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8 STATE OF CALIFORNIA

9 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

10 In the Matter of:

11 BERNARDO BELTRAN dba B & J TIRES &
12 WHEELS, INC. aka B & J TIRES; B & J AUTO
13 CENTER, INC.

14
15 TPID NO.: 1000902-01

16 ASSESSOR'S PARCEL NO.: 041-3906-002

17 RESPONDENT
18
19

) ADMINISTRATIVE DECISION
PURSUANT TO STIPULATION FOR THE
DENIAL OF THE WASTE AND USED
TIRE HAULER REGISTRATION AND
WASTE TIRE HAULER PENALTIES.

) PUBLIC RESOURCES CODE SECTION
42960; 42962.

) Agency No: 2008-000040-DEN

) OAH No. 2009010484

20 INTRODUCTION

21 Pursuant to Public Resources Code (PRC) section 42850(b), the California
22 Integrated Waste Management Board ("CIWMB") served a Statement of Issues for the
23 Denial of the Waste and Used Tire Hauler Registration on December 13, 2008.
24 RESPONDENT requested a hearing on January 7, 2009. A hearing was scheduled for
25 May 8, 2009, in Oakland, California. On May 4, 2009, the parties requested to convert
26 the hearing to a settlement conference, which was approved by the Office of
27 Administrative Hearings on May 6, 2009.
28

1 To avoid the uncertainties of litigation, RESPONDENT entered into a Stipulation
2 on June 24, 2009, for Issuance of Administrative Decision for Waste Tire Facility Permit,
3 the Denial of the Waste and Used Tire Hauler Registration; and Waste Tire Hauler
4 Penalties to resolve the allegations in the Third Amended Statement of Issues for the
5 Denial of Waste and Used Tire Hauler Registration. Pursuant to the Stipulation, and
6 good cause appearing therefore, the following Stipulated Factual Findings and
7 Conclusions of Law are made, and the following Stipulated Order is issued.
8

9 **STIPULATED FACTUAL FINDINGS**

10 1. The Third Amended Statement of Issues was executed by WENDY
11 BRECKON, Senior Staff Counsel, CIWMB, acting in her official capacity.

12 2. The California Integrated Waste Management Board ("CIWMB") has
13 authority to regulate and conduct enforcement actions regarding Waste Tire Haulers
14 within the State of California under Public Resources Code (PRC) Section 42962 et
15 seq. and has authority to inspect, permit, regulate and conduct enforcement actions
16 against Waste Tire Facilities (WTF) within the State of California under PRC section
17 42800, et seq., and attendant regulations contained in 14 California Code of
18 Regulations ("CCR").
19

20 3. The following facts pertain to RESPONDENT BERNARDO BELTRAN dba
21 B&J TIRES & WHEELS, INC. aka B & J TIRES, and any reference to RESPONDENT in
22 this paragraph does not include B & J AUTO CENTER, INC.:
23

24 **PRIOR VIOLATIONS**

25 a. Clean Up & Abatement Order No. 98-83 dated October 15, 1998, was
26 issued by CIWMB to RESPONDENTS, Operator of B & J Tires requesting
27 that RESPONDENTS either obtain a WTFP or remove all waste tires from his
28 location by December 31, 1998.

- 1 b. As a result of 13,000 waste tires stored at his facility, CIWMB and
2 Bernard Beltran entered into a Settlement Agreement and Mutual
3 Compromise on May 14, 1999, wherein Mr. Beltran agreed to pay \$500 and
4 apply for a waste tire facility permit.
- 5 c. The CIWMB issued RESPONDENT a Minor Waste Tire Facility Permit
6 (WTFP) on June 3, 2003, allowing RESPONDENT to store 4,999 of whole or
7 passenger tire equivalents (PTE).
- 8 d. RESPONDENT, located at 5901 Coliseum Way, Oakland, Alameda
9 County, California 94602; Assessor's Parcel Number 041-3906-002, is in
10 violation of PRC section 42822 et seq effective June 3, 2008, at which time
11 RESPONDENT'S WTFP expired. Further, RESPONDENT failed to timely file
12 for a permit extension.
- 13 e. On January 14, 2005, the CIWMB Waste Tire Hauler Registration and
14 Manifest Program cancelled RESPONDENT for failing to renew the waste tire
15 registration for the 2005 calendar year. RESPONDENT continued to haul
16 waste and used tires on 24 (twenty-four) occasions after the waste tire hauler
17 registration expired.
- 18 f. On October 25, 2005, the matter was determined as a default
19 pursuant to Government Code section 11520, and RESPONDENT was
20 ordered to pay the CIWMB an administrative penalty of \$59,500.00 within 30
21 (thirty) days of the date of the decision.
- 22 g. On March 1, 2006, RESPONDENT requested reconsideration of the
23 administrative penalty owed the Board because of a number of
24 circumstances, including financial conditions of the business.
- 25 h. On May 16, 2006, the Board considered the request and decided that
26 the totality of the circumstances justified reconsideration of the penalty. An
27 agreement was reached for a penalty of \$40,000.00 (forty thousand dollars),
28 with \$15,000.00 (fifteen thousand dollars) stayed for a period of two (2) years.
The parties executed the Stipulation for Issuance of Administrative Decision

1 for Administrative Penalties, in which the parties stipulated to the law and
2 facts of this matter, the administrative penalty owed, the payment plan, and
3 other terms.

4 i. On June 22, 2006, the CIWMB amended its October 25, 2005
5 decision, such that RESPONDENT, owed the CIWMB \$25,000.00 in
6 administrative penalties.

7 j. On May 4, 2007, the CIWMB received the administrative penalties
8 payment of \$25,000.00 paid in full by the RESPONDENT.

9
10 **CURRENT VIOLATIONS**

11 k. On June 3, 2008, the Minor Waste Tire Facility Permit issued to
12 RESPONDENT, expired.

13 l. As of the date of the Stipulation, the CIWMB has received no Waste
14 Tire Facility Permit Application documentation from RESPONDENT.

15 m. On October 21, 2008, Alameda County Inspector Wing Suen and
16 CIWMB Inspectors Bill Motmans and Tom Cunningham, conducted an
17 inspection of B & J TIRES, located at 5901 Coliseum Way in Oakland,
18 California. Approximately 2,189 waste tires were determined to be on site,
19 which means that the site was an unpermitted minor waste tire facility
20 pursuant to Public Resources Code section 42808.

21 n. On October 21, 2008, upon inspection of the comprehensive trip logs,
22 or manifests pursuant to Public Resources Code section 42961.5, the
23 inspector discovered that RESPONDENTS failed to manifest at least two loads
24 of waste tires that were delivered to 5901 Coliseum Way pursuant to PRC
25 section 42961.5. RESPONDENT failed to correct this violation after receiving
26 an Area of Concern on May 20, 2008, for failure to manifest deliveries of used
27 and waste tires to the 5901 Coliseum Way facility.

28 o. In February 2009, there were approximately 773 waste tires
transported to RESPONDENT's facility located at 5325-27 International in

1 Oakland, and RESPONDENT failed to manifest the pick-up of these tires to
2 an authorized end-use facility pursuant to PRC section 42961.5.

3 p. On or about March 24, 2009, Alameda County Inspector Maria
4 Mendoza, conducted an inspection of B & J TIRES Facility, located at 5325-27
5 International Blvd in Oakland, California, and discovered RESPONDENTS
6 have been hauling waste or used tires as an unregistered hauler in violation of
7 PRC section 42951 between January 1, 2009 and March 24, 2009.

8 q. B&J AUTO CENTER, INC. was named as a respondent in the Third
9 Amended Statement of Issues.

10 **STIPULATED CONCLUSIONS OF LAW**

11 4. CIWMB has the authority to impose administrative penalties pursuant to
12 PRC section 42962, and to deny used and waste tire hauler registrations pursuant to
13 PRC section 42960.

14 5. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC., Property
15 Owner and Operator operated its facility without obtaining a permit in violation of PRC
16 section 42835, and directed waste tires to an unpermitted facility in violation of 42834.

17 6. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC. violated 14
18 CCR section 18426, failure to submit a completed permit application pursuant to PRC
19 section 42822.

20 7. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC. violated
21 PRC §42951(b) by transporting waste or used tires to a facility that is not permitted,
22 excluded, exempted, or otherwise authorized by the board, by statute, or by regulation
23 to accept waste and used tires, or to a facility that lawfully accepts waste or used tires
24 for reuse or disposal. On October 21, 2008, upon inspection of the comprehensive trip
25 logs, or (manifests) pursuant to Public Resources Code section 42961.5, the inspectors
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1 discovered that two truck loads of 2,189 tires were delivered to the site creating an
2 unpermitted minor WTF.

