

**BEFORE THE
DEPARTMENT OF RESOURCES, RECYCLING & RECOVERY
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF:

Andrade Recycling, Inc – Maria Ermelinda Saenz Gonzalez

Address: 6072 Etjwanda Ave, Jurupa Valley, CA

Type of Entity: Application Denial

File No.: IH21-001-BCR

Certificate No.: CN740454

PRECEDENTIAL DECISION No.: 23-05

**Designation of decision as precedential under Government
Code Section 11425.60**

Pursuant to Government Code Section 11425.60, the Department of Resources, Recycling and Recovery hereby designates as precedential its decision, dated June 29, 2021, in the above-referenced action.

This decision is designated precedential effective September 10, 2023,
Sacramento, California.

Dated: September 10, 2023.

As approved by Rachel Machi Wagoner on September 10, 2023,
Department of Resources, Recycling & Recovery.

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

IN THE MATTER OF:)	File No. IH21-001-BCR
)	
ANDRADE RECYCLING, INC.)	
CN740454)	
)	DECISION AND ORDER
MARIA ERMELINDA SAENZ GONZALEZ)	
)	
RESPONDENT.)	
)	

I. INTRODUCTION

The Division of Recycling (Division) of the Department of Resources Recycling and Recovery (Department or CalRecycle) issued a notice to Maria Ermelinda Saenz Gonzalez and Andrade Recycling, Inc. (Respondent) dated February 1, 2021, denying Respondent's application for certification to operate a recycling center at 6072 Etiwanda Avenue in Jurupa Valley, California.

Respondent filed a timely request for hearing on the application denial pursuant to Title 14, section 2130 of the California Code of Regulations (CCR).

A hearing was conducted on May 11 and May 28, 2020, in Sacramento, California via video-conferencing. On those dates, all evidence and testimony in this matter was received into the record.

Linda Nueva, Senior Staff Counsel, CalRecycle, appeared on behalf of the Division. John Gugliotta, 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 Division's decision to deny Respondent's application for certification to operate a recycling center shall be sustained, modified, or reversed.

III. EVIDENTIARY MATTERS

Witnesses

The Division presented testimony from three witnesses. Judy Garcia (Garcia) is an Associate Governmental Program Analyst for the Division responsible for conducting on-site inspections and record reviews of certified recycling centers. Garcia reviewed the purchase receipts and daily summaries from one of Respondent's certified recycling

1 centers- RC247712.001, located in Covina, California (Covina RC). She also
2 conducted an on-site inspection of the Covina RC on July 27 and 28, 2020.

3 The Division presented testimony from Lin Xu (Xu), Division employee. Xu testified that
4 the Division has an agreement with the Department of Motor Vehicles (DMV) by which
5 the Division may request vehicle registration information. The Division provides license
6 plate numbers and drivers' names on the DMV form titled "Law Enforcement Request
7 for Vehicle or Vessel Registration Information." The DMV then completes and returns
8 the form to the Division, indicating whether the information provided matches the
9 records in its vehicle registration database. Xu has regularly made such requests to the
10 DMV on behalf of the Division over the past ten years, including in connection with
11 receipts produced by the Covina RC.

12 The Division presented testimony from Jason Pagan (Pagan), Division supervisor for
13 the Northern and Southern California Inspection units. Pagan testified generally to the
14 Division's procedures in issuing NOVs and specifically regarding NOVs issued to
15 Respondent.

16 Maria Gonzalez (Gonzalez) testified on behalf of Respondent.

17
18 Evidentiary Objections

19
20 Notices of Non-Compliance

21 Respondent objects to the Hearing Officer's consideration of Notices of Non-
22 Compliance (NONC) in support of this Decision. A NONC is a warning sent to a
23 certified-operator that a violation of the Act or Regulations has occurred at one of its
24 certified entities. It carries no monetary penalty and the operator is not provided an
25 opportunity to request a hearing to challenge its findings. It is the Division's practice to
26 issue NONCs for first-time violations only. Repeat violations are assessed a penalty via
27 a Notice of Violation (NOV)¹.

28 Here, several NONCs were admitted into the record as Official Documents² although
29 they were not supported by the testimony of the issuing-inspector or other evidence³.
30 These NONCs will not be considered because there is an inadequate foundation to
31 assess their reliability and Respondent was not provided an opportunity to challenge the
32 NONCs at their time of issue.

33 However, the NONC issued on May 26, 2020⁴, was supported by the testimony of the
34 issuing-inspector (Garcia) and will be considered.

35
36 Notices of Violation

37 Respondent objects to consideration of Notices of Violation (NOVs). An NOV is a
38 recording of inspectors' observations in the field whereby violations are cited and
39 assessed a civil penalty. Since an NOV assesses a penalty, it must meet certain
40 procedural requirements, including informing the respondent of her right to a hearing
41

42
43 ¹ Second-time penalties carry a \$100 penalty, increasing to \$250, \$500, \$750, and \$1,000 for third, fourth, fifth, and
44 sixth violations, respectively.

45 ² Evidence Code section 1280 provides that certain writings by public employees are not made inadmissible by the
46 hearsay rule.

47 ³NONCs issued on September 8, 2020 (Exhibit 4, page 139), August 23, 2019 (Exhibit 4, pages 141-142), and July
48 19, 2018 (Exhibit 4, page 145).

⁴Exhibit 4, page 140.

1 and a sworn statement from the issuing-inspector verifying the alleged violations. (14
2 CCR § 2100¹.)

3 Respondent contends that consideration of NOV's that fail to comply with the procedural
4 requirements of 14 CCR section 2100 violates Respondent's right to due process.
5 However, the 2 NOV's admitted into the record here meet the procedural requirements
6 of section 2100². Respondent's objection is therefore, overruled.

7 *DMV Records*

8
9 Respondent objected to the admission of driver registration information provided by the
10 Department of Motor Vehicles (DMV) as hearsay³. The information provided by the
11 DMV falls into two categories: 1) information provided via telephone conversation and,
12 2) written information provided to the Division via an official DMV form. The Division
13 concedes that the information provided by the DMV is hearsay, but argues that both
14 categories of information fall under an exception to the hearsay rule—the official records
15 exception.

16 Evidence code section 1280 provides the official records exception:

17
18 "Evidence of a writing made as a record of an act, condition, or event is
19 not made inadmissible by the hearsay rule when offered ... to prove the
20 act, condition, or event if all of the following appl[y]:

- 21
22 (a) The writing was made by and within the scope of duty of a public
23 employee.
- 24 (b) The writing was made at or near the time of the act condition, or event.
- 25
26 (c) The sources of information and method and time of preparation were
27 such as to indicate its trustworthiness." (Cal. Evid. Code § 1280)

28
29 The telephone calls made between the Division and the DMV do not meet the
30 requirements of the official records exception. Section 1280, by its express terms,
31 applies only to writings. Here, no writings made as a record of the telephone calls were
32 introduced into evidence. Therefore, the exception does not apply and Respondent's
33 objection to the information gleaned via telephone is sustained.

34 However, the written driver-registration information provided by the DMV does meet the
35 requirements of the official records exception⁴. Xu credibly testified that the vehicle
36 registration information is provided on an official DMV form via an longstanding

37
38 ¹ 14 CCR section 2100 provides that an NOV must contain all of the following: 1) a brief statement of the alleged
39 violation; 2) a statement that Respondent has a right to a formal hearing; 3) a statement that respondent's right to a
40 hearing will be waived if no written request is received within 15 days; and, 4) a sworn statement by the issuing
41 inspector verifying the acts or omissions that form the basis of the violation. (14 CCR § 2100.) The record here
42 establishes that all of these elements were met.

43 ² The NOV dated August 23, 2019 (Exhibit 4, pages 143-144) meets all of 14 CCR section 2100's procedural
44 requirements on its face. The NOV dated March 1, 2019 (Exhibit 4, page 151) does not include a "Notice of
45 Defense" informing Respondent of her right to a hearing, however, Pagan credibly testified that a Notice of Defense
46 was included with the NOV when it was mailed to Respondent.

47 ³ Evidence Code section 1200, the hearsay rule, provides that "hearsay evidence" is evidence of a statement that was
48 made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.
(Cal. Evid. Code § 1200.)

⁴ The written information provided to the Division by the DMV appears at Exhibit 3, pages 107-114.

1 agreement between the DMV and the Division, and that she has regularly made
2 requests for the information over the past ten years. She further testified that the
3 Division timely requested and received the information at issue here. Therefore, the
4 exception applies and Respondent's objection to the written DMV information is
5 overruled.

6 *Handwriting Analysis*

7
8 Respondent objects to the opinion of Inspector Garcia that customer signatures on
9 purchase receipts provided by the Covina RC were fabricated. As described above,
10 Garcia is an inspector for the Division responsible for record reviews— her investigative
11 experience is extensive, but she is admittedly not an expert in handwriting analysis.
12 Respondent contends that since Garcia is not an expert, her conclusion that signatures
13 were fabricated is improper lay-person opinion. The Division contends that the alleged
14 fabrications are plain and obvious, and therefore properly the subject of lay-witness
15 opinion testimony.

