

BEFORE THE  
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD  
STATE OF CALIFORNIA

In the Matter of:

FRED SCHMIDT, Operator of RUBBER  
TECHNOLOGY INTERNATIONAL,

Respondent.

Agency No. 2000-34AC

OAH No. L-2000060275

DECISION

This matter came on regularly for a Mandatory Settlement Conference before Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings in Los Angeles, California on March 20, 2001.

Lynda Williams, Staff Counsel, represented the Complainant.

Trevor Webb, President of Rubber Technology International, was personally present and represented Respondent.

The parties entered into a written settlement stipulation dated March 15, 2001 and agreed that the Administrative Law Judge would put the stipulation in the form of a Proposed Decision. The original of the Stipulation is attached to the Proposed Decision as Exhibit A.

STIPULATED FINDINGS OF FACT

1. The parties to this stipulation are the California Integrated Waste Management Board (the "CIWMB") and Fred Schmidt ("SCHMIDT"), Operator of Rubber Technology International ("RTI"), located at 3185 Washington Blvd., Los Angeles, California ("facility").

2. SCHMIDT is the operator of RTI and has obtained a minor waste tire facility permit to store no more than 5,000 waste tires at the facility; and

3. SCHMIDT stored in excess of 50,000 waste tires at the facility throughout the summer of 2000 without first obtaining a major waste tire facility permit from CIWMB; and

4. A claim of violation has been filed by the CIWMB as 2000-16AC against SCHMIDT and RTI for storing in excess of 50,000 waste tires at RTI, without a major waste tire facility permit; and

5. SCHMIDT has reduced the inventory of waste tires to fewer than 5,000 waste tire equivalents at their own expense and has secured new equipment to process waste tires in order to prevent exceeding the existing permit limits; and

6. SCHMIDT has submitted an application for a major waste tire facility permit for 30,000 waste tires and represents that RTI will not store in excess of 30,000 waste tires or in any way violate the terms of the pending major waste tire facility permit; and

7. SCHMIDT has paid \$500.00 to offset CIWMB's administrative costs in pursuit of compliance with Clean Up and Abatement Order 99-116, and the amount of \$500.00 was received on March 12, 2001; and

8. SCHMIDT is represented by counsel in this matter; and

9. In consideration of the covenants and conditions contained in the stipulation, the CIWMB and SCHMIDT as Operator of RTI have agreed to settlement of the Complaint herein, pursuant to which they stipulated as follows:

#### STIPULATED TERMS OF DECISION

10. CIWMB agrees to forego imposition of further penalties or fines for violations of the Public Resources Code and the related provisions of California Code of Regulations if SCHMIDT meets all of the following terms and conditions and in a timely manner:

a. SCHMIDT stipulates to an Administrative Decision by Stipulation ("Decision") in favor of the CIWMB in the sum of \$50,000.00, such sum to be satisfied by quarterly payments in amounts as described herein.

b. SCHMIDT authorizes the Administrative Law Judge to sign and issue the

Decision forthwith. The Decision shall not be converted into a Judgment or otherwise enforced unless SCHMIDT is in default under the terms of the Stipulation.

c. SCHMIDT shall pay to the CIWMB the sum of \$50,000, as follows:

1. Payment by SCHMIDT to the CIWMB of the sum of \$5,000.00 on or before May 10, 2001;

2. Payment by SCHMIDT to the CIWMB of the sum of \$15,000.00 on or before August 10, 2001.

3. Payment by SCHMIDT to the CIWMB of the sum of \$15,000.00 on or before November 10, 2001; and

4. Payment by SCHMIDT to the CIWMB of the sum of \$15,000 on or before February 10, 2002.

d. Payments shall be made to the CIWMB, Attn: Kim Kotey, at 880 Cal Center Dr., Sacramento, CA 95826 or to such other person and/or place as the CIWMB or its agent may from time to time designate in writing. If any payment by SCHMIDT hereunder is not received within five days of the due date, then SCHMIDT shall be deemed in default of this Stipulation and the CIWMB or its agent may enforce the Decision.

e. Unless and until SCHMIDT applies for and is issued a major waste tire facility permit, SCHMIDT is to store no more than 5,000 waste tires at RTI on the ground or in storage at any time. SCHMIDT agrees to regular, and at least quarterly, investigations of RTI in furtherance of this provision. In the event that waste tires exceed the permitted amounts, all excess tires shall be removed within 24 hours by a registered waste tire hauler and SCHMIDT shall submit a copy of the waste tire manifest to the CIWMB within 7 days of the removal of said tires from the site, which is sent as follows: Attn: Steve Dolan, Telecommute Center, 71 Day Road, Ventura, CA, 93004 - or to such other person and/or place as the CIWMB or its agent may from time to time designate in writing.

f. Failure to meet any of these terms on the part of SCHMIDT shall be deemed a default and shall result in any appropriate and immediate action to enforce the terms of the Decision and to collect the sums specified within the terms of the stipulated Decision. CIWMB may also seek further penalties and fines as are indicated by the relevant circumstances.

g. No covenant, promise, term, condition, breach or default of or under the Stipulation and Decision shall be deemed to have been waived except as expressly so stated

in writing by the CIWMB. A waiver by the CIWMB of any breach or default by SCHMIDT under the Stipulation shall not be deemed a waiver of any preceding or subsequent breach or default by SCHMIDT. Acceptance of payments which are either untimely or in an amount less than the full amount then due, owing and payable shall not be deemed a waiver of any preceding or subsequent breach or default, nor to deprive the CIWMB of the right to exercise any of its remedies under Paragraph 10(f) above, on account of any preceding or subsequent breach or default or on account of the untimely and/or partial payment so accepted.

h. SCHMIDT freely and voluntarily entered into the Stipulation and was afforded the opportunity to consult with counsel prior to entering into the Stipulation. Through representation by counsel, SCHMIDT has (1) administered the cleanup of the site and (2) has disputed liability and is entering into this stipulation to avoid further litigation. It is expressly understood and agreed that no representations or promises of any kind, other than as contained in the Stipulation, have been made by any party to the other party to enter into the Stipulation and that the Stipulation may not be altered, amended, modified or otherwise changed except in writing, executed by each of the parties to the Stipulation.

i. Each party agrees to execute and deliver any and all documents, and to take any and all actions, necessary or appropriate to consummate the Stipulation and to carry out its terms and provisions.

j. The Stipulation shall be binding and shall inure to the benefit of the successors, heirs and assigns of the respective parties to the Stipulation.

k. The Stipulation and the Decision constitute the entire understanding of the parties concerning the settlement of this proceeding. There are no restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth in the Stipulation or contained in separate written documents, which have been delivered or are to be delivered, and the parties expressly acknowledged that each has not relied upon any restrictions, promises, warranties, covenants, undertakings or representations other than those expressly contained in the Stipulation.

## ORDER

WHEREBY, IT IS ORDERED that the parties fully comply with the terms and conditions of the Stipulation dated March 15, 2001 into which they freely and mutually entered, as set forth in this Decision, which was drafted and issued in accordance with that Stipulation.

Dated: April 19, 2001

CAROLYN D. MAGNUSON  
Administrative Law Judge  
Office of Administrative Hearings