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10 STATE OF CALIFORNIA

11 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

12 In the matter of:

13 American Tack & Hardware Co., Inc.
14 (AmerTac)

15 RESPONDENT

16) ADMINISTRATIVE DECISION FOR RIGID
17) PLASTIC PACKAGING CONTAINER
18) PENALTIES

19) PUBLIC RESOURCES CODE
20) § 42300, ET SEQ.

21) OAH NO: 2017110654
22) AGENCY NO: 2017-001-RPPC

23 The California Department of Resources Recycling and Recovery ("CALRECYCLE"), formerly the
24 California Integrated Waste Management Board ("Board"), is filing this Decision to seek penalties in the amount
25 of \$61,000 from American Tack & Hardware Co., Inc. (hereinafter "AmerTac" or "RESPONDENT").
26 CalRecycle succeeded to the Board's authority on January 1, 2010, pursuant to Public Resources Code ("PRC")
27 § 40401(a)(1). CalRecycle is authorized to enforce the California Rigid Plastic Packaging Container ("RPPC")
28 law, PRC § 42300 et seq. and the California Code of Regulations ("CCR"), Chapter 4 of Division 7 of Title 14, §
17943 et seq.

PROCEDURAL HISTORY

This ADMINISTRATIVE DECISION FOR RIGID PLASTIC PACKAGING CONTAINER
PENALTIES ("Decision"), is based on the STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE

1 DECISION FOR THE IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE
2 PENALTIES (“Stipulation”) signed by Rod Roghan, of Roghan Jones LLC, Attorney for RESPONDENT. The
3 parties to this Decision are CALRECYCLE and AmerTac (hereafter referred to collectively as “the parties”).
4 On September 5, 2017, CALRECYCLE issued an accusation to seek penalties in the amount of \$81,000 for
5 violations of Public Resources Code (PRC) § 42300-42345 and Title 14 of the California Code of Regulations
6 (CCR) § 17943-17949, for calendar year 2014, for: negligently failing to certify container compliance;
7 negligently submitting a compliance certification that was incomplete and inaccurate in violation of 14 CCR §
8 17945.2 and 17945.3; and, negligently failing to submit a compliance certification by the deadline proscribed
9 in 14 CCR § 17945.2(c). The RESPONDENT filed a “Notice of Defense/Request for Hearing” and a hearing
10 was scheduled thereafter. That hearing was continued for good cause. On or about June 24, 2018, the parties
11 in this matter signed the STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR
12 THE IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE PENALTIES.
13 The Stipulation resolved all issues raised in this matter, in exchange for payment of the penalty amount of
14 Sixty One Thousand Dollars (\$61,000.00); of that amount, an immediate penalty payment of Twenty Thousand
15 and Five Hundred Dollars (\$20,500) and forty thousand and five hundred dollars (\$40,500.00) will be held in
16 abeyance until January 1, 2023, and be terminated absent a default as described below. Additionally, as part of
17 the Stipulation, AmerTac agreed to pay Twenty Thousand Dollars (\$20,000) to fund a Supplemental
18 Environmental Project supporting Environmental Education.

19
20 **FACTUAL FINDINGS**

21 **VIOLATION I: AMERTAC FAILED TO SUBMIT THE REQUIRED COMPLIANCE**
22 **CERTIFICATION ON TIME FOR THE RPPC PROGRAM FOR CALENDAR YEAR 2014 IN**
23 **VIOLATION OF PRC §§ 42300-42345 AND 14 CCR § 17945.2.**

- 24 1. During the relevant Compliance Certification measurement period, from calendar year January 1,
25 2014, through December 31, 2014, AmerTac was a product manufacturer who was selling
26 products packaged within RPPCs in California.
- 27 2. Pursuant to 14 CCR § 17945.2, CalRecycle notified AmerTac on or about March 8, 2013, in a pre-
28 certification letter, that it may be selected to certify compliance, and should use the pre-

1 certification period to review compliance and resolve any compliance issues. Through this notice,
2 AmerTac was also informed that CalRecycle was available to provide any advice and answer any
3 questions they may have had about the RPPC law and its requirements. This letter was sent
4 Certified Mail with a return receipt which was signed upon delivery as received on March 11,
5 2013.

- 6 3. Pursuant to 14 CCR § 17945.2, CalRecycle notified AmerTac on or about March 28, 2014, that it
7 had been selected to certify compliance; must submit required data and documentation necessary
8 to demonstrate compliance with the RPPC law for the 2014 calendar year; and must submit their
9 Compliance Certification by April 1, 2015. This letter was sent Certified Mail with a return
10 receipt which was signed upon delivery as received on March 31, 2014. Both the compliance
11 certification notification and the pre-certification notification were sent to the registered corporate
12 office, which is the main business address of AmerTac.
- 13 4. CalRecycle attempted to contact AmerTac on several occasions, prior to the submission due date,
14 to offer technical assistance, however AmerTac was not responsive. Verbal contact with AmerTac
15 was eventually made by March 10, 2015.
- 16 5. CalRecycle sent information via email, on March 11, 2015, that the Compliance Certification
17 would be due by April 1, 2015.
- 18 6. Having been properly notified of the requirement to certify, AmerTac failed to submit the required
19 Compliance Certification, for the 2014 measurement period, by April 1, 2015, in violation of 14
20 CCR § 17945.2(c).
- 21 7. CalRecycle mailed notification of Violation and Penalty for Non-submittal of Compliance
22 Certification, on April 22, 2015, notifying AmerTac of the requirement to submit the
23 Compliance Certification. This letter was sent Certified Mail with a return receipt which was
24 signed and dated upon delivery, and tracked by United States Postal Service as delivered on April
25 27, 2015.
 - 26 a. CalRecycle also sent an email to AmerTac on April 23, 2015, notifying AmerTac that the
27 Compliance Certification had not been received; the submission was late and AmerTac
28 was subject to penalty.

1 **VIOLATION II: AMERTAC SUBMITTED A COMPLIANCE CERTIFICATION THAT WAS**
2 **INCOMPLETE AND INACCURATE IN VIOLATION OF 14 CCR §§ 17945.2, 17945.3, AND 17945.4**

- 3 8. The allegations set forth in paragraphs 1 through 7 are incorporated by reference as if fully set
4 forth here.
- 5 9. AmerTac submitted its 2014 Compliance Certification via email on April 29, 2015.
- 6 10. CalRecycle conducted an analysis to determine the completeness of the April 29, 2015
7 Compliance Certification submission. CalRecycle determined the Compliance Certification was
8 grossly incomplete and inaccurate. Specifically, the submission did not include:
- 9 a. Current 2014 container data for the RPPCs reported
 - 10 b. Container Manufacturer Certifications
 - 11 c. A Compliance Option and Compliance Option calculation
 - 12 d. Data to support compliance
 - 13 e. Statement of Compliance
 - 14 f. Signature under penalty of perjury
- 15
- 16 11. Once the determination was made that the 2014 Compliance Certification submitted was
17 incomplete, on or about August 12, 2015, CalRecycle sent a Notice of Incomplete Compliance
18 Certification Submission outlining what was missing per the law. This letter was sent Certified
19 Mail with a return receipt which was signed and dated upon delivery, on August 24, 2015.
20 AmerTac was notified that they failed to identify the compliance option(s) chosen for their
21 products, nor provided evidence supporting the chosen option(s) and requested that AmerTac
22 provide the required information.
- 23 12. Following an additional exchange of phone calls and emails, through which CalRecycle further
24 explained what information was needed to comply with the requirements, AmerTac requested
25 additional time to demonstrate compliance and cited layoffs and internal organizational changes as
26 grounds for requesting an extension to provide the required Compliance Certification information.
27 CalRecycle approved a 30-day extension, to October 26, 2015, allowing AmerTac to collect the
28 required information to make the Compliance Certification for the 2014 measurement period
complete.

