

1 ELLIOT BLOCK SBN 116999
Chief Counsel
2 HEATHER L. HUNT SBN 225861
Staff Counsel III
3 Attorneys for Complainant
4 DEPARTMENT OF RESOURCES RECYCLING & RECOVERY
1001 I Street, 24th Floor
5 P. O. Box 4025
6 Sacramento, CA 95812-4025
Telephone: (916) 341- 6068
7 Facsimile: (916) 319-7677

8
9 STATE OF CALIFORNIA
10 DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

11 In the Matter of:

12 MICHAEL BALL, DBA MBO,
Operator

13 AND

14 MARY BALL,
Property Owner

15
16
17 TPID NO: 1000561-01

18 RESPONDENTS.
19

ADMINISTRATIVE DECISION
PURSUANT TO STIPULATION FOR THE
REVOCATION OF WASTE TIRE
HAULER REGISTRATION AND WASTE
TIRE HAULER PENALTIES

AGENCY NO: 2011-000007-REV

OAH NO: 2011-120427

20 **INTRODUCTION**

21 The California Department of Resources Recycling and Recovery (CALRECYCLE)
22 has authority to regulate and conduct enforcement actions regarding Waste Tire Haulers
23 and Waste Tire Facilities within the State of California under Public Resources Code
24 (PRC) sections 42850 et seq. and 42962 et seq., and attendant regulations contained in
25 14 California Code of Regulations (CCR).

26 This Administrative Decision Pursuant to Stipulation for the Revocation of Waste
27 Tire Hauler Registration and Waste Tire Hauler Penalties is based on the Stipulation for
28 Issuance of Administrative Decision for the Revocation of Waste Tire Hauler Registration

1 and Waste Tire Hauler Penalties (Stipulation) signed by MICHAEL BALL, DBA MBO
2 (MBO) and MARY BALL, AS PROPERTY OWNER (RESPONDENTS) on July 23, 2012.

3 The Accusation for the Revocation of Waste Tire Hauler Registration and
4 Administrative Complaint for Waste Tire Hauler Penalties (Complaint) was issued to
5 RESPONDENTS on October 21, 2011. RESPONDENT MBO requested a hearing on
6 November 28, 2011. A hearing was scheduled for July 24, 2012, in Sacramento,
7 California.

8 Pursuant to the Stipulation, and good cause appearing therefore, the following
9 Stipulated Factual Findings and Legal Conclusions are made, and the following Order is
10 issued:

11
12 **STIPULATED FACTUAL FINDINGS**

13
14 1. PRC section 42960 (b)(2) authorizes CALRECYCLE to suspend, revoke, or
15 deny a waste and used tire hauler registration for a period of three years to five years, or
16 may suspend, revoke, or deny a waste and used tire hauler registration permanently
17 pursuant to California's formal administrative hearing procedures when the hauler has
18 been previously fined pursuant to this chapter (Tire Hauler Registration Laws) or Chapter
19 16 of the PRC commencing with Section 42800 (Waste Tires Laws).

20 2. PRC section 42951 (b) prohibits waste tire haulers (haulers) from
21 transporting waste tires to a facility that is not permitted, excluded, exempted, or otherwise
22 authorized by CALRECYCLE, by statute, or by regulation, to accept waste and used tires.

23 3. A major Waste Tire Facility (WTF) is defined in PRC section 42808(b) as a
24 WTF where at any time five thousand (5,000) or more waste tires are or will be stored,
25 stockpiled, accumulated, or discarded.

26 4. PRC section 42822 and 14 CCR section 18420 require operators and
27 owners of major WTF to obtain, and CALRECYCLE to issue, major WTF permits for the
28 operation of major WTFs.

1 5. PRC section 42824, makes it unlawful to direct or transport waste tires to a
2 major WTF or to accept waste tires at a major WTF unless the operator has first obtained
3 a major WTF permit.

4 6. PRC section 42961.5 requires haulers to complete and submit manifests to
5 CALRECYCLE for all waste tire pickups and deliveries, including to the hauler's own site.

6 7. RESPONDENT MBO has been a waste tire hauler (hauler), registered by
7 CALRECYCLE since 1997.

8 8. RESPONDENT MBO operates its hauler business out of the property owned
9 by RESPONDENT MARY BALL located at 18231 West Clinton Road, Jackson, California
10 95669 (the site).

11 9. At no time have RESPONDENTS applied for or obtained a major WTF
12 permit for the site. Further, the operation at the site is neither excluded or exempt from
13 needing a major WTF permit nor has it been otherwise authorized to operate without a
14 major WTF permit by CALRECYCLE.

15 10. RESPONDENTS have previously been fined for violations of California
16 Waste Tire Laws and California Tire Hauler Registration Laws.

