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STATE OF CALIFORNIA

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF: TRI-C TIRE RECYCLING, INC.; MARK KORTE, OPERATOR TPID NO: 1005559-02 RESPONDENTS.	ADMINISTRATIVE DECISION FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES AGENCY No. 2006-010946-ADC

PROCEDURAL HISTORY

The parties to this action are the CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD (CIWMB) and TRI-C TIRE RECYCLING, INC.; MARK KORTE, OPERATOR (hereinafter "RESPONDENTS"), formerly located at 8588 Thys Court, Sacramento, CA 95828 and currently located at 1500 East Kentucky Avenue, Woodland, CA 95695.

The CIWMB issued an Administrative Complaint dated December 27, 2006 for waste tire hauler administrative penalties. The parties met on March 1, 2007, in an attempt to resolve outstanding issues concerning RESPONDENTS' manifest system.

On May 2, 2007, the administrative Complaint was amended adding more allegations, and requesting $12,700 in administrative penalties. The parties again met on June 25, 2007, at a mandatory settlement conference at the Office of Administrative Hearings, and attempted to resolve the issues raised in the Administrative Complaint and other issues raised by RESPONDENTS. To avoid the uncertainties of litigation, a STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR WASTE TIRE HAULER PENALTIES (hereinafter "STIPULATION") was ultimately negotiated representing a settlement of the alleged violations stated in the May 2, 2007, Amended Administrative Complaint for Waste Tire Hauler Penalties.

The CIWMB hereby adopts the Stipulation. Pursuant to the Stipulation, and good cause appearing therefore, the following Stipulated Factual Findings and Conclusions of Law are made, and the following Order is issued:

STIPULATED FACTUAL FINDINGS

1. The CIWMB has authority to regulate and conduct enforcement actions regarding Waste Tire Haulers within the State of California under PRC section 42950 et seq. and attendant regulations contained in Title 14 of the California Code of Regulations (CCR).

2. RESPONDENTS are responsible for completion of California Uniform Waste and Used Tire Manifests ("manifests") as required by law.

3. From February 22, 2005 to April 20, 2007, RESPONDENTS have been completing manifests via the Electronic Data Transfer (EDT) system pursuant to 14 CCR section 18459(a)(2) and 14 CCR section18459.1.2.(a). In accordance with these regulations, and with PRC section 42961.5, the information provided in EDT transmissions must be equivalent to the required information in the manifest system.

4. In response to RESPONDENTS' failure to properly complete manifests or provide accurate information in the EDT system as required by law, the CIWMB mailed letters of violation to RESPONDENTS on January 13, 2004, May 21, 2004,

June 9, 2004, and July 26, 2005. These letters of violation informed RESPONDENTS of occurrences of improperly completed manifest forms or EDT transmissions, including but not limited to, omission of requested information, such as load amount, load type, signature, phone number, whether it was a pick-up or delivery, CIWMB used and waste tire decal number, invalid TPID number, and failure to use a CIWMB Electronic Data Transfer logo.

5. Between February 28, 2005, and December 22, 2005, there were at least 26 EDT invoices submitted by RESPONDENTS that omitted information required by law, including EDT manifest number, Pick up and Delivery information, hauler's TPID number, vehicle license plate, CIWMB decal number, driver's printed name, signature and date, load amount, load type, business customer's name, signature and date.

6. On or about June 7, 2006, RESPONDENTS sold and unloaded 11 (eleven) used tires to Fuel Stop Mini Mart Services; and failed to manifest said used tires.

7. RESPONDENTS inaccurately transmitted the following information to CIWMB:

a) On or about October 13, 2006, January 30, 2007, and February 14, 2007, pickups by RESPONDENTS were represented as occurring at Yellow Cab of Sacramento (TPID 1445069) when they actually occurred at Travel Centers of American (TPID 1444676).

b) Between March 10, 2005 and February 16, 2007, pickups by RESPONDENTS were represented as occurring at FA and Sons (TPID 1005244) when they actually occurred at Xtreme Auto Care (TPID 1105448).

8. Between October 1, 2006, and December 31, 2006, RESPONDENTS omitted decal numbers and/or license plate numbers on 109 manifest transmissions from October 1, 2006 through December 31, 2006.

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STIPULATED CONCLUSIONS OF LAW: RESPONDENTS violated Public Resources Code section 42961.5 and its implementing regulations in its actions stated in the above-mentioned Stipulated Factual Findings.

CIWMB is acting within is discretion in accordance with PRC section 42962(c) and 14 CCR section 18464 in imposing a penalty of $10,000 for these violations.

ORDER

The CIWMB approves of the terms of the Stipulation, and the following order is hereby made:

a. RESPONDENTS shall pay ten thousand dollars ($10,000) within 30 days of the date of this Decision in accordance with the terms of the Stipulation.

b. RESPONDENTS shall produce manifests and supporting documents upon request;

c. RESPONDENTS will comply with the manifesting laws at PRC section 42961.5 and its implementing regulations;

d. Staff shall clarify the meaning of the phrase "accounts proceeds" in its October 14, 2005 UCC Financing Statement # 05-7045436832 on specific equipment owned by RESPONDENT. This means that the CIWMB will provide a letter of assurance or enter into an inter-creditor agreement with Respondent's Lender clarifying the language of the lien as follows: that the CIWMB's security interest is limited to proceeds from the sale of said equipment and does not extend to accounts receivables. Attached hereto is the draft of the Letters agreed to by the parties.

e. Staff shall release $12,000 in funds held in trust for the purposes of financial assurance of appropriate closure of the Thys Court facility upon verification by a CIMWB inspector that RESPONDENTS have made good faith efforts to clean up the following waste tires and tire residue at the facility and on parcels adjacent to the facility in accordance with its closure plan and as required by 14 CCR sections 18440 and 18441; or upon a showing that access to those sites has been denied.

Specifically, there are currently seven to ten waste tires located in the vacant lot adjacent to the southeast corner of the Thys Court permitted facility. There are also waste tire residues with tire wire and forklift tires on the east side of the building. Given that none of the properties are currently owned or leased by RESPONDENTS, the parties have agreed that RESPONDENTS will request access for the purpose of cleanup by the appropriate property owners and/or lessors. If access with reasonable conditions is granted, RESPONDENTS must perform the cleanup of the above-mentioned wastes.

f. RESPONDENTS represent that they will submit a complete Application for a major waste tire facility permit in the near future. Staff shall act expeditiously in its review of the application, as required by 14 CCR 18423(b). The CIWMB agrees that the stipulated facts and violations of law herein will not be used as grounds for denial of the major waste tire facility permit. In addition, the CIWMB will issue its Decision concerning the permit within 90 days of accepting a complete application unless there are unresolved California Environmental Quality Act issues or other unforeseen issues which complicate the review process. However, CIWMB will endeavor to process the application sooner if feasible.

This DECISION shall become effective August 27, 2007.

Dated this 27 day of August, 2007.

MARGO REID BROWN
Chair
CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD