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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of: **KELLY CHAMBERS, PROPERTY OWNER AND OPERATOR, DBA JOE'S USED TIRES.** **TPID NO: 1688585-01** **RESPONDENT**	**Case No. IH15-008-TIR** **ADMINISTRATIVE DECISION PURSUANT TO STIPULATION FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES** **AGENCY NO: 2015-011173-ADC**

INTRODUCTION AND PROCEDURAL HISTORY

The California Department of Resources Recycling and Recovery (hereafter, "CALRECYCLE") has authority to regulate and conduct enforcement actions against waste tire facilities and waste tire haulers within the State of California pursuant to Public Resources Code (PRC) sections 42800 et seq., 42950 et seq., and attendant regulations contained in Title 14 of the California Code of Regulations ("CCR"). This ADMINISTRATIVE DECISION PURSUANT TO STIPULATION FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES (hereafter, "Administrative Decision") is issued pursuant to the STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES (hereafter, "Stipulation") entered into by Kelly Chambers, Property Owner and Operator, dba Joe's Used Tires, (hereafter, referred to as

"RESPONDENT" or Kelly Chambers, Property Owner and Operator, dba Joe's Used Tires") and CALRECYCLE.

Pursuant to PRC section 42851, CALREYCLE issued an ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES (hereafter, "Administrative Complaint") seeking $355,500.00 against RESPONDENT on August 27, 2015. On September 3, 2015, RESPONDENT filed a REQUEST FOR HEARING/NOTICE OF DEFENSE with the CALRECYCLE Legal Office. An informal hearing was scheduled for November 10, 2015, at 10:00 a.m. at CALRECYCLE's offices, located at 801 K Street, 19th Floor, Room 1919, Sacramento, California 95814.

Thereafter, CALRECYCLE and RESPONDENT (hereafter, referred to collectively as "the Parties") took part in discussions regarding possible settlement of this matter. In order to continue settlement discussions in this matter, on October 27, 2015, the Parties submitted a JOINT REQUEST FOR CONTINUANCE OF HEARING DATE requesting that the November 10, 2015 hearing be continued to January 20, 2016. On November 3, 2015, Hearing Officer Tamar Dyson, issued an ORDER GRANTING CONTINUANCE OF HEARING DATE effectively continuing the hearing to January 20, 2016, at 10:00 a.m. at CALRECYCLE's offices, located at 801 K Street, 19th Floor, Room 1919, Sacramento, California 95814.

The Parties negotiated a Stipulation in lieu of litigating the case at an informal administrative hearing. Good cause appearing therefore, the following Findings of Fact, Legal Conclusions and Order are made.

FINDINGS OF FACT

1. The Administrative Complaint was executed by Catherine V. Nystrom, Attorney for CALRECYCLE acting in her official capacity.

2. CALRECYCLE has authority to regulate and conduct enforcement actions regarding Waste Tire Facilities (WTF) and Waste and Used Tire Haulers within the State of California under PRC sections 42800 et seq., 42950 et seq., and attendant regulations contained in Title 14 of the California Code of Regulations (CCR).

3. PRC section 42808 defines a WTF as a "location, other than a solid waste facility . . . where, at any time, waste tires are stored, stockpiled, accumulated, or discarded."

4. PRC section 42808(c) defines a minor WTF as a "[WTF] where, at any time, 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled, accumulated, or discarded."

5. Pursuant to PRC section 42808(c), a minor WTF does not include tire dealers or automobile dismantlers, as defined in Sections 220 and 221 of the California Vehicle Code, who store waste tires on their premises for less than 90 days if not more than 1,500 total used or waste tires are ever accumulated on the premises.

6. Pursuant to PRC section 42832:

> The regulations for minor WTF permits shall include, but not be limited to, all of the following:
>
> (a) Fire prevention measures.
>
> (b) Vector control measures.
>
> (c) Other measures determined by [CALRECYCLE] to be necessary to protect the public health and safety.

7. Pursuant to Title 14 CCR section 18420(a), (7), and (e):

> (a) The operator of a [WTF] shall acquire a [WTF] permit in accordance with the requirements of this Chapter and Public Resources Code section 42808, unless any of the following conditions exist:
>
> (7) The facility is a tire dealer who stores waste tires on the dealer's premises for less than 90 days if not more than 1,500 waste tires are ever accumulated on the dealer's premises.
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> (e) A "used tire dealer" is only authorized to lawfully accept waste or used tires without a waste tire facility permit if the used tire dealer is in compliance with Section 17225.820, Article 4.1, Chapter 3 and has fewer than 1,500 waste tires in accordance with Public Resources Code section 42808(c).

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8. 14 CCR section 17350 et. seq., requires operators of permitted or unpermitted WTFs to comply with storage and safety requirements, including, but not limited to requirements regarding fire standards, site security and vector control.

9. 14 CCR section 17351(c)(2) requires one (1) pike pole or comparable pole at least 10 feet in length to separate burning from nonburning tries to be on site.

10. Title 14 CCR section 17351(c)(3) requires one (1) round point and one (1) square point shovel to be on site.

11. 14 CCR section 17353(a) requires all waste tires to be stored in a manner which prevents the breeding and harborage of mosquitoes, rodents, and other vectors.

12. 14 CCR section 17354(f) mandates that any individual waste tire pile be separated from any other waste tire pile, combustible ground vegetation, stored used tires, waste tire material, or products made from tires, by a distance of at least 40 feet.

13. 14 CCR section 17354(i) requires that tires be removed from rims immediately upon arrival at the WTF or solid waste facility. This section also requires that tires temporarily attached to rims awaiting removal shall be stored separate from other waste tires.

14. 14 CCR section 17354(j) requires the WTF or solid waste facility to be designed and constructed to provide protection to bodies of water from runoff of pyrolytic oil resulting from a potential tire fire.

15. Where there is no identified "operator," the operator shall mean the "owner," pursuant to Title 14 of the CCR, section 17225.755. Thus, because no operator can be identified for the site, RESPONDENT, as property owner, is both the operator and owner of the site, as defined in accordance with PRC section 42805.

16. At no time did CALRECYCLE issue a minor waste tire facility permit to any individual for the site.

17. Pursuant to PRC section 42845(a), "any person who stores, stockpiles, or accumulates waste tires at a location for which a waste tire facility permit is required pursuant to this chapter, or in violation of the terms and conditions of the permit, the provisions of this chapter, or the regulations adopted under this chapter, shall, upon order of [CALRECYCLE],

clean up those waste tires or abate the effects thereof, or, in the case of threatened pollution or nuisance, take other necessary remedial action."

18. During a routine inspection of the site on May 6, 2014 by Scot Johnson Local Enforcement Grantee for CALRECYCLE from the County of Butte, Department of Public Works, and documented in Waste Tire Survey and Inspection Report (Inspection Report) IW-1010946, it was determined that approximately 1,740 waste tire were being stored on site, creating an unpermitted minor WTF, in violation of PRC section 42834. Inspector Johnson determined the business onsite to be a used tire dealer and therefore, pursuant to PRC section 42808(c), was allowed to have 1,500 waste tires onsite. However, at this time, the site was recorded as being out of business and closed. Inspector Johnson further observed that waste tires on site were intermingled with heavy vegetation, in violation of fire prevention measures and outdoor storage standards set forth in 14 CCR sections 17351 and 17354. Inspector Johnson took photos of the tires on site. A copy of the report was mail to RESPONDENT.

19. During follow-up inspections of the site on May 20, 2014, June 3, 2014 and December 12, 2014, and documented in Inspection Report numbers IW-1011281, IW-1011540, and IW-1017328, respectively, Inspector Johnson found no change in the number of waste tires recorded, and no change in the manner of storage of said waste tires on May 6, 2014. Copies of all Inspection Reports were mailed to the RESPONDENT.

20. Following the inspection on December 12, 2014, Butte County issued a Notice of Violation (NOV) to RESPONDENT requiring all waste tires in excess of the authorized limit of 1,500 to be removed by a compliance deadline of December 23, 2014.

21. During a re-inspection of the site on December 29, 2014, and documented in Inspection Report number IW-1017722, Inspector Johnson again found no change in the number of waste tires recorded on May 6, 2014,no change in the manner in which the waste tires were stored, and no compliance made in accordance with the December 12, 2014 NOV. A copy of the Inspection Report was mailed to the RESPONDENT.

22. On December 29, 2014, Butte County referred the ongoing violations to CALRECYCLE for further enforcement.

23. On March 3, 2015, CALRECYCLE served Clean Up and Abatement Order (CAO) number 2014-011043 on RESPONDENT. In accordance with PRC section 42845(a)(2), RESPONDENT was ordered to remove all waste and used tires from the site within 15 days from the date of service of the CAO, maintain the number of waste and used tires on this site to zero, and at no time accept additional waste or used tire at this site. The CAO further required RESPONDENT to obtain approval from CALRECYCLE regarding the destination of all waste and used tires removed from the site to ensure that a registered waste tire hauler legally transported them to an approved facility, to document each load of waste and used tires removed, submit a copy of each completed CTL form to CALRECYCLE within 30 days from the date of service of the CAO, and not to accept additional waste or used tires at this site.

24. During an inspection of the site on March 20, 2015 to ensure compliance with the CAO, and documented in Inspection Report number IW-1021154, Inspector Don Van Dyke with CALRECYCLE and Inspector Johnson with Butte County determined the amount and manner of storage or waste tires onsite remained the same as described in the Inspection Report dated May 6, 2014, in violation of the CAO.

25. On June 4, 2015, during an inspection of the site, and documented in Inspection Report Number IW-1024211, Inspector Van Dyke estimated that 1017 tires remained onsite.

26. Inspector Van Dyke further noted that fire equipment to aid in the control of fires required by 14 CCR 17351(c)(2) and 17351(c)(3) was not onsite, and the waste tires were stored in a manner that would allow for the harboring of vectors in violation of 14 CCR section 17353(a). Inspector Van Dyke additionally noted violations in the manner of tire storage, including but not limited to, the distance between waste tires to create fire lanes, adequate drainage, and separation from combustible ground vegetation by a distance of at least 40 feet, in violation of 14 CCR section 17354(f); failing to remove rims from waste tires in violation of 14 CCR section 17354(i); and failure to protect waste tires from pyrolytic oil run off, in violation of 14 CCR section 17354(j).

27. RESPONDENT, via an agent, was notified of all outstanding violations noted above.

28. On November 5, 2015, during settlement negotiations between CALRECYCLE and RESPONDENT, Inspector Van Dyke returned to the site to perform an inspection, documented in Inspection Report Number IW-1030450. Inspector Van Dyke determined that all tires had been removed from the site and that removal was properly manifested. Inspector Van Dyke noted that he considered the TPID ready to be closed.

29. Pursuant to PRC section 42852, in making a determination regarding a penalty, CALRECYCLE "shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety of the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that the imposition of the proposed penalty will have on both the violator and on the regulated community as a whole."

CONCLUSIONS OF LAW

30. RESPONDENT failed to comply with Clean up and Abatement Order No. 2014-011043, which required the removal of "all waste tires within fifteen days of the date of service, in violation of PRC section 42845, requiring any person, upon order of CalRecycle, to clean up, abate or otherwise take remedial action at a WTF."

31. RESPONDENT violated PRC section 42834, operation of a minor WTF without obtaining a "Minor Waste Tire Permit," and Title 14, CCR section 18423, which requires every operator of a major or minor WTF to submit a completed permit application.

32. RESPONDENT violated 14 CCR section 17351(c)(2) by failing to have on site one (1) pike pole or comparable pole at least 10 feet in length to separate burning from nonburning tires.

33. RESPONDENT violated 14 CCR section 17351(c)(3) by failing to have one (1) round point and one (1) square point shovel to be on site.

34. RESPONDENT violated 14 CCR section 17353(a) by failing to comply with vector control requirements for waste tire storage.

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35. RESPONDENT violated 14 CCR section 17354(f), which mandates that any individual waste tire pile be separated from any other waste tire pile, combustible ground vegetation, stored used tires, waste tire material, or products made from tires, by a distance of at least 40 feet.

36. RESPONDENT violated 14 CCR section 17354(i) by failing to have waste tires removed from rims immediately upon arrival at the WTF or solid waste facility. Tires temporarily attached to rims awaiting removal shall be stored separate from other waste tires.

37. RESPONDENT violated 14 CCR section 17354(j), which requires that the WTF or solid waste facility be designed and constructed to provide protection to bodies of water from runoff of pyrolytic oil resulting from a potential tire fire.

ORDER

38. CALRECYCLE approves of, and adopts the terms of the Stipulation, and hereby orders RESPONDENT to comply with the following terms, in accordance with the Stipulation:

(a) Pursuant to the terms and conditions of the Stipulation, and subject to the limitations hereunder, RESPONDENT stipulates to an administrative penalty against RESPONDENT and in favor of CALRECYCLE in the sum of $355,500.00 for the violations set forth in the Stipulation. Payment of the penalty shall be satisfied in the following manner:

i) RESPONDENT shall pay $5,000.00 to CALRECYCLE in accordance with the following:

1. To exhibit good faith in payment ability, a one-time payment of $83.00 will be due February 1, 2016.

2. RESPONDENT shall pay bi-annual installments of $500.00 to CALRECYCLE with the first payment due August 1, 2016; the final payment will be in the amount of $417.00 reflecting the initial payment of $83.00.

3. All payments shall be made to CALRECYCLE, Attn: Richard Guess, at P.O. Box 4025, Sacramento, CA 95812-4025, or to such other

person and/or place as CALRECYCLE or its agent may from time to time designate in writing.

4. If any payment by RESPONDENT is not mailed to CALRECYCLE by the due date, or a date later issued by CALRECYCLE, and if RESPONDENT fails to cure the missed payment(s) within twenty (20) days of said missed payment, RESPONDENT shall be found in partial default of the stipulation. The partial default amount due shall be calculated to include the amount owed from the missing payment(s) plus a late penalty and interest.

ii) $350,500.00 of this administrative penalty shall be stayed and held in abeyance for a period of five (5) years. The stayed penalty shall be deemed terminated and shall not be paid by RESPONDENT to CALRECYCLE following the five-year period absent a default as described.

iii) In determining the stipulated penalty amount, CALRECYCLE took into consideration the factors provided in PRC section 42852.

(b) RESPONDENT shall not create a waste tire storage facility, as defined by PRC section 42808, without the applicable permit.

(c) RESPONDENT shall not haul more than nine (9) tires without a hauler registration, as required by PRC section 42952.

(d) RESPONDENT shall comply with all other laws related to waste tire storage and waste tire haulers set forth in PRC section 42800 et seq., PRC section 42950 et seq., and Title 14 of the CCR. A violation of any law related to waste tire storage and waste tire haulers that is not described by a separate provision of the Stipulation shall constitute a partial default of the Stipulation.

(e) If CALRECYCLE determines that RESPONDENT has violated any waste tire storage laws, or waste tire hauler laws by creating a new WTF with waste tires onsite, CALRECYCLE will be required to inspect the WTF at an increased frequency, at least monthly, until RESPONDENT comes into compliance.

i. RESPONDENT will grant access for these additional inspections and will reimburse CALRECYCLE for the cost of those inspections (including time preparing for the inspection, traveling to the site, and preparing and writing any Inspection Report). Additionally, after compliance has again been regained, CALRECYCLE will inspect the WTF twice a year for the remainder of the abeyance period, and RESPONDENT will reimburse CALRECYCLE for the additional inspections (including time preparing for the inspection, traveling to the site, and preparing and writing any Inspection Report).

ii. Failure to grant access to inspectors or agents designated by CALRECYCLE, or failure to reimburse CALRECYCLE for the costs of an additional inspection within 30 days of an invoice shall be deemed in default of this Stipulation. The default amount due shall be calculated from the amount owed plus a late fee and interest.

iii. The cost of the additional inspections shall be billed at the rate approved by CALRECYCLE's accounting and budgets offices for enforcement agent inspections for that fiscal year.

39. **Default**: If RESPONDENT defaults under any of the terms of the Stipulation, CALRECYCLE shall send a Notice of Default to RESPONDENT; said Notice of Default shall state the paragraphs or provisions of the Stipulation of which RESPONDENT is in default and the abeyance amount owed as prescribed in PRC sections 42850, 42850.1, 42962 and 14 CCR sections 18429 and 18464. RESPONDENT shall have 30 days from the date of the service of the Notice of Default to provide evidence refuting CALRECYCLE's claim of default. After a review of the evidence and counterarguments provided by RESPONDENT, CALRECYCLE shall make a determination regarding the default and, if appropriate, shall issue a Supplemental Decision based on the default.

40. **Full Default**: Unless otherwise specified in the subsections above, failure to comply with any of the above terms shall constitute a full default of the Stipulation and the full abeyance amount less any amount already paid to CALRECYCLE shall become immediately due and payable.

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41. **Partial Default**: If a partial default has been designated, the penalty amount for each partial default as determined by CALRECYCLE shall become immediately due and payable by RESPONDENT.

(a) Unless otherwise stated, CALRECYCLE shall base any abeyance amount due on the penalty amounts set forth in PRC sections 42850, 42850.1, 42962, and 14 CCR sections 18429 and 18464, taking into account the nature, circumstances, extent and gravity of the partial default.

(b) Penalties for partial default shall be calculated as a "second offense".

(c) If RESPONDENT is ordered to pay a partial default fine and fails to do so within 30 days, the failure shall constitute a full default and the remaining amount of $355,500.00, less any amount already paid to CALRECYCLE, shall become immediately due and payable.

(d) A partial default will be applied to any violations of waste tire storage or waste tire hauler laws not specifically stated as a full default above set forth in PRC section 42800 et seq., PRC section 42950 et seq., and Title 14 of the CCR.

The DECISION shall become effective as of the date signed below:

Dated: 1/14/16

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