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8 **STATE OF CALIFORNIA**

9 **DEPARTMENT OF RESOURCES RECYCLING & RECOVERY**

10
11 In the Matter of:

12 **GILTON SOLID WASTE**
13 **MANAGEMENT, INC.,**

14 **TPID NO. 1001979-01**

15 **RESPONDENT.**

Case No. IH13-010-TIR.

**STIPULATION FOR WASTE TIRE
HAULER ADMINISTRATIVE
PENALTIES**

**PUBLIC RESOURCES CODE
SECTION 42950, ET SEQ.**

Agency No: 2013-011148-ADC

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19 **INTRODUCTION AND PROCEDURAL HISTORY**

20 The California Integrated Waste Management Board (CIWMB) is now the
21 Department of Resources Recycling and Recovery (CALRECYCLE). CALRECYCLE
22 succeeded to the CIWMB's authority on January 1, 2010, pursuant to Public Resources
23 Code (PRC) section 40401(a)(1). The parties to this STIPULATION FOR WASTE TIRE
24 HAULER ADMINISTRATIVE PENALTIES (hereafter, "Stipulation") are CALRECYCLE
25 and Gilton Solid Waste Management, Inc. (GILTON). In order to avoid the time,
26 expense, and uncertainties attendant with litigation, CALRECYCLE and GILTON hereby
27 stipulate to the following Factual Findings, Conclusions of Law, and Order set forth in
28 this Stipulation.

1 On July 29, 2013, an ADMINISTRATIVE COMPLAINT FOR WASTE TIRE
2 HAULER ADMINISTRATIVE PENALTIES (hereafter, "Administrative Complaint") for
3 \$142,500.00 was issued to Respondent, GILTON. On August 13, 2013, Mr. Dennis
4 Shuler, representative for GILTON, filed a REQUEST FOR HEARING/NOTICE OF
5 DEFENSE with the CalRecycle Legal Office. A hearing was scheduled for November
6 7-8, 2013, at 9:00 a.m. at the CalRecycle Headquarters Office, 1001 I Street, 18 Floor,
7 Conference Room 1810, Sacramento, California 95812. On September 24, 2013, the
8 Parties met in person to discuss possible settlement of this matter.

9 In order to continue settlement discussions in this matter, CALRECYCLE and
10 GILTON (hereafter, referred to collectively as "the Parties") submitted a joint request for
11 continuance on October 4, 2013. A NOTICE OF TELECONFERENCE ON REQUEST
12 FOR CONTINUANCE & ORDER TO UPDATE OFFICIAL RECORD was scheduled for
13 October 11, 2013, at 3:00 p.m. (hereafter, "October 11 teleconference"). During the
14 October 11 teleconference, Hearing Officer, Thomas W. Vallance, granted the request
15 for continuance and an "ORDER ON CONTINUANCE & FINAL RESOLUTION
16 PROCESS" and "NOTICE OF TELEPHONIC STATUS CONFERENCE" was issued on
17 October 14, 2013. The continuance was granted, no new date was set for the hearing,
18 and a follow up telephonic status conference was scheduled for November 7, 2013, at
19 2:00 p.m. to discuss the status of settlement negotiations. On November 7, 2013, the
20 Parties notified Hearing Officer Valance that a settlement of the matter was progressing,
21 but the Parties needed more time to finalize a formal agreement. A follow up telephonic
22 conference was scheduled for December 19, 2013, at 2:00 p.m.

23 The Parties hereby submit this Stipulation as final resolution of this matter. In
24 submitting this Stipulation, the Parties understand, acknowledge, and agree to the facts
25 and terms of Stipulation as set forth herein.

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1 6. On January 4, 2013, CALRECYCLE issued a letter to Dennis Shuler,
2 Environmental Affairs Manager for GILTON. The letter informed GILTON that the facility
3 was in violation of PRC Section 42824 and Title 14 CCR section 18420(a) because it
4 was operating as a Major Waste Tire Facility without having obtained a Major Waste
5 Tire Facility permit. GILTON was notified that it was "greatly exceeding" the 150-tires-
6 per-day annual limit set forth in PRC section 42808, and thus, was required to possess
7 a separate valid Waste Tire Facility permit. GILTON was given 30 days to bring the
8 facility into compliance by reducing the number of tires received to less than 150-tires-
9 per-day averaged on an annual basis, and was provided notice that failure to bring the
10 facility into compliance within 30 days would subject GILTON to CALRECYCLE taking
11 direct enforcement action. The letter also specifically informed GILTON that manifesting
12 violations had occurred because GILTON had not properly documented all tires arriving
13 or leaving the facility using CTL forms, and these violations were referred to
14 CALRECYCLE's Waste Tire Enforcement Section.

