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9 **STATE OF CALIFORNIA**
10 **DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

11 **In the matter of:**

12 **825 POST STREET ASSOCIATES, LP.,**
13 **PROPERTY OWNER**

14
15 **RESPONDENT.**
16

**FIRST AMENDED ADMINISTRATIVE
COMPLAINT FOR WASTE TIRE
STORAGE PENALTIES**

**PUBLIC RESOURCES CODE SECTION
42850 ET SEQ.; GOVERNMENT CODE
SECTION 11503**

AGENCY NO. 2013-011156-ADC

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20 **INTRODUCTION**

21 The California Department of Resources Recycling and Recovery ("CALRECYCLE")
22 issues this First Amended Administrative Complaint For Waste Tire Storage Penalties
23 (hereafter, "Amended Complaint") to 825 POST STREET ASSOCIATES, Property Owner
24 (hereafter, referred to as "RESPONDENT") seeking \$315,000.00.

25 The California Integrated Waste Management Board ("CIWMB" or also referred to as,
26 the "Board") is CALRECYCLE. CALRECYCLE succeeded to CIWMB's authority on January 1,
27 2010, pursuant to Public Resources Code (PRC) sections 40400 and 40401(a)(1).

28 CALRECYCLE has the authority to permit, regulate, and conduct enforcement actions

1 regarding waste tire facilities and waste tire haulers within the State of California pursuant to
2 PRC sections 42800 et seq., 42950 et seq. and attendant regulations contained in Title 14 of
3 the California Code of Regulations (“CCR”). Pursuant to PRC section 42851(a),
4 CALRECYCLE is authorized to issue an administrative accusation for penalties to a person on
5 whom civil liability may be imposed. This Amended Complaint is so issued based on the
6 following facts.

7 **STATEMENT OF FACTS**

8 1. GLOBAL WASTE MANAGEMENT, INC., Tire Program Identification (“TPID”)
9 Number 1613306-01, is a minor permitted waste tire facility located at 214 Shaw Road, Unit 9,
10 South San Francisco, California 94080 (hereafter, referred to as “the site”).

11 2. Daniel Akhromtsev is the “Operator” of the site, as that term is defined in PRC
12 section 42804, “the person responsible for the overall operation of a waste tire facility.”

13 3. 825 POST STREET ASSOCIATES, LP is the “Owner” of the site, as that term is
14 defined in PRC section 42805, and Title 14 CCR sections 17225.755, 17225.760. Pursuant to
15 PRC section 42805 and Title 14 CCR section 17225.760, an “Owner” is a “person who owns,
16 in whole or in part, a waste tire facility, the waste tires located at a facility, or the land on which
17 a waste tire facility is located.” Pursuant to Title 14 CCR section 17225.755, the “Operator”
18 means the person legally responsible for the operation of a waste tire facility or the owner if
19 there is no operator.”

20 4. On December 14, 2012, CALRECYCLE issued GLOBAL WASTE
21 MANAGEMENT, INC. a new waste tire facility permit for a “Minor Waste Tire Facility,”
22 authorizing a maximum permitted capacity at the site of 4,999 whole waste tires or passenger
23 tire equivalents.

24 5. A “Minor Waste Tire Facility” is defined in PRC section 42808(c) as, “a waste tire
25 facility where, at any time, 500 or more, but less than 5,000, waste tires are or will be stored,
26 stockpiled, accumulated, or discarded.”

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1 6. A "Major Waste Tire Facility" is defined in PRC section 42808(b) as "a waste tire
2 facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled,
3 accumulated, or discarded."

4 7. On February 20, 2013, CALRECYCLE Inspectors Catherine Blair and Robert
5 Baumann conducted a routine inspection of the site to ensure compliance with applicable
6 waste tire storage and disposal standards and the terms and conditions of GLOBAL WASTE
7 MANAGEMENT's Minor Waste Tire Facility Permit. As documented in Inspection Report #IW-
8 1004936, Inspectors Blair and Baumann were not granted access to the site to conduct a
9 routine inspection. Based on a visual observation and a plain view of the site, Inspectors Blair
10 and Baumann observed approximately 11,682 waste tires on the site, in violation of GLOBAL
11 WASTE MANAGEMENT's Minor Waste Tire Facility Permit (PRC section 42850(a)) and in
12 violation of PRC sections 42823, 42824, and Title 14 CCR section 18420(a).

13 GLOBAL WASTE MANAGEMENT violated PRC section 42823, "no person shall
14 establish a new major waste tire facility or expand an existing minor waste tire facility unless
15 the person has obtained a major waste tire facility permit issued by the board
16 [CALRECYCLE]." GLOBAL WASTE MANAGEMENT also violated Title 14 CCR section
17 18420(a), "the operator of a waste tire facility shall acquire a waste tire facility permit in
18 accordance with the requirements of this Chapter and PRC section 42808." GLOBAL WASTE
19 MANAGEMENT was operating a major waste tire facility by storing approximately 11,682
20 waste tires on the site, without first obtaining a major waste tire facility permit issued by
21 CALRECYCLE.

