

Date: 1/13/20
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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

IN THE MATTER OF THE ACCUSATION	)	OAH Case No:
AGAINST:	)	
JOSE BAUTISTA dba A+ RECYCLING (with	)	DRRR Case No.: 2020-001-BCR
certification nos. PR248484.001, RC14190,	)	
RC10978, RC12720, RC12741, RC13760,	)	
RC221727.001)	)	ACCUSATION
Respondent.	)	(Gov. Code, § 11503)
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Pursuant to the California Beverage Container Recycling and Litter Reduction Act (Act), Public Resources Code section 14500 et seq., and title 14 of the California Code of Regulations, section 2000 et seq. (Regulations), the Department of Resources Recycling and Recovery (Department) issues this Accusation by and through the undersigned, Ken DaRosa, acting Director, exclusively in his official capacity.

I. JURISDICTION

1. The Department is responsible for the administration of the Act, including, but not limited to, managing the California Beverage Container Recycling Fund (Fund), adopting regulations, certifying and registering program participants, inspecting, auditing, investigating,

1 filing and prosecuting enforcement actions, and imposing discipline. (Pub. Resources Code, §§
2 14512.7, 14530.5, 14358, 14539, 14539.5, 14540, 14552, 14553, 14580, 14591–14597.) The
3 Department may recover restitution for any money improperly or illegally paid to a certificate
4 holder, registrant, or responsible party. (*Id.*, §§ 14539, subd. (e), 14591.2, subd. (c)(5) & 14591.4.)
5 This includes payments made from the Fund that are based on documents that are not prepared or
6 maintained in compliance with the Act and Regulations, which are based in whole or in part on
7 false information or falsified documents, as well as claims for program payments the Department
8 cannot verify. (*Id.*, §§ 14538, 14539, 14539.5, 14552, 14553, 14591–14597.)

9 2. In connection with all matters relating to the business activities and subjects under its
10 jurisdiction, Government Code section 11180 et seq. authorizes the Department to inspect books
11 and records, promulgate interrogatories, and issue subpoenas for the attendance of witnesses and the
12 production of papers, books, accounts, documents, and testimony pertinent or material to any
13 inquiry, investigation, hearing, proceeding, or action conducted in any part of the state. (Gov. Code,
14 §§ 11180–81.)

15 3. The Act authorizes the Department to audit or investigate any action taken up to five
16 years before the onset of the investigation in order to determine if there was compliance with the
17 Act and Regulations. (Pub. Resources Code, § 14552, subd. (b)(1).) An enforcement action is
18 timely if filed within five years of the discovery of the violation of the Act or Regulations. (*Id.*, §
19 14552, subd. (b)(2).) The Department may conduct a comprehensive inspection, audit, or
20 investigation to verify an operator’s ongoing compliance with the Act and Regulations. (*Id.*, §§
21 14552, 14553; Cal. Code Regs., tit. 14, §§ 2075, 2125; Gov. Code, § 11180 et seq.) The operator
22 that is the subject of an audit or investigation is required to provide to the Department immediate
23 access to its facilities, operations, and any record that the Department deems to be relevant to the
24 inspection, audit, or investigation. (Pub. Resources Code, § 14552, subd. (c) & 14553, subd. (c).)

25 4. The Act defines “person” as “any individual, corporation, operation, or entity,
26 whether or not certified or registered” under the Act. (Pub. Resources Code, § 14515.2; *see* Cal.
27 Code Regs., tit. 14, § 2000, subd. (a)(34).)

1 5. The Department may take disciplinary action against any party responsible for
2 directing, contributing to, participating in, or otherwise influencing the operations of a certified
3 facility. (Pub. Resources Code, § 14591.2, subd. (a).) The Act defines a responsible party to
4 include, but not be limited to, the certificate holder, registrant, officer, director, or managing
5 employee. (Pub. Resources Code, § 14591.2, subd. (a).)

6 **II. STATUTORY AND REGULATORY AUTHORITY**

7 6. The Act authorizes the Department to certify the operators of recycling centers,
8 processing facilities, dropoff or collection programs, curbside programs, and pilot project recyclers.
9 (Pub. Resources Code, §§ 14538, 14539, 14539.5, 14551.5, 14571.9.) The “operator” is the person
10 or entity who has ultimate responsibility for a recycling facility or processing facility. (Cal. Code
11 Regs., tit. 14, § 2000, subd. (a)(33).) A certificate is assigned to a single entity or person for a
12 specific location, and cannot be transferred or sold to any other person or entity. (Pub. Resources
13 Code, §§ 14538, 14539; Cal. Code Regs., tit. 14, § 2060, subds. (d) & (e).) Any certification or
14 registration granted by the Department is a privilege and not a vested right or interest. (Pub.
15 Resources Code, § 14541.5.)

