

BEFORE THE  
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

CALIFORNIA TIRE RECOVER, LLC,

Respondent.

Case No. 2012-000115-DEN

OAH No. 2013010100

**DECISION**

The attached Amended Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Resources Recycling and Recovery, State of California as its Decision in the above-entitled matter.

This Decision shall become effective on 8/19/13.

IT IS SO ORDERED this 19<sup>th</sup> day of August

By: Conor Math

BEFORE THE  
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues for  
the Denial of the Minor Waste Tire Facility  
Permit for:

CALIFORNIA TIRE RECOVERY, LLC,

TPID NO. 1642979-01,

Respondent

Case Number 2012-000115-DEN

OAH No. 2013010100

**AMENDED PROPOSED DECISION**

Administrative Law Judge Carla Nasoff, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on June 27, 2013.

Martha Perez, Attorney, represented complainant, Heather L. Hunt, Staff Counsel III, Department of Resources Recycling and Recovery (CalRecycle or Department).

Agustin Cortez, owner of California Tire Recovery, LLC (respondent), arrived at the administrative hearing one hour late after the matter had already begun but was present throughout the remainder of the proceeding.<sup>1</sup>

Oral and documentary evidence was received and the matter was submitted on June 27, 2013.

On August 9, 2013, this proposed decision was amended pursuant to Government Code section 11518.5, subdivision (d), in order to correct mistakes and clerical errors.

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<sup>1</sup> As respondent had been properly noticed for the hearing, the matter began after waiting 30 minutes for respondent to appear. When he did not, the case was called and the record was opened.

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. On November 16, 2012, complainant filed the statement of issues in her official capacity. The statement of issues sought denial of respondent's application for a minor Waste Tire Facility (WTF) permit for three years pursuant to Public Resources Code section 42843, subdivision (a)(2), based on the following allegations:

a. On at least three separate occasions, the operator for respondent violated Public Resources Code section 42834 by directing or transporting waste tires to a minor WTF or accepting waste tires at a minor WTF without first obtaining a minor WTF permit.

b. On at least two separate occasions, respondent violated Public Resources Code section 42823 by establishing a new major WTF or expanding an existing minor WTF without having first obtained a valid permit. Respondent also violated Public Resources Code section 42824 by directing or transporting waste tires or accepting waste tires without obtaining the proper WTF permits.

c. On at least one occasion, respondent failed to comply with a Cleanup and Abatement Order directing him, among other things, not to accept additional waste tires unless acceptance would not result in more than 499 waste tires being on site.

The statement of issues and other required jurisdictional documents were served on respondent, who timely filed a notice of defense. The disciplinary matter was set for hearing.

### *Steven Dolan's Testimony*

2. Steven Dolan has worked as a waste tire inspector with CalRecycle since 1997. He was a solid waste inspector for seven (7) years and is an Integrated Waste Management Specialist. His job duties include determining whether a California business complies with statutory requirements for the storage of used tires. Mr. Dolan testified that it is important to regulate used tire storage because, "They catch fire when not properly stored. . . . They pollute the environment. . . . There is a fire risk to surrounding areas. . . . And proper maintenance is required to maintain vector control. Tires are a habitat for mosquitos, rats, ground squirrels, all of which may transmit disease." There are two types of permits – minor permits and major permits. A minor permit allows for the storage of between 500 and 4,999 tires. A major permit allows for the storage of 5,000 or more tires. No permit is required for the storage of 499 or fewer tires.

#### a. *First Inspection*

Mr. Dolan first inspected the respondent's property on August 25, 2011. He took photographs and prepared a report. He estimated there were at least 1,860 tires on site. The respondent did not have any type of WTF permit. Mr. Dolan concluded that respondent needed a valid permit to store more than 499 tires.

b. *Second Inspection*

Mr. Dolan conducted a second inspection on October 5, 2011. Mr. Dolan accompanied inspector Darin Warkentin on this visit. Mr. Dolan estimated there were at least 3,600 tires on the respondent's facility. Mr. Dolan concluded respondent was in violation of the Public Resources Code and regulations because respondent did not have a minor permit that would allow for more than 499 tires to be stored at his facility.

c. *Third Inspection*

Mr. Dolan conducted a third inspection on March 1, 2012, with inspector Darin Warkentin. Photographs were taken and the estimated tire count was over 5,000. A major WTF permit was required for the storage of 5,000 or more tires. Respondent did not have any permits. Mr. Dolan informed CalRecycle.

On March 26, 2012, CalRecycle served a Cleanup and Abatement Order (CAO) [Exhibit 9] on respondent that required respondent to remove all waste tires in excess of 499 tires from the premises within 15 days from the date of service of the CAO and not to accept additional waste tires unless acceptance would not result in more than 499 waste tires being on site.

d. *Fourth Inspection*

Mr. Dolan conducted a fourth inspection on May 10, 2012. The inspection was a pre-permit inspection for a minor permit. Photographs of the premises were taken and respondent's tire count was no more than 499 tires. Mr. Dolan concluded respondent was in compliance with the Public Resources Code requirement regarding the number of tires that may be stored.

