

FILED

SEP 13 2021

**CalRecycle
Legal Office**

1 ANASTASIA BASKERVILLE (SBN 182951)
Chief Counsel
2 JEFFREY A. DIAMOND (SBN 143018)
Senior Staff Counsel
3 California Department of Resources Recycling and Recovery
Legal Office
4 801 K Street, 19th Floor, MS 19-03
Sacramento, CA 95814
5 Telephone: 916-327-0089
Fax: 916-322-8768
6 Email: jeff.diamond@calrecycle.ca.gov

7 Attorneys for the California Department of Resources Recycling and Recovery

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

10 **In the Matter of the**
11 **Accusation Against:**

12 **BC Recycling, Inc. (PR23744.001,**
13 **RC255758.001, RC12895, RC251556.001,**
14 **RC256334.001, RC261261.001, and**
15 **RC289076.001)**

16 **and**

17 **Adolfo Ramirez, as an individual and as Chief**
18 **Executive Officer, Chief Financial Officer, and**
19 **Director of BC Recycling, Inc.,**

20 **Respondents.**

OAH Case No. 2021040611

DRRR Case No. 2019-003-BCR

FIRST AMENDED ACCUSATION
[Gov. Code § 11503]

COLLECTING RESTITUTION AND
INTEREST, ASSESSING CIVIL
PENALTIES, RECOUPING COSTS, AND
IMPOSING PROBATION

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

21 Pursuant to the California Beverage Container Recycling and Litter Reduction Act, Public
22 Resources Code (hereafter "PRC") § 14500 et seq. (hereafter "Act"), and California Code of
23 Regulations, title 14, § 2000 et seq. (hereafter "Regulations"), the Department of Resources
24 Recycling and Recovery (hereafter "Department"), issues this First Amended Accusation by and
25 through the undersigned, Rachel Machi Wagoner, Director, exclusively in her official capacity.

26 **A. Jurisdiction.**

27 1. The Department is responsible for administration of the Act, including but not
28 limited to, managing the California Beverage Container Recycling Fund (PRC § 14580 (hereafter

1 "Fund")), adopting regulations, certifying and registering program participants, inspecting,
2 auditing, investigating, filing and prosecuting enforcement actions, and imposing discipline. (PRC
3 §§ 14512.7, 14530.5, 14538, 14539, 14539.5, 14540, 14552, 14553, 14580, and 14591-14597.)

4 2. The Department is authorized under PRC § 14552(b)(1) to audit or investigate any
5 action taken during the five-year period before the onset of the audit or investigation to determine
6 compliance with the Act and Regulations. An enforcement action is timely if filed within five
7 years of the discovery of a violation of the Act or Regulations. (PRC § 14552(b)(2).) The
8 Department may also conduct a comprehensive inspection, audit, or investigation to verify
9 compliance with the Act and Regulations. (PRC §§ 14552(b) and (c); PRC § 14553(c); Gov. Code
10 §§ 11180 et seq.; Regulations §§ 2075 and 2125.)

11 3. In connection with all matters relating to the business activities and subjects under
12 its jurisdiction, Government Code §11180 et seq. authorizes the Department to inspect books and
13 records, promulgate interrogatories, and issue subpoenas for the attendance of witnesses and the
14 production of papers, books, accounts, documents, and testimony pertinent or material to any
15 inquiry, investigation, hearing, proceeding, or action conducted in any part of the state. (Gov. Code
16 §§ 11180 & 11181.)

17 4. A person or entity must provide the Department with immediate access to its
18 facilities, operations, and any relevant record, that, in the Department's judgment, are necessary to
19 carry out its obligation to verify compliance with the Act and Regulations. (PRC §§ 14552(c) and
20 14553(c).)

21 5. The Act defines "person" as "any individual, corporation, operation, or entity,
22 whether or not certified or registered" under the Act. (PRC §§ 14515.2, 14595, and 14595.4(a);
23 Regulations § 2000(a)(34).)

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

28 7. The Act defines "responsible party" to include, but not be limited to, the certificate

holder, registrant, officer, director, or managing employee. The Department may take disciplinary action against any responsible party for directing, contributing to, participating in, or otherwise influencing the operations of, a certified or registered facility or program. (PRC § 14591.2.)

8. The Act declares that any person participating in conduct intended to defraud the State's beverage container recycling program including, but not limited to, redemption of out-of-state and previously redeemed beverage containers, shall be held accountable for that conduct. (PRC §§ 14591, 14591.2, 14595, 14595.5, 14596, and 14597.)

B. Statutory And Regulatory Authority.

9. The Act and Regulations establish a framework whereby beverage distributors pay to the Department the California Refund Value (hereafter "CRV") for each beverage container sold or offered for sale in California. (PRC §§ 14511 and 14560(a).) Distributors in turn charge the CRV to dealers who operate retail establishments. (PRC §§ 14510 and 14560.5.) The dealers pass the CRV expense to the consumer at the time of the retail sale. (PRC § 14560.5.) Thereafter, certified recycling centers (PRC § 14520) pay to consumers the CRV for empty eligible beverage containers and later submit claims for reimbursement for those payments. (PRC § 14572.) Recycling centers sell the empty beverage containers to certified processors, who pay scrap value for the material, reimburse the recycling centers for CRV paid to consumers, and pay the recycling centers a processing payment and administrative costs based on the material type and quantities of eligible material delivered to the processor. (PRC § 14573.5.) Processors then submit claims to the Department for reimbursement for payments of CRV, processing payments, and administrative costs. (PRC § 14573.)

10. The Act defines "processor" as any person certified by the Department who purchases from recycling centers or collection programs empty beverage containers which have a refund value established by the Act. Additionally, a processor must inspect the empty beverage containers for CRV eligibility as well as cancel the refund value by using a method defined by the Act and Regulations. (PRC §§ 14518 and 14539; Regulations §§ 2000(a)(4) and 2401.) The cancellation process removes the redemption value from the beverage containers. Cancellation is an essential anti-fraud tool that prevents re-redemption of the containers.

1 11. The Act and Regulations require all certified processors to obtain and/or create and
2 maintain specified documentation so that the Department may validate all claims made by a
3 processor for CRV, processing payments, and administrative costs. Processors must retain proof
4 that the processor canceled, or had the CRV canceled, in accordance with the Act and Regulations.
5 (PRC §§ 14539(d)(8) and (e); Regulations § 2420(d).) Any claim filed by the processor that cannot
6 be validated, including claims based on beverage containers that were never cancelled, are invalid
7 and are subject to recovery via restitution. (PRC § 14539(e); Regulations §§ 2420, 2425, and
8 2430.) All scrap transactions must be documented. (Regulations §§ 2420(g) and (h); 2425(f).)

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

13 13. The Act deems a claim to be fraudulent when the claim is based in whole or in part
14 on false information or falsified documents. (PRC § 14597(b).) No person may submit or cause to
15 be submitted a fraudulent claim. (PRC § 14597.)

16 14. Disciplinary action is justified where a responsible party has engaged in
17 dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a
18 certificate holder or registrant, or where the responsible party violates the Act or Regulations.
19 (PRC §§ 14591.2(b)(2) and 14591.2(b)(3).)

20 15. The Department may recover in restitution any money improperly or illegally paid
21 to a certificate holder, registrant, or responsible party. (PRC §§ 14591.2(c)(5) and 14591.4.) This
22 includes payments made from the Fund that are based on documents that are not prepared or
23 maintained in compliance with the Department's Act and Regulations, which are based in whole or
24 in part on false information or falsified documents, where there are no documents to support a
25 claim, as well as claims for program payments the Department cannot verify. (PRC §§ 14538,
26 14539, 14539.5, 14552, 14553, 14591-14597.)

27 16. The Act authorizes the Department to collect interest, levy statutory penalties,
28 recover costs and fees, including attorney fees, related to audits and investigations, and to revoke

1 certificates. (PRC §§ 14591.1, 14591.2, 14591.3, 14591.4, 14594.5, 14596, and 14597.)

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

5 **C. Respondents.**

6 18. Respondent BC Recycling, Inc. (hereafter “BC”), was a sole proprietorship owned
7 by Respondent Adolfo Ramirez prior to October 6, 2015. On and after October 6, 2015, BC was a
8 corporation organized under the laws of the State of California. BC is located at 1043 East
9 Houston Avenue, Visalia, California. The Department certified BC as the operator of a processor
10 facility under certificate number PR23744.001 and a recycling center under certificate number RC
11 RC255758.001. (Regulations § 2000(a)(33).) Because both facilities are located at the same site,
12 BC is known as a dual-certified entity. (Regulations § 2105.) Additionally, BC is the operator of
13 six other certified recycling centers in California. BC’s operational sites are as follows:

14 PR23744.001 - 1043 East Houston Avenue, Visalia

15 RC255758.001 - 1043 East Houston Avenue, Visalia

16 RC12895 - 1145 Park Blvd., Orange Cove

17 RC251556.001 - 250 East Antelope Avenue, Woodlake

18 RC256334.001 - 1357 South K Street, Tulare

19 RC261261.001 - 1546 East Bardsley Avenue, Tulare

20 RC289076.001 - 5201 West Goshen Avenue, Visalia

21 (Regulations § 2000(a)(33).) BC is a responsible party within the meaning of the Act. (PRC §
22 14591.2(a).) In the process of conducting its business, BC, actively engaged in dishonesty,
23 incompetence, negligence, or fraud in performing the functions and duties of a certificate holder,
24 which resulted in defrauding the Fund.

25 19. Respondent Adolfo Ramirez (hereafter “Ramirez”), as an individual owner and as
26 Chief Executive Officer, Chief Financial Officer, and Director of BC Recycling, Inc., was at all
27 times mentioned herein, responsible for directing, contributing to, participating in, or otherwise
28 influencing the operations of BC. At all times relevant to this First Amended Accusation, Ramirez

1 was a responsible party within the meaning of the Act, conducting the business of BC, including
2 but not limited to, actively directing, controlling, and personally participating in, or otherwise
3 influencing, the day-to-day operation and management of all business affairs of BC. (PRC §
4 14591.2(a) and Regulations § 2000(a)(33).) In the process of conducting such business, Ramirez
5 actively engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and
6 duties of a certificate holder, which resulted in defrauding the Fund.

7 20. Hereafter, the Department will refer to Respondent BC Recycling, Inc., and
8 Respondent Adolfo Ramirez collectively as "BC Respondents."

9 21. For the purposes of this First Amended Accusation, Respondents BC Recycling,
10 Inc., and Adolfo Ramirez have joint and several liability as they are each a responsible party within
11 the meaning of the Act. (PRC § 14591.2(a).) BC Respondents jointly and actively directed,
12 controlled, and participated in the day-to-day operation and management of BC. In the process of
13 conducting such business, BC Respondents actively engaged in dishonesty, incompetence,
14 negligence, or fraud in performing the functions and duties of a certificate holder, which resulted in
15 defrauding the Fund.

16 22. BC Respondents were subject to and required to comply with the Act and the
17 Regulations at all times relevant to this First Amended Accusation.

18 23. The original Accusation was timely as it had been filed within five years after the
19 Department discovered the violations of the Act and the Regulations alleged herein. (PRC
20 §14552(b)(2).) This action is subject to the formal hearing procedures of the California
21 Administrative Procedure Act. (Gov. Code §11500 et seq.; PRC §14591.2.)

22 **D. Grounds For Administrative Action.**

23 24. The statements, assertions, and allegations set forth in paragraphs 1 through 23,
24 above, are incorporated by reference.

25 25. The Department conducted an audit of BC for the period of September 1, 2014,
26 through August 31, 2016, inclusive. The last day of field work was August 30, 2018.

27 26. The audit scope was limited to reviewing BC's reported quantities, record keeping
28 procedures, and records supporting claims made against the Fund during the relevant period. It did

1 not encompass any liabilities or credits that may have existed at the time as a result of other
2 transactions.

