

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

**IN THE MATTER OF:**

Jay's Recycling – Javier Cuevas

Address: 10040 Laurel Canyon Blvd, Pacoima, CA  
1031 West Martin Luther King Jr, Blvd, Los Angeles, CA

Type of Entity: Termination of Probationary Certificate

**File No.: IH16-001-BCR**

**Certificate Nos.: RC197654.001, RC1700843.001**

**PRECEDENTIAL DECISION No.: 23-06**

**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 September 12, 2016, 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.

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2 Senior Staff Counsel  
3 Hearing Officer  
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10 STATE OF CALIFORNIA  
11 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

12 **In the Matter of:**

13 **DRRR Case No. IH16-001-BCR**

14 **The Revocation of Probationary**  
15 **Certificates To Operate Jay's Recycling**  
16 **RC197654.001 and Jay's Recycling**  
17 **RC1700843.001**  
18 **RESPONDENT.**

19 **DECISION OF HEARING OFFICER**

20 **INTRODUCTION**

21 The parties in this matter are Javier Cuevas ("Mr. Cuevas" or "Respondent") as  
22 operator of Jay's Recycling RC170843.001<sup>1</sup> ("Jay's RC#17") and Jay's Recycling  
23 RC197654.001<sup>2</sup>, ("Jay's RC#19") and the Department of Resources Recycling and  
24 Recovery ("Department" or "CalRecycle.")

25 CalRecycle, through the Division of Recycling ("Division") is responsible for  
26 administration and enforcement of the Beverage Container Recycling and Litter

27  
28 <sup>1</sup> Located at 10040 Laurel Canyon Boulevard, Pacoima, CA 91331.

<sup>2</sup> Located at 1031 West Martin Luther King Jr. Boulevard, Los Angeles, CA 90037.

1 Reduction Act, Division 12.1 of the Public Resources Code ("Act") and Title 14, Division  
2 2, Chapter 5 of the California Code of Regulations ("Regulations.")

3 On December 31, 2015, the Division issued a notice to Respondent terminating  
4 the probationary certificates of Jay's RC#17 and Jay's RC#19 effective, January 10,  
5 2016.

6 Pursuant to Section 2130 of the Regulations, Respondent requested an  
7 informal hearing to appeal the revocation. The hearing was held on July 11th and  
8 12th, 2016 in Sacramento, California. The Department was represented by Kris  
9 Chisholm, Attorney III. Respondent was represented by John C. Gugliotta, attorney at  
10 law.

11 For the reasons discussed in detail below, the Department's revocation is  
12 upheld.

13 A. Exhibits.

14 At the Division's request, and without objection by Respondent, official notice  
15 as taken of the entire Act and certain provisions contained Division Exhibit 1; the  
16 egulations in their entirety and certain provisions contained in Division Exhibit 2;  
17 ertain provisions of the California Constitution and Evidence Code contained in  
18 ivision Exhibit 3, and the opening documents in the Department's official file  
19 ontained in Exhibits 4 through 6.

20 During the course of the hearing, Division Exhibits 7, 9, 12, and 14 through 18  
21 were admitted into evidence without objection by Respondent. Respondent's  
22 objection to the relevancy of Division Exhibit 8 was overruled, and it was admitted into  
23 evidence.

24 Division Exhibits 10 and 11 were admitted into evidence subject to  
25 espondent's objections as to relevancy and accuracy, which were noted for the  
26 ecord and are discussed in detail below.

27 The ruling on Respondent's objection to Department Exhibit 13 was sustained.  
28

1 B. Designation of Expert Witnesses.

2 Department employees Angela Vincent, Carissa Bell and Yousseff Hocheimi were  
3 designated as expert witnesses without objection by Respondent and also testified as  
4 percipient witnesses.

5 Department counsel proffered Edwin Mui, who is employed by the Department as  
6 a Questioned Document Examiner II ("QDE II"), for qualification as an expert for the  
7 purpose of explaining the forensic results of his analysis of the consumer purchase  
8 records of Jay's RC #19 for the dates October 1 through October 2, 2014.

9 In support of his qualifications as an expert, Mr. Mui testified that he has a  
10 Bachelor's degree in Business Administration and has been employed by the  
11 Department since September 2000. His initial assignment was as an Associate  
12 Management Auditor. Although his actual job title did not change until 2013, he has  
13 been performing the duties of a QDE since 2001 and has almost fifteen years'  
14 experience. Those duties consist of examining records and analyzing documents for  
15 evidence of alterations, fabrications, patterns and anomalies. He has also been  
16 trained on using the Visual Spectral Comparator (VSC) 5000.

17 On *voir dire*, Mr. Mui admitted that he is not a handwriting expert. Therefore,  
18 Respondent objected to Mr. Mui's qualifications to conclude that the log sheets  
19 contained entries indicating that they were written by the same person and, were  
20 therefore fabricated.<sup>3</sup> The Department agreed that Mr. Mui is not qualified as a  
21 handwriting expert in the sense of being able to identify that a handwriting sample was  
22 written by a specific, particular person. However, the Department maintains that Mr.  
23 Mui is qualified to perform his duties as a QDE 11, as reflected by the California  
24 Department of Human Resources ("CalHR") specifications for the position.

25 Respondent's objection was reserved and Mr. Mui was allowed to testify as an  
26 expert witness subject to determination at this time.

27 \_\_\_\_\_

28 <sup>3</sup> Respondent agreed that Mr. Mui qualified as an expert with respect to examining documents with the VSC 5000 and determining whether a document contains writing with different inks or whether there is indented writing.

1           The qualifications of a QDE II's expertise in determining that certain  
2 handwriting samples indicate common authorship is a recurring issue in cases before  
3 the Department involving allegations offalsified or fabricated documents. In this  
4 matter, Respondent's objections actually go to the efficacy of whether QDE II's in  
5 general, and Mr. Mui, in particular, have the training and expertise necessary to  
6 determine and provide expert testimony on whether a particular handwriting sample  
7 has been fabricated or falsified.

8           Evidence Code Section 720 is the governing law respecting qualification of expert  
9 witnesses and provides that a person is qualified to testify as an expert if he or she  
10 has "special knowledge, skill, experience, training or education to qualify him as an  
11 expert in the subject to which his testimony relates." This expertise may be  
12 demonstrated by the expert's own testimony.<sup>4</sup>

13           For the QDE II position, the California State Personnel Board ("CalHR") has  
14 determined the specifications that dictate the knowledge, skills, training and education  
15 necessary to perform the tasks of that position. The Department has made the  
16 decision to use employees with the QDE II classification in accomplishing its  
17 administrative responsibilities to administer the Act. Both of these determinations were  
18 made at the agency level and, therefore, are jurisdictional in nature. It is not the  
19 Hearing Officer's function to disregard or otherwise overrule these policy  
20 determinationsby making a decision that QDE II's are unqualified to perform the  
21 duties ascribed to that position by CalHR. Therefore, if Mr. Mui satisfies the  
22 specifications for the QDE II position, I cannot find that he is unqualified to testify as  
23

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24 <sup>4</sup>Evidence Code Section 720 provides:

25           (a) **A person is qualified to testify as an expert if he *has special knowledge, skill,***  
26           ***experience, training, or education sufficient to qualify him as an expert on the subject to***  
27           ***which his testimony relates.*** Against the objection of a party, such special knowledge,  
          skill, experienced, training, or education must be shown before the witness may testify  
          as an expert.

28           (b) A witness' special knowledge, skill, experience, training or education may be shown by  
          any otherwise admissible evidence, *including his own testimony.* (Emphasis added.)

1 an expert in this hearing.

2 As Hearing Officer I take official notice of specifications for the position of  
3 Questioned Document Examiner (Schem Code VF40/Class Code 8475) as reflected  
4 on CalHR's official website, a copy of which is attached to this opinion as Exhibit A  
5 and, by this reference, incorporated herein.

6 The QDE II classification, is defined as follows:

7 **Questioned Document Examiner II**

8 This is the full journey level in the series. Incumbents perform the more difficult analyses,  
9 evaluations, comparisons, examinations, and identifications of handwriting, mechanical  
10 impressions, and other document-related problems; appear in court to testify as an expert  
11 witness to explain and illustrate the methods used in the examination and identification of  
12 questioned document cases. (Emphasis added.)

13 This definition plainly states that the duties of a QDE II specifically involve the  
14 "comparison, evaluation and identifications of handwriting" and include the ability to  
15 testify as an expert to explain and illustrate the methods used in examining and  
16 identifying questioned documents. Therefore, anyone meeting the minimum  
17 qualifications as a ODE is allowed to perform these tasks. The Minimum Qualifications  
18 for QDE II are as follows:

19 **Questioned Document Examiner II**

20 Either I

21 Two years of experience in the California state service performing the duties of a  
22 Questioned Document Examiner I, Range B.

23 Or II

24 Experience: Four years of experience in law enforcement or investigation work, including  
25 or supplemented by the equivalent of at least two years of technical work involving the  
26 examination of questioned documents, the preparation of documentary exhibits, and  
27 expert witness testimony in various courts on matters relative to documentary evidence.  
28 (Experience in the California state service applied toward this requirement must include  
at least two years performing the duties of a class with substantially the same level of  
responsibility as a Questioned Document Examiner I, Range B); and

Education: Equivalent to graduation from college with a Bachelor's Degree in Criminal  
Justice, Criminalistics, Computer Science, or one of the physical or biological sciences,  
with a minimum of nine semester units in criminal justice. (Additional qualifying

1 experience may be substituted for four years of the required education on a year-for-  
2 year basis.) (Emphasis added.)

3 Mr. Mui has met and, in fact, exceeded the requirements to be a QDE II. He has  
4 almost fifteen years' experience in performing the duties of the QDE position and only  
5 two are needed; and although his Bachelor's Degree is not in one of the specified fields,  
6 four years of his experience be substituted for the education requirement. Therefore, as  
7 a QDE II, Mr. Mui can analyze, compare, examine and identify handwriting and other  
8 "document related problems" and testify to explain and illustrate the methods used in  
9 making his determinations. Accordingly, Respondent's objection to Mr. Mui's  
10 qualifications as an expert is overruled. Respondent's objections to the substance of  
11 the expert opinions expressed by Mr. Mui in this case will be further discussed below.

### 12 **FACTUAL BACKGROUND**

13  
14 Respondent was issued a probationary certification to operate Jay's #RC17 on  
15 October 3, 2012. On December 17, 2013, he received another probationary certification  
16 to operate Jay's RC#19. Jay's RC#17 and RC#19 have been closed since January 15,  
17 2016 - the effective date of the revocation. Respondent also has a certification to  
18 operate Jay's Recycling RC143219.001 (Sun Valley) which is and still operational and  
19 not part of this case.

20 The Division based its revocation on numerous allegations that Respondent, as  
21 operator of Jay's RC#17 and Jay's RC#19, allegedly violated the Act and the  
22 Regulations by:

- 23 1. On October 7, 2014, claiming non-labeled scrap material for CRV  
24 reimbursement at its Pacoima location in violation of Sections  
25 14538(d)(1)(2) of the Act.
- 26 2. On November 12, 2014, claiming non-labeled, out of state and scrap  
27 material for CRV reimbursement from its Pacoima location in violation of  
28 Sections 14595(a)(1)(A) and 14538(d)(6) of the Act and Section 2501(d) of

1 the Regulations.

2 3. On December 13, 2014, claiming non-labeled and out of state and scrap  
3 material for CRV reimbursement from its Pacoima location in violation of  
4 Sections 14595(a)(1)(A) and 14538(d)(6) of the Act and Section 2501(d) of  
5 the Regulations.

6 4. On February 6, 2015, failing to provide recycling services to the public  
7 during normal business hours at its Los Angeles location in violation of  
8 Section 2500(b)(1)(B) of the Regulations.

9 5. On February 12, 2015 failing to provide recycling services to the public  
10 during normal business hours at its Los Angeles location in violation of  
11 Section 2500(b)(1)(B) of the Regulations.

12 6. At its Los Angeles location, fabricating, altering or falsifying logs dated  
13 October 1 and 2, 2014, and using those logs to support shipping reports for  
14 CRV reimbursement from the processor in violation of Section 14597(a) of  
15 the Act and Section 2090(c) of the Regulations.

16 7. At both locations, committing recordkeeping and compliance violations,  
17 which serve as an additional basis for discipline under Section  
18 14591.2(b)(2) and section 14591(b)(3) of the Act. These alleged violations  
19 include, but are not limited to, the following:<sup>5</sup>

20 a. Both Jay's RC#17 and Jay's RC #19 log sheets were not accurate  
21 and/or contained overwriting in violation of Section 2090(c) of the  
22 Regulations.

23 b. Jays RC #17 failed to prepare and maintain daily summaries in  
24 accordance with Section 2525(i) of the Regulations.

25 For the sake of convenience, these violations will be referred to as "Counts."  
26  
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28 <sup>5</sup> The Division's revocation letter included three additional allegations of recordkeeping errors, however they were dismissed by the Department at the onset of the hearing.



1 **LEGAL ANALYSIS**

2 The Division is responsible for administration and enforcement of the Act and  
3 for certifying the operators of recycling centers and processors pursuant to the  
4 procedures for established by Section 2030(a) of the Regulations. Operators certified  
5 to operate a recycling center must meet all of the standards and requirements  
6 established by the Regulations.

7 These violations listed above may serve as a basis for discipline under Section  
8 14591.2(b)(3) of the Act.<sup>6</sup> Such discipline may, at the Department's discretion include  
9 revocation of a probationary certification pursuant to Sections 14541(b) of the Act.<sup>7</sup>

10 Any certification granted by CalRecycle is a privilege and not a vested right or  
11 interest. (Section 14541.5 of the Act.<sup>8</sup>) Therefore, to maintain certification and continue  
12 to operate, the Act places the burden upon to Respondent to "demonstrate, to the  
13 satisfaction of the Department" that he will operate his center in accordance with Act  
14 and Regulations. (Section 14538(b)(1) of the Act.<sup>9</sup>)

15  
16 \_\_\_\_\_  
17 <sup>6</sup> 14591.2 (b): All of the following are grounds for disciplinary action, in the form determined by  
18 the department in accordance with subdivision (c):

19 \*\*\*

19 (3) The responsible party violated this division or any regulation adopted pursuant to  
20 this division, including, but not limited to, any requirements concerning auditing, reporting,  
standards of operation, or being open for business

21 <sup>7</sup> 14541(b): A probationary certificate issued pursuant to this section shall be issued for a limited  
22 period of not more than two years. Before the end of the probationary period, the department shall  
23 issue a nonprobationary certificate, extend the probationary period for not more than one year, *m:i*  
after notice to the probationary certificate holder, revoke the probationary certificate...  
(Emphasis added.)

24 <sup>8</sup> 14541.5. Any certification or registration granted by the department is a privilege and not a  
vested right or interest.

25 <sup>9</sup> 14538 (b): The director shall adopt, by regulation, a procedure for the certificati.on of recycling  
26 centers, including standards and requirements for certification. These regulations shall require  
27 that all information be submitted to the department under penalty of perjury. A recycling center  
shall meet all of the standards and requirements contained in the regulations for certification. The  
28 regulations shall require, but shall not be limited to requiring, that all of the following conditions  
be met for certification:

(1)The operator of the recycling center demonstrates, to the satisfaction of the department, that  
the operator will operate in accordance with this division. (Emphasis added.)

1           However, for the sake of convenience, during the hearing the Department  
2 presents its case first and must establish the allegations against Respondent by a  
3 preponderance of evidence. Then Respondent has the burden of demonstrating, also  
4 by a preponderance of the evidence, that the violations were not committed or that the  
5 Department has otherwise abused its discretion in revoking Respondent's probationary  
6 certificate.<sup>10</sup>

7           Respondents do not dispute Counts 1, 3, 4, 5 and 7a. Furthermore, they did  
8 not provide any evidence controverting the Department's evidence regarding Count  
9 7b, therefore; this decision will only address the testamentary and documentary  
10 evidence relevant to Counts 2 and 6.

11           Count 2- Claiming non-labeled or out of state and scrap material for CRV: Mr.  
12 Hocheimi, who is employed as an Associate Management Auditor with the Department,  
13 testified that he was contacted by Respondent's processor, Sun Valley Paper Stock  
14 ("Sun Valley") on November 13, 2014, because on the previous day, November 12th,  
15 Jay's RC#17 had attempted to claim CRV on a load that contained out of state or  
16 otherwise ineligible material. Sun Valley employees sampled the load and concluded  
17 that 15% of the load was from out of state or otherwise ineligible material. Accordingly,  
18 on November 13th, Mr. Hocheimi examined the load sample and had the payment to  
19 Respondent reduced by that amount. The Department sought to enter a box containing  
20 a sample of this material as Exhibit #13; however, it was not admitted into evidence  
21 because no witness was presented that could authenticate that the material actually  
22 came from Respondent's load. The Department did not present any witnesses from  
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25 <sup>10</sup> Evidence Code §115: "Burden of proof" means the obligation of a party to establish by  
26 evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court..  
27 .. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of  
28 the evidence.

Evidence Code §500: Except as otherwise provided by law, a party has the burden of proof as to  
each fact the existence or nonexistence of which is essential to the claim for relief or defense that  
he is asserting.

1 Sun Valley and Mr. Hocheimi could not authenticate the material because he did not  
2 personally observe the material being pulled from the load.

3 The Department's only other evidence in support of this Count is a shipping  
4 report from DORiis showing a 15% reduction and some pictures of material pulled from  
5 the load. (Division Exhibit 12, pages 033-039.) The shipping report does not indicate  
6 why the shipment was reduced and the photographs of the material pulled from the load  
7 suffer from the same problem as the containers themselves; no one was presented from  
8 Sun Valley who could authenticate them. Ms. Cuevas' testimony regarding this load  
9 was unclear; her final conclusion was that the only time she observed out of state  
10 material in a load was when CalRecycle inspectors were there. Since the material for  
11 this shipment was not pulled by the Department and no eye witness from Sun Valley  
12 was produced to authenticate the photographs and the materials, I find that the  
13 Department has not met its burden with respect to establishing Count 2.

14 Count 6 - Fabricating, altering or falsifying log sheets from Jay's RC#19: Mr.  
15 Hocheimi testified that, on October 3, 2014, he was conducting a regular inspection at  
16 Sun Valley's premises when he was told by his supervisor that the Department had  
17 received a call from an informant alleging that Jay's RC#19 had just delivered a load of  
18 previously baled aluminum containers. Because the truck driver had already unloaded  
19 the material before Mr. Hocheimi could personally inspect it, he placed the load on hold  
20 pending review of the supporting records. He contacted Mr. Cuevas by phone and left a  
21 message informing of him of the payment hold and requesting the records from October  
22 1 through October 2, 2014, which were the dates listed on the shipping report. Despite  
23 several follow up attempts, he did not receive the records until October 22, 2014. Mr.  
24 Cuevas explained that he had been ill and unable to provide the records before then.

25 After reviewing the records, and noting some overwriting and other  
26 recordkeeping errors, and Respondent's failure to provide daily summaries, Mr.  
27 Hocheimi submitted the records to Mr. Mui for forensic review. When he received Mr.  
28 Mui's forensic report concluding that the records contained evidence of fabrication, Mr.

1 Hocheimi denied payment on the load and commenced the investigation of Jay's  
2 RC#17 and #19 for the review period January 2014 through February 2015.

3 Mr. Mui testified that based upon his examination of the records from RC#19 for  
4 the days October 1 through October 2, 2014, he concluded the log sheets were  
5 fabricated; He made four Findings to support this conclusion; however, Mr. Mui's  
6 presentation and report did not support the relevance of Findings 1 through 3 to his  
7 overall conclusion that the log sheets were fabricated.<sup>11</sup> Therefore, Department's  
8 allegations in Count Six primarily rest upon Finding #4 that some entries appeared to be  
9 fabricated based upon the following indicators:

10 Finding 4a: Most of the log sheets were "pristine clean", which is not normal  
11 considering the conditions of an operating recycling center. Respondent objected to this  
12 Finding as lacking foundation. This objection was overruled. The Hearing Officer's  
13 examination of the original log sheets revealed that they were uniformly clean, with few  
14 fingerprints or other markings. (Division Exhibit 15.) While that might not seem unusual  
15 to the Hearing Officer or to any other average person, Mr. Mui testified that he examines  
16 thousands of log sheets a year performing his duties as a QDE II. This is sufficient

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18 <sup>11</sup> Specifically, Mr. Mui made the following Findings (Division Exhibit 10, page 052):

19 Finding #1: Two different types of ink were used in making the entries on three of the log sheets.  
20 With respect to this Finding, Mr. Cuevas explained that different pens were used at the recycling  
21 center. Mr. Mui conceded that this could have accounted for the use of different types of ink. In  
22 fact, Mr. Chisholm stated that the point of Mr. Mui's testimony on the ink variations is to show that  
23 there were two different inks being used, not for the purpose of establishing that those particular  
24 log sheets containing different inks were falsified. As using different inks on a log sheet is not  
25 violation of the Act and the Regulations, I find that in this case, the ink variation evidence is not  
26 relevant to the issue of fabrication.

27 Finding #2: There were a few instances of overwriting. Respondent did not dispute this Finding.  
28 He explained that they were the result of a misunderstanding of the proper method of correcting  
mistakes on log sheets. Both parties admitted that the overwriting did not result in any  
overpayment to Respondent. And Mr. Mui did not explain how overwriting that does not result in  
any change to the totals paid on the log sheet constitute evidence of fabrication. At best this is a  
recordkeeping violation to which Respondent has already admitted. Accordingly I find that in this  
case, the overwriting evidence is not relevant to the issue of fabrication.

Finding #3: Indented writing was found, most of which appeared to be imprints from the  
previous page. Mr. Mui did not provide any testimony as to the significance of this Finding,  
therefore, in this instance, is it irrelevant to the issue of fabrication.

1 foundation for his opinion that these log sheets are pristine clean as compared to log  
2 sheets that he has examined from other recycling centers and that log sheets in this  
3 condition typically indicate that they were fabricated.

4 Finding 4b: The printed names of the customers for each entry appeared to be  
5 written by the same person. (Division Exhibit 10, images #4, 5, and #6, pages DOR-  
6 056-058.) As discussed below, Respondent successfully rebutted this Finding.

7 Finding 4c: Seven of the log sheets contained blocks of signatures that  
8 appeared to be written by the same person (Division Exhibit 10, pages 059-065;  
9 Division Exhibit 11, pages 10-18.) This is the Department's strongest evidence that the  
10 log sheets were fabricated. Mr. Mui testified that his examination of the log sheets from  
11 October 1, 2014, pages 3, 4, 5, and 6 and October 2, 2014, pages 1, 2 and 6 contained  
12 signatures with sufficient similarities that indicate, in his expert opinion, that they were  
13 signed by the same person. In making his determination, he considered both the  
14 similarity in outstanding characteristics of certain letters in the signatures, the ending of  
15 certain words in the signatures, and the overall angle used. These similarities were  
16 present even though the corresponding printed names were different.

17 In total, Mr. Mui examined 12 log sheets for the period October 1 through  
18 October 2, 2014. Of those sheets, 7 (or 58%) contained signatures that, in Mr. Mui's  
19 expert opinion, had a total of 35 points of similarity.<sup>12</sup> This evidence in conjunction with  
20

21 \_\_\_\_\_  
22 <sup>12</sup> Mr. Mui's specific Findings were:

23 October 1 log sheet, page 3: Four consecutive signatures with similar "scribble" at the end.  
(Division Exhibit 10, page 059.)

24 October 1 log sheet, page 4: Three signatures with similar "J's" (Division Exhibit 10, page 060.  
Division Exhibit 11, page 17.)

25 October 1, log sheet, page 5: Two consecutive signatures with similar "H's", three signatures with  
similar "A's", two signatures with similar "scribble" at end. (Division Exhibit 10, page 061; Division  
Exhibit 11, pages 14-16.)

26 October 1 log sheet, page 6: Two signatures with similar "D's", three signatures with similar "J's",  
and two signatures with similar "scribble" at the end. (Division Exhibit 10, page 062; Division  
Exhibit 11, pages 11-13.)

27 October 2 log sheet, page 1: Four consecutive signatures with similar "C's", (Division Exhibit 10,  
page 063; Division Exhibit 11, page 10.)

28 October 2 log sheet, page 2: Four consecutive signatures with similar "scribble". (Division  
Exhibit 10, page 064.)

1 the "pristine" condition of the log sheets, do support Mr. Mui's conclusion that the log  
2 sheets were fabricated.

3 As previously determined, Mr. Mui satisfies the specifications for qualification  
4 as a QDE II and persons with that classification are allowed to analyze and compare  
5 handwriting and draw conclusions with respect to that analysis. Furthermore, in this  
6 particular case, although upon casual examination one might not notice the  
7 cleanliness of the log sheets and signature similarities, once pointed out, these  
8 anomalies noted by Mr. Mui are apparent. If, according to Mr. Mui's experience in  
9 examining thousands of log sheets a year for nearly fifteen years, these anomalies are  
10 typically indicia of common authorship, then his conclusions are relevant evidence of  
11 fabrication. Respondent's objection to the substance of Mr. Mui's testimony, and his  
12 Investigation Report and corresponding Power Point Presentations (Division Exhibits  
13 10 and 11, respectively) is overruled. Accordingly, I find that the Department, through  
14 the expert testimony of Mr. Mui, established a *prima facie* case of falsification under §  
15 14597(a) of the Act.

16 However, any expert opinion is just that, an opinion. Because experts typically  
17 have no personal knowledge of the facts of the case, it is axiomatic that they assume  
18 facts in the course of reaching their opinions.<sup>13</sup> An expert's testimony can be  
19 controverted by lay testimony or other evidence establishing inconsistent facts.<sup>14</sup> As  
20 trier of fact, the Hearing Officer is the exclusive arbiter of credibility in this proceeding  
21 and may reject Mr. Mui's expert testimony in favor of testimony or other credible  
22 evidence presented by Respondent that provides an alternative, innocuous

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24  
25 **October 2 log sheet, page 6: Six consecutive signatures with similar "scribble". Division Exhibit**  
26 **10, page 065; Division Exhibit 1, page 18.)**

27 <sup>13</sup> *Arterberry v. San Diego Gas & Electric Company* (SDGEC) 2007 WL 1176015 at 4 (Cal.P.U.C.)

28 <sup>14</sup> *Helbing v. Helbing*, 89 Cal.App.2d 224,200 P.2d 560 (1<sup>st</sup> Dist. 1948); *Cloud v. Market St. Ry. Co.*,  
74 Cal.App.2d 92, 168 P.2d 1911st Dist. 1946)

1 explanation for Mr. Mui's Finding #4.<sup>15</sup>

2 With Respect to Finding 4a, the "pristine condition" of the log sheets, Respondent  
3 offered no other explanation for the clean appearance and condition of the log sheets.

4 As for Finding 4b, that the printed names were written by the same person, I find  
5 that Respondent has adequately rebutted Mr. Mui's expert opinion by explaining the  
6 attendant was instructed to print the name for each customer in the printed name  
7 column and then allow the customer to sign in the signature column. He instituted this  
8 practice because customers would often sign with a signature in both columns, which  
9 would be a recordkeeping violation.

10 Mr. Hocheimi confirmed that Respondent had provided this explanation to him  
11 and Mr. Mui had been informed that this was Respondent's practice. The log sheets  
12 presented in Mr. Mui's report contained no other anomaly than the similar printed  
13 names. There was no evidence from the Department that printing the names of the  
14 customer by recycling center personnel is a violation of the Act or Regulations.  
15 Therefore, I find that Respondent has successfully rebutted the Finding that, in this  
16 instance, the common authorship of the printed names on the log sheets constituted  
17 evidence of fabrication.

18 With respect to Finding 4c, the similarities in the customer signatures,  
19 Respondent has not presented any credible facts inconsistent with Mr. Mui's  
20 conclusion that the signatures in question were fabricated, Respondent testified that  
21 he was not present at the center that day. Neither he, nor his wife, completed the log  
22 sheets themselves; in fact, the log sheets were actually completed by an employee  
23 who Respondent testified was ultimately terminated for consistently failing to follow his  
24 instructions regarding operating the center in accordance with the requirements of the  
25 Act and the Regulations. Under these circumstances, Respondent cannot  
26 competently testify as to how their employee prepared the sheets, or whether or not  
27

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28 <sup>15</sup> *Lauderdale Associates v. Department of Health Services*, 67 Cal.App. 4<sup>th</sup> 117, 78 Cal.Rptr.2d 802  
(Pt Dist. 1998)

1 he fabricated some or all of these entries. As Mr. Mui's opinion of falsification is  
2 unrefuted, I find that the Department has established Count 6 by a preponderance of  
3 the evidence.

4 Respondent admits that as owner and operator, he is responsible for the acts  
5 of his employees. However, with respect to the log sheets, Respondent testified that  
6 he had no intent to defraud and that any wrongdoing committed was due to a  
7 misunderstanding of the requirements of the Act and the Regulations. He points out  
8 that there was no loss to the Beverage Container Recycling Fund ("Fund") because he  
9 did not receive any payment for the shipment based on the log sheets

10 This argument misapprehends what constitutes a violation of Section 14597(b) of  
11 the Act. This provision does not require a loss of money or damage to the Fund. Nor  
12 does it require *mens rea* or a specific intent to defraud. The very act of fabricating log  
13 sheets is evidence of intent to defraud.<sup>16</sup> And submitting these fabricated log sheets to  
14 the shipper for payment constitutes a violation of Section 14597(b) of the Act.<sup>17</sup>

15 Unrefuted expert testimony has established that the log sheets of October 1  
16 through October 2, 2014 contained fabricated entries. Respondent's own electronic  
17 signature establishes that he submitted these log sheets to Sun Valley for payment on  
18 October 3, 2014. (Division Exhibit 12, pages 069-070.) The fact that the shipment was  
19 denied and Respondent was not paid does not change the fact that he submitted a  
20 fraudulent claim which, is in itself, sufficient basis for revoking his certifications.

21

22

23 <sup>16</sup> **Section 14597(a) "No person shall falsify documents required pursuant to this division or**  
24 **pursuant to regulations adopted by the department. The falsification of these documents is**  
25 **evidence of intent to defraud and for purposes of subdivision (b) of §14591.1 constitutes**  
26 **intentional misconduct.** The department may also **take** disciplinary action pursuant to **§14591.2**  
27 **against a person who engages in falsification including, but not limited to, revocation of any**  
28 **certificate or registration."** (Emphasis added.)

26 <sup>17</sup> Section 14597(b): **"No person shall submit, or cause to be submitted, a fraudulent claim**  
27 **pursuant to this division. For purposes of this subdivision, a fraudulent claim is a claim based in**  
28 **whole or in part on false information or falsified documents.** Any person who submits a fraudulent  
claim is subject to the assessment of penalties pursuant to subdivision (b) of Section 14591.1. The  
department may take action for full restitution for a fraudulent claim, pursuant to Section 14591.4,  
and may also take disciplinary action pursuant to Section 14591.2 including, but not limited to,  
revocation of any certificate or registration." (Emphasis added.)



1 **CONCLUSION**

2 As presiding officer over these informal appeals, the role of the Hearing Officer is  
3 to conduct a "de novo review" of the facts involved in the Division's decision. (*Caloca*  
4 *v. County of San Diego* (2002) 102 Cal.App.4th 433, 444.) That being said, the Division  
5 Legislature, has demonstrable expertise and technical knowledge about the industry,  
6 and possesses special familiarity with the legal and regulatory issues associated with  
7 implementing the Act. Accordingly, the Hearing Officer should maintain a degree of  
8 deference toward the exercise of discretion that is appropriate to the Director's review of  
9 Departmental actions. {See *Yamaha Corp. of America v. Bd. of Equalization* {1999} 73  
10 Cal. App.4th 338, at pp. 349-353.)

11 To their credit, Respondents have freely admitted to claiming non-labeled scrap  
12 material for CRV reimbursement at Jay's RC#17 on October 7, 2014 and claiming  
13 non-labeled, out of state and scrap material for CRV reimbursement at RC#17 on  
14 December 13, 2014. They have also admitted to certain recordkeeping errors on log  
15 sheets at both locations regarding inaccurate and/or overwriting entries.

16 As for the closing of Jay's RC#19 for two days in February 2015, Respondent  
17 explained that, due to being placed on prepayment inspection status<sup>18</sup> as a result of  
18 the shipment on October 3, 2014, their payments from the shipper were delayed and  
19 they simply did not have money to pay for material; they did not even have money to  
20 pay their personal bills. Yet, despite these hardships, Mr. and Mrs. Cuevas both  
21 stated that they actually welcomed the additional scrutiny of being placed on  
22 prepayment inspection status because it provided them valuable training that has  
23 caused them to significantly improve their operations at their Sun Valley recycling  
24

25 \_\_\_\_\_  
26 <sup>18</sup> **Prepayment inspection status requires the Department to inspect the every load and supporting**  
27 **documents presented for shipment prior to releasing payment. This process necessarily causes**  
28 **delays in payment to the recycler.**

1 center. They have elicited the help of a consultant and Mr. Gugliotta to advise them  
2 and they will operate the centers personally. Therefore, they request that the  
3 Department reverse the revocation regarding Jay's RC#17 so that can prove that they  
4 are now capable of operating both centers in accordance with the Act and  
5 Regulations.

6 While acknowledging Respondent's improvements, the Department believes  
7 that Respondent needs more time to establish that he and his wife can operate their  
8 currently Sun Valley center properly before being given an opportunity to operate  
9 another one.

10 It is not the Hearing Officer's role to substitute her judgment on this issue for  
11 that of the Department, unless such judgment is arbitrary and capricious or otherwise  
12 an abuse of discretion. That is certainly not the case here. The Department has  
13 established by a preponderance of the evidence that the Respondent submitted a  
14 shipping report based upon log sheets containing fabricated entries. Falsification  
15 under Section 14597(a) of the Act, if established, is considered so egregious that it  
16 may serve as an independent basis for revocation of a probationary certification.  
17 (Section 14591.2(c)(1) of the Act.<sup>19</sup>)

18 The Department has a fiduciary duty to protect the Fund and there is, and  
19 should be, zero tolerance for submitting fraudulent claims.  
20  
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22

23

24

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<sup>19</sup> **14591.2(a) The department may take disciplinary action against any party responsible for directing, contributing to, participating in, or otherwise influencing the operations of a certified or registered facility or program....**

25

**(b) All of the following are considered grounds for disciplinary action, in the form determined by the department in accordance with subdivision (c)**

26

(2) The responsible party engaged in dishonesty, incompetence negligence, or fraud in performing the functions and duties of a certificate holder or registrant.

27

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28

(c) The department may take disciplinary action pursuant to this section, by taking any one of, or any combination of, the following:

29

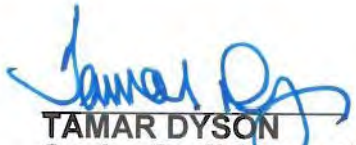
(1) Immediate revocation of the certificate or registration, or revocation of a certificate or registration as of a specific date in the future.

1 **DECISION**

2 Therefore, for the foregoing reasons, and based upon the official record of this  
3 proceeding, the testamentary and documentary evidence, oral arguments presented by  
4 the parties and for good cause appearing, the Department's revocation of Respondent's  
5 probationary certifications to operate Jay's Recycling (RC170843.001) Jay's Recycling  
6 (RC197654.001) is UPHELD.

7  
8 **IT IS SO ORDERED**

9  
10  
11  
12 Sept 12, 2016  
13 Date

14   
15 **TAMAR DYSON**  
16 **Senior Staff Counsel**

# EXHIBIT

A

# Questioned Document Examiner/Supervisor Series

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## California State Personnel Board Specification

Series established March 14, 1979

### Scope

This series specification describes three classes used within the Division of Law Enforcement of the Department of Justice to conduct examinations of questioned documents; to make identifications of documents; to assist local law enforcement in dealing with questioned documents evidence; to testify in court as a questioned document expert; to coordinate and supervise these activities; and to do other related work.

Schem Code	Class Code	Class
VF35	8474	Questioned Document Examiner I {abolished 05/07/2015}
VF40	8475	Questioned Document Examiner II
VF45	8479	Questioned Document Supervisor (abolished 05/07/2015)

### Definition of Series

Questioned Document Examiners have knowledge of the technical phases of examining handwriting, typewriting, and other types of questioned documents within law enforcement agencies. Questioned Document Examiners I and II perform a variety of duties involving the analysis, evaluation, comparison, examination, and identification of handwriting and mechanical impressions, and

appear in court to testify as an expert witness to explain and illustrate the methods used in the examination and identification of questioned document cases. Incumbents also prepare photographs, charts, and other material for demonstration of evidence in court when necessary; consult with prosecutors on various methods of presenting evidence; and prepare reports. The Questioned Document Supervisor is an expert in questioned document examination. The incumbent assigns, directs, and supervises a group of Questioned Document Examiners I and II.

## **Factors Affecting Position Allocation**

Allocations to classes in this series are limited to the Questioned Documents Section of the Division of Law Enforcement of the Department of Justice. Allocation factors include the complexity, scope, and difficulty of questioned document work; the independence of action; the degree of supervision exercised or received; and consequence of error.

## **Definition of Levels**

### **Questioned Document Examiner I**

This is the entry and first working level in the series. Incumbents perform the routine, less difficult analyses, evaluations, comparisons, examinations, and identifications of handwriting and mechanical impressions; appear in court to testify as an expert witness on the less difficult cases to explain and illustrate the methods used in the examination and identification of questioned document cases.

### **Questioned Document Examiner II**

This is the full journey level in the series. Incumbents perform the more difficult analyses, evaluations, comparisons, examinations, and identifications of handwriting, mechanical impressions, and other document-related problems; appear in court to testify as an expert witness to explain and illustrate the methods used in the examination and identification of questioned document cases.

### **Questioned Document Supervisor**

This is the working supervisory level in the series. The incumbent assigns, directs, and supervises the work of a group of Questioned Document Examiners I and II involved in analyses, evaluations, comparisons, examinations, and identifications of handwriting and mechanical impressions, and the preparation and presentation of materials for demonstration of evidence in court. Typical duties include directing all statewide activities of the Questioned Documents Section of the Division of Law

Enforcement of the Department of Justice; representing the Department of Justice to local law enforcement agencies as an expert in the field of questioned document examination; consulting with prosecutors on various methods of presenting evidence; and performing the most difficult examinations of sensitive questioned documents often requiring court testimony.

## **Minimum Qualifications**

### **Questioned Document Examiner I**

#### **Either I**

Education: Equivalent to completion of three years of college (90 semester units), with a declared major in criminal justice, criminalistics, computer science, or one of the physical or biological sciences.

#### **Or II**

Experience: Two years of experience in law enforcement or investigation work, including or supplemented by the equivalent of at least one year of technical work involving the examination of questioned documents, the preparation of documentary exhibits, and expert witness testimony in various courts on matters relative to documentary evidence.

### **Questioned Document Examiner II**

#### **Either I**

Two years of experience in the California state service performing the duties of a Questioned Document Examiner I, Range B.

#### **Or 11**

Experience: Four years of experience in law enforcement or investigation work, including or supplemented by the equivalent of at least two years of technical work involving the examination of questioned documents, the preparation of documentary exhibits, and expert witness testimony in various courts on matters relative to documentary evidence. (Experience in the California state

service applied toward this requirement must include at least two years performing the duties of a class with substantially the same level of responsibility as a Questioned Document Examiner I, Range B.) and

Education: Equivalent to graduation from college with a Bachelor's Degree in Criminal Justice, Criminalistics, Computer Science, or one of the physical or biological sciences, with a minimum of nine semester units in criminal justice. (Additional qualifying experience may be substituted for four years of the required education on a year-for-year basis.)

## **Questioned Document Supervisor**

### **Either I**

One year of experience in the California state service performing the duties of a Questioned Document Examiner II.

### **Or II**

Experience: Five years of experience in law enforcement or investigation work, including or supplemented by the equivalent of a least two years of technical work in the examination of questioned documents, the preparation of documentary exhibits, and expert witness testimony in various courts on matters relative to documentary evidence. (Experience in the California state service applied toward this requirement must include at least one year performing the duties of a class with substantially the same level of responsibility as a Questioned Document Examiner II.) and

Education: Equivalent to graduation from college with a Bachelor's Degree in Criminal Justice, Criminalistics, Computer Science, or one of the physical or biological sciences, with a minimum of nine semester units in criminal justice. (Additional qualifying experience may be substituted for four years of the required education on a year-for-year basis.)

## **Knowledge and Abilities**

### **Questioned Document Examiner I**



Knowledge of: Questioned document examination; styles of handwriting commonly employed and the principal physiological, psychological, and mechanical characteristics of handwriting; rules of evidence applicable to handwriting identification; basic criminal laboratory techniques.

Ability to: Communicate effectively at a level required for successful job performance; detect, recognize, and identify common error, inconsistent speed, departures of normal handwriting, and awkward peculiarities of letter formations in individual writings and mechanical impressions; use microscopic and photographic instruments and equipment; construct the more routine court exhibits and demonstration charts; express facts and prepare written and oral reports; develop and maintain friendly and cooperative relations with law enforcement officers and others; think clearly and logically; analyze situations accurately and adopt an effective course of action.

## **Questioned Document Examiner II**

Knowledge of: All of the above, and principles and techniques of examining and evaluating writing characteristics of ordinary writing instruments; rules of evidence applicable to cases involving handwriting identification.

Ability to: All of the above, and construct court exhibits and demonstration charts; analyze, evaluate, and index information contained in reports of crimes, and correlate bits of information received from other sources.

## **Questioned Document Supervisor**

Knowledge of: All of the above, and the principles of supervision and personnel management; a manager's/supervisor's responsibility for promoting equal opportunity in hiring and employee development and promotion, and for maintaining a work environment that is free of discrimination and harassment.

Ability to: All of the above, and assign, direct, and supervise the work of a group of subordinates; effectively promote equal opportunity in employment and maintain a work environment that is free of discrimination and harassment.

## **Special Personal Characteristic**

# All Levels:

Keeness of observation.

## Class History

Class	Date Established	Date Revised	Title Changed
Questioned Document Examiner I	03/21/1968	10/07/1998	10/07/1998
Questioned Document Examiner II	12/20/1948	10/07/1998	10/07/1998
Questioned Document Supervisor	03/14/1979	10/07/1998	10/07/1998

Updated: 10/14/2015

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