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8
9 STATE OF CALIFORNIA

10 DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

11 In the matter of:

12 JOHN WENDELL SIMPSON AND WILMA

13 LOU SIMPSON

14
15 TPID NO: 1450906

16 RESPONDENT.
17

ADMINISTRATIVE DECISION
PURSUANT TO STIPULATION FOR
WASTE TIRE STORAGE
ADMINISTRATIVE PENALTIES

18 AGENCY NO: 2010-011110-ADC

OAH NO: 2011040963

18 **INTRODUCTION**

19 The California Department of Resources Recycling and Recovery
20 (CALRECYCLE) has authority to regulate and conduct enforcement actions regarding
21 Waste Tire Haulers and Waste Tire Facilities within the State of California under Public
22 Resources Code (PRC) sections 42850 et seq. and 42962 et seq., and attendant
23 regulations contained in 14 California Code of Regulations (CCR).

24 This Administrative Decision Pursuant to Stipulation For Waste Tire Storage
25 Requirements is based on the Stipulation for Issuance of Administrative Decision for
26 Waste Tire Storage Administrative Penalties (Stipulation) signed by JOHN SIMPSON
27 (RESPONDENT 1) and WILMA LOU SIMPSON (RESPONDENT 2), signed on October
28 17, 2011.

1 The ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE
2 ADMINISTRATIVE PENALTIES (Administrative Complaint) was issued to
3 RESPONDENTS on February 9, 2011. RESPONDENTS requested a hearing on March
4 28, 2011. A hearing was scheduled for October 18, 2011, in Sacramento, California.

5 Pursuant to the Stipulation, and good cause appearing therefore, the following
6 Stipulated Factual Findings and Legal Conclusions are made, and the following Order is
7 issued:

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9 **STIPULATED FACTUAL FINDINGS**

10 1. RESPONDENTS are responsible for allowing waste tires to be illegally
11 stored at 36766 Dunlap Road, Squaw Valley, California 93675 (the site) in an amount of
12 500 or more waste tires without obtaining a "Minor Waste Tire Facility Permit," in
13 violation of PRC section 42834.

14 2. Pursuant to PRC section 42834 it is unlawful to accept waste tires at a
15 minor waste tire facility unless the operator has obtained a Minor Waste Tire Facility
16 Permit (permit). A minor waste tire facility is defined by PRC section 42808(b) as a
17 waste tire facility where, at any time, 500 or more, but less than 5,000, waste tires are or
18 will be stored, stockpiled, accumulated or discarded.

19 3. RESPONDENTS are the operators and owners of the site, because they
20 are both the property owners and are responsible for the overall operation of the site, in
21 accordance with PRC sections 42804, 42805.

22 4. At no time between July 19, 2006, and November 22, 2010, had
23 CALRECYCLE issued a Minor Waste Tire Facility permit for the site.

24 5. The County of Fresno Department of Community Health, acting as
25 grantee for the CIWMB, issued a Cease Desist Order to RESPONDENTS on July 25,
26 2006, following a July 19, 2006 inspection, ordering RESPONDENTS to cease and
27 desist "all solid waste disposal activities" at the site.

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1 6. During an inspection of the site on September 21, 2006, by Mario Leal,
2 Local Enforcement Grantee for CALRECYCLE from the County of Fresno Department
3 of Environmental Health (CFDEH), and documented in Waste Tire Survey & Inspection
4 Report (Inspection Report) number I7-1014541, Mr. Leal observed between 500 and
5 600 waste tires. Based on his findings, Mr. Leal issued to RESPONDENTS
6 a Notice of Violation (NOV) with a compliance deadline of October 20, 2006.

7 7. During a follow-up inspection of the site conducted by Janet Gardner,
8 Local Enforcement Grantee for the CIWMB, from the CFDEH, on January 30, 2007, Ms.
9 Gardner observed and took photos of remaining waste tires.

10 8. During a follow-up inspection of the site conducted by XongVue Yang,
11 Local Enforcement Grantee for the CIWMB, from the CFDEH, on December 17, 2007,
12 and documented in Inspection Report number I1-1022456, Mr. Yang observed 700
13 waste tires. At that time, Mr. Yang issued an NOV with a compliance deadline to
14 January 15, 2008.

15 9. During a follow-up inspection of the site on February 8, 2008, and
16 documented in Inspection Report number I4-1072727, Mr. Yang observed 700 waste
17 tires. At that time, Mr. Yang extended the compliance deadline of January 15, 2008, to
18 March 3, 2008.

19 10. During a follow-up inspection of the site conducted on June 4, 2008, and
20 documented in Inspection Report number I5-1072637, Mr. Yang observed 700 waste
21 tires. At that time, Mr. Yang again extended the original compliance deadline of
22 January 15, 2008, to September 3, 2008.

23 11. During a follow-up inspection of the site on September 24, 2008, and
24 documented in Inspection Report number I2-1072700, Mr. Yang observed 700 waste
25 tires. At that time, Mr. Yang again extended the original compliance deadline of
26 January 15, 2008, to December 15, 2008.

27 12. During a follow-up inspection of the site on March 4, 2009, and
28 documented in Inspection Report number I1-1091835, Mr. Yang observed 700 waste

1 tires. At that time, Mr. Yang again extended the previous compliance date of January
2 15, 2008, to June 4, 2009.

3 13. During a follow-up inspection conducted of the site on June 11, 2009, and
4 documented in Inspection Report number I1-1099241, Mr. Yang observed 700 waste
5 tires. Also during the inspection, RESPONDENTS stated that they had removed some
6 of the waste tires, but Mr. Yang observed that the same number of tires were onsite as
7 had been during prior inspections. At that time, Mr. Yang referred the matter to the
8 CIWMB for further enforcement.

9 14. On July 7, 2009, Janet Gardner and Stacey Thomas, Local Enforcement
10 Grantees for the CIWMB, from the CFDEH, referred the matter described above in
11 paragraphs 2 through 15 of this Stipulation, to the CIWMB. Attached to that referral
12 form were photos of the site taken on October 26, 2006, photos of the site taken on
13 January 30, 2007, and photos of the site taken on July 19, 2006.

14 15. During an inspection of the site by Stephen Dolan, inspector for the
15 CIWMB, on October 15, 2009, and documented in Inspection Report number I9-
16 1059844, Mr. Dolan observed 1,015 waste tires on the site. Mr. Dolan issued an NOV
17 to RESPONDENTS.

18 16. On March 30, 2010, CALRECYCLE served Clean Up and Abatement
19 Order (CAO) number 2010-010986 on RESPONDENTS. The CAO required
20 RESPONDENTS to remove all waste tires within 30 days of the date of service of the
21 CAO.

22 17. During an inspection of the site on July 22, 2010, 84 days after the
23 deadline for compliance required by the CAO, and documented in Inspection Report
24 number I1-1134716, Mr. Dolan observed 765 tires on the site.

25 18. During an inspection of the site on November 22, 2010, and documented
26 in Inspection Report number I1-1124269, Ms. Gardner observed waste tires remaining
27 on the site.

1 described below.

2 If RESPONDENTS default on the Stipulation during the three-year period
3 subsequent to the issuance of the Administrative Decision, the stay shall be lifted and
4 RESPONDENTS shall immediately owe CALRECYCLE the stipulated administrative
5 penalty of seventy six thousand dollars (\$76,000.00).

6 (b) RESPONDENTS shall remove all waste and used tires from the site on or
7 before March 31, 2012; failure to do so shall constitute a default of the Stipulation.

8 (c) RESPONDENTS shall obtain and maintain proof of the final destination of
9 any and all waste or used tires removed from the site in the following manner; failure to
10 do so shall constitute a default of the Stipulation:

11 (i) RESPONDENTS may obtain a written authorization from the
12 County of Fresno to allow RESPONDENTS to haul more than nine tires at one time,
13 pursuant to PRC section 42954(a)(7). If RESPONDENTS obtain a hauling exemption,
14 RESPONDENTS shall obtain bills of sale or lading documenting the location of the final
15 destination of the used or waste tires and the amounts of used or waste tires delivered.
16 RESPONDENTS shall provide said bills of sale or lading to CALRECYCLE or an
17 authorized representative thereof within thirty (30) days of the date of removal of any
18 used or waste tires, or

19 (ii) RESPONDENTS may employ a registered waste tire hauler to
20 remove any used or waste tires from the site. If RESPONDENTS employ a registered
21 waste tire hauler, RESPONDENTS shall be responsible for obtaining manifest forms
22 (Comprehensive Trip Logs, CIWMB form 203) from the registered waste tire hauler
23 documenting loads of used or waste tires removed from the site. RESPONDENTS shall
24 provide copies of said Comprehensive Trip Logs to CALRECYCLE or an authorized
25 representative thereof within thirty (30) days of the date of removal of any used or waste
26 tires.

27 (d) RESPONDENTS shall not accumulate, store, or stockpile any amount of
28 used or waste tires on the site for the three-year period following the issuance of the

1 Administrative Decision, and a failure to do so shall result in a default of the Stipulation.

2 (e) RESPONDENTS shall not violate any used and waste tire hauler laws
3 pursuant to PRC section 42950 et seq., or waste tire storage laws pursuant to PRC
4 section 42808 et seq. for the three-year period following the issuance of this Decision;
5 failure to do so shall result in a default of the Stipulation.

6 21. Default: If RESPONDENTS default under the terms of the Stipulation,
7 CALRECYCLE shall notify RESPONDENTS of said default. Either a letter or Notice of
8 Violation sent via certified mail through the United States Postal Service to
9 RESPONDENTS or a Notice of Violation issued directly to RESPONDENTS by
10 CALRECYCLE or an authorized agent thereof shall constitute notice of said default. A
11 Notice of Violation or letter shall state the paragraphs or provisions of this Stipulation of
12 which RESPONDENTS are in default. RESPONDENTS are entitled to appeal
13 CALRECYCLE's determination of default to CALRECYCLE's Director or her designee.
14 RESPONDENTS shall have thirty (30) days from issuance of the notice of default to
15 appeal the default determination. The Director's decision as to whether a default of the
16 Stipulation occurred is the final decision. If RESPONDENTS fail to appeal the
17 determination of default within the prescribed time period, CALRECYCLE shall issue a
18 default decision against RESPONDENTS and the seventy six thousand dollars
19 (\$76,000.00) held in abeyance shall become immediately due and payable to
20 CALRECYCLE.

21 22. Clean-up: If RESPONDENTS fail to remove the used and waste tires from
22 the site in accordance with paragraph 24 of the Stipulation, CALRECYCLE may, at its
23 own discretion, perform any necessary clean up of the site, pursuant to PRC section
24 42846, with the following conditions:

25 (a) RESPONDENTS shall grant CALRECYCLE, or any agent of
26 CALRECYCLE or party contracted with CALRECYCLE to clean up the site, full and
27 complete access to the site to allow for clean up.
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1 (b) RESPONDENTS shall be responsible for any and all clean-up costs
2 incurred by CALRECYCLE, or any agent of CALRECYCLE or party contracted with
3 CALRECYCLE to clean up the site. CALRECYCLE, or any agent of CALRECYCLE or
4 party contracted with CALRECYCLE to clean up the site, may recoup the full amount of
5 clean-up costs by any legal means, including but not limited to, placing a lien on any
6 real property owned by RESPONDENTS, including the property located at 36766
7 Dunlap Road, Squaw Valley, California 93675, in accordance with PRC section
8 42847.4. Said clean-up costs shall be separate and apart from the amount held in
9 abeyance that may be held in default. The Stipulation and corresponding Administrative
10 Decision shall serve as resolution to the civil action required by PRC section 42847 to
11 recover costs incurred during clean up.

12 The DECISION shall become effective as of the date signed below:

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14 Dated this 26 day of October, 2011.

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16 _____
17 SCOTT WALKER
18 Acting Deputy Director
19 Compliance and Enforcement Division
20 CALIFORNIA DEPARTMENT OF
21 RESOURCES RECYCLING AND
22 RECOVERY
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