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9 STATE OF CALIFORNIA

10 CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

11 In the matter of:

12 LUNAS CONSTRUCTION CLEAN-UP,
13 INC.

14 TPID NO: 1599574-01

15 RESPONDENT.

11 SUPPLEMENTAL ADMINISTRATIVE
12 DECISION PURSUANT TO
13 SUPPLEMENTAL STIPULATION FOR
14 PENALTIES PURSUANT TO DEFAULT
15 OF STIPULATION

16 PUBLIC RESOURCES CODE
17 SECTION 42950, ET SEQ.

18 AGENCY No: 2011-011129-ADC

19 **INTRODUCTION**

20 Pursuant to Public Resources Code (PRC) section 42850(b), the Department of
21 Resources Recycling and Recovery (CALRECYCLE) served an ADMINISTRATIVE
22 COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES on LUNAS
23 CONSTRUCTION CLEAN-UP (RESPONDENT) on February 17, 2012. RESPONDENT
24 requested a hearing on March 6, 2012. A hearing was scheduled for September 12, 2012, in
25 Los Angeles, California. CALRECYCLE requested a continuance of the hearing on September
26 11, 2012. The continuance was granted on September 12, 2012 and the new hearing date
27 was scheduled for September 14, 2012. To avoid the cost and uncertainties of litigation,
28 CALRECYCLE and RESPONDENT (hereafter, referred to as "the Parties") entered into a

1 STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR WASTE TIRE
2 HAULER ADMINISTRATIVE PENALTIES (Stipulation) on September 13, 2012. The
3 Stipulation was adopted by CALRECYCLE in its ADMINISTRATIVE DECISION PURSUANT
4 TO STIPULATION FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES
5 (Administrative Decision) on September 26, 2012.

6 On March 19, 2013, RESPONDENT was issued a NOTICE OF DEFAULT OF
7 STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR WASTE TIRE
8 HAULER ADMINISTRATIVE PENALTIES ("Notice of Default") notifying RESPONDENT that it
9 was in default of the terms of the Stipulation and that RESPONDENT would be subject to an
10 administrative penalty of \$6,000.00 if, after reviewing all the evidence provided by
11 RESPONDENT to CALRECYCLE, CALRECYCLE determined that a default of the Stipulation
12 occurred. RESPONDENT was provided twenty (20) days from the date of the Notice of
13 Default to respond to the violations and provide any evidence that there was no default of the
14 Stipulation.

15 From the time period beginning on or around April 3, 2013, to on or around June 17,
16 2013, the Parties took part in discussions regarding the Notice of Default. On April, 10, 2013,
17 RESPONDENT submitted a letter via electronic mail to CALRECYCLE regarding the Notice of
18 Default. RESPONDENT's letter did not provide evidence that a default of the Stipulation did
19 not occur.

20 On or around June 17, 2013, RESPONDENT stipulated to a \$3,000.00 penalty, in favor
21 of CALRECYCLE, to be paid within six months of the effective date of the Supplemental
22 Stipulation. The Supplemental Stipulation does not supersede the terms and conditions
23 contained in the Stipulation or Administrative Decision, including the Stipulated Factual
24 Findings, Stipulated Conclusions of Law, and final Order. The Supplemental Stipulation is
25 entered into by CALRECYCLE and RESPONDENT to settle waste tire hauler administrative
26 penalties owed pursuant to a default by RESPONDENT of the terms and conditions of the
27 Stipulation. Specifically, RESPONDENT is in violation of the terms set forth in the Stipulated
28 Order, Paragraphs 20(h) and 20(j) of the Stipulation.

1 **FACTUAL FINDINGS**

2 1. Paragraph 20(h) of the September 26, 2012, Stipulation provides that
3 RESPONDENTS are in default of the Stipulation if RESPONDENT fails to do the following:

4 Within the first five days of each calendar month, RESPONDENT shall
5 provide CALRECYCLE with a log of waste, used, or new tires picked up from
6 or delivered to any existing or new customer in the state of California. The
7 log shall include the total number of waste, used, or new tires picked up from
8 customers in the state of California, the total number of waste, used, or new
9 tires delivered to customers in the state of California, the names of customers
10 from which or to which waste, used, or new tire were delivered or picked up,
11 and the amount of waste, used, or new tires and their destination for any
12 loads shipped through California that did not originate from or end at a
13 location in California for the previous month.

14 2. Paragraph 20(j) of the September 26, 2012, Stipulation provides that
15 RESPONDENT is in default of the Stipulation if RESPONDENT fails to comply with the laws
16 and regulations related to waste tire haulers set forth in Public Resources Code (PRC)
17 sections 42950 et seq. and Title 14 of the California Code of Regulations (CCR).

18 3. RESPONDENT is responsible for submitting incomplete or inadequate
19 information in its monthly logs, as shown by the discrepancies between the hauling activities
20 listed in the monthly logs and the documentation received by CALRECYCLE for
21 RESPONDENT's hauling activities. Because of the discrepancies in the monthly logs,
22 RESPONDENT's monthly logs did not show the total number of waste, used or new tires
23 picked up from customers in the State of California. This is in violation of Paragraph 20(h) of
24 the Stipulation which states, "[f]ailure to comply with this term shall constitute a full default of
25 this Stipulation."

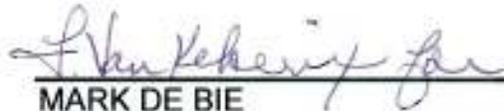
26 4. RESPONDENT is in violation of Paragraph 20(j) of the Stipulation, which
27 requires that RESPONDENT comply with all laws and regulations set forth in PRC 42950 et
28 seq. and Title 14 of the CCR related to waste tire haulers. Pursuant to PRC section 42961.5,
RESPONDENT is required to provide an accurate measurement of the number of tires being
shipped, picked up, the type or types of tires, the date of shipment, and the origin and final
destination of the shipment.

1 and/or place as CALRECYCLE or its agent may from time to time
2 designate in writing. Payments may be remitted in the form of check,
3 cashier's check, money order, cash, or credit card.

4 2. If any payment by RESPONDENT hereunder is not remitted by RESPONDENT
5 to said addressee by the due date, or a date later issued by CALRECYCLE, and if
6 RESPONDENT fails to cure the missed payment(s) within twenty (20) days of said missed
7 payment, RESPONDENT shall be found in partial default of the Stipulation.

8 3. Failure to pay the \$3,000.00 by the said due date shall constitute a full default of
9 the Supplemental Stipulation.

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11 The effective date of this Supplemental Decision is this 16th day of July, 2013

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16 MARK DE BIE
17 Deputy Director
18 DEPARTMENT OF RESOURCES RECYCLING
19 AND RECOVERY (CALRECYCLE)
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