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STATE OF CALIFORNIA

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

In the Matter of: BERNARDO BELTRAN dba B & J TIRES & WHEELS, INC. aka B & J TIRES; B & J AUTO CENTER, INC. TPID NO.: 1000902-01 ASSESSOR'S PARCEL NO.: 041-3906-002 RESPONDENT	ADMINISTRATIVE DECISION PURSUANT TO STIPULATION FOR THE DENIAL OF THE WASTE AND USED TIRE HAULER REGISTRATION AND WASTE TIRE HAULER PENALTIES. PUBLIC RESOURCES CODE SECTION 42960; 42962. Agency No: 2008-000040-DEN OAH No. 2009010484

INTRODUCTION

Pursuant to Public Resources Code (PRC) section 42850(b), the California Integrated Waste Management Board ("CIWMB") served a Statement of Issues for the Denial of the Waste and Used Tire Hauler Registration on December 13, 2008. RESPONDENT requested a hearing on January 7, 2009. A hearing was scheduled for May 8, 2009, in Oakland, California. On May 4, 2009, the parties requested to convert the hearing to a settlement conference, which was approved by the Office of Administrative Hearings on May 6, 2009.

To avoid the uncertainties of litigation, RESPONDENT entered into a Stipulation on June 24, 2009, for Issuance of Administrative Decision for Waste Tire Facility Permit, the Denial of the Waste and Used Tire Hauler Registration; and Waste Tire Hauler Penalties to resolve the allegations in the Third Amended Statement of Issues for the Denial of Waste and Used Tire Hauler Registration. Pursuant to the Stipulation, and good cause appearing therefore, the following Stipulated Factual Findings and Conclusions of Law are made, and the following Stipulated Order is issued.

STIPULATED FACTUAL FINDINGS

1. The Third Amended Statement of Issues was executed by WENDY BRECKON, Senior Staff Counsel, CIWMB, acting in her official capacity.

2. The California Integrated Waste Management Board ("CIWMB") has authority to regulate and conduct enforcement actions regarding Waste Tire Haulers within the State of California under Public Resources Code (PRC) Section 42962 et seq. and has authority to inspect, permit, regulate and conduct enforcement actions against Waste Tire Facilities (WTF) within the State of California under PRC section 42800, et seq., and attendant regulations contained in 14 California Code of Regulations ("CCR").

3. The following facts pertain to RESPONDENT BERNARDO BELTRAN dba B&J TIRES & WHEELS, INC. aka B & J TIRES, and any reference to RESPONDENT in this paragraph does not include B & J AUTO CENTER, INC.:

PRIOR VIOLATIONS

a. Clean Up & Abatement Order No. 98-83 dated October 15, 1998, was issued by CIWMB to RESPONDENTS, Operator of B & J Tires requesting that RESPONDENTS either obtain a WTFP or remove all waste tires from his location by December 31, 1998.

b. As a result of 13,000 waste tires stored at his facility, CIWMB and Bernard Beltran entered into a Settlement Agreement and Mutual Compromise on May 14, 1999, wherein Mr. Beltran agreed to pay $500 and apply for a waste tire facility permit.

c. The CIWMB issued RESPONDENT a Minor Waste Tire Facility Permit (WTFP) on June 3, 2003, allowing RESPONDENT to store 4,999 of whole or passenger tire equivalents (PTE).

d. RESPONDENT, located at 5901 Coliseum Way, Oakland, Alameda County, California 94602; Assessor's Parcel Number 041-3906-002, is in violation of PRC section 42822 et seq effective June 3, 2008, at which time RESPONDENT'S WTFP expired. Further, RESPONDENT failed to timely file for a permit extension.

e. On January 14, 2005, the CIWMB Waste Tire Hauler Registration and Manifest Program cancelled RESPONDENT for failing to renew the waste tire registration for the 2005 calendar year. RESPONDENT continued to haul waste and used tires on 24 (twenty-four) occasions after the waste tire hauler registration expired.

