

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Paper Rush Company – Hugh Centeno

Address:

Type of Entity: Revocation of Probationary Certificate

File No.: 2009-009

OAH No. 2011080346

Certificate Nos.: RC2902, RC13999

PRECEDENTIAL DECISION No.: 23-15

**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 August 13, 2013, in the above-referenced action.

This decision is designated precedential effective September 10, 2023.

Sacramento, California

Dated: September 10, 2023

As approved by Rachel pursuant to RFA dated September 10, 2023

Department of Resources, Recycling & Recovery

AUG 13 2013

**CalRecycle
Legal Office**

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

**IN THE MATTER OF THE
ACCUSATION AGAINST:**

OAH Case No. 2011080346

**PAPER RUSH COMPANY, INC., a
California corporation operating as a
certified recycling center under certificate
number RC2902,**

DRRR Case No. 2009-009

**RECYCLE TODAY, INC., a California
corporation operating as a certified
recycling center under certificate number
RC13999,**

DECISION

**JUNE TRAN VANH, individually and as
the principal, owner, partner, member,
director, president, manager, and operator
of PAPER RUSH COMPANY, INC. and
RECYCLE TODAY, INC.,**

and

**HUGO CENTENO, individually and as the
principal, owner, partner, member,
director, president, manager, operator, and
employee of PAPER RUSH COMPANY,
INC. and RECYCLE TODAY, INC.,**

Respondents.


The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted by the California Department of Resources Recycling and Recovery, along with the corrections made pursuant to Gov. Code §11518.5(d), attached hereto, as its Final Agency Decision in the above-entitled matter.

This Final Agency Decision will become effective on 13 Aug., 2013.

IT IS SO ORDERED 13 Aug., 2013.

Department of Resources Recycling And Recovery
State of California

Dated: 13 Aug. 2013



Carol Mortensen, Director
California Department of Resources
Recycling and Recovery

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

**IN THE MATTER OF THE
ACCUSATION AGAINST:**

OAH Case No. 2011080346

**PAPER RUSH COMPANY, INC., a
California corporation operating as a
certified recycling center under certificate
number RC2902,**

DRRR Case No. 2009-009

**RECYCLE TODAY, INC., a California
corporation operating as a certified
recycling center under certificate number
RC13999,**

**CORRECTIONS TO
THE PROPOSED DECISION**

[Gov. Code §11518.5(d)]

**JUNE TRAN VANH, individually and as
the principal, owner, partner, member,
director, president, manager, and operator
of PAPER RUSH COMPANY, INC. and
RECYCLE TODAY, INC.,**

and

**HUGO CENTENO, individually and as the
principal, owner, partner, member,
director, president, manager, operator, and
employee of PAPER RUSH COMPANY,
INC. and RECYCLE TODAY, INC.,**

Respondents.

Pursuant to Gov. Code §11518.5(d), the Department of Resources Recycling and Recovery makes the following corrections to the Proposed Decision issued in this matter on July 15, 2013 by the Honorable Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, which is adopted otherwise in its entirety as the Final Agency Decision in the above captioned matter.

Paragraph 21, page 13, "CRB" in the last sentence is corrected to "CRV."

Paragraph 82, subparagraph "i," page 31, "CRB" is corrected to "CRV."

Paragraph 29, page 16, is corrected to read as follows:

"29. During the walk-through inspection of Paper Rush, Mr. Scherer detected at that recycling facility large amounts of HDPE (high density polyethylene) plastic, which is also called "number two plastic." The HDPE observed by Mr. Scherer was a

1 type of number two plastic container that was ineligible for redemption, e.g., detergent
2 bottles, milk bottles, and oil containers. This detection by Department personnel was
3 important because during the earlier inspection at the Allan Company processing center
4 in Fresno, the Department learned that Paper Rush had delivered a load of plastic in
5 order to collect CRV reimbursement that contained ineligible HDPE. Due to the
6 ineligibility, that Paper Rush load had to be rejected for reimbursement of CRV.”
7

8 Dated: 13 Aug., 2013


9 Caroll Mortensen, Director
10 California Department of Resources
11 Recycling and Recovery
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FILED

AUG 13 2013

**CalRecycle
Legal Office**

BEFORE THE
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation
Against:

PAPER RUSH COMPANY, INC., a
California corporation operating as a
certified recycling center under Certificate Number
RC2902,

RECYCLE TODAY, INC., a
California corporation operating as a
certified recycling center under Certificate Number
RC13999,

JUNE TRAN VAN, individually and as the
principal, owner, partner, member, director, president,
manager, and operator of
PAPER RUSH COMPANY, INC., and
RECYCLE TODAY, INC.,

and

HUGO CENTENO, individually and as the
principal, owner, partner, member, director, president,
manager, operator, and employee of
PAPER RUSH COMPANY, INC., and
RECYCLE TODAY, INC.,

Respondents.

DRRR Case No. 2009-009

OAH No. 2011080346

PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on December 10, 11, 12, 13 and 14, 2012, March 27, 28 and 29, 2013, as well as April 16 and 17, 2013, in Oakland, California.

Senior Staff Counsel Jeffrey A. Diamond, Legal Office, Department of Resources Recycling and Recovery represented complainant Jose Ortiz, Deputy Director, California Department of Resources Recycling and Recovery.

Mr. Leonard Lang, Upper Room Consulting, Inc., of 9650 Bloomfield Avenue, Cypress, California 90630, represented respondents Paper Rush Company, Inc, Recycle Today, Inc., Ms. June Tran Vanh, and Mr. Hugo Centeno. Over the course of approximately nine days of the hearing of this matter, various Spanish-English interpreters provided respondent Centeno with language assistance.

The record was held open to afford an opportunity to the parties to file written closing argument, and, if necessary, written reply arguments. On May 10, 2013, complainant filed "Department's Closing Argument," which was marked as exhibit "35," and received as argument. Also, on May 10, 2013, OAH filed "Respondents' Closing Argument," which was marked as exhibit "F," and received as argument. On May 13, 2013, OAH received from complainant's legal counsel a letter that objected to the format, and other aspects, of respondents' written argument. The letter, which was marked as exhibit "36," resulted in the undersigned's written response, which was marked as OAH post-hearing exhibit "I," that overruled complainant's objection. On May 22, 2013, OAH received from complainant "Department's Reply to Respondents' Closing Argument," which was marked as exhibit "37," and received as argument. And on May 22, 2013, OAH received "Respondents' Rebuttal Argument to Department's Closing Argument," which was marked as exhibit "G," and received as argument.

On May 22, 2013, the parties were deemed to have submitted the matter and the record closed.

SUMMARY

The Department of Resources Recycling and Recovery is responsible for enforcing California's Recycling Act.

Paper Rush Company, Inc. and Recycle Today, Inc. each holds a probationary certificate to operate their respective recycling centers. Recycle Today and Paper Rush are interlocking corporations that have common ownership, as well as substantially identical officers/directors and management personnel. Respondent Vanh was responsible for the operations of both Paper Rush and Recycle Today, while respondent Centeno was responsible for the operations of Recycle Today.

During late 2009, Recycle Today and Paper Rush dispatched to a recycling processor a number of truck loads of materials, including previously baled material and out-of-state material, that were ineligible for collection of money in the form of California Refund Value (CRV). Respondents Ms. Vanh and Mr. Centeno, as officers, directors, agents or employees of Paper Rush and Recycle Today, knew or should have known, in all instances, that those corporate certified recycling centers had placed into the stream of commerce large amounts

of ineligible material so as to unlawfully collect large sums of money through the California Beverage Container Recycling Fund administered by the Department. The responsible persons associated with both Paper Rush and Recycle Today failed to exercise the degree of care expected of recycling center operators to assure mandatory inspections of loads of material as required by the Act. Further, both Paper Rush and Recycle Today, through respondent Vanh and respondent Centeno, or persons supervised by those responsible persons, committed several reporting violations. Also Paper Rush and Recycle Today, with the exercise of reasonable diligent, should have know that the sellers to them of ineligible material were engaged in a criminal or corrupt enterprises to defraud the Department of money from the Fund. And respondent Centeno and respondent Vanh engaged in fraud in several specific ways that violated the Act.

The Department seeks to revoke the respective probationary certificates held by Paper Rush and Recycle Today. It alleges that Paper Rush and Recycle Today fraudulently paid and collected CRV reimbursement for ineligible beverage containers and split loads, maintained improper records, and engaged in inaccurate reporting. The Department alleges that the conduct of both Paper Rush and Recycle Today was egregious and resulted in substantial damage to the Recycling Fund.

Neither matters in extenuation nor mitigating factors were established by respondents to warrant refutation of imposition of the contemplated adverse action sought against respondents by complainant. Extending the respective probationary certifications under more restrictive terms and conditions would not be in the public interest. Rather, the outright revocation of the respective licenses held by Paper Rush and Recycle Today is required to protect the public.

Also the Department established that it is entitled to substantial restitution and interests from respondents. And the facts developed through evidence at the hearing require that additional penalties be imposed upon respondents.

FACTUAL FINDINGS

1. The Department of Resources Recycling and Recovery (Department) is required by statute to be responsible for the administration of the California Beverage Container Recycling and Litter Reduction Act (the Act), which is found in Public Resources Code section 14500 et seq., and California Code of Regulations, title 14, section 2000 et seq.

The Department is required to manage the California Beverage Container Recycling Fund (the Fund). Under the law pertinent to the Fund, the Department is directed to adopt regulations, certify and register program participants in the Fund, inspect, audit, investigate as well as file and prosecute enforcement actions and impose disciplinary actions.

The Department is authorized to certify or register the operators of recycling centers, processing facilities, dropoff and collection programs, and curbside programs.

The Department is authorized to audit or investigate any action taken during a three-year period before the onset of an audit or an investigation to determine compliance with the Act. (Pub. Resources Code, § 14552, subd. (b)(1).) Further the Department may conduct a comprehensive inspection, audit, or investigation to determine an operator's on-going compliance with the Act or the Regulations. (Pub. Resources Code, § 14522; Cal. Code Regs., title 14, §§ 2075 and 2125.) Also an operator must provide the Department with immediate access to its facilities, operations, and any relevant record, that, in the judgment of the Department, are necessary to carry out the Department's obligation to verify compliance with the Act and Regulations.

Background- Beverage Container Recycling Program

2. The Act establishes a process by which certified recycling centers pay California Refund Value (CRV) to consumers for eligible empty beverage containers. Certified recycling centers submit claims for reimbursement from the Fund for the payments made to consumers.

The claims process for a recycling center entails such entity selling CRV eligible material to a certified processor, which inspects the empty beverage containers, cancels the CRV eligibility and then sells the material to an end user. The certified processor collects the claims record made by certified recycling centers and transmits the claims forms to the Department for payment from the Fund.

The sale of empty eligible beverage containers from a certified recycling center to a certified processor is recorded and documented by a Department Form Number 6-Shipping Report (DR 6). The DR6 document was created by the Department to serve as the essential record for the receipt of eligible material by a processor and the DR 6 serves as the basis for payments from the Fund. A certified processor is ordinarily responsible for preparing the DR6; however, when a certified recycling center is the shipper, the recycling center has responsibility for the content on the DR 6. In all instances, the DR 6 must contain the following information: the name of the company acting as shipper, the address of the shipper, the shipper's certification number, the shipper's contact person, along with the redemption weight for the shipment and the CRV amount claimed.

A certified processor, which receives a shipment from a certified recycling center, weighs the load, inspects the empty beverage container material in accordance with standards set out in the Act and Regulations so as to determine whether the material qualifies for CRV reimbursement payments. Then the certified processor must enter weight and weight ticket numbers on the DR6. The processor calculates both the CRV amount and processes payment due to the shipper and the applicable administrative fees due to the processor. The certified processor is required to pay the CRV amount and process payments to the certified recycling center within two working days. A processor then aggregates a batch of DR6 forms in order

to make a claim on the Fund for CRV money along with processing payments and administrative fees. The CR6 form is signed under penalty of perjury.

Jurisdiction

3. On December 5, 2012, Jose Ortiz, in his official capacity as Deputy Director, the Department, issued and filed the Second Amended Accusation against respondents Paper Rush Company, Inc, Recycle Today, Inc., Ms. June Tran Vanh, and Mr. Hugo Centeno (respondents).

Respondents

4. Respondent Paper Rush Company, Inc. (Paper Rush) is a corporation organized under the laws of the State of California. The Department approved Paper Rush as a certified recycling center under certificate designation number RC2902. Paper Rush's recycling center is located at 2372 Jerrold Avenue in San Francisco, California. Respondent Vanh is the certified operator for Paper Rush.

5. Respondent Recycle Today, Inc. (Recycle Today) is a corporation organized under the laws of the State of California. The Department approved Recycle Today as a certified recycling center under certificate designation number RC13999. Recycle Today's recycling center is located at 848 49th Street in Oakland, California. Respondent Centeno is the certified operator for Recycle Today.

6. Respondent June Tran Vanh (Respondent Vanh) was, at all times relevant to this matter, a principal, corporate member, director, officer and operator of both Paper Rush and Recycle Today.

Respondent Vanh acted as a responsible person, within the meaning of the Act, regarding the conduct of business of both Paper Rush and Recycle Today. Her activities included, but were not limited to, actively directing, controlling and personally participating in the day-to-day operations and management of the business affairs and activities of Paper Rush and Recycle Today.

7. Respondent Mr. Hugo Centeno (Respondent Centeno) was, at all times relevant to this matter, a principal, corporate member, director, officer, operator and employee of Recycle Today at its recycle center in Oakland. Respondent Centeno was a responsible person, within the meaning of the Act, with regard to the conduct of the business of Recycle Today. His functions, duties and responsibilities with regard to Recycle Today included, but were not limited to, directing, controlling, and personally participating in the day-to-day operation and management of the business affairs of Recycle Today. Respondent Centeno served as a site manager for Recycle Today from the commencement date of its operations, both as a certified, lawful recycling center and as an unlicensed recycler, since 2007.

Since approximately 2003, respondent Centeno has worked as the agent of respondent Vanh for matters that pertained to Paper Rush. Through all relevant times to this matter, respondent Centeno provided services to the recycling operations known as Paper Rush and respondent Vanh.

Paper Rush's History as a Probationary Certificate Holder and Record of Adverse Entries in Department Records

8. On January 1, 1989, Paper Rush received an operational date under probationary¹ certificate RC RC2902.

The Department has assembled a record of notations, which covers seven pages, of an adverse or negative nature regarding practices and conduct that Department personnel detected as occurring at, through or associated with, Paper Rush's recycling center operation. The notations indicate a range of Paper Rush's violations of Department's regulations such as "paid CRV on scrap," "failure to remover containers," "failure to prevent refund payment," "hours not posted," "prices not posted," "change of hours [without] notification," "sign message not in compliance," "weights/measures –scale not sealed," "did not visually inspect containers," and other related entries. The record of notations, titled "CIS Event History," shows the beginning of suspension of Paper Rush beginning on December 28, 2009, and continuing through the hearing of this matter.

The business practices of Paper Rush and its managers, directors and officers, never enabled the subject recycling center to acquire a license status other than a holder of a probationary certificate since it began operations in 1989.

Recycle Today's History as a Probationary Certificate Holder and Record of Adverse Entries in Department Records

9. On October 1, 2008, Recycle Today's certification number RC13999 became operational. Although its application for licensure through a Department issued certificate was received on July 3, 2008, the Department has a competent, persuasive record establishing that Recycle Today began unlicensed activities as a non-certified recycling center paying redemption value well before the date Recycle Today was issued its certification number. (In a sworn interview given in 2010, respondent Centeno asserted that

¹ Under the Department's regulations, each newly licensed recycling center receives a probationary certificate for a period of two years. Towards the end of the two-year period of probation, the Department reviews its records pertaining to the business practices and history of compliance for the probationary certificate holder. Upon a two-year period of full compliance, the recycling center is taken off probationary status. From January 1989 through December 28, 2009, when its certificate was suspended and it was ordered to cease and desist its recycling operations, Paper Rush never was relieved of the probationary certificate holder status.

in 2007 he began recycling center activities for CRV at the Oakland site where Recycle Today commenced its certified operations.)

The Department possesses a record of notations of an adverse or negative nature regarding practices and conduct that Department personnel have detected regarding Recycle Today. The notations indicate a range of Recycle Today's violations of Department's regulations such as "non CRV material in load," "previously baled material in load," "paid CRV on scrap glass," "no [recycle center] number on logs," "no prices posted," and other related entries. The record of notations, titled "CIS Event History," indicates the beginning of the suspension of Recycle Today's certificate that began on December 28, 2009, and continued through the hearing of this matter.

Over the span of its approximate 14 months of active operation as a certified recycling center, Recycle Today always held a probationary certification status.

Factual Basis for Disciplinary Action Against the Licenses and Respondents

TESTIMONY BY MR. WALT SCHERER

10. Mr. Walt Scherer is the Supervisor of Investigation for Northern California for the Department. In recent years, he has had a classification of Senior Management Auditor, Compliance Assurance Branch, Division of Recycling, Department of Conservation. He has been employed as an investigator for the Department since October 1987.

11. Mr. Scherer offered reliable and persuasive evidence. By his demeanor while testifying, his attitude towards the proceeding, his clear and unhesitating presentation of evidence as well as his solemn, sincere and conscientious attitude towards the proposed action against respondents, Mr. Scherer established himself to be a credible,² exceedingly knowledgeable and trustworthy witness at the hearing of this matter. Over a course of three days of hearing time, complainant's industry expert rendered consistent, erudite and thorough testimonial evidence.

12. During the course of his testimony, Mr. Scherer provided the record with various definitions of terms of art used in the beverage container recycle industry. Based upon his knowledge, experience and training, Mr. Scherer enabled the following crucial concepts to be included in the record:

An "aluminum beverage container" means a beverage container that consists primarily of aluminum. (Pub. Resources Code, § 14503.)

A "consumer" means every person who, for his or her use or consumption, purchases a beverage in a beverage container from a dealer. A "consumer" includes, but is not limited

² Government Code section 11425.50, subdivision (b), third sentence.

to, a lodging, eating, or drinking establishment, and soft drink vending machines. (Pub. Resources Code, § 14508.)

An “empty beverage container” means a beverage container which meets all of the following requirements: (a) the seal or closure installed by the manufacturer has been broken or removed; (b) it does not contain foreign materials other than the residue of the beverage originally packaged in the beverage container; (c) the container bears the message required by law or is a refillable beverage container; and (d) the container has a refund value under the Recycling Act. (Pub. Resources Code, § 14512.)

A “dropoff or collection program” is any person or organization, certified by the Department, that does not pay CRV to consumers, but collects empty eligible beverage containers from businesses and other collection locations as well as from acts of separating recyclables from distinct waste streams. (Pub. Resources Code, § 14511.7.) A dropoff or collection program cannot accept or collect recyclable materials that have been previously separated from mixed municipal waste. (Cal. Code of Regs, tit. 14, § 2000, subd. (a)(20).)

An “operator” is a person or corporate entity that has ultimate responsibility for recycling facility, processing facility, or collection program. An operator has responsibility to assure the accuracy of all claims for CRV reimbursement as made upon the Fund. (Cal. Code of Regs, tit. 14, § 2000, subd. (a)(33).)

An “out-of-state container” means a used beverage container or used beverage container component for which no deposit has been paid by the beverage distributor and that had been brought into this state. (Pub. Resources Code, § 14515.1.) Out-of-state beverage containers are ineligible for CRV, processing payments, and administrative fees. (Pub. Resources Code, §§ 14538, 14539, 14539.5, 14572, 14591, 14595, 14595.5 and 14597.)

“PETE,” or “PET,” is polyethylene terephthalate plastic, which is also known as “number one plastic.” PETE used beverage containers may be eligible for CRV reimbursement.

“Previously baled materials” are containers that have been baled by a baling machine and then broken apart to be resold. (Department’s Recycling Inspections Training Manual, p. 8.) Previously baled material may be represented by either plastic or aluminum containers. Aluminum containers, which have been previously baled, are often seen as forming “biscuits.” Pieces of biscuits, which are segments of compressed or densified portions of aluminum, constitute previously baled material. Plastic containers that have been previously baled have an appearance of being exceedingly flat and the segments of plastic that have been previously baled are often interlocked or seem to “stick together” during the transportation process. The concept of previously baled material comes within the meaning of California Code of Regulations, title 14, section 2501, subdivision (b), prescribing that “a load of material shall be deemed not eligible for any refund value if . . . (1) [t]here are pieces of broken, densified bales or biscuits of aluminum beverages containers within the load (2) [p]ieces of bales of plastic are found in the load” (“Load Inspections Requirements,”

also called the Inspection, regulation.) Previously baled containers, similar to previously redeemed containers, rejected containers, line breakage, or other ineligible materials, are ineligible for CRV, processing payments, and administrative fees. (Pub. Resources Code, §§ 14538, 14539, 14539.5, 14572, 14591, 14595, 14595.5 and 14597; Cal. Code of Regs, tit. 14, §§ 2401 and 2501.)

A “processor” is any person certified by the Department for the purpose of making purchases from recycling centers or collection programs, empty beverage containers that have refund value as established by the Act. A processor must inspect empty beverage containers presented for CRV reimbursement, as well as cancel the refund value by using a method approved by the Department. ((Pub. Resources Code, §§ 14518 and 14539; Cal. Code of Regs, tit. 14, §§ 2000, subd. (a)(4) and 2401.)

A “recycling center” means an operation that is certified by the Department that accepts from consumers, and pays or provides to consumers the refund value for, eligible empty beverage containers intended to be recycled. (Pub. Resources Code, § 14520.) Only certified recycling centers may pay CRV to consumers. (Pub. Resources Code, § 14572, subd. (d)(1).) A recycling center must inspect each load of beverage containers for CRV eligibility before the recycling center may pay consumers the appropriate refund value. (Pub. Resources Code, § 14538; Cal. Code Regs., tit. 14, § 2501.)

“Rejected containers” are beverage containers that a manufacturer or a beverage fill line operator must eliminate from the stream of commerce because of imperfections, obvious damage, line breakage or that have an emblem for a promotion that has been terminated. Recycling centers may only pay scrap value for rejected containers because the distributor has not paid money into the Fund for such containers. These containers are considered pre-consumer material. (Cal. Code Regs., tit. 14, § 2500, subd. (d).)

“Redemption” and “redeem” means the return to a recycling center or location of an empty beverage container for receipt of a cash payment of at least the refund value. (Pub. Resources Code, § 14522.5.)

A “Responsible Party” includes, but is not limited to, a certificate holder, registrant, officer, director, managing employee or a person associated with a recycling center, namely “any individual, corporation, operation, or entity, whether or not certified or registered” under the Act. (Pub. Resources Code, §§ 14591.2 and 14595.4, subd. (a); (Cal. Code of Regs, tit. 14, § 2000, subd. (a)(34).)

“Refund value” means the amount established for each type of beverage container that is paid by the following: (a) A certified recycling center to the consumer or dropoff or collection center for each beverage container redeemed; (b) a processor to a certified recycling center, dropoff or collection program, or curbside program, for each beverage container received; and (c) the Department to a processor, for each beverage container received by the processor from a certified recycling center, curbside program, or dropoff or collection program. (Pub. Resources Code, § 14524.)

FIRST CAUSE FOR DISCIPLINE – CAUSING AT LEAST \$10,000 LOSS TO THE FUND OVER A SIX-MONTH PERIOD

13. Mr. Scherer persuasively described the genesis of the investigation that resulted in the Department's detection of respondents' violations of statutes and regulations that resulted in the accusation in this matter. He provided comprehensive and credible overview of a significant range of respondents' acts and omissions that occurred from October through December 2009.

During late October 2009, when the Department was engaged in an area-wide review and inspection of certified recycling centers and processors in the area of the Central Valley of California, Department personnel received information from a recycling processor called Allan Company, which is located in Fresno, California. The message from the Allan Company imparted that the recycling processor had received from Recycle Today a shipment of bales that had previously-baled beverage containers interspersed with material in the load for which CRV reimbursement was being claimed.

Based upon the informant's tip, the Department commenced an investigation that spanned the period of October 27, 2009, to November 14, 2009.

On October 28, 2009, under the direction of Mr. Scherer, Department personnel visited the Allan Company facility in Fresno. At that site, Department personnel detected that on October 27, 2009, Recycle Today had delivered to Allan Company one load of aluminum beverage containers. The bales in the load were interspersed with previously baled aluminum beverage containers. Along with the load Recycle Today submitted to Allan Company a DR6 form that claimed CRV reimbursement for \$33,032.80.

Also on October 28, 2009, at the Allan Company's premises, the Department's personnel conducted an inspection of the load, which consisted of 24 bales of aluminum, and found that the bales were interspersed with previously baled aluminum beverage containers. And, the Department's personnel found that 69 percent of the aluminum cans did not reflect the CRV message on the lid of containers. The lack of the CRV message showed that the containers were out-of-state beverage containers, which were not eligible for reimbursement from the Fund.

Further, during the October 28, 2009, inspection of a shipment made in the name of Recycle Today, Department personnel found that on October 27, 2009, Recycle Today had delivered to Allan Company one load of PETE beverage containers. The load was accompanied by Recycle Today's completed DR6 form that claimed reimbursement from the Fund of CRV in the amount of \$23,116.80. The inspected PETE bales, however, included previously baled PETE beverage containers that were not eligible for CRV reimbursement.

Later on December 2, 2009, Department personnel detected that Recycle Today delivered to Allan Company a load of PETE beverage containers. Recycle Today submitted a DR6 form that claimed CRV reimbursement in the amount of \$27,206.40. The PETE bales

as inspected by Department personnel in December 20098 contained previously baled PETE beverage containers.

INSPECTION OF RECYCLE TODAY'S FACILITY AND INTERVIEW OF RESPONDENT CENTENO

14. Over the course of the investigation that began in late October 2009, Mr. Scherer sent Department inspectors to travel to the facilities of Paper Rush. And in addition, along with Auditor Alicia Davenport, Mr. Scherer went to the premises of Recycle Today in Oakland.

During the inspection of the premises of Recycle Today, Mr. Scherer and Auditor Ms. Davenport interacted with respondent Mr. Centeno. And the Department's personnel interviewed respondent Mr. Centeno and they toured Recycle Today's recycling center's operations.

15. The inspection tour of the premises of Recycle Today, on approximately October 29, 2009, resulted in the detection among the inventory of the subject recycling center of a large quantity of plastic beverage materials, which existed in a bale form, that the Department's personnel recognized as constituting previously baled material.

16. During Mr. Scherer's interview on October 29, 2009, of respondent Mr. Centeno, admissions were made by that respondent regarding the unlawful and fraudulent business practices as perpetuated at, and through, Recycle Today. (According to Mr. Scherer, respondent Centeno made his statements fluently in English without the aid of any interpreter.)

Respondent Centeno asserted that Recycle Today often received truck-loads of materials, which were delivered to Recycle Today in large plastic bags. The subject recycling center's business custom was to unload the truckloads of material and weigh the material without first inspecting the contents of each plastic bag of material for which CRV reimbursement was claimed.

Respondent Mr. Centeno described Recycle Today's practice of taking the truckloads of material in plastic bags and placing the material into a machine called a down-stroke baler. That initial baled material, according to respondent Centeno, would then be moved to the back area of the recycle center's premises and the bale would be broken apart so that the material could be placed, along with beverage containers delivered to the recycle center by the general public, into a horizontal-ram baler in order to make a much larger bale that combined all the material. Hence, large high density, heavy bales were created by Recycle Today. (Mr. Scherer was credible when he expressed the opinion that the procedure for baling materials as described by respondent Centeno was implausible as the techniques were economically counterproductive and a waste of time.)

17. Also during the interview, on October 28, 2009, of respondent Mr. Centeno at the premises of Recycle Today, Mr. Scherer was shown check stubs for payments of CRV reimbursement for very large deliveries of used beverage containers by uncertified persons to the recycle center. Hence, Department personnel detected that on several occasions individuals delivered to Recycle Today materials comprised of thousands of pounds of used beverage containers for which CRV was sought from the Fund. Respondent Centeno made an admission that in handling the receiving process for the large deliveries of supposed eligible CRV material, the sellers of such large volumes of material specifically instructed respondent Centeno not to make a record of the delivery in a single receipt that would reflect the entire weight of the delivery; rather, respondent Centeno was asked to create multiple receipts in order to fabricate the impression that several individuals had made a number of deliveries of materials that were purportedly eligible for CRV with weights less than 250 pounds. And respondent Centeno complied with the request that he facilitate unlawful business practices to avoid both proper inspection and correct reporting to the Department.

