

Order

On The Applicability Of Administrative Procedure Act Provisions
In Tire Program Hearings Conducted Before
The Director Of The Department of Resources Recycling and Recovery (CalRecycle)

I am the duly appointed Director of the Department of Resources Recycling and Recovery (CalRecycle).

Legislation that became effective on January 1, 2013, allows for certain hearings regarding waste tire facility permits and waste/used tire hauler registrations to be conducted before CalRecycle's director pursuant to the informal hearing procedures of the Administrative Procedure Act (APA). (Stats. 2012, Ch. 925, §§ 8 & 20, [amending Pub. Res. Code §§ 42852 & 42961.1].) The informal hearing procedures appear in Article 10 of Chapter 4.5 of the APA. (Gov. Code §§ 11445.10-11445.60.)

The APA's informal hearing procedures expressly state that the presiding officer shall regulate the course of the proceeding, including pleadings, discovery, prehearing conferences, witnesses, testimony, evidence, and argument. (Gov. Code § 11445.50(b).)

However, upon consulting appropriate personnel, I have determined that the APA's informal hearing provisions do not, by themselves, provide adequate procedures for conducting administrative adjudicatory proceedings from commencement through final resolution. For example, the APA's informal hearing procedures do not address the content of accusations and statements of issues, service, language assistance, or the location of hearings.

Other provisions of the APA provide that, when no other governing procedure is provided by statute or regulation, an agency may conduct an adjudicative proceeding under its administrative adjudication provisions. (Gov. Code § 11415.10(a).) Together, Chapters 4.5 and 5 of the APA (Gov. Code §§ 11400-11445.70 [Ch. 4.5] & 11500-11529 [Ch.5]) constitute its administrative adjudication provisions. (Gov. Code § 11400(a).)

Accordingly, I have coordinated with staff to review the APA's administrative adjudicatory provisions and determine which sections should be applied in tire program hearings conducted under the APA's informal hearing procedures. A table presenting a section-by-section summary of the applicability of the provisions of the APA in tire program hearings, making contextual amendments, and providing comments is incorporated by reference and attached as **Exhibit A**.

I have delegated my authority to conduct these tire program hearings to certain CalRecycle employees. When serving as presiding officers in tire program hearings, my delegates may be called "Hearing Officers."

To ensure fair hearings and adequate due process, Hearing Officers are hereby directed to apply the provisions of the APA as presented in Exhibit A when conducting tire program hearings under the APA's informal hearing procedures pursuant to Public Resources Code sections 42852 and 42961.1. However, this order shall not limit the authority of a Hearing Officer to issue orders governing the applicability of provisions of the APA, or matters covered thereby, that amend, supplement, or supersede this order, when appropriate under the circumstances of a particular action.

To provide notice of these procedures to tire program hearing participants, this order and/or its Exhibit A may be publicly distributed, posted on the CalRecycle web site, and/or served with applicable accusations and statements of issues.

All prior orders on the applicability of APA provisions in tire program hearings conducted before the Director of CalRecycle are hereby revoked and superseded by this order.

It is so ordered.

Original signed by Caroll Mortensen on 2-25-12.

Date: _____

Caroll Mortensen, Director
Department of Resources Recycling and Recovery (CalRecycle)

Order
On The Applicability Of Administrative Procedure Act Provisions
In Tire Program Hearings Conducted Before
The Director Of The Department of Resources Recycling and Recovery (CalRecycle)

Exhibit A



APA Administrative Adjudication Provisions Applicability In CalRecycle Tire Program Hearings

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California Government Code
Title 2: Government of the State of California
Division 3: Executive Department
Part 1: State Departments and Agencies

CHAPTER 4.5: ADMINISTRATIVE ADJUDICATION: GENERAL PROVISIONS

Section	Description	Applicable Y (Yes) / N (No)	Comments
ARTICLE 1:	Preliminary Provisions	Y	
§ 11400.	Administrative Procedure Act; References to superseded provisions	Y	
§ 11400.10.	Operative date of chapter; Applicability	Y	
§ 11400.20.	Adoption of interim or permanent regulations	Y	
ARTICLE 2:	Definitions	Y	
§ 11405.10.	Definitions governing construction of chapter	Y	
§ 11405.20.	"Adjudicative proceeding"	Y	
§ 11405.30.	"Agency"	Y	
§ 11405.40.	"Agency head"	Y	
§ 11405.50.	"Decision"	Y	
§ 11405.60.	"Party"	Y	
§ 11405.70.	"Person"	Y	
§ 11405.80.	"Presiding officer"	Y	
ARTICLE 3:	Application of Chapter	Y	
§ 11410.10.	Decision requiring evidentiary hearing	Y	
§ 11410.20.	Applicability to agencies	Y	
§ 11410.30.	Applicability to local agencies	Y	
§ 11410.40.	Adoption of chapter by exempt agency	Y	
§ 11410.50.	Applicability to specified proceedings	Y	
§ 11410.60.	Quasi-public entity	Y	



