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**STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

**IN THE MATTER OF THE
ACCUSATION AGAINST:**

**USA Waste of California, Inc.,
dba**

**Sacramento Recycling & Transfer Station
(PR149690.001),**

Respondents.

OAH Case No.

DRRR Case No. 2016-001-BCR

**ACCUSATION
[Gov. Code § 11503]**

**COLLECTING RESTITUTION AND
INTEREST, ASSESSING CIVIL
PENALTIES, RECOUPING COSTS,
AND ISSUING PROBATIONARY
CERTIFICATION WITH CONDITIONS**

**[Pub. Resources Code §§ 14591.1, 14591.2,
14591.3, 14591.4, 14594.5, and 14595-14597]**

Pursuant to the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code (hereafter "PRC") § 14500 et seq. (hereafter "Act"), and California Code of Regulations, title 14, § 2000 et seq. (hereafter "Regulations"), the Department of Resources Recycling and Recovery (hereafter "Department"), issues this Accusation by and through the undersigned, John Halligan, Branch Chief, Recycling Program Enforcement Branch, exclusively in his official capacity.

A. JURISDICTION

1. The Department is responsible for administration of the Act, including but not limited to, managing the California Beverage Container Recycling Fund (hereafter "Fund"),

1 adopting regulations, certifying and registering program participants, inspecting, auditing,
2 investigating, and filing and prosecuting enforcement actions, and imposing discipline. (PRC §§
3 14512.7, 14530.5, 14538, 14539, 14539.5, 14540, 14552, 14553, 14560, 14580, 14591-14597.)
4 The Department may recover in restitution any money improperly or illegally paid to a certificate
5 holder or registrant from the Fund. This includes payments made from the Fund that are based on
6 documents that are not prepared or maintained in compliance with the Department's Act and
7 Regulations, that are based in whole or in part on false information or falsified documents, as well
8 as claims for program payments the Department cannot verify. (PRC §§ 14538, 14539, 14539.5,
9 14552, 14553, 14591-14597.)

10 2. In connection with all matters relating to the business activities and subjects under
11 its jurisdiction, Government Code §11180 et seq. authorizes the Department to inspect books and
12 records, promulgate interrogatories, and issue subpoenas for the attendance of witnesses and the
13 production of papers, books, accounts, documents, and testimony pertinent or material to any
14 inquiry, investigation, hearing, proceeding, or action conducted in any part of the state. (Gov.
15 Code §§ 11180 & 11181.)

16 3. Prior to June 20, 2014, the Department was authorized under PRC § 14552(b)(1) to
17 audit or investigate any action taken during the three-year period before the onset of an audit or
18 investigation to determine compliance with the Act. As of June 20, 2014, the Department is
19 authorized under PRC § 14552(b)(1) to audit or investigate any action taken during the five-year
20 period before the onset of an audit or investigation to determine compliance with the Act. An
21 enforcement action is timely if filed within five years of the discovery of a violation of the Act or
22 Regulations (two years if prior to June 20, 2014). (PRC § 14552(b)(2).) The Department may also
23 conduct a comprehensive inspection, audit, or investigation to determine an operator's on-going
24 compliance with the Act and Regulations. (PRC §§ 14552; Regulations §§ 2075 and 2125.) An
25 operator must provide the Department with immediate access to its facilities, operations, and any
26 relevant record, that, in the Department's judgment, are necessary to carry out its obligation to
27 verify compliance with the Act and Regulations. (PRC § 14552(c).)

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1 4. The Act defines "person" as "any individual, corporation, operation, or entity,
2 whether or not certified or registered" under the Act. (PRC §§ 14515.2, 14595, and 14595.4(a);
3 Regulations § 2000(a)(34).) Public Resources Code § 14595.5 establishes a violation of the Act
4 for any corporation, operation, or entity, whether or not certified or registered, for knowingly
5 receiving, storing, transporting, distributing, or otherwise facilitating or aiding in the redemption of
6 materials that are ineligible for payment of CRV, processing payments, administrative costs, or
7 handling fees.

8 5. The Act defines "responsible party" to include, but not be limited to, the certificate
9 holder, registrant, officer, director, or managing employee. The Department may take disciplinary
10 action against any responsible party for directing, contributing to, participating in, or otherwise
11 influencing the operations of, a certified or registered facility or program. (PRC § 14591.2.)

12 6. Public Resources Code § 14595.5 establishes a violation of the Act for any
13 corporation, operation, or entity, whether or not certified or registered, for knowingly receiving,
14 storing, transporting, distributing, or otherwise facilitating or aiding in the redemption of materials
15 that are ineligible for payment of California Refund Value (hereafter "CRV"), processing
16 payments, administrative costs, or other program payments, such as handling fees.

17 **B. STATUTORY AND REGULATORY AUTHORITY**

18 7. The Act authorizes the Department to certify or register the operators of recycling
19 centers, processing facilities, dropoff and collection programs, and curbside programs. (PRC
20 §§14538, 14539, 14539.5, and 14551.5.) A certificate is assigned to a single entity or person and
21 cannot be transferred or sold to any other entity or person. (PRC §§ 14538, 14539, and 14539.5;
22 Regulations § 2060(d) and (e).) Certification is issued for a specific site, except where the
23 certification is for a collection program. Any certification or registration granted by the
24 Department is a privilege and not a vested right or interest. (PRC §14541.5.)

25 8. The Act defines "recycling center" as an operation that is certified by the
26 Department and that accepts from consumers and pays to them the CRV for eligible beverage
27 containers. (PRC §14520.) Only recycling centers certified by the Department may pay CRV to
28 consumers, or dropoff or collection programs. (PRC § 14572(d)(1); Regulations § 2535.) The

1 recycling center must inspect each load of beverage containers for CRV eligibility before paying to
2 consumers the appropriate refund value. (PRC § 14538; Regulations § 2501.)

3 9. Certified recycling centers shall not pay refund values to a non-certified recycler.
4 (PRC §§ 14538(d)(4) and 14572(d)(1); Regulations § 2535.) It is a violation for a certified
5 recycling center to split loads in excess of the statutory weight limits, or accept during any one-day
6 an aggregate total of material in excess of the statutory weight limits, from any person not certified
7 by the Department. (Regulations § 2535(f)(1).)

8 10. The Act and Regulations require all certified recycling centers to obtain and/or
9 create and maintain specified documentation so that the Department may validate all claims made
10 by a recycling center for CRV, processing payments, or any other program payment. The
11 Department may recover restitution for all payments from the Fund where the Department cannot
12 verify the claim because the required documentation is not available or is not prepared or
13 maintained pursuant to the Act and Regulations. Any claim that cannot be validated must be
14 denied by the Department and recovered via restitution. (PRC § 14538(e); Regulations §§ 2525,
15 2530, and 2535.) All scrap transactions must be documented independently as well as listed in the
16 daily summary. (Regulations § 2525(a), (h) and (I).)

17 11. The Act defines "processor" as any person certified by the Department who
18 purchases from recycling centers or collection programs empty beverage containers which have a
19 refund value established by the Act. Additionally, a processor must inspect the empty beverage
20 containers for CRV eligibility as well as cancel the refund value by using a method approved by
21 the Department. (PRC §§ 14518 and 14539; Regulations §§ 2000(a)(4) and 2401.) Cancellation
22 must be documented fully in accordance with the Act and Regulations. (PRC §§ 14539(d)(8) and
23 (e); Regulations § 2420(d).)