*Darin Warkentin's Testimony*

3. Darin Warkentin has been a Solid Waste Inspector III with the City of San Diego since 2009. He was trained to conduct tire counts and prepare inspection reports.

On July 14, 2011, Mr. Warkentin conducted an inspection of respondent's facility, took pictures and prepared a report. Mr. Warkentin testified that respondent did not have the proper fire equipment on site.

On August 25, 2011, Mr. Warkentin and Mr. Dolan conducted an inspection of respondent's facility and generated a report of their findings. Respondent had at least 1,860 tires at the facility but did not have any WTF permits.

On October 5, 2011, Mr. Warkentin conducted a property inspection and generated a report of his findings. Respondent stored at least 3,600 tires at the facility [Exhibit 7]. He did not have any WTF permits.

On March 1, 2012, Mr. Warkentin accompanied Mr. Dolan on an inspection of respondent's facility and took photographs. Respondent had over 5,000 tires at the facility. [Exhibit 8]. He did not have any WTF permits.

On May 10, 2012, Mr. Warkentin accompanied Mr. Dolan and Ms. Megan Fisher, an Integrated Waste Management Specialist with CalRecycle, for an inspection of the respondent's facility following the March 26, 2012, CAO. Respondent had reduced his tire inventory, had no more than 499 tires, and was in compliance with the regulation concerning the number of tires.

On September 13, 2012, Mr. Warkentin conducted an inspection of respondent's facility and determined that there were over 5,500 tires at respondent's facility. Respondent did not have either a major permit or a minor permit. Mr. Warkentin concluded that respondent exceeded the quantity of tires he was authorized to have. Mr. Warkentin prepared a report of his findings. (Mr. Warkentin testified he put the wrong date on his report, September 4, 2012, instead of September 13, 2012.) Mr. Warkentin wrote, "This case is being referred to CalRecycle because California Tire Recovery (CTR) has applied for a minor Waste Tire Facility Permit and was found not to be in compliance with waste storage standards. CTR was previously inspected (5/10/2012) by CalRecycle with the direction to maintain under 500 tires until the permit is approved. . . . CTR stored 5,570 waste tires."

#### *Megan Fisher's Testimony*

4. Megan Fisher has been an Integrated Waste Management Specialist with CalRecycle for the past four years. Her job duties include processing permits. She testified that Agustin Cortez was the owner of California Tire Recovery, and in April 2012, he applied for a minor permit. Although Ms. Fisher received all the necessary documentation from Mr. Cortez for a minor permit, Mr. Cortez had not yet been approved for a minor permit. The respondent was allowed to store only 499 or fewer tires until he was granted a minor permit. In September 2012, Mr. Warkentin discovered that over 5,000 tires were at respondent's facility and, therefore, respondent was out of compliance. Respondent was never issued any type of permit.

Ms. Fisher testified that in order for Mr. Cortez to comply with CalRecycle's rules and regulations, respondent must now wait three years before applying for another permit. In the interim, respondent is allowed to store only 499 or fewer tires at the facility.

#### *Agustin Cortez's Testimony*

5. Agustin Cortez is the owner of California Tire Recovery and lives in Tecali, Mexico. He has worked in the tire business for the past 18 years in the United States and for the past 39 years in Mexico. Ninety percent of his business involves the storage and transport of used tires. Ten percent of his business involves tire resale.

Mr. Cortez testified that he received proper notice of the administrative hearing; however, he arrived an hour late. He testified that he was in Mexico the morning of the hearing when complainant's attorney called him to determine if he was going to appear at the hearing on his own behalf. Mr. Cortez testified that it was important for him to be present and that he, therefore, crossed the international border to arrive, albeit late. Mr. Cortez admitted that he never received a minor or major WTF permit. From 2011 through February 2012, he had a business partner named Victor M. Liong. Mr. Liong was in charge of making sure the tire business was in compliance with all rules, regulations and statutes. Mr. Liong is no longer Mr. Cortez's partner. Mr. Cortez's business involves picking up old tires in the U.S. and transporting them to Mexico. Mr. Cortez testified, "I am trying to comply with the regulations. . . . I went to Megan's office to complete the application for a minor permit. I filed the paperwork. I provided pictures. . . . The only bad thing I did was I had over 5,000 tires and exceeded the tire requirement."

Mr. Cortez testified that, in order for his business to be successful, he needed to store or transport between 2,000 to 3,000 tires. He has many financial responsibilities in managing the business that include paying worker's compensation, insurance, rent, and employee salaries. Mr. Cortez testified, "I have a least 2,000 tires in stock every day. . . . My trailer gets filled up. . . . I have customers to satisfy." Mr. Cortez acknowledged he never received a final authorization to allow for the storage of tires in excess of 499. Mr. Cortez acknowledged that at the time of this administrative hearing, he had more tires at his facility than allowed.

