WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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JUN 28 9 48 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Department of Transportation, Division of Highways **TITLE NUMBER:** 157

CITE AUTHORITY §§17-23-2 and 3 and 17-24, et seq.

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐ **NO** ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 8

TITLE OF RULE BEING FILED AS AN EMERGENCY: Waste Tire Remediation/Environmental Clean Up

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This filing is necessary to comply with time limitations established by changes to state code. Senate Bill #427 was passed March 11, 2000 and was signed by the Governor on April 4, 2000. The effective date of S.B. 427 was ninety days from passage, June 9, 2000.

Additionally, and as stated in S.B. 427, the Legislature declared it to be public policy to "...eliminate the present danger resulting from discarded or abandoned waste tire piles, and that in order to provide for the public health, safety and welfare, quality of life, and to reverse the adverse impacts to the proper maintenance and efficiency of public highways, it is necessary to enact legislation to those ends by providing expeditious means and methods for effecting the disposal of waste tires."

Samuel H Burnaz
Signature

Use additional sheets if necessary

$9.80

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
Proposed Legislative Rule
June 27, 2000

SUMMARY OF PROPOSED RULE:

Series 8 provides general and specific rules for the Tire Remediation and Environmental Clean up Program (TREC). The TREC program's goal is the identification and the proper disposal of the state's discarded or abandoned waste tire piles. The rules governing the processes by which the Commissioner of the Division of Highways will execute his/her responsibilities as assigned in W. Va. Code §§17-23-2 and 3 and 17-24, et seq. are specified in Series 8.

The primary items addressed by this legislative rule are:

1. a list of definitions, including the definition of a waste tire pile;
2. the criteria for inventorying, documenting and prioritizing each waste tire pile;
3. a set of prohibitions on starting or increasing the size of waste tire piles;
4. the means of providing notification, the appeals process, and other issues concerning property owners with waste tire piles identified for remediation;
5. the limitations on waste tire hauling, temporary storage, disposal and other factors associated with tire pile remediation;
6. the rights of property owners adjacent to waste tire remediation sites; and
7. other issues relating to the administration of the designated funding and the operations of the Tire Remediation/Environmental Clean Up Program.

STATEMENT OF CIRCUMSTANCES:

This proposed legislative rule is being filed to satisfy the rule promulgation responsibilities of the Commissioner of Highways and to ensure the proper administration and execution of his/her duties as defined in W. Va. Code §§17-23-2 and 3 and 17-24, et seq. as it relates to the remediation of waste tires and waste tire piles. The referenced code was amended through the passage of Senate Bill 427 on March 11, 2000. The bill was signed by the Governor on April 4, 2000 and became effective June 9, 2000.

The aforementioned code includes a declaration by the Legislature that it be the public policy of the state to, "...eliminate the present danger resulting from discarded or abandoned waste tires and to eliminate the visual pollution resuling from waste tire piles, and that in order to provide for the public health, safety and welfare, quality of life, and to reverse the adverse impacts to the proper maintenance and efficiency of public highways, it is necessary to enact legislation to those ends by providing expeditious means and methods for effecting the disposal of waste tires."

FISCAL NOTE FOR PROPOSED RULES
June 27, 2000

Rule Title: Series 8, Waste Tire Remediation/Environmental Clean Up

Type of Rule: X Legislative _Interpretive _Procedural

Agency Division of Highways
Address Building 5, 1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0430

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Personal Services	300,000	0	300,000	400,000	400,000
Current Expense	50,000	0	50,000	75,000	75,000
Repairs & Alterations	0	0	0	0	0
Equipment	50,000	0	50,000	75,000	75,000
Other	2,600,000	0	2,600,000	2,950,000	2,950,000
Estimated Total Cost	$3,000,000	0	$3,000,000	$3,500,000	$3,500,000

2. Explanation of above estimates:

Personal Services includes the salaries and administrative overhead expenses of three full time employees to administer Highways' Tire Remediation/Environmental Clean Up Program. Also, the costs for work performed by other Division of Highways' employees are included.

Current Expense includes the cost of travel, telephone/communications, photocopying, printing, office supplies, and other typical expenses resulting from the operational and administrative activities associated with the Tire Remediation/Environmental Clean Up Program.

Equipment includes the cost of using and operating state owned (Division of Highways) passenger vehicles. These vehicles will not be assigned full time to the Tire Remediation/Environmental Clean Up Program, but will be "rented" from the Highways' fleet on an as needed basis.

Other includes the cost of contractual arrangements to provide clean up/removal, transport and legal disposal of waste tires. As specified in W.Va. Code §17-24-4, the Commissioner shall give priority status in the contract process to using the services of the WV Department of Health and Human Resources and the WV Department of Corrections so long as such programs prove to be cost effective.

3. Objectives of this rule:

This legislative rule is being filed to establish the Tire Remediation/Environmental Clean Up Program along with the rules necessary to execute the responsibilities assigned the Commissioner of Highways for the proper disposal and environmental clean up of waste tire piles.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government

No economic impact is anticipated since W. Va. Code §17-24-6 provides for funding through the "Tire Remediation/Environmental Cleanup Fund." The primary source of this funding is an additional five-dollar fee imposed on the issuance of each Certificate of Title for motor vehicles. This fee is estimated to generate three and one-half million dollars per annum.

Also, W. Va. Code §17-24-7 provides for the recovery of remediation expenses and all costs incurred in bringing civil actions against any person who illegally disposed of waste tires or who has waste tires illegally disposed on his or her property.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens:

No identifiable economic impact is projected.

C. Economic Impact on Citizens/Public at Large.

Citizens titling or retitling motor vehicles will incur an additional five-dollar fee. Any persons who have illegally disposed of waste tires or who have waste tires illegally disposed on his or her property will incur the cost of removing and properly disposing of the waste tires including all costs incurred in bringing civil actions against these persons to recover the costs for remediation.

5. Contact Person and Telephone Number.

Mr. Russ Rader
Phone - 558-3243

June 27, 2000

Samuel H. Beverage, P.E.
Acting Secretary/Commissioner of Highways

DATE: June 27, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Highways
1900 Kanawha Boulevard East, Building Five, Room 715
Charleston, WV 25305-0430 Alan Cuervo 304/558-3475

EMERGENCY RULE TITLE: Waste Tire Remediation/Environmental Clean Up

1. Date of Filing June 28, 2000

2. Statutory Authority for promulgating emergency rule:

   §§17-23-2 and 3 and 17-24, et seq.

3. Date of filing of proposed legislative rule: June 28, 2000

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

   New language is being adopted. A new Series 8 is proposed.

5. Has the same or similar emergency rule previously been filed and expired?

   No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, site the Code provision, federal statute or regulation and time limit established therein.

This emergency rule filing is necessary to comply with time limitations established by the passage of Senate Bill 427 on March 11, 2000. The Governor signed this bill on April 4, 2000 and it became effective June 9, 2000.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

EMERGENCY
LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

INDEX TO

SERIES 8

WASTE TIRE REMEDIATION/ENVIRONMENTAL CLEAN UP

Section 1. General

1.1. Scope
1.2. Authority
1.3. Filing Date
1.4. Effective Date
1.5. Legislative Intent

Section 2. Definitions

2.1. Abandoned Salvage Yard
2.2. Award
2.3. Beneficial Use
2.4. Calendar Day
2.5. Commercial Recapping Facility
2.6. Commissioner
2.7. Contract
2.8. Contractor
2.9. Corrections
2.10. Deadline
2.11. DEP
2.12. DHHR
2.13. Director
2.14. Disadvantaged Business Enterprise
2.15. Division
2.16. Employee
2.17. Equipment
2.18. Extra Work
2.19. Fee
2.20. Force Account Work
2.21. Hazardous Waste
2.22. Monofill or Waste Tire Monofill
2.23. Notice to Proceed
2.24. Occupied Private Residence
2.25. Owner/Operator
2.26. Permit
2.27. Person
2.28. Person(s) Responsible
2.29. Priority List
2.30. Remediate or Remediation

2.31. Salvage
2.32. Salvage Yard
2.33. Scope of Work
2.34. Seasonal Restrictions
2.35. Shredded Waste Tire(s)
2.36. Silence of Specifications
2.37. Solid Waste
2.38. State
2.39. Surety
2.40. Temporary Storage Area
2.41. Tire
2.42. Tire Scraps
2.43. Title
2.44. TREC
2.45. TREC Fund
2.46. Unacceptable Work
2.47. Waste Tire
2.48. Waste Tire Chips
2.49. Waste Tire Hauler
2.50. Waste Tire Monofill/Monofill
2.51. Waste Tire Pile
2.52. Waste Tire Processing Facility
2.53. West Virginia Resident
2.54. West Virginia Business
2.55. Work
2.56. Tire Derived Material

Section 3. Location and Identification

3.1. Inventory Listing
3.2. Identification Number
3.3. Tracking Identification
3.4. Noting of Identification Number

Section 4. Prohibition on Starting or Increasing the Size of Waste Tire Piles

4.1 No Increase
4.2 Monofills Exempt
4.3 No New Tire Piles
4.4 Combining Tire Piles
4.5 Disposal
4.6 Component Disposal
4.7 Proper Transportation
4.8 DEP Rules
4.9 Temporary Accumulations
4.10 Clean Up Notification
4.11 Waste Tire Pile Reduction
4.12 Temporary Containment

Section 5. Contractual Services

5.1 Commissioner's Discretion

Section 6. Right of Entry

6.1 For Studies and Exploratory Work
6.2 For Remediation
6.3 Contacting Property Owners
6.4 Requesting Voluntary Entry
6.5 Voluntary Entry Not Obtainable
6.6 Termination of Right of Entry
6.7 Property Owner's Limitations
6.8 Adequate Ingress/Egress
6.9 State's Responsibility
6.10 Ingress and Egress Part of Tire Pile
6.11 Adjoining Properties
6.12 Solid Waste - Owner's Responsibilities

Section 7. Other Agency Regulations

7.1 Conflicting Regulations
7.2 Commissioner's Final Determination
7.3 Site Monitoring
7.4 Resolving Issues
7.5 Preremediation Conference

Section 8. Commissioner Bureau of Public Health

Section 9. Remediation

9.1 Liability
9.2 Land Owner Liability
9.3 Costs
9.4 Repayment Costs
9.5 Arbitration
9.6 Arbitration Limits
9.7 Arbitration Approval

Section 10. Orders/Notices

10.1 Owner Notification
10.2 Compliance Schedule
10.3 Failure to Respond
10.4 Expending Funds
10.5 Repayment of Expended Funds
10.6 Emergency Right of Entry
10.7 Effective Time Period
10.8 Combining Notice and Order

Section 11. Liens

11.1 Lien on Property Remediated
11.2 Time Period
11.3 Included Costs
11.4 Recording Liens
11.5 Priority
11.6 Civil Actions
11.7 Foreclosure
11.8 Proceeds of Sale

Section 12. Injunctive Relief

12.1 Division's Rights
12.2 Inclusions

Section 13. Records Retention

13.1 Time Period
13.2 Federal Time Requirements
13.3 Other Agency Retention Requirements
13.4 Other's Retention Requirements
13.5 Following Litigation

Section 14. Hauling Waste Tires

14.1 Delivery to Approved Sites
14.2 Division Hauling
14.3 PSC Certification
14.4 Subcontract Haulers
14.5 Vendor Registration
14.6 Insurance
14.7 Owner's Hauling

Section 15. Owner Remediation

15.1 Owners Involvement Encouraged
15.2 Compliance Schedule
15.3 PSC Rules Compliance
15.4 Record Keeping
15.5 Owner's Remediation Responsibilities
15.6 Letter of Compliance

Section 16. Storage

16.1 Temporary Storage
16.2 Temporary Storage Site Requirements

Section 17. Disposal

17.1 Approved Disposal
17.2 Commissioner's Disposal

Section 18. Individual Tire Collection and Disposal

18.1 Commissioner's Waste Tire Collection Program
18.2 Fee for Tires
18.3 Business Limits
18.4 Large Tires
18.5 Non Typical Tires
18.6 Disposal
18.7 Source of Fee
18.8 Waste Tire Hauling

Section 19. Rodent/Vector Control

19.1 Checking for Problems
19.2 Vector Control
19.3 Professional Exterminating
19.4 Special Cases
19.5 Homes Affected

Section 20. Right of Appeal

20.1 Division's Procedures
20.2 Appeal Time Limits
20.3 Hearing Officer
20.4 Appeals

Section 21. Priority Listing

21.1 Establish Ranking
21.2 Highest Ranking
21.3 Order of Remediation Affected By
21.4 Updating
21.5 Priority Ranking
21.6 Phase Remediations

Section 22. TREC Funds

22.1 Usage of Funds

Section 23. Miscellaneous

23.1 Training
23.2 Sanitary Facilities
23.3 Safety Equipment

FILED

JUN 28 9 45 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

157CSR8

TITLE 157
EMERGENCY
LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

SERIES 8
WASTE TIRE REMEDIATION/ENVIRONMENTAL CLEAN UP

§157-8-1. General.

1.1. Scope. This rule relates to the remediation and environmental clean up of waste tire piles.

1.2. Authority. W. Va. Code §§17-23-2 and 3 and 17-24, et seq.

1.3. Filing Date.

1.4. Effective Date.

1.5. Legislative Intent. Legislative intent has been declared to be the public policy of the State of West Virginia to eliminate the present danger resulting from discarded or abandoned waste tires and to eliminate the visual pollution resulting from waste tire piles, and in order to provide for the public health, safety and welfare, quality of life, and to reverse the adverse impacts to the proper maintenance and efficiency of public highways, it was necessary to enact legislation to those ends by providing expeditious means and methods for effecting the disposal of waste tires.

§157-8-2. Definitions.

2.1 "Abandoned salvage yard" means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more that one year.

2.2 "Award" means the acceptance by the Division of a bid.

2.3 "Beneficial Use" means the use or reuse of whole waste tires or tire derived material which are reused in constructing retaining walls, rebuilding highway shoulders and sub-base, building highway crash attenuation barriers, feed hopper or watering troughs for livestock, other agricultural uses approved by the Division of Environmental Protection, playground equipment, boat or truck dock construction, house or building

construction, go-cart, motorbike or race track barriers, or similar types of beneficial applications: *Provided*, That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any manner where human health or the environment, as determined by the Director of the Division of Environmental Protection, is put at risk.

2.4 "Calendar Day" means every day shown on the calendar.

2.5 "Commercial Recapping Facility" means a properly licensed West Virginia business that uses waste tires for the purposes of recapping said tire.

2.6 "Commissioner" means the commissioner of the West Virginia Division of Highways.

2.7 "Contract" means the written agreement between the Division and the Contractor covering the performance of the work: the furnishing of labor, equipment and materials, and the basis of payment. The Contract includes the invitation for bids, proposal, contract form, contract bond, specifications, supplemental specifications, special provisions, plans notice to proceed, and any change orders that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

2.8 "Contractor" means the individual, firm or corporation, party of the second part to the Contract, acting directly or through his, her or their agents, employees, or subcontractors.

2.9 "Corrections" means the Division of Corrections, West Virginia Department Of Military Affairs and Public Safety.

2.10 "Dead Line" means the time limit for completion of remediation and/or related contract, and/or Notice To Correct/Remediate the designated waste tire pile.

2.11 "DEP" means the Division of Environmental Protection, Bureau of the Environment.

2.12 "DHHR" means the West Virginia Department of Health and Human Resources.

2.13 "Director" means Commissioner of the West Virginia Division of Highways, West Virginia Department of Transportation.

2.14 "Disadvantaged Business Enterprise (DBE)" means a small business concern which is owned and controlled by one or more socially or economically disadvantaged individuals which have been certified under the Small Business Administration's 8(a) program or by the Division of Highways.

2.15 "Division" means the Division of Highways, West Virginia Department of Transportation.

2.16 "Employee" means any person working on behalf of the project who is under the direction of the contractor of any subcontractor.

2.17 "Equipment" means all machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

2.18 "Extra Work" means an item of work not provided for in the Contract as awarded, but found essential to the satisfactory completion of the Contract within its intended scope.

2.19 "Fee" means the remitted amount the Commissioner may pay for a waste tire to be returned for disposal. The fee will be in the form of a coupon.

2.20 "Force Account Work" means additional work to be performed, with payments based on labor, materials used, equipment cost, plus specified percentages.

2.21 "Hazardous Waste" means a waste or combination of waste, which are hazardous by characteristic and or definition, as referenced by the Resource Conservation and Recovery Act of 1976.

2.22 "Monofill or Waste Tire Monofill" means an approved solid waste facility where waste tires not mixed with any other waste are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

2.23 "Notice To Proceed" means written notice to the Contractor to proceed with the contract work including, when applicable, the date of beginning of contract time.

2.24 "Occupied Private Residence" means a private residence, which is occupied for at least six months each year.

2.25 "Owner/Operator" means an individual, firm, partnership, association or corporation, or the plural thereof.

2.26 "Permit" means an official document certifying authority that certain functions according to applicable codes and rules can and must be performed.

2.27 "Person" means a natural person, corporation, firm, partnership, association or society, and the plural as well as the singular.

2.28 "Person(s) Responsible" means the property owner and/or the person who allows a waste tie pile to be developed, expanded or enlarged. This specifically includes the current property owner(s) where waste tire piles are located.

2.29 "Priority List" means the list of waste tire piles from around the State, ranked on a priority based upon: (1) Health Issues, (2) Ground Waste Contamination, (3) Stream Pollution, (4) Potential Air Quality Problems (fire), (5) Proximity to Population Centers, and (6) the Number of Tires in a Waste Tire Pile.

2.30 "Remediate or Remediation" means to remove all tires located above grade at a site and may also include, at the discretion of the Division, the removal of the solid waste incidental to the removal of waste tires at a site, provided that remediation does not include clean up of a hazardous waste.

2.31 "Salvage" means old or scrap brass, copper, iron, steel, other ferrous or nonferrous materials, batteries or rubber, and any junked, dismantled or wrecked machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles.

2.32 "Salvage Yard" means any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard, provided that no salvage yard may accept, store, or process more that one hundred waste tires unless it has all permits necessary to operate a monofill, waste tire processing facility or solid waste facility. Any salvage yard which currently has on its premises more than one hundred waste tires not on a vehicle must establish a plan in conjunction with the Division of Environmental Protection for the proper disposal of the waste tires.

2.33 "Scope of Work" means a clear, accurate and detailed description of the technical requirements for the services to be rendered.

2.34 "Seasonal Restrictions" means limitations imposed on the work, which prohibit the Contractor from performing certain types of work during specific seasons of the year.

2.35 "Shredded Waste Tires" means tires or tire derived material, which has been processed by shredding to particle sizes not greater than 72 square inches, or approximately 6 inches by 12 inches.

2.36 "Silence of Specifications" means the apparent silence of the specifications, supplemental specifications, plans and special provisions as to any detail, or the apparent omission from them of a detailed description concerning any point, will be regarded as meaning that only material and workmanship of acceptable quality is to be used.

2.37 "Solid Waste" means solid waste as defined in WV Code §22-15-2, et seq.

2.38 "State" means the State of West Virginia.

2.39 "Surety" means the corporation, partnership, or individual other than the Contractor, executing a bond furnished by the Contractor.

2.40 "Temporary Storage Area" means a State approved site where waste tires are collected and stored prior to proper disposition or disposal.

2.41 "Tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle and may include the following types of tires: passenger car tires, light-and heavy-duty truck tires, high speed industrial tires, bus tires and special service tires (including military, off-the-road, recreational/all terrain vehicle, and slow speed industrial).

2.42 "Tire Scraps" means portions of tires that the Division collects on and along the highways of the State.

2.43 "Title" means the official documentation on record in the County Clerks Office showing ownership of a parcel or tract of land.

2.44 "TREC" means Tire Remediation/Environmental Clean up Program.

2.45 "TREC Fund" means the fund setup by §17-24-6 for the remediation of waste tire piles.

2.46 "Unacceptable Work" means work that is not in compliance with the intent of the plans and/or Contract.

2.47 "Waste Tire" means any continuous solid or pneumatic rubber covering designed to encircled the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose no suitable for recapping, or other beneficial use, as defined in section two, article twenty-four, chapter seventeen of this code, because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being recapped are not waste tires.

2.48 "Waste Tire Chips" means tires or tire derived materials that have been reduced to particle sizes not greater than 2 inches by 2 inches.

2.49 "Waste Tire Hauler" means any person or persons who collects waste tires from a tire dealer or other source and transports waste tires in this State, but will not include a person or persons who haul waste tires generated by their own business activity, persons hauling their own tires, or where the hauling of waste tires to a solid waste facility is incidental to business activities. *Provided*, that a waste tire hauler must be a certified motor carrier regulated by the West Virginia Public Service Commission to lawfully transport waste tires.

2.50 "Waste Tire Monofill/Monofill" - See Monofill.

2.51 "Waste Tire Pile" means a collection and/or accumulation of one hundred and one or more waste tires into a single location or given parcel or tract of land.

2.52 "Waste Tire Processing Facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling and/or marketing.

2.53 "West Virginia Resident" means any person of legal age residing/living in the State of West Virginia.

2.54 "West Virginia Business" means any business, corporation, firm, company, sole proprietorship that is located in West Virginia and has a valid West Virginia business franchise certificate.

2.55 "Work" means the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all duties and obligations imposed by the Contract.

2.56 "Tire Derived Material" means any shredded, chipped, crumb rubber or other such tire material that has been processed from a tire, used tire or waste tire.

§157-8-3 Location and Identification

3.1 Inventory Listing. All piles of tires meeting the definition of waste tire piles will have the following information maintained in a Division inventory listing:

3.1.a Generic address with directions from the nearest road on the State Highway System.

3.1.b Latitude and Longitude.

3.1.c Name of Quandrangle Sheet (USCS).

3.1.d Name of drainage basin, name of immediate discharge stream and milepost.

3.1.e Name and location of Fire Department serving the area, including phone number.

3.2 Identification Number. The following identification information will be provided for all piles of tires meeting the definition of waste tire piles and maintained in the Division Priority Inventory Listing:

3.2.a Property owner name, mailing address and phone number.

3.2.b Deed Book number and page of deed for said property.

3.2.c County, Magisterial District, Tax Map Number and parcel number.

3.2.d The flood zone(s) of the waste tire pile must be noted as well as the FEMA flood maps number.

3.3 Tracking Identification. Each tire pile meeting the definition of waste tire pile, will have an identification number assigned.

3.3.a The identification assignation will be such to:

3.3.a.1 identify it as a waste tire pile - WT;

3.3.a.2 identify the county (i.e. 23);

3.3.a.3 identify the nearest State Route number;

3.3.a.4 identify the appropriate milepost (i.e. - 9.85); and

3.3.a.5 identify the number of tires at time of classification (i.e. - 4520). Example WT-23-10-9.85-4520. Waste tires, Logan County, Route 10, Mile Post 9.85, and 4520 tires.

3.4 Noting of Identification Number. All remediation work including invoices, bills, hauling information and all changes must have the designated identification number so noted.

§157-8-4 Prohibition on Starting or Increasing the Size of Waste Tire Piles.

4.1 No Increase. No person may increase the size, volume or numbers of tires in a waste tire pile within the State.

4.2 Monofills Exempt. Licensed monofills are exempt from Subsection 4.1 of these rules.

4.3 No New Tire Piles. No person may accumulate, collect, deposit, or abandon waste tires in a tire pile whose increase in number would cause it to become an illegal waste tire pile.

4.4 Combining Tire Piles. Depositing tires from a waste tire pile to another waste tire pile is prohibited.

4.5 Disposal. Tires removed from a waste tire pile must be disposed of in a manner not in conflict with these rules, and in compliance with Legislative Rule 33CSR5, Section 1, et seq, "Waste Tire Management" of the DEP.

4.6 Component Disposal. After shredding or other breaking down, cutting or processing of waste tires, no components thereof may be disposed of in a manner not consistent with these rules and with Legislative Rule, 33CSR5, "Waste Tire Management" of the DEP.

4.7 Proper Transportation. Waste tires or components thereof, may not be transported into or out of this State for any purpose other than approved proper processing and/or legal disposal of the waste tire or component thereof.

4.8 DEP Rules. No waste tire or component thereof, may be disposed of in a manner not consistent with these rules and the rules of DEP and the Solid Waste Management Board.

4.9 Temporary Accumulations. As noted in WV Code §17-24-3(a), the Commissioner may temporarily accumulate as many waste tires as he/she deems necessary at any location(s) necessary to effectuate the purpose of this rule. This also applies to contractors under contract with the Division to do remediation work at the direction of the Commissioner.

4.10 Clean Up Notification. Companies, groups, persons that conduct clean up efforts to remediate tire problems are exempt from the provisions of these rules that limit the amount of tires and/or tonnage that may be accrued, provided that a written notice is delivered to the Commissioner and DEP at least 72 hours prior to the start of the event and a second written notice is delivered within 72 hours after the clean up.

4.10.a. The written notice prior to the clean up event must provide the tire pile location, a contact name, address and phone number for the company, group or person responsible for the event as well as the identity of the hauler(s) of the tires and the identity of the approved disposal point.

4.10.b. The written notice after the clean up event must list the number of tires collected.

4.11 Waste Tire Pile Reduction. Any person who reduces the number of tires in a waste tire pile in an attempt to avoid compliance will be deemed in non-compliance until the entire waste tire pile is remediated.

4.12 Temporary Containment. Temporary containment or long-term storage of waste tires is prohibited and is deemed unlawful disposal and will constitute an open dump, unless such temporary containment or long term storage is conducted in strict accordance with the applicable rules.

§157-8-5 Contractual Services

5.1 Commissioner's Discretion. The Commissioner may, in the remediation process, at his or her discretion contract with, but is not limited to the following options.

5.1.a Government or Quasi-Government Agencies, such as;

5.1.a.1 West Virginia Division of Corrections,

5.1.a.2 West Virginia DHHR,

5.1.a.3 West Virginia Jail and Correctional Facility,

5.1.a.4 West Virginia National Guard,

5.1.a.5 U.S. Army Reserve,

5.1.a.6 West Virginia Citizen's Conservation Corps,

5.1.b Private Contractors and Others, such as;

5.1.b.1 properly licensed West Virginia Contractors and out-of-state Contractors,

5.1.b.2 civic groups or Disadvantaged Business Enterprises.

5.1.c The Commissioner may at his/her discretion use the personnel in the West Virginia Division of Highways as deemed necessary to accomplish the necessary remediation of waste tire piles. Such directly related activities for remediation are billable to the Tire Remediation/Environmental Clean up Fund.

5.1.d The Commissioner at his/her discretion may enter into Purchasing, Lease/Purchase, Leasing, or Rental Agreements with specialized equipment suppliers for the purpose of remediation.

5.1.d.1 The obtaining of equipment for remediation may be through other state agencies, as the Commissioner deems necessary.

5.1.e No person or business who has been deemed to have a waste tire pile subject to remediation may participate or contract in this program.

5.1.e.1 Once the person or business remediates completely the waste tire pile and clean up, it then may be eligible for contractual services.

5.1.f The Commissioner may use interested civic groups to help remediate smaller waste tire piles by providing the hauling service and other essentials that may be needed.

§157-8-6 Right of Entry

6.1 For Studies and Exploratory Work. Division of Highways employees, their authorized representatives, contractors and sub-contractors, upon presentation of proper identification, have the right of entry upon any property suspected of having a waste tire pile for the purpose of:

6.1.a conducting studies;

6.1.b performing exploratory work to determine the existence of waste tire piles and their adverse effects;

6.1.c determining the feasibility of remediation;

6.1.d determining the potential adverse effects of remediation; and

6.1.e establishing identification information.

6.2 For Remediation. The right of entry for remediation of waste tire piles is:

6.2.a an exercise of the police powers of the State;

6.2.b for the protection of the public health, safety and general welfare of the citizens of West Virginia;

6.2.c not an act of condemnation of said property;

6.2.d not an act of trespassing thereon;

6.2.e an obligation to follow due process of law.

6.3 Contacting Property Owners

6.3.a Contacting property owners may be attempted by telephone and/or fax and/or in person.

6.3.a.1 The property owner will be afforded the right to accompany any authorized parties during any phases including remediation.

6.3.a.2 The property owner may not interfere with any authorized parties during any stages of remediation or investigations and/or studies.

6.3.a.3 Any interference by the property owner during remediation will be addressed by due process of law including but not limited to injunctions and peace warrants.

6.3.a.4 Any interference causing additional costs will be borne by the responsible party.

6.4 Requesting Voluntary Entry. The Division may first seek voluntary right of entry in written form from the property owner(s).

6.5 Voluntary Entry Not Obtainable. When voluntary written right of entry is not obtainable, the Division will issue, with proper service, the Notice of Right of Entry pursuant to WV Code §17-2A-8(4), §17-12-7(d) and §54-1-3.

6.5.a The right of entry is good for three years from the date issued/signed, or until completion of remediation.

6.6 Termination of Right of Entry. When the site has been remediated, cleaned up, seeded and mulched, the Division will notify the owner that the right of entry is terminated, by proper service.

6.7 Property Owner's Limitations. Once right of entry is obtained, the owner:

6.7.a may not stop, impede or hinder said remediation/clean up work;

6.7.b must voluntarily surrender the physical possession of the waste tire pile(s) and the property on which it is located;

6.7.c must accept remediation efforts and allow the Division adequate ingress/egress to any and all waste tire piles that exist on the property; and

6.7.d must hold the Division harmless for any and all damages in the clean up of the referenced tire pile(s).

6.8 Adequate Ingress/Egress. The Division, having right of entry, is entitled to adequate means of ingress/egress from the waste tire pile for remediation and clean up purposes. Adequate ingress/egress will include the right to:

6.8.a upgrade the traveled road and/or provide a new workable access to the waste tire pile; and

6.8.b leave all materials used in upgrading said travelable roads/access roads with no future right or obligation by the State to maintain such. The State is rendered harmless.

6.9 State's Responsibility. The State is responsible for:

6.9.a cleaning up, dressing, seeding, and mulching the remediation site; and

6.9.b grading, draining, controlling sediment and other required activities in accordance with WV Legislative Rule 33CSR1, paragraph 4.5.b.3.

6.9.c Pre-existing conditions, hazardous waste, and other environmental conditions are not the responsibility of the Division or the Contractor; these are the responsibility of the property owner(s).

6.10 Ingress and Egress Part of Tire Pile. In as much as the means of ingress and egress is an integral part of the waste tire pile, its development, and its remediation, the access is considered a part of said waste tire pile.

6.11 Adjoining Properties. In cases where the access via ingress and egress is across property (ies) other than the actual parcel(s) on which the waste tires pile is located, the property owner(s) of the access will be served right-of-entry notices.

6.11.a Property owners that have allowed access to the property on which waste tire piles are located, will be deemed to be contributors to the creation and development of a waste tire pile and are therefore subject to the same penalties under law.

6.12 Solid Waste - Owner's Responsibility. All solid waste items in the environs of the waste tire pile are the responsibility of the owner(s) as are the costs of clean up.

6.12.a The owner(s) may enter into an agreement/contract with the Division and/or its contractor to remove and properly dispose of all solid waste encountered.

6.12.b The owner is responsible for all costs incurred in the clean up of any hazardous materials associated with the referenced waste tire pile.

6.12.c The site is to be cleaned up of all solid waste and hazardous waste at the time the tire pile is remediated, i.e., the site is to be totally and properly remediated.

§157-8-7 Other Agency Regulations

7.1 Conflicting Regulations. In the event of conflict between this rule and other agencies' rules, the more stringent rule prevails.

7.2 Commissioner's Determiniation is Final. For the time period that the Tire Remediation/Environmental Clean up Act is in effect, the Commissioner, being primarily responsible for the remediation of waste tire piles, will make the final determination on issues of conflict with other agencies pertaining to this rule.

7.3 Site Monitoring. All other agencies are encouraged to monitor the clean up/remediation of any and all sites.

7.3.a Any problems noted during remediation are to be addressed to the Division and the Division's on-site coordinator. Under no circumstances are the other agencies to direct the Division's Contractor in any remediation effort.

7.4 Resolving Issues. All other agency's issues during remediation will be addressed as quickly as possible in order to achieve an amicable resolution without slowing the remediation process.

7.5 Pre-remediation Conference. All affected agencies are encouraged to attend a pre-remediation conference with the Division and its Contractor.

7.5.a In cases of the property owner(s) remediation, a pre-remediation conference will be held 72 hours prior to the start of clean up.

§157-8-8 Commissioner Bureau of Public Health

8.1 In accordance with WV Code §16, the Commissioner of the Bureau of Public Health may enforce the public health laws in instances where waste tire piles present an imminent and substantial endangerment to public health.

§157-8-9 Remediation Liability

9.1 Liability. Any person who has illegally disposed of waste tires is liable for all clean up costs associated therewith.

9.2 Land Owner Liability. Any person who has waste tire piles disposed on their property is liable for all clean up costs associated therewith.

9.3 Clean Up Costs. Costs of removal or remediation will include but not be limited to:

9.3.a All costs of removal, ingress, egress, clean up and remediation by the Division.

9.3.b All costs associated with remediation include collection, transporting, processing and disposal of waste tires, cost of providing ingress and egress, damage to adjacent property, legal costs incurred to bring legal actions, and staff time involved with the remediation and court time.

9.4 Repayment. Any person who owes remediation costs, court costs and damages is liable at law until the TREC Fund is fully paid.

9.5 Arbitration. The person liable for any and all remediation, court, and damages costs may arbitrate such costs with the Commissioner.

9.5.a Such arbitration will be based upon the:

9.5.a.1 owner's participation in remediation;

9.5.a.2 owner's responsibility in allowing development of said tire pile;

9.5.a.3 owner's ability to pay;

9.5.a.4 increase in value of property after remediation;

9.5.a.5 owner's ability to remediate the problem; and

9.5.a.6 other special considerations.

9.6 Arbitration Limits. Under no circumstances may the arbitrated settlement be less than the actual costs for the on-site clean up; i.e., actual costs to load and haul the waste tires to a proper handling facility and/or approved disposal site.

9.6.a For sites where proper burial was the only solution, the arbitrated settlement may not be less than the cost for all charges to bury, cover, and properly encapsulate said tire pile.

9.7 Arbitration Approval. All arbitration is subject to the approval of the West Virginia Attorney General.

§157-8-10 Orders/Notice

10.1 Owner Notification. The Division will notify the person(s) owning the property where a waste tire pile exists that said waste tire pile must be remediated. This notice will be by registered or certified mail. If said notice is returned, delivery will then be by the Sheriff's office or personal delivery.

10.2 Compliance Schedule. After the notice of the existence of a waste tire pile that must be remediated, the Division will issue an order to said property owner to submit an acceptable compliance schedule within thirty days of receipt of said order.

10.2.a The Division's acceptance of a compliance schedule will also be considered the Division's time limit for completion of remediation.

10.2.b The Division will return unacceptable compliance schedules to the owner(s) (by certified mail) with the request to resubmit for an approved compliance schedule for remediation. The owner must submit the updated compliance schedule within thirty days after receiving the notice of the unacceptable schedule.

10.2.c Failure to return an updated compliance schedule after receiving notice of an unacceptable schedule will be deemed non-compliance with the order.

10.3 Failure to Respond. Failure to respond to the order will be deemed non-compliance with the Division's time limit for completion of remediation.

10.4 Expending Funds. The Division may expend funds to remediate or to complete the required remediation when:

10.4.a the owner fails to submit/resubmit an acceptable compliance schedule, thereby violating the Division's time limit for completion of remediation;

10.4.b the owner does not complete the remediation within the accepted time limit; or

10.4.b.1 The Division may extend the time limit for justifiable reasons provided that a written request for extension stating the reasons is submitted and approved thirty days prior to the end of the time limit.

10.4.c the owner notifies the Division that he or she is unable to comply with the order to remediate.

10.5 Repayment of Expended Funds. The owner(s) of the property containing the waste tire pile must promptly repay the amount expended from the TREC fund.

10.6 Emergency Right of Entry. In cases of emergencies such as fires, the Division has IMMEDIATE right-of-entry in order to protect the public health, safety and well being.

10.7 Effective Time Period. The Order is good for a period of three years from the date issued/signed.

10.8 Combining Notice and Order. At the Commissioner's discretion, the Order and Notice may be combined.

§157-8-11 Liens

11.1 Lien on Remediated Property. A lien may be placed upon all real property and rights to the property on which the waste tire pile is remediated when State funds from the TREC Fund are expended for remediation, and no arrangements are made by the owner to repay the remediation costs.

11.2 Time Period. The lien will continue until the liability for the costs or judgment against the property is satisfied.

11.3 Included Costs. The lien will include all costs from the latter of:

11.3.a when costs are first incurred by the Division; or

11.3.b the Notice of Remediation is received by the owner(s) of the property.

11.4 Recording Liens. The liens against the property where the waste tire remediation occurred will be recorded in the Office of the Clerk of the County Commission where the property is located and/or taxed.

11.5 Priority. The liens will be of equal dignity, rank, and priority with liens on such premises of State, County and Municipal taxes.

11.6 Civil Actions. The Division may pursue liens in civil actions to recover all remediation costs, damages, court fees and reasonable attorney fees.

11.7 Foreclosure. The Division may foreclose upon the premises by bringing civil action in the Circuit Court of the county where the property is located/taxed, and seek an order to sell the property to satisfy the lien.

11.8 Proceeds of Sale. All proceeds from the sale of the foreclosed property, including the amount of the lien, will be deposited in the TREC Fund in the State Treasurer's office.

11.8.a Any funds the Division receives beyond the amount of the lien will be remitted to the property owner(s) from whom the property was foreclosed on.

11.8.b The State may pursue legal action for remediation costs not recovered through the lien/foreclosure process.

§157-8-12 Injunctive Relief

12.1 Division's Rights. The Division may seek injunctive relief through the West Virginia Attorney General or the local county prosecuting attorney's office to provide remedies when a violation of the provisions of this rule occurs.

12.2 Inclusions. The injunctions may be, but not necessarily limited to restraint, prevention or abatement of the maintaining and storage of waste tire piles in violation of the provisions of this rule.

§157-8-13 Records Retention

13.1 Time Period. The records for any and all remediation work on waste tire piles must be kept for a minimum of five years after completion. All records must be kept minimally for the previous five calendar years.

13.2 Federal Time Period. For those sites that involve Federal Highway Funds or Federal Grants, the records retention will be for the time required by that fund, grant, etc., but in no case less than five calendar years from the date of completion.

13.3 Other Agency Requirements. In remediation cases, where hazardous or other specific types of solid waste are encountered, the records retention will be that prescribed by particular statute or rule, but in no case less than five calendar years after completion.

13.4 Other's Retention Responsibilities. All agencies, contractors, subcontractors, consultants and contractual parties must retain all records of all waste tire pile remediations for which they are involved for the prescribed time periods.

13.5 Following Litigation. On all sites where any person takes any type of legal action, the records must be maintained for five years after litigation is settled.

§157-8-14 Hauling of Waste Tires

14.1 Delivery to Approved Sites. The haulers of waste tires must meet all applicable State of West Virginia rules and regulations, and may only deliver waste tires to approved holding facilities or approved disposal or processing sites.

14.1.a Haulers must ensure that none of the tires will be resold for domestic uses as vehicle tires.

14.1.b Haulers must provide written documentation that all waste tires were disposed in a manner acceptable to the Division and West Virginia DEP.

14.2 Division Hauling. The Division may use its employees to load, haul, and transport waste tires during the remediation process.

14.3 PSC Certification. Before commencing the transportation of waste tires that are being remediated, a hauler of waste tires must have applied for and obtained a certificate of convenience and necessity, or permit, from the West Virginia Public Service Commission to the extent required by WV Code §24A.

14.4 Subcontract Haulers. All subcontract haulers of waste tires must comply with all sections of this rule.

14.5 Vendor Registration. All contract haulers of waste tires must be registered vendors with the State Purchasing Division.

14.6 Insurance. All haulers must be properly insured and bonded.

14.7 Owner's Hauling. When the property owner cleans up/remediates a tire pile(s) on their property, all sections of this rule, including Haulers must be complied with.

§157-8-15 Owner Remediation

15.1 Owners Involvement Encouraged. Owners of property on which waste tire piles are located are encouraged to properly remediate the waste tire problems.

15.2 Compliance Schedule. The owner must provide an acceptable compliance schedule for the Order/Notice to Remediate the waste tire pile on their property.

15.3 PSC Rules Compliance. The owner must comply with the Public Service Commission rules on Waste Tire Haulers under WV Code §24A.

15.4 Record Keeping. The owner must keep records that include date, hours of operation, number of trucks, hauler's name, number of tires removed, approved location to where tires are being transported. Written verification of the hauler's disposal permit is required.

15.5 Owner Remediation Responsibilites.

15.5.a The owner must complete the remediation within the time schedule in the approved Order/Notice.

15.5.b The owner must properly dispose of all solid waste encountered with the waste tire pile(s), in accordance with applicable DEP regulations.

15.5.c The owner must properly dispose of all hazardous material encountered with the waste tire pile(s) in accordance with applicable DEP Regulations.

15.5.d The owner must follow proper procedures and regulations for sediment control during clean up of the site (33CSR1).

15.5.d The owner must properly dress up, seed and mulch the remediated area where the tire pile existed.

15.5.e The owner must notify the Commissioner in writing that said waste tire pile has been remediated.

15.5.f The owner must provide proper protection, safeguards and security so that the area cannot be used again for a dump or for waste tires.

15.6 Letter of Compliance. Upon inspection and acceptance of the completed work, the Commissioner will provide a Letter of Compliance with the said Order/Notice.

§157-8-16 Storage

16.1 Temporary Storage. In accordance with WV Code §17-24-3, the Commissioner may temporarily accumulate as many waste tires as he/she deems necessary at locations necessary to effectively carry out this rule.

16.1.a All waste tires temporarily stored as whole tires must be covered.

16.1.b Proper vector control must be provided at all temporary waste tire storage areas.

16.1.c Waste tires temporarily stored may be as whole or shredded tires, provided that they are properly protected.

16.2 Temporary Storage Site Requirements. Temporary Storage site requirements for tire piles are as follows:

16.2.a tires will be accumulated in designated areas only;

16.2.b tire piles are not to be more that 10 feet high, 50 feet wide, and 150 feet long;

16.2.c tire piles must be separated by a minimum of 60 feet between piles;

16.2.d tire piles are to be at least 100 feet from any building;

16.2.e tire piles must be accessible to fire fighters;

16.2.f tire pile areas must be fenced; and

16.2.g tires are not to be stored on an asphalt base.

§157-8-17 Disposal

17.1 Approved Disposal. All waste tires collected from individuals and all waste tires from the waste tire piles must be disposed of in a proper and acceptable manner.

17.1.a Waste tires may be recycled in any manner that does not pollute the environment.

17.1.b Waste tires must not be sold or offered for sale as a usable tire for its original intended use.

17.1.c Waste tires may be disposed of in approved solid waste landfills and/or approved monofills as per DEP Legislative Rules 17CSR3.1. It is recommended that waste tires be shredded before being disposed of in solid waste landfills or monofills.

17.1.d. Waste tires may be used for any beneficial use.

17.2 Commissioner's Disposal. The Commissioner may offer for sale any or all waste tires from waste tire piles, as he/she deems necessary, by using the State bidding procedures.

17.2.a All funds received from said sale of waste tire piles must be deposited in the TREC Fund.

17.2.b The Commissioner may use the County Highways facilities as designated points for the collection, temporary storage, and distribution of waste tires.

17.2.b.1 The County facilities must provide proper storage and covers as required.

17.2.c The Commissioner may rent or lease temporary storage areas for waste tires being held for proper disposal.

§157-8-18 Individual Tire Collection and Disposal

18.1 Commissioner's Waste Tire Collection Program. The Commissioner may provide to citizens of the State of West Virginia a collection and disposal program.

18.1.a The waste and scrap tires may be accepted at Division of Highways County Headquarters.

18.1.b The county headquarters may accept passenger car and light truck waste tires and scraps.

18.1.c The Commissioner may limit the number of county headquarters accepting waste tires due to funding, space, transportation and staffing.

18.1.d The Commissioner may authorize properly licensed commercial businesses to participate in the collection program.

18.1.e No business or person who has a waste tire pile subject to remediation may participate in the program.

18.1.e.1 Once a person who is subject to remediation has become fully compliant, they may then participate in the program.

18.2 Fee For Tires. The Commissioner may pay a fee for each tire turned in.

18.2.a The fee is limited to a maximum of five tires per each quarter of the calendar year per participant.

18.2.b All participants must be either West Virginia residents or West Virginia businesses.

18.2.c All participants must be of legal age.

18.2.d All participants must present a valid West Virginia driver's license or valid West Virginia business permit.

18.2.e The fee for individual tires may be in the form of a voucher or coupon. Cash will not be given.

18.2.e.1 The coupon/voucher value will be determined by the Commissioner.

18.3 Business Limits. West Virginia businesses may upon written approval deposit more than five tires per quarter.

18.4 Large Tires. Tires larger than passenger and light truck tires may be accepted dependent upon space, manpower, equipment and contractual hauling agreements.

18.5 Non Typical Tires. Tires such as ATV, bicycle, and other non-vehicular may be accepted dependent upon space, manpower, equipment and hauling agreements.

18.6 Disposal. The Commissioner may dispose of the tires collected in this section by sale, contractual hauling to an approved disposal site, or other approved means available.

18.7 Source of Fee. The funds for the collection of individual's private tires may not be from the TREC Fund or Federal Highway funds unless specifically authorized to do so.

18.7.a Funds from the sale of individual tires collected may be used for the fee.

18.8 Waste Tire Hauling. The hauling of all waste tires collected under this program must be in compliance with the West Virginia Public Service Commission requirements on haulers, WV Code §24A.

§157-8-19 Rodent/Vector Control

19.1 Checking For Problems. All waste tire piles must be checked for rodent and/or vector control problems. Assistance is to be requested from the County Health Department.

19.2 Vector Control. Vector control measures must be taken where practical.

19.3 Professional Exterminating. In cases where rodent infestation is noted, a licensed professional exterminating company must be hired to properly bait the tire pile prior to remediation.

19.4 Special Cases. In special cases the Commissioner can have this work done seven days prior to remediation.

19.5 Homes Affected. In cases where individual homes are in the proximity of the waste tire pile, those affected homeowners may request the bait treatment and be paid for as part of the remediation.

§157-8-20 Right of Appeal

20.1 Division's Procedures. The Division's Procedural Rules, 157CSR1 allows for right of appeal to the Commissioner of Highways if a party is aggrieved by an Order/Notice or action resulting from this rule and issued by the Commissioner or an agent of the Commissioner.

20.2 Appeal Time Limits. Failure to appeal within the time frames specified in the Division's Procedural Rules, 157CSR1 constitutes concurrence, and thus void the right of appeal.

20.3 Hearing Officer. The ruling of the Hearing Officer on the appeal constitutes final disposition by the Division.

20.4 Appeals. Appeal of the Hearing Officer's decision is outlined in the Division's Procedural Rules, 157CSR1.

§157-8-21 Priority Listing

21.1 Ranking. The Division will establish an environmental priority ranking for waste tire piles within the State.

21.2 Highest Ranking. Waste tire piles with a higher ranking will, in general, be remediated/cleaned up before lower ranking sites.

21.3 Order of Remediation Affected By. The actual order of remediating/cleaning up of waste tire piles can be affected by:

21.3.a Priority ranking

21.3.b Funds available

21.3.c Code Compliance

21.3.d Legal issues outstanding

21.3.e Manpower availability

21.3.f Environmental Impact

21.3.g Seasonal Conditions

21.3.h Disposal Site Availability

21.3.i Other Special Conditions Which Justify Immediate Action

21.4 Updating. The priority listing will be maintained and updated as new sites and their data become available to the Division.

21.5 Priority Ranking. The priority ranking will be based upon, but not limited to the following:

21.5.a health Issues - Vector, Rodent, Water;

21.5.b potential for ground water contamination;

21.5.c potential for stream pollution;

21.5.d potential for air quality problems and/or susceptibility of waste tire pile to fire;

21.5.e proximity to population centers;

21.5.f potential number of population affected;

21.5.g number of waste tires in pile; and

21.5.h other special conditions which justify immediate action.

21.6 Phase Remediations. The Division may do phase remediation on a given waste tire pile based upon factors in subsection 21.3 of this rule.

21.6.1 Site completion must be done as quickly as possible.

§157-8-22 Use of TREC Fund

22.1 Use of Funds. The Commissioner at his/her discretion may use TREC Funds for, but not limited to the following:

22.1.a TREC Program, staff, equipment, travel, and expenses;

22.1.b site remediation;

22.1.c legal expenses associated with the TREC Program;

22.1.d hauling of waste tires;

22.1.e renting, leasing, or purchasing equipment used for the waste tire remediation;

22.1.f contractual services for remediation;

22.1.g publicity expenses;

22.1.h all State equipment and manpower doing the TREC remediation;

22.1.i consultant services, if needed;

22.1.j proper disposal of waste tires;

22.1.k proper storage of waste tires or shredded tires;

22.1.l pay differential costs for disposal of shredded waste tires in highway construction projects; and

22.1.m professional exterminating companies, when required.

§157-8-23 Miscellaneous

23.1 Training. All Division employees, contractors' and subcontractors' employees must be provided the minimal required training as to proper procedures, hauling, sanitation, safety, and personal hygiene in the remediation of waste tire piles.

23.2 Sanitary Facilities. The Contractor must provide proper temporary sanitary facilities.

23.3 Safety Equipment. The Contractor must provide proper safety equipment and protective clothing.