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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
15 TPID NO: 1711203-01

16 RESPONDENT.

} ADMINISTRATIVE COMPLAINT
FOR WASTE TIRE HAULER
ADMINISTRATIVE PENALTIES,
PUBLIC RESOURCES CODE
SECTION 42950, ET SEQ.

} AGENCY NO: 2012-011143-ADC

17
18 **INTRODUCTION**

19 This Administrative Complaint For Waste Tire Hauler Penalties is issued by the
20 California Department of Resources Recycling and Recovery (CALRECYCLE) to Sherman
21 Donald Ray (RESPONDENT) seeking \$7,000.00.

22 The California Integrated Waste Management Board (CIWMB) is now the California
23 Department of Resources Recycling and Recovery (CALRECYCLE). CALRECYCLE
24 succeeded to CIWMB's authority on January 1, 2010, pursuant Public Resources Code (PRC)
25 section 40401(a)(1). PRC section 42851(a) authorizes CALRECYCLE to issue an Accusation
26 to any person on whom civil liability may be imposed. This Administrative Complaint is so
27 issued based on the following facts.
28

1 **STATEMENT OF FACTS**

2 1. CALRECYCLE has authority to regulate and conduct enforcement actions
3 regarding Waste and Used Tire Haulers (haulers) within the State of California under PRC
4 section 42950 et seq. and attendant regulations contained in Title 14 of the California Code of
5 Regulations (CCR).

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 ALLEGATIONS OF SPECIFIC VIOLATIONS

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.

1 **PENALTIES**

2 18. CALRECYCLE's authority to assess administrative penalties against
3 RESPONDENT is set forth in PRC section 42962(c), which states:

4 In addition to the civil penalty which may be imposed pursuant to
5 subdivision (a), the board may impose civil penalties administratively in an
6 amount not to exceed five thousand dollars (\$5,000) for each violation of a
7 separate provision or for continuing violations for each day that violation
8 continues, on any person who intentionally or negligently violates any
9 permit, rule, regulation, standard, or requirement issued adopted pursuant
10 to this chapter. . .

11 Under PRC section 42962(c), RESPONDENT is subject to a separate administrative penalty of
12 up to \$5,000.00, for each occasion upon which RESPONDENT has hauled waste or used tires
13 without a valid Waste and Used Tire Hauler Registration.

14 19. CALRECYCLE may assess a penalty between \$100.00 and \$500.00 for each
15 count of unregistered hauling where the amount of tires hauled was between 10 and 20 tires,
16 and a penalty between \$500.00 and \$1,000.00 for each count of unregistered hauling where
17 the amount of tires hauled was between 41 and 100 tires. (Title 14 CCR section 18464.)

18 20. CALRECYCLE may assess a penalty between \$1,000 and \$2,000 for each count
19 of falsely advertising or representing himself or herself as being in the business of a waste or
20 used tire hauler without being registered as a waste or used tire hauler with CALRECYCLE.
21 (Title 14, CCR section 18464.)

22 21. As required by Title 14 CCR section 18465, in setting an appropriate
23 administrative penalty for RESPONDENT, CALRECYCLE has taken into consideration the
24 following factors:

- 25 (1) The nature, circumstances, extent, and gravity of the violation.
- 26 (2) Evidence that the violation was willful or negligent.
- 27 (3) The good or bad faith exhibited by the party.
- 28 (4) History of violation of the same or similar nature.
- (5) The extent to which the party has cooperated with the Department in
remediating or injury caused by his or her violation.

- 1 (6) The extent that the party has mitigated or attempted to mitigate any damage
2 or injury caused by his or her violation.
3 (7) Evidence of any financial gain resulting from the violation.
4 (8) Such other matters as justice may require.

5 22. Accordingly, CALRECYCLE hereby requests that an administrative penalty be
6 assessed against RESPONDENT in the sum of \$7,000.00.
7

8 **RIGHT TO HEARING**

9 You are hereby notified that pursuant to the provisions of 14 California Code of
10 Regulations section 18466 and Government Code section 11505 that you are entitled to a
11 hearing to refute the allegations against you contained in this ADMINISTRATIVE COMPLAINT
12 FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES. **If you wish to have a hearing**
13 **on this matter, you must complete and return the enclosed REQUEST FOR HEARING/**
14 **NOTICE OF DEFENSE to our Legal Office within 15 days of receipt of this Administrative**
15 **Complaint. Failure to complete and return the REQUEST FOR HEARING/NOTICE OF**
16 **DEFENSE within 15 days will be deemed a waiver of your right to a hearing.**

