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8
9 STATE OF CALIFORNIA

10 DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

11 In the matter of:

12 MICHAEL J. QUAGLETTI, PROPERTY
13 OWNER, AND LY NGUYEN, A-1 TIRE
14 RECYCLING, AND MAN NGO, DBA A-1
15 TIRE RECYCLING, OPERATORS.
16 TPID NO: 1673847

17 RESPONDENTS

ADMINISTRATIVE COMPLAINT
FOR WASTE TIRE STORAGE
ADMINISTRATIVE PENALTIES,
PUBLIC RESOURCES CODE
SECTION 42850, ET SEQ.

AGENCY NO: 2012-011132-ADC

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20 **INTRODUCTION**

21
22 This Administrative Complaint for Waste Tire Storage Administrative Penalties is
23 issued by the California Department of Resources Recycling and Recovery
24 (CALRECYCLE) to MICHAEL J. QUAGLETTI, PROPERTY OWNER, AND LY NGUYEN,
25 A-1 TIRE RECYCLING, AND MAN NGO, DBA A-1 TIRE RECYCLING, OPERATORS
26 (RESPONDENTS) seeking \$155,000.00. The California Integrated Waste Management
27 Board (CIWMB) is now CALRECYCLE. CALRECYCLE succeeded to CIWMB's
28 authority on January 1,

1 2010, pursuant to Public Resources Code (PRC) section 40401(a)(1). Section 42850(b)
2 of the PRC authorizes CALRECYCLE to issue a complaint to any person that may be
3 administratively liable. This complaint is so issued based on the following facts.

4
5 **STATEMENT OF FACTS**
6

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

11 2. PRC sections 42823 and 42824 make it unlawful for a person to create a
12 major WTF, or to direct, or transport tires to, or accept waste tires at, a major WTF that
13 is not already in possession of a valid Major WTF Permit issued by CALRECYCLE.

14 3. PRC section 42808(b) defines a major WTF as "a [WTF] where, at any
15 time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or
16 discarded."

17 4. PRC section 42834 makes it unlawful for a person to direct or transport
18 waste tires to, or to accept waste tires, at a minor WTF that is not already in possession
19 of a valid Minor WTF Permit issued by CALRECYCLE.

20 5. PRC section 42808(c) defines a minor WTF as a "waste tire facility where,
21 at any time, 500 or more, but less than 5,000, waste tires are or will be stored,
22 stockpiled, accumulated, or discarded."

23 6. PRC section 42845 states

24 Any person who stores, stockpiles, or accumulates, waste tires at a location for which a
25 [WTF] permit is required pursuant to [Chapter 16 of Part 3 of Division 30 of the PRC, or in
26 violation of . . . the provisions of [Chapter 16 of Part 3 of Division 30 of the PRC], . . . , shall,
upon order of [CALRECYCLE], clean up those waste tires or abate the effects thereof, or, in
the case of threatened pollution or nuisance, take other necessary remedial action.

27 7. RESPONDENTS jointly and severally own or operate a WTF located at
28 15215/15225 South Broadway, Gardena, CA 90248 (the site).

1 8. PRC section 42804 defines a WTF "operator" as "the person responsible
2 for the overall operation of a [WTF]".

3 9. PRC section 42805 defines a WTF "owner" as "a person who owns, in
4 whole or in part, a [WTF], the waste tires located at a facility, or the land on which a
5 [WTF] is located."

6 10. At no time between August 23, 2011, and present, have RESPONDENTS
7 been in possession of either a Minor or a Major WTF Permit for the site.

8 11. During an inspection of the site on August 23, 2011, and documented in
9 Waste Tire Survey and Inspection Report (Inspection Report) number I1-1134821
10 Inspector Steve Dolan, for the CALRECYCLE Waste Tire Enforcement-South Branch
11 observed 5,766 waste tires on the premises, a violation of PRC sections 42823 and
12 42824

13 12. During a follow-up inspection of the site on October 6, 2011, and
14 documented in Inspection Report number I1-1134769, Inspector Dolan observed 5,554
15 waste tires, a violation of PRC section 42823 and 42824.

16 13. During a follow-up inspection of the site on November 2, 2011, and
17 documented in Inspection Report number I1-1111094, Inspector Dolan observed 610
18 waste tires on site, a violation of PRC section 42834.

19 14. Prior to or on December 12, 2011, Cleanup and Abatement Order Number
20 2011-011000-CAO (CAO) was served on each of the RESPONDENTS. The CAO
21 ordered the RESPONDENTS to "remove all waste tires from [the site] within 30 days
22 from the date of service " of the CAO.

23 15. During a follow-up inspection of the site on December 15, 2011, and
24 documented in Inspection Report number I1-1134756, Inspector Dolan observed 3,000
25 waste tires, a violation of PRC sections 42834 and 42845.

26 16. During a follow-up inspection of the site on January 4, 2012, and
27 documented in Inspection Report number I1-1134754, Inspector Dolan observed 3,369
28 waste tires, a violation of the CAO and PRC sections 42834 and 42845.

1 17. During a follow-up inspection of the site on January 17, 2012, and
2 documented in Inspection Report number I1-1169578, Inspector Dolan observed 3,763
3 waste tires, a violation of PRC sections 42834 and 42845, and the CAO.

4 18. During a follow-up inspection of the site on May 15, 2012, and
5 documented in Inspection Report number I1-1157590, Inspector Dolan observed 3,500
6 waste tires, a violation of PRC sections 42834 and 42845, and the CAO.

