

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

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

**SLEEP BEDDER, LLC**

**Respondent.**

**AGENCY NO: IH23-001-MAT**

**DEFAULT ADMINISTRATIVE DECISION FOR IMPOSITION OF PENALTIES**

**(Public Resources Code Sections 42985-42994 and Title 14 California Code of Regulations Sections 18959-18964)**

**INTRODUCTION AND PROCEDURAL HISTORY**

1. The Department of Resources Recycling and Recovery (Department) served SLEEP BEDDER LLC, a California limited liability company (Respondent), an accusation in the above-captioned matter on January 26, 2023, alleging that Respondent committed multiple violations of the Used Mattress Recycling and Recovery Act (Public Resources Code (PRC) section 42985 et seq.). Pursuant to the Act and its implementing regulations (Title 14 of the California Code of Regulations (14 CCR) section 18959 et seq.), the Accusation asserts that Respondent should be penalized \$7,700 for such violations.

2. Included with the Accusation was a form for requesting a hearing (Request for Hearing) to refute the Department's allegations. Respondent was provided more than 15 days from the date of service to file a Request for Hearing.

3. Because Respondent did not file a Request for Hearing or otherwise communicate to the Department that it wishes to challenge the allegations against it, the Department issues this Default Administrative Decision for Imposition of Penalties (Decision) pursuant to the Act, 14 CCR section 18971, and Government Code section 11520.

**STATUTORY AND REGULATORY AUTHORITY**

4. The Act created the framework for an "extended producer responsibility" program for the end-of-life handling of mattresses in California. (PRC section 42985.) The Act aims to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the end-of-life management of used

mattresses, (PRC section 42985(a)(1)), while also ensuring that consumers have convenient, no-cost options available for collection or drop-off of used mattresses. (PRC sections 42985(b), 42987.1(l), 42987.1(n), 42992.) The Act authorizes the Department to certify a mattress recycling organization (MRO) to develop, finance, and implement a convenient and cost-effective program to recover and recycle used mattresses in the state. (PRC sections 42985(a)(1), 42987(a)(1).)

5. The Act requires all mattress retailers in California to do the following:

a) register with the MRO (PRC section 42987(b)(1));

b) not sell, offer for sale, or distribute a mattress in the state unless the retailer is in compliance with the Act and the manufacturer of the mattress is identified on the list of compliant manufacturers maintained on the Department's website (PRC sections 42987(c), 42993(a), 42993(d));

c) add a recycling charge to the purchase price of each mattress and remit the charge to the MRO (PRC section 42989.1(a), (b));

d) when adding the mattress recycling charge to the purchase price of each mattress, clearly display the charge as a separate line item on the invoice, receipt, or equivalent document (PRC section 42989.1(a));

e) offer consumers the option to have a used mattress picked up, at no additional cost, when their new mattress is delivered (PRC section 42992(a));

f) upon request by the Department, and as necessary for the Department to determine whether the retailer is in compliance with the Act, provide the Department with access to the retailer's facilities and operations, provide relevant records, and maintain such records for at least three years (PRC section 42993.3(a), (b)); and

g) monitor the Department's website to determine if the manufacturers or renovators of the mattresses the retailer sells are in compliance with the Act (PRC section 42993(c)).

6. There is only one certified MRO: Mattress Recycling Council, Inc. (MRC), which administers the only mattress recycling program under the Act.

7. Pursuant to PRC section 42993.1 and 14 CCR sections 18970 and 18971, the Department may impose an administrative civil penalty for violations of the Act. The Department has authority to impose an administrative civil penalty of up to five hundred dollars (\$500) per day for each violation, but, if the

violation is intentional, knowing, or reckless, the Department may impose an administrative civil penalty of up to five thousand dollars (\$5,000) per day for each violation.

### **FACTUAL FINDINGS**

8. The Department adopts the allegations of the Accusation, as reproduced below, as its factual findings in this matter. By not filing a Request for Hearing, Respondent waived its right to challenge these allegations through the informal hearing procedures outlined in the Administrative Procedure Act (Gov. Code section 11445.10 *et seq.*).

9. Respondent owns and operates an online mattress retail store under the name "Sleep Bedder," using the URL [sleepbedder.com](http://sleepbedder.com).

10. From at least as early as January 2014 through approximately 2021, Respondent also operated physical retail stores, also under the name "Sleep Bedder," including one at 2867 El Cajon Boulevard, San Diego, CA.

11. Although Respondent registered with MRC as a retailer in 2016, it has reported no sales and has remitted no recycling charges since approximately January 2017.

12. On July 16, 2021, Sonia Weksler, the sole owner of Respondent, informed the Department that it should send correspondence related to Respondent's compliance with the Act to Respondent via email at [sleepbedder@gmail.com](mailto:sleepbedder@gmail.com).

