

Date: 10/8/18

By: DM

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

File No. IH17-019-TIR

IN THE MATTER OF:

DECISION AND ORDER

**MANUEL VARGAS, dba WEST COAST
TIRE RECYCLE**

TPID NO.: 1734366

RESPONDENT.

I. INTRODUCTION

The Department of Resources Recycling and Recovery (Department or CalRecycle) served its Administrative Complaint for Waste Tire Hauler Administrative Penalties (Complaint) on Manuel Vargas, dba West Coast Tire Recycle (Respondent) on November 8, 2017, seeking to impose a civil penalty in the amount of \$15,500.00 on Respondent for violations of Chapter 19 of the Public Resources Code relating to transportation of used or waste tires.

Respondent filed a timely request for hearing pursuant to Public Resources Code section 42961.1.

A hearing was conducted on August 7, 2018, in Sacramento, California. On that date, all evidence and testimony in this matter was received into the record.

Catherine V. Nystrom, Attorney, CalRecycle, and Heather Hunt, Attorney III, CalRecycle, appeared on behalf of the Department. Respondent appeared in pro per.

Douglas C. Jensen, Attorney III, CalRecycle, presided over the hearing under a delegation of authority from CalRecycle Director, Scott Smithline.

II. ISSUE

Whether the Department's decision to impose a civil penalty on Respondent in the amount of \$15,500.00 for violations of Chapter 19 of the Public Resources Code relating to the transportation of used or waste tires shall be sustained, modified, or reversed.

III. EVIDENTIARY MATTERS

The Department presented testimony from Keith Cambridge (Cambridge). Cambridge is a Senior Environmental Health Scientist Supervisor within the Department's Registered Waste Tire Hauler Unit. He supervises administrative staff responsible tire hauler registration and manifest compliance and inspectors conducting facility inspections for

1 compliance with tire storage requirements. Cambridge testified as to the history of the
2 Waste Tire Program and current hauler registration requirements. He also testified
3 regarding his review of Respondent's March 21, 2017, registration renewal application
4 and the issuance of Respondent's registration on May 10, 2017.

5
6 The Department presented testimony from Jose Avila (Avila). Avila is an Environmental
7 Health Technician for the Contra Costa County Health Services Division. He conducts
8 inspections of waste and used tire storage facilities for compliance with applicable
9 provisions of the Public Resources Code. Avila's findings are compiled into Observation
10 Reports and submitted to the Department. He testified regarding his April 11, 2017,
11 inspection of MA Auto Repair and Tires (MA Tire), a tire facility located in Richmond,
12 California, and his June 28, 2017, inspection of TWC Dealer Group, Inc. (TWC), a tire
13 facility located in Walnut Creek, California.

14
15 The Department presented testimony from Department employee Nai Teurn (Teurn).
16 Teurn conducts inspections of waste and used tire facilities and reviews Observation
17 Reports submitted to the Department by tire facility inspectors. Teurn reviewed the April
18 11, 2017, and June 28, 2017, Observation Reports submitted to the Department by Avila
19 and recommended that a penalty be imposed on Respondent for violations of the Public
20 Resources Code related to the transportation of used or waste tires.

21
22 Division exhibits 1—7 and 9—11 were admitted into evidence. Respondent exhibits A
23 and B were admitted into evidence.

24
25 Respondent objected to Avila's testimony recounting his conversation with the operator of
26 MA Tire on hearsay grounds. However, hearsay testimony may be used at an
27 administrative hearing for the purpose of supplementing or explaining other evidence.
28 (Govt. Code § 11513(d).) Here, Avila's testimony recounting his conversation with the
29 operator of MA Tire supplemented and explained his April 11, 2017, Observation Report
30 (Department Exhibit 4) and can therefore be used. Respondent's objection is overruled.

31 32 **IV. FINDINGS OF FACT**

33
34 Respondent was registered as waste and used tire hauler from November 17, 2011,
35 through December 31, 2016. On October 17, 2016, the Department sent Respondent a
36 letter informing him that his registration was to set to expire on December 31, 2016, and
37 that his registration renewal application needed to be submitted by November 16, 2016,
38 in order to be timely processed. A second letter, also sent on October 17, 2016, warned
39 Respondent that unregistered haulers would be subject to punitive actions including civil
40 penalties.

41
42 Respondent failed to timely renew his registration and it expired on December 31, 2016.
43 On January 3, 2017, the Department sent Respondent a letter indicating that his
44 registration had expired and warning him that he would be subject to civil penalties if he
45 continued to haul without a valid registration. On January 6, 2017, Teurn called
46 Respondent and left him a message reminding him not to haul tires until he renewed his
47 registration.

1 On March 21, 2017, Respondent submitted a renewal application to the Department
2 listing a new facility address of 1126 Marin Avenue, Albany, California 94706. The new
3 facility address did not match the address of service listed on his waste tire hauler bond,
4 12469 San Pablo Avenue, Richmond, California 94805.

5
6 On May 1, 2017, Cambridge spoke to Respondent by phone and informed him that his
7 waste tire hauler bond needed to be updated to reflect his new facility address in order to
8 issue his hauler registration.

9
10 On May 10, 2017, a bond rider was issued updating respondent's address of service to
11 his new Albany location. The Department immediately issued Respondent a new tire
12 hauler registration.

13
14 On April 11, 2017, Avila conducted a routine inspection of MA Tire, a new and used tire
15 dealer located in Richmond, California. During the inspection, he reviewed MA Tire's
16 shipping manifests. The shipping manifests are completed by tire haulers and retained
17 by tire facilities for the delivery or pick up of used or waste tires. Avila observed that four
18 of the manifests retained by MA Tire had been completed by Respondent for delivery of
19 used tires during the period Respondent was unregistered:

- 20
- 21 • March 13, 2017, delivery of 29 used tires.
- 22
- 23 • March 20, 2017, delivery of 50 used tires.
- 24
- 25 • March 24, 2017, delivery of 53 used tires.
- 26
- 27 • March 31, 2017, delivery of 30 used tires.
- 28

29
30 Avila's findings from the inspection, including copies of the 4 Manifests, were submitted to
31 the Department in an Observation Report dated April 11, 2017.

32
33 On June 28, 2017, Avila conducted a routine inspection of TWC, a tire dealer and auto
34 repair facility located in Walnut Creek, California. During the inspection, he reviewed
35 TWC's shipping manifests. Avila noted that 10 of the manifests retained by TWC had
36 been completed by Respondent for the pick up of used tires during the period
37 Respondent was unregistered:

- 38
- 39 • January 2, 2017, pick up of 10 used tires.
- 40
- 41 • January 5, 2017, pick up of 20 used tires.
- 42
- 43 • January 20, 2017, pick up of 15 used tires.
- 44
- 45 • January 26, 2017, pick up of 38 used tires.
- 46
- 47 • February 7, 2017, pick up of 10 used tires.
- 48
- February 21, 2017, pick up of 18 used tires.

- 1 • March 2, 2017, pick up of 20 used tires.
- 2
- 3 • March 15, 2017, pick up of 17 used tires.
- 4
- 5 • April 2, 2017, pick up of 15 used tires.
- 6
- 7 • May 4, 2017, pick up of 32 used tires.
- 8

9 Avila's findings from the inspection, including copies of the 10 manifests, were submitted
10 to the Department in an Observation Report dated June 28, 2017.

11
12 The April 11, 2017, and June 28, 2017, Observation Reports and the attached shipping
13 manifests were reviewed by Teurn. Based on her review, she determined that
14 Respondent transported 14 loads of used tires during the period in which his registration
15 had expired in violation of Public Resources Code section 42951(a). Teurn further
16 determined that 13 of the shipping manifests had not been submitted to the Department
17 by Respondent in violation of Public Resources Code section 42961.5(c)(2) and Title 14
18 California Code of Regulations section 18459.2.1(a).

19
20 On November 8, 2017, the Department served on Respondent its Complaint seeking to
21 impose \$15,500.00 in civil penalties for violations of the Public Resources Code and its
22 attendant violations related to the transportation of used tires.

23 24 **V. CONCLUSIONS OF LAW**

25
26 The Department is authorized to permit, regulate, and conduct enforcement actions
27 regarding waste tire haulers within the State of California pursuant to Public Resources
28 Code section 42950 et seq. Section 42962(c) specifically authorizes the Department to
29 administratively impose civil penalties on any person who intentionally or negligently
30 violates any permit, rule, regulation, standard or requirement issued pursuant to the
31 Department's waste tire hauler authority.

32
33 The Department requires that any person engaged in the transport of 10 or more waste or
34 used tires to hold a valid waste and used tire hauler registration¹. (Pub. Res. Code §
35 42951(a).) Registrations expire annually on January 1st, and renewal applications must
36 be received 45 days prior to the January 1st expiration date. (Title 14 Cal. Code Regs. §
37 18455.) Applications must include a bond in the favor of the State of California in the
38 amount of ten thousand dollars. (Pub. Res. Code § 42955(d).) Any person that
39 transports 10 or more used tires without a valid and current registration shall be subject to
40 enforcement action by the Department. (Pub. Res. Code § 42962.)

41
42 Tire haulers are further required to complete a "California Uniform Waste and Used Tire
43 Manifest" (manifest) for each pick up or delivery noting date, location, and number of tires
44 transported. (Pub. Res. Code § 42961.5; Title 14 Cal. Code Regs. 18450(a)(11).) A
45

46
47
48 ¹ Public Resources Code section 42954 provides a number of exemptions to the registration requirement. However,
none of the exemptions described in section 42954 apply to the violations alleged here.

1 copy of all completed manifests must be submitted to the Department on a quarterly
2 schedule. (Pub. Res. Code § 42961.5(c)(2) Title 14 Cal. Code Regs. § 18459.2.1.)
3

4 Here, the Department alleges: 1) That Respondent knowingly violated Public Resources
5 Code section 42951(a) by transporting 14 loads of 10 or more waste or used tires while
6 not holding a valid waste and used tire hauler registration; and 2) that Respondent
7 knowingly violated Public Resources Code section 42961.5(c)(2) and Title 14 California
8 Code of Regulations section 18459.2.1(a) by failing to submit 13 manifests to the
9 Department.

10
11 It is the Department's burden to prove by a preponderance of the evidence those facts
12 that are essential to its claims². However, two key facts are not in dispute: 1) Respondent
13 was unregistered from January 1, 2017, to May 9, 2017³, and; 2) Respondent transported
14 14 loads of used tires during the period the he was unregistered⁴.

15
16 Respondent does dispute a key third fact—that he failed to submit 13 manifests. He
17 claims that he timely mailed the manifests to the Department, although he was unable to
18 provide any details of the submission, such as the dates and circumstances of the
19 mailings. The Department, on the other hand, offered credible testimony that it had
20 repeatedly verified, most recently on the day of hearing, that the missing manifests had
21 not been received.

22
23 It is significant that all 13 of the missing manifests were completed while Respondent's
24 registration was lapsed. Respondent would have known that their submission would
25 have alerted the Department to the fact that Respondent was hauling tires without a valid
26 registration. Respondent demonstrated a willingness to flout hauling requirements when
27 he continued to transport tires after his registration expired and after he received multiple
28 warnings not to do so from the Department. Foregoing submission of the missing
29 manifests is consistent with this behavior. Respondent's claim that he timely mailed in
30 the 13 manifests is not credible.

31
32 Although there are few factual disputes here, Respondent presents several legal
33 arguments that penalties should not apply. First, Respondent argues that he is not a
34 "person" as defined by Public Resources Code section 40170, and therefore not subject
35 to the Department's enforcement action. Respondent specifically argues that "person",
36 as defined by section 40170, "contains and creates a 'class' of legal "persons" consisting
37 only of "legal entities" as listed therein", and does not include Respondent as "a man or
38 other living being". (Exhibit 1P, *Respondent's Challenge to Subject Matter Jurisdiction*
39 *and In Personam Jurisdiction*.) However, the definition of 'person' provided by section
40

41
42 ² Absent a statute or other authority fixing a different standard, the burden of proof requires proof by a preponderance
43 of the evidence. (Evid. Code § 115.) Except as otherwise provided by law, a party has the burden of proof as to each
44 fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. (Evid.
45 Code § 500.) Therefore, the Department must meet its burden of proof by a preponderance of the evidence.

46
47 ³ Respondent testified that he allowed his registration to lapse due to financial hardship.

48 ⁴ At hearing, Respondent reviewed the 14 manifests submitted into evidence by the Department, admitted that he
completed them, and admitted that they were accurate. These 14 manifests evidence that Respondent transported 14
loads of used tires during the period in 2017 in which he was unregistered.

1 40170 is broad and includes “an individual” and “any other entity whatsoever”.
2 Respondent meets the plain definition of both ‘person’—“a human being”, and
3 ‘individual’—“a single person as distinguished from a group or class”⁵. Therefore,
4 Respondent’s argument is without merit.

5
6 Respondent next argues that registration and manifesting requirements apply only to
7 ‘waste’ tires and not to the ‘used’ tires that Respondent admits transporting. In support,
8 he references 14 California Code of Regulations section 18459.2.1, titled *Submittal of the*
9 *Manifest Form to the Department*. Respondent notes that section 18459.2.1 refers to the
10 “waste tire hauler” while omitting the term ‘used tire hauler’. However, section
11 18459.2.1’s requirements expressly apply to both waste and used tire haulers: “[t]he
12 Manifest Form shall be in the waste tire hauler’s possession while transporting *used*
13 (emphasis added) or waste tires.” Likewise, Public Resources Code sections 42951(a)
14 and 42961.5(c)(2), the bases for the penalties here, expressly apply to both ‘used’ and
15 ‘waste’ tires. Respondent’s argument is without merit.

16
17 Respondent alternatively argues that he is not legally obligated to be registered in order
18 to haul used tires. In support, Respondent points to the Department’s Form 204, titled
19 *Unregistered Hauler & Comprehensive Trip Log Substitution Form* (Respondent Exhibit
20 A). Respondent contends that since the form refers to an ‘unregistered hauler’, it
21 contemplates a scenario in which an unregistered hauler could legally transport used
22 tires. However, Department witness Teurn testified that the form is intended to be used
23 by end-use facilities to notify the Department of unregistered haulers. Nothing in the form
24 compels Respondent’s interpretation that waste and used tire haulers need not be
25 registered. Moreover, such an interpretation would be in flat contradiction to the plain
26 requirements of Public Resources Code section 42951(a)—“every person who engaged
27 in the transportation of waste or used tires shall hold a valid waste and used tire hauler
28 registration”. Respondent’s argument is unsupported.

29
30 Finally, Respondent argues that the Department’s enforcement action is retaliatory
31 because he issued a “tort letter” to the Director of the Department. However, Respondent
32 produced no evidence in support of this claim. Furthermore, the Department’s
33 enforcement action is supported both legally and factually. Respondent’s retaliation claim
34 must be rejected.

35 36 **Penalty Calculation**

37
38 Title 14 California Code of Regulations section 18464 authorizes a range of penalties for
39 hauling and manifest violations. The first offense penalty range for hauling without a valid
40 registration increases with the number of tires transported: 10-20 tires at \$100-\$500; 21-
41 40 tires at \$500-\$750; 41-100 tires at \$500-\$1,000. First offense violations for failure to
42 submit manifests range from \$100-\$500. Section 18465, in turn, enumerates the factors
43 the Department must consider in determining the appropriate penalty:

- 44
45 1. The nature, circumstances, extent and gravity of the violation.
46
47
48

⁵ Definitions of ‘person’ and ‘individual’ provided by Black’s Law Dictionary.

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. (14 Cal. Code Regs. § 18465.)

Here, the Department seeks to impose the highest penalty authorized by section 18464. In support, the Department cites the willful nature of Respondent's violations. To wit, Respondent ignored warnings from the Department and continued to haul tires while unregistered although he knew it was illegal. However, the Department does not present any evidence of a history of same or similar violations; nor does it present any evidence of financial gain resulting from the violations⁶.

On the other hand, Respondent arguably took steps to remediate the violation by reapplying and obtaining registration. Respondent reapplied in March, prior to the Department learning of his hauling violations⁷. Therefore, Respondent was not reapplying because he was caught illegally transporting tires but because he wanted to comply with the registration requirements.

In consideration of the section 18465 factors, the highest level penalty is not appropriate. The willful nature of Respondent's violations must be balanced against the fact that he mitigated the violation by re-registering. Therefore, a mid-level penalty will be imposed. The penalty for hauling 10-20 tires while unregistered is reduced from \$500 to \$300 (8 instances). The penalty for hauling 21-40 tires while unregistered is reduced from \$750 to \$625 (4 instances). The penalty for hauling 41-100 tires is reduced from \$1,000 to \$750 (2 instances). The penalty for failure to submit manifests is reduced from \$500 to \$300 (13 instances). The total penalty imposed is reduced from \$15,500 to \$10,300.

⁶ The Department's Complaint references Letters of Violation sent to Respondent for violations of manifesting requirements. However, these letters are not part of the administrative record and no evidence of previous violations was presented at hearing. Likewise, the Department did not present any evidence that the violations resulted in financial gain, perhaps other than delaying payment of Respondent's registration fee, which is de minimis.

⁷ Respondent reapplied for registration on March 21, 2017. According to the Complaint, Avila forwarded his first Observation Report to the Department around April 11, 2017.



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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PROOF OF SERVICE

I, Donnet J. McFarlane, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On October 8th, 2018, I served the Decision and Order, In the Matter of Manuel Vargas dba West Coast Tire Recycle, DRRR Case No. IH17-019-TIR to:

Manuel Vargas dba West Coast Recycle
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By:

- X First Class Mail, In a sealed envelope, with postage thereon fully prepaid, in the United States.
Certified Mail, In a sealed envelope, return receipt requested with Postage thereon fully prepaid, in the United States mail.
X Electronic Service, Sent to the email addresses listed above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 8th day of October 2018.

[Handwritten signature in blue ink]

(Signature)