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8
9 STATE OF CALIFORNIA

10 DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

11 In the Matter of:	}	ADMINISTRATIVE DECISION
12 OAKLAND SCRAP, LLC, OPERATOR .		PURSUANT TO STIPULATION FOR THE
13 TPID NO: 1656967-01		DENIAL OF WASTE AND USED TIRE
14 RESPONDENT.		HAULER REGISTRATION
15	}	AGENCY NO: 2011-000102-DEN
16		OAH NO: 2011-100547

17
18 INTRODUCTION

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

24 This Administrative Decision Pursuant to Stipulation For the Denial of Waste and
25 Used Tire Hauler Registration is based on the Stipulation for Issuance of Administrative
26 Decision for the Denial of Waste and Used Tire Hauler Registration (Stipulation) signed by
27 JULIE HE, OWNER, FOR OAKLAND SCRAP, LLC, OPERATOR (RESPONDENT) on
28 June 28, 2012.

1 The Statement of Issues for the Denial of Waste and Used Tire Hauler Registration
2 (Statement of Issues) was issued to RESPONDENT OAKLAND SCRAP, LLC,
3 OPERATOR on August 22, 2011. RESPONDENT requested a hearing on September 1,
4 2011. A hearing was scheduled for May 22, 2012, in Oakland, California. On May 17,
5 2012, complainant filed a request for a continuance. On May 18, 2012, the Office of
6 Administrative Hearings (OAH) granted the request for a continuance. The new hearing
7 date was scheduled for June 29, 2012.

8 Pursuant to the Stipulation, and good cause appearing therefore, the following
9 Stipulated Factual Findings and Legal Conclusions are made, and the following Order is
10 issued:

11
12 **STIPULATED FACTUAL FINDINGS**
13

14 1. On June 2, 2011, CALRECYCLE received RESPONDENT's Waste Tire
15 Hauler Registration Application numbered 1656961 (Application), which listed
16 RESPONDENT as the name of the business, and Dorj Ariunbaatar as the owner of
17 RESPONDENT's LLC.

18
19 **DISPUTED FACTUAL FINDINGS**
20

21 **A. RESPONDENT committed more than three violations of, or has failed to**
22 **comply with the Waste Tire Hauler Registration Laws, the Waste Tire Storage**
23 **Laws, or the regulations adopted pursuant to those provisions in the one-year**
24 **time period from June 24, 2010, through June 24, 2011.**

25
26 **(i) RESPONDENT committed violations of, or has failed to comply with Waste Tire**
27 **Storage Laws and regulations within the one-year time period from June 24, 2010, to June**
28 **24, 2011.**

1 2. PRC section 42808 defines a major WTF as a WTF where, at any time,
2 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded.

3 3. 14 CCR section 18423 requires every operator of a new or existing major
4 WTF to submit a Major WTF Permit Application to CALRECYCLE.

5 4. Pursuant to PRC section 42824, on and after September 1, 1994, it is
6 unlawful to direct or transport waste tires to a major WTF or to accept waste tires at a
7 major WTF unless the operator has obtained a Major WTF Permit.

8 5. RESPONDENT operated a WTF located at 851 81st Avenue, C4, Oakland,
9 CA, 94621 (the site) from the time period starting on or before April, 2011, through June
10 24, 2011. At no time starting on or before April, 2011, through June 24, 2011, did
11 RESPONDENT submit a Major WTF Permit Application for the site. At no time between
12 April, 2011, and June 24, 2011, was RESPONDENT in possession of a Major WTF
13 Permit for the site.

14 6. On May 16, 2011, CALRECYCLE received Waste Tire Hauler/Storage
15 Complaint number 2011-12059 (Complaint) from Brian Chrisman, representative for
16 Borgata Recycling. In the Complaint, Mr. Chrisman claimed that RESPONDENT was
17 operating an illegal WTF by stockpiling more than 4,999 tires in its warehouse.

