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8
9 STATE OF CALIFORNIA

10 CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

11 In the matter of:

12 SHERMAN DONALD RAY

13
14 TPID NO: 1711203-01

15 RESPONDENT.
16

) ADMINISTRATIVE DECISION
) FOR WASTE TIRE HAULER
) ADMINISTRATIVE PENALTIES,
) PUBLIC RESOURCES CODE
) SECTION 42950, ET SEQ.

) AGENCY NO: 2012-011143-ADC

17 **INTRODUCTION**

18
19 The California Department of Resources Recycling and Recovery (CALRECYCLE)
20 served an Administrative Complaint for Waste Tire Hauler Administrative Penalties
21 (Administrative Complaint) and a Request for Hearing on SHERMAN DONALD RAY
22 (RESPONDENT), on April 19, 2013. RESPONDENT had 15 days from the date of service of
23 the Administrative Complaint to request a hearing. RESPONDENT did not file a Request for
24 Hearing. The matter shall be determined as a default pursuant to Title 14 of the California
25 Code of Regulations (CCR) section 18466 and Government Code section 11520.

26 The California Integrated Waste Management Board (CIWMB) is now CALRECYCLE.
27 CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public
28 Resources Code (PRC) section 40401(a)(1). CALRECYCLE takes action against

1 RESPONDENT based upon evidence and affidavits that may be used without any notice to
2 RESPONDENT.

3 **FACTUAL FINDINGS**

4 1. The Administrative Complaint was executed by MARTHA PEREZ, Staff Counsel,
5 acting in her official capacity.

6 2. Pursuant to PRC section 42951(a), "Every person who engages in the
7 transportation of waste or used tires shall hold a valid waste and used tire hauler registration,
8 unless exempt as specified in Section 42954."

9 3. Pursuant to PRC section 42952(a):

10 Except as provided in Section 42954, a person engaged in
11 transporting waste or used tires shall comply with all of the
12 following requirements:

13 (1) The person shall be registered as a waste and used tire hauler
14 with the department.

15 (2) The person shall not advertise or represent himself or herself as
16 being in the business of a waste and used tire hauler without being
17 registered as a waste and used tire hauler by the department.

18 4. Title 14 CCR section 18454(a) states, "Any person hauling 10 or more used or
19 waste tires shall apply for a waste tire hauler registration, unless exempt pursuant to Section
20 18451..."

21 5. On or around April 13, 2011, CALRECYCLE received a Waste Tire
22 Hauler/Storage Complaint Form from Mark Graham, Napa County Local Enforcement Grantee.
23 The complaint shows that on April 13, 2011, Mr. Graham observed a truck, license plate
24 number 4Y57296, with approximately 14 waste/used tires in the back of the vehicle. Mr.
25 Graham spoke with the driver of the vehicle, who identified himself only as "Tom", and
26 explained the state requirements regarding the transportation of waste or used tires. Mr.
27 Graham also provided the driver of the vehicle with CALRECYCLE's "Hauler Responsibility"
28 handout, the "CTL Manifest Guide," and handed him a business card. Mr. Graham further
indicated to the driver of the vehicle that the photos taken and a report would be forwarded to
CALRECYCLE.

1 6. On or around April 15, 2011, CALRECYCLE staff reviewed California
2 Department of Motor Vehicles (DMV) records and revealed that vehicle license plate number
3 4Y57296 is currently registered to Sherman Donald Ray, RESPONDENT.

4 7. On or around April 18, 2011, CALRECYCLE mailed an unregistered hauler letter
5 to the address of the registered owner of said vehicle. The letter informed the registered
6 owner of the vehicle that hauling ten (10) or more waste or used tires on a public roadway in
7 California cannot be done unless the hauler is "registered with CALRECYCLE or is exempt
8 from registration requirements." The letter also stated that should the registered owner of the
9 vehicle continue to haul ten (10) or more waste or used tires, "further enforcement action may
10 be deemed necessary."

11 8. On May 26, 2011, Mr. Graham observed the same truck, license plate number
12 4Y57296, with approximately 15 waste/used tires in the back of the vehicle. Mr. Graham
13 spoke with the same man (who previously identified himself as "Tom" on April 13, 2011)
14 regarding the waste/used tires in the back of the vehicle. "Tom" confirmed that he was the
15 same man, stated that he received a letter from the state about tire hauling, and stated that he
16 had registered to be a tire hauler with the state. Mr. Graham explained to "Tom" that until the
17 waste tire hauler registration card and decals arrived and were properly displayed, hauling a
18 load of 15 waste/used tires was improper. "Tom" indicated to Mr. Graham that he would not
19 haul any tires until the decals arrived.

