

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

**IN THE MATTER OF:**

Live 2 Recycling – Michael Watters

Address: 525 West Inyo Drive, Traver, CA

Type of Entity: Revocation of Probationary Certificate

**File No.: IH14-005-BCR**

**Certificate No.: RC61118.001**

**PRECEDENTIAL DECISION No.: 23-07**

**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 24, 2014, 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.

1 TY MOORE  
2 Staff Counsel  
3 Hearing Officer  
4 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY  
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6 STATE OF CALIFORNIA  
7 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

8 In the Matter of:

)  
) **Doc Case No. IH14-005-BCR**

10 Revocation of Probationary Certification To Operate )

) **DECISION OF HEARING OFFICER**

11 a Recycling Center:

12 Michael Watters, dba Live 2 Recycle )

13 Recycling Center No: 161118.001 )  
14 )  
15 )  
16 )

Date:  
6/24/14

17  
18 **INTRODUCTION**

19 The parties in this matter are the applicants, Michael Watters ("Watters" or "Respondent"),  
20 dba Live 2 Recycle ("L2R") and the Department of Resources Recycling and Recovery  
21 ("Department"), Division of Recycling ("Division").

22 On or about November 1, 2012, Respondent was granted a conditional approval by the  
23 Division to operate a recycling facility at 525 West Inyo Drive in Traver, California; the Department  
24 issued a probationary certification to operate a certified recycling facility to Watters for that facility.  
25 (Division Exhibit 10.) At some point after the approval, the recycling facility was opened or moved  
26 to 3892 Merritt Drive in Traver, California. (Division Exhibit 2.)

27 On or about April 29, 2014, the Division notified Respondent that it was terminating the  
28 probationary certification for L2R. (Division Exhibit 2.) In this notice, the Division stated that  
Watters failed to demonstrate to the satisfaction of the Division that he would operate in

1 compliance with the California Beverage Container Recycling and Litter Reduction Act, Public  
2 Resources Code Sections 14500 et. seq. (the "Act"), and associated regulations (14 CCR Sections  
3 2000 et. seq.). On or about May 8, 2014 (letter dated May 6, 2014), Watters requested a hearing  
4 regarding the termination of their certification. (Division Exhibit 2.)

5 The requested hearing was conducted on June 11, 2014, as coordinated between both  
6 parties, and was conducted at 801 K Street. I was the hearing officer, appointed by the  
7 Department Director, Caroll Mortensen. The Division was represented by Linda Thepot.  
8 Respondent represented himself.

### 9 ISSUES

10 The central issue to be determined is whether the Division's revocation of Respondent's  
11 probationary certificate was supported by applicable law and relevant evidence. Essential to such  
12 a determination is whether the Division met its burden of proof by showing that their determination  
13 that L2R failed in their duty to operate their facility in accordance with the Act and regulations was  
14 supported by a preponderance of the evidence and thus met the standard for such disciplinary  
15 action.

### 16 PRELIMINARY MATTERS AND STIPULATIONS

17 Pursuant to a request from the Division, I took official notice of the Act and associated  
18 regulations (14 CCR Sections 2000 et. seq.) provided in part in Division Exhibit 1. I also took  
19 notice of California Evidence Code Sections 1200 and 1280, provided in Division Exhibit 3

20 Both parties stipulate that L2R was closed from October 2, 2013 through December 6,  
21 **2013.**

22 Additionally, I note that Notice of Informal Hearing, sent on or about May 20, 2014, for this  
23 proceeding and the Division's notification regarding the termination, sent on or about April 29,  
24 2014, (Division Exhibit 2) both indicated that the purpose for this hearing was to make a  
25 determination regarding the Termination of a Probationary Certificate, and did not reference any  
26 pending application. However, at the time of the Hearing, additional materials were presented  
27 regarding a possible denial of an application for a recycling center to be located at Kings Market  
28 and Deli at 1801 6<sup>th</sup> Avenue Drive in Kingsburg, California. (Division Exhibits 6 and 8.) The fact

1 that Respondent has a pending application for a recycling center had no bearing on this matter.  
2 However, I note that this Decision may have some impact on the aforementioned application or  
3 other applications submitted by Respondent.

#### 4 **EVIDENCE PRESENTED**

5 Division Exhibit 11 includes correspondence from Tabitha Chavez ("Chavez") regarding an  
6 inspection conducted by Edmund Darko ("Darko") on or about August 21, 2012, as well as copies  
7 of a Violation Checklist and Declaration of Limited Review signed by both Darko and Watters.  
8 Division Exhibit 12, the Department's Inspection Report from March 20, 2013, consisting of a  
9 Recycling Enforcement Review Findings Notice signed by Watters and Kim Bryant ("Bryant"),  
10 copies of consumer transaction logs, and receipts, are admitted. Division Exhibit 13, an email  
11 containing a Recycling Center Shipping Report, regarding a transaction between L2R and Pena's  
12 Material Recovery Facility, Inc. ("Pena's"), detailing a reduction in redemption weight from 425.8  
13 lbs to 63.6 lbs, for the load received on or about March 25, 2013, based on a determination that  
14 the load included non-program aluminum. Division Exhibit 14, the Shipping Report dated March  
15 26, 2013, and Weighmaster Ticket, dated March 27, 2013, along with related invoices, from L2R to  
16 Pena's for the transaction. Division Exhibit 16 includes an inspection Findings Notices signed by  
17 Tonya Harrison ("Harrison") documenting that no attendant was present at L2R on December 2,  
18 2013, an inspection Findings Notices signed by Tonya Harrison ("Harrison") documenting that no  
19 attendant was present at L2R on December 5, 2013, and a signed statement from Gaher  
20 Zamzami, owner of Tri Market located at 3920 Merritt Drive in Traver, California, stating that L2R  
21 had not been operating for approximately 3 months. Division Exhibit 17 includes Division of  
22 Recycling Integrated Information System ("DORIIS") Transaction Reports for Aluminum, Glass,  
23 HOPE, and PET for all L2R redemptions claimed from 09/01/13 through 12/05/13. Division Exhibit  
24 18 included pictures showing that the recycling center was not operational (closed blue shipping  
25 container in a parking lot); the pictures were labeled 12/5/2013 at 12: 15 P.M. and 12/2/2013  
26 at 12:17 P.M. respectively. Division Exhibit 19 included a letter from Watters dated December 5,  
27 2013 notifying the Division that it was closed for 2 months as a result of a family emergency.  
28 Exhibit 19 also included a copy of a handwritten letter from Watters to the Division, attention Diane

1 Makishima "Makishima", dated August 9, 2012 that he was changing his hours of operation; the  
2 note includes a note from Makishima noting that she called and left a message for Watters  
3 confirming the new hours and requesting another letter if the Division's understanding regarding  
4 Watter's request was not correct. Division Exhibit 20 was a Notice of Noncompliance based on a  
5 violation of 14 CCR 2500(b) for having no staff present (site closed) during hours of operation on  
6 April 8, **2014**.

7 Watters provided Respondent Exhibits A-G, which were his copies of correspondence  
8 previously admitted by the Department as Division Exhibit 2

9 The Division argues in support of its position that it reasonably believes that  
10 Respondent failed in their duty to operate their facility in accordance with the Act and  
11 regulations by showing;

- 12 1. Respondent failed to ensure that required logs were completed;
  - 13 a Recycling Center certification number not included on logs as required per  
14 Regulation Section 2525(a)(4)(b).
  - 15 b Failing to obtain a legible name for the customer and frequently failing to request a  
16 signature (or indicate that the customer refused to sign) as required per Regulation  
17 Section 2525(a)(6)(b).
  - 18 c Total weight count or commodity type not indicated in the summary at the bottom  
19 of the log as required per Regulation Section 2525(a)(1)(b) Total payment amount  
20 and total amount paid for each material type not indicated at bottom of log as  
21 required per Regulation Section 2525(a)(2)(b). Failed to prepare daily summaries  
22 including total weight or corresponding refund value as required per Regulation  
23 Section 2525(i).
- 24 2 Respondent paid and claimed California Redemption Value (CRV) on out-of-state, non-  
25 program, containers in violation of 14 CCR 14538(b)(1) & (6) and Regulation Section  
26 2501(d).
- 27 3 Respondent failed to prepare pre-numbered receipts for purchases of \$100 or more in  
28 refund value per Regulations Section 2525(a).

1 4. Respondent failed to open this recycling center during the agreed upon hours/days and  
2 essentially discontinued operation in violation of Regulation Section 2505.

3 The Division presented testimony by Division staff Chavez, Bryant, Tonya Harrison  
4 ("Harrison") and Heather Gladney ("Gladney").

5 Chavez provided testimony establishing that the Division's records, most notably the  
6 inspection reports by Darko and the note from Makishima, were made within the scope of the  
7 respective employee's duties, at the time of or near the time of the act, condition, or event,  
8 using sources of information and methods such that the records are trustworthy; specifically  
9 Chavez noted that while Darko was not present to testify regarding his inspections, his records  
10 should be admissible pursuant to Evidence Code 1280 which permits the admission of official  
11 records or reports without requiring a witness to testify as to its identity and mode of  
12 preparation if sufficient independent evidence shows that the record or report was prepared in  
13 such a manner as to assure its trustworthiness. Darko's reports, in turn, establish that Watters  
14 was provided with on-site training as well as of Division training materials and establish that  
15 Darko conducted the probationary inspection of L2R where he documented several types of  
16 violations that were observed and reviewed with Watters.

17 Bryant testified that she was contacted by Pena's regarding L2R materials provided to  
18 them where L2R claimed CRV on suspected out-of-state materials. Bryant conducted her  
19 inspection of those materials on March 26, 2013, and found that the materials were non-  
20 program material. Additionally, on March 27, 2013, Bryant collected a copies of a receipt  
21 provided by L2R for \$228.28 which was not a pre-numbered receipt, and logs for March 13-18  
22 and 26, which demonstrate numerous repeated failures to include the Recycling Center  
23 number, failure to obtain legible printed name and/or signature (or indicate refuse to sign),  
24 failure to provide totals paid to individual customers, failure to complete daily summaries.

25 Harrison provided testimony that she visited 3892 Merritt Drive in Traver, California on  
26 December 2, 2013, and December 5, 2013, during operation hours and found the location  
27 closed. Also, she inquired with the manager of the adjacent market who provided her with a  
28 statement that the business had not been open for approximately 3 months.

1 Gladney testified that the Division did not receive a request to temporarily close the site  
2 until December 8, 2013, after Harrison's inspections. Gladney also testified that earlier that  
3 same year the Division changed its policy regarding temporary site closures; they were  
4 previously granted upon request with 10-day notice, however after the policy change they were  
5 no longer permitted.

6 Watters argues that he should be allowed to continue operating RC 161118.001. Watters  
7 testified that the training he received by the Division was not adequate and that that if he had  
8 received the new training now provided by the Division that he would not have committed  
9 violations. Watters testified that he previously failed to understand the reasons why the Division  
10 was requiring him to put his recycling center number on logs, demand signatures, and complete  
11 daily summaries on logs; he testified that he feels that this lack of understanding regarding the  
12 purpose behind the requirements contributed to his failure to properly meet these requirements  
13 and train his employees.

14 Watters testified that when he submitted applications to open three recycling centers, he  
15 intended to first open recycling centers in two other locations where his clients were not  
16 predominantly Spanish speaking; he feels that the fact that his first, and only, recycling center  
17 opening with a client base with whom he could not communicate contributed to his inability to  
18 obtain names and signatures on logs. Regarding the non-program materials provided to Pena's,  
19 he admitted that he failed to inspect that material and knows that he should have done so, and  
20 would inspect future all material submitted for CRV if allowed to continue to operate.

21 Watters testified that he believed that temporary recycling center closures were permitted  
22 upon request and that he didn't know that the Division had changed its policy to prohibit temporary  
23 closure; he admits that he did not request a temporary recycling center closure prior to temporarily  
24 closing his recycling center from October 2, 2013, through December 6, 2013. Watters testified  
25 that he closed his recycling center in October 2013 because of a family emergency; his mother  
26 was diagnosed with stage 2 cancer which he believed she would not survive. Watters also  
27 testified that on another occasion his site was temporarily closed after an employee, a family  
28 friend, used Watters credit card without permission and stole \$3,000; Watters stated that he had

1 insufficient funds to pay customers until he was able to obtain a loan from family members to  
2 reopen. Watters testified that he informed Gladney why his site was closed on this occasion.

3 Watters denies that he violated Section 2500(a)(1) as alleged in the Division's complaint  
4 for failing to begin operation within 60 calendar days of approval of the a probationary certificate  
5 for RC 173077.001, 160740.001 or 160758.001 because the Division failed to meet their obligation  
6 to approve or deny an application within "30 or 90 days"; Watters argues that he was unable to  
7 open these sites because of the excessive delays by the Division, which he testified the Division  
8 excused due to understaffing. He argues that his business arrangements to open recycling  
9 centers at those locations fell through because of the Division's delay; it was not possible to  
10 reestablish agreements with property owners at the locations authorized by the Division within the  
11 obligatory 60 day periods.

12 Watters denies that L2R posted an incorrect price for aluminum in violation; that he did not  
13 violate Regulations Section 2500(e)(2) as alleged in the Division complaint and noted that the  
14 Division didn't provide any proof, other than that he had done so.

## 15 **LEGAL ANALYSIS**

### 16 **BURDEN OF PROOF**

17 In this matter, the Respondent bears the burden of proving that the Department failed to  
18 meet its burden of proof; Respondent must show that the Department failed to demonstrate that  
19 L2R failed in their duty to operate their facility in accordance with the Act and regulations.

### 20 **STANDARD OF PROOF**

21 There is no authority establishing a particular standard of proof for the revocation of a  
22 probationary certificate. Absent a statute or other authority fixing a different standard, the burden  
23 of proof requires the preponderance of evidence. <sup>1</sup>

### 24 **LEGAL BASIS FOR REVOCATION**

25 The Act states that any certification granted by the Division is a privilege and not a vested  
26 right. <sup>2</sup> A probationary certificate holder must, throughout the probationary period, demonstrate to  
27

28 <sup>1</sup> Evidence Code § 115.

<sup>2</sup> PRC §14541.5.



1 the Division's satisfaction that the operator will conduct their business in accordance with the Act  
2 and regulations.<sup>3</sup>The Division may take disciplinary action, including immediate revocation of a  
3 certificate, if the responsible party engaged in dishonesty, incompetence, negligence, or fraud in  
4 performing the functions and duties of a certificate holder or violated the Act or associated  
5 regulations.<sup>4</sup>

#### 6 FINDINGS OF FACT

7 Respondent failed to provide the recycling center number on the seven logs presented  
8 (Division Exhibit 12); each occurrence is a violation of Regulation Section 2525. Similarly, on each  
9 of these same logs, Respondent failed to provide the total weight count or commodity type not  
10 indicated in the summary at the bottom of the log as required per Regulation Section 2525(a)(1)(b)  
11 or the payment amount and total amount paid for each material type not indicated at bottom of log  
12 as required per Regulation Section 2525(a)(2)(b).

13 These logs, for seven days of transactions, also demonstrate over fifty examples of  
14 incomplete transactions based on missing or illegible printed names and/or signatures. A  
15 consumer transaction log is a paper form which is applicable supporting data such that the  
16 requirement of Regulations Section 2090(c) apply. Because the consumer logs did not include a  
17 legibly printed name, a signature, or statement explaining why it could not be obtained, the log is  
18 incomplete per Regulations Section 2525; as such no CRV transaction should have even been  
19 completed; the log is incomplete. Each of these incomplete transactions which were included in  
20 the daily summaries and transferred to a DR-6 resulted in an unqualified payment to Respondent  
21 (regardless of the possibility that Respondent might have improperly passed payment on to a  
22 customer who was not properly identified). This type of error had previously been noted  
23 approximately seven months earlier during the August 21, 2012 inspection by Darko.

24 Additionally, Respondent admits that on at least one occasion, he failed to inspect  
25 materials which were submitted for CRV and which the Division subsequently inspected and found  
26 included non-program, out-of-state material.

27  
28 <sup>3</sup>PRC §§ 14538(a)(I) and 14539(a)(I).

<sup>4</sup>PRC §§ 14591.2(b)(I)-(3).

1 Respondent admits to closing L2R in violation of Regulation Section 2500(b)(1)(8) for over  
2 two months, from October 2, 2013 through December 6, 2013, without informing the Division of the  
3 closure. The Division record and Respondents statements indicate that L2R was closed on at  
4 least one other occasion, on or about April 8, 2014.

5 The Division did not submit sufficient evidence to support a conclusion that on or about  
6 March 26, 2013, Respondent posted an incorrect price for aluminum in violation of Regulation  
7 Section 2500(e)(2).

8 The Division did not present sufficient evidence to conclude that Respondent failed to  
9 begin operations with 60 calendar days of approval of the certifications for RC17307.001,  
10 RC160758001 or 160740.001. DORIIS records indicate an "Operation End Date of July 9, 2012  
11 for both RC 160758.001 and 160740.001. (Division Exhibit 9.) A letter indicating invalidation of  
12 RC 160758.001 and 160740.001 was sent to Watters two weeks later on or about July 26, 2012  
13 that provided a different effective date of invalidation of July 25, 2012. The Division records  
14 admitted are not clear regarding whether the actual date the sites were invalidated was July 9 or  
15 July 25. In either case, the evidence includes no record, nor was testimony provided, regarding  
16 the date that the the Division approved certification for any of these three recycling centers. The  
17 evidence also does not demonstrate that the Division notified Respondent that the recycling  
18 centers were approved. At least the notification to Respondent would be necessary to establish a  
19 start date for Respondent to take action within the 60 day deadline indicated in Regulation Section  
20 2500(a)(1). Additionally, were such an approval date to be in the record, Respondent makes a  
21 compelling and reasonable argument that because the Division did not review the form in a timely  
22 fashion, within the 60 day period as required per the Act section 14538(a)(2), he should have been  
23 excused from the requirement to start a recycling center within 60 days. The Division did not  
24 refute Respondent's claim that they had exceeded their deadline to process the application; the  
25 Division argued generally that some applications are not processed within the 60 day period  
26 because they are incomplete, but none of the Division's witnesses explicitly stated that  
27 Respondents applications had any error or omission.  
28

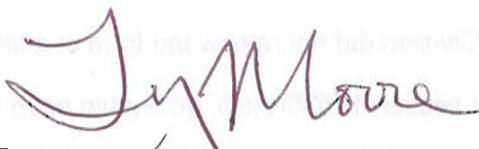
1 **DECISION**

2 The Department is charged with the administration and enforcement of the Act. To protect  
3 the integrity of the California Beverage Container Recycling Fund, recycling center operators,  
4 including those like Live 2 Recycle which hold probationary certificates, are required to operate in  
5 compliance with the Act and regulations enforcing the Act and demonstrate their ability to do so to  
6 the satisfaction of the Department.<sup>5</sup> These duties include ensuring the integrity of the fund by  
7 making sure that payments are not made for non-CRV material and eliminating the opportunity for  
8 fraud and waste by ensuring that all processors follow uniform procedures as defined in the Act and  
9 Regulations.<sup>6</sup> In addition, the law is clear that any certificate granted by the Department is a  
10 privilege and not a vested right or interest. Program participants, like the Respondent, have a duty to  
11 understand and meet the requirements of the Act and Regulations;

12 I find that the Division has established with a preponderance of the evidence that Live 2  
13 Recycle repeatedly failed to meet the requirements of the Act and regulations such that the Division  
14 has a reasonable belief that it did and would continue to put the beverage container fund at risk.  
15 Therefore, the Division did not abuse its discretion to revoke the probationary certificate issued to  
16 Michael Watters for Live 2 Recycle.

17 In light of the foregoing, I uphold the Department's revocation of the probationary certificate  
18 of Live 2 Recycle (Recycling Center No. 131303.001).

19  
20 **IT IS SO ORDERED:**

21  
22 

23 \_\_\_\_\_  
24 **Ty Moore, Staff Counsel**

**June 24, 2014**

25 **Department of Resources Recycling and Recovery**

26 **Hearing Officer**  
27  
28 \_\_\_\_\_

<sup>5</sup> PRC § 14538(a)(1).  
<sup>6</sup> PRC § 14538(a)-(b).



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

PROOF OF SERVICE

I, Donnet Mcfarlane, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On June 24, 2014, I served The Decision in the Matter of the Termination of a Probationary Certificate, Live 2 Recycle, DRRR Case No. IH14-005-BCR to:

Mr. Michael Watters Jr.  
Live 2 Recycle  
3735 Silverdale Street  
Visalia, CA 93292  
Certified# 7011 2970 0003 5422 6559

Linda Thepot, Sr. Staff Counsel (sent via email only)  
CalRecycle - Legal Office  
801 K Street, MS 19-03  
Sacramento, CA 95814  
[Linda.Thepot@calrecycle.ca.gov](mailto:Linda.Thepot@calrecycle.ca.gov)

by:

  X   **First Class Mail** In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service.

  X   **Certified Mail** In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service.

  X   **Electronic Service** Sent to the email addresses listed above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 24th day of June, 2014.

  
\_\_\_\_\_  
(Signature)