17 Pursuant to the above referenced Public Resources Code and Government Code
18 sections, discovery requests by any party must be made within 30 days after the service of this
19 ADMINISTRATIVE COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE
20 PENALTIES.
21

22 Dated this 17th day of April, 2013.
23

24
25 
26 **MARTHA PEREZ**
27 **Staff Counsel**
28

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:

REQUEST FOR A HEARING/NOTICE OF DEFENSE

AGENCY NO: _____ - _____ -ADC

TPID NO: _____

RESPONDENTS.

I, _____, in the above-entitled proceeding, acknowledge receipt of a copy of the _____
(Fill in full title of Statement of Issues or Administrative Complaint [Accusation].)

I hereby:

() Request a hearing.

The basis for my request is the following:

Further, I hereby:

() Object to the Accusation for failure to state acts or omissions upon which the agency may proceed.

() Object to the form of the Accusation in that the transaction cannot be identified or a defense prepared.

() Present new matter by way of defense.

- 1 () Admit the Accusation in whole or in part.
2 () Object to the Accusation on the basis that compliance with the requirements of a
3 regulation would result in a material violation of a regulation enacted by another
4 department affecting substantive rights.

5 All correspondence concerning this proceeding should be sent to Respondent at the
6 following address:

7 (If you are represented by an attorney, all correspondence concerning this matter will be sent
8 to the attorney.)

9 Address: _____

10 City: _____

State: _____

Zip Code: _____

11 Telephone: _____

Email: _____

12 I hereby agree to accept service of all correspondence by email.

13 Signature: _____

14 Date: _____

15 Please send to:

16 CalRecycle Legal Office
17 Attention: Gloria Bell
18 P.O. Box 4025, MS 24-B
19 Sacramento, CA 95812-4125
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DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • WWW.CALRECYCLE.CA.GOV

RIGHT TO A HEARING

You are hereby notified that that you are entitled to request a hearing to refute the allegations against you contained in the ADMINISTRATIVE COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES (Administrative Complaint). The enclosed REQUEST FOR HEARING/NOTICE OF DEFENSE form (Notice of Defense), when signed by or on behalf of the Respondent and returned to the Department of Resources Recycling and Recovery (CalRecycle) within 15 days of receipt of the Administrative Complaint , will acknowledge service of the Administrative Complaint and constitute a notice of defense. **If you wish to have a hearing on this matter, you must complete and return the enclosed Notice of Defense to the address indicated on the form within 15 days of receipt of the Administrative Complaint. Failure to complete and return the Notice of Defense within 15 days will be deemed a waiver of your right to a hearing.**

If you request one, a hearing will be conducted before a Hearing Officer, a CalRecycle employee that does not work on or advise the tire programs, at one of our offices or other locations throughout the State, upon the charges made in the Administrative Complaint.

Please refer to the attached document entitled "Representing Yourself in a CalRecycle Tire Hearing" for further guidance on hearing procedures and basic information on representing yourself at a CalRecycle tire hearing.



1. You are entitled to review the evidence being used against you and request a list of witnesses by applying to CalRecycle's attorney.
2. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you.
3. You are entitled, upon request, to be provided with the assistance of an interpreter, if you or your witnesses do not proficiently speak or understand the English language. If you require the assistance of an interpreter, timely notice of this fact should be given to CalRecycle's Hearing Clerk, so appropriate arrangements can be made. Generally, the cost is paid by the party requesting an interpreter, however, the Hearing Officer may order CalRecycle to pay if you cannot.
4. You are hereby notified that, pursuant to the provisions of 14 CCR section 17050 et seq., the violations alleged against you may cause you to be placed on CalRecycle's Unreliable Contractors, Subcontractors, Borrowers, and Grantees list. Placement on this list may prohibit you from obtaining contracts, loans, or grants from CalRecycle for up to three years.
5. Continuances are not favored. If you need a continuance, immediately submit a written request to Hearing Clerk- TIR, CalRecycle Legal Office, 801 K Street, MS 19-03, Sacramento, California 95814, by fax to 916-322-8768, or by e-mail to HearingClerk.TIR@CalRecycle.ca.gov. Your written request for a continuance will be forwarded to the Hearing Officer for decision. Requests without good cause will be denied.