24 12. The Act and Regulations require all certified processors to obtain and/or create and
25 maintain specified documentation so that the Department may validate all claims made by a
26 processor for CRV, processing payments, and administrative costs. The Department may recover
27 restitution for all payments from the Fund where the Department cannot verify the claim because
28 the required documentation is not available or is not prepared or maintained pursuant to the Act

1 and Regulations. Any claim that cannot be validated must be denied by the Department and
2 recovered via restitution. (PRC § 14539(e); Regulations §§ 2420, 2425, and 2430.) All scrap
3 transactions must be documented. (Regulations §§ 2420(g) and (h); 2425(f).) Processors must
4 retain proof that the processor canceled or had the CRV canceled in accordance with the Act and
5 Regulations. (Regulations § 2420(d).)

6 13. The Act defines "dropoff or collection program" as any person or organization
7 certified by the Department which does not pay CRV to consumers but that collects empty eligible
8 beverage containers from businesses and other collection locations, as well as from separating
9 recyclables from waste streams. (PRC §14511.7.) By law, a dropoff or collection program cannot
10 accept or collect recyclable materials which have already been separated from mixed municipal
11 waste. (Regulations §2000(a)(20).)

12 14. The Act and Regulations require all certified dropoff and collection programs to
13 obtain and/or create and maintain specified documentation so that the Department may validate all
14 claims made by the dropoff or collection program for CRV and processing payments. (PRC §§
15 14553, 14539.5(c); Regulations §§ 2085, 2090, 2530, and 2615.) Such documentation includes,
16 but is not limited to, DR6 Shipping Reports, weight tickets, and transaction logs containing the
17 information set forth in Regulations § 2615(a)(1). The Department may recover restitution for all
18 payments from the Fund where the Department cannot verify the claim because the required
19 documentation is not available or is not prepared or maintained pursuant to the Act and
20 Regulations. Any claim that cannot be validated must be denied by the Department and recovered
21 via restitution. (PRC § 14539.5(c); Regulations §§ 2615.) All scrap transactions must be
22 documented fully by the dropoff or collection program. (Regulations §§ 2085, 2090, 2530 and
23 2615.)

24 15. The Act defines "curbside program" as a recycling program which picks up empty
25 beverage containers from individual or multiple family residences, or both, and where the empty
26 beverage containers are separated from waste materials prior to being picked up. Curbside
27 programs are operated by, or pursuant to a contract with, a city, county, or other public agency.
28 Curbside programs are prohibited from paying CRV to consumers. Often curbside programs are

1 registered and run by the waste hauling companies that have franchise agreements with
2 municipalities. Whether the CRV is retained by the waste hauling company or the municipality is
3 a question of contract, i.e., the franchise agreement.

4 16. The Department's Regulations define "operator" as the person or entity who has
5 ultimate responsibility for a recycling facility, processing facility, or collection program.
6 (Regulations § 2000(a)(33).) An operator has the ultimate responsibility to ensure the accuracy of
7 all claims made on the Fund. (PRC § 14553 and Regulations § 2090(c).)

8 17. All weight "shall be measured, recorded, and reported" in accordance with
9 "Division 5 of the Business and Professions Code (Weights and Measures) and any applicable
10 regulations thereunder." Thus, all weight tickets must include, among other data, accurate
11 container tare weight. (Regulations § 2115.) All weight tickets must be automatically generated.
12 No manually created weight ticket is valid for the purposes of the Act and Regulations. (Business
13 and Professions Code § 12715; *see also* §§ 12700-12729.) Misstating or mixing material types on
14 a single weight ticket is illegal under California law. (Regulations § 2115; Business and
15 Professions Code §§ 12713 and 12715.) All claims against the Fund based on illegal and invalid
16 weight tickets are themselves void and subject to restitution. (PRC § 14539(e).) It is equally clear
17 that whatever commodity the illegal weight ticket supposedly represents, it cannot be deemed to
18 represent a real load delivered to the scale. Not only is it impossible for the Department to validate
19 claims based on illegal weight tickets, but any redemption claim, or other program payment, based
20 on such documentation is fraudulent pursuant to PRC § 14597.

21 18. The Act authorizes the Department to audit or investigate any action taken up to
22 five years before the onset of the audit or investigation in order to determine if there was
23 compliance with the Act and Regulations. (PRC § 14552(b).) More generally, the Department
24 may conduct any inspection, audit, or investigation to verify compliance with the Act and
25 Regulations. (PRC §§ 14552(b) and (c); PRC § 14553(b); Gov. Code § 11180 et seq.) The entity
26 that is the subject of an audit or investigation is required to provide to the Department immediate
27 access to its facilities, operations, and any record deemed by the Department to be relevant to the
28 inspection, audit, or investigation. (PRC §§ 14552(c) and 14553(c).)

1 19. All reports, claims, and other information required pursuant to the Act or
2 Regulations must be complete, legible, and accurate, and shall be signed, by an officer, director,
3 managing employee, or owner of the certified recycling center, processor, distributor, beverage
4 manufacturer, container manufacturer, or other entity. (PRC § 14553.)

5 20. Except for consumers (as defined by the Act), a person, business, or entity not
6 certified or registered by the Department may not pay, claim, or receive CRV, processing
7 payments, administrative costs, or other program payments for eligible recyclable beverage
8 containers. (PRC §§ 14511.7, 14518, 14520, 14538, 14539, 14539.5, 14572, 14573, and 14573.5;
9 Regulations §§2400 and 2535(f).)

10 21. Beverage containers sold to consumers outside the State of California are ineligible
11 for the redemption of CRV, processing payments, administrative costs, or any other program
12 payment made from the Fund. The reason is simple. No CRV is collected from the consumer at
13 the time of an out-of-state sale. Because no money went into the Fund from the sale, no claim may
14 be made upon the Fund based on an out-of-state beverage container. (PRC §§ 14538, 14539,
15 14539.5, 14572, 14591, 14595, 14595.5, and 14597.) Previously redeemed containers, rejected
16 containers, line breakage, previously baled containers, and materials that have never had a refund
17 value are also ineligible for payment of CRV, processing payments, administrative costs, or other
18 program payments. (PRC §§ 14538, 14539, 14539.5, 14572, 14591, 14595, 14595.5, and 14597;
19 Regulations §§ 2110, 2401, and 2501.) Any claim or payment based on the material types set forth
20 in this paragraph are not only invalid, but they are fraudulent under the Act. (PRC§ 14597.)

21 22. The Act declares that any person participating in conduct intended to defraud the
22 State's beverage container recycling program including, but not limited to, redemption of
23 out-of-state and previously redeemed beverage containers, shall be held accountable for that
24 conduct. (PRC §§ 14591, 14591.2, 14595, 14595.5, 14596, and 14597.) The Act deems a claim to
25 be fraudulent when the claim is based in whole or in part on false information or falsified
26 documents. No person may submit or cause to be submitted a fraudulent claim. (PRC § 14597)

27 23. Disciplinary action is justified where a responsible party engaged in dishonesty,
28 incompetence, negligence, or fraud in performing the functions and duties of a certificate holder or

1 registrant, or where the responsible party violates the Act or Regulations. (PRC §§ 14591.2(b)(2)
2 and 14591.2(b)(3).)

3 24. The Act authorizes the Department to collect restitution and interest, levy statutory
4 penalties, recover costs and fees related to audits and investigations, and to revoke certificates.
5 (PRC §§ 14591.1, 14591.2, 14591.3, 14591.4, 14594.5, 14596, and 14597)

6 25. If the certificate holder operates more than one site, the Department may
7 simultaneously or subsequently revoke all the certificates held by the responsible party. (PRC §§
8 14591.2(c)(1), 14591.2(d)(1) and (2).)

9 26. Each violation of the Act is a separate violation and each day of the violation is a
10 separate violation. (PRC § 14591.1(a)(3)) Thus, each invalid, illegal, or fraudulent claim, is a
11 separate violation of the Act. (PRC §§ 14591.1, 14591.2, 14595.5, and 14597.)

12 27. The Act authorizes the Department to assess upon any person, entity, or operation
13 that redeems, attempts to redeem, or aids in the redemption of, empty beverage containers that
14 have already been redeemed, or redeems, attempts to redeem, or aids in the redemption of,
15 otherwise ineligible beverage containers, a civil penalty of up to ten thousand dollars (\$10,000) per
16 transaction, or an amount equal to three times the damage or potential damage, whichever is
17 greater, plus costs. (PRC §§ 14591.3 and 14594.5.)

18 28. The Department may issue an order to a person or entity to cease and desist from
19 any recycling activity that violates the Act or Regulations. (PRC §14591.6.)

20 **C. RELEVANT BACKGROUND ON CALIFORNIA'S BEVERAGE CONTAINER**
21 **RECYCLING PROGRAM**

22 29. The Act establishes a process by which certified recycling centers pay CRV to
23 consumers for empty eligible beverage containers and later submit claims for reimbursement for
24 those payments. (PRC § 14560.) A certified recycling center sells the CRV eligible material to a
25 certified processor. The certified processor inspects the empty beverage containers for redemption
26 eligibility, cancels the CRV, and then sells the material to an end user. The certified processor
27 gathers together the claims made by certified recycling centers and forwards the claims to the
28 Department for payment, as described below.

1 30. The sale of empty eligible beverage containers from a certified recycling center to a
2 certified processor is evidenced by a DR6 Shipping Report (hereafter "DR6"), a form promulgated
3 by the Department to document the receipt of material by a processor. A DR6 forms the basis for
4 payments by the Department pursuant to the Act. (Regulations § 2000(a)(44).) The certified
5 processor is responsible for preparing the DR6 except when the shipper is a certified recycling
6 center. (PRC § 14539(d)(8)(A); Regulations §§ 2420(a) and 2425(e).) The following information
7 is set forth on the DR6: the company name, address, certification number, and the shipper's
8 contact person, as well as the material type, redemption weight, and the CRV amount.

9 31. The certified processor that receives the shipment weighs the load, inspects the
10 empty beverage container material in accordance with the Act and Regulations to determine if it
11 qualifies for CRV payment, enters the received weight and weight ticket number on the DR6, and
12 calculates the CRV amount and processing payment, if any, due to the shipper, as well as the
13 administrative costs due to the processor. The certified processor is required to pay the CRV and
14 processing payments to the certified recycling center within two working days. (PRC §
15 14573.5(b).) The processor then aggregates a batch of DR6 forms to make a claim on the Fund for
16 CRV, processing payments, and administrative costs, thereby obtaining reimbursement for the
17 monies it paid out previously for CRV, processing payments, and administrative costs. The form
18 used by the processor to compile and claim those amounts is the DR7 Processor Invoice Report
19 (hereafter "DR7"). The DR7 form was promulgated by the Department so that it could determine
20 the correct payment to be made to a certified processor. (Regulations § 2000(a)(35.1).) The
21 processor calculates the total redemption weight, total CRV amount, total processing payment, and
22 total administrative costs based on the batch of DR6 forms submitted with the DR7. Both the DR6
23 and DR7 forms are signed under penalty of perjury. The processor signs both the DR6 and DR7.

24 32. The general procedure of sales of eligible beverage containers from a certified
25 recycling center to a certified processor, as discussed above, also applies to sales by a certified
26 dropoff or collection program to a certified processor. The major difference is that a certified
27 dropoff or collection program may not pay out CRV to consumers but may claim CRV on eligible
28 beverage containers that they acquire by purchase, donation, collection, or by sorting the containers

1 from municipal waste streams. Nor can they collect process processing payments or administrative
2 costs that are available to a certified recycling center. (PRC §§ 14573.6 and 14575(g)(4).)

3 33. Curbside programs present a unique challenge for processors. Most processors have
4 multiple curbside programs using their sorting facility on a daily basis. It is not economically
5 possible, however, to segregate one municipality's waste from another and to sort the waste
6 streams individually. In reality, all waste hauling trucks dump their loads at the same point,
7 adjacent to the sorting equipment at what is known as a Material Recovery Facility, or MRF. This
8 results in the mixing of many municipal waste streams. The MRF separates out the recyclable
9 commodities, including paper, cardboard, cans, glass bottles, and various plastic containers.
10 Because multiple sources of recyclable material are mixed together the processor cannot readily
11 determine how much CRV to pay to a particular city's curbside program. Essentially, the
12 processor must know how to apportion the CRV that is sorted out of the combined waste streams.
13 The mechanism used to determine the proportional shares of CRV is call a Waste Characterization
14 Study. Each municipality conducts multiple waste characterization studies to determine a
15 statistical average for each type of eligible beverage container in their waste stream. For example,
16 a city might find that in each ton of waste there is 150 pounds of PET beverage containers which
17 are eligible for CRV. Once the processor has the studies from all of the curbside programs using
18 its MRF, the processor may apply to the Department for an alternative methodology to apportion
19 the CRV to each municipality based on the study of that city's waste stream. (Regulations §§
20 2425(g) and 2650.) Normally each curbside program would have to have its own DR6 Shipping
21 Reports for each type of beverage container sorted from its waste stream. The alternative
22 methodology allows, however, the processor to submit one DR6 Shipping Report for all of its
23 curbside programs, per commodity type.

24 34. Pursuant to PRC § 14553(b), all DR7 and DR6 claim forms are entered on-line via
25 the Department's electronic claims submission procedure known as the Division of Recycling
26 Integrated Information System ("DORIIS"). The Department's billing cycle runs from the first day
27 of the month to the last day of the month.

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1 **D. RESPONDENTS**

2 35. Respondent USA Waste of California, Inc., is a Delaware corporation licensed to do
3 business in California. It is the sole owner and operator of Respondent Sacramento Recycling &
4 Transfer Station ("SRTS"), a certified processor operating under the designation PR149690.001.
5 Respondent Sacramento Recycling & Transfer Station is a "dba" of Respondent USA Waste of
6 California, Inc. Hereafter, the Department will refer to Respondents USA Waste of California,
7 Inc., and Sacramento Recycling & Transfer Station, together with their owners, officers, directors,
8 agents, employees, and operators, as "Respondents."

9 36. Respondent Sacramento Recycling & Transfer Station (PR149690.001) became
10 certified and operational on January 6, 2012.

11 37. For the purposes of this Accusation, Respondent USA Waste of California, Inc., and
12 Respondent Sacramento Recycling & Transfer Station are alter egos of each other. Both entities
13 are responsible parties within the meaning of the Act as they actively directed, controlled, and
14 participated in the day-to-day operation and management of the Sacramento Recycling & Transfer
15 Station (PR149690.001). In the process of conducting such business, Respondents engaged in
16 conduct intended to defraud the Fund.

17 38. Respondents were subject to and required to comply with the Act and the
18 Regulations at all times relevant to this Accusation.

19 39. This action is timely as it has been filed within two years after the Department
20 discovered the violations of the Act and the Regulations alleged herein. (PRC §14552(b)(2).) This
21 action is subject to the formal hearing procedures of the California Administrative Procedure Act.
22 (Gov. Code §11500 et seq.; PRC §14591.2.)

