



## PROCEDURAL HISTORY

CalRecycle mailed, by certified mail, to the address previously provided by Respondent, an *Accusation* along with required documents notifying Respondent of their procedural rights, and Request for Hearing form, to Crosman on or about October 6, 2022, giving Respondent 15 (fifteen) days from the date of service to file the Request for Hearing. Respondent requested a hearing within 15 days and a hearing was scheduled with the Office of Administrative Hearings. Prior to the hearing, which was scheduled to commence on July 12, 2023, Crosman informed the Department that they would no longer oppose the *Accusation* or penalty and submitted a *Withdrawal of Request for Hearing*, on June 21, 2023. The Department responded by sending Crosman and the Office of Administrative Hearing a *Withdrawal Notice*, on June 21, 2023. The matter shall be determined to be a default pursuant to Title 14 of the California Code of Regulations (CCR) section 17949 and Government Code section 11520. CalRecycle takes action against Respondent based upon evidence and affidavits that may be used without any notice to Respondent.

## FACTUAL FINDINGS

1. During the relevant Compliance Certification measurement period, from calendar year January 1, 2019 through December 31, 2019, Crosman was a product manufacturer that was selling products packaged within RPPCs in California.
  - i. In January 2018, staff confirmed that Crosman products, “Copperhead BB’s 6000 Count” and “ASP512 Airsoft BB’s 5000 Count”, were packaged in RPPCs and offered for sale on Amazon.com.
  - ii. Staff verified in 2021 that Crosman products, specifically “Copperhead BB’s 6000 Count” were still available for purchase on Amazon.com.

2. Respondent was randomly selected for Pre-Certification and was sent a *2018 Pre-Certification Notice* on or about January 26, 2018. Respondent provided the information required in its April 23, 2018 response.
3. On March 29, 2019, CalRecycle sent Respondent a *2019 Compliance Certification Notice* via USPS certified mail. The certified mail return receipt was received, and USPS recorded the date of delivery as April 2, 2019.
4. Respondent submitted a 2019 Compliance Certification on March 3, 2020. Respondent failed to submit a complete Compliance Certification because it did not include the following necessary elements:
  - a. A statement of compliance (CCR section 17945.3(b)(2))
  - b. Signature and signatory information (CCR section 17945.3(b)).
  - c. Complete container information (CCR section 17945.3(c)).
5. CalRecycle sent a *Notice of Incomplete 2019 Compliance Certification Submission* ("*Notice of Incomplete*") letter to Respondent on July 15, 2020. CalRecycle provided Respondent 30 days to submit the required information.
6. In response to the *Notice of Incomplete*, Respondent submitted a revised 2019 Compliance Certification via email on July 16, 2020. This submission supplemented Respondents submission with 3 product and container data tables.
7. CalRecycle completed the review and analysis of the additional information and found that there was still information missing from the 2019 Compliance Certification and, on September 8, 2020, requested the missing information via email. CalRecycle also asked for the missing Signatory Page.
8. Respondent responded on September 9, 2020, by submitting an "*RPPC Certification Period – 2019 (January 1 to December 31) Statement of Non-Compliance.*"
9. Based on the email and verbal communications, and the self-certified data from Respondent, Department staff found that the Respondent failed to meet any compliance option(s) for the products held within RPPCs during the 2019 measurement period.

## LEGAL FINDINGS

10. The information set forth in paragraphs 1 through 9 are incorporated by reference as if fully set forth here.

### **Violation 1: Incomplete Compliance Certification Submission**

11. As previously noted, Respondent's March 3, 2020 certification submittal was incomplete.
12. Respondent's subsequent compliance certification, received July 16, 2020, also did not include all of the required elements.
13. Respondent's incomplete submittal significantly delayed CalRecycle's ability to determine compliance and was assigned a "major" significance factor. The degree of incompleteness was assigned as "major" because the certification was missing the weight of each RPPC for 16 product lines and the resin types for all 76 product lines reported. Respondent's delay and election to not provide the information resulted in delays in evaluating compliance and inability to accurately assess the severity of the violations, given that without the missing information the Department cannot fully evaluate the amount of packaging entering California's waste stream from Crosman's products.

Based on major significance and major degree of incompleteness, the penalty table in CCR section 17949(g), assigns a penalty of \$50,000 for this violation.

### **Violation 2: Container Noncompliance**

14. Respondent's certification did not demonstrate compliance with the law (e.g. RPPCs reported in the self-certification did not meet any of the compliance options (PRC section 42310(a) through (e))).
15. Base penalty amounts are determined by regulation; in this case, staff used the Postconsumer Material Content Compliance Option calculation (CCR section 17945.5(b)(1)) and formula from CCR section 17949(e)(1). Respondent failed to provide

a compliance calculation. Using the data provided by Respondent, staff determined a zero-percent compliance rate. Using the Calculated Compliance and Postconsumer Material Content Compliance Penalty formulas, the penalty for the violation is \$50,000, the full penalty for zero container compliance.

16. Pursuant to PRC section 42322 and CCR section 17949 (h) "An Administrative Law Judge or the Department may consider factors in modifying or reducing penalties for violations." CalRecycle has taken into consideration factors, such as, but not limited to evidence of the following:

a. Impact on diversion or sustainable markets in California:

Staff do not have evidence that Respondent made changes to come into compliance during the measurement period or subsequently thereafter.

b. Size of the product manufacturer:

Crosman is a private company with estimated annual sales of \$130 million dollars, employing approximately 335 employees.

c. Technological feasibility of compliance:

Crosman has not reported, and the Department is not aware, of any technological barriers preventing compliance.

d. Good faith efforts to comply with this Article, including compliance history:

Respondent does not have any compliance history under this program. Staff does not have any evidence that Respondent attempted to make any packaging modifications or reductions in order to comply during the measurement period, or afterward.

e. The economic advantage of not complying with this Article:

It is unclear if Respondent obtained an economic advantage or avoided costs associated with developing and using compliant containers.

## **ORDER**

Pursuant to PRC section 42322 and Government Code (GC) section 11520, THE FOLLOWING ORDER is hereby made:

Respondent, Crosman Corporation is ordered to pay a penalty of \$100,000 to the Department of Resources Recycling and Recovery within 30 days of the date of this decision.

### **RESPONDENTS' RIGHT TO FILE WRITTEN MOTION**

Pursuant to GC section 11520(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 decision shall become effective on the date signed below.

Dated this \_\_\_\_ day of July 2023.

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Rachel Machi Wagoner  
Director  
Department of Resources Recycling and  
Recovery