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CalRecycle Legal Office
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By: DM

BEFORE THE
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
STATE OF CALIFORNIA

In the Matter of: GLOBAL WASTE MANAGEMENT, INC., TPID No. 1613306-01 RESPONDENT.	File No. IH13-015-TIR DECISION

DECISION

Tamar Dyson, Senior Staff Counsel, Department of Resources, Recycling and Recovery (CalRecycle or Department), pursuant to a delegation of authority issued by the Department's Director, served as the Hearing Officer presiding over this matter on December 11th, 12th, 13th, 18th, 19th and 23rd, 2013, at 801 K. Street, 19th Floor, Sacramento, California 95814. Thomas W. Vallance, CalRecycle Senior Staff Counsel, served as advisor to the Hearing Officer.

CalRecycle was represented by Heather L. Hunt, CalRecycle Senior Staff Counsel, and Martha Perez, CalRecycle Staff Counsel.

Respondent Global Waste Management, Inc. (Respondent or Global) was represented by Randall G. Knox, Attorney at Law. Respondent's principal, Daniel Akhromtsev (Akhromtsev) was present at all hearing dates.

Respondent Global Waste Management, Inc. (Respondent or Global) was represented by Randall G. Knox, Attorney at Law. Respondent's principal operator, Daniel Akhromtsev (Akhromtsev) was present at all hearing dates.

Testimonial and documentary evidence was received and the parties presented oral closing arguments. At the conclusion of the hearing, Respondent renewed its prior request -- that the Department's revocation of Respondent's waste tire facility (WTF) permit be stayed pending the issuance of the decision in this matter (Third Request for Stay.) For the reasons stated below, that request is denied.

The record was closed and the matter was submitted for decision on December 23, 2013.

FACTUAL FINDINGS

A. Jurisdictional Matters and Procedural History.

Complainant CalRecycle, previously known as the California Integrated Waste Management Board (CIWMB), succeeded to CIWMB's authority and jurisdiction on January 1, 2010, pursuant to Public Resources Code (PRC) 40401(a)(1.)

On September 16, 2011, Respondent applied for its minor WTF permit which was initially denied by CalRecycle. Respondent appealed and requested a formal hearing before the Office of Administrative Hearings (OAH.) The formal hearing was held on November 1st and 2nd, 2012, Administrative Law Judge (ALJ) Michael C. Kohn, presiding.

On November 15, 2012, ALJ Kohn issued a proposed decision granting Respondent a minor WTF permit. CalRecycle issued Respondent's minor WTF permit on December 14, 2012.

At all times relevant to this action, Respondent has been a permitted minor WTF located at 214 Shaw Road, Unit 9, South San Francisco, California 94080. A permitted "minor" WTF is allowed to store, stockpile, accumulate or discard 500 or more, but less than 5,000, waste tires. (PRC section 42808(c).)

On September 16, 2013, CalRecycle served Respondent with a Statement of Issues for the Revocation of Minor Waste Tire Facility Permit (Statement of Issues) and Administrative Complaint for Waste Tire Storage and Waste Tire Hauler Administrative Penalties (Administrative Complaint.)

The Statement of Issues alleged numerous violations of the Integrated Waste Management Act, specifically, the Waste Tire provisions, PRC section 42800, et seq. and the Tire Hauler Provisions, PRC section 42950 et seq. (the Act), and the attendant regulations contained in Title 14 of the California Code of Regulations (CCR) (Regulations.) The Statement of Issues requested immediate revocation of Respondent's minor WTF permit for a period of five years, such revocation to remain in effect until after the hearing was conducted and a written decision issued by the Director of CalRecycle.

The Administrative Complaint requested assessment of $498,000 in administrative penalties against Respondent. CalRecycle amended the Administrative Complaint at the hearing to reduce its penalty request to $391,500.

On September 30, 2013, Respondent filed and served a Request for Hearing on the Statement of Issues and Request for Set Aside or Stay of Revocation and Objection to Informal Hearing in Response to Statement of Issues By the California Department of Resources, Recycling and Recovery (Request for Set Aside or Stay.) Respondent

also objected to this informal hearing procedure and requested that the matter to converted into a formal hearing before OAH.[1] The Request for Set Aside or Stay was fully briefed by both parties and denied in its entirety by the Hearing Officer on October 11, 2013.

On October 15, 2013, Respondent was electronically served with a Notice of Hearing scheduling the informal hearing for December 3rd, 4th, and 5th, 2013.

On November 3, 2013, Respondent filed a Petition for Writ of Mandate and Emergency Request for Stay of Permit Revocation with the San Mateo Superior Court (Writ.) On November 4, 2013, The Honorable George A. Miram, Judge, ordered CalRecycle to stay the revocation of Respondent's WTF permit until further order of the Court (Stay.)

A response to the Writ was submitted on behalf of CalRecycle and, on November 21, 2013, Judge Miram signed an order dissolving the Stay.

On November 27, 2013, Respondent filed with CalRecycle a Request to Reconsider Denial Stay of Permit Revocation (Request for Reconsideration) and Motion to Bifurcate, which was fully briefed by both parties.

Respondent's Motion to Bifurcate was treated as a motion for continuance and granted. The hearing was continued to December 11th, 12th and 13th, 2013.

On December 11, 2013, prior to the commencement of the hearing on the merits, oral argument was heard on the Request for Reconsideration. The Hearing Officer issued a decision denying the Request for Reconsideration on December 13, 2013. One of the grounds for denial was that revocations issued pursuant to PRC section 42843(a) and (b) "shall remain in effect" until after the hearing is completed. Respondent's Third Request for Stay is denied on the same ground.

B. Investigation and Enforcement.

The Statement of Issues/Administrative Complaint is based upon five inspections conducted by CalRecycle on February 20th, March 6th, May 7th, May 14th, and July 31st, 2013 and a multi-day investigation conducted by the California Highway Patrol (CHP.) During the course of the hearing, Respondent presented evidence of an inspection conducted on November 7, 2013, and, in rebuttal, CalRecycle presented evidence of an inspection conducted on November 26, 2013. CalRecycle has not requested penalties based upon these latter inspections; however, they are relevant to the issue of continuing violations.

February 20 Inspection: Robert Baumann (Baumann) and Catherine Blair (Blair) are waste tire inspectors with CalRecycle. On February 20, 2013, Baumann and Blair

[1] Assembly Bill 164 (Stats. 2012 ch. 534) amended the Act to require that all hearings for violation of the waste tire facility laws be conducted informally before the Director of CalRecycle. (PRC section 42843(e).)

went to Respondent's facility to perform an inspection. They were informed that Akhromtsev was not at the facility, and that no one else was available to provide them with permission to inspect. Therefore, they conducted an observational inspection for approximately three hours.

Although Blair and Baumann did not inspect the entire warehouse, they were initially allowed halfway into the facility. They counted the tire bales[2] that they could observe from that position and took two photographs. They also counted and took 14 photographs of the tires outside the facility. The inspection report reflected that they counted 11,682 waste tires on site, which exceeded Respondent's permitted limit of 4,999.

However, after extensive cross examination, neither Baumann nor Blair could remember how many bales they counted, although they were confident that the final tire count was accurate. They also had different counts on the amount of individual tires found outside the facility. Blair thought she counted 200 tires; Baumann admitted during cross-examination that he could only count 51 tires in the photographs taken outside the facility.

Considering that the inspection report was created on February 25, 2013, and last updated on March 19, 2013,[3] the inability of Baumann and Blair at the hearing ten months later to remember the exact number of tires each of them counted is understandable. Therefore, the count in the final inspection report is the best evidence of the amount of tires stored on Respondent's facility that day.

Furthermore, Respondent's permit allows 4,999 waste tires to be stored at its facility at any given time. That is approximately 63 bales of 80 tires each. The two photographs taken inside the facility show an entire wall of baled tires,[4] considerably more than 63 bales. Therefore, even if there were only 51 tires stored outside instead of 200, consideration of the evidence presented by CalRecycle, as well as Respondent's failure to provide controverting evidence, compels the conclusion that Respondent exceeded its permitted waste tire count on February 20, 2013.

In addition to the excess tire count, Blair and Baumann found that Respondent violated the terms of its permit by failing to provide access to its records, operation plan, and emergency response plan and fire prevention measures. These violations were

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[2] Tire bales are waste tires compressed together and bound with wire using a baling machine. The inspectors testified that they had been informed by Akhromtsev that each bale contained approximately 80 passenger tires. This number was used during all inspections of Respondent's WTF to count the number of tires stored in bales.

[3] The parties stipulated to the dates of creation, final update, and service upon Respondent by certified mail of the five inspection reports in this case. However, CalRecycle expressly reserved its right to establish that Respondent received actual notice of an inspection prior to the date of service by certified mail.

[4] The photographs admitted into evidence with the February 20, 2013 inspection report were somewhat blurry; however, at Respondent's request, clearer photographs were provided and entered into evidence.

based upon the fact that Akhromtsev was unavailable[5] and no one else was present during normal operating hours with authority to provide access, as required by Respondent's permit.[6]

The inspection report also noted that Respondent failed to update its emergency contact information, as required by the permit. Blair testified that, when she discovered that Akhromtsev was unavailable to allow access to the facility, she called Erik Klinkovich (Klinkovich) who was listed as Respondent's primary emergency contact. Klinkovich told her that he was no longer with Global. This was a recurring violation and later became a subject of much debate.

Baumann testified that it was standard procedure to serve written copies of the inspection reports by certified mail, return receipt requested, within thirty days after the inspection. After checking CalRecycle's files, however, he could not provide any evidence that Respondent had been mailed a copy of the February 20, 2013 inspection report within that time period. Blair testified, and Akhromtsev confirmed, that she spoke with Akhromtsev shortly after the February 20, 2013 inspection, informed him that Global was over its tire count, and scheduled another inspection for March 6, 2013.

March 6 inspection. CalRecycle's Blair, Baumann, and waste tire inspector Michael Payan (Payan) inspected Respondent's facility on March 6, 2013. Akhromtsev was present during this inspection. Inside the facility they counted 183 bales (14,640 tires), 72 tires along the south east end and south wall, 50 waste tires attached to rims, a pile volumetrically calculated to contain 368 tires, and 100 tires contained in a truck parked in the middle of the warehouse. Outside the facility they counted 50 waste tires outside near a trailer, 150 tires in another truck, a trailer containing approximately 16 bales (1,280 tires) and another truck "presumed" to contain approximately 150 waste tires. The total waste tire count was 17,040 tires.

During cross-examination, Blair admitted that the "presumed" tires should probably not have been counted. There was also testimony indicating that perhaps some of the other loose tire counts were imprecise. However, using Respondent's own estimate of 80 passenger tires per bale, and considering further that Respondent produced no controverting evidence that the bale count was inaccurate, at the very least, Respondent had 183 bales of tires inside the facility and 16 bales outside. That is 16,815 tires which is 11,816 tires above Global's permitted tire count.

During the inspection, the inspectors learned for the first time that a previous co-tenant, B.A.Y. Tires, Inc. (B.A.Y. Tires) had moved out of the facility; therefore, a violation was noted for Respondent's failure to notify CalRecycle within 7 business days of this operational and administrative change, as required by its permit.

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[5] Akhromtsev later testified that he was at the facility on the date of the inspection. Even if that were the case, he did not speak with the inspectors, nor did he or his employee give them permission to inspect the interior of the facility.

[6] General Condition (c) of the permit requires Respondent to allow access to its facility and records to CalRecycle inspectors during normal operating hours.

Akhromtsev testified that CalRecycle already knew that B.A.Y. Tires was no longer operating out of Respondent's facility because CalRecycle issued B.A.Y. Tires a new Tire Program Identification (TPID) number. This was a continuing violation that remained uncorrected at the time of the hearing. [7]

The report also noted a violation for Respondent's failure to maintain a copy of its latest fire approval.[8] However, there was uncontroverted evidence that Respondent did not receive a new approval every year and was only required to pay an annual inspection fee. Upon Payan's request, Akhromtsev provided a copy of the receipt indicating that he had paid the fee for 2013.

Blair testified that, during the March 6th inspection, the only violations she actually discussed with Akhromtsev were those related to the tire count, proper storage and stacking. The other violations were contained in the written report.

CHP Investigation. CalRecycle contracted with the CHP to investigate Respondent's daily operations. The CHP officers conducted surveillance around the clock for 48 hours on March 5th and 6th, 2013. Additional surveillance was conducted on May 7th and 8th, 2013, from 7:00 am to 6:00 pm each day. The CHP investigation reports were offered to establish that, on at least four occasions, Respondent had used China Ahead Trucking, Inc. (China Ahead), an unregistered hauler, to transport tires to the Port of Oakland and then submitted fraudulent Comprehensive Trip Log (CTL) receipts to CalRecycle.[9]

The March investigation report was prepared by Sergeant Matthew McCloskey (McCloskey) who testified that he only observed tires being loaded into the China Ahead trucks on two occasions, rather than the four alleged by CalRecycle. None of the other officers who followed the China Ahead trucks to the Port of Oakland on March 5th and 6th could testify as to what the trucks contained.

The May inspection report was prepared by Officer Matthew Trzesniewski (Trzesniewski). Trzesniewski testified that he observed China Ahead trucks arrive at and depart from Global's facility and that they "appeared" to be loaded because they

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[7] Other continuing violations, noted for the first time at this inspection and subsequently at the May 7, May 14 and July 31, 2013, inspections were Respondent's failing to post the facility hours of operation and storing of waste tires in areas designated in the permit map for storage of used tires. However, CalRecycle's penalty calculations do not seek to assess penalties for these specific violations so they will not be addressed further.

[8] The permit's General Condition (d) requires Respondent to maintain a copy of its Fire Authority approval.

[9] This evidence was also offered was to establish that Respondent, in anticipation of the arrival of the inspectors on March 6th, moved trucks off the premises, presumably to hide tires that would place them over their tire count, and then moved them back when the inspectors departed. Such efforts, while not a violation per se, could possibly be circumstantial evidence of a violation. However , the evidence presented was not probative on that issue because there were no tire counts linked to the vehicles that were moved. In addition, on cross examination McCloskey testified that he did not see any counter-surveillance actions, such as lookouts, that would indicate intent to avoid inspection.