17 11. On September 26, 1996, the CIWMB issued Administrative Complaint
18 number 96-29A for violations of California laws against RESPONDENT MBO seeking
19 penalties in the amount of fifteen thousand dollars (\$15,000.00). Administrative Complaint
20 number 96-29A was based on evidence indicating that RESPONDENT MBO had stored,
21 stockpiled, or accumulated approximately seven thousand (7,000) waste tires on the site.
22 Administrative Complaint number 96-29A alleged that RESPONDENT MBO violated PRC
23 section 42824 by directing or transporting waste tires to a major WTF or accepting waste
24 tires at a major WTF without first obtaining a major WTF permit.

25 12. On August 8, 1997, California Administrative Law Judge Catherine B. Frink
26 issued a Decision against RESPONDENT MBO for violations alleged by CALRECYCLE in
27 Administrative Complaint number 97-24AC and ordered RESPONDENTS to pay penalties
28 for violations of California Waste Tires and Tire Hauler Registration laws. In her Decision,

1 the Honorable Catherine Frink found that RESPONDENT MBO rented space on a
2 separate site located at 11941 Highway 88, Martel, California, where it had operated a
3 WTF, and stored or stockpiled more than nine thousand (9,000) waste tires without first
4 obtaining a minor or a major WTF permit (14 CCR section 18420). The Honorable
5 Catherine Frink ordered RESPONDENT MBO to pay a fine of one thousand dollars
6 (\$1,000.00) to CALRECYCLE if all waste tires over four hundred ninety nine (499) were
7 removed by a deadline, or to pay a fine of nine thousand dollars (\$9,000.00) to
8 CALRECYCLE if that deadline was not met for the following violations: failing to obtain a
9 waste tire facility permit (PRC section 42822 and 14 CCR section 18420), failing to provide
10 adequate fire prevention measures including adequate water supply (14 CCR section
11 17351), failing to provide adequate vector control (14 CCR section 17353), failing to
12 provide adequate security (14 CCR section 17352), and failing to properly store waste
13 tires (14 CCR section 17354).

14 13. On April 17, 2000, California Administrative Law Judge M. Amanda Beke
15 issued a Decision against RESPONDENTS based on violations alleged in Administrative
16 Complaint number 99-86AC and terms stipulated to between RESPONDENTS and
17 CALRECYCLE. The Honorable M. Amade Beke ordered RESPONDENTS to pay a fine
18 of five thousand dollars (\$5,000.00) to CALRECYCLE based on the following violations
19 stipulated to by both parties: RESPONDENTS stored, stockpiled or accumulated more
20 than seven thousand (7,000) waste tires on the site without first obtaining a minor or a
21 major WTF permit (PRC section 42824), RESPONDENT MBO brought tires to the
22 unpermitted site, RESPONDENTS failed to provide adequate fire prevention measures to
23 the site including inadequate water supply (14 CCR section 17351), RESPONDENTS
24 failed to provide adequate security and access to site (14 CCR section 17352),
25 RESPONDENTS failed to provide adequate vector control at the site (14 CCR section
26 17353), and RESPONDENTS failed to properly store waste tires on site (14 CCR section
27 17354).

28 ///

- 1 c. RESPONDENTS violated PRC section 42824 by transporting waste
2 tires to the unpermitted major waste tire facility without first obtaining a
3 major waste tire facility permit.
- 4 d. RESPONDENTS violated PRC section 42961.5 by failing to complete,
5 and submit to CALRECYCLE, manifest forms showing deliveries of
6 waste tires to the site, which had more than 5,000 tires onsite during
7 the June 30th, 2011 inspection conducted by CALRECYCLE staff.

8
9 **ORDER**

10
11 17. CALRECYCLE approves of, and adopts the terms of the Stipulation, and
12 hereby orders RESPONDENTS to comply with the following terms, in accordance with the
13 Stipulation:

14 (a) Pursuant to the terms and conditions of the Stipulation, and subject to
15 the limitations hereunder, RESPONDENTS stipulate to an administrative penalty against
16 RESPONDENTS and in favor of CALRECYCLE in the sum of forty five thousand dollars
17 (\$45,000.00) for the violations set forth in the Stipulation. Payment of the penalty shall be
18 satisfied in the following manner:

19 i) RESPONDENTS shall pay eleven thousand dollars (\$11,000.00) to
20 CALRECYCLE in accordance with the following:

- 21 1. RESPONDENTS shall pay to CALRECYCLE the sum of three
22 hundred dollars (\$300.00) each month with the first payment due on
23 October 15, 2012.
- 24 2. All payments shall be made to CALRECYCLE, Attn: Esther
25 Gallegos, at P. O. Box 4025, Sacramento, CA 95812-4025, or to
26 such other person and/or place as CALRECYCLE or its agent may
27 from time to time designate in writing.
- 28

1 3. If any payment by RESPONDENTS hereunder is not mailed by
2 RESPONDENTS to said addressee by the due date, or a date later
3 issued by CALRECYCLE, and if RESPONDENTS fail to cure the
4 missed payment(s) within twenty (20) days of said missed payment,
5 RESPONDENTS shall be found in partial default of the stipulation.

6 ii) Thirty four thousand dollars (\$ 34,000.00) of this administrative
7 penalty shall be held in abeyance for five years. The stayed penalty shall be deemed
8 terminated and shall not be paid by RESPONDENTS to CALRECYCLE following the five-
9 year period absent a default as described.

