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8  
9 STATE OF CALIFORNIA

10 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

11 In the matter of:

12  
13 **BENITO AND SONS ROAD SERVICES**

14  
15 **RESPONDENT**

16  
17 **TPID NO.: 1624731-01**

11 } **ADMINISTRATIVE DECISION  
FOR WASTE TIRE HAULER  
ADMINISTRATIVE PENALTIES**

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

17 } **AGENCY NO: 2015-011179-ADC**

18  
19 **INTRODUCTION AND PROCEDURAL HISTORY**

20 The California Integrated Waste Management Board (CIWMB) is now the California  
21 Department of Resources Recycling and Recovery ("CALRECYCLE"). CALRECYCLE  
22 succeeded to CIWMB's authority on January 1, 2010, pursuant to Public Resources Code  
23 (PRC) section 40401(a)(1).

24 On February 1, 2016, CALRECYCLE issued an ADMINISTRATIVE COMPLAINT FOR  
25 WASTE TIRE HAULER ADMINISTRATIVE PENALTIES (hereafter, "Administrative  
26 Complaint") to Benito and Sons Road Services (hereafter, "RESPONDENT"), which included  
27 penalties in the amount of \$1,000.00. Effective service of the Administrative Complaint was  
28 completed on February 15, 2016. RESPONDENT was provided

1 with 15 days from the date of receipt of the Administrative Complaint to request a hearing and  
2 file a "Notice of Defense/Request for Hearing" with CALRECYCLE to refute the allegations  
3 contained therein. RESPONDENT did not file a "Notice of Defense/Request for Hearing." The  
4 matter shall be determined as a default pursuant to Title 14 of the California Code of  
5 Regulations (CCR) section 18466 and Government Code section 11520. CALRECYCLE takes  
6 action against RESPONDENT based upon evidence and affidavits that may be used without  
7 any notice to RESPONDENT.

### 8 9 FACTUAL FINDINGS

10 1. The Administrative Complaint was executed by CATHERINE V. NYSTROM, Staff  
11 Counsel, acting in her official capacity.

12 2. A "Waste or Used Tire Hauler" or "Hauler" is defined as, "any person engaged in  
13 the transportation of waste or used tires, or tire casings, including haulers that the Department  
14 [CALRECYCLE] approved as exempt from registration pursuant to PRC section 42954." (14  
15 CCR section 18450(37).)

16 3. A "Waste Tire Hauler Registration" is defined as, "the documents, including the  
17 decal and registration form, issued by the Department [CALRECYCLE], which authorizes the  
18 holder of the documents to legally haul waste or used tires within California for the period of  
19 issuance." (14 CCR section 18450(40).)

20 4. PRC section 42951(a) states, "[e]very person who engages in the transportation  
21 of waste or used tires shall hold a valid waste and used tire hauler registration, unless exempt  
22 as specified in Section 42954."

23 5. PRC section 42952(a) states, in relevant part:

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

27 (1) The person shall be registered as a waste and used tire hauler  
28 with the department [CALRECYCLE].

1 6. Title 14 CCR section 18454(a) requires that “any person hauling 10 or more used  
2 or waste tires shall apply for a waste tire hauler registration....”

3 7. PRC section 42954 specifies exemptions from registration. An individual does  
4 not need to be registered as a tire hauler if: the person transports fewer than 10 waste or used  
5 tires at any one time; hauls used and waste tires in a vehicle owned by the federal, state, or  
6 local government; the waste or used tires were inadvertently mixed with solid waste and it is  
7 not economical or safe to remove them; the tire load originated outside the boundaries of the  
8 state and is destined to a place outside state boundaries; the tires are hauled for agricultural  
9 purposes; the tires are hauled by a common carrier on a return trip; or the individual is hauling  
10 the tires to an amnesty day event (PRC section 42954(a)(1)–(8).)

11 8. Pursuant to PRC section 42956(b), “any person who operates a vehicle . . . that  
12 transports 10 or more tires without a valid and current waste and used tire hauler registration,  
13 as issued by [CALRECYCLE] . . . shall be subject to the enforcement actions specified in  
14 Article 4 (commencing with [PRC] Section 42962).”

15 9. Title 14 CCR section 18463 subsections (a), (b), and (d), provide that any waste  
16 tire hauler who intentionally or negligently violates any permit, rule, regulation, standard,  
17 requirement, or allows any violation or noncompliance with any permit, rule, regulation,  
18 standard, or requirement pursuant to PRC section 42950 et seq. relating to the generation,  
19 transportation, or disposal of used or waste tires, shall be liable for a civil penalty.

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21 **1 COUNT OF UNREGISTERED HAULING**

22 10. RESPONDENT is not and has never been registered as a waste tire hauler with  
23 CALRECYCLE.

24 11. RESPONDENT is not and has never been exempt from registration under PRC  
25 section 42954(a)(2)-(9).

26 12. On February 2, 2015, during a joint California Highway Patrol (CHP) and  
27 CALRECYCLE surveillance checkpoint at B. J. Used Tire & Rubber Recycling, Inc. located at  
28 14212 Santa Ana Ave. Fontana, CA, RESPONDENT’s vehicle (CA #8W98110) towing a trailer

1 (CA #4HN5855) was observed to be hauling approximately 50 waste tires without a valid waste  
2 and used tire hauler registration issued by CALRECYCLE. These waste or used tires were  
3 being transported to B. J. Used Tire & Rubber Recycling, Inc. for disposal as shown in the  
4 table below:

5

Date of Violation	Violation	Passenger Tire Equivalents	Penalty Assessed
February 2, 2015	Unregistered tire hauling, 41-100 waste and used tires	50	\$1,000

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10 13. On July 13, 2015, CALRECYCLE issued RESPONDENT a Streamlined Penalty  
11 Letter (SPL). The SPL offered RESPONDENT an opportunity to resolve the violation through  
12 settlement. The letter explained RESPONDENT's violation and offered an opportunity to avoid  
13 the cost and time of the administrative legal process by having RESPONDENT agree to the  
14 streamlined penalty process. RESPONDENT was offered a streamlined penalty in the amount  
15 of \$350.00. RESPONDENT was given 15 days from the receipt of the SPL to respond to  
16 CALRECYCLE.

17 14. On August 4, 2015, CALRECYCLE issued RESPONDENT a reminder letter  
18 advising RESPONDENT that CALRECYCLE needed a response on the streamlined penalty  
19 offer and extended the response date to August 18, 2015.

20 15. On August 26, 2015, after receiving no response on the SPL offer from  
21 RESPONDENT, a CALRECYCLE Program Technician with the Tire Hauler Compliance Unit  
22 contacted RESPONDENT via telephone. During the call, RESPONDENT refused the SPL  
23 offer due to his belief that he was permitted to haul any amount of waste or used tires in  
24 California because he had a Tire Program Identification (TPID) number. TPID # 1624731-01  
25 was issued to RESPONDENT on July 6, 2010, along with a letter explaining that the TPID  
26 number did not authorize RESPONDENT to haul more than nine waste or used tires without a  
27 valid registration issued by CALRECYCLE.

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1 **LEGAL CONCLUSIONS**

2 16. RESPONDENT violated PRC section 42951(a) by illegally transporting or  
3 allowing the transportation of at least one load of ten or more waste or used tires on February  
4 2, 2015, without a valid Waste Tire Hauler Registration issued by CALRECYCLE, or being  
5 exempt pursuant to PRC section 42954.

6 17. RESPONDENT also violated PRC section 42952(a)(1), as RESPONDENT is not  
7 and never was registered as a waste and used tire hauler with CALRECYCLE.

8 18. RESPONDENT additionally violated 14 CCR 18454(a), as RESPONDENT did  
9 not and has never applied for a waste tire hauler registration.

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11 **ORDER**

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

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

15 RESPONDENT, Benito and Sons Road Services is ordered to pay an administrative  
16 penalty of \$1,000.00 to CalRecycle within 30 (thirty) days of the date of service of this  
17 Decision.

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19 **RESPONDENT'S RIGHT TO FILE WRITTEN MOTION**

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

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

- 28 (1) Failure of the person to receive notice served pursuant to Section 11505.  
(2) Mistake, inadvertence, surprise, or excusable neglect.  
(Gov't Code § 11520(c).)

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

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3 Dated this 10 day of March 2016.

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

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