

BEFORE THE
DEPARTMENT OF RESOURCES RECYCLING & RECOVERY
STATE OF CALIFORNIA

In the Matter of:

MICHAEL J. QUAGLETTI, PROPERTY
OWNER AND LY NGUYEN, A-1 TIRE
RECYCLING AND MAN NGO, DBA A-1
TIRE RECYCLING, OPERATORS,

TPID Number 1673847,

Respondents.

Agency Case No.: 2012-011132-ADC

OAH No.: 2012110856

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of the Department of Resources Recycling & Recovery as its Decision in the above-entitled matter.

This Decision shall become effective May 31, 2013.

IT IS SO ORDERED with the clarifying change on page 2

DEPARTMENT OF RESOURCES
RECYCLING & RECOVERY

By Carol Murt

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STATE OF CALIFORNIA

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PROPOSED DECISION

This matter came on regularly for hearing on May 13, 2013, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

The California Department of Resources Recycling and Recovery (CalRecycle) was represented by Martha Perez, Staff Counsel.

Man Ngo (Respondent) was present and represented himself.¹

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. CalRecycle was previously the California Integrated Waste Management Board (CIWMB). CalRecycle succeeded to CIWMB's authority and jurisdiction on January 1, 2010, pursuant to Public Resources Code² section 40401, subdivision (a)(1).

¹ The remaining respondents did not request a hearing.

² All statutory references are to the Public Resources Code unless otherwise indicated.

2. At all relevant times, Respondent was the operator³ of A-1 Tire Recycling in Gardena, California (A-1). A-1 did business as a waste tire facility (WTF).

3. A major WTF is a waste tire facility at which, "at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded." (Code § 42808, subd. (b).) It is unlawful for a person to create a major WTF, or to direct, or transport tires to, or accept waste tires at, a major WTF unless the person has obtained a WTF permit issued by CalRecycle. (Code §§ 42823 and 42824.)

4. A minor WTF is a waste tire facility at which, at any time, at least 500, but fewer than 5,000, waste tires are or will be stored, stockpiled, accumulated, or discarded. (Code § 42808, subd. (c).)

5. Stephen Dolan (Dolan) is an Integrated Waste Management Specialist with CalRecycle. On August 23, 2011, Dolan performed an inspection of A-1 following receipt of several complaints by A-1's nearby competitors. He found over 5,000 waste and used tires on site, making A-1 a major WTF. However, Respondent had not obtained a major WTF permit. Dolan took photographs of the site and issued a violation notice for Respondent's failure to have a major WTF permit.

6. Dolan returned to A-1 on October 6, 2011 to re-inspect the facility. At that time, he found more than 5,500 waste and used tires. He learned that Respondent had previously telephoned the "hot line" at CalRecycle's headquarters and reported his facility closed even though it was still open for business with more than 5,000 tires on site. Respondent explained to Dolan that he intended to close the facility and move the business to another location. Dolan again explained to Respondent that he must obtain a WTF permit if the business housed more than 500 tires. Dolan reactivated the Tire Program Identification Number (TPID) that Respondent had closed with the "hot line," and he issued a Notice of Violation which he forwarded to the headquarters in Sacramento for enforcement action.

7. Dolan inspected A-1 again on November 2, 2011. The number of tires on site had been significantly reduced to 610. However, because the total number of tires at the facility exceeded 500, a WTF permit was required, and Respondent had not yet obtained one.

8. On December 2, 2011, the then Acting Deputy Director of CalRecycle's Compliance and Enforcement Division issued a Cleanup and Abatement Order against all of the respondents in this action, ordering them to cease violation of waste tire storage laws, and remove all waste tires from the premises within 30 days in accordance with a specified schedule. Respondents were warned that, among other things, failure to comply with or complete compliance with the order could result in the imposition of fines up to \$10,000 for each violation or for each day of continuing violations. Transport of the removed tires was

³ "Operator" is defined in Code section 42804 as the person responsible for the overall operation of a WTF.

to be by a registered waste tire hauler to a facility approved by CalRecycle. A completed Comprehensive Trip Log manifest had to accompany each load and had to be submitted to CalRecycle within 45 days from the date of service.

9. On December 15, 2011, Dolan returned to A-1 for another inspection. He found approximately 3,000 tires on site. Respondent informed Dolan that he had fallen behind in the removal process after his bailer and forklift had broken. The comprehensive trip logs for outbound tires were not available for inspection.

10. Dolan's next inspection of A-1 took place on January 4, 2012. Respondent was still out of compliance with the Cleanup and Abatement Order, and he still lacked a WTF permit. Dolan found 3,369 tires on site during that inspection. There were no manifests for outgoing tires.

11. Dolan returned to inspect A-1 on January 17, 2012. He counted over 3,700 waste and used tires on site, and Respondent remained out of compliance with the Cleanup and Abatement Order.

12. Dolan's final inspection of A-1 took place on May 15, 2012. He found over 3,500 waste tires on site. A-1 was still unpermitted for either a minor or major WTF.

13. Respondent operated A-1 for approximately one year and nine months. On April 11, 2012, Respondent filed an application for a major WTF permit after receiving approval of the site by the local fire department on November 14, 2011. However, Respondent found the remainder of the application process too complex and, on May 11, 2012, he withdrew his application. In so doing, he informed CalRecycle he intended to resubmit the application once the necessary local approvals were issued. CalRecycle held the application package until June 15, 2012 for the resubmittal, but Respondent did not procure the necessary approvals, and he did not resubmit the application. Accordingly, he operated the business without a permit from approximately March 2011 until December 2012, when he closed the business.

14. As a factor in aggravation, after Respondent closed A-1, he opened So Cal Tires, another WTF, in Gardena, California. He did not procure a WTF permit for So Cal Tires. He endorsed the position that he was a tire dismantler and was therefore allowed to house up to 1,500 waste or used tires on site as long as he moved them every 30 days.

15. On May 1, 2013, Dolan inspected So Cal Tires. He found over 6,000 waste or used tires on site. He explained to Respondent that the site did not qualify for the auto dismantler exception, and that it was an unpermitted WTF.

16. At the administrative hearing, Respondent admitted that approximately 1,500 tires are presently housed at So Cal Tires, and that the facility is not permitted. The evidence established that he has not yet applied for a WTF permit.

17. Respondent testified that his intentions were good, and that he wanted nothing more than to protect the environment and make California cleaner. The evidence of repeated inspection failures at his unpermitted WTFs and his non-compliance with the Cleanup and Abatement Order belie that testimony.

18. CalRecycle seeks to impose an administrative penalty of \$1,000 per day for the minimum of 132 days Respondent has failed to comply with the Cleanup and Abatement Order. Respondent testified that the penalty CalRecycle seeks to impose on him is too large and would take too long to pay.

LEGAL CONCLUSIONS

1. Cause exists to find Respondent in violation of the Cleanup and Abatement Order by his continued violations and his failure and refusal to obtain a WTF permit, as set forth in Findings 1 through 13.

2. Cause exists to order Respondent to pay an administrative penalty for continued and ongoing violations and non-compliance with the Cleanup and Abatement Order as set for the in Findings 1 through 13.

3. Code section 42850 states in relevant part:

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

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

4. California Code of Regulations, title 14, section 18429 permits a fixed fine of \$1,000 per day since the issuance of the Cleanup and Abatement Order for Respondent's ongoing non-compliance.

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5. California Code of Regulations, title 14, section 18465 states:

In assessing the amount of civil penalty, factors to be considered shall include, but are not limited to, the following:

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

6. Code section 42852 states in relevant part:

In making a decision regarding a denial, revocation, suspension, or penalty, the director shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

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7. Respondent operated A-1 for approximately 1.5 years without procuring a WTF permit for the facility. At most times during that operation, Respondent was housing thousands of waste and used tires. When the application process became complex, he withdrew the application instead of seeking assistance. In addition, he represented to CalRecycle that his business was closed when, in fact, it was open, fully operational, unpermitted, and in violation of applicable law. Respondent's conduct constituted a serious, ongoing, and willful violation of the laws and regulations governing the operation of WTF's. The violations have continued despite numerous inspections and the imposition of a Cleanup and Abatement Order. Therefore, Respondent failed to cooperate with CalRecycling in remediating the violation. Instead, he continued to operate the business, thus benefitting financially while in lengthy non-compliance with applicable laws, regulations, and the Cleanup and Abatement Order. In aggravation, after closing A-1, Respondent opened another WTF and housed over 6,000 tires there while committing the same violations he committed in connection with A-1. Even today, he continues to operate that non-permitted major WTF where he is presently housing approximately 1,500 waste or used tires. His conduct posed a threat to the public health and safety, and to the environment he claimed he is trying to protect.

8. Respondent is bound by the same rules as his competitors. He is not entitled to an exception. Although he testified that the fine is too large and that it would take him too long to pay it, he offered no evidence to support a finding of an inability to pay. Balancing the criteria set forth in Code section 42852 and California Code of Regulations, title 14, section 18465, CalRecycle's request for a fine of \$1,000 per day for 132 days of non-compliance with the Cleanup and Abatement Order is deemed just and reasonable.

ORDER

Respondent Man Ngo shall pay to CalRecycle an administrative penalty of \$132,000 at such time and in such a manner as CalRecycling shall direct.

Dated: May 21, 2013



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings