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10 STATE OF CALIFORNIA

11 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

12 In the matter of:	}	REPLY TO OPPOSITION TO
	}	REQUEST FOR SET ASIDE OR
13 GLOBAL WASTE MANAGEMENT, INC.,	}	STAY OF REVOCATION AND
14 OPERATOR	}	OBJECTION TO INFORMAL
	}	HEARING
15 TPID NO. 1613306-01	}	PUBLIC RESOURCES CODE
	}	SECTION 42843
16 Respondent.	}	AGENCY NO.: 2013-000010-REV
	}	
	}	

17 **STATEMENT OF THE CASE**

18 This matter is before the Department of Resources Recycling and Recovery
19 (“CalRecycle”) on the request by Respondent, Global Waste Management, Inc. (“Global”) to
20 set aside or stay the revocation of its Minor Waste Tire Facility (“WTF”) permit and objection
21 to an informal hearing.
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23 CalRecycle purports to have revoked Global’s Minor Waste Tire Facility permit “for a
24 period of five (5) years, effective immediately” with the service of a Statement of Issues on
25 September 16, 2013. Global contests the ability of CalRecycle to revoke or suspend its permit
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1 in the absence of a determination of an “imminent or substantial endangerment to the public
2 health or safety or the environment” as required by California Public Resources Code §
3 42844(a), and objects to an informal hearing and requests a formal hearing under California
4 Public Resources Code § 42852(a) and California Government Code §§ 11500 et seq.

5 Global submits this Reply to the Opposition filed by CalRecycle.

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7 **ARGUMENT**

8 **CALRECYCLE’S PURPORTED REVOCATION OF GLOBAL’S PERMIT**
9 **SHOULD BE SET ASIDE OR STAYED BECAUSE CALRECYCLE VIOLATED**
10 **ITS REGULATIONS AND GLOBAL COMPLIED WITH THE CLEANUP AND**
11 **ABATEMENT ORDER**

12 CalRecycle concedes that it could not immediately suspend Global’s permit without a
13 determination of an imminent threat to public safety under California Public Resources Code §
14 42844(a), but contends that under California Public Resources Code § 42843, it can revoke the
15 permit without such a determination and without a hearing.

16 CalRecycle does not cite any precedent to support its position that a greater sanction,
17 revocation for five years, requires less due process than the lower sanction of suspension.

18 With limited exceptions not applicable here, fundamental due process requires notice and
19 an opportunity to be heard before the government deprives someone of a property interest.
20 Goldberg v. Kelly, 397 U.S. 254 (1970). The statutory scheme of the California Public Resources
21 Code reflects this principle by requiring a determination of an imminent threat to the public before
22 even an interim permit suspension. It is specious to argue that a revocation should require less.

23 As presented in Global’s Motion to set Aside or Stay Revocation, California Public
24 Resources Code § 42844(a) states:

25 The department may immediately suspend any permit issued
26 pursuant to this chapter if the department determines that the
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action is necessary to prevent or mitigate an imminent or substantial endangerment to the public health or safety or the environment.

As noted before, there has been no determination by CalRecycle that Global presents an imminent danger to public health, safety or the environment.

CalRecycle now claims that the immediate revocation of the permit is authorized under California Public Resources Code § 42843 because Global violated a Cleanup and Abatement Order (“CAO”) issued on April 8, 2013. (Opposition to Request for Set Aside or Stay of Revocation, Exhibit A). That statute provides:

California Public Resources Code § 42843

(a) The department may revoke, suspend, or deny a waste tire facility permit for a period of up to three years, by serving a statement of issues, by personal service or certified mail, in accordance with Section 42852, if the applicant for, or holder of, the permit, does any of the following:

(1) The applicant misrepresents or fails to disclose material factual information in its application.

(2) The operator of the waste tire facility, at any time during the previous three years, fails to comply with an order regarding compliance subsequent to receiving a notice of violation, for any of the following:

(A) A violation of this chapter or the regulations adopted pursuant to this chapter.

(B) A violation 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.

(b) If the department determines that a violation specified in paragraph (2) of subdivision (a) demonstrates a chronic, recurring pattern of noncompliance that poses, or may pose, a significant risk to public health and safety or the environment, or if the violation has not been corrected or reasonable progress toward correction has not been achieved, the department may suspend, revoke, or deny a waste tire facility permit, in accordance with the procedure specified in subdivision (a), for a period of not more than five years.

1 (c) If the department determines that a violation specified in paragraph (2) of
2 subdivision (a) has resulted in significant harm to human health or the environment, the
3 department may suspend, revoke, or deny a waste tire facility permit, in accordance
4 with the procedure specified in subdivision (a), for a period of five years or longer.

5 (d) The department shall notify the applicant for, or the holder of, the permit of the
6 revocation, suspension, or denial of the permit and the effective date of the revocation,
7 suspension, or denial. A revocation or suspension issued pursuant to this section shall
8 remain in effect until the hearing is completed and the director issues a decision.

9 (e) Upon receipt by the department of a notice of defense to the statement of issues
10 from the applicant for, or the holder of, the permit, the department shall, within 15 days,
11 schedule a hearing before the director. The hearing shall be held within 90 days of the
12 scheduling date, unless a later date is agreed to by both the department and the applicant
13 for, or the holder of, the permit.

14 (f) After conducting the hearing, the director shall, within 60 days after the case is
15 submitted, issue a decision, including an order setting forth the issuance, suspension,
16 revocation, or denial of the permit. If the decision is not issued within this period, the
17 revocation or suspension shall be of no further effect.

18 California Public Resources Code § 42843(a) establishes the bases upon which
19 CalRecycle can take action on a WTF permit, but does establish the procedures used to suspend,
20 revoke or deny a permit. California Public Resources Code § 42843(b) and (c) establish the
21 maximum period of suspension, revocation or denial of a WTF permit only if there has been a
22 determination that: (1) “demonstrates a chronic, recurring pattern of noncompliance that poses,
23 or may pose, a significant risk to public health and safety or the environment, or if the violation
24 has not been corrected or reasonable progress toward correction has not been achieved,” or (2)
25 “has resulted in significant harm to human health or the environment.” California Public
26 Resources Code § 42843(d), (e) and (f), simply set forth the notice, hearing schedule and decision
27 requirements for adverse permit action.

28 Under California Public Resources Code § 42843(f), in fact, if a decision is not rendered
within 60 days of submission, “the revocation or suspension shall be of no further effect.”

1 California Public Resources Code § 42843 clearly contemplates that in the absence of an
2 emergency order under California Public Resources Code § 42844(a), a permit holder shall be
3 afforded a hearing and an opportunity to be heard prior to adverse action on the permit. A parallel
4 statutory scheme is found in the California Administrative Procedure Act (“APA”), California
5 Government Code § 11460.30(a), which authorizes an agency to issue an emergency decision
6 prior to hearing only if there is “an immediate danger to the public health, safety or welfare that
7 requires immediate agency action.”
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9 Moreover, Global remedied the violation alleged in the only Cleanup and Abatement
10 Order issued, the CAO of April 8, 2013. CalRecycle claims that Global violated the CAO because
11 it failed to “reduce and maintain the number of waste tires onsite to 4,999 or less.”
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13 On May 7, 2013, CalRecycle inspected the Global facility and found that the tire count
14 was 3,143, well below the number of waste tires permitted. A copy of the CalRecycle inspection
15 report of May 7, 2013 is attached as Exhibit 1. There has been no further CAO.

16 Even if there were further violations, which Global disputes, there has been no
17 determination that “demonstrates a chronic, recurring pattern of noncompliance that poses, or
18 may pose, a significant risk to public health and safety or the environment,” or “has resulted in
19 significant harm to human health or the environment.”
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21 CalRecycle has violated its own statutes, California Public Resources Code §§
22 42843(b) and (c) and 42844(a) by attempting to circumvent the requirement that there be a
23 hearing prior to adverse action or a determination of imminent harm.

24 Accordingly, the revocation should be set aside or stayed.

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1 **THIS MATTER SHOULD BE CONVERTED TO A FORMAL HEARING**

2 CalRecycle contends that it is “required to use the informal hearing process,” which it
3 argues would “be heard in a much shorter time frame.” (Opposition, p. 5, lns. 6 and 27).

4 Global does not challenge whether CalRecycle could use the informal hearing process,
5 only that it would not be appropriate here. Global is agreeable to an expedited formal hearing
6 before an Administrative Law Judge.

7 As amended effective January 1, 2013, California Public Resources Code § 42852(a)
8 provides that WTF permit hearings may be conducted by CalRecycle’s director as either informal
9 hearings under California Government Code §§ 11400 et seq. or formal hearings under California
10 Government Code §§ 11500 et seq. Prior to this new legislation, all WTF permit hearings were
11 referred to the Office of Administrative Hearings for a formal hearing by an Administrative Law
12 Judge. The new legislation provided for an informal hearing process.

13 CalRecycle has submitted as its Exhibit B the Order on the Applicability of Administrative
14 Procedure Act Provisions in Tire Program Hearings Conducted before the Director (“Order on
15 APA”) issued February 25, 2013. In that Order on APA the director of CalRecycle “determined
16 that the APA’s informal hearing provisions do not, by themselves, provide adequate procedures
17 for conducting administrative adjudicatory proceedings from commencement through final
18 resolution.” The director’s Order on APA further stated that “[t]o ensure fair hearings and
19 adequate due process, Hearing Officers are hereby directed to apply the provisions of the APA as
20 presented in Exhibit A when conducting tire program hearings under the APA’s informal hearing
21 procedures...” Exhibit A to that Order on APA lists which APA provisions apply in WTF
22 hearings.

1 Exhibit A to the Order on APA lists the informal hearing procedures as available options
2 but not mandated. Order on APA p. 4, California Government Code § 11445.20.

3 As stated in Global's Motion to Set Aside or Stay Revocation, Global objects to an
4 informal hearing and requests that the matter be converted to a formal hearing with the Office of
5 Administrative Hearings. Even though an informal hearing is allowed under the California Public
6 Resources Code, the criteria contained in California Government Code § 11445.20 all militate in
7 favor of a formal hearing. Here, there are a number of material facts in dispute including tire
8 counts, the use of carriers, access to records and notice to CalRecycle of a change in tenancy at the
9 facility. In addition, Global would present mitigating circumstances on the alleged violations, like
10 port congestion and labor actions that prevented shipping. Moreover, the sanction sought by
11 CalRecycle is severe, a permit revocation for five years and fines of almost \$500,000. This is not
12 a simple matter suited to an informal process.
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15 Further, CalRecycle has previously sought to deny Global a WTF permit, only to be
16 ordered after hearing by an Administrative Law Judge to issue Global a WTF permit. This prior
17 action by CalRecycle would present the appearance of partiality in a hearing conducted informally
18 by the agency itself.
19

20 CONCLUSION

21 For the reasons stated above, Global requests that the revocation of its WTF permit be
22 set aside or stayed. Global also objects to an informal hearing on the Statement of Issues and
23 Administrative Complaint and requests a formal hearing before the Office of Administrative
24 Hearings.

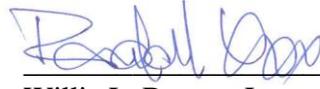
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Dated: October 10, 2013

Respectfully submitted,



Willie L. Brown, Jr.
Randall Knox
Attorneys for Global Waste Management, Inc.

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PROOF OF SERVICE BY PERSONAL SERVICE

In the matter of Global Waste Management, Inc.

TPID No. 1613306-01
Agency No. 2013-000010-REV

I, the undersigned, declare:

I am a United States citizen over 18 years of age and am not a party to the within action. My business address is 870 Market Street, Suite 820, San Francisco, CA 94102. I served a true copy of the attached **REPLY TO OPPOSITION TO REQUEST FOR STAY OF REVOCATION AND OBJECTION TO INFORMAL HEARING** upon the below named persons at the address given below by electronic mail on October 10, 2013. The transmission was addressed as shown below.

I declare under penalty of perjury that the foregoing is true and that this declaration was executed in the City and County of San Francisco, CA. on the date next given below.

**Heather L. Hunt
Martha Perez
Department of Resources, Recovery and Recycling
1001 I Street, 24th Floor
Sacramento, CA 95812-4025
Heather.hunt@calrecycle.ca.gov**

Dated: October 10, 2013



Randall Knox