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8  
9 STATE OF CALIFORNIA  
10 DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

11 In the matter of:	}	STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES PUBLIC RESOURCES CODE SECTION 42850, ET SEQ.
12 JOHN WENDELL SIMPSON AND WILMA		
13 LOU SIMPSON		
14		
15 TPID NO: 1450906	}	AGENCY NO: 2010-011110-ADC OAH NO: 2011040963
16 RESPONDENT.		
17		

18 **INTRODUCTION**

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20 The parties to this STIPULATION FOR ISSUANCE OF ADMINISTRATIVE  
21 DECISION FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES (Stipulation)  
22 are the Department of Resources, Recycling and Recovery (CALRECYCLE) and JOHN  
23 WENDELL SIMPSON AND WILMA LOU SIMPSON (RESPONDENTS). CALRECYCLE  
24 was formerly the California Integrated Waste Management Board (CIWMB).  
25 CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public  
26 Resources Code (PRC) section 40401(a)(1). The ADMINISTRATIVE COMPLAINT  
27 FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES (Administrative  
28 Complaint) was issued to RESPONDENTS on February 9, 2011. RESPONDENTS

1 requested a hearing on March 28, 2011. A hearing was scheduled for October 18,  
2 2011, in Sacramento, California.

3 In order to avoid the costs and uncertainties of litigation, CALRECYCLE and  
4 RESPONDENTS hereby stipulate to the following Factual Findings, Conclusions of  
5 Law, and Order:

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7 **STIPULATED FACTUAL FINDINGS**

8 1. The Administrative Complaint was executed by Heather L. Hunt, Staff  
9 Counsel III, CALRECYCLE, acting in her official capacity.

10 2. CALRECYCLE has the authority to inspect, permit, regulate and conduct  
11 enforcement actions against Waste Tire Facilities within the State of California under  
12 PRC section 42800, et seq., and attendant regulations contained in Title 14 of the  
13 California Code of Regulations (CCR).

14 3. RESPONDENTS are responsible for allowing waste tires to be illegally  
15 stored at 36766 Dunlap Road, Squaw Valley, California 93675 (the site) in an amount of  
16 500 or more waste tires without obtaining a "Minor Waste Tire Facility Permit," in  
17 violation of PRC section 42834.

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

23 5. RESPONDENTS are the operators and owners of the site, because they  
24 are both the property owners and are responsible for the overall operation of the site, in  
25 accordance with PRC sections 42804, 42805.

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

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1           7.     The County of Fresno Department of Community Health, acting as  
2 grantee for the CIWMB, issued a Cease Desist Order to RESPONDENTS on July 25,  
3 2006, following a July 19, 2006 inspection, ordering RESPONDENTS to cease and  
4 desist "all solid waste disposal activities" at the site.

5           8.     During an inspection of the site on September 21, 2006, by Mario Leal,  
6 Local Enforcement Grantee for CALRECYCLE from the County of Fresno Department  
7 of Environmental Health (CFDEH), and documented in Waste Tire Survey & Inspection  
8 Report (Inspection Report) number I7-1014541, Mr. Leal observed between 500 and  
9 600 waste tires. Based on his findings, Mr. Leal issued to RESPONDENTS  
10 a Notice of Violation (NOV) with a compliance deadline of October 20, 2006.

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

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

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

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

27          13.    During a follow-up inspection of the site on September 24, 2008, and  
28 documented in Inspection Report number I2-1072700, Mr. Yang observed 700 waste

1 tires. At that time, Mr. Yang again extended the original compliance deadline of  
2 January 15, 2008, to December 15, 2008.

3 14. During a follow-up inspection of the site on March 4, 2009, and  
4 documented in Inspection Report number I1-1091835, Mr. Yang observed 700 waste  
5 tires. At that time, Mr. Yang again extended the previous compliance date of January  
6 15, 2008, to June 4, 2009.

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

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

18 17. During an inspection of the site by Stephen Dolan, inspector for the  
19 CIWMB, on October 15, 2009, and documented in Inspection Report number I9-  
20 1059844, Mr. Dolan observed 1,015 waste tires on the site. Mr. Dolan issued an NOV  
21 to RESPONDENTS.

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

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



1 described below.

2 If RESPONDENTS default on this 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 <sup>March 31,</sup> ~~January 13,~~ 2012; failure to do so shall constitute a default of this 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 this 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  
Administrative Decision, and a failure to do so shall result in a default of this Stipulation.

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

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

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

24 (a) RESPONDENTS shall grant CALRECYCLE, or any agent of  
25 CALRECYCLE or party contracted with CALRECYCLE to clean up the site, full and  
26 complete access to the site to allow for clean up.

27 (b) RESPONDENTS shall be responsible for any and all clean-up costs  
28 incurred by CALRECYCLE, or any agent of CALRECYCLE or party contracted with

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

10 27. No covenant, promise, term, condition, breach or default of or under this  
11 Stipulation shall be deemed to have been waived except as expressly so stated in  
12 writing by CALRECYCLE. A waiver by CALRECYCLE of any breach or default by  
13 RESPONDENTS under this Stipulation shall not be deemed a waiver of any preceding  
14 or subsequent breach or default by RESPONDENTS.

15 28. RESPONDENTS have freely and voluntarily entered into this Stipulation  
16 and have been afforded the opportunity to consult with counsel prior to entering into this  
17 Stipulation. It is expressly understood and agreed that no representations or promises  
18 of any kind, other than as contained herein, have been made by any party to induce any  
19 other party to enter into this Stipulation, and that said Stipulation may not be altered,  
20 amended, modified or otherwise changed except by a writing executed by each of the  
21 parties hereto. Each party hereto agrees to execute and deliver any and all documents  
22 and to take any and all actions necessary or appropriate to consummate this Stipulation  
23 and to carry out its terms and provisions.

24 29. Except as expressly provided herein, RESPONDENTS waive the right in  
25 the entitled matter to a hearing, any and all appeals and any and all rights that may be  
26 afforded pursuant to the Public Resources Code, the Administrative Procedure Act, or  
27 any other provision of law regarding the express provisions of this Stipulation.

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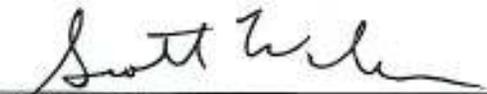
1           30. This Stipulation shall be binding and inure to the benefit of the successors,  
2 heirs and assigns of the respective parties hereto.

3           31. This Stipulation and the ADMINISTRATIVE DECISION to be issued  
4 constitute the entire understanding of the parties concerning the settlement of this  
5 proceeding. There are no restrictions, promises, warranties, covenants, undertakings,  
6 or representations other than those expressly set forth herein or contained in separate  
7 written documents delivered or to be delivered pursuant hereto, and each party  
8 expressly acknowledges that it has not relied upon any restrictions, promises,  
9 warranties, covenants, undertakings, or representations other than those expressly  
10 contained herein.

11           32. For purposes of this Stipulation, facsimile signatures will be treated as  
12 originals until the applicable page(s) bearing non-facsimile signatures have been  
13 received by CALRECYCLE.

14           33. The effective date of this STIPULATION FOR ISSUANCE OF  
15 ADMINISTRATIVE DECISION is the date of issuance of the ADMINISTRATIVE  
16 DECISION.

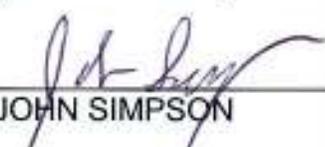
17 Dated: 10-26-11

  
\_\_\_\_\_  
SCOTT WALKER  
Acting Deputy Director  
DEPARTMENT OF RESOURCES,  
RECYCLING AND RECOVERY  
(CALRECYCLE)

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22 Dated: 10-24-11

  
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HEATHER L. HUNT  
Staff Counsel III  
DEPARTMENT OF RESOURCES,  
RECYCLING AND RECOVERY  
(CALRECYCLE)

23  
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27 Dated: 10/17/2011

  
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JOHN SIMPSON

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Dated: Oct 17, 2011

Wilma Lou Simpson  
WILMA LOU SIMPSON

