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STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:

EARTH WEAVE CARPET MILLS, INC.

RESPONDENT

STIPULATION FOR THE ISSUANCE OF
ADMINISTRATIVE DECISION FOR THE
IMPOSITION OF ADMINISTRATIVE
PENALTIES

PUBLIC RESOURCES CODE
§ 42970, ET SEQ.

OAH NO: 2017100813
AGENCY NO: 2017-002-CARPET

PROCEDURAL HISTORY

The parties to this STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION (hereinafter "STIPULATION") are the California Department of Resources Recycling and Recovery (CalRecycle) and Earth Weave Carpet Mills, Inc. (hereinafter "Earth Weave). On October 3, 2017, CalRecycle issued an accusation to seek penalties in the amount of \$78,000.00 from Earth Weave for violations of violation of Public Resources Code (PRC) section 42974, offering carpet for sale in California while not covered under a stewardship plan. This stipulation resolves all issues raised in this matter, and for violations by Earth Weave resulting from California carpet sales not covered under an approved carpet stewardship plan, that might have arisen after the filing of this accusation through July 1, 2018, in exchange for an immediate payment of \$10,000.00 and an additional payment of \$68,000.00, held in abeyance, immediately paid should Earth Weave violate the terms of the settlement agreement,

1 or forgiven should Earth Weave meets all of the terms of the settlement agreement, demonstrating
2 compliance through June 1, 2021.

3
4 **STIPULATED FACTS**

- 5 1. On February 29, 2016, CARE notified Earth Weave and CalRecycle that Earth Weave's
6 membership with CARE was terminated. This termination resulted in the removal of Earth
7 Weave from the California Carpet America Recovery Effort (CARE) stewardship plan and
8 associated California Carpet Stewardship Program. CARE informed CalRecycle via their
9 February 29, 2016 e-mail notification
- 10 2. CARE sent to CalRecycle via a separate email, the updated Manufacturers List which did not
11 include Earth Weave.
- 12 3. March 14, 2016, CalRecycle inspectors verified, via phone calls to retailers, that Earth
13 Weave product(s) were being sold and/or offered for sale in California.
- 14 4. March 30, 2016, Earth Weave owner, Mr. Stinnett, acknowledged that Earth Weave was
15 selling carpet in California during a phone conversation where Mr. James Stinnett contacted
16 CalRecycle inspector Steve Rogers via phone to inquire as to why CalRecycle had been at
17 retailers asking questions about Earth Weave.
- 18 5. April 29, 2016, a Manufacturer Inquiry letter was sent from CalRecycle via certified mail to
19 Mr. Stinnett at Earth Weave requesting that the following be provided within 30 days, which
20 calculated to Monday, May 30, 2016:
 - 21 a. Copies of two (2) invoices or equivalent billing documents for carpet sold in
22 California: One invoice dated between January 1, 2016 and February 28, 2016 the
23 other dated between February 29, 2016 and the date of this inquiry, as was defined in
24 PRC 42972(c)(3)(A).
 - 25 b. A list of all carpet product lines and/or brands of carpet being sold, offered for sale, or
26 distributed in California by the company, as was defined in PRC 42971 (d)(1).
 - 27 c. Documentation identifying the company's status, that a carpet stewardship plan
28 individually or through a carpet stewardship organization has been submitted and
approved by CalRecycle as was defined in PRC 42972 & 42974.

