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8 STATE OF CALIFORNIA

9 CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

10 In the matter of:

11 GLOBAL WASTE MANAGEMENT, INC.,

12 OPERATOR

13 TPID NO. 1613306-01

14
15 RESPONDENT.

) STATEMENT OF ISSUES FOR THE DENIAL
) OF THE MINOR WASTE TIRE FACILITY
) PERMIT

) PUBLIC RESOURCES CODE SECTION
) 42843

) AGENCY NO: 2011-000102-DEN

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20 **INTRODUCTION**

21 This Department of Resources Recycling and Recovery (CALRECYCLE) Statement of Issues is
22 seeking the DENIAL for 3 years of the Minor Waste Tire Facility Permit of GLOBAL WASTE
23 MANAGEMENT, INC. (RESPONDENT), located at 214 Shaw Road, Unit 9, South San Francisco,
24 California, in accordance with Public Resources Code (PRC) 42843. This denial of permit is so issued
25 based on the following facts.
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1 **STATEMENT OF FACTS**

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

5 2. Pursuant to PRC section 42843:

6 (a) [CALRECYCLE], after holding a hearing in accordance with the procedures set forth in
7 Sections 11503 to 11519, inclusive, of the Government Code, may revoke, suspend, or deny a
8 waste tire facility permit for a period of up to three years, if [CALRECYCLE] determines any of
9 the following:

(1) The permit was obtained by a material misrepresentation or failure to disclose relevant
factual information. . . .

10 3. Black's Law Dictionary defines "material misrepresentation," as it relates to contracts, as
11 "A false statement that is likely to induce a reasonable person to assent or that the maker knows is
12 likely to induce the recipient to assent." (Black's Law Dictionary (9th ed. 2009).)

13 4. RESPONDENT submitted to CALRECYCLE a minor WTF Permit Application, CIWMB
14 Form 500 (Application) dated September 16, 2011, requesting a WTF Permit for the site located at 214
15 Shaw Road, Unit 9, South San Francisco, California, 94080 (Unit 9). The Application was signed by
16 Erik Klinkovich, as the facility operator, and Jim Forbes for 825 Post Street Associates, L. P., as the
17 property owner, both certifying that "the information submitted [was], to the best of [their] knowledge
18 and belief, true, accurate and complete."

19 5. Attached to and included with the Application, RESPONDENT submitted Operation Plan
20 CIWMB Form 501, Environmental Information CIWMB Form 502, Emergency Response Plan CIWMB
21 Form 503, a copy of a letter from the South San Francisco Fire Prevention Division documenting
22 approval for fire prevention equipment, the lease agreement for Unit 9, the Business License/Site
23 Clearance Application, the Business License issued by the City of South San Francisco, the Certificate
24 for the Minor Used Permit MUP10-0002, and the letter from the Mayor of South San Francisco.

25 6. During its review, CALRECYCLE determined that RESPONDENT failed to disclose
26 relevant factual information or misrepresented material facts in its Application.

27
28 **RESPONDENT failed to disclose the relevant factual information or misrepresented the material
fact in its permit application that it did not have complete control over Unit 9, but rather shared
Unit 9 with another business entity.**

1 7. The waste tire storage laws set forth in PRC section 42800 et seq. and 14 CCR section
2 18420 et seq. place specific tire count requirements on the owner and operator of a permitted WTF and
3 place different tire count requirements on a non-permitted WTF owner and operator. Additionally, 14
4 CCR section 17350 et seq. sets forth specific requirements for the storage of waste tires at a WTF to
5 protect the public health and the environment; these requirements include the height of waste tire piles,
6 fire prevention equipment needed onsite, vector control measures needed onsite and measures
7 needed to control access to the site. The names and contact information for the owners and operators
8 of a business entity operating within a site, along with information depicting the areas and the waste
9 and used tires under that business entity's control, is relevant and material information needed by
10 CALRECYCLE to evaluate a WTF Permit Application so that CALRECYCLE can ensure that
11 compliance with waste tire storage laws is met by the appropriate responsible party, and ensure that
12 adequate environmental and public health precautions are maintained for all waste and used tires
13 onsite.

