

BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
STATE OF CALIFORNIA

In the Matter of The Amended Statement of Issues for Denial of Waste and Used Tire Hauler Registration and The Amended Administrative Complaint for Waste Tire Hauler Administrative Penalties Against:) Board Nos.: 2007-000028-DEN 2007-011000-ADC
CARL, BUDDIE STOGNER aka CARL B. STAGNER, dba BUD'S TIRE,) OAH Nos.: L2008020033 L2008010598
Respondent.)

DECISION

The attached Proposed Decision of the Administrative Law Judge was received by the California Integrated Waste Management Board on or about June 19, 2008. The Board then considered the adoption of the Proposed Decision.

Now, therefore, pursuant to the provision of California Government Code Section 11517(c)(2)(A) and (C),

IT IS SO ORDERED:

1. That the following technical error in the Proposed Decision is corrected, as follows: on page 2, the sentence that reads " Respondent continued to operate as a registered tire hauler under a "temporary" registration issued by the Board" will be deleted because all of the evidence for temporary registration was not presented at the hearing; and
2. The attached Proposed Decision is hereby adopted by the California Integrated Waste Management Board.

The DECISION shall become effective 7/22/08.

Dated this 22 day of July, 2008.


MARGO RIED BROWN
Chair
CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD

STATE OF CALIFORNIA
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

In the Matter of The Amended Statement of Issues for the Denial of Waste and Used Tire Hauler Registration and The Amended Administrative Complaint for Waste Tire Hauler Administrative Penalties Against:

CARL BUDDIE STOGNER aka CARL B. STAGNER, d/b/a BUD'S TIRE

TPID NO.: 1335422

Respondent.

Board Nos. 2007-000028-DEN
2007-011000-ADC

OAH Nos. L2008020033
L2008010598

PROPOSED DECISION

These matters were consolidated prior to hearing and were both heard on May 16, 2008, in San Bernardino, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Carl Buddie Stogner, Sr. (Respondent) was present and represented himself.

Wendy A. Breckon, Senior Staff Counsel, represented the California Integrated Waste Management Board (CIWMB or Board or Complainant).

Oral and documentary evidence was received. The record was held open until May 30, 2008, in order for the parties to submit closing briefs. On May 30, 2008, Complainant submitted a closing brief which was marked as exhibit 19. Respondent did not submit a closing brief. On June 2, 2008, the matter was submitted for decision.

FACTUAL FINDINGS

1. On November 6, 2007, Respondent applied for a Waste and Used Tire Registration (registration) pursuant to Public Resources Code¹ section 42951. Thereafter, the Board denied Respondent's application. The Board also filed an administrative complaint seeking \$11,500 in civil penalties. Respondent appealed the Board's denial of his application and requested a hearing on the administrative complaint and the instant hearing took place.

¹ All further statutory references are to the Public Resources Code.

2. Each year, 40,000,000 waste tires are generated in California. The Board has the responsibility and the authority to regulate and conduct enforcement actions regarding waste tire haulers within the State of California under Code section 42950 et. seq. and title 14 of the California Code of Regulations.²

3. When a person or entity is issued a registration, that registration automatically expires on January 1 of the following year pursuant to Regulation section 18455. Therefore, a new application is required each year.

4. Respondent has been a registered hauler since 2001 and his most recent registration expired on December 31, 2007. After December 31, 2007, Respondent continued to operate as a registered tire hauler under a "temporary" registration issued by the Board.

5. The Board denied Respondent's application based on the following facts, all of which were established, as discussed in Findings 6-11.

6. A registered tire hauler is required to take the waste tires to a permitted disposal facility.

7. On or about April 10 and April 13, 2007, Respondent failed to use the current manifest form required by regulation (Board form number 203) when he hauled used and waste tires from Big O Tires, number 57677, 29 Palm Highway, Yucca Valley, California. Respondent also failed to submit these manifests to the Board as required by Code section 42961.5 and Regulation section 18459.2.1. In mitigation, while Respondent did not use the current manifest form, he did use the "old" manifest form. The Board had changed its required manifest form, but Respondent continued to use the "old" forms to save money.

8. On or about June 21, 2007, Respondent misrepresented the tire program identification number (TPID) on comprehensive trip log (CTL) number 3500582 when he someone else using Respondent's registration, picked up and hauled waste or used tires from Big O Tires, number 57677, 29 Palm Highway, Yucca Valley, California. Respondent failed to submit this manifest to the Board as required by Code section 42961.5

9. On or about August 3, 2007, Respondent failed to complete the manifest form (CTL number 3500574) as required by Code section 42961.5 and Regulation section 18831 (Board form 203). Respondent also failed to include the required generator facility information when Respondent picked up waste tires from Big O Tires, number 57677, 29 Palm Highway, Yucca Valley, California. In addition, Respondent failed to submit the manifest to the Board in violation of Code section 42961.5.

² All further references to "Regulations" are to Title 14 of the California Code of Regulations.