15 7. On or around January 9, 2013, Gerri Stryker, Supervisor of CalRecycle's
16 Tire Enforcement Section-Central Unit, and Keith Cambridge, Supervisor of
17 CalRecycle's Tire Hauler Compliance Unit had a phone conversation with Mr. Shuler.
18 Ms. Stryker discussed with Mr. Shuler the issues regarding the overage of waste tires at
19 the facility. Mr. Cambridge discussed with Mr. Shuler the issues regarding the improper
20 documentation of all waste/used tires arriving or leaving the facility. Ms. Stryker and Mr.
21 Cambridge explained to GILTON that GILTON was not allowed to transport waste/used
22 tires back to the facility until GILTON was under the waste tire authorized storage limit.
23 Mr. Cambridge also explained that GILTON's manifest forms need to be complete when
24 they are submitted to CALRECYCLE and that GILTON had not submitted any manifest
25 forms showing waste tire deliveries to the facility. Mr. Shuler stated that all the
26 waste/used tires that were picked up by GILTON were delivered to the facility and that
27 he was unaware that GILTON needed to document deliveries on the manifest forms.
28 Mr. Cambridge instructed Mr. Shuler how to properly complete a manifest form and

1 advised Mr. Shuler that all waste/used tires picked up and/or delivered must be
2 documented and shown on manifest forms.

3 8. On January 22, 2013, Mr. Cambridge conducted an audit of GILTON's
4 manifest forms for the time period from July 1, 2012 through December 31, 2012. From
5 this audit, Mr. Cambridge determined that at least 283 loads of waste tires delivered to
6 the facility were not properly manifested in accordance with the manifesting
7 requirements set forth in Title 14 CCR sections 18459, 18459.2.1, and 18460.2 for
8 waste and used tire haulers, waste and used tire generators, and waste and used tire
9 end-use facilities. GILTON failed to submit accurate and complete manifest forms
10 showing all waste/used tires that were delivered to the facility.

11 9. On January 30, 2013, Inspector Weber and Inspectors Michael Payan and
12 Cathy Blair of CALRECYCLE's Tire Hauler Compliance Unit performed a follow-up
13 inspection of the facility. As documented in Tire Inspection Report Number IW-
14 1004733, Inspectors Payan and Blair examined GILTON's CTL forms for the last three
15 years to ensure compliance with manifesting requirements. Inspectors Payan and Blair
16 found that some of GILTON's CTL forms contained errors and omissions, such as, a
17 failure to properly manifest pick-ups and deliveries of waste and used tires from
18 GILTON to other facilities or from generators to GILTON, and failure to accurately
19 complete information on CTL forms indicating the load type, i.e. weight in tons or whole
20 tire counts. Inspectors Payan and Blair instructed Mr. Shuler how to properly complete
21 the CTL form to accurately reflect pickups and deliveries of all waste and used tires.

22 10. As documented in SWIS Inspection Report No. 50-AA-0012, January 30,
23 2013, all waste tires that were previously observed during the December 10, 2012
24 inspection (approximately 35,000) had been removed from the facility. According to
25 statements made by Mr. Shuler, the waste tires had been removed from the facility and
26 delivered to Forward Landfill, located in Stockton, CA, using GILTON's vehicles.
27 Inspectors reviewed the CTL forms provided by GILTON showing the deliveries to
28 Forward Landfill and found that the CTL forms failed to show the pick-ups from

1 GILTON. Inspector Blair informed Mr. Shuler that a CTL form is required to show pick-
2 ups from the facility for every delivery to another location. Additionally, Inspectors Payan
3 and Blair informed Mr. Shuler of the Title 14 CCR sections 18461(b) and 18462(c)
4 requirements to use CalRecycle Form 204, *Unregistered Hauler & Comprehensive Trip*
5 *Log Substitution Form*, any time unregistered haulers make deliveries of waste or used
6 tires to the facility.

