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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

**In the matter of: Waste Recovery  
West Inc., TDR Stockton Property  
LLC, Owner TPID NO: 1608939  
ASSESSOR PARCEL NOS:  
193-020-44 & 193-02-046**

**Administrative Complaint for Waste Tire  
Storage Administrative Penalties  
Public Resources Code Section 42800, et seq  
Title 14 CCR Section 18420 et seq.**

INTRODUCTION

The California Integrated Waste Management Board (CIWMB) is now the California Department of Resources Recycling and Recovery (CALRECYCLE). CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public Resources Code (PRC) section 40401(a)(1).

This Administrative Complaint For Waste Tire Storage Administrative Penalties (Administrative Complaint) is issued by CALRECYCLE to Waste Recovery West, LLC, Operator; and TDR Stockton, LLC, Property Owner, (RESPONDENTS. Note: RESPONDENT used herein without modifiers refers only to Waste Recovery West, LLC.) seeking \$1,416,000.00.

Pursuant to Public Resources Code (PRC) section 42850(a), CALRECYCLE is authorized to administratively impose penalties on any person to whom civil liability may be levied. This Administrative Complaint is so issued based on the following facts.

#### STATEMENT OF FACTS

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

2. PRC section 42808 defines a WT facility as:

. . . a location, other than a solid waste facility permitted pursuant to this division that receives for transfer or disposal less than 150 tires per day averaged on an annual basis, where, at any time, WT are stored, stockpiled, accumulated, or discarded. "WT facility" includes all of the following:

(a) "Existing WT facility" means a WT facility which is receiving, storing, or accumulating waste tires, or upon which waste tires are discarded, on January 1, 1990.

(b) "Major WT facility" means a WT facility where, at any time, 5,000 or more WT are or will be stored, stockpiled, accumulated, or discarded.

(c) "Minor waste tire facility" means a WT facility where, at any time, 500 or more, but less than 5,000, WT are or will be stored, stockpiled, accumulated, or discarded. However, a "minor WT facility" does not include a tire dealer or an automobile dismantler, as defined in Sections 220 and 221 of the Vehicle Code, who stores WTs on the dealer's or dismantler's premises for less than 90 days if not more than 1,500 total used or WTs are ever accumulated on the dealer's or dismantler's premises.

(Pub. Resources Code section 42808.)

3. PRC section 42804 defines an operator as “the person responsible for the overall operation of a WT facility.”
4. PRC section 42805 defines an owner as “a person who owns, in whole or in part, a WT facility, the WT located at a facility, or the land on which a WT facility is located.”
5. Pursuant to 14 CCR section 17225.770, “Passenger Tire Equivalents’ (pte) means the total weight of altered WT, in pounds, divided by 20 pounds.”
6. 14 CCR section 17354(c) requires the “[s]torage of WTs...be restricted to individual piles that do not exceed 5,000 square feet of contiguous area. Pile width shall not exceed 50 feet. Any pile shall not exceed 50,000 cubic feet in volume or 10 feet in height.”
7. 14 CCR section 17354(f) requires “[a]ny individual WT pile...be separated from any other WT pile, combustible ground vegetation, stored used tires, WT material, or products made from tires, by a distance of at least 40 feet.”
8. 14 CCR section 17354(i) requires “[t]ires...be removed from rims immediately upon arrival at the WT facility or solid waste facility. Tires temporarily attached to rims awaiting removal shall be stored separate from other WT.”
9. Pursuant to PRC section 42850(a), “Any person who negligently violates any provision of [Chapter 16 of Part 3 of Division 30 of the PRC], or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to [Chapter 16], is liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000), for each violation of a separate provision or, for continuing violations, for each day that the violation continues.”
10. RESPONDENT is the operator of a WT facility located at 4554 South El Dorado Street, Stockton, California, 95206 (the site).
11. RESPONDENT TDR Stockton, LLC., owns the property located at 4555 South El Dorado Street, Stockton, California, 95206.

12. RESPONDENT is in possession of Major WT Facility Permit number 39-TI-1538 issued by CALRECYCLE on November 29, 2017 (permit); since then, the site plan has been updated multiple times, most recently on or about June 2018.

13. RESPONDENT TDR Stockton, LLC., signed the underlying permitting documents submitted by RESPONDENT, acknowledging that RESPONDENT TDR Stockton, LLC., is “aware that the operator intends to operate a WT facility at the site ... and understand[s] that [it] may be responsible for the site should the operator fail to meet applicable requirements.”

14. The permit allows RESPONDENT to store up to 336,300 WT/pte at the site. Of that 336,300 WT/pte, specific condition 15a., of the permit allows RESPONDENT to store up to only 40,000 whole tires.