3 27. The audit revealed that BC Respondents were not in compliance with the
4 requirements of the Act and Regulations. Specifically, BC Respondents filed claims against the
5 Fund based on beverage containers that had never been cancelled. Claims made by a certified
6 processor on beverage containers are not valid unless the containers are cancelled by the processor
7 pursuant to the Act and Regulations. (PRC §§ 14518, 14539(d)(7) and (d)(8); Regulations §§
8 2000(a)(4), 2110, and 2420(d).)

9 28. For the period of September 1, 2014, through February 28, 2015, inclusive, BC
10 Respondents failed to cancel 1,128,274.4 pounds of PET beverage containers sold to Recycling
11 Services Alliance, Inc. (hereafter “RSA”). BC Respondents claimed **\$1,353,868.52** in CRV,
12 processing payments, and administrative costs based on the uncanceled beverage containers.

13 29. The audit of BC also established that BC Respondents failed to weigh and inspect
14 all loads of beverage containers they received from BC’s own off-site recycling centers. Claims
15 made by a certified processor on beverage containers that have not been weighed or inspected are
16 not valid for any purpose. (PRC § 14539(d); Regulations §§ 2401, 2420(b), and 2430(a).)

17 30. For the period of September 1, 2014, through August 31, 2016, inclusive, BC
18 Respondents failed to weigh and inspect 1,482 loads of beverage containers received from BC’s
19 own off-site recycling centers.

20 31. The results of the audit were communicated to Roy Ortiz and Respondent Adolfo
21 Ramirez at an exit conference held on August 30, 2018, and again via a Draft Audit Report dated
22 October 16, 2018. In a letter dated November 13, 2018, BC Respondents replied to the audit results
23 by submitting comments and documents to the Department for consideration.

24 32. After a review of the comments and documents submitted by BC Respondents,
25 the Department concluded that no viable defense was presented by BC Respondents to the Final
26 Audit Report.

27 33. The total amount due set forth in the Final Audit Report was \$1,674,731.00. That
28 amount included \$1,353,869.00 in disallowed processor invoice payments, \$296,400.00 in civil

1 penalties, and \$24,462.00 in interest. Interest was then calculated at a daily rate through August 30,
2 2018, on the disallowed processor invoices. As of the date of this First Amended Accusation, BC
3 Respondents have failed to pay to the Department the foregoing amounts.

4 **E. Count One: BC Respondents Filed Claims For CRV, Processing Payments, And**
5 **Administrative Costs Based On Beverage Containers They Failed To**
6 **Cancel.**

7 34. The statements, assertions, and allegations set forth in paragraphs 1 through 33,
8 above, are incorporated by reference.

9 35. Claims made by a certified processor on beverage containers are not valid unless
10 the containers are cancelled by the processor pursuant to the Act and Regulations. (PRC §§ 14518,
11 14539(d)(7) and (d)(8); Regulations §§ 2000(a)(4), 2110, and 2420(d).) A certified processor has
12 the absolute duty to cancel all beverage containers to render them unfit for re-redemption. (PRC §
13 14539(d)(7).) Indeed, cancellation is a paramount duty of all processors to prevent the
14 reintroduction of the beverage containers back into the recycling program. Cancellation, like
15 inspection, is a first-line defense against fraud. Notwithstanding this paramount duty, BC
16 Respondents failed to cancel certain PET beverage containers during the period of September 1,
17 2014, through February 28, 2015.

18 36. According to BC Respondents, Alpha Recycling Resource Services Alliance
19 (hereafter “Alpha”), located in North Hollywood, California, cancelled the subject PET beverage
20 containers on their behalf. That contention is problematic for BC Respondents. First, Alpha was
21 never authorized to cancel on behalf of BC Respondents. (PRC § 14539(d)(7); Regulations §
22 2110.) Second, BC Respondents have no documentation from Alpha that proves cancellation.
23 (PRC § 14539(d)(8)(C); Regulations § 2420(d).) Third, BC Respondents did not ship their material
24 to Alpha. Instead, BC Respondents sold and shipped their PET beverage containers to RSA,
25 located in Sacramento, California. Therefore, no entity other than RSA could have cancelled those
26 loads on behalf of BC Respondents. Fourth, RSA was never authorized to cancel on behalf of BC.
27 (PRC § 14539(d)(7); Regulations § 2110.) Fifth, BC Respondents have no documentation from
28 RSA that proves cancellation. (PRC § 14539(d)(8)(C); Regulations § 2420(d).) Sixth, neither
Alpha nor RSA were a “location of end use,” also informally known as a “bona fide end user.”

(PRC § 14539(d)(7); Regulations §§ 2000(a)(4)(F) and 2420(d).) Therefore, any loads of beverage containers BC Respondents sold and shipped to RSA, or Alpha, did not meet the requirements in the Act or Regulations for cancelled materials. (PRC § 14539(d)(7); Regulations §§ 2000(a)(4) and 2420(d).)

37. Proof that a claim for CRV, processing payments, and administrative costs is valid necessarily includes proof that the subject containers had been cancelled pursuant to the Act and Regulations. In this matter the Department cannot validate the cancellation of the beverage containers sold by BC Respondents to RSA or Alpha. Due to the lack of cancellation, the Department cannot validate the claims made by BC Respondents on 1,128,274.4 pounds of PET, for the period of September 1, 2014, through February 28, 2015, inclusive. Accordingly, BC Respondents have no legal claim to the **\$1,353,868.52** in CRV, processing payments, and administrative costs paid from the Fund based on the uncanceled beverage containers they sold to RSA or Alpha. Those claims are invalid and subject to restitution. (PRC § 14539(e).)

38. The claims that BC Respondents made on the 1,128,274.4 pounds of PET are also fraudulent pursuant to PRC § 14597. The submission of a Processor Invoice (DR7), setting forth the monetary claim against the Fund, certifies compliance with all the processor's duties and obligations relevant to the claim, including but not limited to, inspection and cancellation of the subject beverage containers. Here, BC Respondents attested to cancellation when in fact no cancellation had ever occurred. Thus, the claims submitted by BC Respondents on 1,128,274.4 pounds of PET are fraudulent because they "were based in whole or in part on false information." (PRC § 14597(b).)

F. Count Two: BC Respondents Failed To Weigh And Inspect 1,482 Loads Of Beverage Containers Received From Their Own Off-Site Recycling Centers.

39. The statements, assertions, and allegations set forth in paragraphs 1 through 38, above, are incorporated by reference.

40. During the on-site audit, Department auditors saw BC Respondents deliver material from their own off-site recycling centers. The trucks bypassed the BC Respondents' processing facility truck scale completely and dumped their loads directly into the holding bunkers.

1 These loads were neither weighed nor inspected by BC Respondents' employees at the processing
2 facility. Later, Department auditors spoke with Mr. Roy Ortiz, BC Respondents' operations
3 manager, who confirmed the auditors' observations. Mr. Ortiz told the auditors that BC
4 Respondents' processing facility employees never weighed or inspected any beverage containers
5 received from BC Respondents' own off-site recycling centers.

6 41. For the period of September 1, 2014, through August 31, 2016, BC Respondents
7 failed to weigh and inspect 1,482 loads of beverage containers received from their own off-site
8 recycling centers.

9 42. The failure to weigh and inspect all incoming material, other than material from a
10 dual-certified site, violates the Act and Regulations. (PRC § 14539(d); Regulations §§ 2401,
11 2420(b), and 2430(a).)

12 43. Claims made by a certified processor on beverage containers that have not been
13 weighed or inspected are not valid, and if already paid, are subject to restitution. (PRC §
14 14539(d)(1), (d)(2), (d)(5), (d)(6), and (e); Regulations §§ 2401, 2420(b), and 2430(a).)

15 **G. Statutory Remedies To Be Imposed.**

16 44. The statements, assertions, and allegations set forth in paragraphs 1 through 43,
17 above, are incorporated by reference.

18 45. Pursuant to its statutory authority, the Department imposes the following
19 disciplinary action against the Respondent BC Recycling, Inc., and Respondent Adolfo Ramirez,
20 joint and severally, based upon sufficient evidence of violations of the enumerated statutes and
21 regulations, as set forth above.

22 **(a) Disallowed Claims**

23 Pursuant to PRC §§ 14539(e) and 14591.2(c)(5), all claims based on beverage
24 containers that were never cancelled are disallowed in their entirety.

25 **(b) Restitution**

26 Pursuant to PRC §§ 14539(e), 14591.2(c)(5), and 14591.4, the Department orders
27 immediate restitution in the amount of One Million Three Hundred Fifty-Three Thousand Eight
28 Hundred Sixty-Eight Dollars and Fifty-Two Cents (**\$1,353,868.52**) for the program payments based

on loads not cancelled and on claims based on invalid, illegal, and/or fraudulent documents.

(c) Interest

Pursuant to PRC § 14591.4, the Department orders payment of interest on the restitution of \$1,353,868.52. The interest is calculated at the rate earned on the Pooled Money Investment Account, pursuant to PRC § 14591.4, beginning on the date the claim was submitted and continuing until the restitution and interest ordered herein is paid in full. As of September 30, 2021, interest owed to the Department totals Ninety-Eight Thousand Eight Hundred Twenty-Five Dollars and Seventy-Two Cents (**\$98,825.72**). Interest accruing after that date will be established at trial.

(d) Civil Penalties

Pursuant to PRC §§ 14591.1 and 14591.2(c)(6), the Department assesses civil penalties for the **2994** violations of the Act and Regulations, as enumerated in this First Amended Accusation (Count One - 30 violations; Count Two - 2964 violations). Each violation of the Act or Regulations constitutes an independent basis upon which to sustain a penalty. (PRC §§ 14591.1(a)(3) and (b).) For each violation, the Department imposes a civil penalty as follows: Count One - Five Hundred Dollars (**\$500.00**) per violation, for a subtotal of \$15,000.00; Count Two - One Hundred Dollars (**\$100.00**) per violation, for a subtotal of \$296,400. Accordingly, the Department orders penalties totaling Three Hundred Eleven Thousand Four Hundred Dollars and no Cents (**\$311,400.00**).

(e) Costs and Fees

Pursuant to PRC § 14591.3, the Department orders the payment of all costs and fees, including but not limited to attorneys' and expert witness fees, and the costs of audit, investigation, and hearing, in the amount set forth below, as well as additional amounts to be determined at trial, including costs and fees associated with litigation after the date of this First Amended Accusation. As of the date of this First Amended Accusation, the costs and fees incurred by the Department total Sixty Thousand Three Hundred Twenty-One Dollars and Five Cents (**\$60,321.05**), as follows:

(1) Senior Management Auditor - \$5,262.60

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (2) Associate Management Auditor - \$4,176.35
- (3) Staff Services Management Auditor - \$12,382.10
- (4) Attorney IV - \$38,500.00

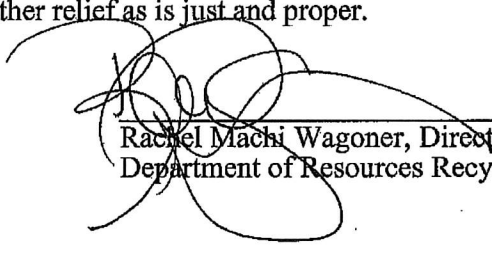
(f) Probation

Pursuant to PRC § 14591.2(c)(1), the Department designates certificates PR23744.001, RC255758.001, RC12895, RC251556.001, RC256334.001, RC261261.001, and RC289076.001 probationary for the period of five (5) years from the date of the issuance of a Final Agency Decision in this matter.

46. The total amount due to the Department under this First Amended Accusation is **\$1,824,415.29.**

47. In addition to the disciplinary actions taken in paragraph 45, above, the Department seeks such other and further relief as is just and proper.

Dated: 9/13/21



Rachel Machi Wagoner, Director
Department of Resources Recycling and Recovery