"rode" differently based on whether they were empty or full. He admitted, however, that he did not know what, if anything, the Global trucks contained.

Akhromtsev testified that Global also used China Ahead to haul plastic and e-waste. CalRecycle inspectors testified that there was no violation unless China Ahead hauled used or waste tires.

Blair testified that she reviewed 11 CTL receipts submitted by Respondent to CalRecycle which reflected that, using its own trucks, Respondent's employees delivered waste tires from Global's facility to the Port of Oakland four times on March 5, four times on March 6, once on May 7, and twice on May 8, 2013. Since none of the CHP reports reflected the truck listed in the CTLs leaving Global on those days, she concluded that the 11 CTL receipts contained falsified information.

When cross-examined about the March 5 and 6 CTL receipts, McCloskey admitted that Global trucks could have made deliveries to the Port of Oakland because "[t]hey did not necessarily have to be picked up during our observation time. They could have been staged somewhere else and delivered to the Port that day. It's the nature of the business." McCloskey also admitted that it was possible that he or his team could have missed a truck leaving Global and going to the Port of Oakland.

With respect to the May 7 and 8 CTL receipts, Trzesniewski's report explicitly states that he could not determine whether trucks leaving Global "were delivering or picking up "because of the closed box van and inability to observe it from a vantage point within the business to watch every aspect of operation without compromising the covertness of the operation."

Furthermore, each of the CHP officers called as witnesses refused to testify to as to the exact position from which they were observing the Global facility, on the grounds that it might "compromise the ongoing investigation." Without this information, Respondent and the Hearing Officer were prevented from determining whether it was even possible for the CHP officers to observe what they reported to have seen.

The Clean Up and Abatement Order (CAO.) On April 10, 2013, CalRecycle served a CAO upon Respondent. Respondent was given 10 days from the date of service of the CAO to file a petition with CalRecycle "raising substantial issues appropriate for review." (CAO, Exhibit 9, page 4, lines 21-25.) Respondent filed no such petition.

On April 23, 2013, Respondent's landlord, 825 Post Street Associates, was also served with a CAO, in its capacity as owner of the property.

May 7 inspection On May 7, 2013, CalRecycle's Baumann, Blair, and Payan inspected Respondent's facility. Akhromtsev was present during this inspection. The tire count was 3,143, well within Respondent's permitted limit. However, Respondent

was cited for the following new violations: storing waste tires in areas near the loading dock which was designated for used truck tires, in violation of its permit,[10] and storing flammable materials within 40 feet of tires in violation of the Regulations. Also, as noted in the March 6 inspection, Respondent failed to update its emergency contact.

May 14 inspection. On May 14, 2013, CalRecycle's Baumann, Blair and Payan inspected Respondent, accompanied by Marjorie Terrell (Terrell) an inspector with the San Mateo Tire Enforcement Agency. Terrell and Blair counted the loose waste tires and Payan and Baumann counted the tire bales. Altogether they counted 124 bales (9,920 tires) and 647 loose tires inside the facility. Outside the facility they found a box van estimated to contain 150 used/waste tires, another box truck full of approximately 300 waste tires, and another with capacity to hold approximately 150 tires that was presumed to be full because appeared to be weighed down. They also counted another 1000 used/waste tires from a tractor trailer that was in the process of being unloaded. A total of 12,167 waste tires were stored at the facility.

Due to a recent surgery, Ahkromtsev was not present during this inspection. Therefore he requested a Global employee, Denis Kreker (Kreker), to videotape the tires located at the facility that day. Kreker testified that he was a driver, occasionally worked in the warehouse, and that he counted approximately 3,000 tires inside the facility. It was clear from cross-examination that Kreker had limited expertise in counting tires and that he did not videotape the entire facility; only the tires located on the back wall. Therefore, neither his testimony nor the video are probative on the issue of the tire count.

In addition to the tire count violation, Payan noted that several previously identified violations had not been corrected, namely: the flammable material remained stored too close to the tires, there were still waste tires stored in the area designated on the permit for used tires only, Respondent's emergency contact had not been updated and Respondent had not updated its permit to reflect the departure of B.A.Y. Tires.

July 31 inspection. On July 31, 2013, CalRecycle's Baumann and Payan inspected Global. Akhromtsev arrived during the latter part of the inspection. The indoor tire count consisted of 201 bales (16,080 tires) and 1,832 loose tires. The outdoor count consisted of a shipping container in the process of being unloaded which contained approximately 2,240 tires, and various vehicles containing a total of 900 loose tires. The total count was 21,052 waste tires, the highest tire count noted in any inspection report admitted into evidence in this case.

Akhromtsev explained that he was over his tire count because his container was rejected at the Port of Oakland, which was why it was being unloaded when the inspectors arrived. He also disagreed with the determination that certain used tires that had been knocked over by customers should be counted as waste tires. Akhromtsev testified that determining whether a tire is used depends upon the amount of tread or

[10] The permit's Site Specific Condition (b) states in part that "Waste tires shall be stored only in designated areas shown in the site plan on the final page of the permit."

whether the tire is, in fact, reusable. However, for waste tire permitting purposes, "used tire" is a term of art. Therefore, tires that are in piles or otherwise improperly stacked can be counted as waste tires.[11]

The same permit violations noted in the May 7 and May 14 inspections remained unaddressed, except that the tires were no longer stored too close to flammable materials.

November 8 and November 26 inspections. In rebuttal to the evidence admitted concerning tire count violations, Respondent submitted the first page of a November 8, 2013, report of an inspection conducted by Terrell and another San Mateo County Tire Enforcement Agency inspector, which reflected that there were 3,800 waste tires at the facility, well within Respondent's permitted limit.

In response, CalRecycle presented a report of inspection conducted by Baumann on November 26, 2013. Although Respondent only had 4,591 tires on site, Global was cited for operating as a minor WTF without a permit because the Stay granted by Judge Miram had been dissolved five days earlier, on November 21, 2013. Without its minor WTF permit, Respondent was only allowed to store 499 tires. .

Akhromtsev testified that he was unaware that the Stay had been lifted by that time. Therefore, he thought that Global was still permitted and allowed to operate and store up to 4,999 tires. He admitted, however, that he had received some paperwork from his attorney which he had not yet opened. After talking to the inspectors, he telephoned his attorney who confirmed that the revocation was back in effect and Global was no longer able to operate as a minor WTF.

LEGAL ANALYSIS

A. Burden and Standard of Proof.

"Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of evidence (Evidence Code section 115), and a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting (Evidence Code section 500.) The party claiming that a person is guilty of wrongdoing has the burden of proof on that issue. (Evidence Code section 520.)

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[11] According to PRC section 42807 ""Waste tire" means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage, or deviation from the manufacturer's original specifications. A waste tire includes a repairable tire, scrap tire, altered waste tire, and a used tire that is not organized for inspection and resale by size in a rack or a stack in accordance with PRC section 42806.5, but does not include a tire derived product or crumb rubber." (Emphasis added) To be considered used tires they must be "stored by size in a rack or stack not more than two rows wide but not in a pile..." (PRC section 42806.5(c)(1).)