15. During a routine inspection of the site, on September 8, 2022, as documented in WT Facility Inspection Report (IR) IW-1919905, CALRECYCLE inspectors observed 378,007 WT/pte including 91,554 whole tires, as well as WT piles that exceeded 10 feet in height by 50 feet in width, WT piles along the eastern perimeter fence that were not separated from other WTs or materials by the distance authorized by 14 CCR section 17354(f), and tires stored on rims. CALRECYCLE issued Notices of Violations (NOV) to RESPONDENT for not complying with the terms of the permit, and for not complying with 14 CCR section 17354(c) and 17354(f).

16. During a follow-up inspection of the site on October 25, 2022, as documented in IR IW-1921207, CALRECYCLE inspectors observed 487,233 WT/pte including 107,631 whole tires, as well as WT piles that exceeded 10 feet in height and 50 feet in width, WT piles along the eastern perimeter fence that were not separated from other WTs or other materials by the distance authorized by 14 CCR section 17354(f), and tires stored on rims.

CALRECYCLE issued NOVs to RESPONDENT for not complying with the terms of the permit, and for not complying with 14 CCR sections 17354(c), 17354(f) and 17354(i.)

17. On November 7, 2022, CALRECYCLE issued correspondence to RESPONDENTS notifying the parties of the previous NOVs and advising them that if the violations were not promptly corrected further action CALRECYCLE would issue a Clean Up and Abatement Order to them.

18. During a follow-up inspection of the site on December 8, 2022, as documented in IR IW-1922470, CALRECYCLE inspectors observed 549,597 WT/pte including 75,298 whole tires, as well as WT piles that exceeded 10 feet in height and 50 feet in width, and WT piles along the eastern perimeter fence that were not separated from other WTs or materials by the distance authorized by 14 CCR section 17354(f). CALRECYCLE issued NOVs to RESPONDENT for not complying with the terms of its permit, and for not complying with 14 CCR section 17354(c), and 17354(f).

19. During a follow-up inspection of the site on February 9, 2023, and documented in IR IW-1924869, CALRECYCLE inspectors observed 330,349 WT/pte onsite including 92,824 whole tires, as well as WT piles that exceeded 10 feet in height and 50 feet in width, WT piles directly next to other WT piles and not separated by the distance authorized by 14 CCR section 17354(f), and tires stored on rims. CALRECYCLE issued NOVs to RESPONDENT for not complying with the terms of its permit, and for not complying with 14 CCR section 17354(c), 17354(f) and 17354(i.) Note, IR IW-1924869 superseded IR IW-1924378 to correct NOVs and better inform RESPONDENT of the violations observed at the site.

20. During a follow-up inspection of the site on March 28, 2023, and documented in IR IW-1925969, CALRECYCLE inspectors observed 432,290 WT/pte onsite, including 76,217 whole tires, as well as WT piles that exceeded 10 feet in height and 50 feet in width, WT

piles directly next to other WT piles and not separated by the distance authorized by 14 CCR section 17354(f), and tires stored on rims. CALRECYCLE issued NOVs to RESPONDENT for not complying with the terms of its permit, and for not complying with 14 CCR section 17354(c), 17354(f) and 17354(i.)

21. On April 5, 2023, CALRECYCLE served RESPONDENTS with Cleanup And Abatement Order number 2023-102251-CAO (CAO). The CAO required RESPONDENTS to remove all waste tires in excess of 40,000 whole tires and 336,000 pte within 10 business days.

22. During a follow-up inspection of the site on April 25, 2023, and documented in IR IW - 1927651, CALRECYCLE inspectors observed 454,113 WT/pte onsite including 61,721 whole tires, as well as WT piles that exceeded 10 feet in height and 50 feet in width, WT piles directly next to other WT piles and not separated by the distance authorized by 14 CCR section 17354(f), and tires stored on rims. CALRECYCLE issued NOVs to RESPONDENTS for not complying with the terms of the permit, and for not complying with 14 CCR section 17354(c), 17354(f) and 17354(i.)

23. During a follow-up inspection of the site on June 29, 2023, and documented in IR IW- 1930304, CALRECYCLE inspectors observed 132,507 WT/pte onsite including 81,882 whole tires, as well as WT piles that exceeded 10 feet in height and 50 feet in width, WT piles within 14 feet of other WT piles and not separated by the distance authorized by 14 CCR section 17354(f), and tires stored on rims. CALRECYCLE issued NOVs to RESPONDENTS for not complying with the terms of the permit, and for not complying with 14 CCR section 17354(c), 17354(f) and 17354(i.)

24. Based on multiple conversations and email communications with RESPONDENT, CALRECYCLE has been made aware that the violations observed during the above-referenced inspections continued on the days in between inspections.

ALLEGATIONS OF SPECIFIC VIOLATIONS

ACCESSIBILITY-MODIFIED DOCUMENT

25. On at least 20 separate occasions, RESPONDENTS violated the conditions set forth in the permit, specifically the condition that specified RESPONDENT was allowed to store no more than 330,000 WT/pte at the site.

26. On at least 86 separate occasions RESPONDENTS violated the conditions of the permit, specifically condition 15a that specifies RESPONDENT can store no more than 40,000 whole tires at the site.

27. On at least 86 separate occasions RESPONDENTS violated 14 CCR section 17354(i) for failing to remove rims from tires at the site immediately upon the arrival of tires.

28. On at least 86 occasions RESPONDENTS violated 14 CCR section 17354(f) for failing to maintain WT piles at the site separate from other WTs and material as required by the regulation.

29. On at least 86 occasions RESPONDENTS violated 14 CCR section 17354(c) for storing WT in piles at the site exceeding the size set by that regulation.

#### PENALTIES

30. As stated above, CALRECYCLE's authority to assess administrative penalties against RESPONDENTS for negligent storage violations set forth is set forth in PRC section 42850(a) which authorizes civil penalties of "not less than \$500 or more than \$5,000, for each violation of a separate provision or, for continuing violations, for each day that the violation continues."

31. 14 CCR section 18429 sets specific penalties within the range set forth in PRC section 42850, for specific violations of WT storage laws.

32. CALRECYCLE has applied the range set forth in PRC section 42850(a), in conjunction with the specific penalties authorized by 14 CCR section 18429 in reaching appropriate penalties for RESPONDENTS. 33. As required by PRC section 42852, in determining an appropriate administrative penalty for RESPONDENTS, CALRECYCLE has also taken into

consideration, “the nature, circumstances, extent, and gravity of the violation, the violators past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety of the environment come on the violator 's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as whole.”

34. 14 CCR section 18429, authorizes penalties of not less than \$500 or more than \$5,000, for each violation of a separate provision of 14 CCR section 17354, for continuing violations, for each day that the violation continues.

35. 14 CCR section 18429 Table 2 authorizes penalties of up to \$3,000 for each day for each violation of storing WT in excess of the permitted amount.

36. For the 86 days of violations of 17354(c), 17354(f) and 17354(i), CALRECYCLE has deemed a penalty of \$5,000 per day per violation appropriate, in accordance with 14 CCR section 18429. The total penalties for these violations, so far, is \$1,290,000.

37. For the 20 days of violations of the permit term specifying the amount of WT allowed on site, CALRECYCLE has deemed a penalty of \$3,000 per day appropriate, in accordance with 14 CCR section 18429. In calculating this amount CALRECYCLE has determined that RESPONDENTS exceeded their capacity onsite by more than 50,000 WT, and that a risk factor of 1 is appropriate. The total penalty for this violation, so far, is \$60,000.

38. For the 86 days of violations of the permit term 15a, specifying the amount of whole WT allowed onsite, CALRECYCLE has calculated the first 20 days as part of the penalty for violations related to RESPONDENTS exceeding their overall permissible WT count, and is not seeking a separate penalty for those days. For the remaining 66 days, CALRECYCLE deems a penalty of \$1,000 per day appropriate. CALRECYCLE has taken into consideration the penalty range provided by PRC section 42850(a), and, notwithstanding that RESPONDENTS' failure to comply with this permit term is a separate violation worthy of

separate penalties, CALRECYCLE has taken into account such factors as a large portion of RESPONDENTS' whole tires are also on rims or stored in piles that exceed size limits or separation requirements, and therefore also included in other penalty calculations. The total penalty for this violation, so far, is therefore \$66,000.

39. Based on the foregoing paragraphs, CALRECYCLE hereby requests WT storage penalties be assessed against RESPONDENTS, jointly and severally, in the sum of \$1,416,000.00.

40. CALRECYCLE reserves the right to amend this Administrative Complaint to seek additional penalties for any ongoing violations.

#### RIGHT TO A HEARING

You are hereby notified that pursuant to the provisions of PRC sections 42851 and 42961.1 that you are entitled to a hearing to refute the allegations against you contained in this Administrative Complaint. If you wish to have a hearing on this matter, you must complete and return the enclosed REQUEST FOR HEARING/ NOTICE OF DEFENSE to our Legal Office within 15 days of receipt of this Administrative Complaint. Failure to complete and return the REQUEST FOR HEARING/NOTICE OF DEFENSE within 15 days will be deemed a waiver of your right to a hearing.

Pursuant to the above-referenced PRC and Government Code sections, discovery requests by any party must be made within 30 days after the service of this Administrative Complaint.

Dated this 5<sup>th</sup> day of September 2023

HEATHER L. HUNT  
Attorney for  
Department of Resources Recycling and  
Recovery (CALRECYCLE)