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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

IN THE MATTER OF: **Golden By-Products, Inc.,** **PROPERTY OWNER AND OPERATOR** **RESPONDENT.** **TPID NO.: 1003314**	**ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE PENALTIES** **PUBLIC RESOURCES CODE SECTION 42850 ET SEQ.;** **AGENCY NO. 2014-011166-ADC**

INTRODUCTION

The California Department of Resources Recycling and Recovery ("CALRECYCLE") issues this Administrative Complaint For Waste Tire Storage Penalties (hereafter, "Administrative Complaint") to GOLDEN BY-PRODUCTS, INC., Property Owner and Operator (hereafter, referred to as "GOLDEN BY-PRODUCTS" or "RESPONDENT") seeking $730,000.00. The California Integrated Waste Management Board ("CIWMB" or also referred to as, the "Board") is now CALRECYCLE. CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public Resources Code (PRC) sections 40400 and 40401(a)(1).

CALRECYCLE is authorized to inspect, permit, regulate, and conduct enforcement actions against waste tire facilities and waste tire haulers within the State of California

pursuant to PRC sections 42800 et seq., 42950 et seq. and attendant regulations contained in Title 14 of the California Code of Regulations ("CCR"). CALRECYCLE is authorized to issue an administrative accusation for penalties to a person on whom civil liability may be imposed. This Administrative Complaint is so issued based on the following facts.

STATEMENT OF FACTS

1. GOLDEN BY-PRODUCTS, INC., Tire Program Identification ("TPID") Number 1003314, is a major permitted waste tire facility located at 13000 Newport Dr., Ballico, California, 95303, Assessor's Parcel Number 041-120-019 (hereafter, referred to as "the site").

2. RESPONDENT is a "Major waste tire facility" as that term is defined in PRC section 42808(b).[1]

3. On July 6, 2009, CALRECYCLE issued GOLDEN BY-PRODUCTS, INC. a new waste tire facility permit for a "Major Waste Tire Facility," (hereafter, referred to as "Major WTFP") authorizing a maximum permitted capacity of 1,500 tons of whole tires and primary shreds (altered tires larger than 2 inches in diameter) (150,000 passenger tire equivalents (PTEs)), and 8,500 tons of other material, as that material is described in the Major WTFP.

4. RESPONDENT's Major WTFP will expire on July 6, 2014.

5. From November 6, 2013, and until the present, RESPONDENT has stored in excess of 150,000 PTEs of whole waste tires and/or primary shreds on the site, in violation of RESPONDENT's Major WTFP.

6. On November 6, 2013, at 1:30 pm, Merced County Environmental Health inspectors Esperanza Cabrera-Clark, Paul Wrighton, and supervisor Vickie Jones, along with CALRECYCLE inspectors Steve Dolan, Robert Baumann, Peder Kryski, Jean Whalen, and Mathew Vipond performed a routine inspection of RESPONDENT's site to ensure compliance with applicable waste tire storage and disposal standards and the terms and conditions of GOLDEN BY-PRODUCT's Major WTFP. Also in attendance during this inspection was Merced County Fire Marshal, Hank Moore, who performed a separate fire safety inspection of

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[1] A "Major Waste Tire Facility" is defined as, "a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded." (PRC section 42808(b).)

the site.[2] Inspectors were met by Steve Krauss of GOLDEN BY-PRODUCTS, and Karen and Brett Barstow, owners of GOLDEN BY-PRODUCTS.

During this inspection, Merced County and CALRECYCLE inspectors broke off into respective groups to measure indoor/outdoor tire storage areas to determine compliance with the Major WTFP capacity limits, other terms and conditions of the Major WTFP, and state minimum standards. As documented in Inspection Report #I1-1206501, Merced County and CALRECYCLE inspectors determined that a total whole waste tire and altered waste tire (greater than two inches in diameter) count of approximately 466,868 PTEs were being stored on RESPONDENT's site. This is in violation of RESPONDENT's Major WTFP capacity limits as specified in conditions 4.d. and 15.a., and a violation of PRC section 42850(a). Additionally, and as documented in Inspection Report #I1-1206501, Merced County and CALRECYCLE inspectors determined that RESPONDENT was in violation of Title 14 CCR section 17354 (storage of waste tires outdoors), and in violation of specific terms and conditions in its Major WTFP, specifically general conditions: 15.aa; 15.ff; 15.gg; 15.hh; 15.ii; 15.jj; 15.kk; 15.mm; and 15.nn. RESPONDENT was cited for these violations and received a Notice of Violation with a compliance deadline date of March 3, 2014.[3]

7. On March 5, 2014, Merced County inspector Esperanza Cabrera-Clark and CALRECYCLE Inspectors Steve Dolan, Robert Baumann, Jean Whalen, Mathew Vipond, and Dustin Schiavo returned to RESPONDENT's site to perform a re-inspection and determine whether RESPONDENT had come into compliance with the compliance deadline date of March 3, 2014. Also in attendance during this inspection were Margie Comotto and Kevin Taylor, of CALRECYCLE's permitting division. Inspectors were met by Steve Krauss of GOLDEN BY-PRODUCTS.

