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8 STATE OF CALIFORNIA

9 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

10
11 In the matter of:

12 KELLY CHAMBERS, PROPERTY
13 OWNER AND OPERATOR, DBA JOE'S
14 USED TIRES.
15 TPID NO: 1688585-01

16
17 **RESPONDENT**

**STIPULATION FOR ISSUANCE OF
ADMINISTRATIVE DECISION
FOR WASTE TIRE STORAGE
ADMINISTRATIVE PENALTIES**

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

AGENCY NO: 2015-011173-ADC

18 **INTRODUCTION AND PROCEDURAL HISTORY**

19 The California Integrated Waste Management Board ("CIWMB") is now the Department
20 of Resources Recycling and Recovery (hereafter, "CALRECYCLE"). CALRECYCLE
21 succeeded to the CIWMB's authority on January 1, 2010, pursuant to Public Resources Code
22 (PRC) section 40401(a)(1). The parties to this STIPULATION FOR ISSUANCE OF
23 ADMINISTRATIVE DECISION FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES
24 (hereafter, "Stipulation") are CALRECYCLE and Kelly Chambers, Property Owner and
25 Operator, dba Joe's Used Tires (hereafter, "RESPONDENT").

26 On August 27, 2015, an ADMINISTRATIVE COMPLAINT FOR WASTE TIRE
27 STORAGE ADMINISTRATIVE PENALTIES (hereafter, "Administrative Complaint") seeking
28 \$355,500.00 was issued against RESPONDENT. On September 3, 2015, RESPONDENT

1 4. PRC section 42808(c) defines a minor WTF as a "[WTF] where, at any time,
2 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled, accumulated, or
3 discarded."

4 5. Pursuant to PRC section 42808(c), a minor WTF does not include tire dealers or
5 automobile dismantlers, as defined in Sections 220 and 221 of the California Vehicle Code,
6 who store waste tires on their premises for less than 90 days if not more than 1,500 total used
7 or waste tires are ever accumulated on the premises.

8 6. Pursuant to PRC section 42832:

9 The regulations for minor WTF permits shall include, but not be limited to, all of
10 the following:

11 (a) Fire prevention measures.

12 (b) Vector control measures.

13 (c) Other measures determined by [CALRECYCLE] to be necessary to protect
14 the public health and safety.

15 7. Pursuant to Title 14 CCR section 18420(a), (7), and (e):

16 (a) The operator of a [WTF] shall acquire a [WTF] permit in accordance with
17 the requirements of this Chapter and Public Resources Code section 42808,
18 unless any of the following conditions exist:

19 (7) The facility is a tire dealer who stores waste tires on the dealer's premises
20 for less than 90 days if not more than 1,500 waste tires are ever accumulated on
21 the dealer's premises.

22 (e) A "used tire dealer" is only authorized to lawfully accept waste or used
23 tires without a waste tire facility permit if the used tire dealer is in compliance
24 with Section 17225.820, Article 4.1, Chapter 3 and has fewer than 1,500 waste
25 tires in accordance with Public Resources Code section 42808(c).

26 8. 14 CCR section 17350 et. seq., requires operators of permitted or unpermitted
27 WTFs to comply with storage and safety requirements, including, but not limited to
28 requirements regarding fire standards, site security and vector control.

1 9. 14 CCR section 17351(c)(2) requires one (1) pike pole or comparable pole at
2 least 10 feet in length to separate burning from nonburning tires to be on site.

3 10. Title 14 CCR section 17351(c)(3) requires one (1) round point and one (1) square
4 point shovel to be on site.

5 11. 14 CCR section 17353(a) requires all waste tires to be stored in a manner which
6 prevents the breeding and harborage of mosquitoes, rodents, and other vectors.

7 12. 14 CCR section 17354(f) mandates that any individual waste tire pile be
8 separated from any other waste tire pile, combustible ground vegetation, stored used tires,
9 waste tire material, or products made from tires, by a distance of at least 40 feet.

10 13. 14 CCR section 17354(i) requires that tires be removed from rims immediately
11 upon arrival at the WTF or solid waste facility. This section also requires that tires temporarily
12 attached to rims awaiting removal shall be stored separate from other waste tires.

13 14. 14 CCR section 17354(j) requires the WTF or solid waste facility to be designed
14 and constructed to provide protection to bodies of water from runoff of pyrolytic oil resulting
15 from a potential tire fire.

16 15. Where there is no identified "operator," the operator shall mean the "owner,"
17 pursuant to Title 14 of the CCR, section 17225.755. Thus, because no operator can be
18 identified for the site, RESPONDENT, as property owner, is both the operator and owner of the
19 site, as defined in accordance with PRC section 42805.

20 16. At no time did CALRECYCLE issue a minor waste tire facility permit to any
21 individual for the site.