22 GLOBAL WASTE MANAGEMENT also violated PRC section 42824, "it is unlawful to
23 direct or transport waste tires to a major waste tire facility or to accept waste tires at a major
24 waste tire facility unless the operator has obtained a major waste tire facility permit." GLOBAL
25 WASTE MANAGEMENT unlawfully accepted waste tires at the site exceeding its 4,999
26 permitted capacity as a minor waste tire facility, and expanded a minor waste tire facility into a
27 major waste tire facility, without having first obtained a major waste tire facility permit issued by
28 CALRECYCLE. Pursuant to PRC section 42850.1(b)(1):

1 Any person who intentionally violates any provision of this chapter,
2 or any permit, rule, regulation, standard, or requirement issued or
3 adopted pursuant to this chapter, is liable for a civil penalty not to
4 exceed ten thousand dollars (\$10,000), for each violation of a
separate provision or, for continuing violations, for each day that
the violation continues.

5 Thus, RESPONDENT is liable for a civil penalty for allowing GLOBAL WASTE MANAGEMENT
6 to accumulate waste tires on the site in violation of GLOBAL WASTE MANAGEMENT's Minor
7 Waste Tire Facility Permit, exceeding its permitted capacity of 4,999 waste tires stored on the
8 site, and for violations of the rules, regulations, and requirements pursuant to Chapter 16
9 (commencing with PRC section 42800 et seq.) and Chapter 19 (commencing with PRC section
10 42950 et seq.).

11 8. On March 6, 2013, CALRECYCLE Inspectors Blair, Baumann, and Michael
12 Payan returned to the site to conduct a routine inspection. As documented in Inspection
13 Report #IW-1005173, GLOBAL WASTE MANAGEMENT had approximately 17,040 waste tires
14 stored on the site, once again in violation of GLOBAL WASTE MANAGEMENT's Minor Waste
15 Tire Facility Permit (PRC section 42850(a)) and in violation of PRC sections 42823, 42824,
16 and Title 14 CCR section 18420(a). GLOBAL WASTE MANAGEMENT was operating a major
17 waste tire facility by storing approximately 17,040 waste tires on site. GLOBAL WASTE
18 MANAGEMENT unlawfully accepted waste tires at the site exceeding its 4,999 permitted
19 capacity as a minor waste tire facility, and expanded a minor waste tire facility into a major
20 waste tire facility, without having first obtained a major waste tire facility permit.

21 9. On April 8, 2013, CALRECYCLE issued Cleanup and Abatement Order ("CAO")
22 2013-011028-CAO to GLOBAL WASTE MANAGEMENT and to RESPONDENT for waste tire
23 storage violations. RESPONDENT was served with the CAO on April 23, 2013. The CAO
24 directed RESPONDENT to, "remove all waste tires in excess of 4,999 from the premises within
25 15 days from the date of service of [the] CAO, in accordance with the following waste tire
26 removal schedule . . . all waste tires . . . shall be removed by a registered waste tire hauler . . .
27 to an approved facility." The CAO also ordered RESPONDENT to at no time "accept
28 additional waste tires at the site unless there are less than 4,999 and the acceptance of

1 additional waste tires will not result in more than 4,999 waste tires at this site” and to
2 “reimburse CalRecycle for the cost of all inspections conducted within a year from the issuance
3 of this CAO that are in addition to those inspections required by statute or regulation.”

4 10. On May 7, 2013, CALRECYCLE Inspectors Blair, Baumann, and Payan
5 inspected the site. CALRECYCLE Inspectors counted approximately 3,143 waste tires on the
6 site.

7 11. On May 14, 2013, CALRECYCLE Inspectors Blair, Baumann, Payan and San
8 Mateo County Health Services Department Inspector, Marjorie Terrell, re-inspected the site. As
9 documented in Inspection Report #IW-1005931, the Inspectors determined that approximately
10 12,167 waste tires were stored on the site in violation of GLOBAL WASTE MANAGEMENT’s
11 Minor Waste Tire Facility Permit (PRC section 42850(a)), the CAO, and in violation of PRC
12 sections 42823 and 42824. RESPONDENT violated the CAO by allowing more than 4,999
13 waste tires to accumulate on the site.

14 12. On July 31, 2013, CALRECYCLE Inspectors Michael Payan and Robert
15 Baumann conducted an additional inspection of the site. As documented in Inspection Report
16 #IW-1006440, Inspectors determined that approximately 21,052 waste tires were being stored
17 on the site, in violation of GLOBAL WASTE MANAGEMENT’s Minor Waste Tire Facility Permit
18 (PRC section 42850(a)), the CAO, and in violation of PRC sections 42823, 42824.
19 RESPONDENT violated the CAO by allowing more than 4,999 waste tires to accumulate on
20 the site. Daniel Akhromtsev, GLOBAL WASTE MANAGEMENT’s Operator, even
21 acknowledged that he was in violation by being over his permitted waste tire count. He stated
22 to CALRECYCLE inspectors that he knew he was over his allowable tire count.

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24 **ALLEGATIONS OF SPECIFIC VIOLATIONS**

25 13. CALRECYCLE seeks administrative penalties of \$315,000.00, pursuant to PRC
26 sections 42850.1 and Title 14 CCR sections 18429. The administrative penalties are based on
27 the above-mentioned facts, and for the following violations as more specifically set forth in the
28 foregoing paragraphs.

1 a. On at least two occasions, RESPONDENT failed to comply with the terms
2 set forth in the CAO, thereby violating PRC section 42845, which requires
3 any person, upon order of CALRECYCLE, to clean-up, abate the effects of
4 waste tires, or take other remedial action as necessary. The CAO ordered
5 RESPONDENT, "*at no time may you accept additional waste tires at this*
6 *site unless there are less than 4,999 at this site and the acceptance of*
7 *additional waste tires will not result in more than 4,999 waste tires at this*
8 *site.*" (Emphasis added.) On May 14, 2013, approximately 12,167 waste
9 tires were stored on the site. On July 31, 2013, approximately 21,052
10 waste tires were stored on the site.

11 **PENALTIES**

12 15. RESPONDENT is liable for administrative penalties as set forth in PRC section
13 42850.1 for intentional violations. Penalties cannot exceed \$10,000 per day for an intentional
14 violation.

15 16. Pursuant to PRC section 42846.5, the imposition of penalties herein may form
16 the basis for a subsequent CALRECYCLE order permitting CALRECYCLE or its contractor's
17 access to the property mentioned herein to perform cleanup, abatement or remedial work
18 under PRC section 42846. Further, PRC section 42847 authorizes CALRECYCLE to seek
19 recovery of the costs of any cleanup abatement or remedial work.

20 17. CALRECYCLE's authority to assess administrative penalties against
21 RESPONDENT is set forth in PRC section 42850.1 (b), which states:

22 (b) (1) Any person who intentionally violates any provision of this
23 chapter, or any permit, rule, regulation, standard, or requirement
24 issued or adopted pursuant to this chapter is liable for a civil
25 penalty not to exceed ten thousand dollars (\$10,000), for each
26 violation of a separate provision or, for continuing violations, for
27 each day that the violation continues.

28 (2) Liability under this subdivision may be imposed in a civil action
or may be imposed administratively pursuant to this article.

RESPONDENT is subject to an administrative penalty of up to \$10,000 per violation for each
day RESPONDENT is in violation.

1 18. Title 14 CCR section 18429 authorizes penalties of up to three thousand dollars
2 (\$3,000.00) for every day the intentional violation continues after the deadline set forth in the
3 CAO against permitted waste tire facilities that accumulate between 10,000-19,999 waste tires.

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

6 20. In determining an appropriate administrative penalty for RESPONDENT, as
7 required by 14 CCR section 18465, CALRECYCLE has taken into consideration the following
8 factors:

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

19 21. Accordingly, CALRECYCLE seeks an administrative penalty to be assessed
20 against RESPONDENT for \$315,000.00.

22 **RIGHT TO HEARING**

23 On September 16, 2013, Henry Lau, Manager, authorized to accept service for James
24 M. Forbes was personally served with the Administrative Complaint. A copy of the
25 Administrative Complaint was also mailed to James M. Forbes via first-class mail on
26 September 16, 2013. The Administrative Complaint notified you that pursuant to the
27 provisions of section 42962(c) of the Public Resources Code and Government Code section
28 11500, you are entitled to a hearing to refute the allegations against you contained in the
Administrative Complaint.

1 On October 11, 2013, Gina Sharron, Attorney for Respondent, filed a Notice of Defense
2 and requested a hearing in this matter. A hearing was calendared for January 23 and 24,
3 2013, at 10:00 a.m. at the Department of Resources Recycling and Recovery (CalRecycle)
4 Office, 1001 I Street, 24th Floor, Conference Room 2410, Sacramento, California 95812. That
5 hearing has been continued to February 26th and 27th, 2014, 10:00 a.m., at the Department of
6 Resources Recycling and Recovery (CalRecycle) Office, 1001 I Street, 3rd Floor, Conference
7 Room 350, Sacramento, California 95812. It is not necessary to request a new hearing in
8 response to this Amended Administrative Complaint.

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

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13 Dated this 27th day of December, 2013.

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16 MARTHA PEREZ
17 Staff Counsel
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