### *Evaluation*

6. Respondent's operation of an unpermitted WTF constituted violations of the Department's laws, rules and regulations within the meaning of Public Resources Code section 42843, subdivision (a). Respondent's violations are grounds for the denial of the application for a minor WTF permit. Respondent has repeatedly and knowingly violated the Public Resources Code by storing more tires at his facility than allowed. Multiple inspections revealed respondent continually failed to comply with the required regulations. Photographs submitted demonstrated that more than 499 tires were stored at the facility without permits. Although in May 2012 respondent was in compliance when he stored no more than 499 tires, four months later, he stored over 5,000 tires without obtaining the necessary permit to do so.

Respondent failed to comply with the issued CAO. Respondent has had difficulty complying with the rules and regulations. He has repeatedly allowed the storage of tires over the allowed legal limit. The proper maintenance and storage of tires is necessary because noncompliance may pose a significant risk to public health and safety. The need for proper fire safety measures and vector control are significant public safety concerns when storing large quantities of tires. Respondent's financial concerns do not permit him to violate these laws. Blaming the violations on respondent's former partner was also not an excuse.

Respondent candidly testified at the administrative hearing that he currently was not in compliance. Respondent has continuously disregarded the law. Although respondent temporarily complied with the regulations in May 2012, just four months later, respondent again had more tires than allowed, vitiating the effect of his temporary compliance.

## LEGAL CONCLUSIONS

### *Statutory Authority*

1. Public Resources Code section 42808 provides, in part, that, "Waste Tire Facility" means a location that receives for transfer or disposal fewer than 150 tires per day averaged on an annual basis. A "major waste tire facility" means a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded. A "minor waste tire facility" means a waste tire facility where, at any time, 500 or more, but fewer than 5,000, waste tires are or will be stored, stockpiled accumulated or discarded.

2. Public Resources Code section 42804 provides the definition of "Operator" as a person responsible for the overall operation of a waste tire facility.

In this matter, Agustin Cortez was the operator.

3. Public Resources Code section 42823 provides, in part, that no person shall establish a new waste tire facility or expand an existing facility (of tires over 499) unless the person has obtained a valid facility permit issued by the board.

In this matter, the operator never obtained any permits.

4. Public Resources Code section 42824 provides, in part, that it is unlawful to direct or transport waste tires to a major waste tire facility or to accept waste tires at a major waste tire facility unless the operator has obtained a major waste tire facility permit.

In this matter, at various times, the operator accepted waste tires at his facility in excess of 5,000 tires without obtaining a major waste tire facility permit.

5. Public Resources Code section 42834 provides, in part, that it is unlawful to direct or transport waste tires at a minor waste tire facility unless the operator has obtained a minor waste tire facility permit.

In this matter, at various times, the operator accepted waste tires at his facility in excess of 499 without obtaining a minor waste tire facility permit.

6. Public Resources Code section 42843, subdivision (a)(2), provides, in part, that the Department, after holding a hearing, may deny a waste tire facility permit for a period of up to three years if the operator of the applicant has failed to comply with the

Department's regulations or has failed to comply with a Departmental order relating to the safe storage or processing of waste tires.

*Regulatory Authority*

7. California Code of Regulations, title 14, section 18423, subdivision (b), provides, in part, the filing requirements for obtaining a WTF. If the Department determines that the application does not conform to the applicable requirements, it will notify the applicant in writing enumerating the grounds for rejection.

In this matter, the Department determined that respondent's application did not conform to the applicable requirements and notified the respondent in writing of the rejected application as required.

*Conclusion*

8. Cause exists to deny respondent's application for a minor WTF permit for three years pursuant to Public Resources Code section 42843, subdivision (a)(2). Respondent violated Public Resources Code section 42834 when he directed or transported waste tires to a minor WTF and accepted waste tires without first obtaining a valid minor WTF permit. Respondent also violated Public Resources Code section 42843, subdivision (a)(2), on at least one occasion, when he failed to comply with a Cleanup and Abatement Order directing him, among other things, not to accept additional waste tires unless acceptance would not result in more than 499 waste tires being on site.

9. It would not be in the public interest to issue respondent a permit at this time. Respondent has repeatedly failed to comply with the rules and regulations regarding the proper storage and processing of waste tires. The Department requested denial for a period up to three years. The statute does not specify a start date for the three-year period; however, since respondent has repeatedly violated the rules and regulations governing the issuance of a WTF permit, the period should commence from the effective date of this decision.<sup>2</sup>

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<sup>2</sup> Government Code section 11522 permits a party whose license has been revoked or suspended to petition the agency for reinstatement after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition.

ORDER

1. The application of California Tire Recovery, LLC, for a minor Waste Tire Facility permit is DENIED.

2. Respondent may not re-apply for a Waste Tire Facility permit for three years from the effective date of this decision.

DATED: August 12, 2013

  
CARLA NASOFF  
Administrative Law Judge  
Office of Administrative Hearings