, and
6 18460.2, which require that a hauler, "complete a new Manifest Form for each pick-up
7 or delivery of any used or waste tires in accordance with the directions on the form" and
8 "submit the completed [Manifest] Form to the Department [CalRecycle]." GILTON failed
9 to properly complete a new manifest form for each pick-up and delivery of waste or
10 used tires to and from the facility.

11 ORDER

12 CALRECYCLE approves of, and adopts the terms of the Stipulation, and good
13 cause appearing therefore, the following ORDER is hereby made:

14 15. GILTON shall pay an administrative penalty against GILTON and in favor
15 of CALRECYCLE, in the sum of one hundred thousand dollars (\$100,000.00), for the
16 violations set forth in the Stipulation and recited in this Administrative Decision.

17 Payment of the penalty shall be satisfied in the following manner:

18 (a) GILTON shall pay thirty thousand dollars (\$30,000.00) to CALRECYCLE
19 in accordance with the following:

- 20 i. GILTON shall pay to CALRECYCLE the initial sum of fifteen
21 thousand dollars (\$15,000.00) on or before the 30th day after the
22 effective date of this Administrative Decision.
- 23 ii. GILTON shall make monthly payments to CALRECYCLE of twelve
24 hundred and fifty dollars (\$1,250.00), beginning on or before the
25 30th day after the effective date of this Administrative Decision, for a
26 consecutive twelve-month period, until the total amount of said
27 payments, together with the initial fifteen thousand dollar
28 (\$15,000.00) payment, totals thirty thousand dollars (\$30,000.00).

- 1 iii. All payments shall be made to CALRECYCLE, Attn: Esther
2 Gallegos, at P. O. Box 4025, Sacramento, CA 95812-4025, or to
3 such other person and/or place as CALRECYCLE or its agent may
4 from time to time designate in writing.
- 5 iv. If any payment by GILTON is not mailed to CALRECYCLE by the
6 due date, or a date later issued by CALRECYCLE, and if GILTON
7 fails to cure the missed payment(s) within twenty (20) days of said
8 missed payment, GILTON shall be found in partial default of the
9 Stipulation.

10 (b) GILTON shall pay an additional ten thousand dollars (\$10,000.00) to
11 CALRECYCLE in accordance with the following:

- 12 v. If GILTON fails to comply with any of the waste tire storage or
13 waste tire hauler laws set forth in PRC sections 42800 et seq.,
14 42950 et seq., or attendant regulations contained in Title 14 CCR,
15 or if GILTON fails to abide by any of the terms or conditions
16 contained in the Stipulation, GILTON must immediately pay an
17 additional ten thousand dollars (\$10,000.00) to CALRECYCLE.

18 (c) Sixty thousand dollars (\$60,000.00) of this administrative penalty shall be
19 suspended and stayed for a period of five (5) years. The stayed penalty shall be
20 deemed terminated and shall not be paid by GILTON to CALRECYCLE following the
21 five-year period absent a default as described below, or a violation of the
22 aforementioned waste tire laws and regulations.

- 23 vi. **Default:** GILTON is in default of this Stipulation if GILTON fails to
24 comply with any of the terms and conditions set forth in the
25 Stipulation, unless otherwise specified. In the event that
26 CALRECYCLE discovers a default of this Stipulation,
27 CALRECYCLE shall notify GILTON by issuing a *Notice of Default*.
28 GILTON will have thirty (30) days from the date of issuance of the
 Notice of Default to respond to CALRECYCLE's allegations and

1 provide evidence refuting CALRECYCLE's claim of default.
2 CALRECYCLE will review all counterarguments and evidence
3 provided by GILTON and will make a determination as to whether a
4 default occurred, and if appropriate, shall issue a Supplemental
5 Administrative Decision ("Supplemental Decision") regarding any
6 remaining penalties due. GILTON may appeal CALRECYCLE's
7 determination and subsequent Supplemental Decision within thirty
8 (30) days of the issuance of the Supplemental Decision; any such
9 appeal shall be heard by CALRECYCLE's Director, or an agent
10 designated by the Director.

11 vii. **Partial Default:** If GILTON is in partial default of this Stipulation
12 and is ordered to pay a partial default fine, and fails to do so within
13 30 days, the failure shall constitute a full default and the remaining
14 abeyance amount of sixty thousand dollars (\$60,000.00) shall
15 become immediately due and payable.

16 16. GILTON representative, Dennis Shuler, Environmental Affairs Manager,
17 shall attend a one-time mandatory training class, offered by CALRECYCLE staff. The
18 one-time mandatory training class will provide the following: (1) an explanation and
19 instructions on how to properly complete CTL forms for all waste/used tires picked up or
20 delivered, (2) how to document other information on CTL forms, (3) an overview of the
21 waste tire laws/regulations, and (4) information and instruction on the submittal of CTL
22 forms via the Electronic Data Transfer (EDT) web method.

23 17. No later than one calendar month after the effective date of this
24 Administrative Decision, GILTON shall begin using the EDT web reporting method for
25 all CTL forms completed and submitted from GILTON to CALRECYCLE.