22 17. Pursuant to PRC section 42845(a), "any person who stores, stockpiles, or
23 accumulates waste tires at a location for which a waste tire facility permit is required pursuant
24 to this chapter, or in violation of the terms and conditions of the permit, the provisions of this
25 chapter, or the regulations adopted under this chapter, shall, upon order of the
26 [CALRECYCLE], clean up those waste tires or abate the effects thereof, or, in the case of
27 threatened pollution or nuisance, take other necessary remedial action."

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1 18. During a routine inspection of the site on May 6, 2014 by Scot Johnson Local
2 Enforcement Grantee for CALRECYCLE from the County of Butte, Department of Public
3 Works, and documented in Waste Tire Survey and Inspection Report (Inspection Report) IW-
4 1010946, it was determined that approximately 1,740 waste tire were being stored on site,
5 creating an unpermitted minor WTF, in violation of PRC section 42834. Inspector Johnson
6 determined the business onsite to be a used tire dealer and therefore, pursuant to PRC section
7 42808(c), was allowed to have 1,500 waste tires onsite. However, at this time, the site was
8 recorded as being out of business and closed. Inspector Johnson further observed that waste
9 tires on site were intermingled with heavy vegetation, in violation of fire prevention measures
10 and outdoor storage standards set forth in 14 CCR sections 17351 and 17354. Inspector
11 Johnson took photos of the tires on site. A copy of the report was mail to RESPONDENT.

12 19. During follow-up inspections of the site on May 20, 2014, June 3, 2014 and
13 December 12, 2014, and documented in Inspection Report numbers IW-1011281, IW-
14 1011540, and IW-1017328, respectively, Inspector Johnson found no change in the number of
15 waste tires recorded, and no change in the manner of storage of said waste tires on May 6,
16 2014. Copies of all Inspection Reports were mailed to the RESPONDENT.

17 20. Following the inspection on December 12, 2014, Butte County issued a Notice of
18 Violation (NOV) to RESPONDENT requiring all waste tires in excess of the authorized limit of
19 1,500 to be removed by a compliance deadline of December 23, 2014.

20 21. During a re-inspection of the site on December 29, 2014, and documented in
21 Inspection Report number IW-1017722, Inspector Johnson again found no change in the
22 number of waste tires recorded on May 6, 2014, no change in the manner in which the waste
23 tires were stored, and no compliance made in accordance with the December 12, 2014 NOV.
24 A copy of the Inspection Report was mailed to the RESPONDENT.

25 22. On December 29, 2014, Butte County referred the ongoing violations to
26 CALRECYCLE for further enforcement.

27 23. On March 3, 2015, CALRECYCLE served Clean Up and Abatement Order (CAO)
28 number 2014-011043 on RESPONDENT. In accordance with PRC section 42845(a)(2),

1 RESPONDENT was ordered to remove all waste and used tires from the site within 15 days
2 from the date of service of the CAO, maintain the number of waste and used tires on this site
3 to zero, and at no time accept additional waste or used tire at this site. The CAO further
4 required RESPONDENT to obtain approval from CALRECYCLE regarding the destination of
5 all waste and used tires removed from the site to ensure that a registered waste tire hauler
6 legally transported them to an approved facility, to document each load of waste and used tires
7 removed, submit a copy of each completed CTL form to CALRECYCLE within 30 days from
8 the date of service of the CAO, and not to accept additional waste or used tires at this site.

9 24. During an inspection of the site on March 20, 2015 to ensure compliance with the
10 CAO, and documented in Inspection Report number IW-1021154, Inspector Don Van Dyke
11 with CALRECYCLE and Inspector Johnson with Butte County determined the amount and
12 manner of storage or waste tires onsite remained the same as described in the Inspection
13 Report dated May 6, 2014, in violation of the CAO.

14 25. On June 4, 2015, during an inspection of the site, and documented in Inspection
15 Report Number IW-1024211, Inspector Van Dyke estimated that 1017 tires remained onsite.

16 26. Inspector Van Dyke further noted that fire equipment to aid in the control of fires
17 required by 14 CCR 17351(c)(2) and 17351(c)(3) was not onsite, and the waste tires were
18 stored in a manner that would allow for the harboring of vectors in violation of 14 CCR section
19 17353(a). Inspector Van Dyke additionally noted violations in the manner of tire storage,
20 including but not limited to, the distance between waste tires to create fire lanes, adequate
21 drainage, and separation from combustible ground vegetation by a distance of at least 40 feet,
22 in violation of 14 CCR section 17354(f); failing to remove rims from waste tires in violation of
23 14 CCR section 17354(i); and failure to protect waste tires from pyrolytic oil run off, in violation
24 of 14 CCR section 17354(j).

25 27. RESPONDENT, via an agent, was notified of all outstanding violations noted
26 above.

27 28. On November 5, 2015, during settlement negotiations between CALRECYCLE
28 and RESPONDENT, Inspector Van Dyke returned to the site to perform an inspection,

1 documented in Inspection Report Number IW-1030450. Inspector Van Dyke determined that
2 all tires had been removed from the site and that removal was properly manifested. Inspector
3 Van Dyke noted that he considered the TPID ready to be closed.

4 29. Pursuant to PRC section 42852, in making a determination regarding a penalty,
5 CALRECYCLE "shall take into consideration the nature, circumstances, extent, and gravity of
6 the violation, the violator's past and present efforts to prevent, abate, or clean up conditions
7 posing a threat to the public health or safety of the environment, the violator's ability to pay the
8 proposed civil penalty, and the prophylactic effect that the imposition of the proposed penalty
9 will have on both the violator and on the regulated community as a whole."
10

11 **STIPULATED CONCLUSIONS OF LAW**

12 30. RESPONDENT failed to comply with Clean up and Abatement Order No. 2014-
13 011043, which required the removal of "all waste tires within fifteen days of the date of service,
14 in violation of PRC section 42845, requiring any person, upon order of CalRecycle, to clean up,
15 abate or otherwise take remedial action at a WTF."

16 31. RESPONDENT violated PRC section 42834, operation of a minor WTF without
17 obtaining a "Minor Waste Tire Permit," and Title 14, CCR section 18423, which requires every
18 operator of a major or minor WTF to submit a completed permit application.

19 32. RESPONDENT violated 14 CCR section 17351(c)(2) by failing to have on site
20 one (1) pike pole or comparable pole at least 10 feet in length to separate burning from
21 nonburning tires.

22 33. RESPONDENT violated 14 CCR section 17351(c)(3) by failing to have one (1)
23 round point and one (1) square point shovel to be on site.

24 34. RESPONDENT violated 14 CCR section 17353(a) by failing to comply with
25 vector control requirements for waste tire storage.

26 35. RESPONDENT violated 14 CCR section 17354(f), which mandates that any
27 individual waste tire pile be separated from any other waste tire pile, combustible ground
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1 vegetation, stored used tires, waste tire material, or products made from tires, by a distance of
2 at least 40 feet.

3 36. RESPONDENT violated 14 CCR section 17354(i) by failing to have waste tires
4 removed from rims immediately upon arrival at the WTF or solid waste facility. Tires
5 temporarily attached to rims awaiting removal shall be stored separate from other waste tires.

6 37. RESPONDENT violated 14 CCR section 17354(j), which requires that the WTF
7 or solid waste facility be designed and constructed to provide protection to bodies of water
8 from runoff of pyrolytic oil resulting from a potential tire fire.

9
10 **STIPULATED ORDER**

11 38. The Parties acknowledge and agree to the following terms in full and complete
12 settlement of this matter:

13 (a) Pursuant to the terms and conditions of this Stipulation, and subject to the
14 limitations hereunder, RESPONDENT stipulates to an administrative penalty against
15 RESPONDENT and in favor of CALRECYCLE in the sum of \$355,500.00 for the violations set
16 forth in this Stipulation. Payment of the penalty shall be satisfied in the following manner:

17 i) RESPONDENT shall pay \$5,000.00 to CALRECYCLE in accordance with
18 the following:

19 1. To exhibit good faith in payment ability, a one-time payment of
20 \$83.00 will be due February 1, 2016.

21 2. RESPONDENT shall pay bi-annual installments of \$500.00 to
22 CALRECYCLE with the first payment due August 1, 2016; the final
23 payment will be in the amount of \$417.00 reflecting the initial payment of
24 \$83.00.

25 3. All payments shall be made to CALRECYCLE, Attn: Richard
26 Guess, at P.O. Box 4025, Sacramento, CA 95812-4025, or to such other
27 person and/or place as CALRECYCLE or its agent may from time to time
28 designate in writing.

1 4. If any payment by RESPONDENT is not mailed to CALRECYCLE
2 by the due date, or a date later issued by CALRECYCLE, and if
3 RESPONDENT fails to cure the missed payment(s) within twenty (20)
4 days of said missed payment, RESPONDENT shall be found in partial
5 default of the stipulation. The partial default amount due shall be
6 calculated to include the amount owed from the missing payment(s) plus a
7 late penalty and interest.

8 ii) \$350,500.00 of this administrative penalty shall be stayed and held in
9 abeyance for a period of five (5) years. The stayed penalty shall be deemed terminated and
10 shall not be paid by RESPONDENT to CALRECYCLE following the five-year period absent a
11 default as described.

12 iii) In determining the stipulated penalty amount, CALRECYCLE took into
13 consideration the factors provided in PRC section 42852.

14 (b) RESPONDENT shall not create a waste tire storage facility, as defined by PRC
15 section 42808, without the applicable permit.

16 (c) RESPONDENT shall not haul more than nine (9) tires without a hauler
17 registration, as required by PRC section 42952.

18 (d) RESPONDENT shall comply with all other laws related to waste tire storage and
19 waste tire haulers set forth in PRC section 42800 et seq., PRC section 42950 et seq., and Title
20 14 of the CCR. A violation of any law related to waste tire storage and waste tire haulers that
21 is not described by a separate provision of this Stipulation shall constitute a partial default of
22 this Stipulation.

23 (e) If CALRECYCLE determines that RESPONDENT has violated any waste tire
24 storage laws, or waste tire hauler laws by creating a new WTF with waste tires onsite,
25 CALRECYCLE will be required to inspect the WTF at an increased frequency, at least monthly,
26 until RESPONDENT comes into compliance.

27 i. RESPONDENT will grant access for these additional inspections and will
28 reimburse CALRECYCLE for the cost of those inspections (including time preparing for the

1 inspection, traveling to the site, and preparing and writing any Inspection Report). Additionally,
2 after compliance has again been regained, CALRECYCLE will inspect the WTF twice a year
3 for the remainder of the abeyance period, and RESPONDENT will reimburse CALRECYCLE
4 for the additional inspections (including time preparing for the inspection, traveling to the site,
5 and preparing and writing any Inspection Report).

6 ii. Failure to grant access to inspectors or agents designated by
7 CALRECYCLE, or failure to reimburse CALRECYCLE for the costs of an additional inspection
8 within 30 days of an invoice shall be deemed in default of this Stipulation. The default amount
9 due shall be calculated from the amount owed plus a late fee and interest.

10 iii. The cost of the additional inspections shall be billed at the rate approved
11 by CALRECYCLE's accounting and budgets offices for enforcement agent inspections for that
12 fiscal year.

13 39. **Default:** If RESPONDENT defaults under any of the terms of this Stipulation,
14 CALRECYCLE shall send a Notice of Default to RESPONDENT; said Notice of Default shall
15 state the paragraphs or provisions of this Stipulation of which RESPONDENT is in default and
16 the abeyance amount owed as prescribed in PRC sections 42850, 42850.1, 42962 and 14
17 CCR sections 18429 and 18464. RESPONDENT shall have 30 days from the date of the
18 service of the Notice of Default to provide evidence refuting CALRECYCLE's claim of default.
19 After a review of the evidence and counterarguments provided by RESPONDENT,
20 CALRECYCLE shall make a determination regarding the default and, if appropriate, shall issue
21 a Supplemental Decision based on the default.

22 40. **Full Default:** Unless otherwise specified in the subsections above, failure to
23 comply with any of the above terms shall constitute a full default of this Stipulation and the full
24 abeyance amount less any amount already paid to CALRECYCLE shall become immediately
25 due and payable.

26 41. **Partial Default:** If a partial default has been designated, the penalty amount for
27 each partial default as determined by CALRECYCLE shall become immediately due and
28 payable by RESPONDENT.

1 45. This Stipulation shall be binding and inure to the benefit of the successors, heirs
2 and assigns of the respective parties hereto.

3 46. This Stipulation and the corresponding Decision to be issued constitutes the
4 entire understanding of the parties concerning the settlement of this proceeding. There are no
5 restrictions, promises, warranties, covenants, undertakings, or representations other than
6 those expressly set forth herein or contained in separate written documents delivered or to be
7 delivered pursuant hereto, and each party expressly acknowledges that it has not relied upon
8 any restrictions, promises, warranties, covenants, undertakings, or representations other than
9 those expressly contained herein.

10 47. For purposes of this Stipulation, facsimile signatures will be treated as originals
11 until the applicable page(s) bearing non-facsimile signatures have been received by
12 CALRECYCLE.

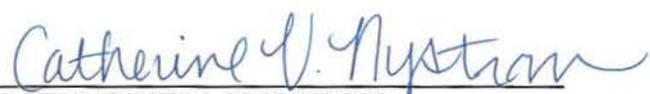
13 The effective date of this Stipulation is the date of issuance of the Administrative
14 Decision.

15
16 Dated: 1/14/16



MARK DE BIE
Deputy Director for
DEPARTMENT OF RESOURCES, RECYCLING AND
RECOVERY (CALRECYCLE)

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20
21
22 Dated: 1/12/16



CATHERINE V. NYSTROM
Attorney for
DEPARTMENT OF RESOURCES, RECYCLING AND
RECOVERY (CALRECYCLE)

23
24
25
26 Dated: 1-7-16



KELLY CHAMBERS
PROPERTY OWNER AND OPERATOR,
DBA JOE'S USED TIRES