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8
9 **STATE OF CALIFORNIA**

10 **DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

11 **IN THE MATTER OF:**

12 **Golden By-Products, Inc.,**
13 **PROPERTY OWNER AND OPERATOR**

14
15 **RESPONDENT.**

16 **TPID NO.: 1003314**

Case No. IH14-008-TIR

**AMENDED SUPPLEMENTAL
ADMINISTRATIVE DECISION FOR
PARTIAL DEFAULT PENALTIES**

AGENCY NO. 2014-011166-ADC

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19 **INTRODUCTION**

20 The California Department of Resources Recycling and Recovery (hereafter,
21 "CALRECYCLE") has authority to regulate and conduct enforcement actions regarding
22 waste tire facilities and waste tire haulers within the State of California pursuant to
23 Public Resources Code (PRC) sections 42800 et seq., 42950 et seq., and attendant
24 regulations contained in Title 14 of the California Code of Regulations ("CCR").

25 Pursuant to PRC section 42851, CALRECYCLE served an administrative
26 accusation (*Administrative Complaint For Waste Tire Storage Penalties*) on Golden By-
27 Products, Inc., Property Owner and Operator (hereafter, referred to as "RESPONDENT"
28 or "Golden By-Products") on June 27, 2014. RESPONDENT requested a hearing in a

1 timely manner. In lieu of litigating the case at an administrative hearing, RESPONDENT
2 and CALRECYCLE (hereafter, collectively referred to as "the Parties") negotiated a
3 *Stipulation For Waste Tire Storage Administrative Penalties* (hereafter, "Stipulation") on
4 October 13, 2014. An *Administrative Decision For Waste Tire Storage Administrative*
5 *Penalties* (hereafter, "Administrative Decision") was issued on October 13, 2014.¹

6 In a letter dated November 25, 2014, CALRECYCLE notified RESPONDENT that
7 RESPONDENT was in partial default of the Stipulation and Administrative Decision for
8 violations found during a November 17, 2014 inspection of RESPONDENT's waste tire
9 facility, located at 13000 Newport Rd., Ballico, CA 95303. CALRECYCLE further notified
10 RESPONDENT that a \$25,000 partial default penalty would be imposed. On December
11 4, 2014, CALRECYCLE issued a *Notice of Default Of The Administrative Decision For*
12 *Waste Tire Storage Penalties* (hereafter, "Notice of Default") to RESPONDENT. The
13 Notice of Default stated the reasons why RESPONDENT was in partial default of the
14 Stipulation and Administrative Decision, the amount of penalties assessed for the
15 default, and notified RESPONDENT of the right to respond to the Notice of Default
16 within 30 days. On December 5, 2014, RESPONDENT provided a written response to
17 CALRECYCLE requesting a modification of the default penalty, citing financial and
18 business reasons, and correction of the violations found during the November 17, 2014
19 inspection.

20 Pursuant to the Stipulation and Administrative Decision, and good cause
21 appearing therefore, the following Factual Findings and Conclusions of Law are made,
22 and the following Order is issued.

23 **FACTUAL FINDINGS**

24 Respondents Failed To Comply With The Terms Set Forth In The Stipulation And Order
25 Of The Administrative Decision.

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28 ¹ The Administrative Decision containing corrected typographical errors was subsequently served on the Parties on October 28, 2014.

1 1. Paragraph 1 of the "Stipulated Order," page 8 of the Stipulation, and
2 Ordering Paragraph 1, page 8 of the Administrative Decision, provides that
3 RESPONDENT shall not accept any waste tires at the site (13000 Newport Rd., Ballico,
4 CA 95303) until CALRECYCLE inspectors perform an inspection of the site and
5 CALRECYCLE provides written notice to RESPONDENT verifying the following: (a) the
6 facility is storing less than 2,000 tons of "whole waste tires" and less than 6,500 tons of
7 "altered waste tires;" (b) whole waste tires at the site are restricted to individual piles not
8 exceeding 5,000 square feet of contiguous area; and (c) piles do not exceed 50,000
9 cubic feet in volume nor 10 feet in height. Whole waste tires are separated from
10 vegetation and other potentially flammable materials by no less than 40 feet.

11 2. Paragraph 5 of the Stipulated Order, page 9 of the Stipulation, and
12 Ordering Paragraph 5, page 9 of the Administrative Decision provides that beginning on
13 or before November 17, 2014, RESPONDENT shall comply with the whole waste tire
14 storage requirements as specified Ordering Paragraph 1.a.ii of the Administrative
15 Decision. Failure to comply with this term will result in an automatic partial default
16 penalty of \$25,000 against RESPONDENT and in favor of CALRECYCLE.

17 3. On November 17, 2014, CalRecycle Inspectors Robert Baumann, Mathew
18 Vipond, Dustin Schiavo, Don Van Dyke, Peder Kryski, Jean Whalen, Billy Yos, Ivan
19 Paleny, and Merced County Inspector Esperanza Cabrera-Clark performed an
20 inspection of RESPONDENT's site to determine compliance with the Stipulation and
21 Administrative Decision. As documented in Waste Tire Survey & Inspection Report
22 ("Inspection Report") IW-1016469, CALRECYCLE inspectors determined that a total
23 whole waste tire count of 103,143 passenger tire equivalents ("PTE") were being stored
24 on RESPONDENT's site, in compliance with Ordering Paragraph 1.a.i. of the
25 Administrative Decision. However, and as documented in Inspection Report IW-
26 1016469, CALRECYCLE inspectors determined that several whole waste tire piles
27 exceeded the requirements set forth in Ordering Paragraph 1.a.ii. Specifically, the
28 following violations were found:

- 1 • Waste tire piles A1, A5 and C2 exceeded the 50,000 cubic feet in volume
2 allowance.
- 3 • Waste tire piles A1 and A5 exceeded the 5,000 square foot contiguous area
4 allowance.
- 5 • Waste tire piles B2, B3, B4, B5, C2, C3a exceeded 10 feet in height.
- 6 • Whole waste tires were stored less than 40 feet from flammable materials.