23 **E. GROUNDS FOR ADMINISTRATIVE ACTION AGAINST RESPONDENTS**

24 40. The allegations set forth in paragraphs 1 through 39, above, are incorporated by
25 reference.

26 41. On March 5, 2014, the Department received information from Department of Food
27 and Agriculture indicating that several large single stream loads were coming in through the
28 Truckee Food and Agriculture station from Sparks, Nevada, with a destination of 8491 Fruitridge

1 Road, Sacramento, California. That address is the facility address of Respondent Sacramento
2 Recycling & Transfer Station (hereafter "SRTS").

3 42. On March 13, 2014, Ben Shelton (Senior Staff Management Auditor), Alicia
4 Davenport (Staff Management Auditor), and Hieu Le (Staff Management Auditor) contacted SRTS
5 on behalf of the Department and spoke to Kurt Standen, SRTS' initial contact person, to
6 understand the nature of the out-of-state materials received by them. Mr. Standen stated that the
7 facility began receiving out-of-state materials in February 2014, the same month that the Imported
8 Material Reports became mandatory. He also stated that out-of-state materials are not claimed for
9 CRV "by using a characterization study."

10 43. On April 25, 2014, Hieu Le, Katie Keith, and Edwin Esternon (Staff Management
11 Auditors for the Department) visited SRTS to meet Mr. Standen, as agreed upon, to obtain
12 additional information. However, Department staff was informed that Kurt Standen no longer
13 worked for SRTS as of 2 p.m. the day before the arranged meeting. Department staff were
14 introduced to the new contact person at the facility, Chad Wilson. Mr. Wilson had no knowledge
15 of the scheduled meeting with Department staff.

16 44. On April 25, June 13, June 30, and July 9, 2014, Department staff obtained
17 supporting documents from SRTS for review and testing. During a site visit on June 13, 2014,
18 SRTS provided a box of records that had been requested and, inadvertently, included out-of-state
19 weight tickets ranging from February through December, 2013. Due to the inconsistency between
20 Mr. Standen's statement that SRTS did not begin receiving out-of-state materials until February,
21 2014 and the provided documents, Department staff expanded the scope of their audit to include
22 the additional out-of-state weight tickets for the period February 1, 2013 through June 30, 2014.
23 As a result of that audit, the Department concluded that SRTS had claimed CRV on out-of-state
24 materials for the month of February, 2013. That fact affected multiple curbside shipping report
25 claims submitted by SRTS.

26 45. Department auditors also discovered inaccurate shipping report claims for
27 aluminum and plastic, both PET (#1 plastic) and HDPE (#2 plastic), during the initial review scope
28 of February and March 2014. Specifically, SRTS had claimed several PET bales as aluminum

1 bales when it submitted multiple curbside shipping reports. Aluminum has a higher CRV value
2 than PET. The Department also found that HDPE had been claimed as aluminum as well as PET.
3 Department staff so informed Mr. Wilson. On July 8, 2014, Mr. Wilson informed Mr. Esternon of
4 similar inaccuracies for the period of April and May 2014. Consequently, all of the DR6 Shipping
5 Reports for the foregoing period were inaccurate. Department staff verified that those inaccuracies
6 were limited to the period February through May 2014.

7 46. Due to the inaccuracies affecting at least 298 DR6 Shipping Reports a meeting was
8 scheduled at the Department's headquarters in Sacramento. The goal of the meeting was to
9 determine the most efficient way Respondents would correct their inaccurate documentation and
10 repay the Department for all of the improper payments made from the Fund. The attendees at the
11 August 4, 2014 meeting were Mr. Wilson and Jennifer Quintana, SRTS Operations Specialist, and
12 Mr. Esternon, Ben Shelton, and Alicia Davenport, for the Department. The parties agreed that
13 SRTS would produce a spreadsheet accounting for all of the original inaccurate shipping reports
14 which needed to be amended. The spreadsheet was to include all of the amendments and the
15 balance due to the Department for the improper payments made to Respondents from the Fund.

16 47. The Department's investigation also included an email exchange between
17 Department staff and SRTS. The following are examples of that correspondence.

18 (a) On July 1, 2014, Ms. Quintana wrote to Tabatha Chavez, one of the
19 Department's Senior Staff Management Auditors, that, "We recently discovered that some of the
20 material claimed since February [2014] was wrong. We finally caught an internal computer error
21 and I need to do amendments to FEBRUARY-MAY crv." (sic.)

22 (b) On July 1, 2014, Mr. Wilson sent an email to Edwin Esternon and stated that
23 "February through May of this year [2014] is not correct." On July 8, 2014, Mr. Wilson stated to
24 Mr. Esternon during a phone conversation that the problem began when Respondents combined
25 separate commodities onto one weight ticket.

26 (c) On July 2, 2014, Ms. Quintana wrote to Janet Ruiz, one of the Department's
27 auditors, that SRTS has 20 curbside programs and that "each discrepancy in the weight claimed
28 will affect all of the CS [curbside] participants that we have."

1 (d) On August 8, 2014, Mr. Wilson emailed Mr. Esternon a spreadsheet for the
2 corrections to February, 2014 CRV claims. Corrections for March through May, 2014 followed
3 thereafter.

4 (e) On August 12, 2014, Mr. Wilson emailed Mr. Esternon saying that, "We are
5 finalizing today the corrections for 2013."

6 (f) On August 13, 2014, Mr. Wilson emailed Mr. Esternon and stated that
7 February 2013 has corrections in all grades of material, while March 2013 has an error regarding
8 glass shipped to Respondents' Lodi facility.

9 (g) On September 11, 2014, Mr. Esternon emailed Mr. Wilson with corrections
10 to the claims made in February 2013 and February through May, 2014.

11 (h) On September 23, 2014, Mr. Wilson replied by asking, "Are we to receive a
12 formal letter from CalRecycle on the exact amount due? I want to make sure I am not missing
13 something."

14 (i) On October 21, 2014, Mr. Wilson emailed Ms. Davenport and stated that he
15 wanted to follow up and find out the status of the final audit results, as well as being sure that the
16 Department had everything it needed from him. Ms. Davenport replied on October 22, 2014 that
17 the Department would present, at an exit conference, a statement for the total amount owed to the
18 Fund for the corrections made to Respondents' claims.

19 (j) On December 1, 2014, Mr. Esternon emailed Ms. Quintana about Mr.
20 Wilson's whereabouts. Mr. Esternon stated that he had sent Mr. Wilson an email on November 19,
21 2014 but had not heard back from him. Apparently, Mr. Wilson had been transferred from SRTS
22 to another facility owned by Respondents.

23 48. As the email exchange above indicates, Respondents initially had engaged in a
24 good-faith effort to find a mechanism to repay the Fund for the initially identified improper
25 payments they received without the need for the Department to expend a large amount of resources
26 pursuing an enforcement action. Mr. Wilson and the Department fully had expected to conclude
27 the audit at the exit interview. Unfortunately, Mr. Wilson's transfer harbored a serious change of
28 attitude on the part of Respondents. Cooperation vanished. Indeed, Respondents failed to respond

1 in any meaningful way to the Department's exit conference or demand letter. The Department was
2 obligated to further analyze the payments made and institute this enforcement action in the absence
3 of a cooperative party seeking a resolution short of litigation. Although this enforcement action
4 looks more deeply at the violations committed by Respondents than did the audit, Respondents had
5 been apprised fully of the issues set forth below. Here there are no surprises for Respondents.