As there are no laws expressly establishing the burden of proof particular to WTF and waste tire hauler administrative enforcement actions, the Evidence Code provisions above are applicable to this proceeding. Therefore, CalRecycle has the burden of proving by a preponderance of the evidence each fact necessary to establish that, the alleged violations occurred, and the requested disciplinary sanctions are warranted.

B. Revocation of Permit.

Upon service of the Statement of Issues/Administrative Complaint, CalRecycle immediately revoked Respondent's permit for five years, pursuant to PRC section 43843 (b.) (Statement of Issues/Administrative Complaint, Exhibit 1, page15, paragraph 28.)

PRC section 43843 provides in relevant part:

(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:

* * *

(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) [waste tire hauler provisions] 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.

In this case, in order to revoke Respondent's permit CalRecycle must first establish that Respondent:

(a) Received a notice of violation; and

(b) Subsequently received an order regarding compliance; and

(c) Thereafter violated the waste tire facility or waste tire hauler statutes and regulations and/or the terms and conditions of its permit.

CalRecycle has established that Respondent received oral notice of its first tire count violation shortly after the February 20 inspection when Blair telephoned Akhromtsev. Respondent also received oral notice of tire count and storage violations during the inspection on March 6, when Blair discussed these violations in person with Akhromtsev.

CalRecycle has also established that, approximately a month later, subsequent to receiving these oral notices of being over its tire count, Respondent was served with an "order of compliance", in the form of the CAO, on April 10, 2013. The CAO was issued pursuant to PRC section 42845.[12] The CAO informed Respondent that, due to the excess number of waste tires found on its premises during the inspections conducted on February 20 and March 6, Respondent was operating as a major WTF,[13] in violation of PRC section 42824 and sections18420(a) and 18423 [14] of the Regulations. (Exhibit 9, page 2, lines 12-18.) The February 20 and March 6 inspection reports were attached and incorporated by reference.

The CAO ordered Respondent to reduce its tire count to no more than 4,999 tires within 15 days after service of the CAO. The CAO also prohibited Respondent from accepting "...additional waste tires at this site unless there are less than 4,999 at this site, and the acceptance of additional waste tires will not result in more than 4,999 waste tires at this site."[15]

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[12] PRC section 42845(a(1) provides that "[a] person who stores, stockpiles, or accumulates waste tires at a location for which a waste tire facility permit is required pursuant to this chapter, or in violation of the terms and conditions of the permit, the provisions of this chapter, or the regulations adopted under this chapter, shall, upon order of the department, clean up those waste tires or abate the effects of the waste tires, or, in the case of threatened pollution or nuisance, take other necessary remedial action.

[13] A major WTF defined in PRC section 42808(b) as "a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded."

[14] Pursuant to PRC section 42824., "on and after September 1, 1994, it is unlawful to direct or transport waste tires to a major waste tire facility or to accept waste tires at a major waste tire facility unless the operator has obtained a major waste tire facility permit."

Sections 18420(a) of the Regulations provides, in pertinent part "The operator of a waste tire facility shall acquire a waste tire facility permit..(14 CCR section18420(a).) Section 18423(a) of the Regulations provides in pertinent part: "Every operator of a new or existing major or minor waste tire facility shall submit to the Board a completed original and two (2) copies of the waste tire facility permit application..." (14 CCR section 18423(a).)

[15] The CAO also states that Respondent had violated at least one or more of the safety and security measures required by a legally permitted facility, but did not specify which. (Exhibit 9, page 2, lines 19-

Finally, CalRecycle has established that, after receiving the CAO, Respondent thereafter violated the WTF laws and Regulations and failed to comply with the terms and conditions of its permit, by exceeding its permitted tire count on May 14 and July 31, 2013.

Accordingly, CalRecycle has satisfied the requirements for revoking Respondent's permit for three years, pursuant to PRC section 42843(a.) (Statement of Issues/Administrative Complaint, Exhibit 1, pages. 13-14, paragraph 20.)

However, CalRecycle seeks to revoke Respondent's permit for five years (Exhibit 1, page 15, paragraph 28), which requires an additional finding that Respondent has demonstrated either a "chronic pattern of noncompliance that poses or may pose a significant risk to public health and safety or the environment" or, failed to correct, or achieve "reasonable progress" toward correction. (PRC section 42843(b).)

CalRecycle has not established this additional finding. Respondent brought its tire count within permitted limits by May 7, 2013.[16] The CAO also required that Respondent maintain its tire count within permitted limits.[17] (Exhibit 9, page 3, paragraph 2.) Although Respondent was over its tire count on May 14 and July 31, it was under 4,999 tires when it was inspected on November 8 and November 26. Therefore, after service of the CAO, Respondent was within its tire count three times and over its tire count twice. This does not constitute a "chronic pattern of noncompliance" posing "a significant risk to the environment"[18] or failure to correct or "make reasonable progress" toward correction."[19]

Therefore, although a five year revocation could not be supported by the facts, CalRecycle's alternate request for a three-year revocation of Respondent's minor WTF permit is granted.

23.)

[16] Although Respondent was served with the CAO on April 10, 2013, CalRecycle calculated the compliance deadline from April 23, 2013, which was the date that Respondent's landlord was served with its CAO.

[17] Respondent argued that, once it met the tire count deadline on May 7, 2013, in order to revoke Respondent's permit, CalRecycle must issue another CAO. However, the CAO required Respondent to "maintain" its permitted tire count. (Exhibit 9, page 3, lines 7-9.) Absent any statute or regulation governing the effective duration of the CAO, a reasonable time must be inferred. In this case, Respondent was over its tire count on May 14, a week after it was in compliance, and then again six weeks later on July 31, which is a sufficiently reasonable time frame to support a permit revocation based upon violation of the original CAO.

[18] Considering that "any" violation of the permit requirements, the Act or the Regulations, will sustain a three year revocation, the "significant risk to the environment" requirement for a five year revocation seems to anticipate more egregious circumstances than the mere act of a WTF being over its tire count.

[19] By contrast, Respondent's failure to remedy the Site Specific and General Permit conditions of its permit does demonstrate a "chronic pattern of non-compliance" and "failure to make reasonable progress towards correction." However, those violations were not specified in the CAO and, therefore, cannot be used to justify the five year revocation requested.

C. Findings of Fact on Statement of Issues/Administrative Complaint.

PRC section 42850(a) allows CalRecycle to assess penalties against Respondent for violation of the terms and conditions of its minor WTF permit. The following findings of fact are found with respect to the violations alleged against Respondent in the Statement of Issues/Administrative Complaint. [20]

Expansion of a minor WTF to a major WTF without a permit/storage of excess tires in violation of terms and conditions of permit. As previously discussed, by storing more than 4,999 waste tires on its facility, Respondent automatically became an unpermitted major WTF. PRC sections 42823 and 42824, together with section 18420(a) of the Regulations, prohibit a minor WTF permit holder from expanding an existing minor WTF into a major WTF by storing, stockpiling, or accumulating more than 4,999 tires without first obtaining a major WTF permit.