20 9. On June 7, 2011, Mr. Graham again observed the same truck, license plate
21 number 4Y57296, with approximately 20 waste/used tires in the back of the vehicle and
22 without the proper placarding and decals displayed. On this day, Mr. Graham had a telephone
23 conversation with "Tom" regarding the waste/used tires in the back of the truck, vehicle license
24 plate number 4Y57296. "Tom" confirmed that he was the owner of the truck and that he was
25 the same person Mr. Graham spoke with on April 13, 2011 and May 26, 2011. During this
26 phone conversation, "Tom" stated that he was registered to haul tires with the state.

27 10. On or around June 7, 2011, this matter was referred to CALRECYCLE
28 enforcement. CALRECYCLE received a Waste Tire Hauler/Storage Complaint Form and a

1 memorandum from Mr. Graham which detailed the waste and used tire hauler violations on
2 April 13, 2011, May 26, 2011, and June 7, 2011 by RESPONDENT.

3 11. On or around May 10, 2012, CALRECYCLE received a hauler observation report
4 with photographs from Mr. Graham. The report and photos show that Mr. Graham again
5 observed the same truck, license plate number 4Y57296, with approximately 50 waste/used
6 tires in the back of the vehicle.

7 12. On or near September 14, 2012, CALRECYCLE received a Waste Tire
8 Hauler/Storage Complaint Form and accompanying photos from Mr. Graham. The complaint
9 and photos show that Mr. Graham again observed the same truck, license plate number
10 4Y57296, with approximately 10 or more waste/used tires in the back of the vehicle.

11 12 LEGAL CONCLUSIONS

13 13. RESPONDENT is in violation of PRC section 42951(a) which states, "Every
14 person who engages in the transportation of waste or used tires shall hold a valid waste and
15 used tire hauler registration, unless exempt as specified in Section 42954."

16 14. At no time between April 13, 2011 and September 14, 2012 was RESPONDENT
17 registered as a waste and used tire hauler in California, nor was RESPONDENT exempt from
18 registration as a waste and used tire hauler as provided in PRC section 42954.

19 15. RESPONDENT transported or allowed the transport of between 10-20
20 waste/used tires without holding a valid waste and used tire hauler registration on at least four
21 occasions, subjecting RESPONDENT to a \$2,000.00 penalty.

22 16. On at least one occasion, RESPONDENT transported or allowed the transport of
23 between 41-100 waste/used tires without holding a valid waste and used tire hauler
24 registration, subjecting RESPONDENT to a \$1,000.00 penalty.

25 17. On at least two occasions, RESPONDENT falsely represented himself as being
26 in the business of a used or waste tire hauler without in fact being registered as a used or
27 waste tire hauler by CALRECYCLE, subjecting RESPONDENT to a \$4,000.00 penalty.

28 18. No evidence of mitigation, extenuation or rehabilitation is offered.

1 **ORDER**

2 Good cause appearing, Complainant's motion to take action in accordance with the
3 provisions of Government Code Section 11520, subdivision (a) is granted.

4 **THE FOLLOWING ORDER** is hereby made:

5 RESPONDENT, SHERMAN DONALD RAY, is ordered to pay an administrative penalty
6 of \$7,000.00 to CalRecycle within 30 (thirty) days of the date of this Decision.

7
8 **RESPONDENT'S RIGHT TO FILE WRITTEN MOTION**

9 Pursuant to Government Code section 11520(c), RESPONDENT has a right to serve
10 CALRECYCLE with a written motion requesting that the decision be vacated and stating the
11 grounds relied on:

12 Within seven days after service on the respondent of a decision based on the
13 respondent's default, the respondent may serve a written motion requesting that the
14 decision be vacated and stating the grounds relied on. The agency in its discretion
may vacate the decision and grant a hearing on a showing of good cause. As used
in this subdivision, good cause includes, but is not limited to, any of the following:

- 15 (1) Failure of the person to receive notice served pursuant to Section 11505.
16 (2) Mistake, inadvertence, surprise, or excusable neglect.

17 *Gov't Code § 11520(c)*

18 This DECISION shall become effective on the date signed below.

19
20 Dated this 7 day of June 2013.

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