16 7. A “recycling center” is an operation that is certified by the Department and that
17 accepts from consumers and pays to them the California Redemption Value (CRV) for eligible
18 beverage containers. (Pub. Resources Code, § 14520.) Only certified recycling centers may pay
19 CRV to consumers. (*Id.* § 14572(d)(1); Cal. Code Regs., tit. 14, § 2535.) Recycling centers must
20 weigh and inspect each load of beverage containers for CRV eligibility before paying the
21 appropriate refund value. (Pub. Resources Code, § 14538; Cal. Code Regs., tit. 14, § 2501.)

22 8. A “processor” is any person, including a scrap dealer, who purchases or offers to
23 purchase empty beverage containers from more than one recycling center in this state and is
24 responsible for cancelling empty beverage containers as prescribed in section 2000, subdivision
25 (a)(4) of the Regulations. (Cal. Code Regs., tit. 14, § 2000, subd. (a)(35).)

26 9. The Act and Regulations require all certified recycling centers to prepare and retain
27 specified documentation so that the Department can validate all claims made for the payment of
28 CRV and other program payments. (Pub. Resources Code, § 14538; Cal. Code Regs., tit. 14, §§

1 2085, 2525.) These documents include, *inter alia*, shipping reports, consumer transaction receipts,
2 consumer transaction logs, and weight tickets. (Pub. Resources Code, § 14538, subd. (d)(7); Cal.
3 Code Regs., tit. 14, § 2525.) The Department may obtain restitution for all payments from the
4 Fund where the Department cannot verify the claim because the required documentation is not
5 available or is not prepared or maintained pursuant to the Regulations. (Pub. Resources Code, §
6 14538, subd. (e).)

7 10. The Act and Regulations require all processors to prepare and retain specified
8 documentation so that the Department can validate all claims made for the payment of CRV and
9 other program payments. (Pub. Resources Code, § 14539, subd. (d)(8); Cal. Code Regs., tit. 14, §§
10 2085, 2420.) These documents include, *inter alia*, shipping reports, processor invoice reports,
11 cancellation verification documents, and weight tickets. (Pub. Resources Code, § 14539, subd.
12 (d)(8).) The Department may obtain restitution for all payments from the Fund where the
13 Department cannot verify the claim because the required documentation is not available or is not
14 prepared or maintained pursuant to the Regulations. (*Id.*, subd. (e).)

15 11. After purchasing empty beverage containers from consumers, recycling centers ship
16 the empty beverage container material to certified processors. (Cal. Code Regs., tit. 14, §2530,
17 subd. (a).) Recycling centers prepare and submit their shipping reports prior to shipment to the
18 processor. (*Id.*, subd. (b).) Recycling centers are required to base their claims for payment of CRV,
19 administrative fees, processing fees, and handling fees on these records. (Cal. Code Regs., tit. 14,
20 §2530, subd. (c).) The shipping report is the claim that allows the recycling center to be reimbursed
21 for payments made to consumers, and to receive administrative fees and processing payments from
22 the Fund. (Pub. Resources Code, § 14573; Cal. Code Regs., §§ 2000, subd. (a)(44), 2530.)

23 12. Recycling centers prepare shipping reports for payment from a processor. (Pub.
24 Resources Code, § 14573.5(a); Cal. Code Regs., tit. 14, § 2430). When receiving empty beverage
25 container material from a recycling center, certified processors weigh and inspect the material to
26 substantiate the recycling center's claim. (Cal. Code Regs., tit. 14, §§ 2401, 2430). Processors must
27 prepare and retain weight tickets indicating the material and weight of individual loads of beverage
28

1 containers by material type received from recycling centers. (Pub. Resources Code, § 14539, subd.
2 (d)(8)(I); Cal. Code Regs., tit. 14, § 2420, subd. (b).)

3 13. Processors submit processor invoices to make a claim for payment from the Fund.
4 (Pub. Resources Code, § 14573; Cal. Code Regs., tit. 14, §§ 2000, subd. (a)(35.1), 2425.) The
5 processor invoice includes a summary of the processor's transactions during the period covered by
6 the report, and includes: (1) the total weight of all material received, including empty beverage
7 containers; (2) the total weight of empty beverage containers received, and the refund value and
8 applicable administrative and processing payments made by material type; and, the total payments
9 requested from the Fund. (Cal. Code Regs., tit., 14, § 2425, subd. (c).) The payments are calculated
10 as the sum of the total reported CRV paid, the administrative fees paid, and the processing
11 payments paid. (*Id.*) Each processor invoice also contains copies of all shipping reports being
12 claimed on the invoice. (*Id.*, subd. (d).)