3 8. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC. violated
4 PRC §42961.5 (C) (2) by failing to complete the California Uniform Waste and Used
5 Tire Manifest (manifest or CTL) as required by the board. The waste and used tire
6 hauler is required to provide the manifest to the waste or used tire facility operator who
7 receives the waste or used tires for handling, altering, storage, disposal, or any
8 combination thereof. Inspectors determined on or about October 21, 2008 that at least
9 two deliveries of waste tires taken to the facility at 5901 Coliseum Way that were not
10 manifested. In addition, in February 2009, there were approximately 773 waste tires
11 transported to RESPONDENT's 5325-27 International facility in Oakland, and
12 RESPONDENTS failed to manifest the pick-up of these tires to an authorized end-use
13 facility.

14 9. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC. violated
15 PRC § 42951 by hauling used or waste tires without a CIWMB registration as stated in
16 paragraph 3(p) above.

17 ORDER

18 The CIWMB approves of, and adopts the terms of the Stipulation, and the
19 following order is hereby made:

20 a. RESPONDENT BERNARDO BELTRAN dba B & J TIRES is ordered to
21 pay an administrative penalty for waste and used tire hauler penalties in favor of
22 the CIWMB in the sum of eighteen thousand dollars (\$18,000.00). Five thousand
23 dollars (\$5,000.00) of this penalty is owed to CIWMB, and the remaining thirteen
24 thousand dollars (\$13,000.00) is to be held in abeyance for two years and will be
25 imposed in the event of default of the Stipulation. Payment of the \$5,000 (five
26 thousand dollars) administrative penalty shall be made pursuant to the terms of
27 the Stipulation.
28

1 b. RESPONDENT B & J AUTO CENTER, INC. is ordered to pay an
2 administrative penalty for waste and used tire hauler penalties in favor of the
3 CIWMB in the sum of Ten Thousand Dollars (\$10,000.00). Ten Thousand
4 dollars (\$10,000.00) of this penalty is to be held in abeyance for two years in
5 case of default of the Stipulation as follows:

6 1) failure to submit a complete application to CIWMB for a waste tire
7 facility permit within 60 days;

8 2) failure to submit a complete application to CIWMB for a used and waste
9 tire registration within 60 days;

10 3) Each occurrence of unregistered hauling will result in a \$1,000 per
11 violation penalty from the amount held in abeyance;

12 4) Each occurrence of storage of more than 1500 waste tires at an
13 unpermitted facility, other than the facility at 5901 Coliseum Way, or any other
14 unpermitted waste tire facility operated by RESPONDENT, will result in a \$1,000
15 per violation penalty from the amount of funds held in abeyance;

16 5) Nothing shall preclude CIWMB from seeking another enforcement
17 action in addition to the remedies for default of the stipulation, such as
18 disciplining a CIWMB permit or registration, or seeking an administrative penalty.

19 c. RESPONDENTS shall comply with and abide by the waste tire laws and
20 all the conditions of the permit originally issued by CIWMB to B & J TIRES &
21 WHEELS, INC. on June 3, 2003, and that expired on June 3, 2008 until a new
22 permit is issued. RESPONDENTS shall cooperate with requests for information
23 pertaining to the WTF.

24 d. RESPONDENT B & J AUTO CENTER, INC. shall submit to CIWMB a
25 complete application for a waste tire facility permit within 60 days of the issuance
26 of the Administrative Decision adopting this Stipulation.

27 e. RESPONDENT B & J AUTO CENTER, INC. shall submit to CIWMB a
28 complete application for a waste tire facility registration within 60 days of the
issuance of the Administrative Decision adopting this Stipulation. A temporary

1 used and waste tire hauler registration will be issued to RESPONDENT B & J
2 AUTO CENTER, INC., and will expire 60 days after its issuance.

3 f. The waste and used tire hauler registration issued to RESPONDENT
4 BERNARDO BELTRAN dba B & J TIRES is denied for one year.

5 g. RESPONDENT BERNARDO BELTRAN dba B & J TIRES shall be in
6 default of the Stipulation if he or any business, limited liability company,
7 partnership or corporation that he is affiliated with by means of being an officer,
8 manager owner, or partner, creates an unpermitted waste tire facility pursuant to
9 PRC section 42808, hauls used or waste tires without CIWMB registration
10 pursuant to PRC section 42951, or fails to make payments pursuant to paragraph
11 10(e)(1).

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13 The effective date of this Decision is 8/18/2009.

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17 MARGO REID BROWN
18 Chair
19 California Integrated Waste Management Board
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