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8 STATE OF CALIFORNIA

9 CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

10 In the matter of:

11 LUNAS CONSTRUCTION CLEAN-UP,
12 INC.
13 TPID NO: 1599574-01
14 RESPONDENT.

SUPPLEMENTAL ADMINISTRATIVE
DECISION FOR PENALTIES PURSUANT
TO DEFAULT OF STIPULATION

PUBLIC RESOURCES CODE
SECTION 42950, ET SEQ.

AGENCY No: 2011-011129-ADC

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19 **INTRODUCTION**

20 Pursuant to Public Resources Code (PRC) section 42850(b), the Department of
21 Resources Recycling and Recovery (CALRECYCLE) served an ADMINISTRATIVE
22 COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES on LUNAS
23 CONSTRUCTION CLEAN-UP, INC. (RESPONDENT) on February 17, 2012. To avoid the cost
24 and uncertainties of litigation, CALRECYCLE and RESPONDENT (hereafter, referred to as
25 "the Parties") entered into a STIPULATION FOR ISSUANCE OF ADMINISTRATIVE
26 DECISION FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES (Stipulation) on
27 September 13, 2012. The Stipulation was adopted by CALRECYCLE in its ADMINISTRATIVE
28

1 DECISION PURSUANT TO STIPULATION FOR WASTE TIRE HAULER ADMINISTRATIVE
2 PENALTIES on September 26, 2012.

3 RESPONDENT later defaulted on the September 13, 2012 Stipulation and was notified
4 in a first Notice of Default on March 19, 2013. RESPONDENT and CALRECYCLE
5 subsequently stipulated to settle the additional penalties imposed by the default in a
6 SUPPLEMENTAL STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR
7 PENALTIES PURSUANT TO DEFAULT OF STIPULATION (Supplemental Stipulation) signed
8 by Noberto Madrigal, Representative for RESPONDENT on July 10, 2013. The terms set forth
9 in the Supplemental Stipulation were adopted in a Supplemental Administrative Decision that
10 was issued on July 16, 2013.

11 On March 30, 2016, RESPONDENT was issued a second NOTICE OF DEFAULT OF
12 STIPULATION FOR ISSUANCE OF ADMINISTRATIVE DECISION FOR WASTE TIRE
13 HAULER ADMINISTRATIVE PENALTIES (Notice of Default) notifying RESPONDENT that it
14 was in default of the terms of the Stipulation and that RESPONDENT would be subject to an
15 administrative penalty of \$12,500.00 if, after reviewing all the evidence provided by
16 RESPONDENT to CALRECYCLE, CALRECYCLE determined that a default of the Stipulation
17 occurred. RESPONDENT was provided twenty (20) days from the date of the Notice of
18 Default to respond to the violations and provide any evidence that there was no default of the
19 Stipulation.

20 On April 28, 2016, after receiving a one-week extension to respond, RESPONDENT
21 submitted a letter via electronic mail to CALRECYCLE regarding the Notice of Default.
22 RESPONDENT's letter did not provide evidence that a default of the Stipulation did not occur.
23 Nonetheless, CALRECYCLE unilaterally reduced the penalty from \$12,500.00 to \$10,000.00.

24 This Supplemental Administrative Decision does not supersede the terms and
25 conditions contained in the Stipulation, Administrative Decision, Supplemental Stipulation, or
26 first Supplemental Administrative Decision, including the Stipulated Factual Findings,
27 Stipulated Conclusions of Law, and final Order featured in any of the above listed pleadings.
28 This Supplemental Administrative Decision is issued by CALRECYCLE pursuant to a second

1 default by RESPONDENT of the terms and conditions of the Stipulation. Specifically,
2 RESPONDENT is in violation of the terms set forth in the Stipulated Order, Paragraphs 20(i)
3 and 20(j) of the Stipulation.

4 **FACTUAL FINDINGS**

5 1. Paragraph 20(i) of the Stipulation requires RESPONDENT to maintain a manifest
6 error rate of 5 percent or less for the abeyance period.

7 2. Paragraph 20(j) of the September 26, 2012, Stipulation provides that
8 RESPONDENT is in default of the Stipulation if RESPONDENT fails to comply with the laws
9 and regulations related to waste tire haulers set forth in Public Resources Code (PRC)
10 sections 42950 et seq. and Title 14 of the California Code of Regulations (CCR).

11 3. On December 16, 2015, CALRECYCLE Inspector Nai Teurn, conducted an audit
12 of Respondent's manifesting records for the time period from June 16, 2015 to December 16,
13 2015. Inspector Teurn performed a second-level random sampling of the records and reviewed
14 50 percent of 51 Comprehensive Trip Log (CTL) forms submitted by Respondent that were
15 stored in CALRECYCLE's Waste Tire Management System (WTMS). Of the 26 CTLs
16 reviewed, five CTLs had errors and/or omissions, in violation of Public Resources Code (PRC)
17 section 42961.5 and Title 14 of the California Code of Regulations (CCR) sections 18459(b)
18 and 18460.2. The details of these violations are listed below:

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20 Comprehensive Trip Log	21 Violation	22 Date of Violation	23 Penalty Assessed
24 5397192-B	Invalid Facility TPID number	25 June 16, 2015 26 (Receipt B)	\$2500
27 5397200-B	Pick-up or delivery box not checked	28 June 26, 2015 (Receipt B)	\$2500
5397207 (header)	Missing signature date	July 14, 2015 (Receipt A)	\$2500
5397214-B	Missing load date and facility phone	July 28, 2015	\$2500

	number	(Header date)	
5397219-A	Invalid/closed facility TPID	August 7, 2015 (Receipt A)	\$2500

Accordingly, RESPONDENT is in violation of Paragraph 20(j) of the Stipulation.

4. The five CTLs featuring errors and/or omissions also reflect a manifesting error rate of 19 percent, exceeding the five percent error rate required during the abeyance period stated in the Stipulation. Accordingly, RESPONDENT is in violation of Paragraph 20(i) of the Stipulation.

5. Failure to comply with the terms set forth in Paragraphs 20(i) and (j) of the Stipulation constitutes a partial default, as specified in Paragraph 22 of the Stipulation, which states:

Unless otherwise specified in the subsections above, failure to comply with any of the above terms shall constitute a partial default of this Stipulation and the abeyance amount determined by CALRECYCLE shall become immediately due and payable by RESPONDENT.

6. RESPONDENT's April 28, 2016 response letter to the Notice of Default did not provide sufficient evidence to refute the existence of the violations of the Stipulation set forth in the Notice of Default. RESPONDENT conceded that the above listed discrepancies were "clerical errors," however, RESPONDENT contends that these errors were "never done with the intention to defraud or harm CALRECYCLE."

6. After receipt of RESPONDENT's April 28, 2016 letter, in a show of good faith, CALRECYCLE unilaterally reduced the penalty from \$12,500.00 to \$10,000.00.

CONCLUSIONS OF LAW

6. CALRECYCLE has authority to regulate and conduct enforcement actions against Waste Tire Haulers within the State of California under PRC sections 42960 and 42962, and attendant regulations in Title 14 of the CCR.

7. RESPONDENT violated the terms of the Stipulation, Paragraphs 20(i) and 20(j) of the Stipulated Order. The Parties stipulated that failure to comply with the Stipulation is

1 deemed a default of the terms of the Stipulation and subjects RESPONDENT to a penalty of
2 the abeyance amount owed.

3 8. RESPONDENT failed to comply with the required laws related to waste tire
4 haulers set forth in PRC sections 42950 et seq. and Title 14 of the CCR.

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6 **ORDER**

7 **GOOD CAUSE APPEARING THEREFORE**, the following Order is hereby made:

8 1. RESPONDENT shall pay an administrative penalty in the sum of \$10,000.00 to
9 CALRECYCLE for the violations set forth in the Notice of Default and this Supplemental
10 Administrative Decision within 30 (thirty) days of the date of service of this Decision.

11 2. Failure to pay the \$10,000.00 by the said due date shall constitute a full default of
12 the Stipulation, pursuant to Paragraph 22, subsection (b) of the Stipulation.

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14 The effective date of this Supplemental Decision is this 9 day of June, 2016

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18 _____
19 MARK DE BIE
20 Deputy Director
21 DEPARTMENT OF RESOURCES RECYCLING
22 AND RECOVERY (CALRECYCLE)
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