6 **F. COUNT ONE: Respondents Filed Fraudulent Claims for CRV, Processing**
7 **Payments, and Administrative Costs Causing \$805,123.23 in**
8 **Damages to the Fund.**

9 49. The allegations set forth in paragraphs 1 through 48, above, are incorporated by
10 reference.

11 50. During the months of February 2013 and February through May 2014, Respondents
12 filed 17 DR7 Processor Invoices and 298 DR6 Shipping Reports that were fraudulent pursuant to
13 PRC § 14597. Those documents were fraudulent because they were based on false information or
14 falsified documents. Specifically, the documents were based on illegal weight tickets or they
15 included out-of-state material, or both. The weight tickets were illegal because they either listed
16 two commodities, the wrong commodity, or they were created manually. On the basis of the
17 fraudulent documents Respondents were paid **\$678,006.44** for CRV, **\$110,166.63** for processing
18 payments, and **\$16,950.16** for administrative costs, totaling **\$805,123.23** in harm to the Fund.

19 51. The Act and Regulations require all claims made on the Fund to be supported by
20 accurate documentation as determined by the Department. (PRC § 14553) As relevant to this
21 matter, Respondents' claims for CRV, processing payments, and administrative costs had to be
22 supported by accurate DR6 Shipping Reports and accurate weight tickets. (PRC §§ 14538(d)(7)
23 and 14539(d)(8).) Any claim that cannot be validated by the Department due to inaccurate or non-
24 existent documentation is void and subject to restitution. (PRC § 14539(e).)

25 52. It bears restating here that misstating material types, or mixing material types, on a
26 single DR7 Processor Invoice Report, DR6 Shipping Report, or a weight ticket is prohibited by the
27 Act and Regulations, as well as the Business and Professions Code. Each material type, be it PET
28 (#1 plastic), HDPE (#2 plastic), aluminum, or glass beverage containers, must have a separate DR6
and a separate weight ticket. The same is true for DR7 forms. Commodities may never be

misstated or mixed on any DR7, DR6, or their supporting weight ticket. (Regulations §§ 2420(a), (b) and (g); 2530(e) and (f)) In short, loads of beverage containers upon which claims are made against the Fund must be homogeneous with respect to material type and documented accurately.

53. It also bears repeating that weight tickets must be issued by a licensed weighmaster and include the commodity type and unit quantity, as well as gross weight and tare weight. (Business and Professions Code §§ 12713-12715.) No manually created weight ticket is valid for the purposes of the Act and Regulations. (Business and Professions Code §§ 12700 et seq.) Different beverage container material types may never be combined on a single weight ticket for any purpose. (Business and Professions Code §§ 12713, 12715, and 12718.)

54. The Legislature of the State of California articulated a clear and manifest public policy prohibiting the payment of any kind from the Fund on the basis of ineligible beverage container material. Public Resources Code § 14595 announces the Legislature's intent in unambiguous language:

The Legislature finds and declares that the redemption of beverage container material imported from out of state, previously redeemed containers, rejected containers, and line breakage presents a significant threat to the integrity of the beverage container recycling program and fund.

It is therefore the intent of the Legislature that no refund value or other recycling program payments be paid to any person for this material. It is further the intent of the Legislature that any person participating in conduct intended to defraud the state's beverage container recycling program shall be held accountable for that conduct.

The Legislature also created a mandate for the Department, as set forth in §14595.5 of the Act:

(a)(1) No person shall pay, claim, or receive any refund value, processing payment, handling fee, or administrative fee for any of the following:

(A) Beverage container material that the person knew, or should have known, was imported from out of state.

(B) A previously redeemed container, rejected container, line breakage, or other ineligible material.

(a)(2) No person shall, with intent to defraud, do any of the following:

(A) Redeem or attempt to redeem an out-of-state container, rejected container, line breakage, previously redeemed container, or other ineligible material.

(B) Return a previously redeemed container to the marketplace for redemption.

1 (C) Bring an out-of-state container, rejected container, line breakage, or other
2 ineligible material to the marketplace for redemption.

3 (D) Receive, store, transport, distribute, or otherwise facilitate or aid in the
4 redemption of a previously redeemed container, out-of-state container, rejected
5 container, line breakage, or other ineligible material.

6 Thus, the Department has no discretion whatsoever to allow any type of claim if it is based
7 on ineligible beverage container material, including out-of-state material. The Legislature
8 emphasized further in PRC § 14597 that such claims constitute fraud against the Fund:

9 (a) No person shall falsify documents required pursuant to this division or pursuant to
10 regulations adopted by the department. The falsification of these documents is evidence of
11 intent to defraud and, for purposes of subdivision (b) of Section 14591.1, constitutes
12 intentional misconduct. The department may also take disciplinary action pursuant to
13 Section 14591.2 against a person who engages in falsification including, but not limited to,
14 revocation of any certificate or registration.

15 (b) No person shall submit, or cause to be submitted, a fraudulent claim pursuant to this
16 division. For purposes of this subdivision, a fraudulent claim is a claim based in whole or in
17 part on false information or falsified documents. Any person who submits a fraudulent
18 claim is subject to the assessment of penalties pursuant to subdivision (b) of Section
19 14591.1. The department may take action for full restitution for a fraudulent claim,
20 pursuant to Section 14591.4, and may also take disciplinary action pursuant to Section
21 14591.2 including, but not limited to, revocation of any certificate or registration.

22 Given these Legislative mandates, any DR7 or DR6 that is supported by false information
23 or falsified documents, such as claims based in whole or part on illegal weight tickets or ineligible
24 material, are fraudulent and must be recovered via restitution. (PRC §§ 14539(e), 14591.2(c)(5),
25 and 14591.4.)

26 55. Lastly, Public Resources Code § 14550 and Regulations § 2425 require all
27 processors to report to the Department on a monthly basis the amount of empty beverage
28 containers, by material type and weight of container or material, excluding refillable beverage
containers, received from recycling centers and curbside programs for recycling, the CRV,
processing payments, and administrative costs paid on the containers, as well as the scrap value
paid for glass, PET, and bimetal containers and any beverage confirm that is assessed a processing
fee. Supporting documents, such as DR6 forms, must be attached to the monthly reports.
Regulations § 2425 contains additional detailed requirements not at issue in this Accusation.

56. The details of Respondents' fraudulent claims are set forth below.

(a) During the month of February 2013, Respondents submitted claims that

1 included ineligible out-of-state materials. Specifically, Respondents filed 4 DR7 Processor Invoice
2 Reports supported by 76 DR6 Shipping Reports that included out-of-state PET, HDPE, aluminum,
3 and glass beverage containers. Only eligible beverage containers may be accounted for on a DR7
4 and DR6, which are signed under penalty of perjury certifying that the material listed thereon is
5 eligible for redemption. Consequently, the foregoing documents signed by Respondents agents and
6 employees falsely stated that those claims were in full accord with the Act and Regulations. To the
7 contrary, each DR7 and DR6 was fraudulent pursuant to PRC § 14597. Respondents fraudulently
8 obtained **\$108,578.22** in CRV, **\$14,838.87** in processing payments, and **\$2,714.46** in
9 administrative costs, totaling **\$126,131.55** in harm to the Fund.

10 (b) There is an additional reason the February 2013 claims are fraudulent.
11 Notably, the Department had no reason to suspect that Respondents were importing, sorting, and
12 filing claims that included ineligible out-of-state material in February 2013. To the contrary, on
13 March 13, 2014, Kurt Standen, Respondents' operations manager, told Department investigators
14 that Respondents did not import any out-of-state material until February 2014. The Department
15 accidentally discovered that Respondents had been importing out-of-state material since 2013
16 when it examined documents provided by Respondents. It is axiomatic that Respondents were
17 prohibited from importing, sorting, and deducting out-of-state material from their February 2013
18 redemption weights because Respondents had no approved alternative methodology until April
19 2014. An alternative methodology is required in order to reduce the redemption weight by the
20 amount of out-of-state beverage containers. Respondents actively concealed the truth from the
21 Department during its investigation. But for the accidental discovery of the truth, Respondents
22 would have kept their illegal conduct, and the attendant illicit funds, secret. The foregoing
23 dishonesty justifies independently the revocation of Respondents' certification.

24 (c) During the month of February 2014, Respondents filed 3 DR7 Processor
25 Invoice Reports supported by 54 DR6 Shipping Reports based on documents that erroneously
26 stated the material type of the beverage containers. During this month HDPE (#2 plastic) was
27 claimed as aluminum or PET beverage containers, or both. The associated DR7 and DR6 claim
28 forms were fraudulent pursuant to PRC § 14597. Accordingly, Respondents fraudulently obtained

1 **\$71,187.82** in CRV, **\$4,385.31** in processing payments, and **\$1,779.70** in administrative costs,
2 totaling **\$77,352.83** in harm to the Fund.

3 (d) During the month of March 2014, Respondents filed 2 DR7 Processor
4 Invoice Reports supported by 36 DR6 Shipping Reports based on documents that erroneously
5 stated the material type of the beverage containers. During this month PET (#1 plastic) was
6 claimed as aluminum beverage containers. The associated DR7 and DR6 claim forms were
7 fraudulent pursuant to PRC § 14597. Accordingly, Respondents fraudulently obtained
8 **\$129,093.19** in CRV, **\$2,807.28** in processing payments, and **\$3,227.33** in administrative costs,
9 totaling **\$135,127.80** in harm to the Fund.

10 (e) During the month of April 2014, Respondents filed 4 DR7 Processor Invoice
11 Reports supported by 60 DR6 Shipping Reports based on weight tickets that reflected more than
12 one commodity. Moreover, those claims also included ineligible out-of-state materials. The
13 associated DR7 and DR6 claim forms were fraudulent pursuant to PRC § 14597. Accordingly,
14 Respondents fraudulently obtained **\$120,089.50** in CRV, **\$40,201.44** in processing payments, and
15 **\$3,002.24** in administrative costs, totaling **\$163,293.18** in harm to the Fund.

16 (f) During the month of May 2014, Respondents filed 4 DR7 Processor Invoice
17 Reports supported by 72 DR6 Shipping Reports based on weight tickets that reflected more than
18 one commodity. Moreover, those claims also included ineligible out-of-state materials. The
19 associated DR7 and DR6 claim forms were fraudulent pursuant to PRC § 14597. Accordingly,
20 Respondents fraudulently obtained **\$249,057.71** in CRV, **\$47,933.73** in processing payments, and
21 **\$6,226.43** in administrative costs, totaling **\$303,217.87** in harm to the Fund.

22 57. Another consequence of the using illegal weight tickets is that the monthly reports
23 submitted by Respondents during the period of February through May 2014 were erroneous.
24 (Regulations § 2425.) The monthly report for February 2013 is also erroneous due to the inclusion
25 of out-of-state material.

26 58. The 17 DR7 Processor Invoice Reports and 298 DR6 Shipping Reports, constitute
27 invalid and illegal claims against the Fund. Moreover, the claims are also fraudulent pursuant to
28 PRC §§ 14597 as they were “based in whole or in part on false information or falsified

documents.” (PRC § 14597(b).) Therefore, the act of filing a claim for program payments, including CRV, processing payments, and administrative costs, without complete and accurate supporting documentation, constitutes fraud. (PRC §§ 14591.2 and 14597.) Each fraudulent claim, regardless of how the fraud was committed, is a separate violation of the Act. (PRC §§ 14591.1, 14591.2, 14595.5, and 14597.) Respondents had no legal right to the **\$805,123.23** paid to them as a result of their fraudulent conduct.

G. COUNT TWO: Respondents Filed Fraudulent Claims for CRV, Processing Payments, and Administrative Costs on Beverage Containers They Failed To Cancel Causing \$1,637,711.17 in Damages to the Fund.

59. The allegations set forth in paragraphs 1 through 58, above, are incorporated by reference.

60. Claims made by a certified processor on beverage containers are not valid unless the containers are cancelled by the processor pursuant to the Act and Regulations. (PRC §§ 14518, 14539(d)(7), and 14539(d)(8); Regulations §§ 2000(a)(4), 2110, and 2420(d).) A certified processor has the absolute duty to cancel all beverage containers to render them unfit for re-redemption. (PRC § 14539(d)(7).) Indeed, cancellation is a paramount duty of all processors to prevent the reintroduction of the beverage containers back into the recycling program. Cancellation, like inspection, is a first-line defense against fraud. Notwithstanding this paramount duty, Respondents failed to cancel certain beverage containers during the time period of February 2013 through June 2014, seventeen (17) months.

61. During the foregoing time period, Respondents filed claims for CRV, processing payments, and administrative costs on 51 DR7 Processor Invoice Reports supported by 935 DR6 Shipping Reports. Respondents sold and shipped 938,585.7 pounds of PET (313 loads of #1 plastic), 243,880.9 pounds of HDPE (312 loads of #2 plastic), and 379,159.4 pounds of aluminum (310 loads) beverage containers to Ming’s Resource Corporation (hereafter “Ming’s”). Those loads of beverage containers were not canceled by Respondents, as discussed below.

62. During the time period relevant to this Accusation, Ming’s was not a bona fide end user, nor did they have Departmental authority to cancel on behalf of Respondents. Furthermore,

1 Respondents failed to maintain documentary evidence of cancellation for the beverage containers
2 they sold to Ming's. Respondents had no on-board bills of lading, no on-board weight tickets, or
3 other documentation to prove that the containers had either been exported permanently from the
4 State of California or sold to a bona fide end user. In short, the Department has no evidence of
5 what Ming's did with the beverage container material. For these reasons all claims made by
6 Respondents on the uncanceled beverage containers are invalid.

7 63. With respect to the aluminum beverage containers, Respondents also failed to
8 densify the material in accordance with Regulations § 2000(a)(4). On average, the bales of
9 aluminum beverage containers sold by Respondents to Ming's were densified to 22 pounds per
10 cubic foot. Regulations § 2000(a)(4)(A) requires densification to 30 pounds per cubic foot or
11 more, or shredding. Such densification is necessary to make it more difficult to break the bales
12 apart and re-redeem the beverage containers for a second time. For this additional reason, none of
13 the aluminum beverage containers sold by Respondents to Ming's in this period of time were
14 cancelled in accordance with the Act and Regulations.

15 64. Proof that a claim for CRV, processing payments, and administrative costs is valid
16 necessarily includes proof that the subject containers had been cancelled pursuant to the Act and
17 Regulations. In this matter the Department cannot validate the cancellation of the beverage
18 containers sold by Respondents to Ming's. Due to the lack of cancellation, the Department cannot
19 validate the claims made by Respondents on those same beverage containers. Accordingly,
20 Respondents have no legal claim to the **\$1,669,664.59** in CRV, processing payments, and
21 administrative costs paid from the Fund on the uncanceled beverage containers they sold to
22 Ming's. Those claims are void and subject to restitution. (PRC § 14539(e).)

23 65. When a processor submits DR7 and DR6 forms, signed under penalty of perjury,
24 they certify that the loads are eligible for redemption, that the data on the forms are accurate, and
25 that they will have complied with their duties under the Act and Regulations in order to obtain
26 monies from the Fund. When Respondents filed claims against the Fund based on loads they did
27 not cancel, the respective DR7 and DR6 forms became fraudulent. (PRC §§ 14591.2 and 14597.)
28 To reiterate, each fraudulent claim, regardless of how the fraud was committed, is a separate

violation of the Act. (PRC §§ 14591.1, 14591.2, 14595.5, and 14597.).

H. COUNT THREE: Respondents Failed to File A DR6 Shipping Report for a Load of Glass Beverage Containers.

66. The allegations set forth in paragraphs 1 through 65, above, are incorporated by reference.

67. In March 2013, Respondents failed to prepare a DR6 Shipping Report for a load of glass beverage containers received at their facility from a curbside program. Pursuant to Regulations §§ 2420 and 2425, Respondents are obligated to obtain and/or prepare a DR6 Shipping Report for each material type received from a recycling center, curbside program, dropoff or collection program, or community service program. Only with such documentation can the Department trace material and validate claims made on the Fund. Notwithstanding the regulatory requirements, Respondents failed to complete a DR6 for the load of glass beverage containers.

I. COUNT FOUR: Respondents Filed 79 Inaccurate and Unsigned Imported Material Reports.

68. The allegations set forth in paragraphs 1 through 67, above, are incorporated by reference.

69. Regulations § 2831 states in relevant part:

(b) Persons receiving imported empty beverage container material shall operate in accordance with all of the following requirements.

(1) Persons receiving imported empty beverage container material shall not take delivery of any imported empty beverage container material that is not accompanied by a proof of inspection and an Imported Material Report that has the appropriate sections completed, has the proper supporting documents attached, correctly identifies the delivery location, and accurately describes the material.

(2) Persons receiving imported empty beverage container material shall inspect each load of material to determine whether the material matches the description on the accompanying Imported Material Report.

(3) Persons receiving imported empty beverage container material shall prepare weight tickets describing the material and indicating the weight for each individual load of imported empty beverage container material received. A separate weight ticket shall be prepared for each material type received. Weight tickets for loads of material weighing more than 100 pounds shall be issued by a weighmaster licensed pursuant to Chapter 7 of Division 5 of the Business and Professions Code (commencing with section 12700). A copy of each weight ticket shall be provided to the person delivering the material.

1 (4) Persons receiving imported empty beverage container material shall complete
2 and sign all appropriate sections of the Imported Material Report upon taking
3 delivery of the material.

4 (5) Persons receiving imported empty beverage container material shall not pay,
5 claim, or receive any refund value or other recycling program payments for the
6 material.

7 (6) Persons receiving imported empty beverage container material shall cooperate
8 fully with any California Department of Food and Agriculture inspector, Division
9 staff person, law enforcement officer, or other appropriate official to fulfill the
10 purposes of Section 14596 of the Act and these regulations, including preparing and
11 completing all required documentation, providing full, true and correct information,
12 and granting access to records, premises, equipment, facilities, and operations.

13 70. Regulations § § 2831.4 states in relevant part:

14 (b) No person shall take delivery in California of any empty beverage container material the
15 person knows, or should know, was imported into this State, unless the material is
16 accompanied by a proof of inspection and an Imported Material Report that has the
17 appropriate sections completed, has the proper supporting documents attached, correctly
18 identifies the delivery location, and accurately describes the material.

19 71. Regulations § 2835 states in relevant part:

20 (c) Persons receiving imported empty beverage container material shall, in the course of
21 taking delivery of the material, complete all appropriate sections of the Imported Material
22 Report that includes all of the following:

23 (1) The name, address, phone number, and other contact information of the person
24 receiving the imported empty beverage container material; and

25 (2) Confirmation that the material is being delivered to the destination indicated on
26 the Imported Material Report; and

27 (3) Confirmation that the material presented for delivery matches the description of
28 the material on the Imported Material Report; and

(4) The printed name, title, and signature of the person accepting delivery of the
material; and

(A) The signature block shall state that the information in the report is true
and correct to the best knowledge of the person signing the report, the
person signing is authorized to do so, and the person signing the report
acknowledges that empty beverage container material imported into
California is ineligible for refund value and other recycling program
payments; and

(5) The date the report was signed by the person taking delivery.

72. Regulations §§ 2831, 2831.4, and 2835 impose substantial duties upon Respondents
when they import and accept a load of out-of-state material. IMRs document the amount of out-
of-state beverage materials a processor receives. That information is crucial in order to ensure that

1 none of the ineligible material finds its way onto a DR6 Shipping Report. Therefore, an inaccurate
2 or incomplete IMR will impede an auditor's ability to follow the trail of materials to ensure that no
3 CRV is ever claimed on out-of-state materials. Respondents' signature on the IMR certifies that
4 they have complied with all of the foregoing obligations for each load of out-of-state materials
5 received at their facility. Their signature on DR6 and DR7 claim forms certifies that all material
6 has been inspected and is eligible for CRV redemption. Thus, an IMR provides one method to
7 validate the eligibility of CRV claims.

8 73. During the period of February 1, 2014 to March 6, 2014, Respondents failed to
9 comply with the requirements of the foregoing Regulations when they accepted 79 out-of-state
10 loads of material with inaccurate and incomplete IMRs. More specifically, none of the IMRs were
11 signed by Respondents. Many of the IMRs do not identify the weight and percentage of beverage
12 containers in the load. Respondents' failure to comply with the IMR regulations prevented the
13 Department from validating CRV claims based on loads that included out-of-state material. It
14 must be emphasized that the failure to comply with Regulations §§ 2831, 2831.4, and 2835
15 necessarily means that Respondents were prohibited by law from importing and accepting the out-
16 of-state material for any purpose.

17 **J. STATUTORY DISCIPLINE TO BE IMPOSED.**

18 74. The allegations set forth in paragraphs 1 through 73, above, are incorporated by
19 reference.

20 75. Pursuant to its statutory authority, the Department imposes the following
21 disciplinary action against Respondents USA Waste of California, Inc. and Sacramento Recycling
22 & Transfer Station (PR149690.001), joint and severally, based upon sufficient evidence of
23 violations of the enumerated statutes and regulations as set forth above.

24 (a) All claims against the Fund submitted by Respondents that were unsupported by
25 complete, accurate, and lawful documentation, or such claims submitted by their officers,
26 members, directors, agents, representatives, or employees, including but not limited to those claims
27 paid and unpaid, known and unknown, are disallowed in their entirety.

28 (b) Pursuant to PRC § 14591.2(c)(4), Respondents are issued a probationary

1 certificate for five (5) years, with the following conditions.

2 (1) All out-of-state material of any type imported by Respondents will at all
3 times be physically separated from material generated and collected from within the State of
4 California. The requirement of physical separation includes, but is not limited to, the initial
5 storage of the out-of-state material upon delivery, the sorting and baling of out-of-state material, as
6 well as the storage of the finished inventory prior to shipment to a location of end use, or the
7 exportation of the material permanently from the state. Respondents are prohibited from mixing
8 and/or shipping together the finished inventory of out-of-state material with the finished inventory
9 of in-state material. Respondents will use separate weight tickets for out-of-state and in-state
10 material without exception. Weight tickets for out-of-state material will indicate clearly the
11 out-of-state and scrap nature of the material. Residue produced from out-of-state material may be
12 mixed with residue generated from in-state material so long as the combined residue is delivered
13 directly to a landfill. Mixed residue may not be resorted. For the purposes of this paragraph,
14 residue is defined as the waste that remains after all recyclables are removed by a Material
15 Recovery Facility from the source material.

16 (2) Respondents shall create and/or maintain documentation for all imported
17 material such that the Department will be able to audit each importation transaction, starting with
18 the source and purchase of the material to its transportation into California, as well as its delivery,
19 processing, storage, and final disposition as scrap.

20 (3) Respondents shall not pay or claim CRV, processing payments,
21 administrative costs, or any other program payment based on ineligible material, including but not
22 limited to, out-of-state beverage containers.

23 (4) Respondents shall comply with the scrap transaction requirements
24 pursuant to the Act and Regulations.

25 (5) Respondents shall not use weight tickets that are manually generated or
26 that list more than one commodity.

27 (6) Respondents shall only use the certified scale at their facility, whether
28 weighing scrap or beverage containers that are eligible for redemption. Respondents shall not use

1 third party scales for any purpose.

2 (7) Respondents' Imported Material Reports shall be accurate, complete,
3 and otherwise in full compliance with the Act and Regulations.

4 (8) Respondents shall not use any type of allocation methodology, whether
5 previously approved by the Department or not, to deduct the weight of out-of-state material from
6 their DR6 Shipping Reports.

7 (9) Respondents shall cancel all beverage containers and maintain the
8 documentation required pursuant to PRC §§ 14539(d)(7) and (d)(8) and Regulations § 2420(d).
9 All claims for CRV, processing payments, administrative costs, or other program payments based
10 on beverage containers that you have failed to cancel will be deemed to be fraudulent under the
11 Act.

12 (c) The Department imposes upon Respondents, joint and severally, an Order for
13 Restitution, Interest, Civil Penalties, and Costs and Fees, as follows.

14 (1) **Restitution** - Pursuant to PRC §§ 14539(e), 14539.5(c), 14591.2(c)(5),
15 and 14591.4, the Department orders immediate restitution in the amount of Two Million Four
16 Hundred Seventy-Four Thousand Seven Hundred Eighty-Seven Dollars and Eighty-Two Cents
17 (**\$2,474,787.82**) against Respondents for the program payments paid to them based on invalid,
18 illegal, or fraudulent submission of claims, as follows.

19 (I) Count One: \$805,123.23

20 (ii) Count Two: \$1,669,664.59

21 (2) **Interest** - Pursuant to PRC § 14591.4, the Department orders payment
22 of interest on the **\$2,474,787.82** against Respondents. The interest is calculated at the rate earned
23 on the Pooled Money Investment Account, pursuant to PRC § 14591.4, beginning on the date the
24 claim was submitted and continuing until Respondents make payment in full of the restitution and
25 interest ordered herein. As of January 31, 2016, interest owed to the Department totals **\$14,758.42**,
26 as follows.

27 (I) Count One: \$4,138.29

28 (ii) Count Two: \$10,620.13

1 (3) **Civil Penalties** - Pursuant to PRC §§ 14591.1 and 14591.2(c)(6), the
2 Department assesses civil penalties for the violations of the Act as enumerated in this Accusation
3 against Respondents. Each violation of the Act constitutes an independent basis upon which to
4 sustain a penalty. (PRC §§ 14591.1(a)(3) and (b).)

5 (I) For each violation of the Act or Regulations set forth above, the
6 Department imposes a civil penalty in the amount of One Thousand Dollars (\$1,000.00). (PRC
7 §14591.1(b). Accordingly, the Department orders penalties against Respondents in the amount of
8 One Million Four Hundred Three Thousand Dollars and no Cents (**\$1,403,000.00**), as follows.

9 (A) Count One (320 violations): \$320,000.00

10 (B) Count Two (1003 violations): \$1,003,000.00

11 (C) Count Three (1 violation): \$1,000.00

12 (D) Count Four (79 violations): \$79,000.00

13 (ii) If the Department receives restitution in full for all monies paid
14 from the Fund, including interest, the Department will recalculate the civil penalties pursuant to
15 PRC§ 14591.4(d).

16 (4) **Costs and Fees** - Pursuant to PRC § 14591.3, the Department orders
17 Respondents to pay all costs and fees, including but not limited to attorneys' and expert witness
18 fees, and the cost of investigation and hearing, in the amount set forth below, as well as those
19 amounts to be determined at trial. As of the date of this Accusation, the costs incurred by the
20 Department are **\$60,784.02**, as follows:

21 (I) Associate Management Auditor - \$26,742.68

22 (ii) Staff Management Auditor - \$4,387.02

23 (iii) Senior Management Auditor - \$594.04

24 (iv) Supervising Management Auditor - \$325.40

25 (v) Recycling Specialist II - \$734.88

26 (vi) Senior Staff Counsel - \$28,000.00

27 ///

28 ///

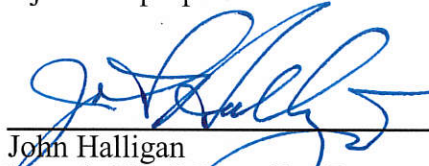
1 76. The total amount due to the Department under this Accusation is **\$3,953,330.26**.

2 77. In addition to the disciplinary actions taken in paragraph 75, above, the Department
3 seeks such other and further relief as is just and proper.

4 ///

5 Dated: _____

2/16/2016



John Halligan
Branch Chief, Recycling Program Enforcement Branch
Department of Resources Recycling and Recovery



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

PROOF OF SERVICE

I, Alicia Davenport, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On February 17, 2016, at 12:30 a.m./p.m. (p.m.) I served In The Matter of the Accusation Against USA Waste of California, Inc., dba Sacramento Recycling & Transfer Station (PR149690.001), a copy of the Accusation, Notice of Defense, Statement to Respondent, Request for Discovery, Government Code Sections 11507.5, 11507.6, and, 11507.7, and OAH hearing information, as follows:

Jay X. Ramos, District Manager
(Name & Title)

Sacramento Recycling & Transfer Station (PR149690.001)
8491 Fruitridge Road
Sacramento, CA 95826

by:

- ☒ **By Personal Delivery** - I caused such document(s), in a sealed envelope, to be delivered by hand to the office(s) of the above addressee(s).
- ☐ **U.S. Mail, Certified with Return Receipt** - In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service.
- ☐ **First Class U.S. Mail** - In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service
- ☐ **Electronic Mail** - Sent to email addresses listed above.
- ☐ **FAX** - Sent to fax numbers listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 17th day of February, 2016.

Alicia Davenport

(Signature)





DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

PROOF OF SERVICE

I, JEFFREY A. DIAMOND, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On February 17, 2016, I served In The Matter of the Accusation Against USA Waste of California, Inc., dba Sacramento Recycling & Transfer Station (PR149690.001), a copy of the Accusation, Notice of Defense, Statement to Respondent, Request for Discovery, Government Code Sections 11507.5, 11507.6, and, 11507.7, and OAH hearing information, as follows:

Andrew M. Kenefick
Senior Legal Counsel
Waste Management
720 4th Avenue, Suite 400
Kirkland, WA 98033

C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

by:

___ **By Personal Delivery** - I caused such document(s), in a sealed envelope, to be delivered by hand to the office(s) of the above addressee(s).

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(Signature)