16 A lay witness may properly offer an opinion that is rationally based on her perception
17 and helpful to a clear understanding of her testimony. (Evid. Code § 800.) However,
18 matters that go beyond common experience and require particular scientific knowledge
19 may not properly be the subject of lay opinion testimony. (Evid. Code § 720; *People v.*
20 *DeHoyos* (2013) 158 Cal.Rptr.3d 797, 57 Cal.4th 79.)

21 Garcia identified two categories of handwriting "anomalies", the first being stylistic
22 similarities between purportedly different signatures¹ and the second being the
23 presence of overwriting (described further below).

24 Garcia found three types of stylistic similarities: 1) stylistic similarities between
25 Gonzalez' signature and customer signatures; 2) stylistic similarities between Covina
26 RC attendants' signatures and customer signatures; and, 3) stylistic similarities between
27 purportedly different customer signatures.

28
29 A lay witness may state her opinion whether a writing is in the handwriting of a
30 supposed writer if the court finds that she has personal knowledge of the handwriting of
31 the supposed writer. (Evid. Code § 1416.) Such personal knowledge may be acquired
32 from: having seen the supposed writer write (Evid. Code § 1416(a)); having seen a
33 writing purporting to be in the handwriting of the supposed writer and upon which the
34 supposed writer has acted or been charged (Evid. Code § 1416(b)); having received
35 letters in the due course of mail purporting to be from the supposed writer in response
36 to letter duly addressed and mailed by her to the supposed writer (Evid. Code §
37 1416(c)); or by any other means of obtaining personal knowledge of the handwriting of
38 the supposed writer. (Evid. Code § 1416(d).)

39 Here, Garcia had personal knowledge of the signatures of Gonzalez and the Covina RC
40 attendants. Examples of Gonzalez' signature came through her application for
41 certification and other Division documents completed by Gonzalez in connection with
42 her recycling center certifications and entered into the record here. Signatures of
43 Covina RC attendants were personally obtained by Garcia in connection with her on-site
44 inspections of the Covina RC. As Garcia had personal knowledge of the signatures of
45 Gonzalez and the Covina RC attendants, she was qualified to state her opinion that

46
47 ¹ For example, Garcia observed that the letter "J" used by attendant Juan Carlos in his signature had
48 similar stylistic characteristics to 15 purportedly different customer signatures (Exhibit 5, page 272.)

1 purported customer signatures were actually written by Gonzalez or the attendants. As
2 to these comparisons, Respondent's objection is overruled.

3
4 However, Garcia's opinion that purportedly different customer signatures were
5 stylistically similar is not expressly authorized by the Evidence Code. Furthermore, the
6 use of handwriting experts in civil matters is widespread, suggesting that handwriting
7 analysis is a matter that goes beyond common experience and requiring special
8 scientific knowledge. Therefore, Garcia's opinion based on comparisons between
9 unauthenticated customer signatures will not be considered.

10 In the second category of handwriting "anomalies", Garcia identified several instances
11 of "overwriting", i.e., signatures that had been scribbled over¹. Identifying instances of
12 overwriting is not a matter "that goes beyond common experience" or "requires
13 particular scientific knowledge". (Evid. Code § 720.) Rather, the presence of scribbling
14 over a signature is readily apparent and rationally based on perception. (Evid. Code §
15 800.) While the presence of overwriting is not necessarily evidence of fabrication,
16 repeated instances may constitute circumstantial evidence of fabrication. In regards to
17 Garcia's opinion regarding the presence of overwriting, Respondent's objection is
18 overruled.

19 Record

20 Division Exhibits 1-6 were admitted into the record.

22 **IV. FINDINGS OF FACT**

23
24 Gonzalez completed a purchase of Andrade Recycling, Inc., a corporation, in June
25 2018². At the time of purchase, Andrade Recycling, Inc. operated certified recycling
26 centers at 1383R Citrus Avenue in Covina, RC247712.001, (Covina RC) and 101 West
27 Whittier Boulevard in Montebello, RC260500.001 (Montebello RC). Following
28 Gonzalez's purchase, a third certified recycling center was added to the operations-
29 1901 West 5th Street in Santa Ana, RC298439.001 (Santa Ana RC).

30 On March 1, 2019, the Division issued a Notice of Violation (March NOV) to
31 Respondent alleging that on February 10, 2019, Respondent paid California Refund
32 Value (CRV) on scrap at the Montebello RC in violation of Public Resources Code
33 section 14538(d)(1). The March NOV included a "Notice of Defense" indicating that
34 Respondent has a right to a hearing on the matter upon request and that Respondent's
35 right to a hearing will be deemed waived if Respondent fails to respond in writing with
36 15 days of service. Respondent did not request a hearing and paid the assessed
37 penalty.

38 On August 23, 2019, the Division issued a Notice of Violation to Respondent (August
39 NOV) alleging that on August 20, 2019, Respondent failed to obtain the printed name
40 and signature of customers at the Covina RC in violation of 14 CCR section 2525(a)(6).
41 The NOV included a "Notice of Defense" indicating that Respondent has a right to a
42 hearing on the matter upon request and that Respondent's right to a hearing will be
43 deemed waived if Respondent fails to respond in writing with 15 days of service. It
44 further indicated that a civil penalty of \$250.00 will be assessed. The NOV included a
45 certification under penalty of perjury verifying that the acts or omissions forming the

46 ¹ Garcia explained that "overwriting" represents an attempt to thwart comparisons between signatures.

47 ² The parties stipulated that violations occurring prior to the completion of Gonzalez's purchase of Andrade
48 Recycling, Inc will not be considered.

1 basis of the violation are true and correct. Respondent did not request a hearing and
2 paid the \$250.00 penalty.

3 On May 26, 2020, Respondent delivered three loads of CRV material to its processor.
4 Based on the loads' volumes, the Division determined that Respondent's average daily
5 volume for Plastic #1 (PET) had a 153% increase, warranting further investigation.
6

7 The Division obtained the Covina RC's purchase receipts for the period of May 18
8 through May 26, 2020—the records associated with the loads delivered by Respondent
9 to its processor on May 26, 2020.

10 Recycling Centers are required to maintain receipts for purchases of beverage
11 containers in the amount of \$100 or more. The purchase receipts must include the
12 customer's printed name and signature as well as either the customer's valid driver
13 license number or vehicle license plate number. (14 CCR § 2525(a).)
14

15 In reviewing the Covina RC's purchase receipts, the Division identified several customer
16 signatures it concluded had been fabricated. Specifically, the Division found that some
17 signatures had been "overwritten", or scribbled-over to prevent comparative handwriting
18 analysis. Other signatures were identified as having stylistic similarities, leading the
19 Division to conclude that they had a common author.

20 The Division submitted 49 (34 in writing) license plate numbers gleaned from the
21 purchase receipts to the Department of Motor Vehicles (DMV) for comparison to the
22 DMV's vehicle registration database. Of the 34 unique plates submitted in writing, 17
23 were returned "no match", 13 were returned "record not on file", 3 were returned as
24 matches, and 1 was returned as "license not compatible"¹.

25 The Division also found two instances where the same license plate was used by
26 multiple customers².

27 Based on the findings of its record review, the Division reduced payments on three
28 associated shipping reports³.
29

30 The Division conducted an on-site inspection of the Covina RC on July 27 and 28, 2020.
31 Division inspectors arrived prior to opening each day and identified themselves to the
32 Covina RC's attendants. The inspectors remained on-site until closing, observing the
33 attendants' practices and logging each customer purchase. Inspectors obtained and
34 reviewed the Covina RC's purchase receipts for the 2 days of observation—no
35 anomalous signatures were found.
36

37 On August 13, 2020, Division Inspector Garcia met with Gonzalez and showed her
38 customer signatures from the May record review that the Division considered fraudulent.
39 Gonzalez admitted that she could see a problem in the signatures.

40 ¹ Xu testified that "no match" means that the name provided does not match the registered vehicle owner; "record
41 not on file" means that the provided license plate number does not exist in the DMV database; "license not
42 compatible" means the provided license plate number does not follow California license plate formatting, and a
43 check mark means that the provided license plate number and name matches the registered vehicle owner.

44 ² Plate number 8K01127 was used by M. Estrada on May 20, 2020 and by J. Garza on May 23, 2020. Home
45 addresses recorded on the receipts for M. Estrada and J. Garza did not match. Plate number 4X85413 was used by
46 S. Suarez on May 21, 2020 and May 24, 2020, and by R. Ramirez on July 28, 2020. Home addresses recorded on
47 the receipts for S. Suarez and R. Ramirez did not match.

48 ³ Shipping reports 10969483 AL, 10974144 PET, and 10972829 PET for the period of May 24 through May 26,
2020 were reduced by 29%, 35%, and 25%, respectively.

1 On February 1, 2021, the Division informed Respondent that its application for
2 certification to operate a recycling center at 6072 Etiwanda Avenue in Jurupa Valley,
3 California was denied based a history of violations and fabricated customer signatures
4 and license plates discovered during the Division's record review.
5

6 7 **V. CONCLUSIONS OF LAW**

8 The Division is charged with enforcing the California Beverage Container Recycling and
9 Litter Reduction Act (Public Resources Code § 14500 et. seq.) ("Act") and related
10 regulations found at 14 CCR section 2000 et seq.
11

12 Section 14538(b)(1) of the Act requires a processor to demonstrate to the Division's
13 satisfaction that it will operate in accordance with the Act. This burden of demonstrating
14 compliance with the Act applies to applicants for certification¹.

15 14 CCR section 2030(e) requires that the Division, in determining whether an applicant
16 is likely to operate in accordance with the Act, review the certification history of the
17 operator and any other responsible individuals.
18

19 Here, the Division cites three bases for denying Respondent's Application: 1)
20 Respondent's history of violations memorialized through NOVs; 2) alleged fabrication of
21 customer signatures on purchase receipts; and, 3) alleged fabrication of license plate
22 information included on purchase receipts.

23 Respondent was issued NOVs and assessed a monetary penalty on March 1, 2019 and
24 August 23, 2019. The March NOV cited Respondent for paying CRV on scrap in
25 violation of Public Resources Code section 14538(d)(1) and the August NOV cited
26 respondent for failing to obtain customer printed name and signature in violation of 14
27 CCR section 2525(a)(6). In each instance, Respondent paid the assessed monetary
28 penalty rather than requesting a hearing to challenge the alleged violations. Respondent
29 did not challenge the NOVs at hearing nor offered any explanation that could otherwise
30 mitigate the violations.

31 The Division's review of the Covina RC's purchase receipts revealed numerous
32 anomalous customer-signatures. Specifically, the Division observed stylistic similarities
33 between Gonzalez's signature and several customer signatures as well as stylistic
34 similarities between Covina RC attendants and several customer signatures.
35 Additionally, the Division observed numerous examples of "overwriting" – instances
36 where a customer signature is scribbled over, rendering it difficult to read.

37 At hearing, Respondent argued that the 'stylistically similar' signatures were not in fact
38 similar and instances of alleged overwriting were in fact normal signatures. However,
39 when examples of anomalous signatures shown to Gonzalez in August 2020, she
40 admitted that she could see a problem. Furthermore, it is the Hearing Officer's opinion
41

42
43
44 ¹ Absent a statute or other authority fixing a different standard, the burden of proof requires proof by a
45 preponderance of the evidence. (Evidence Code § 115.) Except as otherwise provided by law, a party has the
46 burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or
47 defense that he is asserting. (Evid. Code § 500.) Therefore, applicants for certification must meet the burden
48 of proof by a preponderance of the evidence.

1 that many of the signatures are indeed stylistically similar and that instances of
2 overwriting did in fact occur¹.

3
4 It is also significant that the Division found numerous instances of overwriting during its
5 record review, but when it conducted an announced inspection of the Covina RC, it
6 found none. If the alleged instances of overwriting were merely normal signatures, as
7 Respondent contends, one would expect that such signatures would occur with
8 regularity. Here, overwriting was extensive in the Division's record review but non-
9 existent when Division inspectors were present on-site.

10 Further bolstering the Division's application denial is the driver registration information
11 provided by the DMV. Of 34 unique license plates compared to the DMV vehicle
12 registration database, only three were returned as matches. Respondent argues that
13 incorrect plate information was provided by customers, and that Respondent is not
14 responsible for verifying plate information. While Respondent is correct that it is not
15 responsible for verifying plate information, the rate of non-matching plates here is far
16 beyond what one would reasonably expect absent fraud.

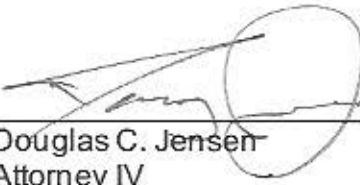
17 It is Respondent's burden to demonstrate that it will comply with the Act and
18 Regulations. Respondent has not met its burden. The Division has established an
19 uncontested history of violations. Further, the Division has established strong
20 circumstantial evidence of fraud related to anomalous signatures and high rates of
21 incorrect vehicle plates.

22
23 **VI. DECISION AND ORDER**

24 The Division's decision to deny Respondent's application for certification to run a
25 recycling center is sustained.

26
27
28 **IT IS SO ORDERED.**

29
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31
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33 DATED: 6/29/2021

34 
35 Douglas C. Jensen
36 Attorney IV
37 Department of Resources Recycling
38 and Recovery (CalRecycle)
39 Hearing Officer

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46
47 ¹ Evidence Code section 1417 provides that the genuineness of handwriting, or the lack thereof, may be provided by
48 a comparison made by the trier of fact. Here, the trier of fact is the Hearing Officer.