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CALIFORNIA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

Representing Yourself in a CalRecycle Tire Hearing

CalRecycle is providing this information to help you prepare for your administrative hearing. This information is not a substitute for having an attorney. We hope this information will help you better understand the process and prepare for the hearing.

How Do I Request A Hearing?

You have received this because you have been served with either a Statement of Issues or Administrative Complaint (Accusation) issued by the Waste Permitting, Compliance, and Mitigation Division of the Department of Resources Recycling and Recovery (CalRecycle). You may request a hearing to have a Hearing Officer hear your side of the matter before your permit or registration is denied, suspended or revoked, or before penalties are assessed against you. If you do not request a hearing, a Default Decision will be issued ordering the denial, suspension, or revocation of your permit or registration or ordering you to pay the penalty amount requested in the Accusation. If you wish to request a hearing, you must complete and send the Request For Hearing / Notice Of Defense to the address designated on that form. On that form you must state the reason you are requesting a hearing. You must provide enough information for CalRecycle to understand the facts, defenses, and other issues you hope to have addressed at the hearing.

What Will My Hearing Be Like?

Your hearing will be very similar to a trial in court, with witnesses, exhibits and rules of evidence. A Hearing Officer will preside under a delegation of authority from CalRecycle's director. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. However, an attorney may be better able to present your side.

When the hearing begins, each side may present an opening statement. This tells the Hearing Officer what that side intends to prove. Each side can then offer relevant evidence to prove its case.

Evidence can be testimony taken under oath at the hearing or it can be certain kinds of documents, such as business records. You must prove that the documents you submit are authentic. This means that you must be able to show that a document actually is what you say it is; usually this is accomplished through witness testimony.

CalRecycle usually presents its evidence first. CalRecycle's attorney will ask its witness questions (direct examination). When the attorney is finished, it will be your turn to ask questions of that witness (cross-examination). CalRecycle's attorney will have a second chance to ask questions (redirect) and then you will have a second chance (recross).

After CalRecycle has presented its witnesses, it will be your turn. You may make a statement yourself and call your witnesses. As you finish with each of your witnesses (and your testimony), the CalRecycle attorney will cross-examine. As stated before, you will have a second chance to ask questions of each witness. Even if you choose not to testify, CalRecycle's attorney may cross-examine you.

After you have presented your case, CalRecycle may call rebuttal witnesses. Rebuttal witnesses may only testify to issues you brought up in your case. If CalRecycle calls rebuttal witnesses, you may be allowed to call additional witnesses to address the issues discussed by rebuttal witnesses. Few hearings involve rebuttal witnesses.

Remember: Before the hearing closes, you must submit all the evidence you want the Hearing Officer to consider.

After all testimony has been heard, each side can make a closing argument. Usually CalRecycle goes first; you go next. The party that goes first has the opportunity to make the last comments.

Closing argument is your chance to sum up the evidence and tell the Hearing Officer why you should prevail in your case. It can address only those facts brought out in testimony of witnesses or in documents received into evidence. In some cases, the Hearing Officer may want the parties to submit written, instead of oral, argument. If so, a schedule will be set up for the written arguments.

What Do I Need To Prove?

If a license, permit or registration for which you applied is being denied, the burden is on you to prove your side. You must prove you meet the qualifications for the license, permit or registration.

If you already have a license, permit or registration against which CalRecycle is imposing discipline, CalRecycle has the burden of proof. This means that CalRecycle must establish that you violated the laws or regulations charged in the Accusation or Statement of Issues.

Even when CalRecycle has the burden of proof, you should prepare to offer evidence of your good character and conduct, mitigation, rehabilitation and evidence refuting the charges, as appropriate.

May I See CalRecycle's Evidence Against Me?

CalRecycle's evidence is also called discovery. You are entitled to request discovery of the information CalRecycle has to prove the charges made against you or enable you to mount a defense against them. A Request For Discovery form is available on CalRecycle's website, or may be obtained by contacting CalRecycle's attorney or Hearing Clerk. Simply send the completed Request for Discovery to CalRecycle's attorney if you wish to obtain a copy of the investigative files and any other documents or relevant information CalRecycle has regarding your case. You may have to pay for copies. You also have a right to receive a witness list.

Generally, you must request "discovery" within 30 days of receiving the initial Accusation or Statement of Issues, or within 15 days of any supplemental Accusations or Statements of Issues. In some cases, these times may be shorter. Be sure to read the documents you receive to verify the time you have to request discovery.

