

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

IN THE MATTER OF:

Pedley Vet Recycling – Roger Tobin

Address: 8978 Limonite Avenue, Riverside, California

Type of Entity: Termination of Probationary Certificate

File No.: IH19-014-BCR

Certificate No.: RC216898.001

PRECEDENTIAL DECISION No.: 23-01

**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 April 3, 2020, in the above-referenced action.

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

Dated: September 10, 2023.

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

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

IN THE MATTER OF:)	File No. IH19-014-BCR
)	
PEDLEY VET RECYCLING;)	
RC216898.001;)	
ROGER TOBON,)	DECISION AND ORDER
)	
RESPONDENT.)	
)	
)	

I. INTRODUCTION

The Division of Recycling (Division) of the Department of Resources Recycling and Recovery (Department or CalRecycle) issued a notice to Roger Tobon and Pedley Vet Recycling (Respondent) dated November 18, 2019, terminating Respondent’s probationary certificate (RC216898.001) to operate a recycling center at 8978 Limonite Avenue in Riverside, California (Limonite RC), effective November 28, 2019.

Respondent filed a timely request for hearing on the certification termination pursuant to Title 14, section 2130 of the California Code of Regulations.

A hearing was conducted on February 20, 2020, in Sacramento, California. On that date, all evidence and testimony in this matter was received into the record.

Linda Nueva, Senior Staff Counsel, CalRecycle, appeared on behalf of the Division. John C. Gugliotta, Esq., appeared on behalf of Respondent.

Douglas C. Jensen, Attorney IV, CalRecycle, presided over the hearing under a delegation of authority from CalRecycle Acting Director, Ken DaRosa.

II. ISSUE

Whether the Division’s decision to revoke Respondent’s probationary certification to operate a recycling center shall be sustained, modified, or reversed.

III. EVIDENTIARY MATTERS

The Division presented testimony from Cha Lee (Lee), Division inspector. Lee testified regarding a covert observation he conducted of the Limonite RC on June 27 and 28, 2018.

1 The Division presented testimony from Rebecca Chavez (Chavez), Division inspector.
2 Chavez testified regarding a covert inspection she conducted on the Limonite RC, along
3 with Division inspector Lee, on June 27 and 28, 2018.
4

5 The Division presented testimony from Jeffrey Heng (Heng), Division Inspector. Heng
6 testified regarding an on-site observation he conducted of the Limonite RC on
7 November 14, 2018, and a subsequent record review.
8

9 The Division presented testimony from Edwin Mui (Mui), a Questioned Document
10 Examiner II. Mui examined receipts produced by the Limonite RC using a magnification
11 device. Mui opined, based upon his experience and training, that several customer
12 signatures were commonly authored. Respondent objected to the admission of Mui's
13 opinion on the basis that he lacks the required expertise.
14

15 Roger Tobon, owner and operator of the Limonite RC, testified regarding certification
16 history of Pedley Vet Recycling and the operations of the Limonite RC.
17

18 Division Exhibits 1—3, 5, and 7—13 were admitted without objection. Respondent
19 objected to the admission of Division Exhibits 4 and 6 on the basis that they were
20 inadmissible opinion. Division Exhibits 4 and 6 will not be admitted into evidence.
21

22 **Respondent's Motions**

23

24 Respondent made two motions during the hearing. First, Respondent moved to dismiss
25 the informal administrative hearing on the basis that Respondent's probationary
26 certification was improperly extended a second time. Second, Respondent moved to
27 exclude Mui's testimony and reports (Division Exhibits 4 and 6) on the basis that they
28 include improper opinion.
29

30 Probation Extension

31

32 Respondent moves to dismiss the informal administrative hearing on the basis that
33 Respondent's probationary certification was improperly extended a second time.
34 Respondent contends, therefore, that his certification is non-probationary, entitling him
35 to a formal hearing before an administrative law judge to challenge the Division's
36 revocation.
37

38 Probationary certification is controlled by Public Resources Code section 14541. It
39 states in relevant part:
40

- 41 (a) The department may issue a certificate pursuant to an initial or renewal
42 application for certification as probationary and the department may issue any
43 other certificate as probationary pursuant to an enforcement action.
44
- 45 (b) A probationary certificate issued pursuant to this section shall be issued for a
46 limited period of not more than two years. Before the end of the probationary
47 period, the department shall issue a non-probationary certificate, extend the
48

1 probationary period for not more than one year, or, after notice to the
2 probationary certificate holder, revoke the probationary certificate.

3
4 Tobon was initially granted a certificate to operate a recycling center with a two-year
5 probationary period. At the end of that two-year period, Tobon's probationary status
6 was extended by one year. At the end of that one-year period, Tobon's probationary
7 status was extended a second time by one year.

8
9 Respondent contends that, by the plain meaning of section 145491, the Division was
10 not authorized by section 145491 to extend the probationary period a second time.
11 "The statute specifically states that the extension of probation is limited to 'not more
12 than one year.'" At the expiration of the first one-year probation extension, Respondent
13 argues, the Division was obligated to either make the certification non-probationary or
14 revoke the probationary certificate. Respondent contends that since the Division did not
15 revoke Respondent's certification at the end of the first one-year extension, its
16 certificate became non-probationary, entitling him to a formal administrative hearing
17 before an administrative law judge to challenge the revocation.

18
19 The Division argues that the plain language of section 145491 places no limits on the
20 number of times that the Division may extend probation. Had the Legislature intended
21 such restrictions, the Division states, it would have included additional limiting language
22 as follows: "Before the end of the probationary period, the department shall issue a non-
23 probationary certificate, extend the probationary period **one time only** and for a period
24 of not more than one year, or, after notice to the probationary certificate holder, revoke
25 the probationary certificate." Since the legislature did not include any such language,
26 extending Respondent's probation a second time was authorized and Respondent is not
27 entitled to a formal hearing before an administrative law judge.

28
29 The Division's position that the plain language of section 145491 does not limit the
30 number of probation extensions is correct. The clause 'not for more than one year' from
31 section 145491 modifies the length of any extension, as contrasted with the initial two-
32 year probationary period. However, it does not limit the number of extensions to only
33 one. The Division's practice of extending probation multiple times is consistent with the
34 plain language of section 145491. Therefore, Respondent's certification is probationary
35 and he is not entitled to a formal hearing before an administrative law judge.

36 37 Opinion of Mui

38
39 Respondent moves to exclude the testimony of Mui on the basis that he lacks the skill
40 and training necessary to offer expert opinion on the subject of handwriting analysis.
41 Included in Respondent's motion are Division Exhibit Numbers 4 and 6, reports
42 prepared by Mui and including his opinion.

43
44 Mui examined receipts produced by the Limonite RC and concluded that they were
45 commonly authored, indicating fraud. The Division contends that Mui has adequate
46 training, experience, and skill to offer such an opinion.

1 The Hearing Officer declines to decide this issue. Mui's analysis and opinion here are
2 peripheral to the Division's substantive investigations which consist of covert
3 observations and record reviews. The evidence derived from these investigations alone
4 warrants Respondent's revocation. Mui's testimony, including Division Exhibit numbers
5 4 and 6 will not be considered.

6 7 **IV. FINDINGS OF FACT** 8

9 Tobon received a 2-year, probational certification to operate Pedley Vet Recycling
10 Center in approximately 2016. At the end of the two-year probationary period, probation
11 was extended by an additional year. At the end of that one-year probationary period,
12 probation was again extended by one year. It was during this second, one-year
13 probationary period that the Division revoked Respondent's certificates, effective
14 November 28, 2019. While it was on probationary status, Pedley Vet Recycling
15 received several Notices of Violation from the Division for minor violations of the Act and
16 Regulations.

17
18 The Limonite RC is located within the parking lot of a small strip mall in Limonite,
19 California. The strip mall contains a liquor store and a feed store. The Limonite RC
20 consists of a carport, three roll-off bins, and a storage shed. Three driveways open into
21 the strip mall parking lot.

22
23 The Division conducted a covert observation of the Limonite RC on June 27 and 28,
24 2018. Division inspectors parked their vehicle off-site in a position to observe customer
25 transactions. They logged each transaction they observed for both days, noting
26 customer time in and out, mode of transportation, vehicle type, vehicle passengers, and
27 approximate amount of material.

28
29 There were times during the Division's covert observation that the inspectors' view of
30 the Limonite RC was blocked by passing vehicles and vehicles parking in the strip mall
31 parking lot. A back entrance to the parking lot wasn't visible to the inspectors and they
32 did not have a view of the scale.

33
34 The Division subsequently reviewed the Limonite RC's receipts for the days of its covert
35 observation—June 27 and 28, 2018. On June 27, Division inspectors observed 41
36 transactions¹, but the Limonite RC produced 74 receipts for the same period. On June
37 28, Division inspectors observed 49 transactions² but the Limonite Center produced 77
38 receipts. The Division admitted that it was possible that a single customer may have
39 received multiple receipts.

40
41 Respondent claimed California Refund Value (CRV) for the receipts that it generated on
42 June 27 and 28, 2018.

43
44
45 ¹ Although inspectors only observed 37 transactions, they noted that four customer vehicles contained a passenger.
46 Therefore, they assumed those passengers also conducted transactions, bumping the total to 41.

47 ² Although the inspectors only observed 40 transactions, they noted nine customer vehicles contained a passenger.
48 Therefore, they assumed those passengers also conducted transactions, bumping the total to 49.

1 The Division conducted an on-site observation of the Limonite RC on November 14,
2 2018, recording all 49 transactions that occurred. The inspectors observed that the
3 physical inventory of material on site was considerably lower than the amount of
4 inventory reflected in the Limonite RC's books.

5
6 The Division requested and received from the Limonite RC its records for January 2018
7 through May 2019. The Division compared material volumes from November 14, 2018,
8 to the Limonite RC's volumes for January 2018 through May 2019. The material
9 volumes for November 14 were generally lower.

10
11 On November 18, 2019, the Division notified Respondent that it was revoking its
12 certification to operate a recycling center effective November 28, 2019. The stated
13 reasons for the revocation were: 1) Respondent falsified multiple purchase receipts for
14 the period of June through August, and November 2018; and 2) Respondent claimed
15 California Refund Value (CRV) on the falsified purchase receipts.