13 14. All claims are created and submitted online via the Division of Recycling Integrated
14 Information System ("DORIIS"). (Pub. Resources Code, § 14553.)

15 15. Processors must cancel all empty beverage containers to render them unfit for
16 redemption. (Pub. Resources Code, § 14539, subd. (d)(7).) "Cancellation" is the act of removing the
17 refund value of an empty beverage container. (Cal. Code Regs., tit. 14, § 2000, subd. (a)(4).)
18 Processors may cancel plastic empty beverage containers by altering the original form of the
19 beverage container to make their reconstitution physically impossible, or by permanently shipping
20 the material out of the state or to a location of end use. (*Id.*, subd. (a)(4)(C) & (E).) Processors may
21 cancel aluminum empty beverage containers by densifying the material to thirty pounds per cubic
22 foot, altering the containers so that the containers can no longer be physically reconstituted or
23 distinguished as container units, or by shipping the material out of the state to a location of end use
24 after densifying the material to fifteen pounds per cubic foot. (*Id.*, subd. (a)(4)(A) & (E).)
25 Processors may cancel glass empty beverage containers by cleaning the glass of non-glass
26 contaminants and crushing the glass to a size in such a manner to be acceptable to a willing user.
27 (*Id.*, § 2000, subd. (a)(4)(B).)

1 16. Processors must prepare and retain proof that they cancelled or had cancelled all
2 empty beverage containers in accordance with the Regulations. (Pub. Resources Code, § 14539,
3 subd. (d)(8)(C); Cal. Code Regs., tit. 14, § 2420, subd. (d).) For shipments out of the State or to a
4 location of end use, the verification shall include a receipt issued by the person receiving the
5 shipment and any applicable bills of lading. (*Id.*, subd. (d)(2).) For other forms of cancellation,
6 proof shall be a certification prepared in accordance with section 2090(d) of the Regulations and
7 signed by the person performing the cancellation. The certification shall identify the cancelled
8 materials, the date of cancellation, and the method of cancellation. (*Id.*, subd. (d)(3).)

9 17. Recycling centers and processors are required to provide the Department with
10 immediate access to its facilities, operations, and any relevant record that the Department
11 determines is necessary to verify compliance. (Pub. Resources Code, § 14552(c).) The Department
12 may take disciplinary action against any person who fails to provide the Department with access to
13 records, including imposing penalties and termination of any certificate or registration held by the
14 operator. (*Id.*, § 14552(c)(1).)

15 **IV. RESPONDENT**

16 18. Respondent Jose Bautista dba A+ Recycling (hereafter "Respondent") was at all
17 times herein an individual doing business as A+ Recycling with a principal place of business at
18 3230 Westminster Avenue, Santa Ana, CA 92706 and 2950 W. Ball Road, Anaheim, CA 92804.

19 19. The Department certified Respondent to operate six recycling centers and processing
20 facility under certificate numbers RC14190, RC10978, RC12720, RC12741, RC13760,
21 RC221727.001, PR248484.001, respectively. The recycling centers are located at 9774 Katella
22 Avenue, Anaheim, CA 92804, 2950 W Ball Rd, Anaheim, CA 92804, 13075 Euclid St, Garden
23 Grove, CA 92843, 9961 Garden Grove Blvd, Garden Grove, CA 92844, 13231 Garden Grove Blvd,
24 Garden Grove, CA 92843, and 3230 Westminster Ave, Santa Ana, CA 92702. The processing
25 facility is a dual certified processor and is located at 3230 Westminster Avenue, Santa Ana, CA
26 92706. As a certified operator, Respondent was subject to and required to comply with the Act and
27 Regulations at all times relevant to this accusation.

20. Respondent was at all times herein operating as the sole proprietor for A+ Recycling. As such, Respondent was and is at all times herein a responsible party as defined in section 14591.2, subdivision (a) of the Act.

21. This Accusation has been filed within twenty (20) days after an Order of Immediate Suspension was served on Respondent. (Pub. Resources Code, § 14591.2, subd. (d)(3)(C).) The Order was served on Respondent on December 26, 2019. Furthermore, this action is timely as it has been filed within five years from when the Department discovered the violations of the Act and Regulations alleged herein. (*Id.*, § 14552(b)(2).) This action is subject to the formal hearing procedures of the California Administrative Procedure Act. (Gov. Code, § 11500 et seq.; Pub. Resources Code, § 14591.2.)

V. GROUNDS FOR ADMINISTRATIVE ACTION

22. The allegations set for in paragraphs 1 through 21, above, are incorporated by reference.

23. On or about May 16, 2018, the Department initiated a review of the operations of Respondent's recycling centers (RC14190, RC10978, RC12720, RC12741, RC13760, RC221727.001) and processing facility, PR248484.001.

24. During the review and subsequent audit, the Department discovered the following violations of the Act and Regulations.

COUNT ONE: Failure to Prepare and Retain Cancellation Verification Documents

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

26. Between April 1, 2018 through April 30, 2018, PR248484.001 filed 34 processor invoices for the payment of CRV, processing payments, and administrative fees. Respondent received payment of \$295,792.16 in payments from the State of California for these claims.

27. Between January 1, 2019 through September 30, 2019, Respondent submitted 157 processor invoices for the payment of CRV, processing payments, and administrative fees. Respondent received payment of \$3,632,056.45 in payments from the State of California for these claims.

1 28. In total, Respondent received \$3,927,848.61 in payments from the Fund based on
2 these claims for payment for the time periods of April 1, 2018 through April 30, 2018 and January
3 1, 2019 through September 30, 2019.

4 29. All of the processor invoices were signed by Respondent Jose Bautista.

5 30. Respondent did not prepare and retain the documents required by Public Resources
6 Code section 14539(d)(8)(C) and section 2420(d) of the Regulations to prove it cancelled any
7 empty beverage container material claimed on its processor invoices submitted for the periods of
8 April 1, 2018 through April 30, 2018 and January 1, 2019 through September 30, 2019. Without
9 the cancellation verification documents, the Department cannot verify the processor invoices
10 submitted by Respondent.

11 **COURT TWO: Failure to Prepare and Retain Records**

12 31. The allegations set for in paragraphs 1 through 30, above, are incorporated by
13 reference.

14 32. Between January 1, 2019 through September 30, 2019, Respondent filed 3,607
15 claims for payment, and were paid by the Department out of the Fund, as follows:

16 RC14190: \$893,858.51

17 RC10978: \$940,048.55

18 RC12720: \$946,822.94

19 RC12741: \$935,995.53

20 RC13760: \$913,680.89

21 RC221727.001: \$711,188.05

22 In total, Respondent received \$5,341,594.47 in payments from the Fund based on these claims for
23 payment.

24 33. All of the claims were signed by Respondent Jose Bautista.

25 34. Between January 1, 2019 through September 30, 2019, Respondent did not prepare
26 and retain consumer transaction logs or consumer transaction receipts for RC14190, RC10978,
27 RC12720, RC12741, RC13760 and RC221727.001 as required by Public Resources Code, section
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1 14538, subd. (d)(7) and section 2525 of the Regulations. Without these records, the Department
2 cannot verify the claims submitted by Respondent.

3 **VI. DISCIPLINE TO BE IMPOSED**

4 35. The allegations set for in paragraphs 1 through 34, above, are incorporated by
5 reference.

6 36. The Department may take disciplinary action against any party responsible for
7 directing, contributing to, participating in, or otherwise influencing the operations of a certified
8 facility. (Pub. Resources Code, § 14591.2, subd. (a).) A responsible party includes, but is not
9 limited to, the certificate holder, registrant, officer, director, or managing employee. (*Id.*)

10 37. The Department may take disciplinary action against a certificate holder if the
11 certificate holder engages in dishonesty, incompetence, negligence, or fraud in performing the
12 functions and duties of a certificate holder. (*Id.*, § 14591.2, subds. (a), (b)(2).) Additionally, the
13 Department may take disciplinary action against a responsible party if the responsible party violates
14 the Act or any Regulation adopted under the Act, including and requirements concerning auditing,
15 reporting, or standards of operation. (*Id.*, § 14591.2, subd. (b)(3).)

16 38. Each violation of the Act is a separate violation and each day of the violation is a
17 separate violation. (*Id.*, § 14591.1, subd. (a)(3).)

18 39. When there are grounds for disciplinary action, the Department may take a number
19 of actions, including: (1) revoking a certificate holder's certificates; (2) collecting amounts in
20 restitution of any money improperly paid; (3) collecting amounts in restitution for payments that
21 cannot be verified because of missing weight tickets or cancellation verification documentation;
22 and, imposing civil penalties against a responsible party. (*Id.*, §§ 14539, subd. (e), 14591.2, subd.
23 (c)(1), (5) & (6).)

24 40. When the Department seeks to revoke one certificate held by a responsible party, the
25 Department may also simultaneously revoke all of the certificates held by the responsible party.
26 (*Id.*, § 14591.2, subd. (d)(2).)

1 41. The Department may assess a civil penalty on any person who intentionally or
2 negligently violates the Act of Regulations of up to \$5,000 for each violation that occurs, or for
3 continuing violations, for each day that violation occurs. (*Id.*, § 14591.1, subd. (b).)

4 42. Pursuant to the authority provided by the Act, the Department hereby imposes the
5 following discipline:

6 **A. Revocation of all Certificates**

7 Pursuant to section 14591.2 of the Act, the Department immediately revokes all certificates
8 held by Respondent (RC14190, RC10978, RC12720, RC12741, RC13760, RC221727.001,
9 PR248484.001) for the violations described in the above-mentioned Counts.

10 **B. Restitution, Interest, Civil Penalties, Costs and Fees**

11 **(1) Restitution:** Pursuant to sections 14539 and 14591.4 of the Act, the Department
12 orders Respondent to immediately to pay restitution of \$3,927,848.61 for the CRV, processing
13 payments, and administrative fees paid to Respondent for the processor invoices submitted for the
14 periods of April 1, 2018 through April 30, 2018 and January 1, 2019 through September 30, 2019 as
15 described in Count.

16 Additionally, pursuant to sections 14539 and 14591.4 of the Act, the Department orders
17 Respondent to immediately to pay restitution of \$5,341,594.47 for the claims submitted January 1,
18 2019 through September 30, 2019 as described in Count Two.

19 In total, the Department orders the Respondent to immediately pay restitution in the amount
20 of \$9,269,443.08.

21 **(2) Interest:** Pursuant to section 14591.4 of the Act, the Department orders payment of
22 interest on the claims paid by the Department as described in paragraph 42.B.(1), in an amount to be
23 determined and calculated at the rate earned on the Pooled Money Investment Account, against
24 Respondent.

25 **(3) Civil Penalties:** Pursuant to sections 14591.1 and 14591.2 of the Act:

26 **(a) Count One:** The Department assesses a civil penalty against Respondent for each
27 violation during the time period of April 1, 2018 to April 30, 2018 and January 1, 2019 to
28 September 30, 2019 that Respondent failed to prepare and retain the cancellation verification

1 documents required by section 14539, subdivision (d)(8)(C) of the Act and section 2420,
2 subdivision (d) of the Regulations as described in Count One. As alleged in Count One, between
3 April 1, 2018 through April 30, 2018, Respondent filed 34 processor invoices. Between January 1,
4 2019 through September 30, 2019, Respondent submitted 157 processor invoices. The Department
5 considers each invoice to amount to a single violation for a total of 191 violations. Therefore, for
6 each of the violation, the Department imposes a civil penalty in the amount of \$300. Accordingly,
7 the Department orders penalties against Respondent in the amount of \$57,300 for Count One.

8 **(b) Count Two:** The Department assesses a civil penalty against Respondent for each
9 violation during the time period of April 1, 2018 to April 30, 2018 and January 1, 2019 to
10 September 30, 2019 that Respondent did not prepare and retain consumer transaction logs or
11 consumer transaction receipts for RC14190, RC10978, RC12720, RC12741, RC13760 and
12 RC221727.001 as required by Public Resources Code, section 14538, subd. (d)(7) and section 2525
13 of the Regulations. As alleged in Count Two, Respondent filed 3,607 claims for payment. The
14 Department considers each claim for payment to amount to a single violation for a total of 3,607
15 violations. For each violation, the Department imposes a civil penalty in the amount of \$300.
16 Accordingly, the Department orders penalties against Respondent in the amount of \$1,082,100 for
17 Count Two.

18 In total, the Department orders \$1,139,400 in penalties against Respondent. The
19 Department will recalculate the civil penalties pursuant to PRC§ 14591.4(d) if it receives restitution
20 in full for all monies paid from the Fund.

21 **(4) Costs and Fees:** Pursuant to section 14591.3 of the Act, the Department orders
22 payment of all costs and fees, including but not limited to attorneys' and experts' fees, and the cost
23 of the investigation and hearing, in an amount determined and according to proof, against
24 Respondent.

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1 43. In addition to the disciplinary action taken in paragraph 42, above, the Department
2 seeks such other and further relief as is just and proper.

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4 Dated: 8 Jan. 2020



KEN DAROSA
Acting Director
Department of Resources Recycling and Recovery