18 7. On May 18, 2011, during an inspection of the site, and documented in Waste
19 Tire Survey and Inspection Report (Inspection Report) number I1-1167851, Alameda
20 County Environmental Health Inspectors Steven Plunkett and Paresh Khatri observed
21 11,715 waste tires, thereby creating an unpermitted major WTF in violation of PRC section
22 42824, and 14 CCR section 18423.

23 (ii) RESPONDENT committed violations of, or has failed to comply with Waste Tire
24 Hauler Laws and regulations within the one-year time period from June 24, 2010, to June
25 24, 2011.

26 8. PRC section 42951(a) requires every person who engages in the
27 transportation of waste or used tires to hold a valid waste and used tire hauler registration,
28 unless exempt pursuant to PRC section 42954.

1 9. Once CALRECYCLE approves a Waste Tire Hauler Registration, it issues
2 registration cards and/or decals for each vehicle listed in the Waste Tire Hauler
3 Registration Application, in accordance with 14 CCR section 18456.2. Pursuant to 14
4 CCR sections 18456.2(c) and 18454(f) the registration card and/or decal issued to a
5 specific vehicle is not transferable from vehicle to vehicle, and said card or decal must at
6 all times be present in the vehicle to which it was issued.

7 10. PRC section 42954(a)(6) exempts persons hauling waste and used tires
8 from the registration requirement set forth in PRC section 42951(a) when the person
9 hauling waste or used tires is a common carrier who transports something other than
10 waste or used tires to an original destination point and then transports waste or used tires
11 on the return part of the trip, and the revenue derived from the waste or used tires is
12 incidental when compared to the revenue earned by the carrier.

13 11. Pursuant to 14 CCR section 18450(a)(10) the revenue derived from
14 transporting the used and waste tires by a common carrier must be incidental (10% of the
15 total revenue) when compared to the total revenue earned by the common carrier.

16 12. PRC section 42961.5, in conjunction with 14 CCR sections 18459 and
17 18460.2, prohibits waste tire haulers from hauling used or waste tires without preparing
18 and maintaining in the hauling vehicle a manifest, also known as Comprehensive Trip Log
19 Receipts (CTL receipts), documenting loads of used or waste tires picked-up and/or
20 delivered.

21 13. 14 CCR section 18460.1 requires a common carrier to carry a copy of the
22 completed CTL receipt in its vehicle if the common carrier transports 10 or more waste or
23 used tires at one time.

24 14. 14 CCR section 18459(c)(5) requires a CTL receipt to accompany each load
25 of 10 or more waste or used tires hauled by a common carrier.

26 15. 14 CCR section 18459.3 requires an end-use facility to retain a copy of each
27 completed CTL receipt at its place of business for three years, and to make the copy
28 available to any authorized representative of CALRECYCLE upon request.

1 16. 14 CCR section 18450(a)(15) defines an end-use facility as the WTF where
2 used or waste tires are unloaded and/or accepted.

3 17. 14 CCR section 18461 requires end-use facilities to retain copies of CTL
4 receipts documenting loads of used and waste tires delivered to the end-use facility as
5 provided by a registered waste and used tire hauler. If tires are not delivered by a
6 registered waste tire hauler, 14 CCR section 18461 requires the end-use facility to
7 complete an Unregistered Hauler & Comprehensive Trip Log Substitution Form (Substitute
8 Trip Form) within 48 hours of the tire delivery and submit said form to CALRECYCLE.
9 Furthermore, the end-use facility must retain a copy of said form at the place of business
10 for a period of 3 years and must make said form available to any representative of
11 CALRECYCLE upon request.

12 18. On January 13, 2010, Julie He, representative for RESPONDENT, contacted
13 Keith Cambridge, Supervisor of the Tire Hauler Compliance Unit, by e-mail and requested
14 that CALRECYCLE process an Application for Agricultural/Common Carrier Exemption
15 Letter on behalf of RESPONDENT. Mr. Cambridge explained the Common Carrier
16 Exemption requirements to Ms. He, including the requirement that RESPONDENT would
17 be required to complete CTL receipts for loads carrying 10 or more used or waste tires.

18 19. On April 14, 2011, CALRECYCLE received an Application for
19 Agricultural/Common Carrier Exemption Letter from RESPONDENT. In said application,
20 RESPONDENT listed the business owner as Oakland Scrap, LLC, the business facility
21 address as 851 81st Avenue, C4, Oakland, California 94621, and the business operator or
22 manager as HS Trading Company. Said application was signed by Julie He as authorized
23 agent and President for RESPONDENT.

24 20. On April 20, 2011, CALRECYCLE issued to RESPONDENT Common
25 Carrier Exemption Number 1656967 in the form of a letter. The letter again advised
26 RESPONDENT that RESPONDENT would “still be required to manifest ten (10) or more
27 waste or used tires while transporting said tires within the state of California.” The letter
28 further required RESPONDENT to advise CALRECYCLE if it no longer hauled waste tires

1 in the manner allowed by the Common Carrier Exemption.

2 21. On May 16, 2011, CALRECYCLE received the Waste Tire Hauler/Storage
3 Complaint from Brian Chrisman, representative for Borgata Recycling, referenced in
4 paragraph 10 of the Stipulation. In the Complaint, Mr. Chrisman further alleged that
5 RESPONDENT was picking up tires as a hauler and bringing the tires back to its WTF, in
6 violation of PRC section 42951(a).

7 22. During the inspection of the site on May 18, 2011, referenced in paragraph
8 11 of the Stipulation, Alameda County Environmental Health Inspectors Steven Plunkett
9 and Paresh Khatri observed that RESPONDENT had received more than 11,000 waste or
10 used tires at the site, making the site an end-use facility. During that inspection,
11 RESPONDENTS were unable to produce CTL receipts for review documenting the
12 transportation of the 11,715 waste tires to the site, in violation of 14 CCR sections 18461
13 and 18459.3.

14 23. On May 18, 2011, Barbara Strough, Supervisor for CALRECYCLE's Tire
15 Enforcement-North Division, spoke to Ms. He regarding the permitting requirements for a
16 WTF. Ms. He explained that RESPONDENT's business model was to pick up tires from
17 generators, bring them back to the site, bale them, and ship them overseas, thereby
18 admitting that RESPONDENT operated as a waste tire hauler and not a common carrier
19 eligible for an exemption from the waste tire hauler registration requirement, in violation of
20 PRC section 42951, and requiring RESPONDENT to prepare CTL receipts for each load
21 of used or waste tires hauled in accordance with PRC section 42961.5 and 14 CCR
22 section 18459.

23 24. Because of the unavailability of CTL receipts at the May 18th inspection, Mr.
24 Cambridge performed a review of CTL receipts received by CALRECYCLE pursuant to 14
25 CCR sections 18459.2.1 and 18461. The table below lists the only CTL receipts submitted
26 to CALRECYCLE that document loads of waste tires delivered to or picked up from the
27 site prior to the May 18th inspection. The information in the reviewed CTL receipts provides
28 documentation for only 3,500 of the 11,715 waste tires observed onsite, meaning that

1 RESPONDENT accepted tires at the site without either obtaining a CTL receipt or
 2 preparing an Substitute Trip Form in violation of 14 CCR sections 18459.3 and 18461.
 3 Furthermore, no additional CTL receipts were observed by Mr. Cambridge documenting
 4 loads of 10 or more used or waste tires hauled by RESPONDENT, as there should have
 5 been based on Ms. He's admissions to Ms. Strough on May 18th, in violation of PRC
 6 section 42961.5 and 14 CCR sections 18459 and 18460.2.

Comprehensive Trip Log	Load Date	Hauler Name	Pickup PTE	Delivery PTES	Facility Name
4258305-C	May 09, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258309-B	May 11, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258313-B	May 12, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258317-B	May 13, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258315-B	May 16, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258320-B	May 17, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258324-A	May 18, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.

18 25. On June 2, 2011, CALRECYCLE received RESPONDENT's Application,
 19 referenced in paragraph 5 of the Stipulation, which listed RESPONDENT as the name of
 20 the business, and Dorj Ariunbaatar as the owner of RESPONDENT's LLC. Included in the
 21 list of vehicles for which RESPONDENT requested registration decals was a vehicle with
 22 CA license plate number 9B57492 and VIN 1XPGDU9X8XD487945 that was registered
 23 through the California Department of Motor Vehicles (DMV) to Dorj Ariunbaatar; however,
 24 that vehicle was already registered to haul tires by CALRECYCLE for Borgata Recycling,
 25 in violation of 14 CCR section 18454(f).

26 26. On June 24, 2011, during an inspection of the site, and documented in
 27 Inspection Report Number I1-1167797, Alameda County Environmental Health Inspectors
 28 Plunkett and Khatri, along with CALRECYCLE staff, Barbara Strough, Mary LeClaire, and

1 Katie Bruner-Benson, observed 334 waste tires. Ms. Bruner-Benson further observed that
2 no CTL receipts or Substitute Trip Forms were on site and available for review
3 documenting the removal of waste tires from the site, in violation of 14 CCR sections
4 18459.3 and 18461.

5 27. On June 24, 2011, during the same inspection CALRECYCLE staff observed
6 a truck in the parking lot that had no license plate. Upon further investigation Ms. Bruner-
7 Benson observed that the VIN for that truck was 1GDJG31U841912745, and that the 2011
8 CALRECYCLE-issued tire hauler decal number 11-06665 was affixed to the passenger
9 side windshield. Upon returning to CALRECYCLE, Inspector Bruner-Benson reviewed
10 CALRECYCLE's records and found that decal number 11-06665 was never issued to
11 RESPONDENT's vehicle, but instead was issued by CALRECYCLE to a vehicle with
12 California license plate number 9E04401 and VIN 1FUJA6AVMayDN71513 that was listed
13 in the Waste Tire Hauler Registration Application for MGL Express Transportation.
14 RESPONDENT's use of a decal on a vehicle to which it was not specifically issued
15 violated 14 CCR sections 18454(f) and 18456.2.

16 28. On June 24, 2011, during the same inspection a separate hauler registered
17 with CALRECYCLE delivered a load of tires to the site. RESPONDENT failed to obtain a
18 CTL receipt, in violation of 14 CCR sections 18459.3 and 18461, until the Inspectors
19 requested that RESPONDENT call the driver back and obtain the CTL Receipt.
20

21 **B. RESPONDENT misrepresented or omitted a significant fact or other**
22 **required information in its hauler Application for a waste and used tire hauler**
23 **registration.**
24

25 29. In its Application, referenced in paragraph 5 of the Stipulation,
26 RESPONDENT requested a registration decal for a vehicle with CA license plate number
27 9B57492 and VIN 1XPGDU9X8XD487945, and registered through the California DMV to
28 Dorj Ariunbaatar, thereby representing that this vehicle was available for use by

1 RESPONDENT to haul tires within California; however, said vehicle was already
2 registered to haul tires by CALRECYCLE for Borgata Recycling.

3
4 **DISPUTED CONCLUSIONS OF LAW**

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6 30. On at least one occasion RESPONDENT violated PRC section 42824, by
7 storing more than 4,999 waste tires onsite without first obtaining a Major WTF Permit.

8 31. On at least one occasion RESPONDENT violated 14 CCR section 18423 for
9 failing to apply for a Major WTF Permit when a Major WTF Permit was required for the
10 site.

11 32. On at least one occasion RESPONDENT violated PRC section 42951(a) by
12 hauling loads of used or waste tires without holding a valid waste and used tire hauler
13 registration while not meeting the requirements of hauling under an exemption, such as an
14 exemption for a common carrier as set forth in PRC section 42952, and 14 CCR sections
15 18450(a)(10).

16 33. On at least one occasion RESPONDENT violated 14 CCR section 18454(f)
17 by requesting in its Application a registration decal for a vehicle already registered by
18 CALRECYCLE to a separate used and waste tire hauler.

19 34. On at least one occasion RESPONDENT violated 14 CCR sections 18454(f)
20 and 18456.2(c) by transferring a decal that had been issued to a specific vehicle by
21 CALRECYCLE to a different vehicle to which the decal had not been specifically issued.

22 35. On at least one occasion RESPONDENT violated PRC section 42961.5 and
23 14 CCR sections 18459 and 18460.2 by failing to prepare and maintain CTL Receipts for
24 loads of used and waste tires hauled by RESPONDENT who was acting as a used and
25 waste tire hauler.

26 36. On at least three separate occasions RESPONDENT violated 14 CCR
27 sections 18459.3 and 18461 for failing to retain and make available to a representative of
28 CALRECYCLE CTL receipts or Substitute Trip Forms for loads of waste or used tires

1 delivered to or picked-up from the site.

2 37. On at least one occasion RESPONDENT misrepresented or omitted required
3 information in the Application by stating that a specific vehicle was available to be
4 registered for use hauling waste and used tires by CALRECYCLE to RESPONDENT even
5 though said vehicle was already registered by CALRECYCLE to a separate used and
6 waste tire hauler.

7
8 **ORDER**

9
10 38. CALRECYCLE approves of, and adopts the terms of the Stipulation, and
11 hereby orders RESPONDENT to comply with the following terms, in accordance with the
12 Stipulation:

13 (a) Pursuant to the terms and conditions of the Stipulation, and subject to the
14 limitations hereunder, RESPONDENT, and each member of RESPONDENT's LLC., shall
15 cease hauling waste or used tires, in any capacity, within the State of California for a
16 period of three years.

17 (b) If RESPONDENT defaults on any term of the Stipulation, following the
18 procedures set forth in paragraph 43 of the Stipulation, RESPONDENT shall immediately
19 remit payment of \$1,000 per load of waste or used tires hauled, consistent with 14 CCR
20 section 18464.

21 (i) All payments shall be made to CALRECYCLE, Attn: Esther Gallegos,
22 at P. O. Box 4025, Sacramento, CA 95812-4025, or to such other person and/or
23 place as CALRECYCLE or its agent may from time to time designate in writing.

24 39. Default: If RESPONDENT defaults under any of the terms of the Stipulation,
25 CALRECYCLE shall send a Notice of Default to RESPONDENT; said Notice of Default
26 shall state the paragraphs or provisions of the Stipulation of which RESPONDENT is in
27 default and the abeyance amount owed. RESPONDENT shall have fifteen (15) days from
28 the date of the issuance of the Notice of Default to provide evidence refuting

1 CALRECYCLE's claim of default. After a review of the evidence provided by
2 RESPONDENT, CALRECYCLE shall make a determination regarding the default and, if
3 appropriate, shall issue a Supplemental Decision regarding any remaining penalties due.
4 RESPONDENT may appeal CALRECYCLE's determination and subsequent
5 Supplemental Decision within thirty (30) days of the issuance of the Supplemental
6 Decision; any such appeal shall be heard by CALRECYCLE's Director, or an agent
7 designated by the Director.

8
9 The DECISION shall become effective as of the date signed below:

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11 Dated this 26th day of July, 2012.

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13 
14 LORRAINE VAN KERKERIX
15 Acting Deputy Director
16 DEPARTMENT OF RESOURCES,
17 RECYCLING AND RECOVERY
18 (CALRECYCLE)
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