During this inspection, Merced County and CALRECYCLE inspectors broke off into respective groups to measure indoor/outdoor tire storage areas to determine compliance with

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[2] On March 18, 2014, Merced County Fire Marshal, Hank Moore, issued RESPONDENT a Notice of Violation for the violations found during the fire inspection site visit on November 6, 2013.

[3] Inspection Report #I1-1206501 citing the Notice of Violation and compliance deadline date was hand-delivered to RESPONDENT's facility on February 3, 2014 by Merced County Inspector Esperanza Cabrera-Clark.

the Major WTFP capacity limits, other terms and conditions of the Major WTFP, and state minimum standards. As documented in Inspection Report #IW-1010048, Merced County and CALRECYCLE inspectors determined that a total whole waste tire and altered waste tire (greater than two inches in diameter) count of approximately 565,514 PTEs were being stored on RESPONDENT's site. This is in violation of RESPONDENT's Major WTFP capacity limits as specified in conditions 4.d. and 15.a., and a violation of PRC section 42850(a). Additionally, Merced County and CALRECYCLE inspectors determined that RESPONDENT was in violation of Title 14 CCR section 17353 (vector control measures), Title 14 CCR section 17354 (storage of waste tires outdoors), and in violation of specific terms and conditions in its Major WTFP, specifically general conditions: 15o; 15r; 15.aa; 15.hh; 15.ii; 15.jj; 15.kk; 15.mm; 15.nn; and 15.qq. CALRECYCLE inspector Rob Baumann explicitly noted on Inspection Report #IW-1010048 that RESPONDENT was in violation of Title 14 CCR section 17353(a), Vector Control, since inspectors documented multiple examples of standing water with larva formation in waste tires at RESPONDENT's site.

As documented in Inspection Report #IW-1010048, RESPONDENT was cited for these violations, and the Notice of Violation given on November 6, 2013 was not extended and remained in effect. Violations noted during the November 6, 2013 inspection were still outstanding. RESPONDENT was not provided with a new compliance deadline date. However, and as noted in Inspection Report #IW-1010048, CALRECYCLE will issue a Cleanup and Abatement Order to RESPONDENT. Inspection Report #IW-1010048 was mailed to RESPONDENT via first-class United States Postal Service (USPS) certified mail on March 14, 2014.

8. On March 14, 2014, CALRECYCLE issued Cleanup and Abatement Order (hereafter, referred to as "CAO") 2014-011034-CAO to RESPONDENT for violating waste tire storage laws and regulations, and for capacity violations related to RESPONDENT's Major WT Facility Permit. RESPONDENT was served with the CAO on or around March 17-18, 2014.[4] RESPONDENT was ordered to, "*remove all waste tires in excess of 1,500 tons or 150,000*

[4] On March 19, 2014, CALRECYCLE received a returned USPS registered certified mail receipt, signed by Lisa Gomes of Golden By-Products.

passenger tire equivalents from the premises within 30 days from the date of service of this Cleanup and Abatement Order (CAO)." (Emphasis added.) The CAO also ordered RESPONDENT to do the following, "[b]eginning March 24, 2014, maintain daily incoming and outgoing tonnage records for all waste/PTE tires until you obtain compliance with section one [of the CAO] above . . . submit [above records] to Geralda Stryker of my [CALRECYCLE] staff . . . by close of business on Friday of each week for the duration." The CAO also noticed RESPONDENT that failure to comply with the CAO by the specified date may subject RESPONDENT to civil penalties, the issuance of an injunction, criminal penalties, and/or administrative civil penalties pursuant to PRC sections 42845, 42850, and 42850.1. RESPONDENT had 10 days from the date of service of the CAO to file a petition with CALRECYCLE to raise any substantial issues appropriate for review. CALRECYCLE did not receive a petition from RESPONDENT.

9. On April 29, 2014, Merced County inspector Esperanza Cabrera-Clark and CALRECYCLE Inspectors Steve Dolan, Robert Baumann, Peder Kryski, Jean Whalen, Mathew Vipond, Dustin Schiavo, and Nikki Castagneto returned to RESPONDENT's site to perform a follow-up inspection to determine whether RESPONDENT had come into compliance with the CAO. Also in attendance during this inspection was Geralda Stryker, supervisor, CALRECYCLE Waste Tire Compliance – Central Unit. Inspectors were met by Karen Barstow, owner of GOLDEN BY-PRODUCTS, and Steve Krauss of GOLDEN BY-PRODUCTS. As in previous inspections, Merced County and CALRECYCLE inspectors broke off into respective groups to measure indoor/outdoor tire storage areas to determine compliance with the Major WTFP capacity limits, other terms and conditions of the Major WTFP, and state minimum standards. As documented in Inspection Report #IW-1011032, Merced County and CALRECYCLE inspectors determined that a total whole waste tire and altered waste tire (greater than two inches in diameter) count of approximately 946,400 PTEs were being stored on RESPONDENT's site. This is in violation of RESPONDENT's Major WTFP capacity limits as specified in conditions 4.d. and 15.a., the CAO, and a violation of PRC section 42850(a).

Additionally, Merced County and CALRECYCLE inspectors determined that RESPONDENT was still in violation of Title 14 CCR section 17353 (vector control measures), Title 14 CCR section 17354 (storage of waste tires outdoors), and in violation of specific terms and conditions in its Major WTFP, specifically general conditions: 15.r; 15.aa; 15.hh; 15.ii; 15.jj; 15.kk; 15.mm; 15.nn; and 15.qq. CALRECYCLE inspector Rob Baumann explicitly noted on Inspection Report #IW-1011032 that RESPONDENT was still in violation of Title 14 CCR section 17353(a), Vector Control, since inspectors documented examples of standing water with larva formation in waste tires at RESPONDENT's site. Inspectors notified the Merced County Mosquito Abatement District shortly after the March 5, 2014 inspection when violation of Title 14 CCR section 17353 was first documented. On June 2, 2014, the Merced County Mosquito Abatement District issued a letter to Karen Barstow, owner of GOLDEN BY-PRODUCTS, regarding facility [site] inspections wherein the Merced County Mosquito Abatement District detected "a limited amount of mosquito breeding" during each site inspection of a species "capable of transmitting West Nile virus."

As documented in Inspection Report #IW-1011032, RESPONDENT was cited for these violations. RESPONDENT still had not come into compliance with the terms and conditions of its Major WTFP, nor had RESPONDENT removed all waste tires in excess of 1,500 tons or 150,000 PTEs within the 30-day timeframe as ordered by the CAO. Inspection Report #IW-1011032 was sent via electronic mail to Steve Krauss of GOLDEN BY-PRODUCTS on May 12, 2014, and via USPS first-class mail on May 13, 2014.

10. On June 4, 2014, Merced County Inspector Esperanza Cabrera-Clark and CALRECYCLE Inspectors Robert Baumann, Mathew Vipond, Dustin Schiavo, Peder Kryski, Jean Whalen, Billy Yos returned to RESPONDENT's site to determine whether RESPONDENT had come into compliance with the CAO. During this inspection, the inspectors focused on RESPONDENT's compliance with its Major WTFP capacity related conditions 4.d. and 15.a. Also in attendance during this inspection was Geralda Stryker, supervisor, CALRECYCLE Waste Tire Compliance – Central Unit. Inspectors were met by Karen Barstow, owner of GOLDEN BY-PRODUCTS, and Steve Krauss of GOLDEN BY-

PRODUCTS. As in previous inspections, Merced County and CALRECYCLE inspectors broke off into respective groups to measure indoor/outdoor tire storage areas to determine compliance with the Major WTFP capacity limits. As documented in Inspection Report #IW-1011790, Merced County and CALRECYCLE inspectors determined that a total whole waste tire and altered waste tire (greater than two inches in diameter) count of approximately 614,697 PTEs were being stored on RESPONDENT's site. This is in violation of RESPONDENT's Major WTFP capacity limits, the CAO, and a violation of PRC section 42850(a). RESPONDENT was still in violation of Title 14 CCR section 17354 (storage of waste tires outdoors), and the specific terms and conditions in its Major WTFP, specifically general conditions: 15.aa; 15.hh; 15.jj; and 15.kk.

As documented in Inspection Report #IW-1011790, RESPONDENT was cited for these violations. RESPONDENT still had not come into compliance with the capacity limits and other terms and conditions of its Major WTFP, nor had RESPONDENT removed all waste tires in excess of 1,500 tons or 150,000 PTEs within the 30-day timeframe as ordered by the CAO. Inspection Report #IW-1011790 was sent via electronic mail to Steve Krauss, Brett Barstow, and Karen Barstow of GOLDEN BY-PRODUCTS on June 17, 2014, and via first-class USPS mail on June 25, 2014.

11. On June 24, 2014, Merced County inspector Esperanza Cabrera-Clark and CALRECYCLE Inspectors Robert Baumann, Peder Kryski, Jean Whalen, Mathew Vipond, Nikki Castagneto, Mary LeClaire, Billy Yos, and Nai Teurn returned to RESPONDENT's site to perform a follow-up inspection to determine whether RESPONDENT had come into compliance with the CAO. Also in attendance during this inspection was Merced County Fire Marshal, Hank Moore, who performed a separate fire safety inspection of the site. CALRECYCLE inspector Billy Yos accompanied Merced County Fire Marshal Hank Moore during the fire safety inspection for an approximate 20 minute duration of the fire safety inspection. Inspectors were met by Brett Barstow, co-owner of GOLDEN BY-PRODUCTS. As in previous inspections, Merced County and CALRECYCLE inspectors broke off into respective groups to measure indoor/outdoor tire storage areas to determine compliance with

the Major WTFP capacity limits, other terms and conditions of the Major WTFP, and state minimum standards.

As documented in Inspection Report #IW-1011953, Merced County and CALRECYCLE inspectors determined that a total whole waste tire and altered waste tire (greater than two inches in diameter) count of approximately 686,027 PTEs were being stored on RESPONDENT's site. This is in violation of RESPONDENT's Major WTFP capacity limits as specified in conditions 4.d. and 15.a., the CAO, and a violation of PRC section 42850(a). Additionally, Merced County and CALRECYCLE inspectors determined that RESPONDENT was still in violation of Title 14 CCR section 17354 (storage of waste tires outdoors), and in violation of specific terms and conditions in its Major WTFP, specifically general conditions: 15.c; 15.aa; 15.dd; 15.ee; 15.hh; 15.ii; 15.jj; 15.kk; 15.mm; 15.nn; and 15.qq. Furthermore, Fire Safety Marshal Hank Moore issued a "Fire Safety Notice" to RESPONDENT on June 27, 2014, requiring RESPONDENT to come into compliance with current California Fire Code (CFC), Merced County Code, and Title 19 of the CCR, and noting additional requirements for the following items: (1) fire extinguishers need to be checked monthly; (2) access to fire hydrants needs to be cleared and hydrants must have a minimum foot width distance; (3) need current maintenance/flow test records for water pumps as requested during the November 6, 2013 fire safety inspection; (4) and pumps need to be corrected to meet CFC standards.

As documented in Inspection Report #IW-1011953, RESPONDENT was cited for these violations. RESPONDENT still had not come into compliance with the terms and conditions of its Major WTFP, nor had RESPONDENT removed all waste tires in excess of 1,500 tons or 150,000 PTEs within the 30-day timeframe as ordered by the CAO. Additionally, RESPONDENT had not come into compliance with Fire Safety Plan which requires an adequate water supply to be available for use by the local fire authority, pursuant to Title 14 CCR section 17351(c). Inspection Report #IW-1011953 will be sent via electronic mail to Steve Krauss of GOLDEN BY-PRODUCTS and via USPS first-class mail by close of business on June 27, 2014.

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ALLEGATIONS OF SPECIFIC VIOLATIONS

12. CALRECYCLE seeks administrative penalties of $730,000.00 pursuant to PRC sections 42850.1(b) and Title 14 CCR section 18429. The administrative penalties are based on the above-mentioned facts, and for the following violations as more specifically set forth in the foregoing paragraphs.

a. RESPONDENT is in violation of the CAO, thereby violating PRC section 42845, which requires any person, upon order of CALRECYCLE, to clean-up, abate the effects of waste tires, or take other remedial action as necessary. The CAO ordered RESPONDENT to, "*remove all waste tires in excess of 1,500 tons or 150,000 passenger tire equivalents from the premises within 30 days from the date of service of this Cleanup and Abatement Order (CAO).*" (Emphasis added.)

RESPONDENT's deadline to comply with the CAO was on or around April 19, 2014. On April 29, 2014, RESPONDENT was storing approximately 946,400 passenger tire equivalents on the site. On June 4, 2014, RESPONDENT was storing approximately 614,697 passenger tire equivalents on the site. On June 24, 2014, RESPONDENT was storing approximately 686,027 passenger tire equivalents on the site.

b. Beginning with the November 6, 2013 inspection and every inspection conducted thereafter, RESPONDENT is in violation of PRC section 42850(a), complying with the terms and conditions of its Major WTFP, and Title 14 CCR section 17354, complying with outdoor storage requirements.

c. Beginning with the March 5, 2014 inspection, and thereafter on the April 29, 2014 inspection, RESPONDENT was in violation of Title 14 CCR section 17353(a), complying with vector control measures.

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PENALTIES

13. RESPONDENT is liable for administrative penalties as set forth in PRC section 42850.1 for intentional violations.

14. CALRECYCLE's authority to assess administrative penalties against RESPONDENT is set forth in PRC section 42850.1(b), 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.

RESPONDENT is subject to an administrative penalty of up to $10,000 per violation of a separate provision, or for continuing violations for each day RESPONDENT continues to be in violation.

15. Title 14 CCR section 18429(b)(1) authorizes a base penalty of $8,000.00 for every day the intentional violation continues after the deadline set forth in the CAO against permitted waste tire facilities that accumulate between 50,000 or more waste tires in excess of their permitted capacity.

16. Beginning on April 19, 2014, the deadline set forth in the CAO, and until June 24, 2014, the date of the last inspection completed before issuance of this Administrative Complaint, RESPONDENT has stored between 300,000 to 800,000 more waste tires in excess of its permitted capacity. Penalties against RESPONDENT have accumulated in the amount of $670,000.00.[5]

17. Penalties will continue to accumulate for every day that RESPONDENT is in violation of the CAO.

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[5] Pursuant to the penalty schedule set forth in Title 14 CCR section 18429, the following penalty was calculated for RESPONDENT: $8,000.00 x 1.25 risk factor x 67 days (April 19, 2014 to June 24, 2014) = $670,000.00.

18. Title 14 CCR section 18429(b)(1) authorizes additional penalties in the following amounts: (1) violations of permit conditions (except capacity violations), $500.00 - $5,000.00 range for each occurrence of the violation; (2) violations of Title 14 CCR section 17353, Vector Control Measures, $500.00 - $5,000.00 range for each occurrence of the violation; and (3) violations of Title 14 CCR section 17354, parameters for storage of waste tires outdoors, $500.00 - $5,000.00 range for each occurrence of the violation.

19. Beginning on November 6, 2013, and every inspection thereafter, RESPONDENT was in violation of Title 14 CCR section 17354, the improper storage of waste tire outdoors, and the terms and conditions of its Major WTFP. On March 5, 2013, and thereafter on April 29, 2014, RESPONDENT was in violation of Title 14 CCR section 17353, complying with vector control measures. Additional penalties against RESPONDENT have accumulated in the amount of $60,000.00.[6]

20. In determining an appropriate administrative penalty for RESPONDENT, CALRECYCLE has taken into consideration the nature, circumstances, extent and gravity of the violation, RESPONDENT's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, RESPONDENT's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty will have on both RESPONDENT and on the regulated community as a whole.

21. Pursuant to PRC section 42846.5, the imposition of penalties herein may form the basis for a subsequent CALRECYCLE order permitting CALRECYCLE or its contractor's access to the property mentioned herein to perform cleanup, abatement or remedial work under PRC section 42846. Further, PRC section 42847 authorizes CALRECYCLE to seek recovery of the costs of any cleanup abatement or remedial work.

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[6] Pursuant to the penalty schedule set forth in Title 14 CCR section 18429, Table 5, the following penalty was calculated for RESPONDENT: two violations of Title 14 CCR § 17353 x $5,000.00 + five violations of Title 14 CCR § 17354 x $5,000.00 + five violations of waste tire facility permit conditions x $5,000.00 = $60,000.00.

PRAYER FOR RELIEF

WHEREFORE, CALRECYCLE prays for judgment as follows:

1. That an administrative penalty be assessed against RESPONDENT for $730,000.00.

2. That additional penalties be assessed against RESPONDENT for continuing violations according to proof, and such other and further relief as the director, or an administrative law judge, if the hearing is converted to a formal hearing, deems just and proper.

3. That RESPONDENT reimburse CALRECYCLE for the costs of additional inspections conducted pursuant to PRC section 42852(b), including the cost of preparing for the inspection, traveling to and from the inspection, and writing the inspection reports.

RIGHT TO HEARING

You are hereby notified that pursuant to PRC sections 42851 and Government Code section 11506, that you are entitled to a hearing to refute the allegations against you contained in this Administrative Complaint. **If you wish to have a hearing on this matter, you must complete and return the enclosed "Request For A Hearing/Notice of Defense" to the address indicated on the form within 15 days of receipt of this Administrative Complaint. Failure to complete and return the Request For A Hearing/Notice of Defense 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 (30) days after the service of this Administrative Complaint.

Dated this 27th day of June, 2014.

MARTHA PEREZ
Attorney for
Department of Resources Recycling and Recovery (CALRECYCLE)

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of: TPID NO: _____ RESPONDENTS.	**REQUEST FOR A HEARING/NOTICE OF DEFENSE** AGENCY NO: _____-_____-ADC

I, _____, in the above-entitled proceeding, acknowledge receipt of a copy of the _____
(Fill in full title of Statement of Issues or Administrative Complaint [Accusation].)
_____.

I hereby:

( ) Request a hearing.

The basis for my request is the following:

_____

_____

_____

_____

_____

Further, I hereby:

( ) Object to the Accusation for failure to state acts or omissions upon which the agency may proceed.

( ) Object to the form of the Accusation in that the transaction cannot be identified or a defense prepared.

( ) Present new matter by way of defense.

( ) Admit the Accusation in whole or in part.
( ) Object to the Accusation on the basis that compliance with the requirements of a regulation would result in a material violation of a regulation enacted by another department affecting substantive rights.

All correspondence concerning this proceeding should be sent to Respondent at the following address:

(If you are represented by an attorney, all correspondence concerning this matter will be sent to the attorney.)

Address:

City: State: Zip Code:

Telephone: Email:

☐ I hereby agree to accept service of all correspondence by email.

Signature:_____

Date:_____

Please send to:

CalRecycle Legal Office
Attention: Gloria Bell
P.O. Box 4025, MS 24-B
Sacramento, CA 95812-4125

CalRecycle

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • WWW.CALRECYCLE.CA.GOV

RIGHT TO A HEARING

You are hereby notified that you are entitled to request a hearing to refute the allegations against you contained in the ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES (Administrative Complaint). The enclosed REQUEST FOR HEARING/NOTICE OF DEFENSE form (Notice of Defense), when signed by or on behalf of the Respondent and returned to the Department of Resources Recycling and Recovery (CalRecycle) within 15 days of receipt of the Administrative Complaint will acknowledge service of the Administrative Complaint and constitute a notice of defense. **If you wish to have a hearing on this matter, you must complete and return the enclosed Notice of Defense to the address indicated on the form within 15 days of receipt of the Administrative Complaint. Failure to complete and return the Notice of Defense within 15 days will be deemed a waiver of your right to a hearing.**

If you request one, a hearing will be conducted before a Hearing Officer, a CalRecycle employee that does not work on or advise the tire programs, at one of our offices or other locations throughout the State, upon the charges made in the Administrative Complaint.

Please refer to the attached document entitled "Representing Yourself in a CalRecycle Tire Hearing" for further guidance on hearing procedures and basic information on representing yourself at a CalRecycle tire hearing.

ORIGINAL PRINTED ON 100 % POST-CONSUMER CONTENT, PROCESSED CHLORINE FREE PAPER

1. You are entitled to review the evidence being used against you and request a list of witnesses by applying to CalRecycle's attorney.
2. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you.
3. You are entitled, upon request, to be provided with the assistance of an interpreter, if you or your witnesses do not proficiently speak or understand the English language. If you require the assistance of an interpreter, timely notice of this fact should be given to CalRecycle's Hearing Clerk, so appropriate arrangements can be made. Generally, the cost is paid by the party requesting an interpreter, however, the Hearing Officer may order CalRecycle to pay if you cannot.
4. You are hereby notified that, pursuant to the provisions of 14 CCR section 17050 et seq., the violations alleged against you may cause you to be placed on CalRecycle's Unreliable Contractors, Subcontractors, Borrowers, and Grantees list. Placement on this list may prohibit you from obtaining contracts, loans, or grants from CalRecycle for up to three years.
5. Continuances are not favored. If you need a continuance, immediately submit a written request to Hearing Clerk- TIR, CalRecycle Legal Office, 801 K Street, MS 19-03, Sacramento, California 95814, by fax to 916-322-8768, or by e-mail to HearingClerk.TIR@CalRecycle.ca.gov. Your written request for a continuance will be forwarded to the Hearing Officer for decision. Requests without good cause will be denied.

CalRecycle

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CALIFORNIA 95814• (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

Representing Yourself in a CalRecycle Tire Hearing

CalRecycle is providing this information to help you prepare for your administrative hearing. This information is not a substitute for having an attorney. We hope this information will help you better understand the process and prepare for the hearing.

How Do I Request A Hearing?

You have received this because you have been served with either a Statement of Issues or Administrative Complaint (Accusation) issued by the Waste Permitting, Compliance, and Mitigation Division of the Department of Resources Recycling and Recovery (CalRecycle). You may request a hearing to have a Hearing Officer hear your side of the matter before your permit or registration is denied, suspended or revoked, or before penalties are assessed against you. If you do not request a hearing, a Default Decision will be issued ordering the denial, suspension, or revocation of your permit or registration or ordering you to pay the penalty amount requested in the Accusation. If you wish to request a hearing, you must complete and send the Request For Hearing / Notice Of Defense to the address designated on that form. On that form you must state the reason you are requesting a hearing. You must provide enough information for CalRecycle to understand the facts, defenses, and other issues you hope to have addressed at the hearing.

What Will My Hearing Be Like?

Your hearing will be very similar to a trial in court, with witnesses, exhibits and rules of evidence. A Hearing Officer will preside under a delegation of authority from CalRecycle's director. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. However, an attorney may be better able to present your side.

When the hearing begins, each side may present an opening statement. This tells the Hearing Officer what that side intends to prove. Each side can then offer relevant evidence to prove its case.

Evidence can be testimony taken under oath at the hearing or it can be certain kinds of documents, such as business records. You must prove that the documents you submit are authentic. This means that you must be able to show that a document actually is what you say it is; usually this is accomplished through witness testimony.

CalRecycle usually presents its evidence first. CalRecycle's attorney will ask its witness questions (direct examination). When the attorney is finished, it will be your turn to ask questions of that witness (cross-examination). CalRecycle's attorney will have a second chance to ask questions (redirect) and then you will have a second chance (recross).

After CalRecycle has presented its witnesses, it will be your turn. You may make a statement yourself and call your witnesses. As you finish with each of your witnesses (and your testimony), the CalRecycle attorney will cross-examine. As stated before, you will have a second chance to ask questions of each witness. Even if you choose not to testify, CalRecycle's attorney may cross-examine you.

After you have presented your case, CalRecycle may call rebuttal witnesses. Rebuttal witnesses may only testify to issues you brought up in your case. If CalRecycle calls rebuttal witnesses, you may be allowed to call additional witnesses to address the issues discussed by rebuttal witnesses. Few hearings involve rebuttal witnesses.

Remember: Before the hearing closes, you must submit all the evidence you want the Hearing Officer to consider.

After all testimony has been heard, each side can make a closing argument. Usually CalRecycle goes first; you go next. The party that goes first has the opportunity to make the last comments.

Closing argument is your chance to sum up the evidence and tell the Hearing Officer why you should prevail in your case. It can address only those facts brought out in testimony of witnesses or in documents received into evidence. In some cases, the Hearing Officer may want the parties to submit written, instead of oral, argument. If so, a schedule will be set up for the written arguments.

What Do I Need To Prove?

If a license, permit or registration for which you applied is being denied, the burden is on you to prove your side. You must prove you meet the qualifications for the license, permit or registration.

If you already have a license, permit or registration against which CalRecycle is imposing discipline, CalRecycle has the burden of proof. This means that CalRecycle must establish that you violated the laws or regulations charged in the Accusation or Statement of Issues.

Even when CalRecycle has the burden of proof, you should prepare to offer evidence of your good character and conduct, mitigation, rehabilitation and evidence refuting the charges, as appropriate.

May I See CalRecycle's Evidence Against Me?

CalRecycle's evidence is also called discovery. You are entitled to request discovery of the information CalRecycle has to prove the charges made against you or enable you to mount a defense against them. A Request For Discovery form is available on CalRecycle's website, or may be obtained by contacting CalRecycle's attorney or Hearing Clerk. Simply send the completed Request for Discovery to CalRecycle's attorney if you wish to obtain a copy of the investigative files and any other documents or relevant information CalRecycle has regarding your case. You may have to pay for copies. You also have a right to receive a witness list.

Generally, you must request "discovery" within 30 days of receiving the initial Accusation or Statement of Issues, or within 15 days of any supplemental Accusations or Statements of Issues. In some cases, these times may be shorter. Be sure to read the documents you receive to verify the time you have to request discovery.

CalRecycle has the same rights to get information from you. You may also be served with, or have included in the paperwork received already, a Request For Discovery on behalf of CalRecycle. You must make copies of the requested information available to CalRecycle by the date stated in the Request for Discovery.

What Kind of Evidence Will I Need For the Hearing?

Depending on your case, you may want to bring witnesses who know about the issues involved with the charges against you. If there are documents, such as contracts, business records or checks that help prove your side, try to bring the original and three copies. You may bring photographs or other items that are relevant to your defense. Items you want to be considered must be left with the Hearing Officer. Generally, you may substitute copies of those items in place of the originals.

Documents and photographs must be authenticated. This is typically done through witness testimony, during which your witness, or yourself, if you choose to testify, will need to explain to the Hearing Officer what the document is, how the witness reliably knows what it is, and how it is relevant to your case.

How Do I Get Records From a Business?

If you are a party to a hearing, you have the right to subpoena from individuals, businesses and government agencies relevant records or other things to be produced at the hearing. CalRecycle has a subpoena form available for download on its website, and a copy may also be mailed or emailed to you upon request. You must arrange to pay any required fees and have someone else serve the subpoenas. Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

How Do I Get a Witness to Come to the Hearing?

A witness can come voluntarily to the hearing. However, a subpoena protects your right to have that person present. You may obtain the subpoena form by downloading it from CalRecycle's website, or by requesting that a copy be mailed or emailed to you. You must use the subpoena to compel the attendance of persons whose testimony is relevant to your case, unless that person agrees to appear voluntarily on your behalf. Witnesses are entitled to paid reimbursement of their time. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10. You must arrange to pay required fees and have someone else serve the subpoenas. Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

Is It OK to Bring Letters Instead of Witnesses?

Some letters and other documents may be admitted in evidence for limited purposes, but generally it is better to bring witnesses who can help present your side of the case and answer any questions raised. The Hearing Officer will not speak with witnesses, except at the hearing itself. If you do choose to offer letters, declarations or other documents, make sure you understand what you must do to get them admitted in evidence. (For instance, see the discussion on authenticating documents above.)

Remember: This hearing is your chance to tell the Hearing Officer your side. It is important to have your witnesses present at the hearing to testify.

If I Forget Something, Can I Send It Later to the Hearing Officer?

Your chance to present evidence is at the hearing. Only in rare cases will the Hearing Officer allow you to send evidence later.

Is There a Way To Settle This Without a Hearing?

Cases often settle without going to hearing. Contact the CalRecycle attorney to see if you can work something out.

What If I Can't Be There On The Day Set?

You must show good cause to change a hearing date. If you cannot attend on the date and at the time shown, you must contact CalRecycle as soon as you know of the problem. To request a change of date, you must file a written request with the Hearing Clerk in CalRecycle's Legal Office, with a copy to CalRecycle's attorney, explaining the reasons for the change. The sooner you make your request, the more likely it will be granted.

Remember: You must file a timely Notice of Defense in order to have a hearing.

Where Will The Hearing Take Place?

Hearings are scheduled at the CalRecycle office located closest to your residence or the location at which the transactions or events providing the basis for the Accusation or Statement of Issues occurred. CalRecycle's office locations are in Sacramento, Los Angeles, Riverside and San Diego. In some circumstances, CalRecycle may conduct a hearing at a location other than a CalRecycle office. If you feel that a different location would work better for you please contact CalRecycle's Hearing Clerk as early as possible to request a location change. CalRecycle reserves the right to deny the request upon consideration of issues including, without being limited to, the ability of CalRecycle staff and the Hearing Officer to travel to the location, and any fees that may be incurred for travel plans already made by CalRecycle staff, the Hearing Officer, and CalRecycle's witnesses.

What If I Don't Attend?

If you request a hearing and do not attend the hearing, CalRecycle can still proceed with the case against you. (If you do not request a hearing, CalRecycle will issue a Default Decision against you.)