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Section	Description	Applicable Y (Yes) / N (No)	Comments
ARTICLE 4:	Governing Procedure	Y	
§ 11415.10.	Determination of procedure	Y	
§ 11415.20.	Statute to prevail over provision of chapter	Y	
§ 11415.30.	Actions by Governor to avoid loss or delay of federal funds	Y	
§ 11415.40.	Waiver of right conferred by provisions	Y	
§ 11415.50.	Procedure for decision for which adjudicative proceeding not required	Y	
§ 11415.60.	Decision by settlement	Y	
ARTICLE 5:	Alternative Dispute Resolution	N	Tire program regulatory actions are not appropriate for alternative dispute resolution, as those processes would compromise CalRecycle's discretion to assess compliance and impose discipline.
§ 11420.10.	Mediation or arbitration	N	
§ 11420.20.	Model regulations for alternative dispute resolution	N	
§ 11420.30.	Protection of communications	N	
ARTICLE 6:	Administrative Adjudication Bill of Rights	Y	
§ 11425.10.	Required procedures and rights of persons affected	Y	
§ 11425.20.	Hearings open to the public; Order for closure	Y	
§ 11425.30.	Specified persons not to serve as presiding officer	Y	
§ 11425.40.	Disqualification of presiding officer	Y	
§ 11425.50.	Decision to be in writing; Statement of factual and legal basis	Y	
§ 11425.60.	Decisions relied on as precedents; Index of precedent decisions	Y	



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Section	Description	Applicable Y (Yes) / N (No)	Comments
ARTICLE 7:	Ex Parte Communications	Y	
§ 11430.10.	Ex parte communications	Y	
§ 11430.20.	Permissible ex parte communications	Y	
§ 11430.30.	Permissible ex parte communication from agency that is party	Y	
§ 11430.40.	Disclosure of communication received while proceeding is pending	Y	
§ 11430.50.	Communication in violation of provisions	Y	
§ 11430.60.	Prohibited communication as grounds to disqualify presiding officer	Y	
§ 11430.70.	Agency head delegated to hear or decide proceeding	Y	
§ 11430.80.	Communication between presiding officer and agency head delegated to hear proceeding	Y	
ARTICLE 8:	Language Assistance	Y	
§ 11435.05.	"Language assistance"	Y	
§ 11435.10.	Interpretation for deaf or hard-of-hearing persons	Y	
§ 11435.15.	Provision of language assistance by state agencies	Y	
§ 11435.20.	Hearing or medical examination to be conducted in English	Y	
§ 11435.25.	Cost of providing interpreter	Y	
§ 11435.30.	Publication of list of certified interpreters	Y	
§ 11435.35.	Publication of list of certified medical examination interpreters	Y	
§ 11435.40.	Designation of languages for certification	Y	
§ 11435.45.	Application fees to take interpreter examinations	Y	



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Section	Description	Applicable Y (Yes) / N (No)	Comments
§ 11435.50.	Removal of person from list of certified interpreters	Y	
§ 11435.55.	Qualification and use of noncertified interpreters	Y	
§ 11435.60.	Party to be advised of right to interpreter	Y	
§ 11435.65.	Rules of confidentiality applicable to interpreters	Y	
ARTICLE 9:	General Procedural Provisions	Y	
§ 11440.10.	Review of decision	Y	
§ 11440.20.	Service of writing; Notice	Y	
§ 11440.30.	Conduct of hearing by telephone, television, or other electronic means	Y	
§ 11440.40.	Proceedings involving sexual offenses; Limitations on evidence	N	This provision is inapplicable to CalRecycle tire program hearings by its own terms.
§ 11440.45.	Benevolent gestures as admission of liability; Limitations on evidence	Y	
§11440.50.	Intervention; Grant of motion; Conditions	N	Application of this provision is by agency regulation. (Gov. Code § 11440.50(a).) CalRecycle has no regulation applying this provision in tire program hearings.
§ 11440.60.	Indication of person paying for written communication	Y	
ARTICLE 10:	Informal Hearing	Y	These <i>optional</i> provisions are available in CalRecycle tire program hearings. (See Pub. Res. Code §§ 42852(a) & 42961.1.)
§ 11445.10.	Legislative findings and declarations	Y	
§ 11445.20.	Circumstances permitting use of informal hearing procedure	Y	The use of these informal hearing procedures is an <i>available option</i> in CalRecycle tire program hearings, despite the limitations described by this provision. (See Pub. Res. Code §§ 42852(a) & 42961.1.) (See also Gov. Code § 11415.10, above. [State statute prevails over conflicting or inconsistent provision of this chapter 4.5.]



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Section	Description	Applicable Y (Yes) / N (No)	Comments
§ 11445.30.	Notice of informal procedure	Y	
§ 11445.40.	Application of procedures otherwise required	Y	
§ 11445.50.	Denial of use of informal procedure; Conversion to formal hearing; Cross-examination	Y	
§ 11445.60.	Identity of witnesses or other sources	Y	
ARTICLE 11:	Subpoenas	Y	
§ 11450.05.	Application of article	Y	
§ 11450.10.	Issuance for attendance or production of documents	Y	
§ 11450.20.	Persons who may issue subpoenas; Service	Y	
§ 11450.30.	Objection to subpoena; Motion for protective order; Motion to quash	Y	
§ 11450.40.	Witness's mileage and fees	Y	
§ 11450.50.	Written notice to witness to attend; Service	Y	
ARTICLE 12:	Enforcement of Orders and Sanctions	Y	
§ 11455.10.	Grounds for contempt sanction	Y	
§ 11455.20.	Certification of facts to justify contempt sanction; Other procedure	Y	
§ 11455.30.	Bad faith actions; Order to pay expenses including attorney's fees	Y	
ARTICLE 13:	Emergency Decision	N	Application of this article is by agency regulation. (Gov. Code § 11460.20(a).) CalRecycle has no regulation applying this article in tire program hearings.
§ 11460.10.	Conduct of proceeding under emergency procedure	N	
§ 11460.20.	Emergency decision	N	



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Section	Description	Applicable Y (Yes) / N (No)	Comments
§ 11460.30.	Conditions for issuance of emergency decision	N	
§ 11460.40.	Notice and hearing prior to decision	N	
§ 11460.50.	Statement of factual and legal basis and reasons for emergency decision	N	
§ 11460.60.	Formal or informal proceeding after issuance of emergency decision	N	
§ 11460.70.	Agency record	N	
§ 11460.80.	Judicial review of decision	N	
ARTICLE 14:	Declaratory Decision	N	The declaratory decision procedures of this article are inapplicable to a matter that is the subject of a pending administrative proceeding. (Gov. Code § 11465.20(b)(3).)
§ 11465.10.	Conduct of proceeding under declaratory decision procedure	N	
§ 11465.20.	Application; Issuance of decision	N	
§ 11465.30.	Notice of application for decision	N	
§ 11465.40.	Applicable hearing procedure	N	
§ 11465.50.	Actions of agency after receipt of application	N	
§ 11465.60.	Contents of decision; Status and binding effect of decision	N	
§ 11465.70.	Model regulations	N	
ARTICLE 15:	Conversion of Proceeding	Y	
§ 11470.10.	Conversion into another type of proceeding	Y	
§ 11470.20.	Appointment of successor to preside over new proceeding	Y	
§ 11470.30.	Record of original proceeding	Y	
§ 11470.40.	Duties of presiding officer of new proceeding	Y	



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Section	Description	Applicable Y (Yes) / N (No)	Comments
§ 11470.50.	Adoption of regulations to govern conversion	Y	
ARTICLE 16:	Administrative Adjudication Code of Ethics	N	This article does not apply to presiding officers in CalRecycle tire program hearings. (See Law Revision Commission Comment to Gov. Code § 11475.10, excerpted below.) "This article does not apply to an agency head or hearing officer who presides in an administrative adjudication but who is not an administrative law judge, absent a special statute or regulation. See subdivision (a)(2) [of section 11475.10]. However, other ethical considerations apply to the hearing and non-hearing conduct of state agency presiding officers." (26 Cal. Law Rev. Com. Rep. (1996) 335, at p. 344.) www.clrc.ca.gov
§ 11475.	Name of rules	N	
§ 11475.10.	Application	N	
§ 11475.20.	Law governing conduct	N	
§ 11475.30.	Definitions	N	
§ 11475.40.	Inapplicable provisions of Code of Judicial Ethics	N	
§ 11475.50.	Violations	N	
§ 11475.60.	Compliance requirements	N	
§ 11475.70.	Construction and intent	N	



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California Government Code
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CHAPTER 5: ADMINISTRATIVE ADJUDICATION: FORMAL HEARING

Section	Description	Applicable Y (Yes) / N (No)	Comments
§ 11500.	Definitions	Y As Modified	Except for the following contextual amendment, which is hereby adopted, the provision is applicable as is. 11500(d) The subsection is amended to read: "Administrative law judge" means "presiding officer," as defined in Government Code section 11405.80.
§ 11501.	Application of chapter to agency	Y	
§ 11502.	Administrative law judges	N	CalRecycle tire program hearings are conducted by CalRecycle's director. (See Pub. Res. Code §§ 42852(a) & 42961.1.)
§ 11503.	Accusation	Y	
§ 11504.	Statement of issues	Y	
§ 11504.5.	Applicability of references to accusations to statements of issues	Y	
§ 11505.	Service of accusation and accompanying papers; Notice of defense; Request for hearing	Y	
§ 11506.	Filing of notice of defense; Contents; Right to hearing on the merits	Y	Note the following: CalRecycle shall accept as timely a request for hearing filed within 30 days after receipt of the denial, suspension or revocation of a tire hauler registration issued pursuant to Pub. Res. Code § 42960. (See 14 Cal. Code Regs. § 18458.)
§ 11507.	Amended or supplemental accusation; Objections	Y	
§ 11507.3.	Consolidated proceedings; Separate hearings	Y	
§ 11507.5.	Exclusivity of discovery provisions	Y	
§ 11507.6.	Request for discovery	Y	



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Section	Description	Applicable Y (Yes) / N (No)	Comments
§ 11507.7.	Motion to compel discovery; Order	Y	
§ 11508.	Time and place of hearing	Y As Modified	<p>Except for the following contextual amendments, which are hereby adopted, the provision is applicable as is.</p> <p>11508(a) The subsection is amended to read: "The hearing shall be held at the CalRecycle office in Sacramento, Los Angeles, Riverside, or San Diego that is closest to the location where the transaction occurred or the respondent resides."</p> <p>11508(c) The last sentence of the subsection is amended to read: "Unless good cause is identified in writing by the presiding officer, hearings shall be held in CalRecycle offices."</p>
§ 11509.	Notice of hearing	Y	
§ 11511.	Depositions	Y	
§ 11511.5.	Prehearing conference; Conduct by telephone or other electronic means; Conversion to ADR or informal hearing; Prehearing order	Y	
§ 11511.7.	Settlement conference	Y	
§ 11512.	Administrative law judge to preside over hearing; Disqualification; Reporting of Proceedings	Y	
§ 11513.	Evidence	Y	
§ 11514.	Affidavits	Y	
§ 11515.	Official notice	Y	
§ 11516.	Amendment of accusation after submission	Y	
§ 11517.	Contested cases	N	Subsections (a), (b) and (c) of this provision are inapplicable in CalRecycle tire program hearings. (See Pub. Res. Code §§ 42851, 42852, 42961 & 42961.1.) Subsection (d) of this provision is unnecessary in light of Gov. Code § 11518, below.
§ 11518.	Copies of decision to parties	Y	



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Section	Description	Applicable Y (Yes) / N (No)	Comments
§ 11518.5.	Application to correct mistake or error in decision; Modification; Service after correction	Y	
§ 11519.	Effective date of decision; Stay of execution; Notice of suspension or revocation; Restitution; Actual knowledge as condition of enforcement	Y	Note the following: Pub. Res. Code § 42853 states that waste tire facility civil liability orders are effective and final upon issuance. Pub. Res. Code § 42854(a) measures the time for filing a writ of administrative mandate from service of the waste tire facility civil liability decision.
§ 11519.1.	Order of restitution for financial loss or damages	N	This provision is inapplicable to CalRecycle tire program hearings by its own terms.
§ 11520.	Defaults and uncontested cases	Y	
§ 11521.	Reconsideration	Y As Modified	Except for the following contextual amendment, which is hereby adopted, the provision is applicable as is. 11521(b) Only the first sentence of the subsection is adopted. The second and third sentences of the subsection are stricken.
§ 11522.	Reinstatement of license or reduction of penalty	N	This provision is inapplicable to CalRecycle tire program hearings.
§ 11523.	Judicial review	Y	
§ 11524.	Continuances; Requirement of good cause; Judicial review of denial	Y	
§ 11526.	Voting by mail .	N	This provision is inapplicable to CalRecycle tire program hearings. Tire program hearings do not involve voting.
§ 11527.	Charge against funds of agency	Y	
§ 11528.	Oaths	Y	
§ 11529.	Interim orders	N	This provision is inapplicable to CalRecycle tire program hearings by its own terms.