- 1 13. AmerTac resubmitted its 2014 Compliance Certification, with additional documentation, over a
2 period of or about October 22, 2015 through October 29, 2015.
- 3 14. On October 26, 2015, CalRecycle notified AmerTac, via email, that not all of the required
4 Compliance Certification information was received; that the submission was still incomplete.
- 5 15. Following receipt of the Compliance Certification information, CalRecycle conducted an analysis
6 to determine completeness. CalRecycle determined that items were still missing, and the report
7 was inaccurate. Specifically, the submission still did not include:
- 8 a. Compliance Option and Compliance Option calculation
 - 9 b. Data to support compliance
 - 10 c. Statement of Compliance
 - 11 d. Signature under penalty of perjury
 - 12 e. Correlating product and container data
- 13 i. CalRecycle was unable to verify that all products offered for sale were
14 properly reported; product and container data reported by the product
15 manufacturer did not match the data reported by the container
16 manufacturers and vice versa.
 - 17 1. In total, data for 160 different containers were provided by
18 AmerTac. Only 110 stock keeping unit (“SKU”) identifiers were
19 reported by both the Product Manufacturer and Container
20 Manufacturers.
 - 21 2. Product Manufacturer data were provided for 137 containers.
 - 22 3. Container Manufacturer data were provided for 143 containers.
 - 23 4. At best, the AmerTac data was 80% complete (assuming that the
24 extra 33 SKUs reported with container data did not correspond to
25 regulated RPPCs) because they did not report container data
26 corresponding to 27 SKUs. However, it is possible that the data
27 provided is only 69% complete, assuming all 160 SKUs reported
28 correspond to AmerTac RPPCs.

1 **VIOLATION III: AMERTAC FAILED TO DEMONSTRATE THAT THEIR RPPCS MET ANY OF**
2 **THE COMPLIANCE OPTIONS UNDER THE RPPC PROGRAM FOR CALENDAR YEAR 2014 IN**
3 **VIOLATION OF PRC §§ 42300-42345 AND 14 CCR §§ 17943-17949.**

4 16. The allegations set forth in paragraphs 1 through 15 are incorporated by reference as if fully set
5 forth here.

6 17. AmerTac was obligated to demonstrate that all RPPCs holding their products meet a compliance
7 option, per 14 CCR § 17945.3(d), for the 2014 measurement period, and reference the compliance
8 formula, as applicable, per 14 CCR § 17945.5, in their 2014 Compliance Certification submission.

9 18. CalRecycle reviewed and analyzed AmerTac's self-certified 2014 Compliance Certification,
10 submitted as of October 2015, and the additional supporting documentation received. Using the
11 final data provided by AmerTac, CalRecycle conducted an analysis and compiled data sets,
12 provided by both AmerTac and its container manufacturers, to determine if AmerTac complied
13 with the law. Although a specific compliance option was not claimed by AmerTac, CalRecycle's
14 analysis evaluated all compliance options that may have been relevant based on all submitted data.
15 It was determined that AmerTac failed to meet any of the container requirements in the law.

- 16 a. The 2014 Compliance Certification submitted by AmerTac failed to claim a compliance
17 option and did not report any container compliance data (in violation of 14 CCR §
18 17945.3(d)), did not use any compliance formula (in violation of 14 CCR § 17945.5), or
19 provide any supporting documentation regarding any effort to comply.

20
21 **LEGAL FINDINGS**

22 32. RESPONDENT negligently failed to submit the required compliance certification for the RPPC
23 program, for calendar year 2014, by the proscribed deadline, in violation of PRC § 42300-42345
24 and 14 CCR § 17943-17949.

25 33. RESPONDENT negligently submitted a compliance certification that was incomplete and
26 inaccurate in violation of 14 CCR § 17945.2 and 17949.3.

27 34. RESPONDENT negligently failed to claim a compliance option and did not comply with any
28 container requirements for calendar year 2014, in violation of PRC § 42300-42345 and 14 CCR §
17943-17949.

1 ORDER

2 Pursuant to Public Resources Code section 42322 and Government Code section 11520, consistent with the
3 terms of the above referenced Stipulation, THE FOLLOWING ORDER is hereby made:

4 35. RESPONDENT stipulates to an administrative penalty against the RESPONDENT and in favor of
5 CALRECYCLE in the sum of sixty-one thousand dollars (\$61,000.00) for the violations set forth
6 in the Stipulation and shall pay twenty thousand dollars (\$20,000) to fund a Supplemental
7 Environmental Project for Environmental Education. Payments shall be satisfied in the following
8 manner:

9 (a) RESPONDENT shall pay a penalty of twenty thousand five hundred dollars (\$20,500) to
10 CALRECYCLE by no later than November 1, 2018.

11 (b) RESPONDENT shall, no later than November 1, 2018, pay twenty thousand dollars
12 (\$20,000), to CALRECYCLE, to be deposited into the Environmental Education Account
13 established pursuant to PRC § 71305 to support CALRECYCLE's Office of Environmental
14 Education efforts to disseminate the model environmental curriculum developed pursuant to
15 PRC § 71303 through 71034.

16 (c) All payments shall be made and mailed to Department of Resources Recycling and
17 Recovery (CALRECYCLE), Attention: Chona Nicolas, Fiscal Services Branch, at 1001 I
18 Street, PO Box 4025, MS 19A, Sacramento, CA 95812-4025.

19 i. If any payment by the RESPONDENT is not mailed to CALRECYCLE by the due date,
20 and if the RESPONDENT fails to cure the missed payment(s) within twenty (20) days of
21 said missed payment RESPONDENT shall be found in full default.

22 (d) The penalty of forty thousand and five hundred dollars (\$40,500.00) of the overall sixty-
23 one thousand dollars (\$61,000.00) shall be stayed and held in abeyance until January 1, 2023.
24 The stayed penalty shall be deemed terminated and shall not be paid by the RESPONDENT to
25 CALRECYCLE absent a default as described.

26 36. RESPONDENT shall provide a full list of all products sold in California in 2020, by April 1, 2021,
27 and certify under penalty of perjury that at least 50% of those products are either;

28 i. Sold in non-RPPC packaging, or

1 ii. Sold in RPPCs that are compliant with the RPPC law, and indicate a compliance
2 option which each RPPC has met, as described under 14 CCR § 17944 or 17944.1 and
3 17945.3.

4 37. RESPONDENT shall comply with Pre-certification Requirement in calendar year 2020, as set
5 forth in 14 CCR 17945.1.

6 38. RESPONDENT shall participate in the Rigid Plastic Packaging Container Compliance
7 Certification Measurement period (calendar year) 2021, reported not later than April 1, 2022, as
8 set forth in PRC § 42300 et seq. and 14 CCR § 17945.2 et seq, and demonstrate that AmerTac is,
9 in fact, in full compliance with the RPPC law, to the satisfaction of CALRECYCLE.

10 39. RESPONDENT will designate an American Tack & Hardware Co., Inc. employee, (Name of
11 person, title, phone number, mailing address), not later than November 1, 2018, who shall be the
12 single point of contact, with CALRECYCLE through January 1, 2023. The point of contact shall
13 be responsible for all communications with CALRECYCLE in regards to implementing the RPPC
14 law, including but not limited to technical assistance, pre-certification notifications and responses,
15 compliance certification, and discussion and questions regarding what qualifies as an RPPC. The
16 point of contact shall respond to CALRECYCLE's requests for information in compliance with
17 the RPPC law and within 15 business days for requests for information or clarification by
18 CALRECYCLE. If the above point of contact or their information changes, the RESPONDENT
19 shall notify CALRECYCLE within 15 days of the change.

20 (a) If after CALRECYCLE has notified the RESPONDENT of failure to maintain accurate
21 single point of contact information with the department and the RESPONDENT fails to cure
22 the missing information within twenty (20) days, the RESPONDENT shall be found in full
23 default.

24 40. RESPONDENT shall comply with PRC § 42300 et seq. and 14 CCR § 17945.2 et seq. for RPPC
25 Compliance Certification Measurement period 2021 (calendar year) and beyond.

26 41. Default: If RESPONDENT defaults under any of the terms of the Stipulation, CALRECYCLE
27 shall send a Notice of Default to the RESPONDENT; said Notice of Default shall state the
28 paragraphs or provisions of the Stipulation of which the RESPONDENT is in default and the

1 abeyance amount owed. RESPONDENT shall have 30 days from the date of the issuance of the
2 Notice of Default to provide evidence refuting CALRECYCLE's claim of default. After a review
3 of the evidence provided by the RESPONDENT, CALRECYCLE shall make a determination and,
4 if appropriate shall issue a Supplemental Decision regarding any remaining penalty due.

5 42. If RESPONDENT fails to demonstrate compliance in the RPPC Compliance Certification
6 Measurement period 2021 (calendar year), or CALRECYCLE finds violations of PRC § 42300 et
7 seq. and 14 CCR 17945.2 et seq. that occurred in calendar year 2021 or anytime after,
8 CALRECYCLE may elect to find the RESPONDENT in default of the terms of the Stipulation
9 and pursue enforcement action seeking additional penalties for violations with the RPPC law,
10 following the process described in statute and regulations, and is not limited in any manner by the
11 Stipulation.

12
13 This Administrative Decision shall become effective as of the date signed below.

14
15
16 Dated: 8/1/2018



17 MARK de BIE
18 Deputy Director, WPCMD
19 Department of Resources Recycling and
20 Recovery (CalRecycle)

