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8
9 STATE OF CALIFORNIA

10 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

11 In the matter of:

12
13 **BENITO AND SONS ROAD SERVICES**

14
15 **RESPONDENT**

16
17 **TPID NO.: 1624731-01**

11 } **ADMINISTRATIVE COMPLAINT
FOR WASTE TIRE HAULER
ADMINISTRATIVE PENALTIES**

14 } **PUBLIC RESOURCES CODE
SECTION 42950, ET SEQ.**

17 } **AGENCY NO: 2015-011179-ADC**

18
19 **INTRODUCTION**

20 The California Integrated Waste Management Board (CIWMB) is now the California
21 Department of Resources Recycling and Recovery ("CALRECYCLE"). CALRECYCLE
22 succeeded to CIWMB's authority on January 1, 2010, pursuant to Public Resources Code
23 (PRC) section 40401(a)(1).

24 This Administrative Complaint For Waste Tire Hauler Administrative Penalties
25 (hereafter, "Administrative Complaint") is issued by the CALRECYCLE to Benito and Sons
26 Road Services (hereafter, referred to as "RESPONDENT") seeking \$1,000.00. Pursuant to
27 PRC section 42962(c), CALRECYCLE is authorized to administratively impose penalties on a

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1 person to whom civil liability may be levied. This Administrative Complaint is so issued based
2 on the following facts.

3 STATEMENT OF FACTS

4 1. CALRECYCLE has the authority to permit, regulate, and conduct enforcement
5 actions regarding waste tire facilities and waste tire haulers within the State of California
6 pursuant to PRC sections 42800 et seq., 42950 et seq., and attendant regulations contained in
7 Title 14 of the California Code of Regulations ("CCR").

8 2. A "Waste or Used Tire Hauler" or "Hauler" is defined as, "any person engaged in
9 the transportation of waste or used tires, or tire casings, including haulers that the Department
10 [CALRECYCLE] approved as exempt from registration pursuant to PRC section 42954." (14
11 CCR section 18450(37).)

12 3. A "Waste Tire Hauler Registration" is defined as, "the documents, including the
13 decal and registration form, issued by the Department [CALRECYCLE], which authorizes the
14 holder of the documents to legally haul waste or used tires within California for the period of
15 issuance." (14 CCR section 18450(40).)

16 4. PRC section 42951(a) states, "[e]very person who engages in the transportation
17 of waste or used tires shall hold a valid waste and used tire hauler registration, unless exempt
18 as specified in Section 42954."

19 5. PRC section 42952(a) states, in relevant part:

20 Except as provided in Section 42954, a person engaged in
21 transporting waste or used tires shall comply with all of the following
22 requirements:

23 (1) The person shall be registered as a waste and used tire hauler
24 with the department [CALRECYCLE].

25 6. Title 14 CCR section 18454(a) requires that "any person hauling 10 or more used
26 or waste tires shall apply for a waste tire hauler registration...."

27 7. PRC section 42954 specifies exemptions from registration. An individual does
28 not need to be registered as a tire hauler if: the person transports fewer than 10 waste or used

1 tires at any one time; hauls used and waste tires in a vehicle owned by the federal, state, or
2 local government; the waste or used tires were inadvertently mixed with solid waste and it is
3 not economical or safe to remove them; the tire load originated outside the boundaries of the
4 state and is destined to a place outside state boundaries; the tires are hauled for agricultural
5 purposes; the tires are hauled by a common carrier on a return trip; or the individual is hauling
6 the tires to an amnesty day event (PRC section 42954(a)(1)–(8).)

7 8. Pursuant to PRC section 42956(b), “any person who operates a vehicle . . . that
8 transports 10 or more tires without a valid and current waste and used tire hauler registration,
9 as issued by [CALRECYCLE] . . . shall be subject to the enforcement actions specified in
10 Article 4 (commencing with [PRC] Section 42962).”

11 9. Title 14 CCR section 18463 subsections (a), (b), and (d), provide that any waste
12 tire hauler who intentionally or negligently violates any permit, rule, regulation, standard,
13 requirement, or allows any violation or noncompliance with any permit, rule, regulation,
14 standard, or requirement pursuant to PRC section 42950 et seq. relating to the generation,
15 transportation, or disposal of used or waste tires, shall be liable for a civil penalty.

16 **1 COUNT OF UNREGISTERED HAULING**

17
18 10. RESPONDENT is not and has never been registered as a waste tire hauler with
19 CALRECYCLE.

20 11. RESPONDENT is not and has never been exempt from registration under PRC
21 section 42954(a)(2)–(9).

22 12. On February 2, 2015, during a joint California Highway Patrol (CHP) and
23 CALRECYCLE surveillance checkpoint at B. J. Used Tire & Rubber Recycling, Inc. located at
24 14212 Santa Ana Ave. Fontana, CA, RESPONDENT’s vehicle (CA #8W98110) towing a trailer
25 (CA #4HN5855) was observed to be hauling approximately 50 waste tires without a valid
26 waste and used tire hauler registration issued by CALRECYCLE. These waste or used tires
27 were being transported to B. J. Used Tire & Rubber Recycling, Inc. for disposal as shown in
28 the table below:

Date of Violation	Violation	Passenger Tire Equivalents	Penalty Assessed
February 2, 2015	Unregistered tire hauling, 41-100 waste and used tires	50	\$1,000

13. On July 13, 2015, CALRECYCLE issued RESPONDENT a Streamlined Penalty Letter (SPL). The SPL offered RESPONDENT an opportunity to resolve the violation through settlement. The letter explained RESPONDENT's violation and offered an opportunity to avoid the cost and time of the administrative legal process by having RESPONDENT agree to the streamlined penalty process. RESPONDENT was offered a streamlined penalty in the amount of \$350.00. RESPONDENT was given 15 days from the receipt of the SPL to respond to CALRECYCLE.

14. On August 4, 2015, CALRECYCLE issued RESPONDENT a reminder letter advising RESPONDENT that CALRECYCLE needed a response on the streamlined penalty offer and extended the response date to August 18, 2015.

15. On August 26, 2015, after receiving no response on the SPL offer from RESPONDENT, a CALRECYCLE Program Technician with the Tire Hauler Compliance Unit contacted RESPONDENT via telephone. During the call, RESPONDENT refused the SPL offer due to his belief that he was permitted to haul any amount of waste or used tires in California because he had a Tire Program Identification (TPID) number. TPID # 1624731-01 was issued to RESPONDENT on July 6, 2010, along with a letter explaining that the TPID number did not authorize RESPONDENT to haul more than nine waste or used tires without a valid registration issued by CALRECYCLE.

ALLEGATIONS OF SPECIFIC VIOLATIONS

16. CALRECYCLE is seeking administrative penalties of \$1,000.00, pursuant to PRC section 42962(c) based on the aforementioned facts and for the following violations:

- a. RESPONDENT violated PRC section 42951(a) by illegally transporting or allowing the transportation of at least one load of ten or more waste or

1 used tires on February 2, 2015, without a valid Waste Tire Hauler
2 Registration issued by CALRECYCLE, or being exempt pursuant to PRC
3 section 42954.

4 b. RESPONDENT also violated PRC section 42952(a)(1), as RESPONDENT
5 is not and never was registered as a waste and used tire hauler with
6 CALRECYCLE.

7 c. RESPONDENT additionally violated 14 CCR 18454(a), as RESPONDENT
8 did not and has never applied for a waste tire hauler registration.

9
10 **PENALTIES**

11 17. CALRECYCLE's authority to assess administrative penalties against
12 RESPONDENT as a waste and used tire hauler is set forth in PRC section 42962(c) and Title
13 14 CCR section 18463.

14 Pursuant to PRC section 42962(c):

15 ... [CALRECYCLE] may impose civil penalties administratively
16 in an amount not to exceed five thousand dollars (\$5,000) for each violation
17 of a separate provision or for continuing violations for each day that
18 violation continues, on any person who intentionally or negligently violates
19 any permit, rule, regulation, standard, or requirement issued or adopted
pursuant to this chapter. . .

20 Title 14 CCR section 18463, provides in relevant part:

21 Any waste tire generator, end-use facility, or waste tire hauler, or any party
22 or person who commits any of the following acts shall be liable for a civil
penalty:

23 (a) Intentionally, or negligently violates any permit, rule, regulation, standard, or
24 requirement pursuant to Chapter 19 of the Public Resources Code relating to the
25 generation, transportation or disposal of used or waste tires.

26 (b) The aiding or abetting, or allowing of any violation, or noncompliance with any
27 permit, rule, regulation, standard, or requirement pursuant to Chapter 19 of the
28 Public Resources Code relating to the generation, transportation or disposal of
used or waste tires...

1 18. Title 14 CCR section 18464 authorizes penalties for unregistered waste tire
2 haulers in violation of PRC section 42951(a). CALRECYCLE may assess a first offense
3 penalty between \$500.00 and \$1,000.00 for each count of unregistered hauling where the
4 amount of tires hauled was between 41 and 100 tires.

5 19. RESPONDENT committed a first offense of one count of unregistered tire
6 hauling, hauling between 41 and 100 waste or used tires.

7 20. As required by Title 14 CCR section 18465, in determining an appropriate
8 administrative penalty for RESPONDENT, CALRECYCLE has taken into consideration the
9 following factors:

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

20 21. Accordingly, CALRECYCLE hereby requests that a waste tire hauler
21 administrative penalty be assessed against RESPONDENT in the sum of \$1,000.00.
22

23 **RIGHT TO HEARING**

24 You are hereby notified that pursuant to the provisions of PRC section 42961.1 and
25 Government Code section 11505 that you are entitled to a hearing to refute the allegations
26 against you contained in this ADMINISTRATIVE COMPLAINT FOR WASTE TIRE HAULER
27 ADMINISTRATIVE PENALTIES. **If you wish to have a hearing on this matter, you must**
28 **complete and return the enclosed REQUEST FOR HEARING/ NOTICE OF DEFENSE to**

1 our Legal Office within 15 days of receipt of this Administrative Complaint. Failure to
2 complete and return the REQUEST FOR HEARING/NOTICE OF DEFENSE within 15 days
3 will be deemed a waiver of your right to a hearing.

4 Pursuant to the above referenced Public Resources Code and Government Code
5 sections, discovery requests by any party must be made within 30 days after the service of this
6 ADMINISTRATIVE COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE
7 PENALTIES.

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9 Dated this 1 day of February, 2016.

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11 
12 CATHERINE V. NYSTROM
13 Attorney for
14 Department of Resources Recycling and
15 Recovery (CALRECYCLE)
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