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10 **STATE OF CALIFORNIA**

11 **DEPARTMENT OF RESOURCES RECYCLING & RECOVERY**

12 **In the matter of:**

13 **MICHAEL J. QUAGLETTI, PROPERTY**  
14 **OWNER, AND LY NGUYEN, A-1 TIRE**  
15 **RECYCLING, AND MAN NGO, DBA A-1**  
16 **TIRE RECYCLING, OPERATORS.**  
17 **TPID NO: 1673847**

18 **RESPONDENTS**

**FIRST AMENDED ADMINISTRATIVE  
COMPLAINT FOR WASTE TIRE  
STORAGE ADMINISTRATIVE  
PENALTIES**

**PUBLIC RESOURCES CODE  
SECTION 42850, ET SEQ.**

**AGENCY NO: 2012-011132-ADC**

20  
21 **INTRODUCTION**

22 This Administrative Complaint for Waste Tire Storage Administrative Penalties is  
23 issued by the California Department of Resources Recycling and Recovery  
24 (CALRECYCLE) to MICHAEL J. QUAGLETTI, PROPERTY OWNER, AND LY NGUYEN,  
25 A-1 TIRE RECYCLING, AND MAN NGO, DBA A-1 TIRE RECYCLING, OPERATORS  
26 (RESPONDENTS) seeking \$132,000.00. The California Integrated Waste Management  
27 Board (CIWMB) is now CALRECYCLE. CALRECYCLE succeeded to CIWMB's  
28 authority on January 1, 2010, pursuant to Public Resources Code (PRC) section

1 40401(a)(1). Section 42850(b) of the PRC authorizes CALRECYCLE to issue a  
2 complaint to any person that may be administratively liable. This Complaint is so issued  
3 based on the following facts.

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5 **STATEMENT OF FACTS**  
6

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

11 2. PRC sections 42823 and 42824 make it unlawful for a person to create a  
12 major WTF, or to direct, or transport tires to, or accept waste tires at, a major WTF that  
13 is not already in possession of a valid Major WTF Permit issued by CALRECYCLE.

14 3. PRC section 42808(b) defines a major WTF as “a [WTF] where, at any  
15 time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or  
16 discarded.”

17 4. PRC section 42834 makes it unlawful for a person to direct or transport  
18 waste tires to, or to accept waste tires, at a minor WTF that is not already in possession  
19 of a valid Minor WTF Permit issued by CALRECYCLE.

20 5. PRC section 42808(c) defines a minor WTF as a “waste tire facility where,  
21 at any time, 500 or more, but less than 5,000, waste tires are or will be stored,  
22 stockpiled, accumulated, or discarded.”

23 6. PRC section 42845 states:

24 Any person who stores, stockpiles, or accumulates, waste tires at a  
25 location for which a [WTF] permit is required pursuant to [Chapter 16 of  
26 Part 3 of Division 30 of the PRC, or in violation of . . . the provisions of  
27 [Chapter 16 of Part 3 of Division 30 of the PRC], . . . , shall, upon order of  
28 [CALRECYCLE], clean up those waste tires or abate the effects thereof,  
or, in the case of threatened pollution or nuisance, take other necessary  
remedial action.

1           7.       RESPONDENTS jointly and severally own or operate a WTF located at  
2 15215/15225 South Broadway, Gardena, CA 90248 (the site).

3           8.       PRC section 42804 defines a WTF “operator” as “the person responsible  
4 for the overall operation of a [WTF]”.

5           9.       PRC section 42805 defines a WTF “owner” as “a person who owns, in  
6 whole or in part, a [WTF], the waste tires located at a facility, or the land on which a  
7 [WTF] is located.”

8           10.      At no time between August 23, 2011, and present, have RESPONDENTS  
9 been in possession of either a Minor or a Major WTF Permit for the site.

10          11.      During an inspection of the site on August 23, 2011, and documented in  
11 Waste Tire Survey and Inspection Report (Inspection Report) number I1-1134821  
12 Inspector Steve Dolan, for the CALRECYCLE Waste Tire Enforcement-South Branch,  
13 observed 5,766 waste tires on the site, a violation of PRC sections 42823 and 42824.

14          12.      During a follow-up inspection of the site on October 6, 2011, and  
15 documented in Inspection Report number I1-1134769, Inspector Dolan observed 5,554  
16 waste tires on the site, a violation of PRC section 42823 and 42824.

17          13.      During a follow-up inspection of the site on November 2, 2011, and  
18 documented in Inspection Report number I1-1111094, Inspector Dolan observed 610  
19 waste tires on the site, a violation of PRC section 42834.

20          14.      On or around December 2, 2011, Cleanup and Abatement Order Number  
21 2011-011000-CAO (CAO) was served on each of the RESPONDENTS. The CAO  
22 ordered the RESPONDENTS to “remove all waste tires from [the site] within 30 days  
23 from the date of service” of the CAO.

24          15.      During a follow-up inspection of the site on December 15, 2011, and  
25 documented in Inspection Report number I1-1134756, Inspector Dolan observed 3,000  
26 waste tires on the site, a violation of PRC sections 42834 and 42845.

27          16.      During a follow-up inspection of the site on January 4, 2012, and  
28 documented in Inspection Report number I1-1134754, Inspector Dolan observed 3,369

1 waste tires on the site, a violation of the CAO and PRC sections 42834 and 42845.

2 17. During a follow-up inspection of the site on January 17, 2012, and  
3 documented in Inspection Report number I1-1169578, Inspector Dolan observed 3,763  
4 waste tires on the site, a violation of PRC sections 42834 and 42845, and the CAO.

5 18. During a follow-up inspection of the site on May 15, 2012, and  
6 documented in Inspection Report number I1-1157590, Inspector Dolan observed 3,500  
7 waste tires on the site, a violation of PRC sections 42834 and 42845, and the CAO.

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9 **ALLEGATIONS OF SPECIFIC VIOLATIONS**

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11 19. For at least 132 days, from the time period between January 4, 2012, and  
12 May 15, 2012, RESPONDENTS violated the terms of the CAO.

13 20. For at least 132 days, from the time period between January 4, 2012, and  
14 May 15, 2012, RESPONDENTS violated PRC section 42845 by failing to comply with  
15 the requirements set forth in the CAO.

16 21. On at least two separate occasions RESPONDENTS violated PRC  
17 section 42823 by creating a major WTF with first obtaining a Major WTF Permit from  
18 CALRECYCLE.

19 22. On at least two separate occasions RESPONDENTS violated PRC  
20 section 42824 by directing, transporting tires to, or accepting waste tires at a major WTF  
21 that was not in possession of a Major WTF Permit issued by CALRECYCLE.

22 23. On at least five separate occasions RESPONDENT violated PRC section  
23 42834 by directing, transporting tires to, or accepting waste tires at a minor WTF that  
24 was not in possession of a Minor WTF Permit issued by CALRECYCLE.

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26 **PENALTIES**

27 24. MICHAEL J. QUAGLETTI, PROPERTY OWNER, AND LY NGUYEN, A-1  
28 TIRE RECYCLING, AND MAN NGO dba A-1 TIRE RECYCLING, OPERATORS

1 (RESPONDENTS) are liable for administrative penalties as set forth in PRC section  
2 42850 for negligent violations, or PRC section 42850.1 for intentional violations.  
3 Penalties cannot exceed \$5,000 per day for a negligent violation and \$10,000 per day  
4 for an intentional violation.

5 25. Pursuant to PRC section 42846.5, the imposition of penalties herein may  
6 form the basis for a subsequent CALRECYCLE order permitting CALRECYCLE or its  
7 contractor's access to the property mentioned herein to perform cleanup, abatement or  
8 remedial work under PRC section 42846. Further, PRC section 42847 authorizes  
9 CALRECYCLE to seek recovery of the costs of any cleanup abatement or remedial  
10 work.

11 26. CALRECYCLE'S authority to assess administrative penalties against  
12 RESPONDENTS is set forth in PRC section 42850(a) and (b), which states:

13 (a) Any person who negligently violates any provision of this chapter, or any  
14 permit, rule, regulation, standard, or requirement issued or adopted pursuant to  
15 this chapter, is liable for a civil penalty of not less than five hundred dollars  
16 (\$500) or more than five thousand dollars (\$5,000), for each violation of a  
17 separate provision or, for continuing violations, for each day that the violation  
18 continues.

19 (b) Liability under this section may be imposed in a civil action or liability may be  
20 imposed administratively pursuant to this article.

21 RESPONDENTS are subject to an administrative penalty of up to \$5,000 per violation  
22 for each day RESPONDENTS are in violation.

23 27. The penalty table set forth in 14 CCR section 18429 authorizes an  
24 administrative penalty of up to \$1,000 for every day the violation continues after the  
25 deadline set forth in the CAO against unpermitted WTFs that accumulate between 500  
26 and 4,999 waste tires.

27 28. In setting an appropriate administrative penalty, the hearing officer must  
28 take into consideration the provisions of PRC section 42852.

29 29. In determining an appropriate administrative penalty for RESPONDENTS,  
30 as required by 14 CCR section 18465, CALRECYCLE has taken into consideration the  
31 following factors:

- 1 (1) The nature, circumstances, extent, and gravity of the violation.
- 2 (2) Evidence that the violation was willful or negligent.
- 3 (3) The good or bad faith exhibited by the party.
- 4 (4) History of violation of the same or similar nature.
- 5 (5) The extent to which the party has cooperated with the Department in
- 6 remediating or injury caused by his or her violation.
- 7 (6) The extent that the party has mitigated or attempted to mitigate any
- 8 damage or injury caused by his or her violation.
- 9 (7) Evidence of any financial gain resulting from the violation.
- 10 (8) Such other matters as justice may require.

11 30. PRC section 42847 makes the person or persons who unlawfully stored,  
12 stockpiled, or accumulated the waste tires or who unlawfully permitted the storage,  
13 stockpile, or accumulation of waste tires or who threaten to cause or permit the unlawful  
14 storage, stockpile, or accumulation of waste tires liable to the governmental agency that  
15 cleans up said stored, stockpiled or accumulated waste tires, to the extent of the  
16 reasonable actually incurred in cleaning up the waste, abating the effects thereof, or  
17 taking other remedial actions.

18 31. Accordingly, CALRECYCLE hereby requests that an administrative  
19 penalty be assessed against RESPONDENTS in the sum of \$132,000.00.

### 21 RIGHT TO HEARING

22 You are hereby notified that pursuant to the provisions of PRC section 42962(c)  
23 of the California Public Resources Code and Government Code section 11500 that you  
24 are entitled to a hearing to refute the allegations against you contained in this  
25 Administrative Complaint. **If you wish to have a hearing on this matter, you must**  
26 **complete and return the enclosed REQUEST FOR HEARING to our Legal Office**  
27 **within 15 days of receipt of this notice. Failure to complete and return the**  
28 **REQUEST FOR HEARING within 15 days will be deemed a waiver of your rights to**

1 a hearing.

2 Pursuant to the above referenced Public Resources Code and Government Code  
3 sections, discovery requests by any party must be made within thirty days after the  
4 service of this Administrative Complaint.

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6 Dated this 3<sup>rd</sup> day of May, 2013.

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MARTHA PEREZ  
Staff Counsel

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