7 11. On April 5, 2013, Mr. Cambridge performed an audit of GILTON's CTL
8 forms to verify GILTON's compliance with the manifesting requirements set forth in PRC
9 section 42961.5 and Title 14 CCR sections 18449 et seq. Mr. Cambridge found that
10 during the time period from January 30, 2013 to April 5, 2013, GILTON submitted seven
11 CTL forms; two of the seven CTL forms contained errors or omissions, equating to a
12 29% error rate.

13 STIPULATED CONCLUSIONS OF LAW

14 The Parties stipulate to the following conclusions of law:

15 12. GILTON did not comply with PRC section 42961.5, which requires a
16 generator of waste or used tires, a waste or used tire hauler, or the operator of a waste
17 facility to complete a manifest form that contains all of the information, including, but not
18 limited to, "an accurate measurement of the number of tires being shipped, the type or
19 types of the tires, the date the shipment originated, and the origin and intended final
20 destination of the shipment."

21 13. GILTON failed to properly manifest at least 283 loads of waste/used tires
22 in accordance with the manifesting requirements set forth in Title 14 CCR sections
23 18459, 18459.2.1, and 18460.2 for waste and used tire haulers, waste and used tire
24 generators, and waste and used tire end-use facilities.

25 14. GILTON did not comply with Title 14 CCR sections 18459, 18459.2.1, and
26 18460.2, which require that a hauler, "complete a new Manifest Form for each pick-up
27 or delivery of any used or waste tires in accordance with the directions on the form" and
28 "submit the completed [Manifest] Form to the Department [CalRecycle]." GILTON failed

1 to properly complete a new manifest form for each pick-up and delivery of waste or
2 used tires to and from the facility.

3 **STIPULATED ORDER**

4 15. GILTON and CALRECYCLE stipulate to the following terms and
5 conditions in full and complete settlement of this matter.

6 16. Pursuant to the terms and conditions of this Stipulation, and subject to the
7 limitations hereunder, GILTON stipulates to an administrative penalty against GILTON,
8 and in favor of CALRECYCLE, in the sum of one hundred thousand dollars
9 (\$100,000.00), for the violations set forth in this Stipulation. Payment of the penalty
10 shall be satisfied in the following manner:

11 (a) GILTON shall pay thirty thousand dollars (\$30,000.00) to CALRECYCLE
12 in accordance with the following:

- 13 i. GILTON shall pay to CALRECYCLE the initial sum of fifteen
14 thousand dollars (\$15,000.00) on or before the 30th day after the
15 effective date of the Administrative Decision issued pursuant to this
16 Stipulation.
- 17 ii. GILTON shall make monthly payments to CALRECYCLE of twelve
18 hundred and fifty dollars (\$1,250.00), beginning on or before the
19 30th day after the effective date of the Administrative Decision
20 issued pursuant to this Stipulation, for a consecutive 12-month
21 period, until the total amount of said payments, together with the
22 initial fifteen thousand dollar (\$15,000.00) payment, totals thirty
23 thousand dollars (\$30,000.00).
- 24 iii. All payments shall be made to CALRECYCLE, Attn: Esther
25 Gallegos, at P. O. Box 4025, Sacramento, CA 95812-4025, or to
26 such other person and/or place as CALRECYCLE or its agent may
27 from time to time designate in writing.
- 28

1 iv. If any payment by GILTON is not mailed to CALRECYCLE by the
2 due date, or a date later issued by CALRECYCLE, and if GILTON
3 fails to cure the missed payment(s) within twenty (20) days of said
4 missed payment, GILTON shall be found in partial default of the
5 Stipulation.

6 (b) GILTON shall pay an additional ten thousand dollars (\$10,000.00) to
7 CALRECYCLE in accordance with the following:

8 v. If GILTON fails to comply with any of the waste tire storage or
9 waste tire hauler laws set forth in PRC sections 42800 et seq.,
10 42950 et seq., or attendant regulations contained in Title 14 CCR,
11 or if GILTON fails to abide by any of the terms or conditions
12 contained in this Stipulation, GILTON must immediately pay an
13 additional ten thousand dollars (\$10,000.00) to CALRECYCLE.

14 (c) Sixty thousand dollars (\$60,000.00) of this administrative penalty shall be
15 suspended and stayed for a period of five (5) years. The stayed penalty shall be
16 deemed terminated and shall not be paid by GILTON to CALRECYCLE following the
17 five-year period absent a default as described below, or a violation of the
18 aforementioned waste tire laws and regulations.

19 i. **Default:** GILTON is in default of this Stipulation if GILTON fails to
20 comply with any of the terms and conditions set forth in this
21 Stipulation, unless otherwise specified. In the event that
22 CALRECYCLE discovers a default of this Stipulation,
23 CALRECYCLE shall notify GILTON by issuing a *Notice of Default*.
24 GILTON will have thirty (30) days from the date of issuance of the
25 *Notice of Default* to respond to CALRECYCLE's allegations and
26 provide evidence refuting CALRECYCLE's claim of default.
27 CALRECYCLE will review all counterarguments and evidence
28 provided by GILTON and will make a determination as to whether a
 default occurred, and if appropriate, shall issue a Supplemental

1 Administrative Decision ("Supplemental Decision") regarding any
2 remaining penalties due. GILTON may appeal CALRECYCLE's
3 determination and subsequent Supplemental Decision within thirty
4 (30) days of the issuance of the Supplemental Decision; any such
5 appeal shall be heard by CALRECYCLE's Director, or an agent
6 designated by the Director.

7 ii. **Partial Default:** If GILTON is in partial default of this Stipulation
8 and is ordered to pay a partial default fine, and fails to do so within
9 30 days, the failure shall constitute a default of this Stipulation and
10 the remaining abeyance amount of sixty thousand dollars
11 (\$60,000.00) shall become immediately due and payable.

12 17. GILTON representative, Dennis Shuler, Environmental Affairs Manager,
13 shall attend a one-time mandatory training class, offered by CALRECYCLE staff. The
14 one-time mandatory training class will provide the following: (1) an explanation and
15 instructions on how to properly complete CTL forms for all waste/used tires picked up or
16 delivered, (2) how to document other information on CTL forms, (3) an overview of the
17 waste tire laws/regulations, and (4) information and instruction on the submittal of CTL
18 forms via the Electronic Data Transfer (EDT) web method.

19 18. No later than one calendar month after the effective date of the
20 Administrative Decision issued pursuant to this Stipulation, GILTON shall begin using
21 the EDT web reporting method for all CTL forms completed and submitted from
22 GILTON to CALRECYCLE.

23 19. GILTON shall submit all CTL receipts to CALRECYCLE within thirty (30)
24 days from the date of the pickup or delivery of tires, for a period not to exceed one
25 calendar year from the date this Stipulation is signed. At the expiration of the calendar
26 year period, GILTON will be required to submit CTL forms within ninety (90) days, as
27 specified in Title 14, CCR 18459.2.1(a).
28

1 20. GILTON shall maintain a manifest error rate of 7% or less, effective
2 January 1, 2014, until the end of the five-year abeyance period. The 7% manifest error
3 rate shall be based on a sample size of a six-month accumulation of manifest forms.

4 21. GILTON shall comply with all waste tire storage and waste tire hauler laws
5 set forth in PRC section 42800 et seq., PRC section 42950 et seq., and attendant
6 regulations in Title 14, CCR; failure to comply with any waste tire laws set forth in PRC
7 sections 42800 et seq., 42950 et seq., or attendant regulations in Title 14, CCR will
8 result in immediate suspension of GILTON's hauler registration for a period not to
9 exceed three (3) calendar months.

10 22. GILTON shall abide by all of the terms and conditions set forth in this
11 Stipulation; failure to abide by any of the terms and conditions set forth in this
12 Stipulation shall result in immediate suspension of GILTON's hauler registration for a
13 period not to exceed three (3) calendar months.

14 23. **Additional Inspections:** If at any time during the abeyance period
15 CALRECYCLE determines that GILTON has violated any of the waste tire laws, or the
16 terms set forth in this Stipulation, CALRECYCLE shall inspect the facility at an
17 increased frequency, at least monthly, until GILTON remedies the violations and brings
18 the facility into compliance. GILTON shall grant access for these additional inspections
19 and shall reimburse CALRECYCLE for the cost of those inspections. Costs of the
20 inspection includes time preparing for inspection, travel to and from the facility, and time
21 spent preparing and writing the inspection report, at the same amounts that are
22 determined annually and approved for enforcement agents to be charged by the
23 department.

24 24. **Additional Terms/Conditions:** On or before one calendar year from the
25 effective date of the Administrative Decision issued pursuant to this Stipulation, GILTON
26 shall apply for a Minor Waste Tire Facility permit. GILTON's application for a Minor
27 Waste Tire Facility permit shall comply with all attendant regulations set forth in Title 14
28 CCR Section 18431 et seq.

1 (a) The application for a Minor Waste Tire Facility permit shall include
2 verification that all applicable local, State, and federal permits and
3 approvals have been acquired, as well as include the following
4 CALRECYCLE forms: (1) Waste Tire Facility Permit Application, (2)
5 Operation Plan, (3) Environmental Information, and (4) Emergency
6 Response Plan. GILTON must submit an original and two copies of the
7 completed forms to CALRECYCLE. Within 30 days of receipt,
8 CALRECYCLE will either accept or reject the application. Within 180 days
9 (in most cases) of accepting a completed application, CALRECYCLE will
10 issue or deny the Minor Waste Tire Facility permit.

11 25. Nothing shall be implied in this Stipulation that shall preclude
12 CALRECYCLE from using any enforcement mechanism, whether administrative, civil, or
13 criminal, should GILTON commit future violations of waste tire storage laws or waste
14 tire hauler laws.

15 26. No covenant, promise, term, condition, breach, or default of, or under this
16 Stipulation shall be deemed to have been waived except as expressly so stated in
17 writing by CALRECYCLE. A waiver by CALRECYCLE of any breach or default by
18 GILTON under this Stipulation shall not be deemed a waiver of any proceeding or
19 subsequent breach or default.

20 27. GILTON has freely and voluntarily entered into this Stipulation and has
21 been afforded the opportunity to seek and consult with counsel prior to entering into this
22 Stipulation. It is expressly understood and agreed that no representations or promises
23 of any kind, other than as contained herein, have been made by any party to induce any
24 other party to enter into this Stipulation, and that said Stipulation may not be altered,
25 amended, modified or otherwise changed except by a writing executed by each of the
26 Parties hereto. The Parties hereto agree to execute and deliver any and all documents
27 and to take any and all actions necessary or appropriate to consummate this
28 STIPULATION and to carry out its terms and provisions.

1 28. Except as expressly provided herein, GILTON waives the right in the
2 entitled matter to a hearing, any and all appeals, and any and all rights that may be
3 afforded pursuant to the PRC, the Administrative Procedure Act, or any other provision
4 of law regarding the express provisions of this Stipulation.

5 29. The terms of this Stipulation shall be binding upon the Parties and inure to
6 the benefit of their representative, successors, heirs, and assigns.

7 30. This Stipulation and the Administrative Decision to be issued constitute
8 the entire understanding of the Parties concerning the settlement of this proceeding.
9 There are no restrictions, promises, warranties, covenants, undertakings, or
10 representations other than those expressly set forth herein or contained in separate
11 written documents delivered or to be delivered pursuant hereto, and the Parties
12 expressly acknowledge that they have not relied upon any restrictions, promises,
13 warranties, covenants, undertakings, or representations other than those expressly
14 contained herein.

15 31. This Stipulation shall not have, or be construed to have, any precedential
16 effect with respect to any present or future litigation by and between the Parties.

17 32. The effective date of this Stipulation is the date of issuance of the
18 Administrative Decision.

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21 Dated: 1/6/2014



MARK DE BIE
Deputy Director
DEPARTMENT OF RESOURCES,
RECYCLING AND RECOVERY
(CALRECYCLE)

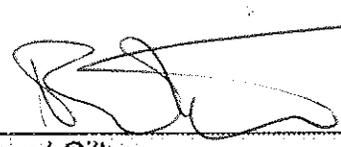
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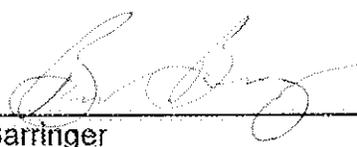
Dated: 12/19/13


MARTHA PEREZ
Attorney for
DEPARTMENT OF RESOURCES,
RECYCLING AND RECOVERY
(CALRECYCLE)

Dated: 1/7/14


Richard Gilton
GILTON SOLID WASTE MANAGEMENT, INC.
Owner

Dated: 1/8/14


Bart Barringer
Attorney for
GILTON SOLID WASTE MANAGEMENT, INC.