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STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of: ~~PROPOSED~~ **Administrative Decision For
The Denial Of Waste Tire Hauler
Registration Application**

TYRES TRANSPORTATION INC.

RESPONDENT.

**PUBLIC RESOURCES CODE SECTIONS
42960, ET SEQ**

TPID NO: 1946640

GOVERNMENT CODE SECTION 11520

AGENCY NO: 2020-102034-DEN

I. INTRODUCTION AND PROCEDURAL HISTORY

The Department of Resources Recycling and Recovery (CALRECYCLE) served RESPONDENT Tyres Transportation, Inc., (RESPONDENT) with the initial Statement of Issues For the Denial Of The Waste Tire Hauler Registration (Statement of Issues) in this matter, Agency Number 2020-102034-DEN, on January 4, 2021, alleging that RESPONDENT misrepresented or failed to disclose material factual information, or other required information, in its waste tire hauler registration application for the 2021 calendar year, and further alleging that RESPONDENT was acting as a continuation of another waste tire hauler, CB Tyres Recycling Resources, LLC., (CB TYRES) that had been fined previously by CALRECYCLE.

RESPONDENT, represented by Wacy Armstrong, Esq., timely served CALRECYCLE with a Request For Hearing/Notice of Defense.

CALRECYCLE served RESPONDENT with an Amended Statement of Issues For the Denial of the Waste Tire Hauler Registration on June 29, 2021, via email, adding allegations that RESPONDENT had violated Chapter 19 of Part Three of Division 30 of the Public Resources Code on more than three occasions.

Mr. Armstrong withdrew as counsel on September 8, 2022; RESPONDENT did not obtain new counsel.

On December 4, 2022, CALRECYCLE received an email from Mercedes Fermin, Agent for Service of Process and Chief Executive Officer for RESPONDENT noticing CALRECYCLE that RESPONDENT would not be attending the hearing. RESPONDENT did not seek to continue the matter.

CALRECYCLE issued a Second Amended Statement of Issues setting forth additional facts in support of the prior allegations made and served RESPONDENT via email. CALRECYCLE also attempted personal service at the last two known addresses for RESPONDENT, but service was unable to be completed.

Hearing commenced at 10:15 a.m. on December 8, 2022.

Heather L. Hunt, Attorney III, CALRECYCLE, appeared on behalf of CALRECYCLE.

Douglas C Jensen, Attorney IV, CALRECYCLE, presided over the hearing under a delegation of authority from CALRECYCLE director Rachel Machi Wagoner

RESPONDENT did not appear.

RESPONDENT's notice of intention to not appear combined with RESPONDENT's actual failure to appear in this matter shall be deemed as a withdrawal of RESPONDENT's Request for Hearing/Notice of Defense. Therefore, CALRECYCLE makes this Decision pursuant to default in accordance with Government Code section 11520.

II. FINDINGS OF FACT

The Second Amended Statement Of Issues was executed by Heather L. Hunt, Attorney III, acting in her official capacity; it supersedes the initial Statement of Issues as well as the Amended Statement of Issues.

CB TYRES had been a waste tire hauler registered with CALRECYCLE for many years.

CB TYRES is an LLC, owned and operated by Antonio Tejada (a.k.a. Tony Tejada).

On multiple prior occasions CALRECYCLE ordered CB TYRES to pay penalties for violations of waste tire storage and waste tire hauling laws:

(a) On November 8, 2005, CALRECYCLE predecessor CIWMB ordered CB TYRES to pay an administrative penalty in the amount of \$12,500.00 for storage violations at the site:

(b) On November 11, 2009, CALRECYCLE predecessor CIWMB ordered CB TYRES to pay administrative penalties in the amount of \$15,000.00, with an additional \$25,000.00 suspended and stayed for a period of two years absent a default for storage violations at the site.

(c) On February 2, 2012, CALRECYCLE ordered CB TYRES to pay penalties in the amount of \$500.00 for violations of Public Resources Code (PRC) section 42951(b).

(d) On June 12, 2018, CALRECYCLE ordered CB TYRES to pay administrative penalties in the amount of \$156,000.00, pursuant to a stipulated settlement agreement described in the following paragraphs.

Tony Tejada signed a Stipulation For Issuance of Administrative Decision for Waste Tire Storage and Waste Tire Hauler Administrative Penalties (Stipulation) on behalf of CB TYRES, on May 30, 2018,

The Stipulation documented multiple alleged violations by CB TYRES of California's waste tire storage laws as set forth in chapter 16 of part three of division 30 of the PRC and chapter 14 of the CCR, including storage of more than 20,000 waste tires without first obtaining a major waste tire facility permit in violation of PRC section 42823; the Stipulation further documented multiple violations by CB TYRES of California's waste tire hauler laws as set forth in chapter 19 of part three of division 30 of the PRC and chapter 14 of the CCR, including hauling tires to an unpermitted site in violation of PRC section 42951(b).

The Stipulation documented CALRECYCLE's agreement to allow CB TYRES to retain its Waste Used Tire Hauler Registration through the 2018 calendar year but made clear that CB TYRES was "responsible for obtaining a waste tire hauler registration every calendar year."

Pursuant to paragraphs 29 and 30 of the Stipulation, CB TYRES agreed to pay a penalty of \$156,000.00, with \$100,000.00 held in abeyance for 5 years. Portions of the abeyance amount would become due and payable upon a finding of a default of the Stipulation. The remaining \$56,000.00 was to be paid in monthly installments in accordance with the following:

[CB TYRES] shall make a single, lump sum payment to CALRECYCLE of \$3,200.00, due on the 60th day after service of the Administrative Decision ("Decision"), then monthly payments of \$1,100.00. The first monthly payment will be due August 1, 2018, pursuant to this Stipulation.

CB TYRES obtained a waste tire hauler registration, authorizing it to haul waste and used tires for the 2019 calendar year.

On December 5, 2019, CB TYRES emailed CALRECYCLE stating that Mercedes Fermin would “handle all payments” for CB TYRES “[g]oing forward.”

In 2020, CALRECYCLE sent First, Second and Final Notices to CB TYRES for the outstanding penalty amount.

To date CB TYRES has only paid \$1,100.00 of the owed penalty, leaving an outstanding balance of \$54,900.00.

CB TYRES submitted a waste tire hauler registration application in 2019 for a waste tire hauler registration for the 2020 calendar year. CALRECYCLE notified CB TYRES that the application was deemed incomplete. CB TYRES did not submit an updated application and did not obtain a waste tire hauler registration for the 2020 calendar year.

Because CB TYRES’ defaulted on the Stipulation for failing to pay the agreed upon penalty, in accordance with PRC section 42960(b)(2), CALRECYCLE would have denied CB TYRES a waste tire hauler registration for the 2020 calendar year.

On December 18, 2019, RESPONDENT submitted an initial waste tire hauler registration application for the 2020 calendar year, signed by David Valdivia, naming Mercedes Fermin as the business owner and providing a facility address of 415 E. Norman Road, San Bernardino, California 92408.

On September 11, 2020, CALRECYCLE inspector Ivan Palenyy attempted to inspect RESPONDENT’s facility at the 415 E. Norman Road, San Bernardino, California 92408, address; Mr. Palenyy was informed by the current tenant, who had occupied the property since August 1, 2020, that she had no knowledge of Mercedes Fermin or David Valdivia.

On October 19, 2020, RESPONDENT submitted a renewal waste tire hauler registration application for the 2021 calendar year, listing the same vehicles that had been approved for the 2020 calendar year, and providing the same two addresses as the prior 2019 waste tire hauler registration application for the 2020 calendar year. CALRECYCLE rejected this waste tire hauler registration application deeming it incomplete and providing misinformation, based on the information gathered at the September 11, 2020, attempted inspection, as well as a missing subhauler letter for RESPONDENT’s listing of trucks registered to Tyres Logistics, Inc.

RESPONDENT provided the required subhauler letter, affirmed to CALRECYCLE that the 415 E. Norman Road, San Bernardino, California 92408, was the correct business address, and resubmitted its waste tire hauler registration application that is the subject of this denial on November 30, 2020.

In addition to CB TYRES, Tony Tejada is the Chief Executive Officer, Chief Financial Officer, Secretary and a Director of two other California Corporations: Big Daddy’s Tire

and Wheel, and Tyres Logistics, Inc. In its Statement of Interest on file with the California Secretary of State, Big Daddy's Tire and Wheel states its street address and its mailing address as 399 West Valley Boulevard, Colton, California, 92324.

The waste tire hauler registration application requires the applicant to provide the vehicles with which the waste tire hauler intends to haul waste and used tires. Upon approval of the waste tire hauler registration application, CALRECYCLE issues decals for those specific vehicles authorizing those vehicles to be used to haul 10 or more waste or used tires subject to California's waste tire hauling laws, including manifesting the loads of waste and used tires hauled.

Tyres Logistics, Inc., was the registered owner of the vehicles listed in CB TYRES's waste tire hauler registration for the calendar years 2015, 2016, 2017, 2018, and 2019.

On October 24, 2018, CB TYRES submitted, and CALRECYCLE approved, a waste tire hauler registration application requesting a waste and used tire hauler registration for the 2019 calendar year listing the following vehicles that were registered with the California Department of Motor Vehicles (DMV) to Tyres Logistics, Inc., with license plate numbers: 7E89003, 7D36805, 8E96369, 9E23199, 21967M1, 9D78477, 9D21880, 7W79059, 9F31657, 08010N2 and 08009N2.

In its initial waste tire hauler registration application for the 2020 calendar year RESPONDENT listed vehicles registered with the California Department of Motor Vehicles to Tyres Logistics, Inc., with license plate numbers: 7D36805 and 9D78477, the same vehicles that CB TYRES had obtained decals for the previous year.

In December 2019, CB TYRES submitted the waste tire hauler registration application for the 2020 calendar year listing vehicles with license plate numbers 08010N2, 08009N2, 7E89003, 9E23199, 21967M1, 9D21880, and 9F31657.

On January 8, 2020, RESPONDENT updated its waste and waste tire hauler registration through an online portal for CALRECYCLE and obtained decals for vehicles with license plates 08010N2, 08009N2, 7E89003, 9E23199, 21967M1, 9D21880, and 9F31657.

Antonio Tejada was the legal owner of vehicles with license plate numbers 08010N2, 08009N2 at the times CB TYRES and RESPONDENT listed the vehicles on their waste tire hauler registration applications.

Tyres Logistics, LLC., was the registered owner of vehicles with license plates 7E89003, 9E23199, 21967M1, 9D21880, and 9F31657, at the time RESPONDENT listed the same vehicles in its waste tire hauler registration application.

On November 24, 2020, Antonio Tejada signed an Application for Transfer by New Owner on behalf of RESPONDENT TYRES TRANSPORTATION, INC., with the California Department of Motor Vehicles (DMV). In an accompanying document titled Statement of Facts dated November 25, 2020, Antonio Tejada again signed on behalf of RESPONDENT stating the reason for changing the title for vehicle with license plate

9F31657 as “I am changing my name from Tyres Logistics, Inc., to Tyres Transportation, Inc.”

RESPONDENT’S waste tire hauler registration application for the 2020 calendar year listed Mercedes Fermin as Business Owner and David Valdivia as Business Manager. It further provided 6535 North Cold Mountain Way, San Bernardino, California 92407, as the business’s mailing address and 415 E. Norman Road, San Bernardino, California 92408, as the business’ street address, and a telephone number (909) 205-1397.

