

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

**IN THE MATTER OF THE ACCUSATION AGAINST:**

**JAMES CHANDLER WYATT an individual; DESIGN CENTER LA HABRA LLC dba  
DESIGN CENTER**

**Respondents**

**File No.: IH22-005-MAT**

**DECISION AND ORDER**

**I. INTRODUCTION**

The Department of Resources Recycling and Recovery (CalRecycle or Department) filed its Accusation seeking to impose penalties on James Chandler Wyatt and Design Center La Habra LLC doing business as Design Center (Respondent), on 'Ap \l 20, 2022.

Respondent opposed the imposition of penalties and timely requested a hearing. A hearing was conducted on August 26, 2022, in Sacramento, California via video-conferencing. On that date, all evidence and testimony in this matter was received into the record and the record was closed.

Daniel Zlatnik, Attorney, CalRecycle, appeared on behalf of the Department. Douglas R. Macleith, esq., appeared on behalf of Respondent.

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

**II. ISSUE**

Whether the Department's imposition of penalties on Respondent shall be sustained, overruled, or otherwise modified.

**III. EVIDENTIARY MATTERS**

Witnesses

The Department presented testimony from Rob Hammerstad (Hammerstad), a former Department inspector in the Extended Producer Responsibility Unit (EPRU). Hammerstad testified regarding an October 21, 2020, inspection of Respondent's

mattress retail business located at 2321 West Whittier Boulevard in La Habra, California.

The Department presented testimony from Gayle Hanlon (Hanlon), Director of Legal Affairs for the Mattress Recycling Council (MRC) of California. Hanlon testified regarding the MRC's registration and remittance requirements and Respondent's registration and remittance history.

The Department presented testimony from Kirby Garrett (Garrett), a supervisor in the Department's EPRU. Garrett oversees a staff of inspectors responsible for compliance inspections of mattress retailers. He testified regarding EPRU's enforcement practices and its enforcement history with Respondent.

James Wyatt (Wyatt) testified on behalf of Respondent.

Department Exhibit Numbers 1, 2, 5, 12, 14, and 15 were admitted into evidence via stipulation. Department Exhibit Numbers 6, 7, 8, 13, and 17 were admitted into evidence at hearing without objection. Department Exhibit Numbers 3 and 4 were admitted into evidence over Respondent's objections as to foundation. Exhibit Numbers 9 through 11 were not moved into evidence.

A demonstrative table prepared by Hanlon was not offered into evidence by the Parties; however, the table was heavily relied upon in both Hanlon's direct and cross-examinations. Reference to the table is necessary to obtain an accurate reading of the transcript of proceedings. Therefore, it will be admitted into the record as Exhibit A but only to the extent that it supplements or clarifies Hanlon's testimony.

#### **IV. FINDINGS OF FACT**

Design Center is a mattress retail business located at 2321 West Whittier Boulevard in La Habra, California. It is owned by Design Center La Habra, LLC; James Wyatt (Wyatt) is the owner and sole member of the LLC.

The Department conducted an inspection of Design Center on October 21, 2020. Wyatt was present at the inspection and admitted to the Department's inspector that Respondent had been conducting retail mattress sales since October 2020 but was neither registered with a Mattress Recycling Organization (MRO) nor offering free mattress take-back. The Department requested records including mattress sales receipts, proof of registration with an MRO, and records related to mattress take-back, but Wyatt indicated that the records were not available at that time because of a recent change in the business' ownership. The inspector informed Wyatt that Design Center was in violation for failing to register, failing to collect and remit the recycling charge, failing to offer free mattress takeback, and failing to produce relevant records.

On November 11, 2020, the Department delivered a written notice of violation (First NOV) to Respondent. The First NOV noted that Respondent was required take

corrective action and provide records including customer receipts, proof of registration, proof of remittance, and proof of compliance with the mattress take-back requirement. It stated, "Failure to correct and/or submitting false or misleading information may result in violation(s) subject to penalties of up to \$5,000 per day pursuant to PRC section 42993.1(a)."

On December 24, 2020, the Department delivered a second written NOV (Second NOV) to Respondent. The Second NOV reiterated the Department's demand for records and again notified Respondent that it was in violation. It stated, "[f]ailure to respond to this notice by January 21, 2021 and/or submitting false or misleading information will result in penalties of up to \$5,000 per day pursuant to Public Resources Code section 42993.1(a)."

On December 9, 2020, Design Center requested registration with the Mattress Recycling Council (MRC). The MRC approved Respondent's registration in January. The MRC required that Respondent submit sales reports monthly, even if only to note that no sales had been made.

On February 19, 2021, the Department delivered a third written NOV (Third NOV) to Respondent. Like the First and Second NOVs, it identified Design Center's outstanding violations and demanded records. The Third NOV stated "[t]he business remains in violation of the Mattress Stewardship Law and is subject to penalties of up to \$5,000 per day per PRC section 42993.1."

On February 25, 2021, Respondent submitted its sales report and remittances to the MRC for its October 2020 sales.

On September 14, 2021, Respondent submitted its sales reports and remittances for sales made from December 2020 through May 2021.

In March 2022, the Department delivered to Respondent its Accusation seeking to impose penalties.

On approximately April 7, 2022, Wyatt requested a hearing to oppose the imposition of penalties.

On April 20, 2022, Wyatt paid late fees in connection with his overdue reports to the MRC.

In June 2022, Wyatt provided 98 receipts to the Department spanning sales made from October 2020 to May 2022. Approximately 91 of the receipts incorrectly displayed the recycling charge.

On August 4, 2022, Wyatt paid the MRC additional late fees in connection with his overdue reports.

Respondent did not remit for sales occurring from June 2021 to May 2022 (12 months).

On August 26, 2022, a hearing was conducted in Sacramento via video-conferencing. Respondent continued to offer mattresses for sale through the time of hearing but did not submit additional sales reports to the MRC. The MRC requires that sales reports must be submitted even where no sales have been made.

## **V. LEGAL ANALYSIS**

The Used Mattress Recovery and Recycling Act (Public Resources Code (PRC) section 42985 et seq.) (the Act) was established to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the end-of-life management of used mattresses. The Act authorizes the Department to certify a mattress recycling organization (MRO) to develop, implement and administer a convenient and cost-effective program to recover and recycle used mattresses in California. (PRC section 42985(a)(1), 42987(a)(1)) Each mattress retailer must register with the MRO and comply with the Act. (PRC section 42987(b)(1), 42987(c).)

### **Administrative Civil Penalty**

The Department provides enforcement oversight of the Act and is authorized to impose penalties for violations.

"The department may impose an administrative civil penalty on any ... retailer that is in violation of this chapter. The amount of the administrative civil penalty shall not exceed five hundred dollars (\$500) per day, but, if the violation is intentional, knowing, or reckless, the department may impose an administrative civil penalty of not more than five thousand dollars (\$5,000) per day." (PRC section 42993.1(a).)

In determining the penalty amount, the Department is required to consider the totality of the circumstances, which may include any number of listed factors.

"In assessing or reviewing the amount of civil penalty imposed for a violation of this article, the department or the court shall consider the totality of the circumstances, which may include, but is not limited to, the following:

- (a) The nature, circumstances, extent, and gravity of the violation(s).
- (b) The number and severity of the violation(s).
- (c) Evidence that the violation was intentional, knowing, or negligent.
- (d) The size of the violator.
- (e) History of violation(s) of the same or similar nature.
- (f) The willfulness of the violator's misconduct.
- (g) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.

- (h) Evidence of any financial gain resulting from the violation(s).
- (i) The economic effect of the penalty on the violator.
- (j) U) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
- (k) (k) Any other factor that justice may require." (Title 14 California Code of Regulations (CCR) section 18970.)

Here, the Department seeks to impose penalties upon Respondent totaling \$62,068 in connection with three counts.

## **Alleged Violations of the Act**

### **Count I- Failure to Provide Relevant Records**

The Department seeks a penalty of \$29,559 for violations of PRC section 42993.3. "The Department calculates this penalty based on Respondents' continuous violation of the Act for at least 59 days, with a per-day penalty of \$501. The minimum basis of 59 days equals the sum of the periods during which the Department's written notices demanded that Respondents provide records demonstrating that they had corrected this continuous violation of the Act." (First Amended Accusation (FAA) P. 8 Par 49.)

Public Resources Code Section 42993.3 authorizes the Department to access mattress retailer facilities, operations, and records to determine compliance with the Act.

"(a) A manufacturer, renovator, distributor, recycler, retailer, and mattress recycling organization shall do both of the following:

(1) Upon request, provide the department with reasonable and timely access, as determined by the department and as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, to its facilities and operations, as necessary to determine compliance with this chapter.

(2) Upon request, provide the department with relevant records necessary to determine compliance with this chapter.

(b) The records required by this chapter shall be maintained and accessible for three years. All reports and records provided to the department pursuant to this chapter shall be provided under penalty of perjury.

(c) The department may take disciplinary action against a manufacturer, renovator, distributor, recycler, retailer, or mattress recycling organization if the manufacturer, renovator, distributor, recycler, retailer, or mattress recycling organization fails to provide the department with the access required pursuant to this section, including, but not limited to, imposing penalties pursuant to Section 42993.1 and posting an immediate notice on the department's internet website pursuant to Section 42993 that the

manufacturer, renovator, or distributor is no longer in compliance with this chapter." (PRC section 42993.3.)

### Count II- Failure to Collect and Remit Recycling Charge

The Department seeks a penalty of \$29,559 for violations of PRC section 42989.1. "The Department calculates this penalty based on Respondents' continuous violation of the Act for 59 days, with a per-day penalty of \$501. The minimum basis of 59 days equals the sum of the periods during which the Department's written notices demanded that Respondents provide records so the Department could assess their compliance with the Act." (FAA P.9-10, Par. 59.)

Mattress retailers are required to add a recycling charge to the purchase price of mattresses and clearly display the charge on customer receipts. The recycling charges collected must be remitted to an MRO. Public Resources Code section 42989.1 states:

"(a). Commencing 90 days after the date the department approved the budget pursuant to Section 42988.1, each manufacturer, renovator, retailer, or distributor that sells a mattress to a consumer or to the ultimate end user of the mattress in the state shall add the charge to the purchase price of the mattress. The charge shall be clearly visible on the invoice, receipt, or functionally equivalent document by the seller to the consumer as a separate line item.

(b). The charges collected pursuant to subdivision (a) shall be remitted to the mattress recycling organization in accordance with procedures established by the mattress recycling organization." (PRC Section 42989.1.)

### Count III- Failure to Offer No-Cost Used Mattress Pickup

The Department seeks a penalty of \$2,950 for violations of PRC section 42992. It imposes a penalty of \$50 per day for 59 days, "the sum of the periods which the Department's written notices demanded that Respondent's provide records demonstrating that they offered customers free pickup of old mattresses". (FAA P.11, Par. 66.)

Public Resource Code section 42992(a) states that "a retailer shall offer a consumer the option to have a used mattress picked up for recovery at the time of delivery, at no additional cost to the consumer, if a new mattress is delivered to the consumer." (PRC section 42992(a).)

### **Burden of Proof**

Absent a statute or other authority fixing a different standard, the burden of proof requires proof by a preponderance of the evidence. (Evidence Code (EC) section 115.)

Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. (EC section 500.) Therefore, the Department meets its burden of proof by establishing each count by a preponderance of the evidence.

### **Respondent's Contentions**

Respondent does not dispute the violations. Rather, Respondent contends that the penalties are excessive, and that the Department failed to consider the economic impact of the penalties on Respondent's small business. Further, Respondent denies that it received the Department's written Notices of Violations (NOVs).

#### Respondent Receipt of Notices of Violation

Respondent denies that it received the Department's written Notices of Violation (NOVs) dated November 10, 2020, December 22, 2020, and February 18, 2021. However, for the reasons discussed below, Respondent's denial is not credible.

First, the NOVs themselves indicate that they were successfully delivered to Respondent. Each NOV is accompanied by tracking information provided by General Logistics Systems (GLS), a third-party vendor employed by the Department for delivery services. The tracking information includes delivery location, shipping date, and delivery date and time. It also includes a recipient signature- the first and second NOVs were signed for by "Doug" and the third by "Jim".

At hearing, Respondent objected to admission of the GLS tracking information on the basis that it is hearsay. However, assuming that the information is hearsay, it still may be used to supplement or explain other evidence. (Government Code section 11513(d).).

Here, the Department presented testimony from its inspector and its program manager establishing that the NOVs were prepared and delivered in accordance with the Department's normal practices and procedures. The tracking information supplements that testimony. All three NOVs are dated, and the accompanying tracking information indicates each was delivered to Design Center within a day or two of its date. The tracking information is consistent with the NOVs themselves and it consistent with Department testimony regarding the NOVs' delivery.

Furthermore, the recipient signatures from the GLS tracking information are consistent with the evidentiary record. Wyatt testified that 'Doug' is the name of a Design Center employee. And it cannot be disputed that Jim is a common nickname for James- Wyatt's first name. The GLS information supplements

and explains that evidence; therefore, it is admissible as administrative hearsay. (Gov. Code section 11513(d).)

Second, Wyatt's testimony regarding receipt of the NOVs was inconsistent. On cross-examination, Wyatt was asked whether he had an employee named "Doug"- the apparent recipient of the first and second NOVs:

Q: Okay. Did you have someone named Doug working for you? A:

Did I have someone named Doug working for me?

Q: Yeah.

A: No.

(TOP P.8 L 14-18)

A short time later during his cross-examination, Wyatt was again asked about an employee named Doug.

Q Okay. I will give you a specific date. November 2020 did you have somebody named Doug working for you?

A No.

Q Did you ever have somebody named Doug working for you? A:

Pre-COVID.

Q Okay. Was he an employee? A:

He was.

As demonstrated by the excerpt above, Wyatt's testimony regarding an employee named Doug was contradictory and inconsistent. Wyatt's demeanor and manner while testifying regarding this issue appeared evasive.

The evidence here, including witness testimony, establishes that the written NOVs were delivered to Respondent. Respondent's denial of receipt of the NOVs is not credible.

#### Eighth Amendment Excessive Fines

Respondent contends that the penalties sought to be imposed by the Department violate the Eighth Amendment's Excessive Fines Clause.



The Eighth Amendment of the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Supreme Court has held that a fine is unconstitutionally excessive under the Eighth Amendment if its amount "is grossly disproportional to the gravity of the defendant's offense." (*United States v. Bajakajian*, 524 U.S. 321, 336-37.) To determine whether a fine is grossly disproportional to the underlying offense, four factors are considered: 1) the nature and extent of the underlying offense; 2) whether the underlying offense is related to other illegal activities; 3) whether other penalties may be imposed for the offense; and 4) the extent of the harm caused by the offense.

Respondent cites *Pimental v. City of Los Angeles*, 874 F.3d 917 (2020) in support of its contention that the penalty here is excessive under the Constitution. In *Pimental*, Appellants were subject to parking fines and late fees and challenged a Los Angeles parking ordinance as violating the Eighth Amendment's Excessive Fines Clause. The *Pimental* Court held that the Excessive Fines Clause applied to municipal parking fines and remanded the matter to determine whether late payments were grossly disproportional to the offense of failing to pay the initial fine.

Here, we are concerned with an administrative civil penalty imposed by the State, not a parking ticket late fee imposed by a municipality like in *Pimental*. Nonetheless, for purposes of this decision, the Hearing Officer will assume that the Excessive Fines Clause applies to administrative civil penalties. However, while Respondent asserts that the Excessive Fines clause applies here, it did not address the *Bajakajian* factors at hearing and did not develop the evidentiary record on these points. Therefore, the scope of this analysis is necessarily limited.

#### *Culpability, Nature, and Extent of Violation*

Culpability, or responsibility for a wrong, is the primary factor considered when determining whether a fine is excessive. "[I]f culpability is high or behavior reckless, the nature and extent of the underlying violation is more significant. Conversely, if culpability is low, the nature and extent of the violation is minimal. It is critical, though, that the court review the specific actions of the violator rather than by taking an abstract view of the violation." (See *United States v. 3814 NW Thurman St.*, 164 F.ed 1191, 1197.) The *Pimental* court notes that "benign actions may still result in some non-minimal degree of culpability." (*Pimental* at 923.) It found that ticketed individuals were culpable because there was no dispute that there was a violation but nonetheless found that culpability to be low because the underlying violation was minor.

Respondent's violations here are not akin to the late payment of a parking fine. Respondent committed multiple violations of the Act then ignored the Department's demands to corrects them. The Act's vital purposes- reducing illegal dumping, increasing recycling, and reducing public agency costs for the end-of-life management

of used mattresses- were not met, and the Department's enforcement efforts were thwarted. Respondent's culpability is high.

#### *Related to Other Illegal Activities*

The *Pimental* court found nothing in the record showing whether failing to pay a parking meter related to other illegal activities and found the factor to be inapplicable. Here, all the violations relate to each other and are all components of mattress recycling. However, it is not clear how this factor applies here, and Respondent has provided no argument or other guidance on its application.

#### *Other Penalties*

The *Pimental* court found that "neither party suggests that alternative penalties may be imposed instead of the fine, and the record is devoid of any such suggestion." (*Pimental* at 923.) Again, Respondent did not develop this factor nor provide any specific argument regarding its application. Therefore, the factor is not addressed here.

#### *Extent of Harm*

When considering the extent of harm stemming from a violation, the Court looks at monetary harm and "how the violation erodes the government's purposes for" . proscribing the conduct." (*Thurman St.* 164 F.3d at 1198; *Pimental* at 923.) "Without material evidence to the contrary, we must afford "substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments." (*Bajakajian*, 524 U.S. at 336.)

Again, Respondent did not develop the record or provide specific argument on this point. However, the record demonstrates that Respondent's violations undermined the Act and the Department's enforcement role. These are serious violations. While the extent of the harm stemming from Respondent's violations was not specifically addressed at hearing, it is apparent that the harm here is potentially extensive.

The penalties imposed by the Department are authorized by the Act. While the penalties are significant, they were crafted within the limits set out by the legislature. Therefore, they are entitled to substantial deference.

#### *Economic Impact on Respondent*

Respondent contends that the Department failed to consider the economic impact its penalty would have on Respondent's small business. The Department contends that it was not required to consider economic impact and that it properly considered the 'totality of the circumstances' in determining the penalty amount.

In assessing the amount of civil penalty imposed for a violation, the Department must consider the "totality of the circumstances." (14 CCR 18970.) Here, the evidentiary record supports that the Department met that requirement.

At hearing, the Department presented documentary evidence and witness testimony establishing Respondent's complete compliance history. That history demonstrated that Respondent knowingly ignored his obligations under the Act.

Respondent argues that the Department failed to consider the economic effect that the penalty would have on Respondent's small business. While economic impact and business size are listed penalty factors under section 18970, the Department is not required to consider them. Here, the record demonstrates that the Department considered all the information available to it in assessing the penalty amount. While Respondent argues that the economic impact will be severe, it did not produce any evidence in support of that contention. And the Department cannot be expected to assess economic impact where the Respondent does not provide any evidence of it.

### **Intentional, Reckless or Knowing**

Under most circumstances, the Department may impose an administrative civil penalty of up to \$500.00 per day, per violation. However, where a violation is "intentional, knowing, or reckless", the Department may impose an enhanced administrative civil penalty to up to five thousand dollars (\$5,000) per day. (PRC section 42993.1(a).) Here, the Department seeks to impose an enhanced penalty in connection with counts one and two, alleging that Respondent's failures to collect and remit the recycling charge and to produce relevant records were intentional, knowing or reckless.

The preponderance of the evidence here establishes that Respondent ignored its obligations to collect and remit the recycling charge and to produce relevant records to the Department. Wyatt was personally informed by the Department at the October 2020 inspection that Respondent was in violation of the Act and needed to take corrective actions, including providing records to the Department. Over the following four months, Respondent received three additional notices; each notice clearly identified Respondent's violations and Respondent's obligation to promptly rectify them. Nonetheless, Respondent did not provide records until June 2022- some sixteen months after the Department's last notice. Those records demonstrated that Design Center failed to properly collect the recycling charge for most of the sales it made from October 2020 to May 2022.

Wyatt's disregard for the Department's enforcement efforts was further displayed at hearing. On cross-examination, Wyatt affirmed that he had received the Department's Accusation and First Amended Accusation but admitted that he did not read them. (TOP p.186 L.19-25; p. 187 L 1-15.) A responsible businessperson carefully reads legal communications directed at himself and his business, but Wyatt ignored the Department's Accusations until he was directly contacted by the Department's attorney.

Wyatt disregarded the Department's instructions to correct Design Center's violations and ignored its follow-up notices. The preponderance of the evidence establishes that Respondent's failures to produce records and to collect and remit the recycling charge were intentional or reckless and therefore subject to enhanced penalties pursuant to section 42993.1 (a).

## **VI. CONCLUSION**

The Department identified significant violations at Respondent's mattress retail business and directed Respondent to correct them. Respondent ignored the Department's directions and did not correct the violations.

The penalty sought is authorized by the Act. The Department considered the totality of the circumstances in assessing the penalty amount and Respondent's violations were intentional or reckless. The economic impact of the penalty on Respondent is not required to be considered and Respondent did not provide any such evidence.

The penalty amount of \$62,068 while significant, is not constitutionally excessive.

## **VII. DECISION AND ORDER**

The Department's proposed total penalty of \$62,068, as set forth in its 'Amended Accusation' filed August 24, 2022, is sustained.

**IT IS SO ORDERED.**

DATED: 12/15/22

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