f. On October 25, 2005, the matter was determined as a default pursuant to Government Code section 11520, and RESPONDENT was ordered to pay the CIWMB an administrative penalty of $59,500.00 within 30 (thirty) days of the date of the decision.

g. On March 1, 2006, RESPONDENT requested reconsideration of the administrative penalty owed the Board because of a number of circumstances, including financial conditions of the business.

h. On May 16, 2006, the Board considered the request and decided that the totality of the circumstances justified reconsideration of the penalty. An agreement was reached for a penalty of $40,000.00 (forty thousand dollars), with $15,000.00 (fifteen thousand dollars) stayed for a period of two (2) years. The parties executed the Stipulation for Issuance of Administrative Decision

for Administrative Penalties, in which the parties stipulated to the law and facts of this matter, the administrative penalty owed, the payment plan, and other terms.

i. On June 22, 2006, the CIWMB amended its October 25, 2005 decision, such that RESPONDENT, owed the CIWMB $25,000.00 in administrative penalties.

j. On May 4, 2007, the CIWMB received the administrative penalties payment of $25,000.00 paid in full by the RESPONDENT.

CURRENT VIOLATIONS

k. On June 3, 2008, the Minor Waste Tire Facility Permit issued to RESPONDENT, expired.

l. As of the date of the Stipulation, the CIWMB has received no Waste Tire Facility Permit Application documentation from RESPONDENT.

m. On October 21, 2008, Alameda County Inspector Wing Suen and CIWMB Inspectors Bill Motmans and Tom Cunningham, conducted an inspection of B & J TIRES, located at 5901 Coliseum Way in Oakland, California. Approximately 2,189 waste tires were determined to be on site, which means that the site was an unpermitted minor waste tire facility pursuant to Public Resources Code section 42808.

n. On October 21, 2008, upon inspection of the comprehensive trip logs, or manifests pursuant to Public Resources Code section 42961.5, the inspector discovered that RESPONDENTS failed to manifest at least two loads of waste tires that were delivered to 5901 Coliseum Way pursuant to PRC section 42961.5. RESPONDENT failed to correct this violation after receiving an Area of Concern on May 20, 2008, for failure to manifest deliveries of used and waste tires to the 5901 Coliseum Way facility.

o. In February 2009, there were approximately 773 waste tires transported to RESPONDENT's facility located at 5325-27 International in

Oakland, and RESPONDENT failed to manifest the pick-up of these tires to an authorized end-use facility pursuant to PRC section 42961.5.

p. On or about March 24, 2009, Alameda County Inspector Maria Mendoza, conducted an inspection of B & J TIRES Facility, located at 5325-27 International Blvd in Oakland, California, and discovered RESPONDENTS have been hauling waste or used tires as an unregistered hauler in violation of PRC section 42951 between January 1, 2009 and March 24, 2009.

q. B&J AUTO CENTER, INC. was named as a respondent in the Third Amended Statement of Issues.

STIPULATED CONCLUSIONS OF LAW

4. CIWMB has the authority to impose administrative penalties pursuant to PRC section 42962, and to deny used and waste tire hauler registrations pursuant to PRC section 42960.

5. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC., Property Owner and Operator operated its facility without obtaining a permit in violation of PRC section 42835, and directed waste tires to an unpermitted facility in violation of 42834.

6. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC. violated 14 CCR section 18426, failure to submit a completed permit application pursuant to PRC section 42822.

7. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC. violated PRC §42951(b) by transporting waste or used tires to a facility that is not permitted, excluded, exempted, or otherwise authorized by the board, by statute, or by regulation to accept waste and used tires, or to a facility that lawfully accepts waste or used tires for reuse or disposal. On October 21, 2008, upon inspection of the comprehensive trip logs, or (manifests) pursuant to Public Resources Code section 42961.5, the inspectors

discovered that two truck loads of 2,189 tires were delivered to the site creating an unpermitted minor WTF.

8. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC. violated PRC §42961.5 (C) (2) by failing to complete the California Uniform Waste and Used Tire Manifest (manifest or CTL) as required by the board. The waste and used tire hauler is required to provide the manifest to the waste or used tire facility operator who receives the waste or used tires for handling, altering, storage, disposal, or any combination thereof. Inspectors determined on or about October 21, 2008 that at least two deliveries of waste tires taken to the facility at 5901 Coliseum Way that were not manifested. In addition, in February 2009, there were approximately 773 waste tires transported to RESPONDENT's 5325-27 International facility in Oakland, and RESPONDENTS failed to manifest the pick-up of these tires to an authorized end-use facility.

9. BERNARDO BELTRAN d/b/a B & J TIRES & WHEELS, INC. violated PRC § 42951 by hauling used or waste tires without a CIWMB registration as stated in paragraph 3(p) above.

ORDER

The CIWMB approves of, and adopts the terms of the Stipulation, and the following order is hereby made:

a. RESPONDENT BERNARDO BELTRAN dba B & J TIRES is ordered to pay an administrative penalty for waste and used tire hauler penalties in favor of the CIWMB in the sum of eighteen thousand dollars ($18,000.00). Five thousand dollars ($5,000.00) of this penalty is owed to CIWMB, and the remaining thirteen thousand dollars ($13,000.00) is to be held in abeyance for two years and will be imposed in the event of default of the Stipulation. Payment of the $5,000 (five thousand dollars) administrative penalty shall be made pursuant to the terms of the Stipulation.

b. RESPONDENT B & J AUTO CENTER, INC. is ordered to pay an administrative penalty for waste and used tire hauler penalties in favor of the CIWMB in the sum of Ten Thousand Dollars ($10,000.00). Ten Thousand dollars ($10,000.00) of this penalty is to be held in abeyance for two years in case of default of the Stipulation as follows:

1) failure to submit a complete application to CIWMB for a waste tire facility permit within 60 days;

2) failure to submit a complete application to CIWMB for a used and waste tire registration within 60 days;

3) Each occurrence of unregistered hauling will result in a $1,000 per violation penalty from the amount held in abeyance;

4) Each occurrence of storage of more than 1500 waste tires at an unpermitted facility, other than the facility at 5901 Coliseum Way, or any other unpermitted waste tire facility operated by RESPONDENT, will result in a $1,000 per violation penalty from the amount of funds held in abeyance;

5) Nothing shall preclude CIWMB from seeking another enforcement action in addition to the remedies for default of the stipulation, such as disciplining a CIWMB permit or registration, or seeking an administrative penalty.

c. RESPONDENTS shall comply with and abide by the waste tire laws and all the conditions of the permit originally issued by CIWMB to B & J TIRES & WHEELS, INC. on June 3, 2003, and that expired on June 3, 2008 until a new permit is issued. RESPONDENTS shall cooperate with requests for information pertaining to the WTF.

d. RESPONDENT B & J AUTO CENTER, INC. shall submit to CIWMB a complete application for a waste tire facility permit within 60 days of the issuance of the Administrative Decision adopting this Stipulation.

e. RESPONDENT B & J AUTO CENTER, INC. shall submit to CIWMB a complete application for a waste tire facility registration within 60 days of the issuance of the Administrative Decision adopting this Stipulation. A temporary

used and waste tire hauler registration will be issued to RESPONDENT B & J AUTO CENTER, INC., and will expire 60 days after its issuance.

f. The waste and used tire hauler registration issued to RESPONDENT BERNARDO BELTRAN dba B & J TIRES is denied for one year.

g. RESPONDENT BERNARDO BELTRAN dba B & J TIRES shall be in default of the Stipulation if he or any business, limited liability company, partnership or corporation that he is affiliated with by means of being an officer, manager owner, or partner, creates an unpermitted waste tire facility pursuant to PRC section 42808, hauls used or waste tires without CIWMB registration pursuant to PRC section 42951, or fails to make payments pursuant to paragraph 10(e)(1).

The effective date of this Decision is 8/18/2009.

MARGO REID BROWN
Chair
California Integrated Waste Management Board