13. On August 2, 2021, the Department sent a letter via email to Respondent with the subject line "California Mattress Stewardship Law Inspection – Remote Compliance Inspection Letter of Inquiry" (Letter of Inquiry).

14. The Letter of Inquiry explained that, as part of its routine compliance evaluation efforts, the Department required Respondent to provide certain records to demonstrate that Respondent was complying with the Act. In particular, the Letter of Inquiry demanded the following records (Required Compliance Records):

- a) documentation showing that Respondent had registered with MRC;
- b) copies of three recent receipts for sales of mattresses;
- c) documentation showing that Respondent had remitted to MRC recycling charges collected during May 2021;

d) documentation or a statement demonstrating whether Respondent offers customers the option of having a used mattress picked up upon delivery of a purchased mattress;

e) documentation or a statement indicating whether Respondent complies with the requirement that it monitor the Department's website to verify that the manufacturers and renovators of mattresses offered for sale are registered with MRC, as required by the Act; and

f) a complete list of manufacturers and renovators that supply the mattresses that Respondent offers for sale.

15. Enclosed with the Letter of Inquiry were optional questionnaires for Respondent to fill out to provide statements explaining whether it was complying with the used mattress takeback and website monitoring requirements (the Optional Questionnaires).

16. Also enclosed with the Letter of Inquiry was an informational pamphlet, "California's Used Mattress Recovery and Recycling Program Enforcement Overview" (Mattress Program Enforcement Brochure), regarding the Act, its requirements, and the Department's role in enforcing it.

17. The Letter of Inquiry provided instructions for how to respond and demanded that Respondent produce the Required Compliance Records within 15 days (by August 17, 2021).

18. Respondent did not respond to the Letter of Inquiry or otherwise provide any of the Required Compliance Records.

19. On September 3, 2021, the Department sent Respondent a Notice of Violation (First Notice of Violation) via email.

20. Included with the First Notice of Violation were the Optional Questionnaires, the Mattress Program Enforcement Brochure, and an inspection report identifying seven provisions of the Act that the Department, based on Respondent's failure to respond to the Letter of Inquiry, alleged that Respondent

was violating. The notice explained that Respondent was subject to penalties of up to \$5,000 per day for such violations.

21. The violations identified in the inspection report included the failure to provide records to the Department upon request, collect the recycling charge and display it as a line item on receipts, remit recycling charges to MRC, and offer the option to have used a mattress picked up free of charge upon delivery of new mattresses.

22. The First Notice of Violation reiterated the Department's demand that Respondent provide the Required Compliance Records and set a due date of October 3, 2021 (thirty days from date of the notice).

23. On September 30, 2021, an inspector for the Department called and emailed Ms. Weksler to remind her of Respondent's obligation to respond to the First Notice of Violation.

24. Respondent did not respond to the First Notice of Violation or provide any of the Required Compliance Records.

25. On October 7, 2021, the Department sent Respondent another Notice of Violation (Second Notice of Violation) via email and courier.

26. The Second Notice of Violation included an updated inspection report, the Optional Questionnaires, and the Mattress Program Enforcement Brochure, and identified the same violations as did the First Notice of Violation. It again explained that Respondent was subject to penalties of up to \$5,000 per day and demanded that Respondent provide the Required Compliance Records, except that it required Respondent to provide all sales receipts for mattress sales between June 1 and August 31, 2021 (Additional Receipts). The notice demanded production of records by November 8, 2021.

27. Respondent did not respond to the Second Notice of Violation or otherwise provide any of the Required Compliance Records or Additional Receipts.

28. On November 19, 2021, the Department sent Respondent another notice regarding its violations of the Act (Notice of Continued Violation). The Notice of Continued Violation was sent via email and courier.

29. The Notice of Continued Violation included an updated inspection report and identified the same violations as did the previous notices. The notice again explained Respondent's obligation to provide records demonstrating that it was no longer violating the Act. It also noted that Respondent was subject to penalties of up to \$5,000 per day.

30. The Notice of Continued Violation demanded production of records by November 29, 2021.

31. Respondent did not respond to the Notice of Continued Violation or provide any of the Required

Compliance Records or Additional Receipts.

## **LEGAL CONCLUSIONS**

32. Respondent is a retailer subject to the Act's requirements because it sells and offers for sale

mattresses in California.

33. Respondent intentionally, knowingly, or recklessly violated the Act as set forth in the Accusation and below.

34. In consideration of the totality of the circumstances, including the regulatory factors listed in 14 CCR section 18970, a penalty of \$7,700 is appropriate, as further detailed below.

### COUNT I

#### **RESPONDENT FAILED TO PROVIDE THE DEPARTMENT WITH REQUESTED RECORDS, IN VIOLATION OF PRC SECTION 42993.3(a)(2).**

35. Respondent's failure to provide records in response to the Letter of Inquiry (dated August 2, 2021), First Notice of Violation (dated September 3, 2021), Second Notice of Violation (dated October 7, 2021), and Notice of Continued Violation (dated November 19, 2021) violated PRC section 42993.3(a)(2). This violation persisted throughout all times relevant to the facts described herein.

36. In light of the factors listed in 14 CCR section 18970, a penalty of \$3,100 for Respondent's continuous violation of PRC section 42993.3 is appropriate. The Department penalizes Respondent based on its continuous violation of the Act for at least 62 days, with a per-day penalty amount of \$50. The minimum basis of 62 days equals the sum of the periods during which the Department's written notices demanded that Respondent provide records so the Department could assess its compliance with the Act:

Notice	Date of Notice	Response Due Date	Duration (Days)
First Notice of Violation	September 3, 2021	October 3, 2021	30
Second Notice of Violation	October 7, 2021	November 8, 2021	32
Notice of Continued Violation	November 19, 2021	November 29, 2021	10
<b>Total</b>			<b>62</b>

### COUNT II

#### **RESPONDENT FAILED TO COLLECT AND REMIT RECYCLING CHARGES, IN VIOLATION OF PRC SECTION 42989.1**

37. Since at least as early as August 2, 2021, Respondent has sold mattresses without adding the recycling charge to the price of each mattress and showing the charge as a line item on receipts. Each such

sale has constituted a violation of PRC section 42989.1(a). 38. Even if Respondent did collect any recycling charges in compliance with PRC section 42989.1(a), it nevertheless violated PRC section 42989.1(b) because it never remitted such charges to MRC.

39. In light of the factors listed in 14 CCR section 18970, a total penalty of \$2,300 for Respondent's violations of PRC section 42989.1 is appropriate. Although Respondent began violating section 42989.1 at least as early as August 2, 2021, and continued to violate it at least through the date of the Accusation, the Department penalizes Respondent \$25 per day over the period of 92 days covered by the Additional Receipts. The Second Notice of Violation demanded the Additional Receipts so that the Department could assess Respondent's compliance with PRC section 42989.1 on each of those days (June 1, 2021, through August 31, 2021).

40. Even if there was insufficient evidence to establish violations of PRC section 42989.1, Respondent would have caused such insufficiency by intentionally not providing the Department records relevant to those violations, as described in Count I. A \$2,300 penalty is therefore appropriate either as a penalty for Respondent's intentional violation of section 42989.1 or as an additional penalty for the intentional violation of PRC section 42993.3(a)(2) set forth in Count I.

### **COUNT III**

#### **RESPONDENT FAILED TO OFFER FREE PICKUP OF USED MATTRESSES UPON DELIVERY OF NEW MATTRESSES, IN VIOLATION OF PRC SECTION 42992(a)**

41. Since at least as early as August 2, 2021, Respondent has violated PRC section 42992(a) every time it delivers a mattress because it does not offer customers the option to have a used mattress picked up.

42. In light of the factors listed in 14 CCR section 18970, a total penalty of \$2,300 is appropriate for Respondent's violations of PRC section 42992(a). Although Respondent has been violating section 42992(a) since at least as early as August 2, 2021, and continued to violate it at least through the date of the Accusation, the Department penalizes Respondent \$25 per day over the period of 92 days covered by the Additional Receipts. The Second Notice of Violation demanded the Additional Receipts so that the Department could assess Respondent's compliance with PRC section 42989.1 on each of those days (June 1, 2021, through August 31, 2021).

43. Even if there was insufficient evidence to establish violations of PRC section 42992(a), Respondent would have caused such insufficiency by intentionally not providing the Department records relevant to those violations, as described in Count I. A \$2,300 penalty is therefore appropriate either as a penalty for Respondent's intentional violation of section 42992(a) or as an additional penalty for the intentional violation of PRC section 42993.3(a)(2) set forth in Count I.

### **ORDER**

Good cause appearing, the Department acts in accordance with Government Code section 11520, subdivision (a), and orders as follows:

Respondent SLEEP BEDDER, LLC is hereby ordered to pay an administrative penalty of \$7,700 to the Department within 30 (thirty) calendar days of the date of this Decision.

### **RESPONDENT'S RIGHT TO FILE WRITTEN MOTION**

Pursuant to government code section 11520, subdivision (c), Respondent has the right to serve the Department with a written motion requesting that the decision be vacated and stating the grounds relied on:

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.

(Gov. Code section 11520(c).)

This Decision shall become effective on the date signed below.

Dated: June 5, 2023

[SIGNED]

MINDY MCINTYRE

Chief Deputy Director

Department of Resources Recycling and Recovery