What If I Need An Interpreter?

If you or a witness need a sign or language interpreter, immediately contact the CalRecycle attorney or Hearing Clerk so that a certified interpreter can be provided. Normally, it is not sufficient to bring a friend or relative to interpret for you.

Will The Hearing Location Be Accessible To People With Disabilities?

Hearing locations are to be accessible to persons with disabilities. However, check in advance with CalRecycle's Hearing Clerk to assure accessibility. In addition, if you know persons who plan to attend have special needs that require reasonable accommodation, please contact CalRecycle's Hearing Clerk as soon as possible, so arrangements can be made.

What Is The Contact Information For CalRecycle's Hearing Clerk?

All tire hearing papers must be filed with the Hearing Clerk in CalRecycle's Legal Office at the street address, fax number or email address below.

Hearing Clerk- TIR
CalRecycle Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
916-327-0089
916-322-8768 FAX
HearingClerk.TIR@CalRecycle.ca.gov

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CALIFORNIA 95814• (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

CalRecycle Tire Hearing Subpoena Information

CalRecycle Tire Hearing Subpoenas cannot be used in CalRecycle Division of Recycling hearings.

Can I subpoena witnesses to testify at the hearing?

Subpoenas may be issued to require witnesses to attend and testify at CalRecycle tire hearings. Witnesses are entitled to payment for their time and travel. Please see "I have received a subpoena to be a witness in a case. Can I be paid?" below.

I want to receive copies of records held by someone else for my administrative hearing. How do I get them?

You are entitled to request discovery of the information CalRecycle has to prove the charges made against you or enable you mount a defense against them. Please see *Representing Yourself in a CalRecycle Tire Hearing* for more information.

You may also subpoena records from individuals, businesses, and government agencies to be produced at your hearing. A subpoena duces tecum means "bring with you under penalty of law" and compels the party served to bring records that they have to the hearing and to verify that the documents or records have not been altered. That may be done by declaration or by direct testimony, as you require.

The form on the internet is not signed. Can I sign it?

Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer.

Hearing Clerk- TIR
CalRecycle Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
916-327-0089
916-322-8768 FAX
HearingClerk.TIR@CalRecycle.ca.gov

What laws should I look at before sending a subpoena or a subpoena duces tecum?

Code of Civil Procedure sections 1985-1987
Government Code sections 11450.05-11450.50, 68092.5-68093, and 68096.1-68097.10.

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Code of Civil Procedure sections 1985-1987
Government Code sections 11450.05-11450.50, 68092.5-68093, and 68096.1-68097.10.

I have received a subpoena to be a witness in a case. Can I be paid?

Yes, according to Government Code Sections 11450.05 and 11450.50, you may request witness fees and mileage actually traveled both ways. You may request payment in advance of the hearing from the party at whose request the subpoena or subpoena duces tecum is issued, which appears in item 1 of the CalRecycle Tire Hearing Subpoena form. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.

Name: _____

Address: _____

Telephone: _____

Fax (optional): _____

Email (optional): _____

STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:	)	**REQUEST FOR DISCOVERY**
_____	)	
_____	)	(Government Code Section 11507.6)
_____	)	RESOURCES CODE SECTION 42960
	)	
TPID NO: _____	)	AGENCY NO: ____-_____-_____
	)	
_____		

TO: The Department of Resources Recycling & Recovery ("CALRECYCLE"), under Government Code Section 11507.6, I, _____ request the following:

1. The names and addresses of all witnesses to the extent known by you, including, but not limited to, those you intend to call to testify at the hearing, and

2. An opportunity to inspect and copy all of the following matters under Government Code Section 11507.6(a)-(f) that are in your possession, custody or control:

(a) A statement of any person, or regarding any entity named in the initial pleading when it is claimed in the pleading that any respondent's act or omission regarding this person or entity is the basis for this administrative proceeding;

(b) A statement pertaining to the subject matter of the pleading made by any party to another party or person;

(c) Statements of witnesses proposed to be called to testify and of other persons having personal knowledge of the acts, omissions, or events that are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including but not limited to reports and things that you propose to offer in evidence;

(e) Any other writing or thing that is relevant and would be admissible in evidence.

(f) Investigative reports made by or on behalf of you or any other party pertaining to the subject matter of the proceedings, to the extent that these reports:

(1) Contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions, or events that are the basis for the proceedings, or

(2) Reflect matters perceived by the investigator in the course of his or her investigation, or

(3) Contain or include by attachment any statement or writing described in (a) to (e) above, or a summary thereof.

3. This request is not intended to require inspection, copying or production of any writing which is privileged from disclosure by law or protected as attorney's work product.

4. This is a continuing request for discovery of any of the above stated matters that may come into your possession at any time before the hearing.

Specifically, in response to the discovery requested above, pursuant to Government Code 11507.6, I request the following evidence relevant to this matter:

_____

_____

_____

_____

_____

Signature: _____

Date: _____

Please send completed form to:

CalRecycle Legal Office
Attention: Gloria Bell
P.O. Box 4025, MS 24B
Sacramento, Ca 95812-4125