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STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of: CALIFORNIA TIRE RECOVERY, LLC TPID NO. 1642979-01 RESPONDENT.	STATEMENT OF ISSUES FOR THE DENIAL OF THE MINOR WASTE TIRE FACILITY PERMIT PUBLIC RESOURCES CODE SECTION 42843 AGENCY NO: 2012-000115-DEN

INTRODUCTION

This Department of Resources Recycling and Recovery (CALRECYCLE) Statement of Issues is seeking the DENIAL for three years of the Minor Waste Tire Facility Permit of CALIFORNIA TIRE RECOVERY, LLC., (RESPONDENT), located at 6987 Calle De Linea, Suite 107, San Diego, CA 92154, in accordance with Public Resources Code (PRC) 42843. The denial of the permit is requested based on the following facts.

STATEMENT OF FACTS

1. Pursuant to PRC section 42800 et seq., and attendant regulations contained in Title 14 of the California Code of Regulations (CCR), CALRECYCLE has authority to inspect, permit, regulate

and conduct enforcement actions against Waste Tire Facilities (WTF) within the State of California.

2. Pursuant to section 42843 of Division 30, Part 3, Chapter 16 of the PRC:

(a) [CALRECYCLE], after holding a hearing in accordance with the procedures set forth in Sections 11503 to 11519, inclusive, of the Government Code, may revoke, suspend, or deny a waste tire facility permit for a period of up to three years, if [CALRECYCLE] determines any of the following:

. . . (2) The operator of the waste tire facility, during the previous three years, has been issued a final order for, failed to comply with, or has been convicted of, any of the following:

(A) One or more violations of this chapter [16] or the regulations adopted pursuant to this chapter.

(B) One or more violations of Chapter 19 (commencing with Section 42950) or the regulations adopted pursuant to that chapter.

(C) The terms or conditions of the operator's waste tire facility permit.

(D) Any order, direction, or penalty issued by [CALRECYCLE] relating to the safe storage or processing of waste tires. . . .

3. PRC section 42808 defines minor and major WTFs as follows:

. . . (b) "Major waste facility" means a waste tire facility where, at any time, 5,000, or more waste tires are or will be stored, stockpiled, accumulated or discarded.
(c) "Minor waste tire facility" means a waste tire facility where, at any time, 500 or more, but less than 5,000, waste tires are or will be store, stockpiled, accumulated, or discarded. However, a "minor waste tire facility" does not include a tire dealer or an automobile dismantler, as defined in Sections 220 and 221 of the Vehicle Code, who stores waste tires on the dealer's or dismantler's premises for less than 90 days if not more than 1,500 total used or waste tires are ever accumulated on the dealer's or dismantler's premises.

4. PRC section 42834 makes it "unlawful to direct or transport waste tires to a minor [WTF] or to accept waste tires at a minor [WTF] unless the operator has obtained a minor [WTF] permit."

5. Pursuant to PRC section 42823, "no person shall establish a new major [WTF] or expand an existing minor [WTF] unless the person has obtained a major [WTF] permit . . . ."

6. PRC section 42824 makes it "unlawful to direct or transport waste tires to a major [WTF] or to accept waste tires at a major [WTF] unless the operator has obtained a major [WTF] permit."

7. Pursuant to PRC section 42804 "'[o]perator' means the person responsible for the overall operation of a WTF."

8. Pursuant to PRC section 40170 "'[p]erson' includes an individual, firm, limited liability company, association, partnership . . . ."

9. Since at least July 14, 2011, RESPONDENT has been the operator of a WTF located at 6987 Calle De Linea, Suite 107, San Diego, California, 42154 (the site).

10. At no time from August 2011, to present has RESPONDENT been in possession of either a major or a minor WTF permit for the site. As RESPONDENT has not been in possession of WTF Permit, RESPONDENT is required to maintain 499 or less waste tires on the site pursuant to PRC sections 42808, 42824 and 42834.

11. On or about May 1, 2012, RESPONDENT submitted a Waste Tire Facility Permit Application (Application) to CALRECYCLE requesting a permit to operate a minor WTF at the site. The Application included Forms 500 (WTF Permit Application), 501 (WTF Operation Plan), 502 (WTF Environmental Information), and 503 (WTF Emergency Response Plan). At the same time RESPONDENT submitted a copy of the operational map, the property management/lease agreement, the business tax certificate/business license, the fire department inspection/agreement, and pictures of the surrounding area.

12. On May 29, 2012, Megan Fisher, staff member for CALRECYCLE accepted the Application package as complete, in accordance with 14 CCR section 18423(b).

13. During an inspection of the site on July 14, 2011, and documented in Waste Tire Survey and Inspection Report (Inspection Report) number I1-1223809, Daron Warkentin, inspector for the City of San Diego and Waste Tire Grantee, observed at least 4,144 waste tires, thereby making the site an unpermitted minor WTF, in violation of PRC section 42834.

14. During an inspection of the site on August 25, 2011, and documented in Inspection Report number I1-1134770, inspector Steven Dolan observed at least 1,860 waste tires, in violation PRC section 42834.

15. During an inspection of the site on October 5, 2011, and documented in Inspection Report number I1-1169624, Mr. Warkentin and Mr. Dolan observed at least 3,600 waste tires, in violation of PRC section 42834.

16. During an inspection of the site on March 1, 2012, and documented in Inspection Report number I1-1211105, Mr. Warkentin and Mr. Dolan observed at least 5,496 waste tires, thereby creating a major waste tire facility, in violation of PRC sections 42824 and 42823.

17. On March 26, 2012, CALRECYCLE served Cleanup and Abatement Order number 2012-011012-CAO (CAO) on RESPONDENT. The CAO ordered the following:

1. Remove all waste tires in excess of 499 from the premises within 15 days from the date of service of this Clean Up and Abatement Order (CAO), in accordance with the following waste tire removal schedule

a. Waste Tire Removal Schedule

i. Waste tires shall be removed from the premises. CalRecycle must approve the destinations of the tires to ensure that a registered waste tire hauler legally transports them to an approved facility.

ii. All waste tires (whole and/or passenger tire equivalents, pursuant to Title 14 of the CCR, section 17225.770) shall be removed by a registered waste tire hauler, as prescribed by PRC section 42950 et seq., within 15 days from the date of service of this CAO. A completed Comprehensive Trip Log (CTL), CalRecycle 203, manifest form must accompany each load and a copy of each completed CTL form must be submitted to CalRecycle within 30 days from the date of service of this CAO. Failure to comply with this provision may result in penalties, pursuant to PRC sections 42961.5 and 42962.

2. At no time may you accept additional waste tires at this site unless there are less than 499 onsite and the acceptance of additional waste tires will not result in more than 499 waste tires being onsite.

18. The site was found to be in compliance on May 10, 2012, however, during an inspection of the site on September 13, 2012, and documented in Inspection Report number I1-1152549, Mr. Warkentin observed at least 5,570 waste tires, in violation of PRC sections 42824,42823, and the CAO.

ALLEGATIONS OF SPECIFIC VIOLATIONS

19. CALRECYCLE is seeking the DENIAL of RESPONDENT's Minor Waste Tire Facility Permit for three years pursuant to PRC section 42843(a)(2) based on the above-mentioned facts and for the reasons set forth in the foregoing paragraphs:

a. On at least three separate occasions, the operator for RESPONDENT violated Division 30, Part 3, Chapter 16, PRC section 42834, by directing or transporting waste tires to a minor WTF or accepting waste tires at a minor WTF without first obtaining a minor WTF permit.

b. On at least two separate occasions, the RESPONDENT violated Division 30, Part 3, Chapter 16, PRC section 42823, by establishing a new major WTF or expanding an existing minor WTF without having obtained a major WTF permit, and violated Division 30, Part 3, Chapter 16, PRC section 42824 by directing or transporting waste tires to a major WTF or accepting waste tires at a major WTF without first obtaining a major WTF permit.

c. On at least one occasion, RESPONDENT failed to comply with CAO number 2012-011012-CAO, an order issued by CALRECYCLE relating to the safe storage or processing of waste tires.

RIGHT TO HEARING

You are hereby notified that pursuant to the provisions of section 42843 of the California Public Resources Code and Government Code section 11506, you are entitled to a hearing to refute the allegations against you contained in this Statement of Issues. **If you wish to have a hearing on this matter, you must complete and return the enclosed REQUEST FOR HEARING to our Legal Office within 15 days of receipt of this notice. Failure to complete and return the REQUEST FOR HEARING within 15 days will be deemed a waiver of your right to a hearing.**

Pursuant to the above referenced Public Resources Code and Government Code sections, discovery requests by any party must be made within thirty days after the service of this Denial of the Minor Waste Tire Facility Permit.

Dated this 16 day of November, 2012.

HEATHER L. HUNT
Staff Counsel III