

TY D. MOORE SBN 262374
Attorney for Complainant
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
1001 I Street, 24th Floor
P. O. Box 4025
Sacramento, CA 95812-4025
Telephone: (916) 341-6756
Facsimile: (916) 319-7238

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

In the matter of:

Truck-Lite Co., LLC (Truck-Lite)

RESPONDENT

**STIPULATION FOR THE ISSUANCE
OF ADMINISTRATIVE DECISION
FOR THE IMPOSITION OF RIGID
PLASTIC PACKAGING
CONTAINER ADMINISTRATIVE
PENALTIES**

**PUBLIC RESOURCES CODE
SECTION 42300, ET SEQ.**

AGENCY NO: 2024-002-RPPC

INTRODUCTION AND PROCEDURAL HISTORY

This STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR THE IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE PENALTIES (hereinafter "Stipulation") is entered into by the Parties, California Department of Resources Recycling and Recovery (CALRECYCLE) and Truck-Lite Co., LLC (TRUCK-LITE). TRUCK-LITE was selected to demonstrate compliance under the Rigid Plastic Packaging Container (RPPC) Program, by providing RPPC Compliance Certification (Compliance Certification or Certification) for the 2021 Measurement Period. Following receipt of TRUCK-LITE's submission, staff determined that TRUCK-LITE was noncompliant and potentially subject to penalties for violations of Public Resources Code (PRC) sections 42300 through 42345 and Title 14 of the California Code of Regulations (CCR) sections 17944(a) and 17945.2. CALRECYCLE sent a Notice of Violation to TRUCK-LITE and both parties are seeking to settle its violations, without adjudication via the administrative hearing process. This Stipulation resolves all issues raised regarding the alleged noncompliant 2021 RPPC Compliance Certification, in exchange for an immediate payment of Five Thousand Dollars (\$5,000.00) payable within 30 calendar days of execution of this Stipulation and Penalty

in Abeyance of Forty-Five Thousand Dollars (\$45,000.00) which may be forgiven in part or completely if TRUCK-LITE achieves the Progress Incentives described herein. Failure to achieve the described requirements would require payment of the Penalty in Abeyance as described.

STIPULATED STATUTORY AND REGULATORY AUTHORITY

1. PRC section 42300 et seq. and CCR section 17943 et seq. provides the supporting authority for this Stipulation.
2. PRC section 42301 and CCR section 17943 provide definitions that directly apply to the implementation and enforcement of the law. Key definitions used within this Stipulation include the following:
 - a. PRC section 42301(e), states a "Manufacturer" is defined as, "the producer or generator of a product that is sold or offered for sale in the state and that is stored inside of a rigid plastic packaging container."
 - b. CCR section 17943(k) states a "Measurement Period" "means the calendar year for which compliance is being determined as part of the certification or auditing process described in sections 17945.1, 17945.2, 17945.3, 17945.5, 17947, and 17948.1 of this Article. For products introduced for sale in California after January 1 of a measurement period, their first measurement period shall be the remainder of that calendar year."
 - c. PRC section 42301(g), states "'Postconsumer material' means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process."
 - d. PRC section 42301(f), states a "Rigid plastic packaging container" is defined as, "any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state."
 - e. CCR section 17943(ae) states "Sold or Offered for Sale" "means direct sales, retail sales, and remote sales such as through distributors, wholesalers and the internet."
3. CCR Section 17943(af) states a "Source Reduced Container" is defined, in part, as;
 - "(1) A rigid plastic packaging container whose container weight per unit or per number of product uses has been reduced by 10 percent when compared with one of the following:
 - (A) The rigid plastic packaging container used for the product by the product manufacturer as of January 1, 1995.

(B) The rigid plastic packaging container used for the product by the product manufacturer over the course of the product's first full year of commerce in California.

(C) The rigid plastic packaging container used in commerce during the same year for similar products in similar rigid plastic packaging containers by the product manufacturer or other product manufacturers that are held by "particular type rigid plastic packaging containers," as defined in this Article, whose containers have not been considered source reduced.

(2) A rigid plastic packaging container is not a source reduced container for the purposes of this Article if the reduction was achieved by any of the following:

(A) Substituting a different material type for a material that previously constituted the principle material of the container."

4. PRC section 42310, states that "Except as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of the following criteria:

- a. Be made from 25 percent postconsumer material.
- b. Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container or a single resin type of rigid plastic packaging container, as demonstrated to the board by the product maker, container manufacturer, or other entity. The board may take appropriate action to verify the demonstration, but the board is not required to expend state funds to conduct a survey or calculate the rate.
- c. Be a reusable package or a refillable package.
- d. Be a source reduced container.
- e. Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years."

5. Additionally, PRC section 42310.3 provides manufacturers an alternative compliance option. A manufacturer can demonstrate compliance if the manufacturer consumed postconsumer material generated in the state in the manufacture of a RPPC or other plastic products or plastic packaging in an amount equivalent to, or exceeds the postconsumer material that the rigid plastic container is otherwise required to contain. This criteria and requirements for meeting this alternative compliance option are outlined in the RPPC regulations (CCR section 17945.3(e)).

6. Pursuant to PRC section 42325, CALRECYCLE has authority to adopt regulations which include but are not limited to procedures for product manufacturers to certify compliance. The regulations require the submittal of a compliance certification. Within the certification, the product manufacturer claims that the RPPCs holding their products meet one of the compliance criteria, identified above, or meet the alternative

compliance option, and reports specific container data and supporting information for the compliance option claimed.

7. CCR section 17945.2 requires the following during compliance certification;

- “(a) Product manufacturers, upon written notification from CALRECYCLE, are required to certify to CALRECYCLE that all of the rigid plastic packaging containers holding their products sold or offered for sale in California comply with the rigid plastic packaging container requirements, pursuant to Public Resources Code Section 42310 or 42310.3. Product manufacturers shall submit the information described in Section 17945.3 in their certifications.
- (b) Container manufacturers’ certifications provided to product manufacturers shall include the information described in Section 17945.4.
- (c) A product manufacturer’s completed certification, including any applicable container manufacturer certifications, must be postmarked or sent electronically no later than April 1 of the calendar year immediately following the measurement period.
- (d) Prior to the end of the measurement period, a product manufacturer may request an extension for submittal of its certification of up to 30 calendar days for cause. An extension may be granted by CALRECYCLE only if the product manufacturer provides documentary evidence to justify an extension based on criteria such as corporate acquisitions, corporate reorganizations, difficulty obtaining container information, or catastrophic acts of God, or other criteria deemed acceptable upon CALRECYCLE’s evaluation.
- (e) If CALRECYCLE receives a certification that, upon review, does not include all of the information required by this Article, CALRECYCLE will notify the product manufacturer and state what additional information or documentation is required. The product manufacturer will then have 30 calendar days after receipt of the notice to provide the required information or documentation. One 30-calendar day extension may be granted for cause by CALRECYCLE upon request.
- (f) At any time, CALRECYCLE may request information from a product manufacturer outside of any notice of incomplete certification. In such cases, CALRECYCLE shall mail a written request, and the product manufacturer shall have 60 calendar days following the date of receipt of the request to supply the information.”

8. CCR section 17945.3(a) requires that a product manufacturer include in its certification the information listed in subsections (b) through (d), and if applicable, subsection (e).

- a. CCR section 17945.3(b) requires information necessary to identify and contact the product manufacturer, a statement regarding whether products were sold in California along with whether products were approved for a waiver or qualified for statutory exemptions, and a requirement that all corporate entities providing certification must identify the individual submitting the certification and be signed under the following statement, "I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the foregoing information and all supporting data provided is accurate, true and complete."
- b. CCR section 17945.3(c) requires the product manufacturer to provide details about products sold in RPPCs, including specific details regarding the physical characteristics of the packaging containers and sales data.
- c. In addition to data reporting requirements in this section, CCR section 17945.3(d) requires that manufacturers identify their chosen method of compliance (options previously noted under PRC sections 42310, 42310.3 and CCR sections 17944 and 17944.1) and submit information specific to the container compliance option(s) claimed.

9. CCR section 17945.4(a) requires that container manufacturers provide, to the product manufacturer, information including contact information for the entity that manufactured the packaging in addition to information regarding the type of container (jar, bottle, clamshell, etc.) weight, percentage of postconsumer content, and/or any reduction in the RPPC weight. Subsection (b) requires this information to be submitted under penalty of perjury.

10. CCR section 17945.5(a) requires that a product manufacturer use the compliance option formulas listed in subsections (b) through (f) to calculate its claim of compliance.

11. Pursuant to CCR Section 17943(q) "Postconsumer Material (PCM)" means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle." However, per subsection (3) of that definition, "Postconsumer material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process."

12. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE is authorized to impose fines and penalties on manufacturers who violate any provision of the RPPC law.

13. CCR section 17949(e) states, "When product manufacturers do not comply with the rigid plastic packaging container requirements in Sections 17945.3 and 17945.5 ... CALRECYCLE will calculate penalties using the data from the approved compliance certifications and the following formulas" (penalty formulas as listed in 1 through 5 of CCR section 17949(e)).

14. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE has authority to impose Fifty Thousand Dollars (\$50,000) penalty for each violation; total annual fines and penalties assessed cannot exceed One Hundred Thousand Dollars (\$100,000), on a manufacturer who violates provisions of the RPPC law within a calendar year.

GROUND FOR ADMINISTRATIVE ACTION

15. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE is authorized to impose fines and civil penalties on manufacturers who violate any provision of the RPPC law, up to a maximum of One Hundred Thousand Dollars (\$100,000.00).

ALLEGED VIOLATIONS AND BASIS FOR SETTLEMENT

16. During the relevant Compliance Certification measurement period, from calendar year January 1, 2021 through December 31, 2021, TRUCK-LITE was a product manufacturer that was selling products packaged within RPPCs in California, as indicated above.

17. TRUCK-LITE was selected for Pre-Certification and was sent a *2020 Pre-Certification Notice* on or about January 30, 2020. TRUCK-LITE provided the information required in its February 20, 2020 response.

18. On March 24, 2021, CALRECYCLE sent TRUCK-LITE a *2021 Compliance Certification Notice* via USPS certified mail.

19. TRUCK-LITE submitted a 2021 Compliance Certification on March 3, 2022. TRUCK-LITE reported 22 products sold in RPPC containers. TRUCK-LITE used the Source Reduction (Reduced Container Weight) and Postconsumer Material Content compliance option templates in its submission, reporting 60% postconsumer material (PCM) content in 21 container lines and source reduction in 1 container line. The TRUCK-LITE submission included a flow chart illustrating the path of "Recycled Material".

20. CALRECYCLE identified the following violations based on the TRUCK-LITE submission:

- a. A flow chart provided as part of the submitted compliance certification supporting documentation indicated that TRUCK-LITE counted in its compliance calculations material ineligible to be counted as PCM, because they were "materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process" (CCR Section 17943(q)(3)), was counted in TRUCK-LITEs calculations.
- b. The Source Reduced container, a 32 oz. tub, was found to have switched resins (prohibited per CCR Section 17943 (af)(2)(A)), and was therefore ineligible to be considered as a source reduced container.

21. TRUCK-LITE did not demonstrate that its packaging met the compliance options during the measurement period and is therefore in violation of the rigid plastic packaging container requirements PRC Section 42310 and CCR Sections 17944, 17945.2, 17945.3, 17945.4 and 17945.5.

STIPULATED PENALTY AND SETTLEMENT TERMS

22. TRUCK-LITE stipulates to paying a Penalty of Five Thousand Dollars (\$5,000.00) payable within 30 calendar days of execution of this Stipulation, with a Penalty in Abeyance of Forty-Five Thousand Dollars (\$45,000.00). Payments shall be satisfied in the following manner;

- a. All payments shall be made and mailed to the Department of Resources Recycling and Recovery (CALRECYCLE), Fiscal Services Branch, at 1001 I Street, PO Box 4025, MS 19A, Sacramento, CA 95812-4025, by certified mail. Within the memo field the following shall be included "Agency No: 2024-002-RPPC". TRUCK-LITE will maintain the receipt as evidence of compliance.
 - i. If any payment from TRUCK-LITE is not mailed to CALRECYCLE by the due date, TRUCK-LITE shall be found in full Default.

Initial Penalty Payment

- b. TRUCK-LITE shall make an initial payment for penalties in the amount Five Thousand Dollars (\$5,000.00) within thirty (30) calendar days of execution of this Stipulation.
- c. If TRUCK-LITE fails to pay the Five Thousand Dollars (\$5,000.00) due within thirty (30) calendar days of the execution of this Stipulation, CALRECYCLE will follow the Default procedures described below.
 - i. If TRUCK-LITE does not make its payment within thirty (30) days, TRUCK-LITE will exclusively be held in default and assumes liability for all monetary penalties including the abeyance amount of Forty-Five Thousand Dollars (\$45,000.00) under this Stipulation, immediately due as described above.

First Progress Incentive

- d. TRUCK-LITE may submit evidence by October 1, 2024 of implementing efforts, for all product lines sold in California, including those previously reported in its 2021 Container Compliance Certification, demonstrating that they have implemented efforts to convert to fully compliant packaging as of January 2024. The documentation should include, but is not limited to, certification from the container manufacturer for each packaging line used in California.

- i. Based on CALRECYCLE's review, should TRUCK-LITE have demonstrated that for all product lines sold in California, including its reported 2021 packaging, has implemented efforts by January 1, 2024, to convert to fully compliant packaging, CALRECYCLE will forgive Fifteen Thousand Dollars (\$15,000.00) of the Penalty in Abeyance. Should CALRECYCLE find TRUCK-LITE has not demonstrated implementing efforts as described above, CALRECYCLE will provide written notice to TRUCK-LITE before December 31, 2024. Upon receipt of notice, payment of Fifteen Thousand Dollars (\$15,000.00) shall be made by TRUCK-LITE to CALRECYCLE within thirty (30) days from the date of notice.
- ii. If TRUCK-LITE fails to submit evidence by October 1, 2024 of implementing efforts to convert all product lines sold in California, including its reported 2021 packaging as of January 1, 2024, then payment of Fifteen Thousand Dollars (\$15,000.00) of the Penalty in Abeyance shall be made to CALRECYCLE by October 31, 2024 or it is in full default of this settlement agreement and shall pay the entire Penalty held in Abeyance.

Second Progress Incentive

- e. TRUCK-LITE may submit evidence by December 1, 2024, that they have implemented efforts to transition all RPPC product packaging to packaging that does not meet the definition of a RPPC ("non-RPPC packaging"). The documentation should include, but is not limited to, a description of the packaging and transition that has been fully implemented along with photographic examples of the new non-RPPC packaging being used.
- i. Based on CALRECYCLE's review, should TRUCK-LITE have demonstrated it has transitioned all products sold in California into non-RPPC packaging, CALRECYCLE will forgive the entire remaining Penalty in Abeyance and the Third Progress Incentive requirement is Not Applicable. Should CALRECYCLE find TRUCK-LITE has not demonstrated the transition as described above, it will provide written notice to TRUCK-LITE before February 1, 2024. Upon receipt of notice, payment of Fifteen Thousand Dollars (\$15,000.00) of the Penalty in Abeyance shall be made to CALRECYCLE within thirty (30) days from the date of notice.

Third Progress Incentive

- f. If TRUCK-LITE fails to meet the requirements of the Second Progress Incentive, including receipt of notice that CALRECYCLE finds that TRUCK-LITE has not demonstrated the transition described under the Second Progress Incentive, TRUCK-LITE agrees to participate in the 2025 Compliance Certification. Upon notification by CALRECYCLE, TRUCK-LITE shall follow CALRECYCLE's instructions regarding submittal of the

2025 Compliance Certification, as set forth in PRC section 42300 et seq. and CCR section 17945.2 et seq., and demonstrate that TRUCK-LITE products individually or collectively meet one of the compliance options described under the law. Failure to demonstrate compliance with the requirements in the program's statutes and regulations will result in payment of the remaining Fifteen Thousand Dollars (\$15,000.00) of the Penalty in Abeyance, as described in the following subsection of this agreement.

- g. TRUCK-LITE agrees to be liable for Fifteen Thousand Dollars (\$15,000.00), which shall be stayed and held in abeyance until 2026 or CALRECYCLE issues a Notice of Violation for TRUCK-LITE's 2025 Compliance Certification, prior to January 1, 2027, and TRUCK-LITE is found to be in violation after exercising its rights under law, if any, or otherwise settles such violation with CALRECYCLE;
 - i. If TRUCK-LITE fails to submit a 2025 Compliance Certification, the Default procedures will result, as described below, and CALRECYCLE will demand payment of the Fifteen Thousand Dollars (\$15,000.00) Penalty held in Abeyance by April 30, 2026.
 - ii. If TRUCK-LITE submits a 2025 Compliance Certification and is found noncompliant, TRUCK-LITE will pay the Fifteen Thousand Dollars (\$15,000.00) Penalty held in Abeyance. Upon final resolution of a Notice of Violation from CALRECYCLE issued prior to January 1, 2027, provided that TRUCK-LITE is found to be in violation after exercising its rights under law, if any, or otherwise settles such violation with CALRECYCLE.
 - iii. This Stipulation shall serve as CALRECYCLE's Pre-Certification and Certification Notifications required by CCR sections 17945.1(b)(1) and (d)(2).
 - iv. If TRUCK-LITE fails to demonstrate compliance in the 2025 Compliance Certification Measurement Period, or any future RPPC Program Compliance Certification, CalRecycle reserves the authority to pursue a separate enforcement action against TRUCK-LITE, seeking additional penalties for violations with the RPPC law, following the process described in statute and regulations, not limited in any manner by this Stipulation, and TRUCK-LITE retains all rights to contest such enforcement.

Penalty in Abeyance

- h. TRUCK-LITE agrees to be liable for any part of the Penalty in Abeyance which was not previously forgiven by CALRECYCLE or paid by TRUCK-LITE. The Penalty in Abeyance shall be stayed and held in abeyance until January 1, 2027, or CALRECYCLE issues a Notice of Default;
 - i. If TRUCK-LITE fails to notify CALRECYCLE regarding changes to contact information, CALRECYCLE may issue a finding of Default, and

CALRECYCLE may demand payment of some, or all, of the Penalty in Abeyance that was not previously forgiven or paid.

- ii. Otherwise, the stayed penalty held in abeyance shall be deemed terminated on January 1, 2027, and shall not be paid by TRUCK-LITE to CALRECYCLE unless CALRECYCLE previously issued a Notice of Default as described below.

23. TRUCK-LITE is designating Gina Capua, Executive Vice President and General Counsel of Clarence Technologies, the parent company of Truck-Lite, who can be reached via email at gcapua@clariencetechnologies.com, or by telephone at 248-846-8128, to be the single point of contact for communication between TRUCK-LITE and CALRECYCLE through January 1, 2027. The point of contact shall be responsible for all communications with CALRECYCLE regarding implementing the RPPC law, including but not limited to technical assistance, pre-certification and compliance certification notifications and responses, and discussion and questions regarding what qualifies as an RPPC. The point of contact shall respond to CALRECYCLE's requests for information in compliance with this Stipulation, their Pre-Certification or Compliance Certification, and the RPPC law within fifteen (15) business days of any request for information or clarification by CALRECYCLE. If the above point of contact or that individual's information changes, TRUCK-LITE shall notify CALRECYCLE within twenty (20) business days of the change.

24. With respect to any Notice of Default regarding TRUCK-LITE's failure to maintain an accurate single point of contact, TRUCK-LITE shall have twenty (20) business days from the date of the issuance of the Notice of Default to cure that default, by providing that information to CALRECYCLE via certified mail communication.

Default

25. If CALRECYCLE believes that TRUCK-LITE has defaulted under any of the terms of this Stipulation, CALRECYCLE shall send a Notice of Default to TRUCK-LITE; said Notice of Default shall state the paragraphs or provisions of the Stipulation of which TRUCK-LITE is believed to be in default.

26. After issuing a Notice of Default and reviewing any evidence or information provided by TRUCK-LITE, CALRECYCLE shall issue a Supplemental Decision with its determination as to whether there has been a Default by TRUCK-LITE and if so, the penalty which is due.

Miscellaneous

27. TRUCK-LITE acknowledges that on June 30, 2022, California's Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54, Allen, Chapter 75, Statutes of 2022) was enacted. This statute addresses single-use packaging and plastic food service ware. Implementing regulations for California Plastic Pollution Prevention and Packaging Producer Responsibility Act are in the formal rulemaking process.

Clarience Technology, LLC the parent company of TRUCK-LITE will sign-up, for the listserv to follow the rulemaking on behalf of TRUCK-LITE and all of its other products and subsidiaries. As shared by CALRECYCLE, both Clarience Technology, LLC and TRUCK-LITE understands that California's Plastic Pollution Prevention and Packaging Producer Responsibility Act, by year 2032, will require producers of covered plastic material to source reduce by 25% and reach a recycling rate of 65% for covered plastic material, and requires 100% of covered material to be recyclable or compostable.

28. Attorney's Fees and Costs: Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from each Party's own counsel in connection with the matters set forth herein.

29. Interpretation: This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

30. Waiver of Right to Administrative Hearing: TRUCK-LITE acknowledges that it understands that it is entitled to an Administrative Hearing on the merits of this matter, pursuant to PRC section 42322 and Government Code section 11506 and has procedural rights under Government Code sections 11507.5, 11507.6, and 11507.7, and is voluntarily waiving these rights and the right to contest this matter in an Administrative Hearing as part of this Settlement.

31. Waiver of Right to Petition or Appeal: The Parties hereby waive their rights, if any, to petition for writ of administrative mandate in the California Superior Court or to appeal to a California Superior Court and/or any California appellate level court.

Dated: _____

Mindy McIntyre
Chief Deputy Director
Department of Resources Recycling and
Recovery (CalRecycle)

Dated: _____

Gina Capua
Executive Vice President and General
Counsel of Clarience Technologies