RESPONDENT is a California corporation; its Articles of Incorporation were filed on March 14, 2018. In its Statement of Information filed on October 4, 2018, RESPONDENT named Mercedes Fermin as Chief Executive Officer, Chief Financial Officer, and Secretary. In a subsequent Statement of Information filed on June 26, 2020, RESPONDENT again named Mercedes Fermin as Chief Executive Officer, Chief Financial Officer and Secretary. In both Statements of Information RESPONDENT lists its business address and address for service of process as 399 W. Valley Boulevard, Colton, California 92324. This address remains the current business address on file with the California Secretary of State for RESPONDENT.

Bills of lading from Mitsubishi Cement Corporation document the delivery of waste tires on three occasions in 2021 by CB TYRES using the vehicle with license plate number 9D21880. Meanwhile, corresponding Comprehensive Trip Logs, filled out by the hauler, show those same loads of waste tires as being hauled by RESPONDENT.

David Valdivia, who, as noted above, signed the initial waste tire hauler registration application for RESPONDENT, signed multiple invoices for the pickup or delivery of tires to and from Lakin Tire West, Inc., on behalf of CB TYRES in 2019, 2020, and 2021.

On September 10, 2021, Frank Fermin was observed driving a truck with license plate number 08010N2 at a Firestone Complete Auto Care facility in Escondido, California. The truck bore RESPONDENT’S emblem on the door and RESPONDENT’s 2020 hauler decal in the windshield. Used or waste tires that had recently been picked up were observed in the back. Meanwhile, the accompanying bill of lading documented the tires had been picked up by CB TYRES for Lakin Tire West, Inc., but the corresponding comprehensive trip log documented the hauler picking up said tires under the business name 101 Tire and Service, LLC.

Frank Fermin signed multiple invoices on behalf of CB TYRES, for tires hauled for Lakin Tire West, LLC., in 2019, 2020 and 2021.

Multiple CB TYRES invoices from November 2020 to January 2021 document pickups of waste tires from Evans Tire and Service Center in Encinitas, California, while corresponding comprehensive trip logs document those same pickups performed by RESPONDENT.

RESPONDENT has not been in possession of a waste and used tire hauler registration at any time for the calendar years 2021 and 2022, and at no time for the 2021 and 2022 calendar years has RESPONDENT met any exemption specified in PRC section 42954.

Comprehensive trip logs show that on at least three separate occasions, as enumerated in the following table, RESPONDENT hauled loads of 9 or more waste and used tires to Mitsubishi Cement Corporation, while not in possession of a waste tire hauler registration:

Date	CTL Number
January 13, 2021	7254276-A
January 14, 2021	7254570-A
January 15, 2021	7254273-A

During an inspection of Jimbo's Tires, LLC, located at East 4th Street, Perris, California, 92408, on April 6, 2021, and documented in Hauler Observation Report number 1484047-01., Inspector Mathew Piper observed CTLs described in the below table, documenting the pick-up or delivery of waste and used tires by RESPONDENT, that had not yet been submitted to CALRECYCLE. These CTLs document that the loads of waste and used tires had been hauled more than 90 days prior to the date of this inspection, and therefore past the 90-day requirement to have submitted them to CALRECYCLE.

Date	CTL
11/02/2020	725983-C
11/03/2020	725986-C
11/05/2020	7253989-C
11/11/2020	7254008-C
11/12/2020	7254015-C
11/13/2020	7254028-C
11/17/2020	7254032-C
11/19/2020	7254044-C
11/23/2020	7254049-C
11/25/2020	7254115-C
11/30/2020	7254167-C

III. LEGAL ANALYSIS

CALRECYCLE has the authority to permit, regulate, and conduct enforcement actions regarding waste tire facilities and waste tire haulers within the State of California pursuant to PRC sections 42800 et seq., 42950 et seq. and attendant regulations contained in Title 14 of the CCR.

Pursuant to PRC section 42960(a)(4), CALRECYCLE may suspend, revoke, or deny a waste and used tire hauler registration for up to three years if the applicant “misrepresents or fails to disclose material factual information, or other required information in the application for a waste and used tire hauler registration.”

Further, pursuant to PRC section 42960(a)(1), CALRECYCLE may deny, suspend, or revoke a waste and used tire hauler registration if the holder of that registration commits or fails to comply with the requirements set forth in chapter 16 or chapter 19 of part three of division 30 of the PRC, or the regulations adopted pursuant to those provisions on three or more occasions.

A. Misrepresentation or Failure To Disclose Material Factual Information in it Waste Tire Hauler Registration Application And Actions as a Continuation of Another Waste Tire Hauler That Had Been Previously Fined By CALRECYCLE.

Waste and used tire hauler registrations are granted by CALRECYCLE on a calendar-year basis, and automatically expire on January first of the following year. (Pub. Resources Code section 42958; see also Cal. Code Regs. tit.14, section 18454(c).)

Any renewal waste tire hauler registration application must be received by CALRECYCLE “shall be received by the Department no later than 45 days prior to the January 1 expiration date.” (Cal. Code Regs. tit. 14 section 18455(c).)

CALRECYCLE may deny a waste tire hauler registration application of a new or renewed waste tire hauler registration by issuing a statement of issues in accordance with Government Code section 11504. (Cal. Code Regs. tit.14, section 18457(b)).

CALRECYCLE shall notify the applicant for, or holder of the waste and used tire hauler registration, of the suspension, revocation, or denial, and the effective date of the suspension or revocation and serve a statement of issues. (Pub. Resources Code section 42961(a)).

Waste and used tire hauler registrations are granted by CALRECYCLE on a calendar-year basis, and automatically expire on January first of the following year. (Pub. Resources Code section 42958; see also Cal. Code Regs. tit.14, section 18454(c).)

Any renewal waste tire hauler registration application must be received by CALRECYCLE “shall be received by the Department no later than 45 days prior to the January 1 expiration date.” (Cal. Code Regs. tit. 14 section 18455(c).)

CALRECYCLE may deny an application of a new or renewed waste tire hauler registration by issuing a statement of issues in accordance with Government Code section 11504. (Cal. Code Regs. tit. 14, section 18457(b)).

Here, CB TYRES, owner and operated by Antonio Tejada’s waste tire hauler registration application for the 2021 calendar year was rejected, and CB TYRES did not resubmit. CALRECYCLE would have denied that application based on CB TYRES failure to pay a penalty owed to CALRECYCLE.

The totality of overlapping personnel and business information between businesses operated by Antonio Tejada and RESPONDENT demonstrate that RESPONDENT was created by Antonio Tejada as a way of circumventing his inability to haul waste or used tires as CB TYRES, and therefore RESPONDENT was acting as a continuation of CB TYRES.

The address provided by RESPONDENT to the California Secretary of State is the same address provided as Antonio Tejada’s other business, Big Daddy Tire and Wheel, Inc. RESPONDENT provided a different address than the one registered with the California Secretary of State, to CALRECYCLE in its waste tire hauler registration application.

Mercedes Fermin was known to CALRECYCLE as a representative of CB TYRES prior to RESPONDENT applying for its waste and used tired hauler registration. Even after Ms. Fermin became chief executive officer and agent for service of process for RESPONDENT, Mr. Tejada advised CALRECYCLE that Ms. Fermin would serve as the contact for CB TYRES.

David Valdivia signed bills of lading on behalf of CB TYRES in 2019, 2020, and 2021, and also signed RESPONDENT’s waste tire hauler registration application.

Frank Fermin signed bills of lading on behalf of CB TYRES in 2019, 2020, and 2021, and was observed with a signed bill of lading for CB TYRES even though the truck he was driving had RESPONDENT’s company name on the door and RESPONDENT’s hauler decal issued by CALRECYCLE for the 2020 calendar year.

Most of the vehicles submitted by RESPONDENT to CALRECYCLE in its waste tire hauler registration applications were registered to Antonio Tejada’s other business, Tyres Logistics, Inc.. In fact, CB TYRES included these same vehicles in its waste tire hauler application for the 2020 calendar year, and then RESPONDENT added the vehicles to its waste and used tire hauler registration after CB TYRES did not reapply for the 2020 calendar year.; the remaining two were registered to RESPONDENT but still list Antonio Tejada as the legal owner.

On multiple occasions comprehensive trip logs naming RESPONDENT as the hauler correspond to bills of lading showing CB TYRES as the hauling entity.

Comprehensive trip logs show RESPONDENT hauled at least three loads of waste tires to Mitsubishi Cement Corporation, corresponding invoices showed CB TYRES as responsible for the transportation of those same loads. Comprehensive trip logs show that RESPONDENT hauled multiple loads of waste tires for Evan's Tire and Service Center, while corresponding invoices showed CB TYRES as responsible for transporting the same loads.

The above, overlapping of the personnel and businesses between RESPONDENT, CB TYRES and Antonio Tejada, show that RESPONDENT's corporation was formed as an extension of CB TYRES and was not an autonomous entity.

Most damningly, Antonio Tejada not only signed an Application for Transfer by New Owner on behalf of RESPONDENT, but also stated the reason for changing the title for vehicle with license plate 9F31657 as "I am changing my name from Tyres Logistics, Inc., to Tyres Transportation, Inc." This is an admission and is clear and convincing evidence that Antonio Tejada is the true owner of RESPONDENT's Corporation.

The totality of the evidence presented is clear and convincing that RESPONDENT misrepresented itself in its waste tire hauler registration application.

B. Violations of Chapter 19 of Part 3 of Division 30 Of The California PRC By Hauling While Unregistered on More Than Three Occasions

Pursuant to PRC section 42960:

(a) The department may suspend, revoke, or deny a waste and used tire hauler registration for a period of up to three years, by serving a statement of issue in accordance with Section 42961, if the applicant for, or holder of, the registration does any of the following:

(1) Commits more than three violations of, or fails to comply with any requirements of, this chapter [19] or Chapter 16 (commencing with Section 42800), or the regulations adopted pursuant to those provisions, within a one-year period....

"Every person who engages in the transportation of waste or used tires shall hold a valid waste and used tire hauler registration, unless exempt as specified in Section 42954." (Pub. Resources Code section 42951(a).)

Pursuant to 14 CCR section 18459.2.1(a), "[t]he waste tire hauler shall submit the completed original CTL Form to the Department within ninety (90) days of the load shipment.

“Comprehensive Trip Log” or “CTL” means the California Uniform Waste and Used Tire Manifest System form developed by the Department pursuant to Public Resources Code, section 42961.5. The Comprehensive Trip Log is attached hereto as Appendix A (CALRECYCLE 203, 7/10) and incorporated by reference herein. (See 14 CCR Division 7, Chapter 9, Article 9.3, Appendix A.)” (Cal. Code Regs., tit. 14, section 18450(a)(11).)

Here RESPONDENT hauled loads of waste and used tires without possessing a valid waste and used tire hauler registration, while also not meeting any exemptions to the registration requirement, on at least three occasions to Mitsubishi Cement Corporation, and failed to submit a CTL within the required 90-day time period on at least 11 occasions.

This is clear and convincing evidence that RESPONDENT violated Chapter 19 of Part Three of Division 30 of the PRC and its attendant regulations in Title 14 of the California Code of Regulations on more than three occasions.

IV. DECISION AND ORDER

RESPONDENT’s notice of intention to not appear combined with RESPONDENT’s actual failure to appear in this matter shall be deemed as a withdrawal of RESPONDENT’s Request for Hearing/Notice of Defense.

Good cause therefore appearing, CALRECYCLE, hereby takes action in accordance with the provisions of Government Code section 11520(a).

The following order is hereby made: RESPONDENT TYRES TRANSPORTATION, INC.’S, waste tire hauler registration application for the 2021 calendar year is denied for a period of three years

V. RESPONDENTS RIGHTS TO FILE WRITTEN MOTION

Pursuant to government code section 11520 C, respondent has a right to serve CALRECYCLE with a written motion requesting that the decision be vacated and stating the grounds relied on:

c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.

This default decision shall become effective on the date signed below

Dated this day of , 2022.

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