26 18. GILTON shall submit all CTL receipts to CALRECYCLE within thirty (30)
27 days from the date of the pickup or delivery of tires, for a period not to exceed one
28 calendar year from the effective date of this Administrative Decision. At the expiration

1 of the calendar year period, GILTON will be required to submit CTL forms within ninety
2 (90) days, as specified in Title 14, CCR 18459.2.1.

3 19. GILTON shall maintain a manifest error rate of 7% or less, effective
4 January 1, 2014, until the end of the five-year abeyance period. The 7% manifest error
5 rate shall be based on a sample size of a six-month accumulation of manifest forms.

6 20. GILTON shall comply with all waste tire storage and waste tire hauler laws
7 set forth in PRC section 42800 et seq., PRC section 42950 et seq., and attendant
8 regulations in Title 14, CCR; failure to comply with any waste tire laws set forth in PRC
9 sections 42800 et seq., 42950 et seq., or attendant regulations in Title 14, CCR will
10 result in immediate suspension of GILTON's hauler registration for a period not to
11 exceed three (3) calendar months.

12 21. GILTON shall abide by all of the terms and conditions set forth in the
13 Stipulation; failure to abide by any of the terms and conditions set forth in the Stipulation
14 shall result in immediate suspension of GILTON's hauler registration for a period not to
15 exceed three (3) calendar months.

16 22. **Additional Inspections:** If at any time during the abeyance period
17 CALRECYCLE determines that GILTON has violated any of the waste tire laws, or the
18 terms set forth in the Stipulation, CALRECYCLE shall inspect the facility at an increased
19 frequency, at least monthly, until GILTON remedies the violations and brings the facility
20 into compliance. GILTON shall grant access for these additional inspections and shall
21 reimburse CALRECYCLE for the cost of those inspections. Costs of the inspection
22 includes time preparing for inspection, travel to and from the facility, and time spent
23 preparing and writing the inspection report, at the same amounts that are determined
24 annually and approved for enforcement agents to be charged by the department.

25 23. **Additional Terms/Conditions:** On or before one calendar year from the
26 effective date of this Administrative Decision, GILTON shall apply for a Minor Waste
27 Tire Facility permit. GILTON's application for a Minor Waste Tire Facility permit shall
28 comply with all attendant regulations set forth in Title 14 CCR Section 18431 et seq.

1 (a) The application for a Minor Waste Tire Facility permit shall include
2 verification that all applicable local, State, and federal permits and
3 approvals have been acquired, as well as include the following
4 CALRECYCLE forms: (1) Waste Tire Facility Permit Application, (2)
5 Operation Plan, (3) Environmental Information, and (4) Emergency
6 Response Plan. GILTON must submit an original and two copies of the
7 completed forms to CALRECYCLE. Within 30 days of receipt,
8 CALRECYCLE will either accept or reject the application. Within 180 days
9 (in most cases) of accepting a completed application, CALRECYCLE will
10 issue or deny the Minor Waste Tire Facility permit.

11 24. Nothing shall be implied in this Stipulation that shall preclude
12 CALRECYCLE from using any enforcement mechanism, whether administrative, civil, or
13 criminal, should GILTON commit future violations of waste tire storage laws or waste
14 tire hauler laws.

15 25. No covenant, promise, term, condition, breach, or default of, or under this
16 Stipulation shall be deemed to have been waived except as expressly so stated in
17 writing by CALRECYCLE. A waiver by CALRECYCLE of any breach or default by
18 GILTON under this Stipulation shall not be deemed a waiver of any proceeding or
19 subsequent breach or default.

20 26. GILTON has freely and voluntarily entered into this Stipulation and has
21 been afforded the opportunity to seek and consult with counsel prior to entering into this
22 Stipulation. It is expressly understood and agreed that no representations or promises
23 of any kind, other than as contained herein, have been made by any party to induce any
24 other party to enter into this Stipulation, and that said Stipulation may not be altered,
25 amended, modified or otherwise changed except by a writing executed by each of the
26 Parties hereto. The Parties hereto agree to execute and deliver any and all documents
27 and to take any and all actions necessary or appropriate to consummate this
28 STIPULATION and to carry out its terms and provisions.


1 27. Except as expressly provided herein, GILTON waives the right in the
2 entitled matter to a hearing, any and all appeals, and any and all rights that may be
3 afforded pursuant to the PRC, the Administrative Procedure Act, or any other provision
4 of law regarding the express provisions of the Stipulation.

5 28. The terms of this Stipulation shall be binding upon the Parties and inure to
6 the benefit of their representative, successors, heirs, and assigns.

7 29. This Administrative Decision and Stipulation constitute the entire
8 understanding of the Parties concerning the settlement of this proceeding. There are no
9 restrictions, promises, warranties, covenants, undertakings, or representations other
10 than those expressly set forth herein or contained in separate written documents
11 delivered or to be delivered pursuant hereto, and the Parties expressly acknowledge
12 that they have not relied upon any restrictions, promises, warranties, covenants,
13 undertakings, or representations other than those expressly contained herein.

14 30. This Administrative Decision shall become effective as of the date signed
15 below.

16
17 Dated this 6 day of January, 2014.

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20 _____
21 MARK DE BIE
22 Deputy Director
23 DEPARTMENT OF RESOURCES,
24 RECYCLING AND RECOVERY
25 (CALRECYCLE)
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