14 8. RESPONDENT attached to, and included as part of, the Application, an Emergency
15 Response Plan CIWMB Form 503 (Emergency Response Plan). Section Two of the Emergency
16 Response Plan requested RESPONDENT to "[l]ist the names . . . of the persons and appropriate
17 agencies to be contacted in case of emergency." In response, RESPONDENT listed the following: Erik
18 Klinkovich, as the facility owner and operator; Louis DaSilva, from the local fire authority; Dean D.
19 Peterson, from the local environmental health department; Rob Lecel, from the Regional Water Quality
20 Control Board; and "CO OPERATOR - DANIEL AKHROMTSEV" as "[a]ny additional number[]" that may
21 be needed[.]"

22 9. "Daniel Akkhromtsev," a.k.a. Daniel Akrometsev, a.k.a. Daniel Akhrometsev, is listed
23 with the California Secretary of State as the Agent for Service of Process for RESPONDENT, and Mr.
24 Akkrometsev applied for the Business License from the City of South San Francisco on behalf of
25 RESPONDENT.

26 10. RESPONDENT attached to, and included as part of, the Application, an Operation Plan
27 CIWMB Form 501 (Operation Plan) that was signed and certified by Erik Klinkovich as the facility
28

1 operator that "the information submitted [was], to the best of [his] knowledge and belief, true, accurate,
2 and complete."

3 11. Pursuant to Section Five of the Operation Plan, RESPONDENT was required to submit
4 a map (map) of the proposed WTF demonstrating the legal boundaries for which title or leasehold was
5 held; all buildings or structures on-site and an indication of their use; site access, location of fences,
6 gates, and other access control measures; and dimensions of existing and planned tire storage units,
7 fire lanes, and fire breaks.

8 12. RESPONDENT's map depicted the entire interior warehouse, office space, and loading
9 dock areas of Unit 9. RESPONDENT's map further depicted rows of used tires running perpendicular
10 from the center of the north wall of Unit 9, a row of used tires running along the west half of the north
11 wall, a row of used tires running along the west wall, and two piles of scrap tires along the south wall.
12 In doing so, RESPONDENT submitted documentation showing the entire interior of Unit 9, including the
13 warehouse, office space, loading dock areas, and any waste or used tires depicted on the map, as
14 within RESPONDENT's legal boundaries for the WTF, and demonstrating that RESPONDENT planned
15 to undertake and maintain fire prevention, vector control, and access measures for the same areas and
16 tires. At the request of CALRECYCLE, RESPONDENT submitted a revised map; in the revised map all
17 of the same areas and tires were depicted as in the original map.

18 13. During inspections of the site on April 5, 2011, October 25, 2011, November 29, 2011,
19 and March 6, 2012, and documented in Waste Tire Survey and Inspection Reports (Inspection
20 Reports) numbers I1-1140355, IW-1000871, 11-1175746, and IW-1001599, respectively,
21 CALRECYCLE inspectors observed that B.A.Y. Tires, Inc., operated as a separate business entity
22 within the same space depicted in the map submitted by RESPONDENT.

23 14. B.A.Y. Tires, Inc., has been actively incorporated with State of California since March 12,
24 2010, and lists its address with the California Secretary of State as 214 Shaw Road, # 9, South San
25 Francisco, California.

26 15. During an inspection of the site on October 25, 2011, by CALRECYCLE Inspectors
27 Catherine Blair, Michael Payan, and Nancy Fallan, which is documented in Inspection Report number
28 IW-1000871 and attached photographs, Mr. Akhromtsev stated to Ms. Blair and Mr. Payan that the

1 used tires stacked perpendicular from the north wall of Unit 9 were owned by and under the control of
2 B.A.Y. Tires, Inc. Mr. Akhromtsev advised Ms. Blair and Mr. Payan that each business was
3 individually owned; he directed Ms. Blair and Mr. Payan to discuss said used tires with Vitali Barkouski,
4 owner and operator of B.A.Y. Tires, Inc.

5 16. During an inspection of the site on March 6, 2012, and documented in Inspection Report
6 number IW-1001599 and attached photographs, Inspectors Catherine Blair and Michael Payan again
7 observed that used tires stacked perpendicular from the north wall were the property of B.A.Y. Tires,
8 Inc., and not RESPONDENT. During the same inspection, Mr. Akhromtsev stated to Ms. Blair and Mr.
9 Payan that both piles of scrap tires along the south wall contained waste tires belonging to both B.A.Y.
10 Tires, Inc., and RESPONDENT.

11 17. Nowhere in the Application did RESPONDENT advise CALRECYCLE that Unit 9 was
12 shared between RESPONDENT and B.A.Y. Tires, Inc. Likewise, nowhere in the Application did
13 RESPONDENT make any reference to Vitali Barkouski, owner and operator of B.A.Y. Tires, Inc.
14

15 **RESPONDENT failed to disclose the relevant factual information or misrepresented the material**
16 **fact that RESPONDENT did not have the required local approval to carry out the activities for**
17 **which the Application had been submitted.**

18 18. 14 CCR section 18431(h) requires every WTF Permit Application submitted to
19 CALRECYCLE to include "[v]erification that applicable local, state, and federal permits and approvals
20 have been acquired by the applicant."

21 19. RESPONDENT attached to, and included as part of its Application, an Environmental
22 Information CIWMB Form 502 (Environmental Information form) which was signed and certified by Erik
23 Klinkovich as the facility operator that "the information submitted [was], to the best of [his] knowledge
24 and belief, true, accurate, and complete."

25 20. On page two of the Environmental Information form RESPONDENT was asked: "Will the
26 city/county have to issue any permits or approvals for your project?" RESPONDENT responded by
27 writing, "ALL OF THE PERMITS HAVE BEEN OBTAINED AND ATTACHED TO THE APPLICATION
28 (FIRE, BUSINESS LICENES [SIC], ENVIRONMENTAL HEALTH)." On page three of the
Environmental Information form, RESPONDENT described one of the permits that had been acquired

1 as a "TIRE RECYCLING FACILITY-MINOR USE PERMIT," number "P10-0018" (MUP), issued by the
2 planning department of the City of South San Francisco.

3 21. In the MUP, that was approved by the Zoning Administrator/Chief Planner on December
4 22, 2012, Condition of Approval number A5 states, "The applicant *shall not use power driven*
5 *processing* unless the Chief Planning/Zoning Administrator reviews and approves the necessary noise
6 reports to confirm compliance to the City's noise ordinance." (Emphasis added.) The corresponding
7 Zoning Administrator Staff Report states, "The proposed facility does not include power driven
8 processing. Tires are sorted, packaged and shipped"

9 22. In the Operation Plan, RESPONDENT was asked to "[d]escribe on-site processing (e.g.,
10 shredding, buffing, milling, baling, product manufacturing, etc.)" proposed for the WTF. RESPONDENT
11 responded "TIRES ARE ALL BAILED [SIC] AS THEY ARRIVE AT THE FACILITY."

12 23. 14 CCR section 17225.712 defines baled tires as "either whole or altered waste tires that
13 have been compressed and then secured with a binding material for the purpose of reducing their
14 volume." The process of baling requires the use of a power driven machine to compress the waste
15 tires that are then secured with a binding material.

16 24. On March 16, 2012, CALRECYCLE received a carbon copy of an email from Girard
17 Beaudin, Principal Planner for the City of South San Francisco to Luis DaSilva. In said email, Mr.
18 Beaudin stated, "The MUP approval included several conditions to NOT allow 'processing' of the tires
19 at this location (the approval allows the operator to store, load and ship). . . . [T]hey are now 'bailing'
20 [sic] tires at this location, which is not allowed." (Original emphasis.)

21 25. Nowhere in the Application, and at no time from the date RESPONDENT submitted its
22 Application to present, did RESPONDENT notify CALRECYCLE that the MUP neither contemplated nor
23 authorized the use power driven processing to bale waste tires at Unit 9.

24 **ALLEGATIONS OF SPECIFIC VIOLATIONS**

25 26. CALRECYCLE is seeking the DENIAL of RESPONDENT's Waste Tire Facility Permit for
26 three years pursuant to PRC section 42843(a)(1) based on the above-mentioned facts and for the
27 following reasons as more specifically set forth in the foregoing paragraphs:
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- 1 a. RESPONDENT failed to disclose relevant factual information or misrepresented
2 a material fact when it submitted the Application with an attached Operation Plan
3 that demonstrated RESPONDENT has having full control over the WTF and the
4 contents therein, when, in fact, RESPONDENT shared the space with another
5 WTF.
- 6 b. RESPONDENT failed to disclose relevant factual information or misrepresented
7 a material fact in its Application when RESPONDENT attempted to verify that
8 RESPONDENT had acquired all local permits by informing CALRECYCLE of the
9 existence of the MUP, when, in fact, the MUP did not authorize the activity stated
10 by RESPONDENT in the Application.

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12 **RIGHT TO HEARING**

13 You are hereby notified that, pursuant to the provisions of section 42843 of the California Public
14 Resources Code and Government Code section 11506, you are entitled to a hearing to refute the
15 allegations against you contained in this Statement of Issues. **If you wish to have a hearing on this**
16 **matter, you must complete and return the enclosed REQUEST FOR HEARING to our Legal**
17 **Office within 30 days of receipt of this notice. Failure to complete and return the REQUEST FOR**
18 **HEARING within 30 days will be deemed a waiver of your rights to a hearing.**

19 Pursuant to the above referenced Public Resources Code and Government Code
20 sections, discovery requests by any party must be made within thirty days after the service of this
21 Denial of the Minor Waste Tire Facility Permit.

22
23 Dated this 2 day of April, 2012.

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25 
26 _____
27 HEATHER L. HUNT
28 Staff Counsel III

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:

REQUEST FOR A HEARING

GLOBAL WASTE MANAGEMENT, INC.,

AGENCY No: 2011-000102-DEN

OPERATOR

TPID NO. 1613306-01

RESPONDENT.

I, _____, in the above-entitled proceeding, acknowledge receipt of a copy of the STATEMENT OF ISSUES FOR THE DENIAL OF THE MINOR WASTE TIRE FACILITY PERMIT.

I hereby request a hearing to permit me to present my defense to the charges contained in said STATEMENT OF ISSUES FOR THE DENIAL OF THE MINOR WASTE TIRE FACILITY PERMIT.

All correspondence concerning this proceeding should be sent to the following address:

(If you are represented by an attorney, all correspondence concerning this matter will be sent to the attorney.)

Address: _____ Telephone: _____

City: _____ State: _____ Zip Code: _____

Signature: _____

Date: _____

Please send to:

CalRecycle Legal Office

Attention: Gloria Bell

P.O. Box 4025, MS 24-B

Sacramento, CA 95812-4125



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • WWW.CALRECYCLE.CA.GOV

RIGHT TO A HEARING

Your are hereby notified that pursuant to the provisions of Section 42960 of the California Public Resources Code that you are entitled to a hearing to refute the allegations against you contained in the STATEMENT OF ISSUES FOR THE DENIAL OF THE MINOR WASTE TIRE FACILITY PERMIT. **If you wish to have a hearing on this matter, you must complete and return the enclosed REQUEST FOR HEARING to our Legal Office within 30 days of receipt of this notice. Failure to complete and return the REQUEST FOR HEARING within 30 days will be deemed a waiver of your right to a hearing.**

HEARING PROCEDURES

If you request one, a hearing will be conducted before an Administrative Law Judge of the Office of Administrative Hearings of the Department of General Services, at one of their office locations throughout the State, upon the charges made in the STATEMENT OF ISSUES FOR THE DENIAL OF THE MINOR WASTE TIRE FACILITY PERMIT.

1. You may be present at the hearing.
2. You have the right to be represented by an attorney at your own expense.
You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel.
3. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you.



4. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other things by applying to the Office of Administrative Hearings.
5. Pursuant to 1 California Code of Regulations, section 1032, parties are entitled, upon request, to be provided with the assistance of an interpreter if they do not proficiently speak or understand the English language. If you require the assistance of an interpreter, timely notice of this fact should be given to our office so that appropriate arrangements can be made.
6. You are hereby further notified that pursuant to the provisions of 14 CCR section 17050 et seq. the violations alleged against you may cause you to be placed on the CalRecycle's Unreliable Contractors, Subcontractors, Borrowers, and Grantees list. Placement on this list may prohibit you from obtaining contracts, loans, or grants from the CalRecycle for a period up to three years.
7. Continuances are not favored. If you need a continuance, write or call immediately to the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, California 94612 (510) 622-2722. That agency has control of continuances. Requests without good cause will be denied.