18. On that date in late October 2009, Mr. Scherer and Auditor Davenport interviewed the cashier employed by Recycle Today. The subject recycling center's cashier, Graciela Valenzuela de Leon, demonstrated her method of producing receipts for the days when large deliveries were made at the recycle center. The receipts for deliveries of CRV claimed material showed time stamps, which showed sequential records for a load that weighed more or less than its preceding load, and that the receipts' time stamps were seconds apart. Based upon the knowledge of the processes associated with recycle centers accepting deliveries, inspecting materials, weighing materials, preparing requisite documents, the printing by Recycle Today's cashier of receipts, which showed seconds or even a few minutes apart, led to the inference that fraudulent practices were conducted by Recycle Today's employees and agents. As an illustrative example, Mr. Scherer was persuasive when he described Recycle Today's receipts showing that four separate customers were "processed" at the subject recycle center within a span of 20 seconds; which is an "impossible" feat for a single cashier at a recycle center.

Also, certain "receiving ticket" receipts, which are also titled as "Weightmaster Certificates,"³ were issued within seconds of each other, and the documents failed to set out

³ On October 17, 2009, three receipts were issued at "9:38:03 A.M.," "9:38:28 A.M.," and "9:39:04 A.M.," for "Plastic #1" with respective weights of 220 pounds, 230 pounds, and 240 pounds and for which respective CRV payments were made in amounts of \$198, \$207, and \$216. There was neither a name for the seller, a driver's license or vehicle license plate number on any of the weightmaster certificates.

Also on October 17, 2009, six receipts were issued at 11:55:06 A.M., 11:55:22 A.M., 11:55:42 A.M., 11:56:02 A.M., 11:56:25 A.M., 11:56:44, for aluminum cans with weights of 200, 210, 220, 230, 240, and 250, and for which CRV payments were made in amounts of \$300, \$325, \$330, \$345, \$360 and \$375. There was neither a name for the seller, a driver's license or vehicle license plate number on any of the weightmaster certificates.

the name, driver's license number, or other form of identification for the sellers of material for which CRV reimbursement was paid.

19. Mr. Scherer found the personnel at Recycle Today used receipts that reflected the name "Paper Rush Co., Inc." There were several receipts detected that showed Recycle Today personnel used the "Paper Rush Co., Inc.," receipt to note that receipt of supposed CRV material with weights at exactly "250 pounds." In that the Department's regulations require filing with the Department individual reports on a weekly basis of all sales by any particular individual or entity to a recycle center of eligible material having weight greater than 250 pound, Department personnel in October 2009 were reasonable in drawing an inference that a distinct likelihood exists of the existence of a fraudulent scheme to avoid preparation of reports to the Department and to unlawfully pay and collect CRV reimbursement from the Fund.

20. During the investigation at the premises of Recycle Today, Mr. Scherer detected that the names of individuals associated with a notorious criminal organization called the Solis Family were included in the records of Recycle Today. And the subject recycling center's records indicated that used beverage container material had been presented by Javier Solis⁴ to Recycle Today that included out-of-state materials, which were not eligible for CRV reimbursement.

21. During the inspection of Recycle Today, Mr. Scherer and another Department auditor detected that plastic beverage containers having a gross weight in excess of 100,000 pounds were stored on the recycling center's premises. Respondent Centeno did not possess documents or records on the premises of Recycle Today to account for the dates of delivery to the recycle center for that large amount of material. And within nearly all of the bales, which weighed more than 100,000 pounds of plastic beverage containers, Department personnel found previously baled material. Further, the Department's inspectors and auditors observed that bales of material were present on the premises that were much too large for the type of baling equipment existing at the subject recycle center. Mr. Scherer was reasonable when he inferred that the very large bales were made by non-certified persons who sought to use Recycle Today to unlawfully collect CRB reimbursement.

Department personnel found that Recycle Today lacked records for large quantities of eligible material, which was located on the premises. Such records are required by the Department's regulations.

22. Also during the inspection of Recycle Today, which occurred on approximately October 29, 2009, respondent Centeno made admissions regarding "splitting

⁴ On October 17, 2009, Recycle Today issued checks to Javier Solis in the amount of \$2,700 as reimbursement for the sale of 3000 pounds for CRV material as well as a check for \$1,800 as reimbursement for the sale of 2000 pounds for CRV material. And on October 19, 2009, Recycle Today issued a check to Javier Solis for \$1,950 for 1,300 of material.

loads” of truck loads of material in order to make smaller units of baled material in order to avoid preparing reports required by the Department.

23. Mr. Scherer found that personnel at Recycle Today shipped CRV material to the facility of Paper Rush without Recycle Today retaining documentary records of the shipment.

24. While at the premises of Recycle Today on October 29, 2009, and later during November 2009, Department personnel were amazed by the very light amount of consumer traffic to the subject recycling center despite the large amounts of material stored on the premises.

25. During the interview of respondent Centeno on October 29, 2009, he made an admission that although he was the contact person of record for Recycle Today, in fact he was employed by respondent June Tran Vanh, who was the actual owner of Recycle Today. Respondent Centeno reported that he had been employed by respondent Vanh for approximately 10 years as of late October 2009.

26. The Department’s investigation led to detection of documents pertaining to unlawful business practices that resulted in the suspension of the certificate held by Recycle Today.

On October 27, 2009, Recycle Today delivered one load of aluminum beverage containers to Allan Company’s processing facility in Fresno. Along with the load of aluminum beverage containers, Recycle Today submitted a DR6 form that claimed CRV in the amount of \$33,032.80. Department personnel inspected the bales of aluminum and found that the bales contained previously baled aluminum beverage containers. In addition, the Department’s inspection found that sixty nine percent of the load of aluminum beverage containers consisted of out-of-state containers.

Also on October 27, 2009, Recycle Today delivered one load of PETE beverage containers to the Allan Company. Along with the load of the plastic containers, Recycle Today submitted a DR6 form that claimed CRV in the amount of \$23,116.80. Department personnel inspected the bales of PETE containers and detected that the bales contained previously baled PETE beverage containers that were not eligible for CRV reimbursement.

With regard to the very large amount of “off-book” used beverage materials located at Recycle Today, respondent Centeno falsely asserted that the off-book inventory had been collected from farmers. Mr. Scherer gave expert witness testimony that such volume of off-book inventory could never have been collected from farms. Mr. Scherer was reasonable in offering testimony that the large volume of off-book inventory had been delivered to Recycle Today had come from criminal enterprises, such as the Solis Family. (The value of the off-book inventory had a combined refund value in excess of \$395,000.)

Further, Mr. Scherer was compelling in rendering an expert opinion regarding the rationale for respondent Centeno to store the large volume of “off-book” inventory at Recycle Today. Mr. Scherer reasonably opined that respondents could not directly ship the materials to certified processors in the condition as observed by Mr. Scherer because such loads would have been immediately identified as previously baled material and out-of-state material, which would be rejected as not eligible for CRV redemption. Mr. Scherer reasonably advanced that the only approach available to respondent Vanh and respondent Centeno was to “salt” or clandestinely intersperse the ineligible used beverage containers into bales of legitimate containers obtained from ordinary consumers who sought CRV redemption. Such scheme by respondent Centeno and Recycle Today enabled respondents to hide the ineligible material from being discovered when respondents sold the bales of containers to the Allan Company and other certified processors.

Mr. Scherer was instructive with additional expert witness testimony regarding the apparent reason that Recycle Today shipped material to Paper Rush. Complainant’s expert witness further described the scheme by which respondents could “salt” ineligible material into bales that would be shipped to processing centers, such as the Allan Company.

Further on December 2, 2009, Recycle Today delivered another load of PETE beverage containers to Allan Company. A DR6 form, which claimed CRV in the amount of \$27,206.40, accompanied the load. Later, Department personnel inspected the load and detected that the bales contained previously baled PETE beverage containers.

Mr. Scherer offered a detailed, thorough overview of the concept of previously baled material and the reasoning that such material is rendered ineligible for CRV redemption. With a trained and experienced “eye” one can note previously baled material to reflect broken, “densified” components that are discernible as “biscuits” for aluminum. For plastic containers, previously baled material is noted as being irregular pieces of plastic that appears as being inordinately crushed or twisted. Previously baled material is also seen as excessively interlocking containers with folding and tearing of material in peculiar patterns. The condition of previously baled material has a brittle nature that splays in multiple directions under a compressed or folder scheme. Also, previously baled material often is identified when baling wire is found within a bale or when wire is poking from mid-points of a bale, rather than the baling wire being properly bound around the perimeter on a baled cube.

*INSPECTION OF PAPER RUSH AND INTERVIEW OF RESPONDENT VANH AND
MR. JUSTIN VANH*

27. On November 4, 2009, Mr. Scherer along with Department Auditor Davenport traveled to the premises of Paper Rush. At that facility, Mr. Scherer first interviewed Mr. Justin Tran Vanh, who acted as a site manager and the bookkeeper for Paper Rush. Mr. Justin Tran Vanh led Mr. Scherer and Auditor Davenport on a walk-through inspection of the facility.

28. Mr. Justin Vanh described a similar inefficient method for handling material by Paper Rush as used at the Recycle Today facility. In particular, Mr. Vanh unpersuasively claimed that Paper Rush personnel used a small down-stroke baler, then the recycling center's employee used a fork lift machine to take the baled material to the rear portion of the premises where the material was unpacked and then the material was placed into a horizontal ram baler to make much larger bales.

29. During the walk-through inspection of Paper Rush, Mr. Scherer detected at that recycling facility large amounts of HDPE (high density polyethylene) plastic, which is also called "number two plastic." HDPE is not used for beverage containers for which CRV reimbursement is payable because such plastic is used for large, thin-skinned water jugs, plastic plant containers, and thin plastic milk containers. Such soft plastic material cannot accommodate carbonated beverages. This detection by Department personnel was important because during the earlier inspection at the Allan Company processing center in Fresno, the Department learned that Paper Rush had delivered a load of plastic in order to collect CRV reimbursement that contained HDPE, that is ineligible CRV plastic, which was blended into bales of number one plastic for which CRV reimbursement was claimed. Because much of that load contained number two plastic material, that Paper Rush load had to be rejected for reimbursement of CRV.

30. During that inspection of Paper Rush's premises, Mr. Scherer detected several bales of plastic beverage containers, which were hidden from view behind larger stacks of cardboard bales. Mr. Justin Vanh made an admission that because of Recycle Today's limited storage area, that Oakland-based recycling center sent its excess material to the facility of Paper Rush. However, in violation of Department regulations, no documents existed to indicate the manner, date or quantity of shipments from Recycle Today to Paper Rush.

31. About one week later, on November 9, 2009, Mr. Scherer and Ms. Davenport returned to the facility of Paper Rush. The Department personnel interacted with respondent Vanh on that date. That aspect of Department's investigation, as well as on dates after November 9, 2009, led to detection of unlawful business practices that resulted in the suspension in late December 2009 of the certificate held by Paper Rush.

The detection of unlawful business practices by Paper Rush before the suspension included that following:

i. On November 4, 2009, Paper Rush delivered a load of PETE beverage containers to Allan Company's certified processing facility in Fresno. Along with the load of PETE containers, Paper Rush submitted a DR6 that claimed CRV reimbursement in the amount of \$22,291.20. The Department's personnel inspected the load of PETE bales and detected that the load contained previously baled PETE beverage containers.

ii. On December 3, 2009, Paper Rush delivered another load of PETE beverage containers to Allan Company. Also with the load, Paper Rush submitted a DR6

form claiming CRV in the amount of \$33,158.40. The Department's personnel inspected the PETE bales and found that the load contained previously baled PETE beverage containers.

iii. Further on December 3, 2009, Paper Rush delivered a third load of PETE beverage containers to the Allan Company. The load was accompanied by a DR6 form that claimed CRV in the amount of \$29,126.40. The bales in that third load were inspected by Department personnel, who found the bales contained previously baled PETE beverage containers.

TESTIMONY BY LINDSAY DAROSA

32. Ms. Lindsay DaRosa is an associate auditor with the Department. She conducted inspections of loads of material that was associated with the operations of Paper Rush and Recycle Today in late October and early November 2009. Inspector DaRosa provided credible, persuasive and compelling testimonial evidence at the hearing of this matter.

On October 27, 2009, Inspector DaRosa was the Department employee who received the telephone call by an employee of the Allan Company regarding a load of aluminum and plastic beverage containers, which was believed to have been delivered by Paper Rush to the Allan Company. In the view of the recycling processor's report to Inspector DaRosa the material appeared to contain ineligible material for which CRV could not be claimed. Inspector DaRosa and her associate, Inspector Lee Beatty, traveled to the Allan Company's processor facility, where they confirmed that the load delivered by Paper Rush contained materials that had been previously baled aluminum containers as well as previously baled plastic containers.

Upon telephoning Mr. Scherer, Inspector DaRosa was informed that a team of about four other Department employees would meet her at the Allan Company's premises on October 28, 2009, to engage in a comprehensive examination of the load that had been delivered by Paper Rush. The next day, the thorough examination of the material was effected so that great detail was gathered regarding the nature of the load associated with Paper Rush as containing material for which an unlawful claim for CRV money had been made.

On November 4, 2009, Inspector DaRosa returned, along with Inspector Rhoda Flores, to inspect again loads sent by Paper Rush to the Allan Company's processing facility in order to collect CRV. During the inspection of a load of bales of plastic beverage containers, Inspector DaRosa detected previously baled plastic beverage containers. The load had a weight of more than 23,000 pounds for which CRV in an amount of \$22,291 was claimed.

33. Ms. DaRosa was persuasive that she was certain, based upon her training, knowledge and experience, that the loads of materials, which were examined by her and other Department personnel on October 27, 28, and November 4, 2009, contained previously

baled aluminum containers, out-of-state aluminum containers and previously baled plastic beverage material. The material showed indicia of being previously baled as the material was inordinately “interlocked, fused,” that showed a very “dense” nature, and was “brittle” and “twisted.”

TESTIMONY BY MS. RENEE BENNETT

34. Ms. Renee Bennett (Inspector Bennett) is an associate management auditor for the Department. She provided persuasive and credible evidence at the hearing of this matter.

On October 28, 2009, Inspector Bennett was assigned by Mr. Scherer to travel to the premises of the Allan Company to examine and to make determinations regarding loads of material that had been delivered by Paper Rush to the subject processor. Upon arriving at the premises, Inspector Bennett examined and then photographs the loads. During the course of the investigation, the load was found to be credited to Recycle Today.

Inspector Bennett determined that the loads consisted of bales of aluminum with a total weight of 21,040 for which \$33,032.89 of CRV was claimed. However, the load of aluminum cans contained previously baled “biscuits” as well as out-of-state used aluminum beverage containers, which had been delivered by Paper Rush but belonged to Recycle Today. Also, she found on October 28, 2009, that the load from Recycle Today involved bales of plastic containers with a total weight of 24,080 for which \$23,226.80 was claimed as being eligible CRV. But that bales of plastic containers contained previously baled material.