16
17 Respondent timely challenged the revocation and a hearing was held on February 20,
18 2020.

19 20 21 **V. CONCLUSIONS OF LAW**

22
23 The Division is charged with enforcing the California Beverage Container Recycling and
24 Litter Reduction Act (Public Resources Code section 14500 et. seq.) (Act) and related
25 regulations found at Title 14, California Code of Regulations, section 2000 et seq.
26 (Regulations). The Division is further charged with the duty of protecting the integrity of
27 the California Beverage Container Recycling Fund (Fund). (Pub. Res. Code § 14552.)

28
29 The Division issues certifications to operate recycling centers pursuant to Public
30 Resources Code sections 14538 and 14541. Certificates may be issued as
31 probationary for a two-year period. At the expiration of the two-year probationary
32 period, the Division may extend the probationary period, issue a non-probationary
33 certificate, or revoke the certificate subject to hearing. (Pub. Res. Code § 14541(a),(b).)

34
35 Section 14597(b) specifically prohibits any person from submitting a fraudulent claim
36 and defines a fraudulent claim as a claim based in whole or in part on false information
37 or falsified documents. Submission of a fraudulent claim is a basis for revocation.

38
39 Public Resources Code section 14591.2 authorizes the Division to take disciplinary
40 action against the operator of a certified recycling center that is engaged in dishonesty,
41 negligence, incompetence or fraud. Disciplinary action may include immediate
42 revocation, including certificates for other locations. (Pub. Res. Code § 14591.2(d)(1).)
43 In an action to revoke a certification to operate a recycling center, the Division carries
44 the burden of proof.³

45
46 ³ Absent a statute or other authority fixing a different standard, the burden of proof requires proof by a
47 preponderance of the evidence. (Evidence Code § 115.) Except as otherwise provided by law, a party
48 has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for

1 Here, the Division contends that Respondent falsified purchase receipts and claimed
2 CRV based upon the falsified receipts in violation of Public Resources Code sections
3 14597(a) and 14597(b), respectively. In support of its contention, the Division points to
4 a covert customer count conducted on the Limonite RC and a subsequent review of its
5 purchase records

6
7 The Division's covert customer count and subsequent record review constitute strong
8 evidence that the Limonite RC falsified its purchase receipts. On the first day of the
9 covert count, Division inspectors observed 41 transactions, but the Limonite RC
10 produced 74 receipts for the same period. On the second day of the covert count,
11 Division inspectors observed 49 transactions but the Limonite Center produced 77
12 receipts.

13
14 Respondent argues that the Division's covert count is unreliable. He contends that the
15 inspector's view of customer transactions during the covert count may have been
16 blocked at times by vehicle driving by or parking nearby. Respondent further contends
17 that a single customer may have conducted multiple transactions utilizing multiple
18 receipts, thereby skewing the covert count.

19
20 The Division's covert count need not be perfect in order to be reliable evidence.
21 Division inspector Lee conceded that he may have missed a few transactions due to
22 passing vehicles. However, the momentary disruption of view caused by passing
23 vehicle cannot explain the significant disparity between the inspector's count and the
24 number of receipts produced by the Limonite RC for the same period. And while it is
25 possible that a single customer produces multiple receipts, the Division inspectors had a
26 clear view of the customer transactions; Heng and Chavez expressed confidence in the
27 accuracy of their count and they both testified credibly.

28
29 The Division has established by the preponderance of the evidence that the Limonite
30 RC was engaged in the fabrication of purchase receipts and claimed CRV based upon
31 those fabricated receipts in violation of Public Resources Code section 14597.

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45 relief or defense that he is asserting. (Evid. Code § 500.) Therefore, the Division meets its burden of
46 proof establishing by a preponderance of the evidence that the recycling center has engaged in
47 dishonesty, negligence, incompetence or fraud.
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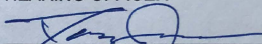
1 VI. DECISION AND ORDER
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3 The Division's decision to revoke Respondent's certification to run a recycling center is
4 sustained.
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8 IT IS SO ORDERED.
9

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11
12 DATED: 4/3/2020
13

HEARING OFFICER



14 Douglas C. Jensen
15 Attorney IV
16 Department of Resources Recycling
17 and Recovery (CalRecycle)
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Department of
Resources Recycling and Recovery

Jared Blumenfeld
Secretary for
Environmental Protection

Scott Smithline
Director for CalRecycle

PROOF OF SERVICE

I, Donnet McFarlane, declare as follows:

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

On April 3rd, 2020, I served the attached Decision & Order for entitled action DRRR Case No. IH19-014-BCR, In The Matter of Pedley Vet Recycling:

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By:

First Class Mail - In a sealed envelope, with postage thereon fully prepaid, in the United States.

Certified Mail - In a sealed envelope, return receipt requested with Postage thereon fully prepaid, in the United States mail.

Electronic Service - Sent to the email addresses listed above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 3rd day of April 2020.

D. McFarlane

(Signature)