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

11 In the Matter of:

12 MICHAEL BALL, DBA MBO,
Operator

13
14 AND

15 MARY BALL,
Property Owner

16
17 TPID NO: 1000561-01

18 RESPONDENTS.
19

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

PUBLIC RESOURCES CODE SECTION
42960

AGENCY NO: 2011-000007-REV

OAH NO: 2011-120427

20 **INTRODUCTION**

21 The parties to this STIPULATION FOR ISSUANCE OF ADMINISTRATIVE
22 DECISION FOR THE REVOCATION OF WASTE TIRE HAULER REGISTRATION AND
23 WASTE TIRE HAULER PENALTIES (Stipulation) are the Department of Resources
24 Recycling and Recovery and MICHAEL BALL, DBA MBO (MBO), Operator and MARY
25 BALL, Property Owner (RESPONDENTS). The California Integrated Waste Management
26 Board (CIWMB) is now the Department of Resources Recycling and Recovery
27 (CALRECYCLE). CALRECYCLE succeeded to CIWMB's authority on January 1, 2010,
28 pursuant to PRC section 40401(a)(1). The ACCUSATION FOR THE REVOCATION OF
WASTE TIRE HAULER REGISTRATION AND ADMINISTRATIVE COMPLAINT FOR

1 WASTE TIRE HAULER PENALTIES (Complaint) was served on RESPONDENTS on
2 October 21, 2011. RESPONDENT MBO, requested a hearing on November 28, 2011. A
3 hearing was scheduled for July 24, 2012, in Sacramento, California.

4 In order to avoid the costs and uncertainties of litigation, CALRECYCLE and
5 RESPONDENTS hereby stipulate to the following Factual Findings, Conclusions of Law,
6 and Order:

7 **STIPULATED FACTUAL FINDINGS**
8

9 1. The Complaint was executed by Heather L. Hunt, Staff Counsel III,
10 CALRECYCLE, acting in her official capacity.

11 2. CALRECYCLE has authority to regulate and conduct enforcement actions
12 regarding Waste Tire Haulers within the State of California pursuant to PRC section 42950
13 et seq. and attendant regulations contained in Title 14 of the California Code of
14 Regulations (CCR).

15 3. PRC section 42960 (b)(2) authorizes CALRECYCLE to suspend, revoke, or
16 deny a waste and used tire hauler registration for a period of three years to five years, or
17 may suspend, revoke, or deny a waste and used tire hauler registration permanently
18 pursuant to California's formal administrative hearing procedures when the hauler has
19 been previously fined pursuant to this chapter (Tire Hauler Registration Laws) or Chapter
20 16 of the PRC commencing with Section 42800 (Waste Tires Laws).

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

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

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

1 7. 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 8. 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 9. RESPONDENT MBO has been a waste tire hauler (hauler), registered by
7 CALRECYCLE since 1997.

8 10. 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 11. 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 12. RESPONDENTS have previously been fined for violations of California
16 Waste Tire Laws and California Tire Hauler Registration Laws.

17 13. 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 14. 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,
the Honorable Catherine Frink found that RESPONDENT MBO rented space on a

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

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

27 16. On May 24, 2000, RESPONDENT MBO was convicted of a misdemeanor
28 violation of PRC section 42824. The Superior Court of California, County of Amador
ordered RESPONDENT MBO to pay a restitution fine of one hundred dollars (\$100.00), to

1 pay restitution in the amount of nine hundred thirty nine dollars and eight cents (\$939.08)
2 to the CIWMB, and to observe good conduct and obey all laws during a probationary
3 period of three (3) years.

4 17. During an inspection of the site on June 30, 2011, and documented in Waste
5 Tire Survey and Inspection Report number I1-1224969, CALRECYCLE Inspectors Marta
6 Kravech and Katie Bruner-Benson observed approximately five thousand 5,000 waste
7 tires. The inspectors further observed standing water in tires, in violation of vector control
8 requirements; weeds growing in and around the tires and an inadequate water supply, in
9 violation of fire prevention measures; and a tire pile exceeding the measurements set forth
10 in California regulations. RESPONDENTS were issued a Notice of Violation to remove all
11 waste tires over 499 by July 30, 2011. The inspectors further observed that
12 RESPONDENT MBO failed to complete required manifest forms documenting the delivery
13 of waste tires to the site.

14 **STIPULATED CONCLUSIONS OF LAW**

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16 18. RESPONDENTS violated PRC section 42960(b)(2) based on the above-
17 mentioned facts by having been previously fined pursuant to California Tire Hauler
18 Registration Laws and California Waste Tire Laws.

19 19. RESPONDENTS violated PRC section 42951 (b) by transporting waste or
20 used tires to a facility that was not permitted, excluded, exempted, or otherwise authorized
21 by CALRECYCLE.

22 20. RESPONDENTS violated PRC section 42824 by transporting waste tires to
23 the unpermitted major waste tire facility without first obtaining a major waste tire facility
24 permit.

25 21. RESPONDENTS violated PRC section 42961.5 by failing to complete, and
26 submit to CALRECYCLE, manifest forms showing deliveries of waste tires to the site,
27 which had more than 5,000 tires onsite during the June 30th, 2011 inspection conducted by
28 CALRECYCLE staff.

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2 **STIPULATED ORDER**
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4 22. RESPONDENTS and CALRECYCLE stipulate to the following terms and
5 conditions in full and complete settlement of this matter:

6 (a) Pursuant to the terms and conditions of this Stipulation, and subject to the
7 limitations hereunder, RESPONDENTS stipulate to an administrative penalty against
8 RESPONDENTS and in favor of CALRECYCLE in the sum of forty five thousand dollars
9 (\$45,000.00) for the violations set forth in this Stipulation. Payment of the penalty shall be
10 satisfied in the following manner:

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

- 13 1. RESPONDENTS shall pay to CALRECYCLE the sum of three
14 hundred dollars (\$300.00) each month with the first payment due on
15 October 15, 2012.
- 16 2. All payments shall be made to CALRECYCLE, Attn: Esther
17 Gallegos, at P. O. Box 4025, Sacramento, CA 95812-4025, or to
18 such other person and/or place as CALRECYCLE or its agent may
19 from time to time designate in writing.
- 20 3. If any payment by RESPONDENTS hereunder is not mailed by
21 RESPONDENTS to said addressee by the due date, or a date later
22 issued by CALRECYCLE, and if RESPONDENTS fail to cure the
23 missed payment(s) within twenty (20) days of said missed payment,
24 RESPONDENTS shall be found in partial default of the stipulation.

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

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

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

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

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

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

15 (g) If RESPONDENTS open a minor or major WTF, or operate as a tire dealer,
16 at any location, CALRECYCLE shall inspect that facility at least twice a year for the
17 abeyance period and RESPONDENTS shall be responsible for reimbursing
18 CALRECYCLE for the cost of those inspections, in accordance with the inspection and
19 reimbursement terms set forth in subparagraph (h) of this Stipulation below.

20 (h) At any time during the abeyance period, if CALRECYCLE determines that
21 RESPONDENTS have violated any waste tire laws, or waste tire hauler laws,
22 CALRECYCLE shall inspect the site at which waste or used tires or RESPONDENTS
23 trucks are stored, whichever location(s) correspond(s) to the violations, at an increased
24 frequency of at least monthly, until RESPONDENTS remedy the new violations and bring
25 the site into compliance. RESPONDENTS shall grant CALRECYCLE inspectors, or any
26 agent designated by CALRECYCLE, access to the site for the purpose of conducting
27 these additional inspections and RESPONDENTS shall reimburse CALRECYCLE for the
28 cost of these additional inspections (including costs for the time spent preparing for the
inspection, traveling to the site, and preparing and writing any

1
2 Inspection Report). Additionally, after compliance has again been regained,
3 CALRECYCLE shall inspect the site twice a year for the remainder of the abeyance
4 period, and RESPONDENTS shall reimburse CALRECYCLE for the costs of these
5 additional inspections (including costs for the time spent preparing for the inspection,
6 traveling to the site, and preparing and writing any Inspection Report).

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

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

13 23. Default: If RESPONDENTS default under any of the terms of this
14 Stipulation, CALRECYCLE shall send a Notice of Default to RESPONDENTS; said Notice
15 of Default shall state the paragraphs or provisions of this Stipulation of which
16 RESPONDENTS are in default and the abeyance amount owed. RESPONDENTS shall
17 have fifteen (15) days from the date of the issuance of the Notice of Default to provide
18 evidence refuting CALRECYCLE's claim of default. After a review of the evidence
19 provided by RESPONDENTS, CALRECYCLE shall make a determination regarding the
20 default and, if appropriate, shall issue a Supplemental Decision regarding any remaining
21 penalties due. RESPONDENTS may appeal CALRECYCLE's determination and
22 subsequent Supplemental Decision within thirty (30) days of the issuance of the
23 Supplemental Decision; any such appeal shall be heard by CALRECYCLE's Director, or
24 an agent designated by the Director.

25 24. Unless otherwise specified in the subsections above, failure to comply with
26 any of the above terms shall constitute a partial default of this Stipulation and the
27 abeyance amount determined by CALRECYCLE shall become immediately due and
28 payable by RESPONDENTS.

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

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

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

13 25. No covenant, promise, term, condition, breach or default of or under this
14 Stipulation shall be deemed to have been waived except as expressly so stated in writing
15 by CALRECYCLE. A waiver by CALRECYCLE of any breach or default by
16 RESPONDENTS under this Stipulation shall not be deemed a waiver of any preceding or
17 subsequent breach or default by RESPONDENTS.

18 26. RESPONDENTS have freely and voluntarily entered into this Stipulation and
19 have been afforded the opportunity to consult with counsel prior to entering into this
20 Stipulation. It is expressly understood and agreed that no representations or promises of
21 any kind, other than as contained herein, have been made by any party to induce any
22 other party to enter into this Stipulation, and that said Stipulation may not be altered,
23 amended, modified or otherwise changed except by a writing executed by each of the
24 parties hereto. Each party hereto agrees to execute and deliver any and all documents
25 and to take any and all actions necessary or appropriate to consummate this Stipulation
26 and to carry out its terms and provisions.

27 27. Except as expressly provided herein, RESPONDENTS waive the right in the
28 entitled matter to a hearing, any and all appeals, and any and all rights that may be

1 afforded pursuant to the PRC, the Administrative Procedure Act, or any other provision of
2 law regarding the express provisions of this Stipulation.

3 28. This Stipulation shall be binding and inure to the benefit of the successors,
4 heirs and assigns of the respective parties hereto.

5 29. This Stipulation and the corresponding Administrative Decision to be issued
6 constitute the entire understanding of the parties concerning the settlement of this
7 proceeding. There are no restrictions, promises, warranties, covenants, undertakings, or
8 representations other than those expressly set forth herein or contained in separate written
9 documents delivered or to be delivered pursuant hereto, and each party expressly
10 acknowledges that it has not relied upon any restrictions, promises, warranties, covenants,
11 undertakings, or representations other than those expressly contained herein.

12 30. For purposes of this Stipulation, facsimile signatures will be treated as
13 originals until the applicable page(s) bearing non-facsimile signatures have been received
14 by CALRECYCLE.

15 31. The effective date of this Stipulation is the date of issuance of the
16 Administrative Decision.

17
18 Dated: 7-30-12


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

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22 Dated: 7-23-12


HEATHER L. HUNT
Staff Counsel III
DEPARTMENT OF RESOURCES, RECYCLING
AND RECOVERY (CALRECYCLE)

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26 Dated: _____

MICHAEL BALL,
Operator
MBO

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18 Dated: _____

19 _____
20 LORRAINE VAN KEKERIX
21 Acting Deputy Director
22 DEPARTMENT OF RESOURCES, RECYCLING
23 AND RECOVERY (CALRECYCLE)

24
25 Dated: 7-23-12

26 _____
27 HEATHER L. HUNT
28 Staff Counsel III
DEPARTMENT OF RESOURCES, RECYCLING
AND RECOVERY (CALRECYCLE)

29
30 Dated: 7-23-12

31 _____
MICHAEL BALL,
Operator
MBO

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Dated: 7-23-12

Mary Ball
 MARY BALL,
 Property Owner
 MBO