10 (b) RESPONDENT MBO's waste and used tire hauler registration shall be
11 suspended for one month starting on January 1, 2013 and ending on February 1, 2013.

12 (c) RESPONDENTS shall not create a minor or major WTF at any
13 location without first obtaining a WTF permit (violation of this term constitutes a full
14 default).

15 (d) RESPONDENTS shall not store any tires on the ground at the site (violation
16 of this term constitutes a full default). RESPONDENTS may operate as a collection facility
17 at the site in accordance with the requirements set forth in 14 CCR section 17225.717.

18 (e) RESPONDENTS shall maintain a manifest error rate of 4% or less for the
19 five year abeyance period (violation of this term constitutes a full default).

20 (f) RESPONDENTS shall comply with all other laws related to waste tire
21 storage and waste tire haulers set forth in PRC section 42800 et seq., PRC section 42950
22 et seq., and Title 14 of the CCR.

23 (g) If RESPONDENTS open a minor or major WTF, or operate as a tire dealer,
24 at any location, CALRECYCLE shall inspect that facility at least twice a year for the
25 abeyance period and RESPONDENTS shall be responsible for reimbursing
26 CALRECYCLE for the cost of those inspections, in accordance with the inspection and
27 reimbursement terms set forth in subparagraph (h) of the Decision below.

28 ///

1 (h) At any time during the abeyance period, if CALRECYCLE determines that
2 RESPONDENTS have violated any waste tire laws, or waste tire hauler laws,
3 CALRECYCLE shall inspect the site at which waste or used tires or RESPONDENTS
4 trucks are stored, whichever location(s) correspond(s) to the violations, at an increased
5 frequency of at least monthly, until RESPONDENTS remedy the new violations and bring
6 the site into compliance. RESPONDENTS shall grant CALRECYCLE inspectors, or any
7 agent designated by CALRECYCLE, access to the site for the purpose of conducting
8 these additional inspections and RESPONDENTS shall reimburse CALRECYCLE for the
9 cost of these additional inspections (including costs for the time spent preparing for the
10 inspection, traveling to the site, and preparing and writing any Inspection Report).
11 Additionally, after compliance has again been regained, CALRECYCLE shall inspect the
12 site twice a year for the remainder of the abeyance period, and RESPONDENTS shall
13 reimburse CALRECYCLE for the costs of these additional inspections (including costs for
14 the time spent preparing for the inspection, traveling to the site, and preparing and writing
15 any Inspection Report).

16 i. Failure to grant access to inspectors or agents designated by
17 CALRECYCLE, or failure to reimburse CALRECYCLE for the costs of an additional
18 inspection within 30 days of an invoice shall be deemed a default of the Stipulation.

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

22 18. Default: If RESPONDENTS default under any of the terms of the Stipulation,
23 CALRECYCLE shall send a Notice of Default to RESPONDENTS; said Notice of Default
24 shall state the paragraphs or provisions of the Stipulation of which RESPONDENTS are in
25 default and the abeyance amount owed. RESPONDENTS shall have fifteen (15) days
26 from the date of the issuance of the Notice of Default to provide evidence refuting
27 CALRECYCLE's claim of default. After a review of the evidence provided by
28 RESPONDENTS, CALRECYCLE shall make a determination regarding the default and, if
appropriate, shall issue a Supplemental Decision regarding any remaining penalties due.

1 RESPONDENTS may appeal CALRECYCLE's determination and subsequent
2 Supplemental Decision within thirty (30) days of the issuance of the Supplemental
3 Decision; any such appeal shall be heard by CALRECYCLE's Director, or an agent
4 designated by the Director.

5 19. Unless otherwise specified in the subsections above, failure to comply with
6 any of the above terms shall constitute a partial default of the Stipulation and the
7 abeyance amount determined by CALRECYCLE shall become immediately due and
8 payable by RESPONDENTS.

9 i. CALRECYCLE shall base any abeyance amount due on the penalty
10 amounts set forth in PRC sections 42850, 42850.1, 42962, and 14 CCR sections 18429
11 and 18464, taking into account the nature, circumstances, extent and gravity of the partial
12 default.

13 ii. If RESPONDENTS are ordered to pay a partial default fine and fail to
14 do so within 30 days, the failure shall constitute a full default and the remaining amount of
15 thirty four thousand dollars, less any amount already paid to CALRECYCLE, shall become
16 immediately due and payable.

17 iii. If RESPONDENTS are found in default of a term which designates a
18 full default as its consequence, RESPONDENT shall be ordered to immediately pay the
19 full penalty amount of thirty four thousand dollars less any amount already paid to
20 CALRECYCLE.

21
22 The DECISION shall become effective as of the date signed below:

23
24 Dated this 30th day of July, 2012.

25 
26 LORRAINE VAN KEKERIX
27 Acting Deputy Director
28 DEPARTMENT OF RESOURCES,
RECYCLING AND RECOVERY
(CALRECYCLE)