Respondent also violated Site Specific Condition (a) of its permit which states, "The permittee shall store no more than 4,999 waste tires on site, in accordance with conditions b, and d, below, at any given time."

Throughout the hearing, Respondent maintained that its license as a used tire dealer allowed Global to store 1,500 waste tires in addition to the 4,999 waste tires allowed by its minor WTF permit. This so-called "used tire dealer exclusion" allows used tire dealers to temporarily store up to 1,500 waste tires without having to apply for a minor WTF permit. [21]

The problem with this assertion, however, is that on March 12, 2012, Respondent was informed by CalRecycle that Global did not meet the criteria for a used tire dealer and that "all enforcement proceedings would be handled accordingly." Furthermore, even if this exclusion applied, in all of the inspections relevant here, Respondent would have been over its permitted capacity even if an additional 1500 tires were allowed.

Therefore, CalRecycle has established by a preponderance of the evidence that Respondent violated provisions of the Act, the Regulations and the terms of its permit on February 20, March 6, May 14, and July 31, 2013.

Storage of flammable materials. Section 17356 of the Regulations requires that "waste tires stored indoors must be stored under conditions that meet or exceed those in the 'The Standard for Storage of Rubber Tires' ...published by the National Fire Protection Association..." (14 CCR section 17356.) CalRecycle has established by a

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[20] Although evidence of other permitting violations was presented at the hearing, only the violations included in CalRecycle's penalty calculations will be discussed.

[21] A "Used Tire Dealer" is "a business, operating under the terms and conditions of a local use permit, business license or other required local approval" the primary purpose of which is to sell used tires for profit,..." (14 CCR section 17225.820.) If such a dealer stores less than 1500 tires for less than 90 days, it is not required to obtain a minor WTF permit. (PRC section 42808(c).)

preponderance of the evidence that Respondent violated this provision by storing flammable materials within 40 feet of a waste tire pile on May 7 and May 14, 2013.

Updating Emergency Contacts. General Condition (d) of Respondent's permit states" "All emergency phone numbers shall be updated immediately." Considerable testimony and documents submitted by both parties initially obfuscated the issue of whether Klinkovich or Akhromtsev was Respondent's primary emergency contact.

During the February 20, 2013, inspection Blair testified that she telephoned Klinkovich, who was listed as Respondent's primary emergency contact on CalRecycle's copy of Respondent's permit, and that Klinkovich told her he "was no longer with Global Waste Management" since "approximately March of 2012." [22]

However, it initially appeared that listing Kinkovich as Global's emergency contact was appropriate because there was no evidence that Klinkovich ever told Blair or anyone else at CalRecycle that he was no longer Respondent's emergency contact; only that he was no longer "with" Global. CalRecycle did not assert that it was a permit requirement that a person be "with" or "connected with" a WTF in order to qualify as an emergency contact.

Klinkovich also testified that he was listed as an emergency contact because he "knew the business more than anybody" and was available to be called in case of an emergency. Akhromtsev also testified that Klinkovich could always be called in an emergency.

However, after Respondent offered into evidence the first page of the November 8 inspection report to demonstrate that it was within its tire count on that day, CalRecycle presented the complete report, the second page of which states that inspector Terrell "verified that Edward (Erik) Klinkovich is still the secondary (not primary) contact."

Respondent next attempted to demonstrate that CalRecycle's permitting records contain an outdated emergency response plan that had been submitted with the initial permit application . Akhromtsev testified that he had submitted to CalRecycle an "updated" emergency response plan in which he was listed as primary emergency contact, and Klinkovich as secondary contact. He also stated that, during every inspection, this document had been posted on the wall at Global's facility, in full view of the inspectors.[23]

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[22] Klinkovich later testified that he never spoke with Blair and that the number she testified that she used to call him was not, nor had ever been, his number. It does appear that Blair was unsure of which number she actually called; however she remained certain that she spoke to Klinkovich on that day.

[23] Respondent submitted a photograph of the facility wall into evidence. It bears noting that this photograph was closely examined by the Hearing Officer and Hearing Advisor and there was no copy of this "updated" emergency response plan on the wall. There was a County Hazard Waste Plan posted which lists Akhromtsev as the emergency contact; however, this does not satisfy the requirement to immediately notify CalRecycle of any changes in the emergency contact.

Sue Markie from CalRecycle's permitting Department testified that the only emergency response plan contained in CalRecycle's electronic files listed Klinkovich as primary emergency contact and was date-stamped September 22, 2011. At Respondent's request, CalRecycle examined the hard copy files of Global's permit application and related documents, and did not find the "updated" emergency response plan that Akhromtsev claimed to have submitted.

Accordingly, it is clear that Klinkovich was, but is no longer, Respondent's primary emergency contact. Therefore CalRecycle has established by a preponderance of the evidence that Respondent never updated its emergency contact information as required by its permit. This violation has continued from February 20, 2013 through, and including, December 23, 2013, the last day of the hearing.

Failure to notify of administrative change. Finding 13(e) of Respondent's permit states that Respondent's facility is shared with B.A.Y. Tires which occupied the area of the facility indicated on permit site map. Site Specific Condition (c) requires Respondent to maintain clear delineation between Global and the area designated in the permit for use by B.A.Y. Tires. General Condition (h) states that "The permittee shall notify CalRecycle in writing of each administrative change no later than seven (7) business days after the change is effective."

CalRecycle has established by a preponderance of the evidence that Respondent violated these permit conditions by failing to notify CalRecycle's permitting department that B.A.Y. Tires was no longer occupying the facility. Respondent continually violated this condition from March 6 through December 23, 2013. The fact that CalRecycle issued a new T.P.I.D. number to B.A.Y. Tires did not relieve Respondent of its responsibility to update its permit.

Transportation of waste/used tires to unauthorized facility. Respondent is charged with two counts of violating PRC section 42951(b) (transporting to an unauthorized facility) [24]and PRC section 42824 (transporting to an unpermitted major WTF),[25] which Global automatically became when it exceeded its permitted waste tire count.

CalRecycle provided evidence that Respondent's employee, Kreker, delivered 213 waste tires to Respondent's facility on May 14, the same day on which CalRecycle inspectors found that Respondent was storing more than 4,999 waste tires. CalRecycle also provided evidence that another Global employee delivered tires to Respondent's facility on May 15; however, there was no evidence that Respondent was over its tire

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[24] Pursuant to PRC 42951(b) A registered waste and used tire hauler shall only transport waste or used tires to a facility that is permitted, excluded, exempted, or otherwise authorized by the board, by statute, or by regulation, to accept waste and used tires, or to a facility that lawfully accepts waste or used tires for reuse or disposal.

[25] PRC section 42824 provides that "it is unlawful to direct or transport waste tires to a major waste tire facility or to accept waste tires at a major waste tire facility unless the operator has obtained a major waste tire facility permit."

count on that day. Therefore, CalRecycle has only established one count of delivery to an unauthorized and unpermitted major WTF.

Falsification of CTL receipts. Submitting falsified information on CTL receipts, which are submitted under penalty of perjury, is prohibited by PRC section 42962.[26] CalRecycle alleged that the CTL receipts submitted by Respondent showing that Global used its own trucks to transport waste tires to and from the Port of Oakland on March 5 and 6, and May 7 and 8, 2013, were falsified, because the CHP investigation reports for those dates only reflected the movement of China Ahead trucks to and from Respondent's facility. No movement of Global trucks was observed by the CHP officers or reflected in their investigation reports.

However, as discussed above, McCloskey admitted that he and his team could have missed the Global trucks during his surveillance on March 5 and 6 , and Trzesniewski's report for May 7 and 8 explicitly states that his vantage point prevented him from observing everything at the facility. In light of these admissions, the CHP evidence, without more, is insufficient to establish these counts by a preponderance of the evidence.

Use of Unregistered Tire Hauler. CalRecycle charged Respondent with four counts of violating PRC section 42953, which prohibits using a non-exempt unregistered hauler to haul used or waste tires.[27] Payan testified that he was personally involved in revoking China Ahead's waste tire hauler certification during the Fall of 2012.

The testimony and investigation reports of the CHP officers conducting surveillance over Respondent's facility established that China Ahead trucks drove from Respondent's facility to the Port of Oakland on at least four instances. However, McCloskey could only be certain on two occasions that the China Ahead trucks contained tires and Trzesniewski could not determine what the trucks contained or whether they were even loaded.

Therefore, CalRecycle has only established by a preponderance of the evidence that, Respondent used China Ahead, an unregistered tire hauler, to haul waste tires on two occasions.

D. Administrative Penalties for Tire Count Violations- Preliminary Issues.

Before discussing the appropriate penalties, two issues must be resolved with respect to calculating the tire count penalties requested in this case:

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[26] PRC section 42962(a) provides: Any person who does any of the following shall be liable for a civil penalty ...(2) Knowing, or with reckless disregard, makes any false statement or representation in any application, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this chapter."

[27] Pursuant to 42953. Any person who gives, contracts, or arranges with another person to transport waste or used tires shall utilize only a person holding a valid waste and used tire hauler registration from the board, unless the hauler is exempt as specified in Section 42954.

- The appropriate date from which to begin the tire count penalty calculation; and

- Whether, in this case, it is appropriate to assess penalties for continuing violations.

The starting date must be established because, in computing penalties, section 18429 of the Regulations requires multiplying the days past the deadline contained in the CAO.[28] In calculating its requested penalties CalRecycle used the compliance deadline established by the CAO served upon the Global's landlord, which was May 8, 2013. From May 8, 2013, through July 31, 2013, is 84 days.

However, CalRecycle used the wrong starting date and, therefore, calculated the penalties using the incorrect number of days. The evidence established that Respondent met the CAO deadline because it was below its permitted capacity on May 7, 2013. Therefore, this date cannot be used because it is manifestly unjust to begin assessing penalties before a violation has been found.

As noted, there is another provision in the CAO that requires on-going compliance with the tire count. That provision essentially establishes a day-to-day compliance deadline. In this case, continuing violations, if appropriate, would be measured from the date of the first tire count violation after the CAO deadline , which would be May 14 through July 31, 2013, which amounts to 77 days.

Before determining the appropriate penalty amount in this case, it must next be determined whether penalties can be assessed against Respondent for continuing tire count violations for each of the 77 days between May 14 and July 31, 2013.

Whether or not there are continuing violations is a question of fact. In order to impose civil penalties for continuing violations, CalRecycle must prove that ongoing violations have occurred.

Ongoing violations may be proved either (1) by proving violations actually continued during a time period, or (2) by presenting evidence from which a reasonable trier of fact could find a continuing likelihood of violations. (*Natural Resources Defense Council v. Southwest Marine, Inc.* (9th Cir. 2000) 236 F.3d 985, at 998. [Proof of continuing violations required by citizen plaintiff to invoke federal jurisdiction for enforcement action for civil penalties under the Clean Water Act (33 U.S.C.S. § 1300 et seq.).]) (See also *Sierra Club v. Union Oil Co.*, 853 F.2d 667, 671 (9th Cir. 1988) (quoting *Chesapeake Bay Found., Inc. v. Gwaltney of Smithfield, Ltd.*, 844 F.2d 170, 171-72 (4th Cir. 1988)).

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[28] To calculate the total penalty amount in this case, 14, CCR section 18429(b) requires multiplication of the amount of penalty in Table 3 by the risk factor in Table 4A or Table 4B (if applicable) and multiplication of that amount by the number of days past the CAO deadline.

Since CalRecycle only submitted has direct evidence[29] that Respondent was over its tire count on May 14 and July 31, 2013, the continuing violations for the days in between must be demonstrated by circumstantial evidence, and the inferences that may be reasonably drawn therefrom.

> Circumstantial evidence, which is not defined in the Evidence Code, is evidence that proves one fact from which an inference of a second may be made. (*People v. Crawford*, 253 Cal. App. 2d 524, 530, 61 Cal. Rptr. 472 (5th Dist. 1967.) "Inference" is defined in Evidence Code section 600(b), as "a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action." As the Comment to section 600 notes, "under the Evidence Code an inference is not itself evidence; it is the result of reasoning from evidence."
>
> Circumstantial is distinguished from direct evidence by the following characteristics: first, the existence of one or more evidentiary facts; and second, a process of inference, by which these facts are so connected with the facts sought, as to tend to persuade one of their truth. (*People v. Nealy*, 228 Cal. App. 3d 447, 451, 279 Cal. Rptr. 36 (2d Dist. 1991).) An inference is the product of logic and reason and must rest on the evidence, on probability, not speculative possibility or conjecture. It must comport with physical laws and human experience. (*Louis & Diederich, Inc. v. Cambridge European Imports, Inc.*, 189 Cal. App. 3d 1574, 1584- 1585, 234 Cal. Rptr. 889 (6th Dist. 1987).)

(Simons, *California Evidence Manual* (West 2010) § 1.43.)

In this case, CalRecycle produced direct evidence establishing that Respondent was over its permitted tire count at the time the inspections were conducted on May 14 and July 31, 2013. However, CalRecycle did not produce direct evidence establishing Respondent's tire count exceeded 4,999 on any days between these inspections. Thus, the Hearing Officer is left to determine whether there is sufficient circumstantial evidence in the record upon which inferences of sufficient weight may be drawn to support finding the likelihood that the tire count violations continued without interruption for 77 days.

For the following reasons, it is determined that, in this case, an inference of continuing violations is not warranted:

> First, the nature of the tire storage business in general is that tire counts can fluctuate during the course of a normal business day, often by several thousand tires.

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[29] "'Direct evidence' means evidence that directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact." (Evidence Code section 410.)

Second, the inspection history demonstrates that with respect to Respondent's WTF in particular, tire counts fluctuate from day to day. For example, during the inspection on July 31, an entire container of tires that returned from the Port of Oakland had to be unloaded and those tires were added to Respondent's tire count. Also, during the five inspections conducted after the CAO, Respondent was within its 4,999 tire limit for three (May 7, November 7 and November 26[30]) and above its limit for two (May 14 and July 31.)

Finally, CalRecycle's own inspectors testified that they could not know the tire counts on the dates that they did not inspect. Baumann testified that their tire counts were just "snapshots" in time. Payan testified that he knew Respondent was over its tire limit at the March 6, inspection but did not know what Global's tire count was during the period between March 7th and May 7th. He also admitted that, although he knew Respondent was under its tire limit on May 7th, he did not know what its tire count was on the following day, May 8th.

This is not to say that assessing penalties for continuing violations always requires actual inspections or other direct evidence of the daily tire count, only that, based upon the evidence in this case, there are insufficient facts from which to draw an inference that Respondent was in violation for each of the 77 days between May 14th and July 31st, 2013.[31]

As the evidence fails to establish, by a preponderance of the evidence, a pattern of operation by Respondent of being consistently out of compliance with its tire count on a day to day basis , CalRecycle may only assess penalties for the excess tire counts found during the inspections on May 14 and July 31, 2013.

E. Calculation of Administrative Penalties.

CalRecycle's authority to assess administrative penalties against Respondent is set forth in PRC section 42850.1, which states:

(b) (1) Any person who intentionally violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter is liable for a civil penalty not to exceed ten thousand dollars ($10,000), for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(2) Liability under this subdivision may be imposed in a civil action or may be imposed administratively pursuant to this article.

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[30] Akhromtsev's testimony that he believed the Stay was in effect seemed credible; therefore, it is reasonable to give Respondent credit for being within is permitted tire count during this inspection.

[31] Such an inference might have been drawn from evidence of the on-going, day-to-day inventory of waste tires at the facility, such as CTL receipts, sales records, and other information that might have provided more insight as to whether Respondent routinely exceeded its tire count during the 77 day period. Either or both parties would normally have access to this type of information in the course of their regular activities.

Section 18429 of the Regulations authorizes penalties of up to three thousand dollars ($3,000) for every day an intentional violation continues after the deadline set forth in the CAO against permitted waste tire facilities that accumulate between 10,000-19,999 waste tires.

Calculation of tire count penalties. Section 18429 (b) of the Regulations contains a penalty table for administrative complaints alleging violations against permitted waste tire facilities for exceeding permitted storage capacity. The relevant portions of the penalty table are attached hereto as Exhibit A and, by this reference, incorporated herein. Penalties are assessed on the number of tires exceeding the permitted capacity.

CalRecycle has requested penalties for tire count violations using the highest excess tire count at the July 31 inspection which equals 16, 053 tires (21,052 - 4,999.) Using the penalty table, for an intentional violation, first offense, the base amount of the penalty is $3,000. CalRecycle then multiplied this base penalty by the moderate risk factor enhancement of 1.25 for a total daily penalty of $3,750.[32] CalRecycle multiplied the enhanced penalty by 84 days for a total tire penalty amount requested by CalRecycle of $315,000. ($3,750 x 84+ $315,000.)

However, as previously determined, continuing violations were not established in this case. Therefore, using the two inspections with tire count violations after the CAO, the total penalty is $8,000, calculated as follows:

May 14, 2013:

> 12,167 waste tires counted, which is 7,168 tires is over permit limits. (12,167 – 4,999 = 7,168.) Based upon the chart (intentional violation, first offense), the fine for this violation is $2,000.

July 31, 2013:

> 21,052 waste tires counted, which is 16,053 tires over permit limits. (21,052 – 4,999 = 16,053) Based upon the chart (intentional violation, second offense), the fine for this violation is $6,000.

Calculation of other tire storage and permit violations. Penalties for these violations are determined by using Table 5 of section 14829(b) of the Regulations. (See Exhibit A to this Decision.).

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[32] CalRecycle multiplied the penalty amount by 1.25% risk factor based upon a conclusion that Global's violations were a moderate threat to public health, safety or the environment. However, CalRecycle did not present any evidence establishing that Global was more than 1,000 feet, but within one mile of residential homes, freeway/major roads, lakes, rivers, waterways and airports, which is required before the risk factor can be applied. (14 CCR section 18429(b), Table 4B.)

Indoor storage violations (storing next to flammables) were found during the May 7 and May 14 inspections. Using the highest range, the penalty is $5,000.

Failure to update permit to reflect departure of B.A.Y. Tires and failure to update emergency contact list. CalRecycle combined these two violations together and established that this was a continuing violation for at least 84 days between May 8 and July 31, 2013. Using the lowest range of $500 x 84 days, the calculated penalty is $42,000.

Calculation of tire hauler penalties. Section 18643 of the Regulations provides for the imposition of administrative penalties for tire haulers.[33] These penalties are assessed in accordance with section 14864 of the Regulations, pertinent portions of which are attached as Exhibit B to this Decision, and by this reference, incorporated herein.

CalRecycle requested $4,000 for four violations of PRC section 42953 for Respondent contracting with China Ahead, an unregistered tire hauler. The penalty is calculated at $1,000, the highest amount for a first offense. (14 CCR section 14864, Table 1.) However, CalRecycle only established two counts for a total penalty amount of $2,000.

CalRecycle requested $6,000 for two violations of PRC section 42951(b) for Respondent transporting waste tires to an unauthorized facility. The penalty is calculated at $3,000, the highest amount for a first offense. (14 CCR section 18464), Table 1.) However, CalRecycle has only established one count, so the appropriate penalty amount is $3,000.

CalRecycle did not establish that Respondent had submitted falsified CTL receipts; therefore the requested penalty of $5,500 for this violation is not assessed.

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[33] 14 CCR section 18643 provides:
Civil Penalties. Any waste tire generator, end-use facility, or waste tire hauler or any party or person who commits any of the following acts shall be liable for a civil penalty:

(a) Intentionally, or negligently violates any permit, rule, regulation, standard, or requirement pursuant to Chapter 19 of the PRC relating to the generation, transportation or disposal of used or waste tires.
(b) The aiding or abetting, or allowing of any violation, or noncompliance with any permit, rule, regulation, standard, or requirement pursuant to Chapter 19 of the Public Resource Code relating to the generation, transportation or disposal of used or waste tires.
(c) Any violation of, or noncompliance with any order issued by the Department or by a hearing officer or a court relating to the generation, transportation or disposal of used or waste tires.
(d) Any false statement, misrepresentation, or omission of a significant fact or other required information in the application for a waste tire hauler registration, Manifest Form, Unregistered Hauler & Comprehensive Trip Log Substitution Form, or in information regarding these matters subsequently reported to the Department.
(e) In addition to liability for a civil penalty, the Department may:
    (1) File a claim against any registered waste tire hauler surety bond for activities resulting from the illegal disposal of tires or injury.
    (2) Deny, suspend, or revoke a waste tire hauler registration.

In summary, the $ 391,500 penalty requested by CalRecycle is recalculated to $60,000. However, before determining the final administrative penalty amount, the Hearing Officer is required to take into consideration the factors enumerated in PRC section 42852(a).[34]

The major portion of the $60,000 penalty ($42,000) is based upon Respondent's continued failure to update its permit to reflect the departure of B.A.Y. Tires, and to keep its emergency contact information current. Considering the surrounding circumstances, of all the violations alleged against Respondent, these were two of the earliest identified and the simplest to rectify. However, Respondent made no effort to do so, even after being served with the Statement of Issues and Administrative Complaint. Respondent's recalcitrance with respect to this violation almost warrants the imposition of the entire calculated amount.

Respondent's obstinacy notwithstanding, however, the truth remains that had an emergency occurred, Klinkovich would have been willing and able to respond. Furthermore, the issuance of the new T.P.I.D. number, although not relieving Respondent of its responsibility to update its permit, did provide CalRecycle with actual notice of B.A.Y. Tires current location and lessens its potential adverse effect. Therefore, taking into consideration the nature of and minimal gravity of these violations, and considering further the evidence presented regarding Respondent's ability to pay, the fine for those violations is reduced to $12,000[35] thereby reducing the entire penalty amount to $30,000.

Continued on next page.

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[34] PRC section 42852(a) provides in pertinent part: "In making a decision regarding a denial, revocation, suspension, or penalty, the director shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole."

[35] Akhromtsev testified that he was not paid a salary as operator by Respondent in 2013, and that he was married with two children. Respondent provided bank statements indicating that its average daily balance was approximately $17,000 and its 2012 tax return which reflected that, after deductions, its ordinary business income was a loss of $30,000. (-$30,000.)

ORDER

Respondent Global Waste Management, Inc.'s (TPID No. 1613306-01) minor waste tire facility permit is revoked for a period of three (3) years.

Respondent Global Waste Management Inc. shall pay to CalRecycle an administrative penalty of thirty thousand dollars ($30,000), within thirty (30) days of the date of this Order, at such time and manner as CalRecycle shall direct.

IT IS SO ORDERED.

HEARING OFFICER

DATED: February 21, 2014

Tamar Dyson, Senior Staff Counsel
Department of Resources Recycling and Recovery

EXHIBIT

A

EXHIBIT A

14 California Code of Regulations section 18429(b)

Permitted Waste Tire Facilities :(1) Determine in Table 3 whether or not this act is negligent or intentional, and whether is it the first, second, or third offense. Match it up to the amount of tires exceeding the permitted capacity at the site, and determine what the base penalty is. Table 3 is to be used for violations of the California Code of Regulations, sections 17351(c) and 17354 (a) & (b), or permit capacity only. Multiply the base penalty by the applicable risk factor in Table 4A or Table 4B and multiply that number by the amount of days past the Clean Up & Abatement Order deadline to determine the total fine. Determine what other types of violations were observed in Table 5, determine the appropriate penalty amount -in accordance with the criteria established in PRC section 42852, and add these penalties to the total fine.

Table 3#
(For Violations Of 17351(c), 17354(a) & (b), Or Permit Capacity only)

Type of Site/Operator	1-4,999 Tires*	5,000-9,999 Tires*	10,000-19,999 Tires*	20,000-49,999 Tires*	50,000 or More Tires*
Negligent Capacity					
Permitted WTF	$500	$1,000	$1,500	$2,000	$3,000
Permitted WTF **(2nd Offense, etc.)**	$2,000	$2,500	$3,000	$3,500	$4,000
Intentional Capacity					
Permitted WTF	$1,000	$2,000	$3,000	$4,000	$6,000
Permitted WTF **(2nd Offense)**	$4,000	$5,000	$6,000	$7,000	$8,000
Permitted WTF **(3rd Offense, etc.)**	$6,000	$7,000	$8,000	$9,000	$10,000

* Over permitted capacity

Total amount of penalty not to exceed maximum amounts specified in PRC sections 42825 and 42835.

Table 4A

Enhancement Issue-Negligent Act	Risk Factor
Serious threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within 1,000 feet.	1.00
Moderate threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within one mile, but more than 1,000 feet.	0.75
No potential threat to public health and safety, or the environment.	0.50

Table 4B

Enhancement Issue-Intentional Act	Risk Factor
Serious threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within 1,000 feet.	1.5
Moderate threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within one mile, but more than 1,000 feet.	1.25
No potential threat to public health and safety, or the environment.	1.00

Table 5

Additional Penalties	Range of Penalty
Type of Violations	
14 CCR 17351(a) & (b) Communications and other site equipment	$500-$5,000
14 CCR 17352 Facility Access and Security	$500-$5,000
14 CCR 17353 Vector Control Measures	$500-$5,000
14 CCR 17354 [except (a)&(b)] Parameters For Storage of Waste Tires Outdoors	$500-$5,000
14 CCR 17356 Indoor Storage Parameters	$500-$5,000
14 CCR 18427 Permit Revision	$500/day (minor)
14 CCR 18470 Financial Assurance Requirements for Closure	$500-$5,000
Violation of any Permit conditions (except capacity violation)	$500-$5,000
14 CCR 18423 (a) Filing of Application	$500-$5,000
14 CCR 18440 (a) Compliance with Section 18441	$500-$5,000
14 CCR 18440 (b) Submit Updated Closure Plan	$500-$5,000
14 CCR 18440 (c) Approval of Major WTF Closure Plan Prior to Closure	$500-$5,000
14 CCR 18440 (d) Approval of Minor WTF Closure Plan Prior to Closure	$500-$5,000
14 CCR 18440 (e) Immediate Closure	$500-$5,000
14 CCR 18441 (a) Closure Procedures	$500-$5,000
14 CCR 18443 (d) Inspection Access	$500-$5,000

EXHIBIT

B

EXHIBIT B

14 CCR Section 18464. Amount of Civil Penalties and Administrative Penalty Schedule

(a) Civil penalties may be imposed administratively with the following penalty tables:

(1) For used and waste tire haulers, tire generators, and end-use facilities, using Penalty Table I:

(A) Determine what violations have occurred.

(B) Determine the number of violations or offenses that have occurred.

(C) Add up the penalties to determine the applicable fine.

(2) For unregistered used and waste tire haulers, using Penalty Table II:

(A) Determine the number of violations or offenses.

(B) Find the number of tires hauled for each load.

(C) Determine whether any other violations listed in Table I have occurred and add that fine to the fine from Table II to determine the total fine

[As applicable to this case, Penalty Table 1 provides:]

Violation	Description of Violation	1st Offense	2nd Offense	3rd and Subsequent Offense
PRC § 42953	Any person who gives, contracts, or arranges with another person to transport waste or used tires shall utilize only a person holding a valid waste and used tire hauler registration from the board, unless the hauler is exempt as specified in Section 42954.	$500-$1000	$1000-$2000	$2000-$3000
PRC § 42961.5	CTL, Manifest Violations, or Electronic reporting; including failure to submit the CTL, manifests, or Electronic reporting on a quarterly basis, missing information, incomplete information, and false information.	$100-$500	$500-$1,000	$1,500-$2,500

CalRecycle

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

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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 February 21, 2014, I served The Decision in The Matter of Global Waste Management Inc., Case No.: DRRR IH13-015-TIR to:

Randall Knox, Esq.
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By:

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

_X_ **Electronic Mail** Sent to the email address listed above.

___ **FAX** Sent to fax numbers 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 21st day of February, 2014.

(Signature)