35. Inspector Bennett was persuasive that she was certain, based upon her training, knowledge and experience, that the loads of materials, which were examined by her and other Department personnel on October 28, 2009, contained previously baled aluminum containers and previously baled plastic beverage material. The material showed various and discreet indicia of being previously baled in the considered view of Inspector Bennett.

TESTIMONY BY MS. ALICIA DAVENPORT

36. Ms. Alicia Davenport (Auditor Davenport) is a former auditor for the Department. (She is now employed an Associate Management Auditor for the California Gambling Control Commission.) Auditor Davenport worked for the Department from January 2007 until May 9, 2010, as a Staff Services Management Auditor.

37. Auditor Davenport provided compelling and persuasive evidence at the hearing of this matter. She was a credible and reliable witness at the hearing of this matter.

38. On October 23, 2009, Auditor Davenport along with another Department auditor was present at the Allan Company’s processing center in Fresno, California, on a routine inspection. While at the processing center, Auditor Davenport observed a Paper Rush truck deliver a load of plastic number two (HDPE) material, which is not eligible for CRV reimbursement. However, upon reviewing the shipping document, Auditor Davenport

detected that Paper Rush was seeking money from the Fund based upon a substantial portion of the load that was apparently not material eligible for CRV . Based upon her preliminary review, the Department dispatched a five-person team of auditors, as led by Mr. Scherer, to travel to the Allan Company's premises to thoroughly inspect the entire load. That inspection found that much of the load, which was initially believed to have been delivered by Paper Rush, actually was a load for which Recycle Today claimed CRV reimbursement. The detailed inspection detected that the load belonging to Recycle Today included previously baled material as well as out-of-state material.

Based upon the discoveries made on October 23 and 24, 2009, the Department tasked Auditor Davenport to take extraordinary action against Recycle Today and Paper Rush. Hence, on October 28, 2009, Auditor Davenport traveled to Paper Rush's facility where she interacted with respondent Vanh. During the meeting, Auditor Davenport presented respondent Vanh with the Department's "Notice of Prepayment Inspection Status." That notice required Paper Rush and Recycle Today to provide the Department with a 48-hour notice before any delivery could be made to a recycling process center as well as to make available all purchase receipts and consumer purchase logs for ready review by the Department's personnel.

During the October 28, 2009, site visit by Auditor Davenport to Paper Rush's facility, the Department's personnel made observations that revealed violations of the Department's regulations and the law. Among other things, Auditor Davenport heard Mr. Justin Vanh make an admission that heavy bales of aluminum and bales of plastic number one were hidden behind stacks of cardboard bales. He acknowledged that the subject bales of aluminum and plastic beverage containers were the property of Recycle Today, which were stored on the premises of Paper Rush. Mr. Vanh made the admission that Paper Rush did not possession any record or document that showed a transfer of CVR related material between the recycling centers, which was in violation of the law. Also, Auditor Davenport observed consumers deliver large plastic bags filled with beverage container being placed on scales by Paper Rush personnel who did not inspect the contents of the bags to determine the eligibility for CRV reimbursement. And, Auditor Davenport saw Paper Rush attendants throw bags of uninspected material into the down-stroke baler, even though the plastic bags, which became intermixed with the load within the baler, were not eligible for CRV money.

39. Auditor Davenport offered compelling testimony regarding the admissions made by respondent Centeno when Mr. Scherer and Auditor Davenport traveled to the facilities of Recycle Today in late October 2009. Respondent Centeno told Auditor Davenport that he was the manager of Recycle Today; however, he asserted that respondent Vanh was the "owner" of the recycling center.

Respondent Centeno made admissions, in the presence of Auditor Davenport, that he had allowed and permitted the cashier for the recycling center to fabricate receipts and weigh tickets upon which CRV was claimed for used beverage containers delivered to Recycle Today.

Respondent Centeno proclaimed to Auditor Davenport that Recycle Today regularly engaged in “splitting loads,” which is an unlawful scheme whereby after accepting delivery of large loads, the recycling center’s personnel would break the large load into units weighing 250 pounds or less so as to avoid the detailed reporting requirements under the Department’s regulations. In fact, Auditor Davenport heard respondent Centeno make an admission that Recycle Today never filed with the Department any 250-pound report.

Also, during a tour of the facility led by respondent Centeno, Auditor Davenport observed significant amounts of previously baled material as well as out-of-state material in mounds of material that respondent Centeno identified as in the process of being baled in order to claim CRV.

During a later visits to the Recycle Today site, respondent Centeno made admissions that he had purchased “rejected containers” and that he had shipped such ineligible material to Paper Rush.

Respondent Centeno acknowledged to Auditor Davenport in a clear manner that inspections within Recycle Today’s premises were never fully made of bags or containers of material delivered to Recycle Today so as to assure that materials in the bags and receptacles were eligible for CRV.

Respondent Centeno described that Recycle Today caused loads of material to be shipped to Paper Rush’s facility. The shipments were made pursuant to the directives made by respondent Vanh so that CRV reimbursement could be claimed by that other recycling center. But, no documents regarding the transfer of the materials, especially loads of rejected containers, belonging to Recycle Today to Paper Rush could be located within the business records of Recycle Today.

During her inspection of recycle today as well as the information provided to her by respondent Centeno, Auditor Davenport learned of numerous other violations of the law as well as the Department’s regulations. The findings and determinations were set out in detail in the Investigation Report for which Auditor Davenport acted as a principal author.

STIPULATED ORDERS

40. On December 28, 2009, the Department⁵ and Paper Rush entered into a Stipulated Order of Immediate Suspension⁶ and Cease and Desist (Stipulated Order) in DOC Case No. IH09-008.

⁵ In December 2009, the Department was called the Department of Conservation with a Division of Recycling.

⁶ The suspension of the certification for Paper Rush and Recycle Today was executed under the authority of Public Resources Code section 14591.2, subdivision (c)(3).

In the Stipulated Order, Paper Rush acknowledged that through the acts and omissions of employees, agents, officers or directors, that it had caused a loss to the Department of at least \$10,000 over the six-month period immediately preceding the issuance of the Order.⁷

41. Also on December 28, 2009, the Department and Recycle Today entered into a Stipulated Order of Immediate Suspension and Cease and Desist (Stipulated Order) in DOC Case No. IH09-009. The terms expressed in the Stipulated Order, which pertained to Recycle Today, were identical to the terms imposed upon Paper Rush. In particular, Recycle Today acknowledged that through the acts and omissions of employees, agents, officers or directors, that it had caused a loss to the Department of at least \$10,000 over the six-month period immediately preceding the issuance of the Order.⁸

ULTIMATE FINDING REGARDING FIRST CAUSE FOR DISCIPLINE

42. Based on Factual Findings 13 to 40, the acts of Paper Rush and Recycle Today, as well as respondent Vanh and respondent Centeno, caused at least a \$10,000 loss to the Fund over a period not exceeding six months preceding the date of the respective suspension of the certificates issued to Paper Rush and Recycle Today.

⁷ Further under the Stipulated Order, dated December 28, 2009, Paper Rush agreed that the continued operation of its recycling center posed an immediate and significant threat to the California Beverage Container Recycling Fund (the Fund), as defined at Public Resources Code section 14580. Also under the Stipulated Order, Paper Rush agreed to the immediate suspension of its certificate to act as a recycling center so that it could not longer operate any program, facility or entity subject to the Department's jurisdiction under the Act. Moreover, Paper Rush stipulated that it would immediately cease and desist from the movement or transportation of any beverage container materials off the facilities or premises owned, leased, or rented by Paper Rush without first providing a minimum of a 48-hour notice to the Department's personnel. Additionally, Paper Rush agreed that no movement or transportation would be attempted on either Saturday, Sunday, holidays or outside business hours of 7:00 a.m. to 6:00 p.m., without the prior written approval by the Department. Also, Paper Rush stipulated that it would immediately cease and desist from the movement or transportation of any beverage container materials between Paper Rush and Recycle Today, "regardless of the location of the ownership of the materials." And Paper Rush agreed that the Stipulated Order applied to any glass, plastic, aluminum or bimetal beverage container material whether or not California Refund Value was paid or claimed for the materials.

⁸ And also in particular, Recycle Today stipulated to the immediate suspension of its certificate to act as a recycling center so that it could no longer operate any program, facility or entity subject to the Department's jurisdiction under the Act.

SECOND CAUSE FOR DISCIPLINE – FRAUDULENT CLAIMS BY PAPER RUSH

DEPARTMENT'S IDENTIFICATION OF FRAUD BEFORE THE DECEMBER 2009
SUSPENSION OF PAPER RUSH'S RECYCLING CENTER CERTIFICATION

43. On a DR6 form submitted by Paper Rush on November 4, 2009, for bales of PETE beverage containers that were delivered to Allan Company, a certified processing facility, Paper Rush claimed, through the DR6 form, CRV in the amount of \$22,291.20. When inspected by Department personnel the bales were found to contain previously baled containers. The DR6, weight tickets and Load Inspection Reports establish that Paper Rush's act of filing the erroneous forms that claimed CRV for previously baled, out-of-state and other ineligible material constituted fraud.

44. On a DR6 form submitted by Paper Rush on December 3, 2009, for a load of bales of PETE beverage containers that were delivered to Allan Company, a certified processing facility. Paper Rush claimed, through the DR6 form, CRV in the amount of \$33,158.40. When inspected by Department personnel the bales were found to contain previously baled containers. The DR6, weight tickets and Load Inspection Reports establish that Paper Rush's act of filing the erroneous forms that claimed CRV for previously baled, out-of-state and other ineligible material constituted fraud.

45. Also, on December 3, 2009, Paper Rush delivered a load of PETE beverage containers to the Allan Company. By a DR6 form, which accompanied the load, Paper Rush claimed reimbursement of CRV in the amount of \$29,126.40. When inspected by Department personnel the bales were found to contain previously baled containers. The DR6, weight tickets and Load Inspection Reports establish that Paper Rush's act of filing the erroneous forms that claimed CRV for previously baled, out-of-state and other ineligible material constituted fraud.

46. Paper Rush, through respondent June Vanh, knowingly filed the claims pertaining to, at least, three loads of materials with the intent to defraud the Fund.

*DEPARTMENT'S AUDIT AND INVESTIGATION FOLLOWING THE IMMEDIATE
SUSPENSION ORDER ISSUED DURING DECEMBER 2009: PAPER RUSH*

47. After the suspension in late December 2009 of the respective recycling center certificates held by Paper Rush and Recycle Today, the Department assigned Auditor Davenport and several other Department employees to conduct a detailed audit/investigation and to craft a comprehensive report regarding the business practices of Paper Rush and Recycle Today. The purpose of the investigation was to ascertain whether evidence existed to show fraudulent activity by the subject recycling centers.

48. Auditor Davenport provided comprehensive, compelling and credible evidence over a three-day phase during the hearing of this matter. Among other things, Auditor

Davenport demonstrated the trustworthiness and reliability of the Department's Investigation Report, and its attached several hundred pages of supporting documents, which were gathered, researched and written over a four-month period of time. The Investigation Report, dated February 10, 2010, compellingly describes the unlawful and fraudulent business practices of both Paper Rush and Recycle Today.

49. With regard to Paper Rush, Auditor Davenport and her associates within the Department developed proof to establish acts of fraud in the following instances:

i. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush submitted four shipping reports that claimed a total of \$68,609 in refund value and paid CRV on loads of aluminum used beverage containers that contained previously baled containers. Those fraudulent acts violated, among other provisions, California Code of Regulations, title 14, section 2501, subdivision (b)(1).

ii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush submitted 12 shipping reports that claimed a total of \$220,128 in refund value and paid CRV on loads of plastic number one used beverage containers that included previously baled containers. Those fraudulent acts violated, among other provisions, California Code of Regulations, title 14, section 2501, subdivision (b)(1).

iii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush submitted a single shipping report that claimed segregated refund value of \$7,894.80 on a 14,360-pound commingled load. By this act, Paper Rush paid CRV on material that was not eligible for reimbursement from the Fund. That fraudulent act violated Public Resources Code section 14538, subdivision (b)(1) and California Code of Regulations, title 14, section 2090, subdivision (c).

ULTIMATE FINDINGS REGARDING FRAUD AND PAPER RUSH

50. Paper Rush, its officers, directors, principals including respondent Vanh, knew or should have known that the bales of beverage containers sold by Paper Rush to the Allan Company contained previously baled material.

51. At all times relevant to this matter, Paper Rush, through its officers, directors, , and principals including respondent Vanh, was responsible for the accuracy of all claims submitted, including the information set out on the DR6 forms that the corporate certified recycling center submitted to the Allan Company. Based on such conduct, Paper Rush, its officers, directors, and principals including respondent Vanh, not only constituted fraud, but also evidences dishonesty, incompetence, or, at a minimum, negligence by a certified recycling center operator.

52. The acts by Paper Rush, respondent Vanh or her designees and agents, including respondent Centeno, of filing a claim for reimbursement of CRV based upon previously baled material or otherwise ineligible material constitutes fraud.

53. The weight of evidence established that Paper Rush, its officers, directors, and principals including respondent Vanh, knowingly, and with intent to defraud the Fund, filed the defective DR6 forms.

54. Through the acts described in Factual Findings 42 through 52, Paper Rush, its officers, directors, managing employees and principals including respondent Centeno and respondent Vanh, knowingly, and with intent to defraud the Fund, filed DR6 forms in order to unlawfully obtained the aggregate of hundreds of thousands of dollars of CRV.

THIRD CAUSE FOR DISCIPLINE – FRAUDULENT CLAIMS BY RECYCLE TODAY

DEPARTMENT'S IDENTIFICATION OF FRAUD BEFORE THE DECEMBER 2009 SUSPENSION OF RECYCLE TODAY'S RECYCLING CENTER CERTIFICATION

55. On a DR6 form submitted by Recycle Today on October 27, 2009, for bales of PETE beverage containers that were delivered to Allan Company, a certified processing facility, Paper Rush claimed CRV in the amount of \$23,116.80. When inspected by Department personnel the bales were found to contain previously baled containers. The DR6, weight tickets and Load Inspection Reports establish that Recycle Today's act of filing the erroneous forms that claimed CRV for previously baled, out-of-state and other ineligible material constituted fraud.

56. On a DR6 form submitted by Recycle on October 27, 2009, for a load of bales of aluminum beverage containers that were delivered to Allan Company, a certified processing facility, Paper Rush claimed CRV in the amount of \$33,032.80. When inspected by Department personnel the bales were found to contain previously baled aluminum containers. Also, inspected bales were found to contain sixty nine percent of out-of-state beverage aluminum cans. The DR6, weight tickets and Load Inspection Reports establish that Recycle Today's act of filing the erroneous forms that claimed CRV for previously baled, out-of-state and other ineligible material constituted fraud.

57. On a DR6 form submitted by Recycle on December 2, 2009, for a load of bales of PETE beverage containers that were delivered to Allan Company, a certified processing facility, Recycle claimed, through the DR6 form, CRV in the amount of \$27,206.40. When inspected by Department personnel the bales were found to contain previously baled containers. The DR6, weight tickets and Load Inspection Reports establish that Recycle's act of filing the erroneous forms that claimed CRV for previously baled, out-of-state and other ineligible material constituted fraud.

DEPARTMENT'S AUDIT AND INVESTIGATION FOLLOWING THE IMMEDIATE SUSPENSION ORDER AS ISSUED DURING DECEMBER 2009: RECYCLE TODAY

58. The Investigation Report, dated February 10, 2010, vividly describes the unlawful and fraudulent business practices of both Paper Rush and Recycle Today.

The February 2010 Investigation Report assembled hundreds of pages that were prepared and compiled from the comprehensive investigative efforts and auditing analysis of Recycle Today by Auditor Davenport and several other Department personnel. The report flowed from the on-site, all-day observations, interviewing of Recycle Today employees and document gathering activities on October 28, 2009, November 4, 2009 and during a week of November 10 through 14, 2009. The computation of the information led the Department's audit team to reasonably conclude that unequivocal indicia of fraudulent activities were apparent for the operations of Recycle Today. Those compelling and persuasive observations, findings and determinations by Auditor Davenport, which involved conclusions ascertaining fraud, included:

i. In addition to the admissions by respondent Centeno and the Recycle Today cashier regarding fabrication of documents, Auditor Davenport independently detected an extensive pattern and explicit characteristics of fabrication of documents. Check stubs showed a total of 40 transactions for aluminum beverage containers in excess of 500 pounds for a total of \$104,781.80 in refund value. However there were no reports to the department regarding any single transaction with a weight greater than 250 pounds. The auditor found 93 receipts that were fabricated on October 16, 2009, which totaled \$21,964 in CRV (3,760 pounds for aluminum containers and 16,730 pounds for plastic containers). And for October 22, 2009, 72 receipts were fabricated for a total of \$18,145.20 in refund value (4,400 pounds in aluminum containers and 11,640 in plastic containers.)

ii. For the period of November 10 through 14, 2009, Department auditors were present on the premises of Recycle Today. All operations of the recycling center were documented and recorded for the time frame in an exercise called a Consumer Transaction Profile (CTP) period. When a comparison was made between the CTP period and weeks during the month of October 2009, the volume reported by Recycle Today for periods during October 2009 was greatly inconsistent with the volume observed by Department personnel during the CTP period. The volume for aluminum containers dropped 92 percent between the records for October 2009 compared with the CTP period. And the volume for plastic containers dropped 94 percent between Recycle Today's records in October 2009 and the CTP period of observation.

iii. Splitting of loads at Recycle Today was found to be prevalent and routine. During October 2009, 40 transactions for aluminum beverage container loads, which ranged from 840 pounds to 3,160 pounds, were split into several receipts in order to avoid the daily allowance to any single consumer of a maximum of 500 pounds. And during October 2009, 68 transactions for plastic containers, which ranged from 820 pounds to 4,860 pounds, were split into several receipts in order to avoid the daily allowance to any single consumer of a maximum 500 pounds.

59. With regard to Recycle Today, Auditor Davenport and her associates within the Department developed proof to establish the fraudulent acts in the following instances:

i. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today submitted five shipping reports for aluminum containers that claimed a total of \$81,326.09 in refund value and paid CRV on loads of aluminum used beverage containers that contained previously baled material. Those fraudulent acts violated, among other provisions, California Code of Regulations, title 14, section 2501, subdivision (b)(1).

ii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today submitted six shipping reports of plastic number one containers that claimed a total of \$99,129.60 in refund value and paid CRV on loads of used plastic number one used beverage containers that included previously baled containers. Those fraudulent acts violated, among other provisions, California Code of Regulations, title 14, section 2501, subdivision (b)(1).

iii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today paid CRV and submitted a shipping report that claimed \$33,032.89 in refund value on a load of aluminum used beverage containers that included out-of-state containers. That fraudulent act violated Public Resources Code section 14538, subdivision (b)(5) and California Code of Regulations, title 14, section 2090, subdivision (f).

iv. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today submitted three shipping reports that claimed \$9,720 in refund value on three loads of bimetal containers. The load included no eligible CRV containers, but only bimetal food containers. That fraudulent act violated Public Resources Code section 14538, subdivision (b)(1).

v. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today fabricated or falsified 165 purchase receipts for aluminum and plastic used beverage containers in order to avoid detection of purchases over the daily allowable limit of 500 pounds for aluminum and plastic number one containers. Those fraudulent acts violated Public Resources Code sections 14553, subdivision (a), 14597, subdivision (b), 14591, subdivision (b)(1)(A), and California Code of Regulations, title 14, section 2090, subdivision (c).

vi. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today failed to provide the Department with an accurate weekly report of 40 transactions involving aluminum containers having weights in excess of 250 pounds. Those acts violated California Code of Regulations, title 14, section 2530, subdivision (i).

vii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today failed to consistently obtain additional information that identified

persons selling CRV eligible material on discreet transactions in excess of \$100 in refund value. Those fraudulent acts violated, among other provisions, California Code of Regulations, title 14, section 2525, subdivision (a)(7).

VIII. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today failed to remove, for the purpose of required inspection for the determination of the basis for payment of CRV, used beverage containers from bags, boxes or other receptacles used to deliver the material to the recycling center. Those fraudulent acts violated, among other provisions, California Code of Regulations, title 14, section 2501, subdivision (a)(1).

ULTIMATE FINDINGS REGARDING FRAUD AND RECYCLE TODAY

60. Through the acts described in Factual Findings 55 through 59, Recycle Today, its officers, directors, managing employees and principals including respondent Centeno and respondent Vanh, knowingly, and with intent to defraud the Fund, filed DR6 forms in order to unlawfully obtained CRV in the aggregate of many tens of thousands of dollars.

61. Recycle Today, its officers, directors, managing employees and principals including respondent Centeno and respondent Vanh, knew or should have known that the bales of beverage containers sold to the Allan Company contained previously baled material and other material that was ineligible for CRV reimbursement.

62. At all times relevant to this matter, Recycle Today, through its officers, directors, and principals including respondent Centeno and respondent Vanh, was responsible for the accuracy of all claims submitted, including the information set out on the DR6 forms that the corporate certified recycling center submitted to the Allan Company. Based on such, the conduct of Recycle Today, its officers, directors, and principals including respondent Centeno and respondent Vanh, not only constituted fraud, but also evidences dishonesty, incompetence, or, at a minimum, negligence by a certified recycling center operator.

FOURTH CAUSE FOR DISCIPLINE – FAILURE BY RECYCLE TODAY AND RESPONDENT CENTENO TO INSPECT LOADS UPON WHICH CRV REIMBURSEMENT, PROCESSING PAYMENTS AND ADMINISTRATIVE FEES WEE CLAIMED AND PAID

63. During the period of October 1, 2008, to December 31, 2009, Recycle Today and Respondent Centeno or his designees and agents submitted 176 separate DR6 Shipping Report forms. The DR6 forms claimed CRV reimbursement, processing payments, and administrative fees; however, the loads were not inspected so as to eliminate non-eligible material for which CRV could not be paid.

Each of Recycle Today's defective DR6 Shipping Report forms that represented a single load of material, which was sold and delivered to a certified processor, was submitted through, and with the assistance or oversight of, Paper Rush and respondent Vanh. Each

defective DR6 bore the signature of Mr. Justin Tran Vanh, who was the authorized agent or employee of respondent June Tran Vanh.

64. Complainant, through Auditor Davenport and Mr. Sherer, offered persuasive and credible testimony regarding the contents of a six-page spreadsheet that listed 175 loads, which were delivered by Recycle Today, with the aid of Paper Rush, to the Allan Company. Those 175 loads of baled material contained ineligible materials for which CRV reimbursement was not payable. Moreover, the spreadsheet shows additional loads that were not properly inspected by respondents' personnel from the facility operated under the name of Recycle Today.

65. On April 22, 2010, during an interview with Department personnel, respondent Centeno made an admission that neither he nor any employee or agent of Recycle Today, ever inspected any load of materials upon which a claim was made for CRV reimbursement. Respondent Centeno asserted that he and the employees of Recycle Today only inspected loads for "garbage and water."

The failure to inspect every load of materials upon which CRV was paid by Recycle Today and respondent Centeno, as endorsed by respondent Vanh, violated the Act and the Department's regulations governing the operation of certified recycling centers.

FIFTH CAUSE FOR DISCIPLINE – RESPONDENTS' SUBMISSION OF FRAUDULENT CLAIMS FOR CRV AND PROCESSING PAYMENTS

66. Paper Rush and Recycle Today, under the management, control and assistance of respondent Vanh and respondent Centeno submitted claims based upon plastic and aluminum containers that were not inspected. The material was, therefore, not lawfully certified as being eligible for redemption of money from the Fund.

67. Paper Rush and Recycle Today, under the management, control and assistance of respondent Vanh and respondent Centeno, used false information on the DR6 claim form. Such false certification that ineligible material was subject to redemption of CRV rendered the claims fraudulent by operation of law.

68. Each fraudulent claim made by Paper Rush and Recycle Today, which involved fraud, constitutes a separate, distinct violation of the Act.

69. Respondent Vanh and respondent Centeno facilitated the submission through Paper Rush and Recycle Today of claims for payment of CRV that were based on false information. Accordingly, respondent Vanh and respondent Centeno acted in concert with one another.

70. During all times relevant to the matter, respondents, and each of them, facilitated the submission and payment of claims based on false information. By their respective acts, respondents committed fraud.

Complainant provided persuasive and compelling testimonial and documentary evidence that under the Public Resources Code, fraud occurs at the moment that a claim is presented to the processor for payment, regardless of whether or not the claim for CRV reimbursement is actually paid.

71. During the period of October 1, 2008, through December 31, 2009, Recycle Today and respondent Centeno, acting together with Paper Rush and respondent Vanh, submitted 175 claims, through defective DR6 forms, to collect from the Fund an amount of money amounting to \$1,970,596.31. Because each bale that includes ineligible material is defective in its entirety and is wholly not eligible for CRV reimbursement, all of the claims filed by respondents are *void ab initio*.⁹ Respondents had no legal right to have received or claimed \$1,970,596.31 as paid by the Department to Recycle Today and Paper Rush.

72. Respondents perpetuated fraud upon the Fund through two distinct means or approaches. First, respondents, and each of them, allowed the filing of claims with respect to material that was ineligible for CRV redemption. Second, respondents, and each of them, submitted claims based in whole or in part on false information or falsified documents. The Act makes each scheme involving fraud to be subject to restitution and collection of interest thereon.

The Department's Request for Restitution and Interest

73. The Department requests that the Order in this matter include a provision that respondents be held jointly and severally liable for restitution in the amount of \$1,970,595.31.

The restitution pertains to all CRV total payments to Recycle Today and Paper Rush occurring between October 1, 2008, and December 26, 2009. The evidence discloses respondent commission of 364 distinct violations of the Act that constitute fraud.

74. For all the times and occasions described in the factual findings above, Paper Rush had no legal entitlement to the CRV reimbursement that it claimed. And in many instances, the recycling center had no right to have received money from the Fund based upon defective or unlawful DR6 form. Consequently, Paper Rush must make restitution to the Fund of all illegally collected or obtained money.

75. For all the times and occasions described in the factual findings above, Recycle Today had no legal entitlement to the CRV reimbursement that it claimed. And in many instances, the recycling center had no right to have received money from the Fund

⁹ Void means "of no legal effect; null." *Void ab initio* signifies "null from the beginning, as from the first moment when a contract is entered into. A contract or obligation is *void ab initio* if it seriously offends law or public policy" (Black's Law Dictionary, (Eighth Ed., 2004) p. 1604.)

based upon defective or unlawful DR6 form. Consequently, Recycle Today must make restitution to the Fund of all illegally collected or obtained money.

76. On September 7, 2010, Department personnel created a four-page spreadsheet titled "Audits Interest Computation Schedule." The spreadsheet depicts a persuasive analysis of the interest calculation for improper CRV reimbursements paid to Recycle Today for loads that included ineligible material for which no money should have been paid from the Fund. Both Mr. Scherer and Auditor Davenport provided compelling testimony that establishes the Department's entitlement to recover from respondent interest on the principle sum sought as restitution. And as prescribed under the Department's regulations, the interest, which is applied against CRV payment for the period of October 1, 2008, through October 16, 2009, is in a total amount of \$60,232.96.

Background: Respondent June Tran Vanh

77. In 1987, respondent June Tran Vanh became involved with the paper handling and recycling business. In 1989, respondent Vanh became a shareholder and vice-president of the beverage container recycling business that continued to use the name Paper Rush.

By 2009, when the Department detected questionable business practices regarding CVR claims by Paper Rush, respondent Vanh had become the president of Paper Rush as well as the principal shareholder of stock in the corporation. Also respondent Vanh acted as the corporate secretary and treasurer for Recycle Today from 2008 to the current date.

Also by 2009, all payments to Paper Rush or Recycle Today were submitted to the attention of respondent Vanh. And respondent Vanh controlled all bank accounts for both recycling centers.

Respondent Vanh hired and fired the employees for both Paper Rush as well as Recycle Today.

Background: Respondent Centeno

78. Respondent Centeno is an immigrant from El Salvador. However, respondent Centeno has fully taken advantage of the opportunities afforded within the United States of America. He has been a successful businessman. He owns a house in Daly City. He is married and is the father of three sons, two of which are enrolled in colleges in the State of California.

79. Approximately 15 years ago, respondent Centeno acquired a Class A commercial driver's license. In addition to acquiring the commercial driver's license from the California Department of Motor Vehicles, he passed vetting by the U.S. Transportation Department for the ownership and operation of commercial trucks that transport loads for interstate commerce. In approximately 2000, respondent Centeno began a trucking company called A.C. Trucking. As of 2009, he personally owned two large trucks, which could each

transport 80,000 pounds of cargo. And during recent years when he provided all trucking services for Paper Rush and Recycle Today, respondent Centeno controlled as many as six large trucks, with four of the vehicles owned by independent contractors.