10. On or about August 6, 2007, Respondent's son Buddie Stogner, Jr., while operating under Respondent's Registration, hauled approximately 900 waste and used tires, in three loads containing approximately 300 waste or used tires per load, to Morongo Basin Tires, number 49997, 29 Palms Highway, Morongo Valley, California, an unpermitted waste tire facility in violation of Code section 42951, subdivision (b). This created a nuisance and fire hazard because tire storage standards were violated. The evidence was unclear exactly why Carl Stogner, Jr. moved the tires, but he was apparently trying to help his father, who was ill, keep the business operational. Buddie Stogner, Jr. used his father's trucks, and operated under his father's registration, in moving the tires to Morongo Basin Tires. Morongo Basin Tires was Carl Stogner, Jr.'s separate business venture. The building had multiple code violations, such as faulty wiring, and Carl Stogner, Jr. did not apply for the proper licenses and permits required to operate a waste tire facility. A waste tire facility is defined as a facility where more than 500 used or waste tires are stored. At Morongo Basin Tires, the tires were not stored correctly and there was no required fire-fighting equipment present. Morongo Basin Tires was eventually "red-tagged" and closed by the local authorities. Thereafter, Respondent, or others operating under his registration, removed the majority of the tires from Morongo Basin Tires. Respondent was attempting to comply with the local authorities who had requested that the site be cleaned. It was not established where those tires were taken.

11. On or about August 6, 2007, Respondent failed to complete and submit a manifest to the Board indicating the pickup of used or waste tires from 6545 North Indian, Palm Springs, California, and the hauling of the tires to Lamb Canyon Landfill in Beaumont, California, in violation of Code section 42961.5 and Regulation section 18831.

12. Respondent offered an explanation for the above findings. Respondent contended that he did nothing wrong and that his son performed all the acts for which the Board seeks to deny Respondent's application for a registration. Respondent testified that he became ill in November 2006. At that time, his son, Buddie Stogner, Jr., tried to help his father carry on the business. However, he did not do a very good job. Thereafter, Respondent fired his son, but his son continued to use Respondent's registration, without Respondent's permission. The time-line of when these events occurred was not established. In any event, the registration was issued to Respondent and it was his responsibility to protect its use. Further, it was established that Buddie Stogner, Jr. was driving Respondent's vehicles after the time Respondent alleged he fired his son, calling into question Respondent's credibility. Moreover, no evidence was presented that Respondent sought help from the Board after discovering that his son had been misusing his Registration.

13. In this case, it was intimated, but not established, that Respondent performed illegal dumping of the tires he collected. It was established that Respondent has not complied with the Board's rules and regulations on multiple occasions.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a waste hauler registration for three years pursuant to Code section 42960, for violating Code sections 42951, subdivision (b), and 42961.5. (Factual Findings 6-13.)

2. Under Code section 42962, subdivision (c), the Board has the authority to impose penalties ranging from \$500 to \$5,000 for a variety of hauling violations indicated in the regulations. In this case, The Board sought an administrative penalty liability of \$11,500.00.

3. Regulation section 18465 defines the "Criteria to Impose a Civil Penalty" as follows:

In assessing the amount of civil penalty, factors to be considered shall include, but are not limited to, the following:

- (1) The nature, circumstances, extent, and gravity of the violation.
- (2) Evidence that the violation was willful or negligent.
- (3) The good or bad faith exhibited by the party.
- (4) History of violation of the same or similar nature.
- (5) The extent to which the party has cooperated with the Board in remediating the violation.
- (6) The extent that the party has mitigated or attempted to mitigate any damage or injury caused by his or her violation.
- (7) Evidence of any financial gain resulting from the violation.
- (8) Such other matters as justice may require.

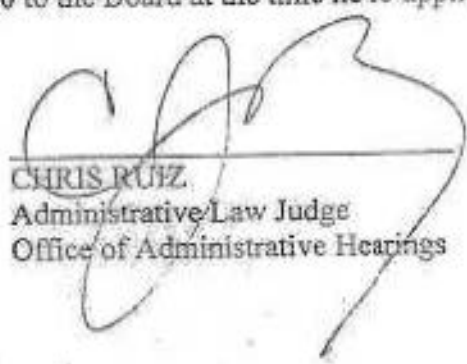
4. In this case, it was not established that Respondent performed illegal dumping of waste tires. However, it was established that Respondent failed to comply with the Board's rules and regulations, on multiple occasions, and that the use of his registration resulted in the creation of a very dangerous unpermitted waste tire facility. As such, Respondent's application is denied. As a result of this denial, Respondent will likely have to find another means of support. Taking this into consideration, a fair penalty is \$7,500, to be paid at such time as Respondent ever re-applies for a registration.

ORDER

1. Respondent Carl Buddie Stogner, Sr.'s application for a Waste and Used Tire Registration is denied. Respondent may re-apply for a registration in three years.

2. Respondent is ordered to pay \$7,500 to the Board at the time he re-applies for a Waste and Used Tire Registration.

DATED: June 19, 2008.



CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