7
8 **ALLEGATIONS OF SPECIFIC VIOLATIONS**
9

10 19. For at least 155 days, from the time period between December 12, 2011,
11 and May 15, 2012, RESPONDENTS violated the terms of the CAO.

12 20. For at least 155 days, from the time period between December 12, 2011,
13 and May 15, 2012, RESPONDENTS violated PRC section 42845 by failing to comply
14 with the requirements set forth in the CAO.

15 21. On at least two separate occasions RESPONDENTS violated PRC
16 section 42823 by creating a major WTF with first obtaining a Major WTF Permit from
17 CALRECYCLE.

18 22. On at least two separate occasions RESPONDENTS violated PRC
19 section 42824 by directing, transporting tires to, or accepting waste tires at a major WTF
20 that was not in possession of a Major WTF Permit issued by CALRECYCLE.

21 23. On at least five separate occasions RESPONDENT violated PRC section
22 42834 by directing, transporting tires to, or accepting waste tires at a minor WTF that
23 was not in possession of a Minor WTF Permit issued by CALRECYCLE.

24
25 **PENALTIES**
26

27 24. MICHAEL J. QUAGLETTI, PROPERTY OWNER, AND LY NGUYEN, A-1
28 TIRE RECYCLING, AND MAN NGO dba A-1 TIRE RECYCLING, OPERATORS

1 (RESPONDENTS) are liable for administrative penalties as set forth in PRC section
2 42850 for negligent violations, or PRC section 42850.1 for intentional violations.
3 Penalties cannot exceed \$5,000 per day for a negligent violation and \$10,000 per day
4 for an intentional violation.

5 25. Pursuant to PRC section 42846.5, the imposition of penalties herein may
6 form the basis for a subsequent CALRECYCLE order permitting CALRECYCLE or its
7 contractor's access to the property mentioned herein to perform cleanup, abatement or
8 remedial work under PRC section 42846. Further, PRC section 42847 authorizes
9 CALRECYCLE to seek recovery of the costs of any cleanup abatement or remedial
10 work.

11 26. CALRECYCLE'S authority to assess administrative penalties against
12 RESPONDENTS is set forth in PRC section 42850(a) and (b), which states:

13 (a) Any person who negligently violates any provision of this chapter, or any
14 permit, rule, regulation, standard, or requirement issued or adopted pursuant to
15 this chapter, is liable for a civil penalty of not less than five hundred dollars
16 (\$500) or more than five thousand dollars (\$5,000), for each violation of a
17 separate provision or, for continuing violations, for each day that the violation
18 continues.

19 (b) Liability under this section may be imposed in a civil action or liability may be
20 imposed administratively pursuant to this article.

21 RESPONDENTS are subject to an administrative penalty of up to \$5,000 per violation
22 for each day RESPONDENTS are in violation.

23 27. The penalty table set forth in 14 CCR section 18429 authorizes an
24 administrative penalty of up to \$1,000 for every day the violation continues after the
25 deadline set forth in the CAO against unpermitted WTFs that accumulate between 500
26 and 4,999 waste tires.

27 28. In setting an appropriate administrative penalty, the hearing officer must
28 take into consideration the provisions of PRC section 42852.

29 29. In determining an appropriate administrative penalty for RESPONDENTS,
30 as required by 14 CCR section 18465, CALRECYCLE has taken into consideration the
31 following factors:

- 1 (1) The nature, circumstances, extent, and gravity of the violation.
- 2 (2) Evidence that the violation was willful or negligent.
- 3 (3) The good or bad faith exhibited by the party.
- 4 (4) History of violation of the same or similar nature.
- 5 (5) The extent to which the party has cooperated with the Department in
- 6 remediating or injury caused by his or her violation.
- 7 (6) The extent that the party has mitigated or attempted to mitigate any damage
- 8 or injury caused by his or her violation.
- 9 (7) Evidence of any financial gain resulting from the violation.
- 10 (8) Such other matters as justice may require.

11 30. PRC section 42847 makes the person or persons who unlawfully stored,
12 stockpiled, or accumulated the waste tires or who unlawfully permitted the storage,
13 stockpile, or accumulation of waste tires or who threaten to cause or permit the unlawful
14 storage, stockpile, or accumulation of waste tires liable to the governmental agency that
15 cleans up said stored, stockpiled or accumulated waste tires, to the extent of the
16 reasonable actually incurred in cleaning up the waste, abating the effects thereof, or
17 taking other remedial actions.

18 31. Accordingly, CALRECYCLE hereby requests that an administrative
19 penalty be assessed against RESPONDENTS in the sum of \$155,000.00.

21 RIGHT TO HEARING

22 You are hereby notified that pursuant to the provisions of PRC section 42962(c)
23 of the California Public Resources Code and Government Code section 11500 that you
24 are entitled to a hearing to refute the allegations against you contained in this
25 Administrative Complaint. **If you wish to have a hearing on this matter, you must**
26 **complete and return the enclosed REQUEST FOR HEARING to our Legal Office**
27 **within 15 days of receipt of this notice. Failure to complete and return the**
28 **REQUEST FOR HEARING within 15 days will be deemed a waiver of your rights to**

1 a hearing.

2 Pursuant to the above referenced Public Resources Code and Government Code
3 sections, discovery requests by any party must be made within thirty days after the
4 service of this Administrative Complaint.

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6 Dated this 30th day of July, 2012.



HEATHER L. HUNT
Staff Counsel III