- 1 6. April 29, 2016, Trevor O'Shaughnessy, CalRecycle Section Manager, called Mr. Stinnett to
2 provide a verbal notification about the transmittal of the Manufacturer Inquiry letter and left
3 a message for Mr. Stinnett.
- 4 a. May 2, 2016, Trevor O'Shaughnessy called Mr. Stinnett again left a message to
5 inform him of the transmittal of the Manufacturer Inquiry letter.
- 6 b. May 4, 2016 Mr. Stinnett returned Trevor O'Shaughnessy's call.
- 7 c. May 4, 2016 Trevor O'Shaughnessy e-mailed Mr. Stinnett as a follow up to the phone
8 conversation provided Mr. Stinnett with his contact information and instructions to
9 continue to work with CalRecycle inspector Steve Rogers.
- 10 7. May 26, 2016, Earth Weave submitted documents to CalRecycle. CalRecycle staff
11 conducted a review of submitted documentation and determined the submission was
12 incomplete.
- 13 a. The submitted documents included:
- 14 i. A copy of an invoice after dated January 18, 2016
- 15 ii. A copy of an invoice after dated February 3, 2016
- 16 iii. A website link to a list of Earth Weave carpet products
- 17 iv. A statement regarding his involvement with CARE
- 18 b. The submission did not include a copy of an invoice after the February 29, 2016 date.
- 19 c. In the email from Mr. Stinnett to Steve Rogers, he stated, "As far as CARE I have
20 sent them everything they need and paid what was agreed upon by myself and Bob
21 Peoples."
- 22 8. The Department confirmed with CARE, that CARE was returning the payments sent by
23 Earth Weave, without depositing the checks, and that CARE had communicated this fact to
24 Earth Weave.
- 25 9. August 16, 2016, the Department sent an e-mail was sent to Mr. Stinnett requesting the
26 following items by close of business August 19, 2016:
- 27 a. Copies of two (2) invoices or equivalent billing documents for carpet sold in
28 California dated after February 29, 2016, as was defined in PRC 42972(c)(3)(A).

- 1 b. Copies of California Carpet Stewardship Law assessment payments made by Earth
2 Weave to CARE for Q1 and Q2 of 2016.
- 3 10. After receiving an extension by the Department, on September 20, 2016, Mr. Stinnett sent an
4 e-mail with two Earth Weave invoices attached from March 2016, satisfying the requested
5 date range specified in the Manufacturer Inquiry letter.
- 6 11. November 23, 2016, CalRecycle sent Earth Weave a Notice of Manufacturer Noncompliance
7 with the California Carpet Stewardship Law via certified mail, received at Earth Weave
8 December 2, 2016, confirmed via certified mail reference. The notification of
9 Noncompliance, signed by Trevor O'Shaughnessey, also requested the following responsive
10 actions be provided within 15 days, which calculates to Friday December 9, 2016:
- 11 a. Submit a carpet stewardship plan to CalRecycle. The plan must comply with the
12 requirements of PRC 42970-42983 and Title 14 California Code of Regulations (14
13 CCR) 18940-18948; or
- 14 b. Provide supporting documentation showing that Earth Weave is a member of a
15 California approved carpet stewardship organization; or
- 16 c. Provide supporting documentation that Earth Weave is no longer selling, or offering
17 for sale, carpet in California.
- 18 12. November 30, 2016, Mr. Stinnett e-mailed Steve Rogers asking why he had received the
19 notice of manufacturer Noncompliance and does not know what it means.
- 20 13. December 5, 2016 Krysty Emery, CalRecycle Supervisor and Steve Rogers phoned Earth
21 Weave to follow up with Mr. Stinnett on his question contained in his email of November 30,
22 2016 regarding the notice of Noncompliance. Mr. Stinnett was not available, Emery and
23 Rogers talked with Earth Weave's General Manager, Mr. Norton Marler.
- 24 14. December 7, 2016, Mr. Stinnett inquired via e-mail that as to why Steve Rogers and Krysty
25 Emery talked with Earth Weave's manager Mr. Norton on the previous Monday [December 5
26 2017].
- 27 a. On December 7, 2016, Steve Rogers replied via e-mail informing Mr. Stinnett the
28 reason for the notice of Noncompliance is because Earth Weave is not a member of a
 stewardship plan.

1 b. On December 7, 2016, Mr. Stinnett responded via e-mail with questions regarding the
2 phone call between Emery, Rogers, and Norton. The email communicated Earth
3 Weave's belief that by continuing to collect the assessment and offer payment to
4 CARE, they were compliant.

5 c. On December 7, 2016, Steve Rogers replied via email to Mr. Stinnett stating that
6 merely collecting the assessment and submitting payments to CARE is not sufficient
7 under the statute if CARE does not accept them as a participant under their Plan. He
8 then directed that future communications with CalRecycle were to go through its
9 legal council.

10 15. On January 13, 2017, CalRecycle sent a Second Notice of Noncompliance and REQUIRED
11 ACTIONS to Earth Weave, signed by Georgianne Turner, CalRecycle Branch Chief. Krysty
12 Emery of CalRecycle also sent the notice via email on January 17, 2017. The notice was
13 received at Earth Weave January 18, 2017. The notice and required actions requested the
14 following responsive actions be provided by February 1, 2017:

- 15 a. Submit a carpet stewardship plan to CalRecycle. The plan must comply with the
16 requirements of PRC 42970-42983 and Title 14 California Code of Regulations (14
17 CCR) 18940-18948; or
18 b. Provide documentation showing that Earth Weave is a member of a California
19 approved carpet stewardship organization; or
20 c. Provide documentation that Earth Weave is no longer selling, or offering for sale,
21 carpet in California.

22 16. On February 16, 2017, CalRecycle inspector Steve Rogers conducted a phone conversation
23 with Mr. Steve Balestrieri, of Armstrong Carpet and Linoleum, confirming that the business
24 was selling Earth Weave Carpet Mill Inc. products at an approximate rate of one (1) sale per
25 month and collecting assessments.

26 17. At no time described herein did Earth Weave submit a stewardship plan to CalRecycle.

27 18. In retailer invoices, described above, and collected at other times by the Department, a
28 stewardship assessment was being collected by Earth Weave on the carpet being sold in the

state after February 29, 2016. The assessments indicated on the invoices were not approved by the Department as part of a stewardship plan.

19. Earth Weaves California sales during 2016 were approximately 4,489.50 square yards, during the period when they were not covered by an approved carpet stewardship plan.

20. Earth Weaves California sales during 2017 were approximately 995.72 square yards, during the period when they were not covered by an approved carpet stewardship plan.

STIPULATED VIOLATIONS

21. The parties stipulate to the following violations in 2016 and 2017;

Violation	Description of Violation
PRC 42974(b)	Offering a carpet for sale or for promotional purposes that is not subject to a CalRecycle-approved stewardship plan
PRC 42972(b)(2)	Stewardship assessment on invoice or functionally equivalent billing document not approved as part of a plan by the department

STIPULATED PENALTY AND SETTLEMENT TERMS

22. Earth Weave shall complete its efforts to rejoin CARE, and arrange for CARE to provide notification of this fact to CalRecycle not later than June 1, 2018.

23. Per agreement between the parties in this matter. Respondent pay the Department \$10,000.00, to be paid to the Department not later than June 1, 2018. The remaining penalty of \$68,000.00 will be held in abeyance.


24. Earth Weave will remain in compliance for three years, until June 1, 2021. By, at all times, doing one of the following;

- a. Remain a member with CARE, or another stewardship organization operating under an approved California Carpet Stewardship Plan.
- b. Have and operate under a CalRecycle approved Earth Weave Carpet Stewardship Plan, pursuant to the process described under PRC § 42972 et seq.
- c. Cease carpet sales to California retailers or distributors operating in California, immediately, should Earth Weave ever fail to meet one of the two conditions listed above, until such time that they meet one of the two conditions listed above.

1 25. Should the Director of CalRecycle, or his appointed designee, determine that Earth Weave
2 has not met the requirements listed above, the entire penalty in abeyance shall immediately
3 be due for payment.

4 26. If Earth Weave rejoins CARE by June 1, 2018, and remains in compliance for three years,
5 until June 1, 2021, the \$68,000.00 in abeyance will be forgiven.
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8
9 Dated: April 16, 2018



TY D. MOORE
Attorney, CalRecycle

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11
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13 Dated: April 16, 2018



James Stinnett
Earth Weave Carpet Mills, Inc.

