

**BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
STATE OF CALIFORNIA**

In the Matter of the Administrative Complaint Against:

**ROBERT GILLON, JAMES RANDALL &
PEGGY DANIELS**, Owners, and **ROBERT
GILLON**, Operator, d.b.a. Gillon Waste Tire Site,
Facility No. 54-TI-1121,

Respondents.

CIWMB No. 2003-010482

OAH No. L2004020205

DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on March 30, 2004.

Wendy Breckon, Staff Counsel, represented Complainant.

No appearance was made on or behalf of Respondent Robert Gillon, despite due notice of the hearing. The other named Respondents were not served with the Complaint, and, on Complainant's motion, were stricken from the request for civil penalties against them. The matter therefore proceeded as a default against Robert Gillon ("Respondent").

Oral and documentary evidence was received and the matter argued. The record was closed and the matter submitted on March 30, 2004.

The below order requires Respondent to pay civil penalties totaling \$28,000.00.

FACTUAL FINDINGS

Jurisdiction & Parties

1. The Administrative Complaint was issued by Wendy Breckon, Staff Counsel ("Complainant"), on behalf of the California Integrated Waste Management Board (CIWMB), in her official capacity. The Complaint alleges a Waste Tire Site exists on Respondent's property (without a permit), of which he has failed to clean up despite several requests and an Order of Abatement regularly issued. The Complaint seeks administrative penalties against Respondent totaling \$28,000; \$14,000 of which as an owner of the property, and \$14,000.00 of which as the operator of an activity on the property which generated the waste tires.

2. The property in question is located at 8190 Road 132, Pixley, CA 93256, Tulare County, California. Respondent now owns the property, along with James Randall and Peggy Daniels. Respondent has also operated an auto repair business on the property, which has generated the waste tires there. This property has not been permitted as a Waste Tire Facility (“WTF”).

3. Respondent was timely served with the Administrative Complaint. He was also timely served, both personally and by mail, with the notice of hearing for this matter. Though no evidence indicates he waived his right to a hearing, he did not appear at it.

Waste Tire Investigation

4A. The California Highway Patrol, under contract with the CIWMB to find potential waste tire sites, referred Respondent’s property to the CIWMB for investigation.

4B. A title search on the property revealed that the title to the property was in the name of Mollie Fields, but that on January 31, 2000, ownership was transferred, by Grant Deed, from Ms. Fields to James Randle, Peggy Daniels and Respondent, as joint tenants.

5. On February 15, 2000, Mr. Lew Elliott, employed by the CIWMB, conducted an initial Waste Tire Facility Inspection at Respondent’s property (“Gillon Waste Tire Site”) and observed approximately 800 waste tires there. Respondent told him the waste tires had accumulated from his auto repair business that he operated on the property. The tires were stored in a manner that violated the standards for facility storage, fire prevention and vector control (rodents, insects, etc.).

6. On March 29, 2000, Mr. Elliott conducted a second Waste Tire Facility Inspection at the Gillon Waste Tire Site and observed approximately 800 waste tires were still on the site.

7. A written report of the initial inspection and a “Letter of Violation” (“LOV”), dated April 5, 2000, were addressed and posted by U.S. Mail, from Mr. Elliott to Respondent, requesting that a Corrective Action Plan be submitted to the CIWMB by May 15, 2000. Respondent was also requested to obtain a minor waste tire facility permit from the CIWMB. This letter informed Respondent that the accumulated waste tires must be removed to a legal facility by a registered waste tire hauler.

8. On June 28, 2000, Mr. Elliott conducted a third Waste Tire Facility Inspection at the Gillon Waste Tire Site and observed approximately 800 waste tires still on the site. It appeared to him that no effort had been made to remove the waste tires from the site.

9. On May 8, 2001, Mr. Elliott conducted a fourth Waste Tire Facility Inspection at the Gillon Waste Tire Site and observed approximately 800 waste tires still on the site. The tires were still stored in a manner that violated the standards for facility storage, fire prevention and vector control.

10. On September 10, 2001, Mr. Elliott conducted a fifth Waste Tire Facility Inspection at the Gillon Waste Tire Site and observed approximately 800 waste tires still on the site.

11. On April 23, 2002, Mr. Elliott conducted a sixth Waste Tire Facility Inspection at the Gillon Waste Tire Site and observed approximately 800 waste tires still on the site. The tires were still stored in a manner that violated the standards for facility storage, fire prevention and vector control. Respondent's daughter was given a copy of haulers who may be able to help with waste tire removal.

12. On September 11, 2002, Mr. Elliott conducted a seventh Waste Tire Facility Inspection at the Gillon Waste Tire Site and observed approximately 800 waste tires still on the site.

13. As a result of the above, Clean Up & Abatement Order # 2001-010056, dated October 17, 2002, was issued by CIWMB to Respondent, James Randall & Peggy Daniels, as Owners of the property, and to Robert Gillon, as Operator of the Gillon Waste Tire Site. The Order was personally served on Respondent. The Order requested Respondent to either obtain a WTF permit or remove all waste tires from the property by December 17, 2002. In case of removal, copies of destination receipts and waste tire manifests were to be submitted to the CIWMB on or before December 17, 2002, to confirm proper removal. No copies of destination receipts and waste tire manifests were ever received by the CIWMB. No application for a minor waste tire facility was ever received for this site either.

14. On December 10, 2002, Mr. Elliott conducted an eighth Waste Tire Facility Inspection at the Gillon Waste Tire Site and observed approximately 800 waste tires still on the site.

15. On March 11, 2003, Mr. Elliott conducted a follow up Waste Tire Facility Inspection of this location and determined that more than 800 waste tires were still located on the site. There had thus been no response to the Clean Up and Abatement Order. On that date, Ms. Rochelle Williams, Respondent's daughter, told Mr. Elliott that Respondent was aware of the Order, but had no means to remove the tires.

16. On November 3, 2003, Mr. Elliott conducted another follow up Waste Tire Facility Inspection of this location and determined that approximately 300-400 waste tires now remained on site. Respondent was present and spoke to Mr. Elliott. Respondent stated that he had arranged for three truck loads of tires (97 vehicles) to be crushed and removed from his backyard. He also said that the auto wrecking yard that performed the removal allowed him to place four waste tires in each vehicle before it was crushed. He did not have any documentation to support his statement, but said he would send it to CIWMB. He failed to do so at any time.

17. The County of Tulare Environmental Health Department also made periodic inspections of the site in 2002 and 2003, and requested Respondent to remove the tires. Respondent similarly ignored those requests.

18. On March 25, 2004, Mr. Elliott conducted a follow up Waste Tire Facility inspection of this location and determined that approximately 300-400 waste tires still remained on site. Respondent was present and spoke to Mr. Elliott. Respondent did not present any documentation supporting his prior statement that tires were properly sent to an auto wrecking yard. He also acknowledged the instant hearing date.

Waste Tire Violations

19. From February 15, 2000, to March 11, 2003, Respondent, as an Owner of the property, and as the Operator of the Gillon Waste Tire Site, was in violation of California Public Resources Code (“PRC”) section 42834, which makes it unlawful to accept more than 499 waste tires at a waste tire facility, unless the operator has obtained a waste tire permit.

20. From February 15, 2000, to March 11, 2003, Respondent, as an Owner of the property, and as the Operator of the Gillon Waste Tire Site, was in violation of Title 14, California Code of Regulations (“14 CCR”) section 18420, which requires that, unless otherwise exempted, the owner/operator of a WTF obtain a permit from the CIWMB. Respondent does not have a permit issued by the CIWMB.

21. From February 15, 2000, to March 11, 2003, Respondent, as an Owner of the property, and as the Operator of the Gillon Waste Tire Site, was in violation of 14 CCR section 17351 (Fire Prevention Measures), which lists specific equipment and water supply that must be available at a WTF. Respondent did not have the required equipment or water supply on site.

22. From February 15, 2000, to March 11, 2003, Respondent, as an Owner of the property, and as the Operator of the Gillon Waste Tire Site, was in violation of 14 CCR section 17352 (Facility Access and Security), which lists specific measures for the prevention of unauthorized entry at a WTF. Respondent did not have adequate measures as on site.

23. From February 15, 2000, to March 11, 2003, Respondent, as an Owner of the property, and as the Operator of the Gillon Waste Tire Site, was in violation of 14 CCR section 17353 (Vector Control Measures), which lists requirements for the prevention of breeding and harborage of mosquitoes, rodents and other vectors at a WTF. Respondent did not comply with these requirements.

24. From February 15, 2000, to March 11, 2003, Respondent, as an Owner of the property, and as the Operator of the Gillon Waste Tire Site, was in violation of 14 CCR section 17354 (Storage of Waste Tires), which lists the requirements for the safe storage of waste tires at a WTF. Respondent did not comply with these requirements.

25. Respondent, as an Owner of the property, and as the Operator of the Gillon Waste Tire Site, did not comply with Clean Up & Abatement Order # 2001-010056, in violation of PRC section 42845, which requires any person, upon order of the CIWMB, to clean up, abate or otherwise take remedial action at a WTF.

26. No evidence in mitigation was presented, other than the fact that Respondent removed approximately half of the 800 waste tires initially located on the property. However, because he has failed to provide any documentation indicating that removal was legal, safe, and proper, the probative value of this evidence as mitigation is greatly undercut.

LEGAL CONCLUSIONS

1. The CIWMB has authority to inspect, permit, regulate and conduct enforcement actions against Waste Tire Facilities within the State of California, whether or not they have proper permits from the CIWMB, under PRC sections 42800, et seq., and attendant regulations contained in Title 14 of the California Code of Regulations Factual Findings 1-26.

2. Respondent's property stored approximately 800 tires, more than the statutory minimum of 499, but less than 5000 waste tires on site, which was a violation of PRC section 42834 (Minor Unpermitted Waste Tire Facility), 14 CCR section 17351 (Fire Prevention Measures), 14 CCR section 17352 (Facility Access and Security), 14 CCR section 17353 (Vector Control), and 14 CCR section 17354 (Waste Tire Storage). Factual Findings 1-26.

3. Respondent, as an Owner of the property containing the waste tires, is liable for civil penalties as set forth in PRC section 42850, for his negligently violating the applicable laws. Under this section, Respondent is subject to a civil penalty of not less than \$500 or more than \$5,000.00, per violation, for each day the Gillon Waste Tire Site was in violation of each requirement listed above. Factual Findings 1-26.

4. Respondent, as the Operator of the Waste Tire Facility, is liable for civil penalties as set forth in PRC section 42850.1(b)(1), for his intentional violation of the applicable laws. Under this section, Respondent is subject to a civil penalty not to exceed \$10,000.00, per violation, for each day the Gillon Waste Tire Site was in violation of each requirement listed above. Factual Findings 1-26.

5A. In setting an appropriate civil penalty, the hearing officer must take into consideration the provisions of PRC section 42852, which includes: the nature, circumstances, extent and gravity of the violation; the violator's past and present efforts to prevent, abate, or clean up conditions; the threat to the public health or safety or the environment; the violator's ability to pay the proposed civil penalty; the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole; and/or the complete disregard of applicable laws by Respondent.

5B. In this case, each of these factors weighs in favor of the requested penalties. The Gillon Waste Tire Site posed a risk to the public, in terms of potential fire, vector containment, etc. Respondent refused to remove all the tires despite requests, and later a properly issued Order of Abatement. Since Respondent failed to appear at the hearing, no evidence regarding his ability to pay the fines was presented. However, some evidence indicates the property in question has a fair market value of approximately \$14,000.00. Though Respondent removed half of the tires in question (almost one year after being ordered to remove them all), he failed to provide any information indicating those tires were legally removed. It is entirely possible those tires were simply moved to another area, without complying with legal requirements. The violations have been longstanding, over hundreds of days. The maximum fines for the two violation categories in this case are \$5,000 and \$10,000, respectively, per day. The request in this case for \$28,000 is reasonable under the circumstances. Factual Findings 1-26.

ORDERS

The civil penalty imposed on Respondent Robert Gillon, as an Owner of the Gillon Waste Tire Site, in the sum of \$14,000, is SUSTAINED.

The civil penalty imposed on Respondent Robert Gillon, as the Operator of the Gillon Waste Tire Site, in the sum of \$14,000, is SUSTAINED.

Respondent Robert Gillon is ORDERED to pay the California Integrated Waste Management Board penalties totaling \$28,000.00.

DATED: April 5, 2004

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings