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8 STATE OF CALIFORNIA

9 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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11 **In the matter of:**)
12 **KELLY CHAMBERS, PROPERTY**) **ADMINISTRATIVE COMPLAINT**
13 **OWNER AND OPERATOR, DBA JOE'S**) **FOR WASTE TIRE STORAGE**
14 **USED TIRES.**) **ADMINISTRATIVE PENALTIES**
15 **TPID NO: 1688585-01**) **PUBLIC RESOURCES CODE**
16 **RESPONDENT**) **SECTION 42850, ET SEQ.**
) **AGENCY NO: 2015-011173-ADC**

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18 **INTRODUCTION**

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

23 Pursuant to PRC section 42851(a), CALRECYCLE is authorized to issue an
24 administrative accusation to a person on whom civil liability may be imposed. This
25 Administrative Complaint For Waste Tire Storage Administrative Penalties to Kelly Chambers,
26 Property Owner and Operator, dba Joe's Used Tires (RESPONDENT) located at 840 Palmer
27 Hill Road, Paradise, California 95969 (the site) is so issued based on the following facts.

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1 **STATEMENT OF FACTS**

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

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

8 3. PRC section 42808(c) defines a minor WTF as being a WTF where, at any time,
9 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled,
10 accumulated, or discarded.

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

15 5. Pursuant to PRC section 42832, "The regulations for minor WTF permits shall
16 include, but not be limited to, all of the following:

- 17 (a) Fire prevention measures.
18 (b) Vector control measures.
19 (c) Other measures determined by [CALRECYCLE] to be necessary to protect
20 the public health and safety."

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

22 (a) The operator of a [WTF] shall acquire a [WTF] permit in accordance with
23 the requirements of this Chapter and Public Resources Code section 42808,
unless any of the following conditions exist:

24 (7) The facility is a tire dealer who stores waste tires on the dealer's premises
25 for less than 90 days if not more than 1,500 waste tires are ever accumulated on
the dealer's premises.

26 (e) A "used tire dealer" is only authorized to lawfully accept waste or used
27 tires without a waste tire facility permit if the used tire dealer is in compliance
28 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).

1 7. 14 CCR section 17350 et. seq., requires operators of permitted or unpermitted
2 WTFs to comply with storage and safety requirements, including, but not limited to
3 requirements regarding fire standards, site security and vector control.

4 8. 14 CCR section 17351(c)(2) requires one (1) pike pole or comparable pole at
5 least 10 feet in length to separate burning from nonburning tires to be on site.

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

8 10. 14 CCR section 17353(a) requires all waste tires to be stored in a manner which
9 prevents the breeding and harborage of mosquitoes, rodents, and other vectors.

10 11. 14 CCR section 17354(f) mandates that any individual waste tire pile be
11 separated from any other waste tire pile, combustible ground vegetation, stored used tires,
12 waste tire material, or products made from tires, by a distance of at least 40 feet.

13 12. 14 CCR section 17354(i) requires that tires be removed from rims immediately
14 upon arrival at the WTF or solid waste facility. This section also requires that tires temporarily
15 attached to rims awaiting removal shall be stored separate from other waste tires.

16 13. 14 CCR section 17354(j) requires the WTF or solid waste facility to be designed
17 and constructed to provide protection to bodies of water from runoff of pyrolytic oil resulting
18 from a potential tire fire.

19 14. Pursuant to 14 CCR section 18432 (a) and (b):

20 (a) The Operation Plan, as required by 18431(b) shall demonstrate conformance
21 with the technical standards contained in Division 7, Chapter 3, Article 5.5 of Title
22 14 of the California Code of Regulations.

23 (b) The operator shall file amendments to the Operation Plan whenever
24 necessary to keep the information contained in it current.

25 15. Pursuant to 14 CCR section 18433 (a) and (b):

26 (a) The operator of the waste tire facility shall maintain a copy of the Emergency
27 Response Plan at the facility. At the time of permit issuance the approved
28 Emergency Response Plan shall be forwarded to the local fire authority by the
permittee. The plan shall be revised as necessary to reflect any changes in the
operations of the waste tire facility or requirements of the local fire authority. The
local fire authority and the Department shall be notified of any changes to the
plan within 30 days of the revision.

1 (b) The operator of the facility shall immediately notify the Department in the
2 event of a fire or other emergency if that emergency has potential significant off-
3 site effects. Within 30 days of any such emergency, the operator shall submit to
4 the Department a written report describing the cause(s) of the emergency, the
5 results of actions taken, and an analysis of the success or failure of these
6 actions.

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

11 17. At no time did CALRECYCLE issue a minor waste tire facility permit to any
12 person for the site.

13 18. Pursuant to PRC section 42845(a), "any person who stores, stockpiles, or
14 accumulates waste tires at a location for which a waste tire facility permit is required pursuant
15 to this chapter, or in violation of the terms and conditions of the permit, the provisions of this
16 chapter, or the regulations adopted under this chapter, shall, upon order of the
17 [CALRECYCLE], clean up those waste tires or abate the effects thereof, or, in the case of
18 threatened pollution or nuisance, take other necessary remedial action."

19 19. During a routine inspection of the site on May 6, 2014 by Scot Johnson Local
20 Enforcement Grantee for CALRECYCLE from the County of Butte, Department of Public
21 Works, and documented in Waste Tire Survey and Inspection Report (Inspection Report) IW-
22 1010946, it was determined that approximately 1,740 waste tire were being stored on site,
23 creating an unpermitted minor WTF, in violation of PRC section 42834. Inspector Johnson
24 determined the business onsite to be a used tire dealer and therefore, pursuant to PRC section
25 42808(c), was allowed to have 1,500 waste tires onsite. However, at this time, the site was
26 recorded as being out of business and closed. Inspector Johnson further observed that waste
27 tires on site were intermingled with heavy vegetation, in violation of fire prevention measures
28 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.

1 20. During follow-up inspections of the site on May 20, 2014, June 3, 2014 and
2 December 12, 2014, and documented in Inspection Report numbers IW-1011281, IW-
3 1011540, and IW-1017328, respectively, Inspector Johnson found no change in the number of
4 waste tires recorded, and no change in the manner of storage of said waste tires on May 6,
5 2014. Copies of all Inspection Reports were mailed to the RESPONDENT.

6 21. Following the inspection on December 12, 2014, Butte County issued a Notice of
7 Violation (NOV) to RESPONDENT requiring all waste tires in excess of the authorized limit of
8 1,500 to be removed by a compliance deadline of December 23, 2014.

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

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

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

26 25. During an inspection of the site on March 20, 2015 to ensure compliance with the
27 CAO, and documented in Inspection Report number IW-1021154, Inspector Don Van Dyke
28 with CALRECYCLE and Inspector Johnson with Butte County determined the amount and

1 manner of storage or waste tires onsite remained the same as described in the Inspection
2 Report dated May 6, 2014, in violation of the CAO.

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

5 Inspector Van Dyke further noted that fire equipment to aid in the control of fires
6 required by 14 CCR 17351(c)(2) and 17351(c)(3) was not onsite, and the waste tires were
7 stored in a manner that would allow for the harboring of vectors in violation of 14 CCR section
8 17353(a). Inspector Van Dyke additionally noted violations in the manner of tire storage,
9 including but not limited to, the distance between waste tires to create fire lanes, adequate
10 drainage, and separation from combustible ground vegetation by a distance of at least 40 feet,
11 in violation of 14 CCR section 17354(f); failing to remove rims from waste tires in violation of
12 14 CCR section 17354(i); and failure to protect waste tires from pyrolytic oil run off, in violation
13 of 14 CCR section 17354(j).

14 RESPONDENT, via an agent, was notified of all outstanding violations.

16 ALLEGATIONS OF SPECIFIC VIOLATIONS

17 27. RESPONDENT failed to comply with Clean up and Abatement Order No. 2014-
18 011043, which required the removal of "all waste tires within fifteen days of the date of service,
19 in violation of PRC section 42845, requiring any person, upon order of CalRecycle, to clean up,
20 abate or otherwise take remedial action at a WTF."

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

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

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

1 thousand dollars (\$5,000), for each violation of a separate provision or, for continuing
2 violations, for each day that the violation continues.

3 (b) Liability under this section may be imposed in a civil action or liability may be
4 imposed administratively pursuant to this article.

5 RESPONDENTS are subject to an administrative penalty of up to \$5,000 per violation
6 for each day RESPONDENTS are in violation.

7 38. The penalty tables set forth in 14 CCR section 18429 authorizes an
8 administrative penalty of up to \$1,000 for every day the intentional violation continues against
9 unpermitted WTFs that accumulate between 500 and 4,999 waste tires.

10 39. In assessing the proposed penalty against RESPONDENT, CALRECYCLE has
11 taken into account the fact that waste tires remained onsite, and additional violations remained
12 uncorrected, on the deadline for compliance required by the CAO. CALRECYCLE's proposed
13 penalty is based upon the days that RESPONDENT remained out of compliance with the CAO
14 after the required deadline set forth in the CAO.

15 40. In setting an appropriate administrative penalty, the hearing officer must take into
16 consideration the provisions of PRC section 42852.

17 41. In determining an appropriate administrative penalty for RESPONDENT, as
18 required by 14 CCR section 18465, CALRECYCLE has taken into consideration the following
19 factors:

- 20 (1) The nature, circumstances, extent, and gravity of the violation.
- 21 (2) Evidence that the violation was willful or negligent.
- 22 (3) The good or bad faith exhibited by the party.
- 23 (4) History of violation of the same or similar nature.
- 24 (5) The extent to which the party has cooperated with the Department in remediating or
25 injury caused by his or her violation.
- 26 (6) The extent that the party has mitigated or attempted to mitigate any damage
27 or injury caused by his or her violation.
- 28 (7) Evidence of any financial gain resulting from the violation.

1 (8) Such other matters as justice may require.

2 42. PRC section 42847 makes the person or persons who unlawfully stored,
3 stockpiled, or accumulated the waste tires or who unlawfully permitted the storage, stockpile,
4 or accumulation of waste tires or who threaten to cause or permit the unlawful storage,
5 stockpile, or accumulation of waste tires liable to the governmental agency that cleans up said
6 stored, stockpiled or accumulated waste tires, to the extent of the reasonable actually incurred
7 in cleaning up the waste, abating the effects thereof, or taking other remedial actions.

8 43. Accordingly, CALRECYCLE hereby requests that an administrative penalty be
9 assessed against RESPONDENT in the sum of \$355,500.¹

10
11 **RIGHT TO HEARING**

12 You are hereby notified that pursuant to the provisions of PRC section 42961.1 and
13 Government Code section 11505 that you are entitled to a hearing to refute the allegations
14 against you contained in this ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE
15 ADMINISTRATIVE PENALTIES. **If you wish to have a hearing on this matter, you must**
16 **complete and return the enclosed REQUEST FOR HEARING/ NOTICE OF DEFENSE to**
17 **our Legal Office within 15 days of receipt of this Administrative Complaint. Failure to**
18 **complete and return the REQUEST FOR HEARING/NOTICE OF DEFENSE within 15 days**
19 **will be deemed a waiver of your right to a hearing.**

20 Pursuant to the above referenced Public Resources Code and Government Code
21 sections, discovery requests by any party must be made within 30 days after the service of this
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24 ¹ This number was calculated using the number of days between March 18, 2015 (the deadline for compliance
25 with the CAO) and June 4, 2015 (CALRECYCLE's most recent inspection) = 79 days. CALRECYCLE is alleging
26 that RESPONDENT violated PRC section 42834 and 14 CCR sections 17351(c)(2), 17351(c)(3), 17353(a),
27 17354(f), 17354(i), and 17354(j). For 79 days of uncorrected violations of each of these statutes/regulations at
28 \$500 per day pursuant to PRC section 42835 and 14 CCR 18429, RESPONDENT is penalized \$39,500 per
violation for a total of \$355,500.

1 ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE ADMINISTRATIVE
2 PENALTIES.

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4 Dated this 27th day of August, 2015.

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CATHERINE V. NYSTROM
Attorney for
Department of Resources Recycling and
Recovery (CALRECYCLE)

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