

BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
STATE OF CALIFORNIA

In the Matter of:

JAMES WARREN aka JIM WARREN,
ETHEL O. WARREN,
dba REN TIRE COMPANY,

Respondents.

TPID No. 1279361

CIWMB No. 2008-011062-ADC

OAH No. 2008110665



DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on January 26, 2009, in Los Angeles, California.

Wendy Breckon, Senior Staff Counsel, California Integrated Waste Management Board, represented complainant.

There was no appearance by or on behalf of James Warren and Ethel Warren.

The case was submitted for decision on January 26, 2009.

FACTUAL FINDINGS

1. The complainant, California Integrated Waste Management Board (Board or CIWMB), filed Administrative Complaint No. 2008-011062-ADC, against James Warren and Ethel O. Warren (respondents), on or about September 25, 2008. On October 20, 2008, the complaint was personally served on James Warren dba Ren Tire Company at his address of registration as follows:

1217 East 80th Street
South Los Angeles, CA 90001

Notice of the date, time and place of hearing was served on James Warren and Ethel O. Warren dba Ren Tire Company, by first class mail on December 9, 2008, at their address of record as listed above. Despite proper service of the Notice of Hearing,

respondents did not appear and were not otherwise represented at hearing. Given proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default pursuant to Government Code section 11520.

2. The Administrative Complaint for Penalty was issued by the Board to respondents, jointly and individually as operators of Ren Tire Company, a waste tire hauler, seeking \$1,750 in civil penalties.

3. The Board has authority to regulate and conduct enforcement actions against waste tire haulers within the State of California under Public Resources Code section 42800 et seq., and California Code of Regulations, title 14. The Administrative Complaint was issued pursuant to Public Resources Code section 42962, which authorizes the Board to impose administrative penalties for violations of the Code. (Pub. Resources Code, § 42950 et seq.)

4. Respondents, as operators of Ren Tire Company, first became registered with the Board as waste tire haulers on February 27, 1998. Their hauler registration number is 1279361.

5. Waste tire haulers who have an active surety bond in place are required to renew their registration by December 31 of each calendar year in accordance with California Code of Regulations, title 14, section 18455. On October 15, 2007, the Board mailed respondents a renewal letter, a renewal application, and notice of the "Zero Tolerance" policy for unregistered hauling of waste or used tires.¹ The Board instructed haulers to forward their renewal applications no later than November 16, 2007, to ensure processing and mailing of certificates and decals to haulers before January 1, 2008.

- a. Decals (color coded for each calendar year) are affixed to the front windshield of the truck. The decals are relied upon by law enforcement and other waste management operators to ensure that haulers are validly registered. The hauling of loads of more than nine waste or used tires by an unregistered hauler is a citable infraction.
- b. Waste and used tires are regulated by the states to ensure they are not dumped or illegally stored thereby posing an environmental hazard. Improperly dumped tires on public and private lands pose a public nuisance, can pollute ground water, and if set on fire can release hazardous toxins into the air.

6. On January 2, 2008, the Board mailed respondents a cancellation letter informing them that their 2008 renewal application had not been received and as a result, their waste tire hauler registration was "CANCELLED." The letter further stated: "If you

¹ A waste tire is a tire that is not on a vehicle and is not safe to drive on. A used tire is a tire that is not on a vehicle and may be safe to drive on.

haul waste tires without a current Waste Tire Hauler Registration, you are subject to civil penalties as well as citation by law enforcement."

7. On April 2, 2008, Ren Tire Company delivered a load of .77 tons of waste/used tires to CRM Company. The delivery load weight equates to approximately 77 passenger tires. As is required by law, a CA Comprehensive Trip Log and Receipts entry (form CIWMB 203) was completed by respondent, James Warren, under the Ren Tire Program Identification Number 1279361-01. The log was signed by James Warren as the driver. On this date, Ren Tire Company was an unregistered hauler; hence the load of more than nine tires was unlawfully transported. The receiver, CRM, accepted the load and reported the delivery to the Board on a "form CIWMB 204." According to Integrated Waste Management Specialist, Claire Miller, the receiving company may accept or reject the load, but is required by law to report all unregistered haulers to CIWMB.

8. On April 4, 2008, respondents submitted their Waste Tire Hauler Registration Application for the calendar year 2008. The renewal was processed and issued by the Board on April 21, 2008. Respondents' renewal application was approximately five months late and not timely for the 2008 calendar year.

Matters in Aggravation

9. Respondents have a history of submitting late renewal registration applications. They were previously disciplined by the Board after a hearing before an Administrative Law Judge (CIWMB No. 99-39AC; OAH No. 1999-040382). After hearing, the civil penalty was reduced from \$500 to \$100, based on respondents' assertion that they thought they had until March 31, 1999, to renew their registration for the 1999 calendar year.

10. On February 4, 2004, respondents submitted their Waste Tire Hauler Registration Application for the calendar year 2004. The renewal was processed and issued by the Board on February 19, 2004. Respondents' renewal application was more than three months late and not timely for the 2004 calendar year.

11. On February 9, 2006, respondents submitted their Waste Tire Hauler Registration Application for the calendar year 2006. The renewal was processed and issued by the Board on February 22, 2006. Respondents' renewal application was more than three months late and not timely for the 2006 calendar year.

LEGAL CONCLUSIONS

Statutes and Regulations

1. Public Resources Code section 42951, requires any person transporting more than nine waste tires to hold a valid waste and used tire hauler registration, unless exempt as specified in section 42965.

2. Public Resources Code section 42962, subdivision (a), authorizes the Board to assess civil penalties not to exceed \$25,000 for each separate violation or for continuing violations for each day that the violation continues, against any person who intentionally or negligently violates any rule or regulation applicable to waste tire haulers.

3. California Code of Regulations, title 14, section 18464, allows the imposition of penalties ranging from \$100 to \$5,000 per load against an unregistered waste and used tire hauler.

Cause for Assessment of Civil Penalties

4. Cause exists to impose a civil penalty against James Warren and Ethel O. Warren dba Ren Tire Company, pursuant to Public Resources Code sections 42951 and 42962, and California Code of Regulations, title 14, section 18464, as set forth in Findings 1 through 11.

5. In setting an appropriate civil penalty, consideration is given to the nature, extent, and gravity of the violations by respondents as operators of Ren Tire Company, the pattern of compliance with registration laws, whether respondents are currently registered as waste tire haulers, and the fact that respondents were provided an opportunity to respond at an administrative hearing for which they failed to appear, as set forth in Finding 1.

ORDER

Respondents James Warren and Ethel O. Warren, dba Ren Tire Company, shall pay an administrative penalty to complainant in the amount of \$1,750.

The administrative penalty shall be paid to the CIWMB in accordance with the payment schedule agreed to by the parties. If appellant fails to make a payment when such payment becomes due and payable, the Board may, at its sole discretion, declare the entire balance of the assessment due.

Dated: February 4, 2009



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings