

Date: 5/12/21

By: DM

**STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

IN THE MATTER OF:

**B & B TIRE AND RUBBER CO.,
OPERATOR AND IG HOLDINGS LLC,
PROPERTY OWNER**

TPID NO.: 1002464

RESPONDENT.

File No. IH19-003-TIR

DECISION AND ORDER

I. INTRODUCTION

The Department of Resources Recycling and Recovery (Department) personally served its Administrative Complaint for Waste Tire Hauler Administrative Penalties (Complaint) on B&B Tire and Rubber Co. (B&B) and IG Holdings LLC (IG) on December 12, 2018, seeking to impose civil waste tire storage penalties in the amount of \$50,000 pursuant to California Public Resources Code (PRC) section 42851(a).

IG and the Department reached a stipulated settlement in the amount of \$18,000. The Department subsequently amended the Complaint, removing IG and reducing the penalty sought from B&B to \$32,000.00

B&B filed a timely request for hearing and notice of defense pursuant to PRC section 42961.1 on January 11, 2019.

A hearing was conducted on April 6, 2021, via the video-conferencing application, GoToMeeting. 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.

B&B failed to appear at hearing¹.

Douglas C. Jensen, Attorney IV, CalRecycle, presided over the hearing under a delegation of authority from CalRecycle Director, Rachel Machi Wagoner.

¹ Gov. Code section 11520 provides that if respondent fails to appear at hearing, the agency may take action based upon respondent's express admission or "upon other evidence". The evidentiary record here consists of both testimony and documentary evidence. (Gov. Code § 11513)

II. EVIDENTIARY MATTERS

The Department presented testimony from Dustin Schiavo (Schiavo). Schiavo is an environmental scientist in the Department's waste tire enforcement section and conducts field inspections at waste tire facilities. He testified regarding eight separate inspections he conducted of B&B's tire facility in West Sacramento between May 2017 and August 2018.

The Department presented testimony from Donald Van Dyke (Van Dyke). Van Dyke is an environmental scientist in the Department's waste tire enforcement section. He testified regarding an inspection he conducted of B&B's tire facility in West Sacramento on June 2, 2017.

Division Exhibits 1—17 were admitted into the record.

III. FINDINGS OF FACT

B&B is a used tire dealer occupying two warehouses at 4225 West Capitol Avenue, West Sacramento, California 95691. Its operator is Daniel N. Barbieri².

On May 20, 2011, The Department issued B&B a Minor Waste Tire Facility Permit (Permit) authorizing B&B to store up to 3,000 Waste Tires (WT)³. The Permit imposed specific conditions on B&B including that no WT be stored indoors or within 50 feet of B&B's warehouse⁴.

The Department conducted site inspections of B&B on May 11, 2017, June 2, 2017, and August 16, 2017⁵. In each inspection, the Department found violations including that B&B failed to comply with its Permit by storing WT indoors. The Department discussed its findings with Barbieri and provided him with written notices of violation.

On December 19, 2017, the Department issued a Cleanup and Abatement Order (Order) by certified mail to B&B pursuant to PRC section 42845⁶. The Order noted the following specific violations:

- Violation of the Permit-- Indoor storage of WT
- Violation of 14 California Code of Regulations (CCR) section 17351(e)-- WT stored within 40 feet of innertubes and smoking in non-designated areas
- Violation of 14 CCR section 17354(e)-- Tires stored within 50 feet of buildings

² PRC section 42804 defines "Operator" as the person responsible for the overall operation of a waste tire facility.

³ PRC section 42807 provides that "Waste tire" means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage, or deviation from the manufacturer's original specifications. A waste tire includes a repairable tire, scrap tire, altered waste tire, and a used tire that is not organized for inspection and resale by size in a rack or a stack..." (PRC § 42807.)

⁴ Department Exhibit 5.

⁵ Department Exhibits 6, 7, and 8, respectively.

⁶ Department Exhibit 9.

- Violation of 14 CCR section 17354(i)-- Rims not immediately removed from tires
- Violation of 14 CCR section 17356(a)-- Failure to maintain 96-inch main aisle width

B&B was ordered to correct the violations within 15 days of service, or by January 3, 2018.

The Department further inspected B&B on February 27, 2018, March 22, 2018, and April 11, 2018⁷. In each inspection the Department found violations, including that B&B failed to comply with its Permit by storing WT indoors. However, inspectors noted improvements over this period including a reduction in the number of WT stored indoors. The inspectors' findings were discussed with Barbieri and he was provided written notice of the violations.

The Department conducted an inspection of B&B on May 4, 2018 and found that it was "in compliance" although the Department continued to note concerns regarding several issues, including the indoor storage of a reduced number of WT⁸.

The Department conducted further inspections on July 18, 2018 and August 15, 2018 and found that B&B had once again fallen out of compliance⁹.

On December 12, 2018, The Department personally served its Administrative Complaint for Waste Tire Storage Administrative Penalties on Barbieri¹⁰. The Accusation alleged the following specific violations based on the July 18 and August 15 inspections:

- On at least two separate occasions, and after being served with the CAO, B&B violated PRC section 42850(a), for failing to comply with the conditions of the Permit, specifically condition "15c" which requires that no WT be stored indoors.
- On at least two separate occasions, and after being served with the CAO, B&B violated 14 CCR section 17351(e), for failure to comply with the fire prevention measures.
- On at least two separate occasions, and after being served with the CAO, B&B violated 14 CCR section 17354(e), for failing to store WT outdoors in accordance with the regulations.
- On at least two separate occasions, and after being served with the CAO, B&B violated 14 CCR section 17354(i), for failure to immediately remove tire rims.
- On at least two separate occasions, and after being served with the CAO, B&B violated 14 CCR section 17356(a)(6)(B), for not maintaining an indoor main aisle width of 96 inches at all times.

⁷ Department Exhibits 10, 11, and 12, respectively.

⁸ Department Exhibit 13.

⁹ Department Exhibits 14 and 16, respectively.

¹⁰ Department Exhibit 1.

On January 11, 2019, B&B responded to the Complaint, denying the accusations and requesting a hearing. Hearing was scheduled for April 6, 2021 and B&B was provided proper notice; however, B&B failed to appear at hearing.

IV. CONCLUSIONS OF LAW

Public Resources Code section 42851(a) authorizes the Department to administratively impose penalties on any person to whom civil liability may be levied. (PRC § 42851(a).) Civil liability may be levied upon any person who negligently or intentionally violates Waste Tire statute, or any permit or regulation adopted pursuant to Waste Tire statute. Penalties for negligent violations shall be no less than \$500 and no more than \$5,000 per violation. In the case of continuing violations, penalties may be assessed for each day that the violation continues. (PRC § 42950(a).) For intentional violations, the \$5,000 penalty cap is increased to \$10,000. (PRC § 42850.1(b)(1).)

14 CCR section 18465 requires the Department to consider 8 factors in assessing the amount of civil penalty¹¹. Here, the Department considered the 8 penalty factors and seeks \$32,000.00 for 5 waste tire storage violations observed by Department inspectors on July 8, 2018 and August 5, 2018¹².

The record here supports the imposition of \$32,000.00 in penalties against B&B. The Department conducted 9 inspections of B&B over an approximate 15-month period. Those inspections establish a significant history of noncompliance in addition to detailing the specific violations cited in the Complaint. As B&B failed to appear at hearing, the evidence introduced by the Department is uncontested; therefore, the penalty of \$32,000.00 sought by the Department is upheld.

V. DECISION AND ORDER

Waste tire storage penalties are hereby assessed against B&B Tire and Rubber Co. in the amount of \$32,000.00.

IT IS SO ORDERED.



Douglas C. Jensen
Attorney IV
Department of Resources Recycling
and Recovery (CalRecycle)
Hearing Officer

DATED: 5/12/21

¹¹ "In assessing the amount of civil penalty, factors to be considered shall include, but are not limited to, the following: (1) The nature, circumstances, extent and gravity of the violation. (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 CCR § 18465.)

¹² Department Exhibit 1, page 11.



Department of
Resources Recycling and Recovery

Jared Blumenfeld
Secretary for
Environmental Protection

Rachel Machi Wagoner
Director for CalRecycle

PROOF OF SERVICE

I, Donnet 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 May 13th, 2021, I served the attached Decision and Order for entitled action DRRR Case No. IH19-003-TIR, In The Matter of B&B Tire and Rubber Co., to:

J. Michael Barbieri
B&B Tire and Rubber Co.,
7602 Creekridge Lane
Citrus Heights, CA 95610
Jmbmailbox@gmail.com

IG Holdings LLC
c/o Anthony S. Coss, Esq.
Albert & Coss LLP
550 Howe Avenue, Suite 100
Sacramento, CA 95825
acoss@albertcoss.com

Heather Hunt, Senior Staff Counsel
CalRecycle, Legal Office
1001 I Street, 24th Floor
Sacramento, CA 95814
Heather.hunt@calrecycle.ca.gov

By:

_____ **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 13th day of May 2021.

D. McFarlane
(Signature)