80. In approximately 2003 after he had provided trucking services for Paper Rush for a number of years, respondent Vanh hired respondent Centeno to work within the facility of Paper Rush. At that initial recycling center owned by Paper Rush, respondent Centeno provided oversight of Spanish-speaking employees and he aided respondent Vanh and her bookkeeper, Mr. Justine Tran Vanh, with Spanish-English interpreting services in communicating with workers who only spoke Spanish.

81. In approximately 2008, when respondent Vanh saw an opportunity to expand into recycling aluminum beverage containers, she offered respondent Centeno the opportunity to become the site manager and corporate officer in a proposed recycling center that in time became known as Recycle Today.

Respondent Centeno paid \$200,000 to acquire a 30 percent interest in the land upon which the Recycle Today facility was to operate. Respondent Vanh bestowed the title of president upon respondent Centeno, but he acquired no corporate stake in the corporation known as Recycle Today. Although respondent Centeno was the operations manager for Recycle Today, respondent Vanh made all critical decisions regarding the operations of Recycle Today. However, respondent Centeno considered himself as “a partner” to respondent Vanh with regard to Recycle Today. Respondent Centeno did possess signatory authority for the bank accounts for Recycle Today.

Matters in Aggravation: Paper Rush

82. The evidence establishes that Paper Rush has a history of non-compliance with the Act and the Department’s regulations. The Investigation Report, by Auditor Davenport, established:

- i. From January 31, 1995, to October 28, 2009, on 11 separate occasions Paper Rush paid CRB on scrap materials.
- ii. From October 28, 1998, to May 19, 2009, on 16 separate instances Paper Rush failed to remove used beverage containers from receptacles so as to effect proper inspection of the material.
- iii. From October 28, 1998, to December 2, 2004, on seven occasions Paper Rush failed to prevent refund value being paid on scrap.
- iv. From April 10, 2001, to December 2, 2004, on seven instances Paper Rush failed to post the hours of operation.

- v. On April 10, 2001, and July 23, 2001, Paper Rush failed to post prices at its recycling center for plastic number two through number seven.
- vi. From April 10, 2001, to December 2, 2004, Paper Rush failed on eight occasions to display a sign message that complied with the Department's regulations.
- vii. On April 10, 2001, December 2, 2004, and December 5, 2005, Paper Rush failed to post "open for business" signs at the recycling center.
- viii. From July 21, 2001, to October 16, 2003, on seven occasions, Paper Rush changed its hours of operation without notifying the Department.
- ix. On July 1, 2002, and January 6, 2006, Paper Rush paid improper CRV reimbursements.
- x. On June 15, 2004, Paper Rush did not accept CRV redemptions.
- xi. On February 5, 2005, Paper Rush had a scale that was not sealed by local Weights and Measures officials.
- xii. From October 5, 2007, to November 13, 2008, on five occasions Paper Rush failed to visually inspect used beverage containers.

83. As a result of the Department's Investigation Report, evidence shows that Paper Rush, through its employees, agents, directors and officers including respondent Vanh, violated the Act and the Department's regulations in ways that did not constitute fraud, yet nevertheless were acts of misconduct or represented acts that are unacceptable for a certified recycling center. Those acts included:

i. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush purchased a load of used beverage containers that had a total refund value in excess of \$50, which was taken from a vehicle with a license plate from a state other than California. That fraudulent act violated California Code of Regulations, title 14, section 2501, subdivision (b)(3).

ii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush paid a collection program a segregated rate of \$0.105 for delivered glass, rather than at the commingled rate or less. By this act, Paper Rush overpaid CRV and thereby created an inaccurate record. That act violated California Code of Regulations, title 14, section 2535, subdivision (c).

iii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush failed to remove used beverage containers from bags, boxes or other receptacles used to deliver the material to the recycling center so that they could inspect the

containers to determine the basis for payment. By these acts Paper Rush made no effort to meet the “first responsibility” of recycling centers in assuring that CRV is paid only upon eligible material. That act violated California Code of Regulations, title 14, section 2501, subdivision (a)(1).

iv. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush did not notify the Department of changes in its operational hours. That act violated California Code of Regulations, title 14, section 2501, subdivision (a)(1).

v. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush failed to consistently obtain additional information identifying the person selling or donating the material, and the state of issuance for vehicle license plates, on transactions exceeding \$100 in refund value. By this failure, Paper Rush deprived the department of the ability to verify the validity of the transaction. That act violated California Code of Regulations, title 14, section 2525, subdivision (a)(4).

vi. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush used a weight scale that was not affixed with a seal by Weights and Measures. That act violated California Code of Regulations, title 14, section 2115, subdivision (b).

vii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Paper Rush failed to include on the sign for refund value, a statement regarding packaging, load contamination and consumer rights. That act violated California Code of Regulations, title 14, section 2500, subdivision (e)(2)(B).

Matters in Aggravation: Recycle Today

84. The evidence establishes that Recycle Today has a history of non-compliance with the Act and the Department’s regulations. The Investigation Report, by Auditor Davenport, established violations within two months of the date of its certification as a recycling center. On December 10, 2008, Recycle Today paid CRV redemption on scrap glass. The recycling center was also determined to have failed to show its recycling certification number on logs. And there were no prices posted at the recycling center for plastic number three through number seven.

85. As a result of the Department’s Investigation Report, the evidence shows that Recycle Today, through its employees, agents, directors and officers including respondent Centeno and respondent Vanh, violated the Act and the Department’s regulations in ways that did not constitute fraud, yet nevertheless were acts of misconduct or represented acts that are unacceptable for a certified recycling center. Those acts included:

i. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today failed to notify the Department regarding the subject recycling

center's change in its operational hours. This act violated, among other provisions, California Code of Regulations, title 14, section 2505, subdivision (a)(8).

ii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today did not consistently obtain the printed names and signatures of customers on purchase receipts. This act violated, among other provisions, California Code of Regulations, title 14, section 2525, subdivision (a)(4).

iii. With the aid, support and oversight of respondent Vanh and respondent Centeno, Recycle Today failed to pay the commingled rate for commingled materials. In this matter, Recycle Today was overpaying CRV on some material that was not eligible for reimbursement from the Fund. This act violated California Code of Regulations, title 14, section 2535, subdivision (d)(5).

Matters in Aggravation: Respondent Vanh

86. By her attitude towards the proceeding, by her demeanor while testifying, by her conscious, pointed refusal to answer clearly stated questions during cross-examination, by her evasive and non-responsive answers, and by her false and deceptive testimony at the hearing of this matter, respondent Vanh showed that she was neither a credible nor trustworthy witness.

87. In 2008, respondent Vanh commenced recycling operations in Oakland, California as early as mid-June 2008 without first securing a certification as an operator by the Department. Respondent Vanh created the corporation known as Recycle Today and placed respondent Centeno as the figurehead president; however, she never ensured that respondent Centeno, who became the certified operator of Recycle Today, actually had the required knowledge or training to perform the level of inspection of material for which CRV was to be claimed. Respondent Vanh never assured that respondent Centeno understood the full range of obligations expected of a certified operator of a recycling center. In summary, respondent Vanh, as the actual owner of Recycle Today, never instituted any manner of managerial controls to assure that Recycle Today complied with the Act and Department regulations. And most egregious, respondent Vanh never exercised any effort to prevent the extensive pattern of fraudulent activities carried out under respondent Centeno at Recycle Today.

88. Over the years since Paper Rush began operations in 1989, respondent Vanh neither implemented minimal measures nor altered business practices to reduce the pattern of violations of regulations at the recycling center conducted under the name Paper Rush. The Department's records show a long history of failure to inspect by Paper Rush personnel, including the failure of personnel to remove CRV-related containers from plastic bags and other receptacles.

89. At the hearing of this matter, respondent Vanh testified as to a wholly unbelievable scenario regarding the storage of large volumes of ineligible material on the

premises of Paper Rush that was detected through the Department's investigation. Respondent Vanh advanced that the material was never to be claimed for CRV from the Fund. Rather the material was scheduled for export as scrap to dealers in either Los Angeles or Asia. Respondent Vanh's account was economically implausible and was not feasible in the view of complainant's expert testimony. The supposed exculpatory explanation would have resulted in losses to Paper Rush of money for shipping, storage and handling of the large load of used beverage containers.

90. Respondent Vanh was false when she stressed that any violation by Paper Rush of the Act and the Department's regulations were "minor." To the contrary, Paper Rush, through its agents and employees, failed to inspect material that had been purchased by the recycling center for which CRV was claimed. Such misconduct, therefore, constitutes a grave violation of the Act and the Department's regulations. The facts show that the Paper Rush bookkeeper, Mr. Justin Vanh, warned respondent Vanh regarding the large purchases that were made by respondent Centeno at Recycle Today's facility in Oakland; however, respondent Vanh failed to make inquiries about the activities at Recycle Today and she chose to remain ignorant to the operations at Recycle Today while generating income from the illegal activity.

Matters in Aggravation: Respondent Centeno

91. At the hearing of this matter, respondent Centeno gave false, misleading and deceptive testimony.

Beyond his pretended, feigned or exaggerated impediment with understanding spoken English, which is addressed below, respondent Centeno profoundly altered his testimony at the hearing of this matter as measured against the admissions and reports given in the past to Department investigators and auditors. Among other things, respondent dramatically changed the position regarding the inspection of CRV-related loads by employees at Recycle Today. He was not truthful with regard to the baling of materials for which CRV was claimed. Respondent Centeno was not believable regarding his denial that previously baled, out-of-state material and other ineligible material was deliberately placed into bales of aluminum and plastic containers so as to unlawfully claim CRV. And he was false with regard to the system of fabrication of documents perpetuated through acts of agents or employees of Recycle Today. Respondent Centeno was not truthful when he claimed that the extraordinary volume of "off-book" material found on the premises of Recycle Today had been received from farmers. And very significant was the misleading testimony given by respondent Centeno regarding his knowledge of the illegal acts by others, including persons associated with the criminal enterprises known as the Solis Family.

And respondent Centeno was not believable that the unlawful practices of splitting loads and fabricating receipts were solely due to the ineptness of the Recycle Today employees who operated outside his supervision and control. But, the signature of respondent Centeno appeared on the checks that paid large dollar amounts for unreported large loads.

Further, at the hearing of this matter, respondent Centeno was evasive and non-responsive when he gave inexact answers to straight-forward questions during cross-examination. In particular, when certain matters in inquiry did not suit his version of events, he claimed not to remember details.

Other Matter – Costs of Interpreting Services Provided to Respondent Centeno.

92. As developed through the evidence during several days of hearing, respondent Centeno was not entitled, at the expense of the Department, to the provision of the services of Spanish-English language interpreters, who were hired by the Department based upon the motion made by respondents and as ordered by the Office of Administrative Hearings on the first day of the proceeding.

93. Respondent Centeno is found not to be a party “who cannot speak or understand English or who can do so only with difficulty.” (Gov. Code, § 11435.05.) Yet, at the outset of the hearing, respondent Centeno argued that he required an Spanish interpreter because he could, at most, understand only 50 percent of all that was being said in the hearing. (In retrospect, it is found that respondent Centeno’s claim that he needed a Spanish-English interpreter was grounded in respondents’ unpersuasive defense to diminish the significance of the admissions of violations of the Act as made by respondent Centeno to Department personnel on various dates during 2009 and 2010.)

94. Respondent Centeno has lived in the United States since he was 14 years old. When he immigrated to the United States, he enrolled in school; but he dropped out of formal education in order to work.

95. Since approximately 1990, respondent Centeno has been a licensed commercial truck driver, who has passed state tests and complied with state and federal regulations that govern interstate trucking.

96. In the 1990’s, respondent Vanh hired respondent Centeno to act as the interpreter at Paper Rush’s facility so that she could communicate with the Spanish speaking employees. Respondent Vanh speaks no Spanish and all communication between those individual respondents was done in English.

97. No interaction between respondent Centeno and the Department was ever conducted in the Spanish language.

98. When respondent applied to become the operator of Recycle Today’s recycling center he was required to take a written examination and to engage in an interview with a Department representative regarding the requirements, functions, obligations and duties of a recycling center operator. Respondent Centeno communicated entirely in English when he sought certification with the Department.

Respondent responded “yes,” under penalty of perjury on the Department’s application for certification as a recycling center operator, that did “speak English.” (On the application form to question 10 regarding being able to speak English, respondent Centeno wrote, “and Spanish.”)

After the written examination, which was printed only in English, that respondent Centeno passed, he was interviewed by Recycling Specialist Heather Gladney, who was assigned to the Certification and Training Section of the Department’s Certification Unit. During July 2008, Ms. Gladney spoke only in English with respondent Centeno during the aspect of the Department’s certification of applicants seeking to become recycling center operators. In her sworn statement,¹⁰ Ms Gladney declared that she and respondent Centeno “spoke English during the interview and Mr. Centeno had no problem understanding my questions, answers, or comments. . . . All of my interactions with Mr. Centeno were accomplished using English as the spoken and written language. At no time did Mr. Centeno ask for a translator or indicate he did not understand what was said or written in English.”

99. During 2009, when Department investigators and auditors examined the Recycle Today’s operations, respondent Centeno spoke entirely in English. Mr. Scherer was credible that on all dates that he interacted with respondent Centeno that only English was spoken. Mr. Scherer never perceived respondent Centeno to indicate that he did not understand statements made by Mr. Scherer. Respondent Centeno never gave the impression to Mr. Scherer that he could not speak English.

100. On April 22, 2010, respondent Centeno gave an interview, under oath where he was questioned by the Department’s attorney, Mr. Diamond. At the interview, which was conducted in the way of a deposition, respondent Centeno was represented by a lawyer (Omar Krashna, Esq.). And the interview was observed by Mr. Scherer and Auditor Davenport. During the interview upon no less than three instances, respondent asserted during the transcribed recording of the April 22, 2010, interview, that he understood the questions put to him in English and he gave responses in English over the course of more than three hours.

