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8 STATE OF CALIFORNIA
9 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
10

11 In the matter of:

12
13 K & L AMERICAN RECYCLE, LLC

14 RESPONDENT

15 TPID NO.: 1680916-01
16

ADMINISTRATIVE DECISION
FOR WASTE TIRE HAULER
ADMINISTRATIVE PENALTIES

PUBLIC RESOURCES CODE
SECTION 42950, ET SEQ.

AGENCY NO: 2014-011165-ADC
17

18 INTRODUCTION

19 The California Department of Resources Recycling and Recovery (CALRECYCLE)
20 issued an Administrative Complaint for Waste Tire Hauler Administrative Penalties
21 (Administrative Complaint) and Request for Hearing on K & L AMERICAN RECYCLE, LLC
22 (RESPONDENT), on January 30, 2015. RESPONDENT had 15 days from the date of service
23 of the Administrative Complaint to request a hearing. RESPONDENT did not file a Request for
24 Hearing. This matter shall be determined as a default pursuant to Title 14 of the California
25 Code of Regulations (CCR) section 18466 and Government Code section 11520.

26 The California Integrated Waste Management Board (CIWMB) is now CALRECYCLE.
27 CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public
28 Resources Code (PRC) section 40401(a)(1). CALRECYCLE takes action against

1 RESPONDENT based upon evidence and affidavits that may be used as evidence without any
2 notice to RESPONDENT.

3
4 **FACTUAL FINDINGS**

5
6 1. The Administrative Complaint was executed by HEATHER L. HUNT,
7 Attorney III, CALRECYCLE, acting in her official capacity.

8 2. PRC section 42951 (b) prohibits registered waste tire haulers (haulers) from
9 transporting waste or used tires to a facility that is not "permitted, excluded, exempted, or
10 otherwise authorized by [CALRECYCLE], by statute, or by regulation, to accept waste and
11 used tires. . . ."

12 3. A "Used or Waste Tire Hauler" or "Hauler" is defined as, "any person engaged in
13 the transportation of used or waste tires, or tire casings, including haulers that the Department
14 approved as exempt from registration pursuant to Public Resources Code section 42954."
15 (Title 14 CCR section 18450(a)(34).)

16 4. A minor Waste Tire Facility (WTF) is defined in PRC section 42808(c) as "a
17 [WTF] where, at any time, 500 or more, but less than 5,000, waste tires are or will be stored,
18 stockpiled, accumulated, or discarded."

19 5. A major WTF is defined in PRC section 42808(b) as "a [WTF] where, at any time,
20 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded."

21 6. PRC section 42823 and 14 CCR section 18420 both require operators and
22 owners of major WTFs to obtain a major WTF permit prior to the operation of a major WTF.

23 7. PRC section 42823 prohibits a person from establishing a new major WTF
24 without first obtaining a major WTF permit from CALRECYCLE.

25 8. PRC section 42824 makes it "unlawful to direct or transport waste tires to a major
26 [WTF] or to accept waste tires at a major [WTF] unless the operator has obtained a major
27 [WTF] permit" from CALRECYCLE.

28 ///

1 9. PRC section 42834 makes it “unlawful to direct or transport waste tires to a minor
2 [WTF] or to accept waste tires at a minor [WTF] unless the operator has obtained a minor
3 [WTF] permit” from CALRECYCLE.

4
5 10. Pursuant to PRC section 42961.5(c)(2):

6 Any waste and used tire hauler hauling waste or used tires for
7 offsite handling, altering, storage, disposal, or any combination thereof,
8 shall complete the California Uniform Waste and Used Tire Manifest as
9 required by the board [CALRECYCLE]. The waste and used tire hauler
10 shall provide the manifest to the waste or used tire facility operator who
11 receives the waste or used tires for handling, altering, storage, disposal,
or any combination thereof. Each waste and used tire hauler shall
submit to the board [CALRECYCLE], on a quarterly schedule, a legible
copy of each manifest. The copy submitted to the board [CALRECYCLE]
shall contain the signatures of the generator and the facility operator.

12 11. The “California Uniform Waste and Used Tire Manifest” is a form developed by
13 the Department [CALRECYCLE] pursuant to PRC section 42961.5 and is also referred to as
14 the “Comprehensive Trip Log” or “CTL.” It is incorporated in the regulations by 14 CCR section
15 18450(a)(11), as such must be filled out completely and accurately, including providing the
16 TPID number for the location of delivery or pick-up of each load of waste tires.

17 12. 14 CCR section 18459(b) requires the CTL form be completed.

18 13. Title 14 CCR section 18460.2, subsections (b), (e), and (h), provide that a
19 registered waste tire hauler shall complete a new CTL for each pick-up or delivery of any used
20 or waste tires, shall not transport used or waste tires without having a completed copy of the
21 form, and shall keep a copy of the completed CTL form.

22 14. Pursuant to 14 CCR section 18459.2.1(a), “The waste tire hauler shall submit the
23 completed original CTL Form to the Department within ninety (90) days of the load shipment. .
24 . .”

25 15. Pursuant to 14 CCR section 18456.2(b), upon approval of a waste and used tire
26 hauler application, CALRECYCLE shall “issue a] waste tire hauler registration card and decal
27 for each vehicle identified in the application.” 14 CCR section 18456.2(c) states that
28 “[r]egistration cards and decals are not transferable from vehicle to vehicle. They shall be

1 present in the vehicle to which they were issued.” 14 CCR section 18454(f) states, “The
2 registration card and/or decal issued to a specific vehicle are [sic] not transferable from vehicle
3 to vehicle. They shall be present in the vehicle to which they are issued.”

4 16. Pursuant to PRC section 42956(a) upon approval of an application submitted
5 pursuant to PRC section 42955, CALRECYCLE shall issue a waste and used tire hauler
6 registration to be carried in the vehicle and a waste and used tire hauler decal to be
7 permanently affixed to the lower, right-hand corner of the windshield.

8 17. RESPONDENT became a registered waste tire hauler on December 5, 2011 and
9 continued to be registered in 2013. Upon initial registration and yearly renewals
10 RESPONDENT received a Hauler Alert regarding the transportation of waste tire to
11 unauthorized locations, a copy of Chapter 6, Article 8.5 regulation for waste tire hauler
12 registration and manifesting requirement, a tri-fold brochure explaining the hauler, generator,
13 and end-use facility operator requirements and a CTL Guidance Manual, Field Reference
14 Guide, and CTL forms. RESPONDENT also received decals and certificates for the tire
15 hauling vehicles upon initial registration and yearly renewals.

16
17 **FOUR COUNTS OF FAILING TO COMPLETE AND/OR SUBMIT A COMPREHENSIVE TRIP**
18 **LOG**

19
20 18. On February 25, 2013, Inspectors Stan Chau and Roel Meregillano with the
21 Santa Clara County Department of Environmental Health conducted an inspection of
22 RESPONDENT’s facility located at 681 Lenfest Road, San Jose, California, (the Site) as
23 documented in the Hauler Observation Report dated February 25, 2013. The Inspectors
24 observed at least 8,000 waste tires being baled at the Site.

25 19. Later, on February 25, 2013, Inspector Chau located Mr. Tom Nguyen, at Senter
26 Tire Service; Mr. Nguyen advised that he was the manager of the Site. Mr. Nguyen stated that
27 he hired Mr. Lawrence Sweeney, at the request of RESPONDENT, to collect waste tires on
28 behalf of RESPONDENT and haul them back to the site. Mr. Nyugen further admitted that very

1 few of these loads, if any, were documented by CTLs as required by PRC section
 2 42961.5(c)(2). Mr. Nguyen stated he had some CTLs and that he would send them to
 3 Inspector Chau. There were no CTL forms completed and submitted to CALRECYCLE for the
 4 deliveries described in the table below:

Date of Occurrence	Violation	Date of Violation
On or before February 25, 2013 (Count 1)	Failure to complete and submit CTL forms to CalRecycle	On or after May 26, 2013 (90-day time requirement)
On or before February 25, 2013 (Count 2)	Failure to complete and submit CTL forms to CalRecycle	On or after May 26, 2013 (90-day time requirement)
On or before February 25, 2013 (Count 3)	Failure to complete and submit CTL forms to CalRecycle	On or after May 26, 2013 (90-day time requirement)
On or before February 25, 2013 (Count 4)	Failure to complete and submit CTL forms to CalRecycle	On or after May 26, 2013 (90-day time requirement)

17 **FOUR COUNTS OF TRANSPORTING WASTE TIRES TO AN UNAUTHORIZED LOCATION**

18 20. Because RESPONDENT was not in possession of a Waste Tire Facility Permit
 19 for the site, RESPONDENT was only authorized to store, stockpile, or accumulate 499 waste
 20 tires onsite; since the site had accumulated more than 499 waste tires the site was
 21 unauthorized. Moreover, as a hauler, RESPONDENT was prohibited from having waste tires
 22 delivered to this unauthorized site. Based on the number of waste tires observed by the
 23 Inspectors at the Site on February 25, 2013, CALRECYCLE can estimate that approximately
 24 40 loads of waste tires were brought to the Site by RESPONDENT; however, CALRECYCLE
 25 only seeks penalties for 4 counts of transporting waste tires to an unauthorized location (10%
 26 of the estimated number of trips to this site) as shown in in the table below:

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Date of Occurrence	Violation	Date of Violation
On or before February 25, 2013 (Count 1)	Transportation of waste or used tires to an unauthorized location	On or before February 25, 2013
On or before February 25, 2013 (Count 2)	Transportation of waste or used tires to an unauthorized location	On or before February 25, 2013
On or before February 25, 2013 (Count 3)	Transportation of waste or used tires to an unauthorized location	On or before February 25, 2013
On or before February 25, 2013 (Count 4)	Transportation of waste or used tires to an unauthorized location	On or before February 25, 2013

ONE COUNT OF FAILING TO PERMANENTLY AFFIX THE TIRE HAULER DECAL TO THE LOWER RIGHT HAND CORNER OF THE WINDSHIELD

21. While at Senter Tire Service, Inspector Chau observed the vehicle, with Washington state license plate number B5-226W, used to haul the waste tires to the Site. This vehicle, registered with CALRECYCLE as a tire hauling vehicle for RESPONDENT, did not have the 2013 CALRECYCLE decal affixed to the lower, right-hand corner of the windshield as required by PRC section 42956(a).

LEGAL CONCLUSIONS

22. RESPONDENT knowingly violated PRC section 42951(b) by transporting or allowing the transportation of at least four loads of 10 or more waste tires to an unauthorized location, specifically RESPONDENT located at 681 Lenfest Road, San Jose, California.

23. RESPONDENT knowingly violated PRC section 42961.5(c)(2) by failing to complete and submit CTL forms to CALRECYCLE within 90 days of the pickups or deliveries of waste and/or used tires, specifically before February 25, 2013 for the Lenfest Site.

24. RESPONDENT knowingly violated PRC section 42956(a) by failing to affix the current year (2013) decal issued by CALRECYCLE to the waste tire hauling vehicle's windshield which was observed on February 15, 2013 by Inspector Chau.

1 25. No evidence of mitigation, extenuation, or rehabilitation is offered by
2 RESPONDENT.

3
4 **ORDER**

5 Good cause appearing, Complainant's motion to take action in accordance with the
6 provisions of Government Code Section 11520, subdivision (a) is granted.

7 **THE FOLLOWING ORDER** is hereby made:

8 RESPONDENT, K & L AMERICAN RECYCLE, LLC, is ordered to pay an administrative
9 penalty of \$4,950.00 to CalRecycle within 30 (thirty) days of the date of this Decision.

10
11 **RESPONDENT'S RIGHT TO FILE WRITTEN MOTION**

12 Pursuant to Government Code section 11520(c), RESPONDENT has a right to serve
13 CALRECYCLE with a written motion requesting that the decision be vacated and stating the
14 grounds relied on:

15 Within seven days after service on the respondent of a decision based on the
16 respondent's default, the respondent may serve a written motion requesting that the
17 decision be vacated and stating the grounds relied on. The agency in its discretion
18 may vacate the decision and grant a hearing on a showing of good cause. As used
19 in this subdivision, good cause includes, but is not limited to, any of the following:

- 18 (1) Failure of the person to receive notice served pursuant to Section 11505.
19 (2) Mistake, inadvertence, surprise, or excusable neglect.

20 *Gov't Code § 11520(c)*

21 This DECISION shall become effective on the date signed below.

22
23 Dated this 28 day of February 2015.

24
25 
26 _____
27 MARK DE BIE
28 Deputy Director
DEPARTMENT OF RESOURCES,
RECYCLING AND RECOVERY
(CALRECYCLE)