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8
9 STATE OF CALIFORNIA

10 CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

11 In the matter of:

12 RAUL G. DURAN DBA DURAN'S TIRE
13 RECYCLING, OPERATOR and JOSE R.
14 PADILLA, PROPERTY OWNER

15
16 TPID NO: 1640606-01

17 RESPONDENTS.

ADMINISTRATIVE DECISION
PURSUANT TO STIPULATION FOR
WASTE TIRE STORAGE
ADMINISTRATIVE PENALTIES

AGENCY NO: 2012-011140-ADC

18 **INTRODUCTION**

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

24 This Administrative Decision Pursuant to Stipulation For Waste Tire Storage
25 Administrative Penalties is based on the Stipulation for Issuance of Administrative Decision for
26 Waste Tire Storage Administrative Penalties (Stipulation) signed by RESPONDENT RAUL G.
27 DURAN, AS DURAN'S TIRE RECYCLING, OPERATOR on February 20, 2013 and
28 RESPONDENT JOSE R. PADILLA, PROPERTY OWNER on February 4, 2013.

1 The Administrative Complaint for Waste Tire Storage Administrative Penalties
2 (Complaint) was served on RESPONDENT RAUL G. DURAN on December 14, 2012 and
3 served on RESPONDENT JOSE R. PADILLA on December 21, 2012. RESPONDENTS did
4 not request a hearing.

5 Pursuant to the Stipulation, and good cause appearing therefore, the following
6 Stipulated Factual Findings and Legal Conclusions are made, and the following Order is
7 issued:

8 **FACTUAL FINDINGS**

9 1. The Administrative Complaint was executed by MARTHA PEREZ, Staff Counsel,
10 CALRECYCLE, acting in her official capacity.

11 2. As detailed in the Administrative Complaint:

- 12 a. RESPONDENT RAUL G. DURAN DBA DURAN'S TIRE RECYLING
13 (RESPONDENT DURAN'S TIRE RECYCLING) is a registered waste tire
14 hauler and operates its hauler business out of the property owned by
15 RESPONDENT JOSE R. PADILLA located at 3442 La Grande Blvd., Suite
16 C, Sacramento, California 95823 (the site).
- 17 b. At no time between April 1, 2011, and April 16, 2012, was RESPONDENT
18 DURAN'S TIRE RECYCLING in possession of a Minor WTF Permit for the
19 site. Further, the operation at the site is neither excluded nor exempt from
20 needing a minor WTF permit nor has it been otherwise authorized to
21 operate without a minor WTF permit by CALRECYCLE.
- 22 c. During the time between April 1, 2011, and April 16, 2012, RESPONDENT
23 DURAN'S TIRE RECYCLING allowed waste tires to be illegally stored at
24 3442 La Grande Blvd., Suite C, Sacramento, California 95823 (the site).
- 25 d. On April 1, 2011, Sacramento County Tire Enforcement Agency (TEA)
26 Inspectors Mike Simpson and Ajay Sharma, conducted an inspection of
27 the site. As documented in Inspection Report #I1-1128113, Inspectors
28 Simpson and Sharma observed an estimated waste tire count of

1 approximately 2,808 waste tires, in violation of PRC section 42834 and 14
2 CCR section 18420. A Notice of Violation (NOV) was issued with a
3 compliance date of May 1, 2011. RESPONDENT DURAN'S TIRE
4 RECYCLING was advised to reduce his waste tire count to 499 within 30
5 days or apply for a WTF permit within seven (7) days to comply with
6 regulations.

- 7 e. On May 31, 2011, Inspectors Simpson and Sharma conducted a re-
8 inspection of the site to determine compliance with the NOV issued on
9 April 1, 2011. During re-inspection of the site and as documented in
10 Inspection Report # I1-1172409, Inspectors Simpson and Sharma
11 observed an estimated waste tire count of approximately 1,080 waste
12 tires, in violation of PRC section 42834 and 14 CCR section
13 18420. RESPONDENT DURAN'S TIRE RECYCLING was given an
14 extension to achieve compliance and was advised to either reduce its
15 waste tire count to 499 within 30 days or apply for a WTF permit within
16 seven (7) days.
- 17 f. On December 9, 2011, Inspector Sharma conducted a re-inspection of the
18 site to determine compliance with the extension issued on May 31, 2011,
19 as documented in Inspection Report # I1-1227005. During the re-
20 inspection, Inspector Sharma observed an estimated waste tire count of
21 approximately 1,688 waste tires on the site, in violation of PRC section
22 42834 and 14 CCR section 18420. RESPONDENT DURAN'S TIRE
23 RECYCLING had not applied for a WTF permit or reduced its waste tire
24 count to 499.
- 25 g. On March 9, 2012, pursuant to PRC section 42845, CALRECYCLE issued
26 Clean-Up and Abatement Order No. 2012-011008-CAO (CAO), signed
27 and mailed by certified mail and served on RESPONDENT DURAN'S
28 TIRE RECYCLING on March 15, 2012, directing RESPONDENT

1 DURAN'S TIRE RECYCLING to remove all waste tires in excess of 499
2 from the premises within 15 days from the date of the service of the CAO.

3 h. During a follow-up inspection of the site on April 16, 2012, and
4 documented in Inspection Report # IW-1002046, John Duke and Katie
5 Bruner-Benson, Inspectors for CALRECYCLE's Compliance and
6 Enforcement Division, observed 2,182 waste tires on the site, in violation
7 of PRC section 42834, 14 CCR section 18420, and in violation of the
8 CAO.

9
10 **CONCLUSIONS OF LAW**

11 3. For seventeen days between March 30, 2012 and April 16, 2012, RESPONDENT
12 DURAN'S TIRE RECYCLING failed to comply with the CAO, thereby violating PRC section
13 42845, which requires any person upon order of CALRECYCLE, to clean-up, abate or
14 otherwise take remedial action at a WTF.

15 4. On at least four (4) separate occasions, RESPONDENT DURAN'S TIRE
16 RECYCLING violated PRC section 42834 by storing, stockpiling, or accumulating more than
17 499, but less than 4,999, waste tires on the site without first obtaining a Minor WTF Permit. On
18 those same four (4) occasions, RESPONDENT DURAN'S TIRE RECYCLING violated 14 CCR
19 section 18420 by operating a WTF without obtaining a WTF Permit.

20
21 **ORDER**

22 CALRECYCLE approves of, and adopts the terms of the Stipulation, and the following
23 Order is hereby made:

24 Pursuant to the terms and conditions of the Stipulation, and subject to the limitations
25 hereunder, RESPONDENT DURAN'S TIRE RECYCLING stipulates to an administrative
26 penalty against RESPONDENT DURAN'S TIRE RECYCLING, and in favor of CALRECYCLE,
27 in the sum of \$21,250.00 for the violations set forth in the Stipulation. Payment of the penalty
28 shall be satisfied in the following manner:

1 i) RESPONDENT DURAN'S TIRE RECYCLING shall pay \$15,000.00 to
2 CALRECYCLE in accordance with the following:

- 3 1. RESPONDENT DURAN'S TIRE RECYCLING shall pay to
4 CALRECYCLE the initial sum of \$1,500.00 on or before the 30th
5 day after the issuance of this Administrative Decision in
6 accordance with the Stipulation.
- 7 2. RESPONDENT DURAN'S TIRE RECYCLING shall make
8 monthly payments to CALRECYCLE of \$375.00 until the total
9 amount of said payments, together with the initial \$1,500.00
10 payment, totals \$15,000.00.
- 11 3. All payments shall be made to CALRECYCLE, Attn: Esther
12 Gallegos, at P. O. Box 4025, Sacramento, CA 95812-4025, or
13 to such other person and/or place as CALRECYCLE or its agent
14 may from time to time designate in writing.
- 15 4. If any payment by RESPONDENT DURAN'S TIRE
16 RECYCLING is not mailed by RESPONDENT DURAN'S TIRE
17 RECYCLING to said addressee by the due date, or a date later
18 issued by CALRECYCLE, and if RESPONDENT DURAN'S
19 TIRE RECYCLING fails to cure the missed payment(s) within
20 twenty (20) days of said missed payment, RESPONDENT
21 DURAN'S TIRE RECYCLING shall be found in partial default of
22 the Stipulation.

23 ii) \$6,250.00 of this administrative penalty shall be suspended and stayed for
24 a period of three (3) years. The stayed penalty shall be deemed terminated and shall not be
25 paid by RESPONDENT DURAN'S TIRE RECYCLING to CALRECYCLE following the three
26 year period absent a default as described below.

1 RESPONDENT DURAN'S TIRE RECYCLING shall comply with all waste tire storage
2 and waste tire hauler laws set forth in PRC section 42800 et seq., PRC section 42950 et seq.,
3 and attendant regulations in Title 14 of the CCR.

4 If RESPONDENT DURAN'S TIRE RECYCLING fails to comply with any waste tire laws
5 set forth in PRC sections 42800 et seq., 42950 et seq., or attendant regulations in Title 14 of
6 the CCR, immediate suspension of RESPONDENT DURAN'S TIRE RECYCLING waste tire
7 hauler registration shall go into effect for a period not to exceed three (3) calendar months.

8 RESPONDENT DURAN'S TIRE RECYCLING shall abide by all the terms and
9 conditions set forth in this Stipulation; failure to abide by all the terms and conditions set forth
10 in this Stipulation shall result in immediate suspension of RESPONDENT DURAN'S TIRE
11 RECYCLING waste tire hauler registration for a period not to exceed three (3) calendar
12 months.

13 RESPONDENT DURAN'S TIRE RECYCLING shall maintain a manifest error rate of
14 7% or less for the three-year abeyance period (violation of this term constitutes a full default).

15 RESPONDENT DURAN'S TIRE RECYCLING shall apply for a Minor WTF permit from
16 CALRECYCLE no later than thirty (30) days from the date of this Stipulation. RESPONDENT'S
17 application for a Minor WTF permit shall comply with all attendant regulations set forth in Title
18 14 CCR Section 18431 et seq.:

- 19 • The application for a minor WTF permit shall include verification that all
20 applicable local, State, and federal permits and approvals have been acquired,
21 as well as include the following CALRECYCLE forms: (1) Waste Tire Facility
22 Permit Application, (2) Operation Plan, (3) Environmental Information, and (4)
23 Emergency Response Plan. Respondent must submit an original and two copies
24 of the completed forms to CALRECYCLE. Within 30 days of receipt,
25 CALRECYCLE will either accept or reject the application. Within 180 days (in
26 most cases) of accepting a completed application, CALRECYCLE will issue or
27 deny the WTF permit.

28

1 If at any time during the abeyance period, CALRECYCLE determines that
2 RESPONDENT DURAN'S TIRE RECYCLING has violated any waste tire laws, waste tire
3 hauler laws, or the terms set forth in this Stipulation, CALRECYCLE shall inspect the site at an
4 increased frequency until RESPONDENT DURAN'S TIRE RECYCLING remedies the new
5 violations and brings the site into compliance. RESPONDENT DURAN'S TIRE RECYCLING
6 shall reimburse CALRECYCLE for the cost of these additional inspections (including costs for
7 the time spent preparing for the inspection, traveling to the site, and preparing and writing any
8 Inspection Report).

9 i. Failure to grant access to inspectors or agents designated by CALRECYCLE, or
10 failure to reimburse CALRECYCLE for the costs of an additional inspection within thirty (30)
11 days of an invoice shall be deemed a default of this Stipulation.

12 ii. The cost of the additional inspections shall be billed at the rate approved by
13 CALRECYCLE's accounting and budgets offices for enforcement agent inspections for that
14 fiscal year.

15 Unless otherwise specified in the subsections above, failure to comply with any of the
16 above terms shall constitute a partial default of this Stipulation and the abeyance amount
17 determined by CALRECYCLE shall become immediately due and payable by RESPONDENT
18 DURAN'S TIRE RECYCLING.

19 i. CALRECYCLE shall base any abeyance amount due on the penalty
20 amounts set forth in PRC sections 42850, 42850.1, 42962, and 14 CCR sections 18429 and
21 18464, taking into account the nature, circumstances, extent and gravity of the partial default.

22 ii. If RESPONDENT DURAN'S TIRE RECYCLING is ordered to pay a partial
23 default fine and fails to do so within 30 days, the failure shall constitute a full default and the
24 remaining abeyance amount of six thousand two hundred and fifty dollars (\$6,250.00), less
25 any amount already paid to CALRECYCLE, shall become immediately due and payable.

26 RESPONDENT JOSE R. PADILLA is hereby released from any and all liability arising
27 out of the violations stated in paragraphs 16 through 18 of this Stipulation and based on the
28 specific facts set forth in paragraphs 1 through 15 of this Stipulation. However, nothing

1 prohibits CALRECYCLE, CALRECYCLE's Director, or an agent designated by the Director, or
2 an Administrative Law Judge from holding RESPONDENT JOSE R. PADILLA liable for any
3 future violations of the PRC or its attendant regulations that arise out of facts that occur at any
4 future date at the site.

5 If RESPONDENT DURAN'S TIRE RECYCLING defaults under any of the terms of this
6 Stipulation, CALRECYCLE shall send a Notice of Default to RESPONDENT DURAN'S TIRE
7 RECYCLING; said Notice of Default shall state the paragraphs or provisions of this Stipulation
8 of which RESPONDENT DURAN'S TIRE RECYCLING is in default and the abeyance amount
9 owed. RESPONDENT DURAN'S TIRE RECYCLING shall have fifteen (15) days from the date
10 of the issuance of the Notice of Default to provide evidence refuting CALRECYCLE's claim of
11 default. After a review of the evidence provided by RESPONDENT DURAN'S TIRE
12 RECYCLING, CALRECYCLE shall make a determination regarding the default and, if
13 appropriate, shall issue a Supplemental Decision regarding any remaining penalties due.
14 RESPONDENT DURAN'S TIRE RECYCLING may appeal CALRECYCLE's determination and
15 subsequent Supplemental Decision within thirty (30) days of the issuance of the Supplemental
16 Decision; any such appeal shall be heard by CALRECYCLE's Director, or an agent designated
17 by the Director.

18 This Administrative Decision shall become effective as of the date signed below.

19
20 Dated this 11 day of March, 2013.

21
22 
23 _____
24 MARK DE BIE
25 Deputy Director
26 DEPARTMENT OF RESOURCES,
27 RECYCLING AND RECOVERY
28 (CALRECYCLE)