101. At the hearing of this matter, Auditor Davenport, who is a fluent Spanish speaker and has acted as an interpreter for the Department, credibly testified that she only communicated in English with respondent Centeno regarding the operations of Recycle Today and the detected violations of law and Department regulations. (Ms. Davenport noted that the only occasions respondent Centeno sought to engage her in Spanish was about his

¹⁰ Complainant offered into evidence the declaration of Ms. Gladney that had been presented many months before the hearing to respondents’ initial legal counsel (David M. Samuels, Esq., of Michelman and Robinson, LLP). The Declaration was accompanied by the statement of intended use of the declaration as provided in Government Code section 11514. As there was neither an objection to any portion of the contents of the declaration by Ms. Gladney, nor a demand that she appear at the hearing to undergo cross-examination, the declaration was received into evidence as though she had testified at the hearing.

family or personal matters while they were present on the premises of Recycle Today.) Ms. Davenport perceived that respondent Centeno was fluent and highly conversant in the English language.

102. At the hearing of this matter, respondent on several occasions sought to answer questions put to him on cross-examination in English before the interpreter had completed the Spanish translation. And respondent Centeno read in English while testifying statements and questions that were contained on his application for certification.

103. During the course of the hearing, there was a portion of the day when respondent Tran gave testimony, yet a Spanish interpreter was not available to sit with respondent Centeno. An instruction was given that one of the two representatives hired by respondents, namely Ms. Richardson, to make notes of any matters indicated to her by respondent Centeno that he did not understand. Ms. Richardson was to confer with respondent Centeno and advise the interpreter who would later arrive as well as trial administrative law judge of those topics, questions or statements that respondent Centeno did not understand. At no time after the interpreter arrived did respondent Centeno indicate that the Spanish interpreter was needed to make clear any aspect of the testimony by respondent Vanh.

104. Based on the foregoing it is found that respondent Centeno did not require an English-Spanish language interpreter for the hearing in this matter. He is obligated to pay the full amount of fees billed to the Department for the provision of language assistance at the hearing for this matter.

Paper Rush and Recycle Today as the Alter Ego Corporate Personalities and Forms of Respondent Vanh and Respondent Centeno

105. Paper Rush is the cloak by which respondent Vanh perpetuated fraud and other acts of misconduct upon the Department and the Fund. And Recycle Today is the fictitious structure by which respondent Vanh and respondent Centeno committed fraud and other acts of misconduct upon the Department and the Fund. The act of one respondent is deemed to be the act of all respondents.

106. The inability of the Department to pierce the respective corporate entities of Paper Rush and Recycle Today, in order to fully acquire all necessary remedies as provided under the Act against respondents will operate against the public interest by allowing the furtherance of respondents' perpetrating a fraud upon the Department.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The object of a disciplinary proceeding is to protect the public. Disciplinary proceedings are not conducted for the purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In a disciplinary proceeding, the burden of proof is on the party asserting the affirmative. (*Small v. Smith, supra*, at p. 457.) In a disciplinary proceeding to revoke a probationary license, the burden of proof is a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

The department has the burden of establishing the disciplinary charges in this matter by a preponderance of the evidence.

3. The burden of producing evidence in mitigation and rehabilitation is on the respondent. (Evid. Code, §§ 500, 550.) The evidence must be sufficiently compelling, in light of the misconduct and other relevant circumstances, to warrant a measure of discipline less than an outright revocation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101.)

Respondents have the burden of producing evidence in mitigation and rehabilitation, and proof is by a preponderance of the evidence. (Evid. Code, § 115.)

4. “Preponderance of the evidence” means evidence that has more convincing force than that opposed to it; if the evidence is so evenly balanced that a fact finder is unable to say that the evidence on either side of an issue preponderates, a finding on that issue must be against the party who had the burden of proving it. (BAJI 2.60.)

Applicable Statutes

5. The legislative findings and declarations relating to the Recycling Act are set forth in Public Resources Code section 14501, which provides:

The Legislature finds and declares as follows:

(a) Experience in this state . . . demonstrates that financial incentives and convenient return systems

ensure the efficient and large-scale recycling¹¹ of beverage containers.

[¶] [¶]

(d) It is the intent of the Legislature to ensure that *every container type proves its own recyclability*.

(Emphasis added.)

6. The Department has the authority to examine and inspect all certified operations for compliance with the Act and the Department's regulations. (Pub. Resources Code, § 14553, subd. (b); Calif. Code Regs, tit. 14, §§2075 and 2125, subd.(a).) Recycling centers are required to obtain or create and maintain specified documentation so that the Department may validate all claims made by a recycling center for CRV and processing payment. (Pub. Resources Code, § 14538.)

7. The Department may take disciplinary action for misconduct in accordance with Public Resources Code section 14591.2, which provides, in pertinent part:

(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. A responsible party includes, but is not limited to, the certificate holder, registrant, officer, director, or managing employee

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

[¶] . . . [¶]

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

(3) The *responsible party violated* this division or any regulation adopted pursuant to this division, including, but not limited to, *any requirements concerning auditing*,

¹¹ Information relating to the operation and success of the Recycling Act is set forth in *Tomra Pacific, Inc. v. Chiang* (2011) 199 Cal.App.4th 463, 471-474.

reporting, standards of operation, or being open for business.

[¶] . . . [¶]

(c) The department may take disciplinary action pursuant to this section, by

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

[¶] . . . [¶]

(Emphasis added.)

8. All reports, claims and other information required under the Act and the Department's regulations must be complete, legible, and accurate. (Pub. Resources Code, § 14553, subd. (a).)

9. Legislative findings and declarations related the redemption of material imported from out-of-state are set forth in Public Resources Code section 14595, which provides as follows:

The Legislature finds and declares that the redemption of beverage container material imported from out of state, previously redeemed containers, rejected containers, and line breakage *presents a significant threat to the integrity of the beverage container recycling program and fund.* It is therefore the intent of the Legislature that *no refund value or other recycling program payments be paid to any person for this material.* It is further the intent of the Legislature that *any person participating in conduct intended to defraud the state's beverage container recycling program shall be held accountable for that conduct.*

(Emphasis added.)

10. A certified recycling center *shall not pay* or receive a refund value for any material that does not have a refund value established by the Act. Nor shall a recycling center pay "refund values, processing payments or administrative fees to a non-certified recycler," or "on empty beverage containers or other containers the certified recycling center knew or *should have known were coming into the state from out of the state.*" (Emphasis added.) (Pub. Resources Code, §§ 14538, subds. (b)(1), (4) and (5), 14572, subd. (d)(2) and 14595.5.)

11. A certified recycling center *cannot* “*claim refund values, processing payments, or administrative fees on empty beverage containers that the certified recycling center knew, or should have known were received from non-certified recyclers or on beverage containers the certified recycling center knew, or should have known*” came from out of California. (Emphasis added.) (Pub. Resources Code, §§ 14538, subds. (b)(6), 14572, subd. (d)(2), and 14595.5.)

12. The Act establishes that any person participating in conduct intended to defraud the State of California’s beverage container recycling program, including, but not limited to, redemption of out-of-state and previously redeemed beverage containers, shall be held accountable for that conduct. (Pub. Resources Code, §§ 14591, 14591.2, 14595, 14596, and 14597.)

13. No person shall falsify documents required by the Act or the Department’s regulations. (Pub. Resources Code, § 14597, subd. (a).) Falsification of a document is evidence of intent to defraud. And falsification of a document constitutes intentional misconduct for which a \$5,000 penalty per violation per day may be imposed. (Pub. Resources Code, § 14591.1, subdivision (b), and 14597.)

14. The Act characterizes a claim for CRV to be fraudulent when the claim is based in whole or part on false information or falsified documents. And no person may submit or cause to be submitted a fraudulent claim. (Pub. Resources Code, § 14597, subd. (b).)

15. Except for criminal prosecutions brought under Public Resources Code section 14591, mens rea of specific intent to defraud is not required for the Department to recover restitution, collect interest on the restitution or to assess civil penalties. Under the Act, the mere existence of false information on the face of a claim form that seeks CRV, or the existence of falsified documents upon which the claim form is based, makes a DR6 claim fraudulent. ((Pub. Resources Code, §§ 14591.1, 14591.3, 14597.)

16. The Act authorizes the Department to collect restitution and interest, levy statutory penalties and recover costs and fees related to audits and investigations. And as set out above, due to fraudulent conduct that unlawfully extracts CRV from the Fund, the Department may permanently revoke certificates and permanently bar individuals or entities from further participation in any recycling center’s activities and functions. (Pub. Resources Code, §§ 14591.1, 14591.2, 14591.3, 14594.5, 14596, and 14597.)

17. Public Resources Code section 14538, subdivision (c), establishes that the Department may recover restitution for all payments from the Fund when the Department cannot verify the claim for CRV because the required documentation is not available or is not prepared or maintained in accordance with the dictates of the Act and the Department’s regulations. Hence, any claim that cannot be validated must be denied by the Department and recovered by way of measures to execute restitution.

18. Each violation of the Act is a separate violation and each day of the violation is a separate violation. (Pub. Resources Code, §§ 24591.1, subd. (a)(3).)

19. Each fraudulent claim, regardless of the manner of commission of the fraud, is a separate violation of the Act. (Pub. Resources Code, §§ 14591.1, 14591.2, 14595.5, and 14597.)

Applicable Statutory Provisions and Regulations, Together

20. Except for consumers as defined by the Act, a business, entity or person not certified by the Department may not claim, receive or pay California Refund Value (CRV), processing payments, or administrative fees for eligible beverage containers. (Pub. Resources Code, §§ 14511.7, 14518, 14520, 14538, 14539, 14539.5, 14572, 14572, subd. (d), 14573, and 14573.5; Cal. Code Regs., title 14, §§ 2000, subd.(a)(7), 2010, 2030, 2045, 2060, 2070, 2400, 2500, 2525, 2535, subd. (f), and 2650.)

21. A certified recycling center must inspect each load, which is delivered to the certified recycling center for which refund valued is claimed, to determine whether the load is eligible for any refund value. If the load is eligible is for CRV, the recycling center must determine whether the load is segregated or commingled. (Cal. Code Regs., title 14, §2501, subd. (a).) The Department's regulations pertaining to "load inspection requirements" are detailed and explicit. Those details are, in part, set out under subdivision (a) of section 2501 as:

(1) For transactions with consumers, the recycling center *shall remove the containers from any bag, box or other receptacle used to deliver the material to the recycling center and visually inspect the containers* prior to determining the basis for payment and paying the seller. *In no case shall a certified recycling center pay or claim the refund value for any material not inspected by the recycling center.*

(2) For any load delivered to a recycling center, from a dropoff or collection program, community service program, curbside program or other recycling center, each recycling center taking delivery of the material *shall visually inspect each load of material by monitoring the unloading and/or conveyor process to determine eligibility* and whether the load is segregated or commingled.

(Emphasis added.)

The Load Inspections Requirements regulation (Cal. Code Regs., title 14, § 2501) does not permit a recycling center's employees or agents to look "through the sides" of a bag or wire mesh basket, which was the common practice by respondents in this matter.

22. Previously baled beverage containers, out-of-state beverage containers, line breakage, previously redeemed containers, and materials that have never been ascribed refund value are ineligible for payment of CRV, processing payments, and administrative fees. (Pub. Resources Code, §§ 14538, subd. (b), 14539, subd. (b), 14539.5, subd. (b), 14572, subd. (d), 14591, 14595, 14595.5, subds. (a)(1) and (2), and 14597; Cal. Code Regs., title 14, §§ 2000, subd. (a)(37), 2110, subd. (a), 2401, subds. (b), (d), and (f), 2501, subd.(b), (d), (e), (f) and (g).) And California Code of Regulations, title 14, section 2501, subdivisions (a)(1) and (2), prohibits the redemption of CRV when a load of material contains any previously baled material, that is “pieces of broken, densified bales or biscuits of aluminum beverage containers within a load, or where pieces of bales of plastic are found in the load.”

Applicable Regulations

23. The Department’s regulations sections 2525 (recordkeeping), 2530 (reporting), 2535 (payments to consumers), set out information and program specifics to which all certified recycling centers, and their operators, are charged or required to know. In particular to this matter, is that all transactions constituting delivery from one recycling center to another must be documented with a DR6 Shipping Report and a weight ticket, which must thereafter be appended to a DR6 Shipping Report that accompanies the load when sold to a certified processor. (Calif. Code Regs., tit. 14, § 2530, subds. (a) and (d).) All transactions involving scrap material must be documented independently as well as listed in the daily summary. (Calif. Code Regs., tit. 14, § 2525, subds. (a), (h) and (i).) All purchases of aluminum beverage containers with weights in excess of 250 pounds must be reported to the Department weekly. (Calif. Code Regs., tit. 14, § 2530, subd. (i).) A certified recycling center must maintain such records for five years. (Calif. Code Regs., tit. 14, § 2085, subd. (b).)

24. All weight “shall be measured, recorded and reported” in accordance with the “Weights and Measures” provision set out in the Business and Professions Code sections 12501, 12711 through 12721. (Calif. Code Regs., tit. 14, § 2115, subd. (b).) Hence, all weight tickets must include, among other data, accurate container tare weight.

25. “A certified recycler shall not pay the refund value to, or claim refund value for any material received from, any person, operation or entity who is not certified by the [Department], delivering a load of material in excess of 500 pounds of aluminum or plastic beverage containers, or 2,500 pounds of glass beverage containers, per day.” Those limitations are applicable to all transactions. (Cal. Code Regs., title 14, §§ 2535, subd. (f)). And, it is a violation for a certified recycling center to split loads in excess of the above mentioned weights, or to accept during any one day an aggregate total of material in excess of the above mentioned weights, from any person not certified by the Department. (Cal. Code Regs., title 14, §§ 2535, subd. (f)(1).)

A Licensee/Employer's Responsibility for Acts of Agents and Employees

26. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of his agents or employees done in the course of his business in the operation of the license. A licensee may not insulate himself from regulation by electing to function through employees or independent contractors. (*Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.) Where a licensee demonstrates unusual circumstances that negate the presumption of control, it might be unfair to hold the licensee liable for employee misconduct. But, mere lack of knowledge does not suffice where a licensee appeared to have tolerated misleading statements in the past or created a climate in which such misstatements were likely to occur. (*Rob-Mac, Inc. v. Department of Motor Vehicles, supra*, at p. 799.)

Respondent Vanh and respondent Centeno are bound by the unlawful and fraudulent acts of employees and agents associated with Recycle Today and Paper Rush.

Cause to Impose Discipline upon Recycling Certifications

FIRST CAUSE FOR DISCIPLINE

PAPER RUSH

27. Cause exists to impose discipline against Probationary Certificate RC2902 issued by the Department to Paper Rush pursuant to Public Resources Code section 14591.2, subdivision (d)(3)(A)(i), as that Code section interacts with Code sections 14538, 14553, 14595, 14595.5, and 14597, along with California Code of Regulations, title 14, sections 2501 and 2535, by reason of the matters set out in Factual Findings 13, 27 through 35, and 37 through 42.

A preponderance of evidence establishes that respondent Paper Rush, respondent Vanh and respondent Centeno caused at least a \$10,000 loss to the Fund during a six month period before the accusation in this matter.

RECYCLE TODAY

28. Cause exists to impose discipline against Probationary Certificate RC13999 issued by the Department to Recycle Today pursuant to Public Resources Code section 14591.2, subdivision (d)(3)(A)(i), as that Code section interacts with Code sections 14538, 14553, 14595, 14595.5, and 14597, along with California Code of Regulations, title 14, sections 2501 and 2535, by reason of the matters set out in Factual Findings 13, 15 through 26, 32 through 35, 37 through 42.

A preponderance of evidence establishes that respondent Recycle Today, respondent Vanh and respondent Centeno caused at least a \$10,000 loss to the Fund during a six month period before the accusation in this matter.

SECOND CAUSE FOR DISCIPLINE – FRAUD: PAPER RUSH

29. Cause exists to impose discipline against Probationary Certificate RC2909 issued by the Department to Paper Rush for fraud, pursuant to Public Resources Code section 14591.2, subdivision (b)(1), as that section interacts with Public Resources Code sections 14553, 14591, 14591.1, 14591.2, 14595, 14595.5, and 14597, along with California Code of Regulations, title 14, sections 2401, 2501 and 2530, by reason of the matters set out in Legal Conclusion 27, and Factual Findings 43 through 54.

THIRD CAUSE FOR DISCIPLINE- FRAUD: RECYCLE TODAY

30. Cause exists to impose discipline against Probationary Certificate RC13999 issued by the Department to Recycle Today for fraud, pursuant to Public Resources Code section 14591.2, subdivision (b)(1), as that section interacts with Public Resources Code sections 14553, 14591, 14591.1, 14591.2, 14595, 14595.5, and 14597, along with California Code of Regulations, title 14, sections 2401, 2501 and 2530, by reason of the matters set out in Legal Conclusion 28 and Factual Findings 55 through 62.

FOURTH CAUSE FOR DISCIPLINE - FAILURE TO INSPECT

RECYCLE TODAY, PAPER RUSH, RESPONDENT CENTENO AND RESPONDENT VANH

31. Cause exists to impose discipline against Probationary Certificate RC2902 issued by the Department to Paper Rush and against Probationary Certificate RC13999 issued by the Department to Recycle Today because of failure to inspect loads upon which California Refund Value, Processing Payments and Administrative Fees were claimed and paid, pursuant to Public Resources Code section 14591.2, subdivisions (a) and (b), as that section interacts with Public Resources Code section 14538, along with California Code of Regulations, title 14, section 2501, by reason of the matters set out in the First through Third Legal Conclusions and Factual Findings 63 through 65.

FIFTH CAUSE FOR DISCIPLINE - SUBMISSION OF FRAUDULENT CLAIMS

32. Cause exists to impose discipline against Probationary Certificate RC2902 issued by the Department to Paper Rush and against Probationary Certificate RC13999 issued by the Department to Recycle Today because of the submission of fraudulent claims for California Refund Value reimbursement, processing payments, and administrative fees, pursuant to Public Resources Code section 14591.2, subdivisions (a) and (b), as that section interacts with Public Resources Code sections 14538, 14591.1, 14591.2, 14595.5, and 14597, by reason of the matters set out in the First through Fourth Legal Conclusions Factual and Findings 66 through 72.

Matters in Aggravation

33. The matters in aggravation as set out in Factual Findings 82 through 91 were considered in making the Order below. Matters in mitigation or matters in rehabilitation were not developed by respondents at the hearing of this matter.

Restitution

34. Under Public Resources Code section 14591.2, subdivision (c)(5), as part of a disciplinary action, the Department may effect “collection of amounts in restitution of any money improperly paid to the certificate holder or registrant from the [F]und.” And Code section 14591.4, subdivision (a), prescribes that “[i]n addition to any other remedies, penalties and disciplinary actions . . . the [D]epartment may seek restitution of any money illegally paid to any person from the [F]und, plus interest at the rate earned on the Pooled Money Investment Account of the total amount.”

The act of filing a claim for CRV and processing payments, which are based on previously baled, out-of-state material or other ineligible matters, constitutes fraud. (Pub. Resources Code, §§ 14591.1, 14591.1, 14595.5, and 14597.) In addition, the use of false information on a claim form renders that claim fraudulent by operation of law. (Pub. Resources Code, §§ 14591.2 and 14597.) Regardless of the manner or mechanism by which the fraud was perpetuated, each fraudulent claim is a separate violation of the Act. (Pub. Resources Code, §§ 14591.1, 14591.2, 14595.5 and 14597.)

Cause exists to impose restitution pursuant to Public Resources Code sections 14591.2, subdivision (c)(5), and 14591.4, subdivision (a), by reason of Legal Conclusions 27 through 32, and Factual Findings 73 through 76.

Interest on the Amount of Restitution Owed the Department

35. Public Resources Code section 14591.4, provides for interest to be attached to the amount of restitution recovered from any person who acquired money illegally from the Fund. Interest is calculated at the rate earned on the Pooled Money Investment Account for the State of California. Furthermore, interest of the principal amount of restitution payable by respondents, jointly and severally, continues until respondents, or any of them, makes payment in full of the restitution and interest ordered.

Civil Penalties

36. Public Resources Code section 14591.1, subdivisions (a)(1) and (c) establishes that the Department may assess a civil penalty upon a person who violates [the Act] in “up to one thousand dollars (\$1,000) for each separate violation, or for continuing violations, for each day that violation occurs.”

Public Resources Code section 14591.2, subdivision (a) and (c)(6), sets forth that the department may take disciplinary action against any responsible party including “imposition of civil penalties pursuant to section 14591.1.”

Complainant is reasonable in setting recovery of civil penalties at \$100 for each of the 364 violations of the Act that the evidence established. Hence, recovery of civil penalties is correctly set at \$36,400.

Costs of Investigation and Prosecution

37. The Public Resources Code provides that the Department may recover its costs of audit, investigation and prosecution from respondents found culpable of allegations set forth in the accusation as proven through evidence presented at a hearing conducted under Government Code (Chapter Five) section 11500 et seq. In particular, Public Resources Code section 14591.3, authorizes recovery by the Department of all costs and fees, including but not limited to attorneys’ fees and fees payable to experts, along with the costs of investigation and prosecution, against respondents. However, at the outset of the hearing of this matter, complainant waived recovery of costs of attorneys, experts, the audit, the investigation and the prosecution.

Language Assistance.

38. Government Code section 11435.05 defines “language assistance” to mean “oral interpretation or written translation into English of a language other than English or of English into another language for a party or witness who cannot speak or understand English or who can do so only with difficulty.”

The guidance for imposition of cost for the provision of an interpreter is set out at Government Code section 11435.25. That provision states, “[t]he cost of providing an interpreter . . . shall be paid by the agency having jurisdiction of the matter if the presiding officer so directs, otherwise by the party at whose request the interpreter is provided.” In this matter, respondents demanded that interpreters be present at the hearing to serve the needs of respondent Centeno during all times that testimony was given by witnesses. From the outset, Complainant, through his counsel, vehemently objected to summoning of interpreters because the Department had had extensive interactions with respondent Centeno over the years and the interactions had all been conducted in English. Respondent Centeno was informed by the undersigned administrative law judge of the costs imposition provisions of Government Code section 11435.25; and that a determination regarding the costs for the interpreters would be made following the hearing of this matter.

Government Code section 11435.25, subdivision (b), instructs that the “presiding officer’s decision to direct payment shall be based upon equitable considerations of all the circumstances in each case, such as the ability of the party *in need* of the interpreter to pay.” First, the weight of the evidence establishes that respondent Centeno did not “need” an interpreter in this matter. Under the facts it would be gravely inequitable for the Department

to be assessed the cost of the interpreters when those professional services were not necessary. At the hearing, respondent Centeno offered no evidence that he is financially hard pressed; rather, the evidence shows him to own commercial trucks and that he has received compensation from his past services, albeit fraudulent, to the subject recycling centers. The Department, through the exercise of its judgment, may forgive the recovery of the costs of the interpreters upon positive, documentary proof from respondent Centeno of his financial hardship.

Cause exists to impose upon respondent Centeno the entire cost of the services of interpreters, who attended at the hearing of this matter, pursuant to Government Code section 11435.25, by reason of Factual Findings 92 through 104.

Piercing the Corporate Veil

39. A corporate identity may be disregarded and the “corporate veil” pierced when an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation and the individuals that run the corporation. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538-539.) When a corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other unlawful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation’s bad acts to be those of the persons or organizations actually controlling the corporation. (*Id.*, p. 538.) The “alter ego doctrine” prevents individuals or organizations from using the corporate structure for the purpose of committing fraud or other grave misconduct. (*Ibid.*)

The conditions necessary for application of the alter ego doctrine exist in this matter. First, there is a unity of interest and ownership between the corporations and their equitable owners so that the separate personalities of the corporation and shareholders do not in reality exist. Second, an inequitable result will result if the fraudulent acts in question are treated as those of the corporations alone. Here the evidence is abundant that Paper Rush, Recycle Today, respondent Vanh and respondent Centeno have commingled funds and assets, have identical ownership, have used the same offices and employees, have used one corporate form as a shell or conduit (i.e., Recycle Today) for the affairs of the other corporation or parties (Paper Rush, respondent Vanh and respondent Centeno), have disregarded the corporate formalities, and have identical directors and officers.

In particular, respondent Vanh “owned” and operated both Paper Rush and Recycle Today as her personal tool to collect money from the Fund. Respondent Vanh acted as president of Paper Rush as well as the secretary and treasure for Recycle Today. Respondent Vanh signed all tax returns. Paper Rush, which has long been controlled by respondent Vanh, completed the DR6 Shipping Reports on behalf of Recycle Today. Respondent Centeno was required to clear all shipments with respondent Vanh. Payments by the Allan Company, regardless of whether the load came from Paper Rush or Recycle Today, were mailed to respondent Vanh. Respondent Vanh controlled the bank accounts for both Paper Rush and Recycle Today. The finances for the two corporations were intertwined. There is

a unity of interest between Paper Rush, Recycle Today and respondent Vanh. Respondent Vanh is Paper Rush. And Respondent Vanh is Recycle Today.

As to respondent Centeno, he had great influence over the illegal conduct attributed to Recycle Today. He acted as the president of Recycle Today. He hired employees for that recycling center. Respondent Centeno signed all payroll checks for employees of Recycle Today. He was the certified operator of Recycle Today during all times that fraudulent actions were perpetuated at the recycling center. Respondent Centeno owns thirty percent of the building and land on and from which Recycle Today carried out its activities. In his mind, respondent was a "partner" to respondent Vanh in the business of Recycle Today.

Respondent Vanh and respondent Centeno are jointly and severally liable for the operation of Recycle Today due to the common ownership of the business land and building as between the two individual respondents.

The doctrine stated in *Sonora Diamond Corp. v. Superior Court* supra 83 Cal.App.4th 523 must be invoked in this matter so as to pierce the corporate veil in order to hold respondent Vanh and respondent Centeno wholly liable for the restitution, interest thereon and penalties assessed against Paper Rush and Recycle Today, by reason of Factual Findings 105 and 106.

ORDER

1. The probationary certificate and the rights of the respondent, Paper Rush Company, Inc., relating to Probationary Certificate RC2902, are revoked.

2. The probationary certificate and the rights of the respondent, Recycle Today, Inc., relating to Probationary Certificate RC13999, are revoked.

3. Respondent June Tran Vanh shall be henceforth permanently barred, prohibited and excluded from participation in any direct or indirect involvement, management or ownership of a recycle center or processor regulated by the Department, or any aspect of the Department's recycling program.

4. Respondent Hugo Centeno shall be henceforth permanently barred, prohibited and excluded from participation in any direct or indirect involvement, management or ownership of a recycle center or processor regulated by the Department, or any aspect of the Department's recycling program.

5. For the time pertinent to the matters developed in the record, all claims are disallowed in their entirety as made by Paper Rush and Recycle Today for California Refund Value and processing payments that were submitted on ineligible materials, including but not limited to, those loads of materials that were not inspected, previously baled material, and out-of-state material. And all claims are disallowed as made for recovery of CRV that were

submitted for redemption from the Fund by the officers, directors, corporate shareholders, subsidiaries, divisions, subdivisions, agents, representatives, managers or employees of Paper Rush or Recycle Today, including but not limited to any claim paid or unpaid, known or unknown.

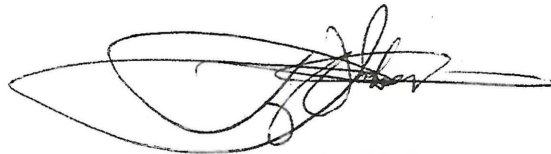
6. Within 60 days following the effective date of this decision, respondents Paper Rush Company, Inc., Recycle Today, Inc., June Tran Vanh, and Hugo Centeno, are jointly and severally liable to pay to the Department restitution of \$1,970,595.31, plus interest on the restitution principal in the total amount of \$60,232.96. Although complainant fixed the interest to be set at \$60,232.96, should respondent fail to pay the restitution and prescribed interest thereon within 60 days from the effective date of this decision, the interest on the principal amount of restitution (\$1,970,595.31) payable by respondents, jointly and severally, then the Department may recalculate the interest on the principal debt from the that 60th day following the effective date of the decision so as to assess interest from that date that continues until respondents, or any of them, makes payment in full of the restitution ordered and increased interest obligation.

7. Respondents are jointly and severally liable to pay the Department civil penalties for 364 violations of the Act that constitute fraud. The penalties, which are set at \$100 per established violation, are set at an aggregate amount of \$36,400. Respondents are to pay the Department the aggregate amount of penalties of \$36,400 within 60 days of the effective date of this decision.

8. Within 30 days of this matter, the Department is to serve upon respondent Centeno a bill, which is certified as true and correct by complainant, that shows the aggregate of the bills tendered by the language assistance company that hired the interpreters who billed for interpreting services provided respondent Centeno during the course of the hearing of this matter. And within 90 days following the effective date of this decision, respondent Hugo Centeno shall reimburse the Department the total amount of the cost of the fees presented by the privately employed, certified Spanish-English interpreters for the services rendered at the hearing of this matter.

9. The Department will not recover costs of the audits, investigation or prosecution associated with the accusation against respondents.

DATED: July 15, 2013



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings