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

11 In the Matter of:	}	STIPULATION FOR ISSUANCE OF
12 OAKLAND SCRAP, LLC, OPERATOR .		ADMINISTRATIVE DECISION FOR THE
13 TPID NO: 1656967-01		DENIAL OF WASTE AND USED TIRE
14 RESPONDENT.		HAULER REGISTRATION
		PUBLIC RESOURCES CODE SECTION
		42960
		AGENCY NO: 2011-000102-DEN
		OAH NO: 2011-100547

18  
19 **INTRODUCTION**

20 The parties to this STIPULATION FOR ISSUANCE OF ADMINISTRATIVE  
21 DECISION FOR THE DENIAL OF WASTE AND USED TIRE HAULER REGISTRATION  
22 (Stipulation) are the Department of Resources Recycling and Recovery and OAKLAND  
23 SCRAP, LLC, OPERATOR (RESPONDENT). The California Integrated Waste  
24 Management Board (CIWMB) is now the Department of Resources Recycling and  
25 Recovery (CALRECYCLE). CALRECYCLE succeeded to CIWMB's authority on January  
26 1, 2010, pursuant to PRC section 40401(a)(1). The STATEMENT OF ISSUES FOR THE  
27 DENIAL OF WASTE AND USED TIRE HAULER REGISTRATION (Statement of Issues)  
28 was served on RESPONDENT on August 22, 2011. RESPONDENT requested a hearing

1 on September 1, 2011. A hearing was scheduled for May 22, 2012, in Oakland, California.  
2 On May 17, 2012, complainant filed a request for a continuance. On May 18, 2012, the  
3 Office of Administrative Hearings (OAH) granted the request for a continuance. The new  
4 hearing date was schedule for June 29, 2012.

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

8 **STIPULATED FACTUAL FINDINGS**  
9

10 1. The Statement of Issues was executed by Heather L. Hunt, Staff Counsel III,  
11 CALRECYCLE, acting in her official capacity.

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

16 3. CALRECYCLE has the authority under PRC section 42800, et seq., to  
17 inspect, permit, regulate and conduct enforcement actions against Waste Tire Facilities  
18 (WTF) within the State of California and attendant regulations contained in Title 14 of the  
19 California Code of Regulations (CCR).

20 4. CALRECYCLE has the authority under PRC section 42960 to deny a Waste  
21 Tire Hauler Registration for a period of up to three years if the applicant for the registration  
22 commits specific violations, including:

- 23 i. More than three violations of, or failure to comply with any requirements of  
24 California's Waste Tire Hauler Registration Laws (PRC section 42950 et seq.) or  
25 California's Waste Tire Storage Laws (PRC section 42800 et seq.), or the  
26 regulations adopted pursuant to those provisions, within a one-year period, or  
27 ii. Any misrepresentation or omission of a significant fact or other required  
28 information in the application for a waste and used tire hauler registration or

1 commits any misrepresentation or omission of fact on any manifest more than three  
2 times in one year.

3 5. On June 2, 2011, CALRECYCLE received RESPONDENT's Waste Tire  
4 Hauler Registration Application numbered 1656961 (Application), which listed  
5 RESPONDENT as the name of the business, and Dorj Ariunbaatar as the owner of  
6 RESPONDENT's LLC.

7 **DISPUTED FACTUAL FINDINGS**

8  
9 **A. RESPONDENT committed more than three violations of, or has failed to**  
10 **comply with the Waste Tire Hauler Registration Laws, the Waste Tire Storage**  
11 **Laws, or the regulations adopted pursuant to those provisions in the one-year**  
12 **time period from June 24, 2010, through June 24, 2011.**

13  
14 **(i) RESPONDENT committed violations of, or has failed to comply with Waste Tire**  
15 **Storage Laws and regulations within the one-year time period from June 24, 2010, to June**  
16 **24, 2011.**

17 6. PRC section 42808 defines a major WTF as a WTF where, at any time,  
18 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded.

19 7. 14 CCR section 18423 requires every operator of a new or existing major  
20 WTF to submit a Major WTF Permit Application to CALRECYCLE.

21 8. Pursuant to PRC section 42824, on and after September 1, 1994, it is  
22 unlawful to direct or transport waste tires to a major WTF or to accept waste tires at a  
23 major WTF unless the operator has obtained a Major WTF Permit.

24 9. RESPONDENT operated a WTF located at 851 81<sup>st</sup> Avenue, C4, Oakland,  
25 CA, 94621 (the site) from the time period starting on or before April, 2011, through June  
26 24, 2011. At no time starting on or before April, 2011, through June 24, 2011, did  
27 RESPONDENT submit a Major WTF Permit Application for the site. At no time between  
28 April, 2011, and June 24, 2011, was RESPONDENT in possession of a Major WTF

1 Permit for the site.

2 10. On May 16, 2011, CALRECYCLE received Waste Tire Hauler/Storage  
3 Complaint number 2011-12059 (Complaint) from Brian Chrisman, representative for  
4 Borgata Recycling. In the Complaint, Mr. Chrisman claimed that RESPONDENT was  
5 operating an illegal WTF by stockpiling more than 4,999 tires in its warehouse.

6 11. On May 18, 2011, during an inspection of the site, and documented in Waste  
7 Tire Survey and Inspection Report (Inspection Report) number I1-1167851, Alameda  
8 County Environmental Health Inspectors Steven Plunkett and Paresh Khatri observed  
9 11,715 waste tires, thereby creating an unpermitted major WTF in violation of PRC section  
10 42824, and 14 CCR section 18423.

11 (ii) RESPONDENT committed violations of, or has failed to comply with Waste Tire  
12 Hauler Laws and regulations within the one-year time period from June 24, 2010, to June  
13 24, 2011.

14 12. PRC section 42951(a) requires every person who engages in the  
15 transportation of waste or used tires to hold a valid waste and used tire hauler registration,  
16 unless exempt pursuant to PRC section 42954.

17 13. Once CALRECYCLE approves a Waste Tire Hauler Registration, it issues  
18 registration cards and/or decals for each vehicle listed in the Waste Tire Hauler  
19 Registration Application, in accordance with 14 CCR section 18456.2. Pursuant to 14  
20 CCR sections 18456.2(c) and 18454(f) the registration card and/or decal issued to a  
21 specific vehicle is not transferable from vehicle to vehicle, and said card or decal must at  
22 all times be present in the vehicle to which it was issued.

23 14. PRC section 42954(a)(6) exempts persons hauling waste and used tires  
24 from the registration requirement set forth in PRC section 42951(a) when the person  
25 hauling waste or used tires is a common carrier who transports something other than  
26 waste or used tires to an original destination point and then transports waste or used tires  
27 on the return part of the trip, and the revenue derived from the waste or used tires is  
28 incidental when compared to the revenue earned by the carrier.

1           15. Pursuant to 14 CCR section 18450(a)(10) the revenue derived from  
2 transporting the used and waste tires by a common carrier must be incidental (10% of the  
3 total revenue) when compared to the total revenue earned by the common carrier.

4           16. PRC section 42961.5, in conjunction with 14 CCR sections 18459 and  
5 18460.2, prohibits waste tire haulers from hauling used or waste tires without preparing  
6 and maintaining in the hauling vehicle a manifest, also known as Comprehensive Trip Log  
7 Receipts (CTL receipts), documenting loads of used or waste tires picked-up and/or  
8 delivered.

9           17. 14 CCR section 18460.1 requires a common carrier to carry a copy of the  
10 completed CTL Receipt in its vehicle if the common carrier transports 10 or more waste or  
11 used tires at one time.

12           18. 14 CCR section 18459(c)(5) requires a CTL Receipt to accompany each  
13 load of 10 or more waste or used tires hauled by a common carrier.

14           19. 14 CCR section 18459.3 requires an end-use facility to retain a copy of each  
15 completed CTL Receipt at its place of business for three years, and to make the copy  
16 available to any authorized representative of CALRECYCLE upon request.

17           20. 14 CCR section 18450(a)(15) defines an end-use facility as the WTF where  
18 used or waste tires are unloaded and/or accepted.

19           21. 14 CCR section 18461 requires end-use facilities to retain copies of CTL  
20 receipts documenting loads of used and waste tires delivered to the end-use facility as  
21 provided by a registered waste and used tire hauler. If tires are not delivered by a  
22 registered waste tire hauler, 14 CCR section 18461 requires the end-use facility to  
23 complete an Unregistered Hauler & Comprehensive Trip Log Substitution Form (Substitute  
24 Trip Form) within 48 hours of the tire delivery and submit said form to CALRECYCLE.  
25 Furthermore, the end-use facility must retain a copy of said form at the place of business  
26 for a period of 3 years and must make said form available to any representative of  
27 CALRECYCLE upon request.

28

1           22. On January 13, 2010, Julie He, representative for RESPONDENT, contacted  
2 Keith Cambridge, Supervisor of the Tire Hauler Compliance Unit, by e-mail and requested  
3 that CALRECYCLE process an Application for Agricultural/Common Carrier Exemption  
4 Letter on behalf of RESPONDENT. Mr. Cambridge explained the Common Carrier  
5 Exemption requirements to Ms. He, including the requirement that RESPONDENT would  
6 be required to complete CTL receipts for loads carrying 10 or more used or waste tires.

7           23. On April 14, 2011, CALRECYCLE received an Application for  
8 Agricultural/Common Carrier Exemption Letter from RESPONDENT. In said application,  
9 RESPONDENT listed the business owner as Oakland Scrap, LLC, the business facility  
10 address as 851 81<sup>st</sup> Avenue, C4, Oakland, California 94621, and the business operator or  
11 manager as HS Trading Company. Said application was signed by Julie He as authorized  
12 agent and President for RESPONDENT.

13           24. On April 20, 2011, CALRECYCLE issued to RESPONDENT Common  
14 Carrier Exemption Number 1656967 in the form of a letter. The letter again advised  
15 RESPONDENT that RESPONDENT would "still be required to manifest ten (10) or more  
16 waste or used tires while transporting said tires within the state of California." The letter  
17 further required RESPONDENT to advise CALRECYCLE if it no longer hauled waste tires  
18 in the manner allowed by the Common Carrier Exemption.

19           25. On May 16, 2011, CALRECYCLE received Waste Tire Hauler/Storage  
20 Complaint numbered 2011-12059 (Complaint) from Brian Chrisman, representative for  
21 Borgata Recycling, referenced above in paragraph 10 of this Stipulation. In the Complaint,  
22 Mr. Chrisman further alleged that RESPONDENT was picking up tires as a hauler and  
23 bringing the tires back to its WTF, in violation of PRC section 42951(a).

24           26. During the inspection of the site on May 18, 2011, referenced above in  
25 paragraph 11 of this Stipulation, Alameda County Environmental Health Inspectors Steven  
26 Plunkett and Paresh Khatri observed that RESPONDENT had received more than 11,000  
27 waste or used tires at the site, making the site an end-use facility. During that inspection,  
28 RESPONDENTS were unable to produce CTL Receipts for review documenting the

1 transportation of the 11,715 waste tires to the site, in violation of 14 CCR sections 18461  
2 and 18459.3.

3 27. On May 18, 2011, Barbara Strough, Supervisor for CALRECYCLE's Tire  
4 Enforcement-North Division, spoke to Ms. He regarding the permitting requirements for a  
5 WTF. Ms. He explained that RESPONDENT's business model was to pick up tires from  
6 generators, bring them back to the site, bale them, and ship them overseas, thereby  
7 admitting that RESPONDENT operated as a waste tire hauler and not a common carrier  
8 eligible for an exemption from the waste tire hauler registration requirement, in violation of  
9 PRC section 42951, and requiring RESPONDENT to prepare CTL receipts for each load  
10 of used or waste tires hauled in accordance with PRC section 42961.5 and 14 CCR  
11 section 18459.

12 28. Because of the unavailability of CTL receipts on the May 18<sup>th</sup> inspection, Mr.  
13 Cambridge performed a review of CTL receipts received by CALRECYCLE pursuant to 14  
14 CCR sections 18459.2.1 and 18461. The table below lists the only CTL receipts submitted  
15 to CALRECYCLE that document loads of waste tires delivered to or picked up from the  
16 site prior to the May 18<sup>th</sup> inspection. The information in the reviewed CTL receipts provides  
17 documentation for only 3,500 of the 11,715 waste tires observed onsite, meaning that  
18 RESPONDENT accepted tires at the site without either obtaining a CTL receipt or  
19 preparing an Substitute Trip Form in violation of 14 CCR sections 18459.3 and 18461.  
20 Furthermore, no additional CTL receipts were observed by Mr. Cambridge documenting  
21 loads of 10 or more used or waste tires hauled by RESPONDENT, as there should have  
22 been based on Ms. He's admissions to Ms. Strough on May 18<sup>th</sup>, in violation of PRC  
23 section 42961.5 and 14 CCR sections 18459 and 18460.2.

Comprehensive Trip Log	Load Date	Hauler Name	Pickup PTE	Delivery PTES	Facility Name
4258305-C	May 09, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258309-B	May 11, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258313-B	May 12, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.

1	4258317-B	May 13, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
2	4258315-B	May 16, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
3	4258320-B	May 17, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4	4258324-A	May 18, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.

5  
6       29.     On June 2, 2011, CALRECYCLE received RESPONDENT's Application,  
7 referenced above in paragraph 5 of this Stipulation, which listed RESPONDENT as the  
8 name of the business, and Dorj Ariunbaatar as the owner of RESPONDENT's LLC.  
9 Included in the list of vehicles for which RESPONDENT requested registration decals was  
10 a vehicle with CA license plate number 9B57492 and VIN 1XPGDU9X8XD487945 that  
11 was registered through the California Department of Motor Vehicles (DMV) to Dorj  
12 Ariunbaatar; however, that vehicle was already registered to haul tires by CALRECYCLE  
13 for Borgata Recycling, in violation of 14 CCR section 18454(f).

14       30.     On June 24, 2011, during an inspection of the site, and documented in  
15 Inspection Report Number I1-1167797, Alameda County Environmental Health Inspectors  
16 Plunkett and Khatri, along with CALRECYCLE staff, Barbara Strough, Mary LeClaire, and  
17 Katie Bruner-Benson, observed 334 waste tires. Ms. Bruner-Benson further observed that  
18 no CTL receipts or Substitute Trip Forms were on site and available for review  
19 documenting the removal of waste tires from the site, in violation of 14 CCR sections  
20 18459.3 and 18461.

21       31.     On June 24, 2011, during the same inspection CALRECYCLE staff observed  
22 a truck in the parking lot that had no license plate. Upon further investigation Ms. Bruner-  
23 Benson observed that the VIN for that truck was 1GDJG31U841912745, and that the 2011  
24 CALRECYCLE-issued tire hauler decal number 11-06665 was affixed to the passenger  
25 side windshield. Upon returning to CALRECYCLE, Inspector Bruner-Benson reviewed  
26 CALRECYCLE's records and found that decal number 11-06665 was never issued to  
27 RESPONDENT's vehicle, but instead was issued by CALRECYCLE to a vehicle with  
28 California license plate number 9E04401 and VIN 1FUJA6AVMayDN71513 that was listed

1 in the Waste Tire Hauler Registration Application for MGL Express Transportation.  
2 RESPONDENT's use of a decal on a vehicle to which it was not specifically issued  
3 violated 14 CCR sections 18454(f) and 18456.2.

4 32. On June 24, 2011, during the same inspection a separate hauler registered  
5 with CALRECYCLE delivered a load of tires to the site. RESPONDENT failed to obtain a  
6 CTL receipt, in violation of 14 CCR sections 18459.3 and 18461, until the Inspectors  
7 requested that RESPONDENT call the driver back and obtain the CTL Receipt.

8  
9 **B. RESPONDENT misrepresented or omitted a significant fact or other**  
10 **required information in its hauler Application for a waste and used tire hauler**  
11 **registration.**

12  
13 33. In its Application, referenced above in paragraph 5 of this Stipulation,  
14 RESPONDENT requested a registration decal for a vehicle with CA license plate number  
15 9B57492 and VIN 1XPGDU9X8XD487945, and registered through the California DMV to  
16 Dorj Ariunbaatar, thereby representing that this vehicle was available for use by  
17 RESPONDENT to haul tires within California; however, said vehicle was already  
18 registered to haul tires by CALRECYCLE for Borgata Recycling.

19  
20 **DISPUTED CONCLUSIONS OF LAW**

21  
22 34. On at least one occasion RESPONDENT violated PRC section 42824, by  
23 storing more than 4,999 waste tires onsite without first obtaining a Major WTF Permit.

24 35. On at least one occasion RESPONDENT violated 14 CCR section 18423 for  
25 failing to apply for a Major WTF Permit when a Major WTF Permit was required for the  
26 site.

27 36. On at least one occasion RESPONDENT violated PRC section 42951(a) by  
28 hauling loads of used or waste tires without holding a valid waste and used tire hauler

1 registration while not meeting the requirements of hauling under an exemption, such as an  
2 exemption for a common carrier as set forth in PRC section 42952, and 14 CCR sections  
3 18450(a)(10).

4 37. On at least one occasion RESPONDENT violated 14 CCR section 18454(f)  
5 by requesting in its Application a registration decal for a vehicle already registered by  
6 CALRECYCLE to a separate used and waste tire hauler.

7 38. On at least one occasion RESPONDENT violated 14 CCR sections 18454(f)  
8 and 18456.2(c) by transferring a decal that had been issued to a specific vehicle by  
9 CALRECYCLE to a different vehicle to which the decal had not been specifically issued.

10 39. On at least one occasion RESPONDENT violated PRC section 42961.5 and  
11 14 CCR sections 18459 and 18460.2 by failing to prepare and maintain CTL Receipts for  
12 loads of used and waste tires hauled by RESPONDENT who was acting as a used and  
13 waste tire hauler.

14 40. On at least three separate occasions RESPONDENT violated 14 CCR  
15 sections 18459.3 and 18461 for failing to retain and make available to a representative of  
16 CALRECYCLE CTL receipts or Substitute Trip Forms for loads of waste or used tires  
17 delivered to or picked-up from the site.

18 41. On at least one occasion RESPONDENT misrepresented or omitted required  
19 information in the Application by stating that a specific vehicle was available to be  
20 registered for use hauling waste and used tires by CALRECYCLE to RESPONDENT even  
21 though said vehicle was already registered by CALRECYCLE to a separate used and  
22 waste tire hauler.

23  
24 **STIPULATED ORDER**

25  
26 42. RESPONDENT and CALRECYCLE stipulate to the following terms and  
27 conditions in full and complete settlement of this matter:  
28

1 (a) Pursuant to the terms and conditions of this Stipulation, and subject to the  
2 limitations hereunder, RESPONDENT, and each member of RESPONDENT's LLC., shall  
3 cease hauling waste or used tires, in any capacity, within the State of California for a  
4 period of three years.

5 (b) If RESPONDENT defaults on any term of this Stipulation, following the  
6 procedures set forth in paragraph 43 below, RESPONDENT shall immediately remit  
7 payment of \$1,000 per load of waste or used tires hauled, consistent with 14 CCR section  
8 18464.

9 (i) All payments shall be made to CALRECYCLE, Attn: Esther Gallegos,  
10 at P. O. Box 4025, Sacramento, CA 95812-4025, or to such other person and/or  
11 place as CALRECYCLE or its agent may from time to time designate in writing.

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

24 44. No covenant, promise, term, condition, breach or default of or under this  
25 Stipulation shall be deemed to have been waived except as expressly so stated in writing  
26 by CALRECYCLE. A waiver by CALRECYCLE of any breach or default by  
27 RESPONDENT under this Stipulation shall not be deemed a waiver of any preceding or  
28 subsequent breach or default by RESPONDENT.

1  
2       45.   RESPONDENT has freely and voluntarily entered into this Stipulation and  
3 has been afforded the opportunity to consult with counsel prior to entering into this  
4 Stipulation. It is expressly understood and agreed that no representations or promises of  
5 any kind, other than as contained herein, have been made by any party to induce any  
6 other party to enter into this Stipulation, and that said Stipulation may not be altered,  
7 amended, modified or otherwise changed except by a writing executed by each of the  
8 parties hereto. Each party hereto agrees to execute and deliver any and all documents  
9 and to take any and all actions necessary or appropriate to consummate this Stipulation  
10 and to carry out its terms and provisions.

11       46.   Except as expressly provided herein, RESPONDENT waives the right in the  
12 entitled matter to a hearing, any and all appeals, and any and all rights that may be  
13 afforded pursuant to the Public Resources Code, the Administrative Procedure Act, or any  
14 other provision of law regarding the express provisions of this Stipulation.

15       47.   This Stipulation shall be binding and inure to the benefit of the successors,  
16 heirs and assigns of the respective parties hereto; this Stipulation shall be binding on each  
17 member of RESPONDENT's LLC.

18       48.   This Stipulation and the corresponding Administrative Decision to be issued  
19 constitute the entire understanding of the parties concerning the settlement of this  
20 proceeding. There are no restrictions, promises, warranties, covenants, undertakings, or  
21 representations other than those expressly set forth herein or contained in separate written  
22 documents delivered or to be delivered pursuant hereto, and each party expressly  
23 acknowledges that it has not relied upon any restrictions, promises, warranties, covenants,  
24 undertakings, or representations other than those expressly contained herein.

25       49.   For purposes of this Stipulation, facsimile signatures will be treated as  
26 originals until the applicable page(s) bearing non-facsimile signatures have been received  
27 by CALRECYCLE.  
28

1           50.    The effective date of this Stipulation is the date of issuance of the  
2 Administrative Decision.

3  
4  
5 Dated: 7-26-12



6 MARK DE BIE  
7 Deputy Director  
8 DEPARTMENT OF RESOURCES, RECYCLING  
9 AND RECOVERY (CALRECYCLE)

10 Dated: 6-28-12



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

15 Dated: 6/28/12



16 JULIE HE  
17 Owner  
18 OAKLAND SCRAP, LLC, OPERATOR