7 Inspection Report IW-1016469 was sent via electronic mail to Stephen Krauss and
8 Karen Barstow, of Golden By-Products, on November 21, 2014.

9 4. On November 25, 2014, CALRECYCLE issued a letter to RESPONDENT
10 wherein a determination was made with regard to compliance with the Stipulation and
11 Administrative Decision. The November 25, 2014 letter notified RESPONDENT that
12 RESPONDENT was in partial default of the Stipulation and Administrative Decision for
13 the violations found during the November 17, 2014 inspection, and that a \$25,000
14 partial default penalty would be imposed. The letter was sent via electronic mail and
15 certified USPS first-class mail on November 25, 2014, to Stephen Krauss, Brett
16 Barstow, and Karen Barstow, of Golden By-Products.

17 5. On December 4, 2014, CALRECYCLE issued a Notice of Default to
18 RESPONDENT for a \$25,000 partial default penalty. The Notice of Default provided
19 RESPONDENT with notice of the violations found during the November 17, 2014
20 inspection, notice of the \$25,000 partial default penalty, and notice of an opportunity to
21 respond to the Notice of Default and provide any evidence to CALRECYCLE refuting
22 the allegations contained in the Notice of Default. The Notice of Default was sent via
23 electronic mail and certified USPS first-class mail on December 4, 2014, to Stephen
24 Krauss, Brett Barstow, and Karen Barstow, of Golden By-Products.

25 6. On December 5, 2014, CALRECYCLE received a written response to the
26 Notice of Default from RESPONDENT. RESPONDENT did not refute the allegations
27 contained in the Notice of Default. RESPONDENT's December 5, 2014 response
28 requested a modification of the partial default penalty, citing financial and business
reasons, and stated that the violations found during the November 17, 2014 inspection

1 were corrected by November 18, 2014.

2 7. As of June 15, 2015, RESPONDENT has paid \$7,142.86, of the original
3 \$25,000 assessed partial penalty, and has an outstanding balance of \$17,857.14.

4 8. On June 23, 2016, RESPONDENT requested an extension to the deadline
5 to pay the outstanding balance of the partial default penalty in order to divert the monies
6 to pay for the fire suppression system upgrades required by the Merced County Fire
7 Department. RESPONDENT understands that failure to meet the requirements set
8 forth by the Merced County Fire Department by a deadline of 9:00 a.m., August 17,
9 2015, may result in a denial of the major WTF permit currently under review by
10 CALRECYCLE, and therefore, may result in a full default of the Stipulation and
11 Administrative Decision thereby causing the full remaining abeyance amount of
12 \$765,000, less any amounts already paid, to become immediately due and payable.

13 **CONCLUSIONS OF LAW**

14 9. CALRECYCLE has authority to regulate and conduct enforcement actions
15 regarding waste tire facilities and waste tire haulers within the State of California
16 pursuant to Public Resources Code sections 42800 et seq., 42950, et seq. and
17 attendant regulations contained in Title 14 of the California Code of Regulations.

18 10. RESPONDENT violated the terms and conditions of the Stipulation and
19 Order of the Administrative Decision as described in the Factual Findings above,
20 paragraph 3.

21 11. The Parties stipulated that failure to comply with the whole waste tire
22 storage requirements as specified in Ordering Paragraph 1.a.ii of the Administrative
23 Decision would result in an automatic partial default penalty of \$25,000 against
24 RESPONDENT and in favor of CALRECYCLE.

25 12. CALRECYCLE has authority and discretion to determine whether a default
26 of the Stipulation and Administrative Decision occurred, to review any evidence
27 submitted by RESPONDENT refuting the allegations contained in the Notice of Default,
28 and to make a final determination of default.


1 13. If RESPONDENT is in partial default of the Stipulation and is ordered to
2 pay a partial default fine, and RESPONDENT fails to do so by the prescribed deadline
3 of September 1, 2015, the failure to pay the partial default penalty shall constitute a full
4 default of the Stipulation and Administrative Decision and the remaining abeyance
5 amount shall become due and payable.

6 **ORDER**

7 GOOD CAUSE APPEARING THEREFORE, the following order is hereby made:

- 8 1. RESPONDENT is ordered to pay to CALRECYCLE a partial default
9 penalty of \$25,000, less any amount already paid, on or before
10 September 1, 2015.
- 11 2. RESPONDENT is ordered to pay to CALRECYCLE a minimum of \$500
12 per month until the full amount of the partial default penalty is paid to
13 CALRECYCLE.
- 14 3. RESPONDENT's failure to pay the \$25,000 partial default penalty on or
15 before September 1, 2015, shall become a full default of the Stipulation
16 and Administrative Decision, and RESPONDENT shall pay the remaining
17 administrative penalty of \$765,000.

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19 The effective date of this Amended Supplemental Decision is 7/6/2015.

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