CalRecycle has the same rights to get information from you. You may also be served with, or have included in the paperwork received already, a Request For Discovery on behalf of CalRecycle. You must make copies of the requested information available to CalRecycle by the date stated in the Request for Discovery.

What Kind of Evidence Will I Need For the Hearing?

Depending on your case, you may want to bring witnesses who know about the issues involved with the charges against you. If there are documents, such as contracts, business records or checks that help prove your side, try to bring the original and three copies. You may bring photographs or other items that are relevant to your defense. Items you want to be considered must be left with the Hearing Officer. Generally, you may substitute copies of those items in place of the originals.

Documents and photographs must be authenticated. This is typically done through witness testimony, during which your witness, or yourself, if you choose to testify, will need to explain to the Hearing Officer what the document is, how the witness reliably knows what it is, and how it is relevant to your case.

How Do I Get Records From a Business?

If you are a party to a hearing, you have the right to subpoena from individuals, businesses and government agencies relevant records or other things to be produced at the hearing. CalRecycle has a subpoena form available for download on its website, and a copy may also be mailed or emailed to you upon request. You must arrange to pay any required fees and have someone else serve the subpoenas. Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

How Do I Get a Witness to Come to the Hearing?

A witness can come voluntarily to the hearing. However, a subpoena protects your right to have that person present. You may obtain the subpoena form by downloading it from CalRecycle's website, or by requesting that a copy be mailed or emailed to you. You must use the subpoena to compel the attendance of persons whose testimony is relevant to your case, unless that person agrees to appear voluntarily on your behalf. Witnesses are entitled to paid reimbursement of their time. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10. You must arrange to pay required fees and have someone else serve the subpoenas. Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

Is It OK to Bring Letters Instead of Witnesses?

Some letters and other documents may be admitted in evidence for limited purposes, but generally it is better to bring witnesses who can help present your side of the case and answer any questions raised. The Hearing Officer will not speak with witnesses, except at the hearing itself. If you do choose to offer letters, declarations or other documents, make sure you understand what you must do to get them admitted in evidence. (For instance, see the discussion on authenticating documents above.)

Remember: This hearing is your chance to tell the Hearing Officer your side. It is important to have your witnesses present at the hearing to testify.

If I Forget Something, Can I Send It Later to the Hearing Officer?

Your chance to present evidence is at the hearing. Only in rare cases will the Hearing Officer allow you to send evidence later.

Is There a Way To Settle This Without a Hearing?

Cases often settle without going to hearing. Contact the CalRecycle attorney to see if you can work something out.

What if I Can't Be There On The Day Set?

You must show good cause to change a hearing date. If you cannot attend on the date and at the time shown, you must contact CalRecycle as soon as you know of the problem. To request a change of date, you must file a written request with the Hearing Clerk in CalRecycle's Legal Office, with a copy to CalRecycle's attorney, explaining the reasons for the change. The sooner you make your request, the more likely it will be granted.

Remember: You must file a timely Notice of Defense in order to have a hearing.

Where Will The Hearing Take Place?

Hearings are scheduled at the CalRecycle office located closest to your residence or the location at which the transactions or events providing the basis for the Accusation or Statement of Issues occurred. CalRecycle's office locations are in Sacramento, Los Angeles, Riverside and San Diego. In some circumstances, CalRecycle may conduct a hearing at a location other than a CalRecycle office. If you feel that a different location would work better for you please contact CalRecycle's Hearing Clerk as early as possible to request a location change. CalRecycle reserves the right to deny the request upon consideration of issues including, without being limited to, the ability of CalRecycle staff and the Hearing Officer to travel to the location, and any fees that may be incurred for travel plans already made by CalRecycle staff, the Hearing Officer, and CalRecycle's witnesses.

What if I Don't Attend?

If you request a hearing and do not attend the hearing, CalRecycle can still proceed with the case against you. (If you do not request a hearing, CalRecycle will issue a Default Decision against you.)

What if I Need An Interpreter?

If you or a witness need a sign or language interpreter, immediately contact the CalRecycle attorney or Hearing Clerk so that a certified interpreter can be provided. Normally, it is not sufficient to bring a friend or relative to interpret for you.

Will The Hearing Location Be Accessible To People With Disabilities?

Hearing locations are to be accessible to persons with disabilities. However, check in advance with CalRecycle's Hearing Clerk to assure accessibility. In addition, if you know persons who plan to attend have special needs that require reasonable accommodation, please contact CalRecycle's Hearing Clerk as soon as possible, so arrangements can be made.

What Is The Contact Information For CalRecycle's Hearing Clerk?

All tire hearing papers must be filed with the Hearing Clerk in CalRecycle's Legal Office at the street address, fax number or email address below.

Hearing Clerk- TIR
CalRecycle Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
916-327-0089
916-322-8768 FAX
HearingClerk.TIR@CalRecycle.ca.gov

Name: _____
 Address: _____
 Telephone: _____
 Fax (optional): _____
 Email (optional): _____

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of: _____) **REQUEST FOR DISCOVERY**
 _____)
 _____) (Government Code Section 11507.6)
 _____) **RESOURCES CODE SECTION 42960**
 _____)
 TPID NO: _____) **AGENCY NO: _____ - _____ - _____**
 _____)
 _____)

TO: The Department of Resources Recycling & Recovery ("CALRECYCLE"), under Government Code Section 11507.6, I, _____ request the following:

1. The names and addresses of all witnesses to the extent known by you, including, but not limited to, those you intend to call to testify at the hearing, and
2. An opportunity to inspect and copy all of the following matters under Government Code Section 11507.6(a)-(f) that are in your possession, custody or control:
 - (a) A statement of any person, or regarding any entity named in the initial pleading when it is claimed in the pleading that any respondent's act or omission regarding this person or entity is the basis for this administrative proceeding;
 - (b) A statement pertaining to the subject matter of the pleading made by any party to another party or person;

(c) Statements of witnesses proposed to be called to testify and of other persons having personal knowledge of the acts, omissions, or events that are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including but not limited to reports and things that you propose to offer in evidence;

(e) Any other writing or thing that is relevant and would be admissible in evidence.

(f) Investigative reports made by or on behalf of you or any other party pertaining to the subject matter of the proceedings, to the extent that these reports:

(1) Contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions, or events that are the basis for the proceedings, or

(2) Reflect matters perceived by the investigator in the course of his or her investigation, or

(3) Contain or include by attachment any statement or writing described in (a) to (e) above, or a summary thereof.

3. This request is not intended to require inspection, copying or production of any writing which is privileged from disclosure by law or protected as attorney's work product.

4. This is a continuing request for discovery of any of the above stated matters that may come into your possession at any time before the hearing.

Specifically, in response to the discovery requested above, pursuant to Government Code 11507.6, I request the following evidence relevant to this matter:

Signature: _____

Date: _____

Please send completed form to:

**CalRecycle Legal Office
Attention: Gloria Bell
P.O. Box 4025, MS 24B
Sacramento, Ca 95812-4125**



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CALIFORNIA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

CalRecycle Tire Hearing Subpoena Information

CalRecycle Tire Hearing Subpoenas cannot be used in CalRecycle Division of Recycling hearings.

Can I subpoena witnesses to testify at the hearing?

Subpoenas may be issued to require witnesses to attend and testify at CalRecycle tire hearings. Witnesses are entitled to payment for their time and travel. Please see "I have received a subpoena to be a witness in a case. Can I be paid?" below.

I want to receive copies of records held by someone else for my administrative hearing. How do I get them?

You are entitled to request discovery of the information CalRecycle has to prove the charges made against you or enable you mount a defense against them. Please see *Representing Yourself in a CalRecycle Tire Hearing* for more information.

You may also subpoena records from individuals, businesses, and government agencies to be produced at your hearing. A subpoena duces tecum means "bring with you under penalty of law" and compels the party served to bring records that they have to the hearing and to verify that the documents or records have not been altered. That may be done by declaration or by direct testimony, as you require.

The form on the internet is not signed. Can I sign it?

Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer.

Hearing Clerk- TIR
CalRecycle Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
916-327-0089
916-322-8768 FAX
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What laws should I look at before sending a subpoena or a subpoena duces tecum?

Code of Civil Procedure sections 1985-1987

Government Code sections 11450.05-11450.50, 68092.5-68093, and 68096.1-68097.10.

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I have received a subpoena to be a witness in a case. Can I be paid?

Yes, according to Government Code Sections 11450.05 and 11450.50, you may request witness fees and mileage actually traveled both ways. You may request payment in advance of the hearing from the party at whose request the subpoena or subpoena duces tecum is issued, which appears in item 1 of the CalRecycle Tire Hearing Subpoena form. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.