

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

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

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 NEW RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: Waste Tire Remediation/Environmental Clean Up

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



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

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
Proposed Legislative Rule
August 16, 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 resulting 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: 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

Legislative Rule-Making Review Committee
QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 16, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Highways

1900 Kanawha Boulevard East, Building Five, Room 110

Charleston WV 25305-0430 304/558-3505

LEGISLATIVE RULE TITLE: Waste Tire Remediation/Environmental Clean Up

1. Authorizing statute(s) citation §17-23-2 and 3 and §17-24, et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 2000

b. What other notice, including advertising, did you give of the hearing?

A copy of the proposed rules was sent to affected state agencies, such as the

Division of Environmental Protection, the Division of Corrections, the

Department of Health and Human Resources and the Division of Natural

Resources. Additional copies of the proposed rule (approximately 60) were

sent to tire industry and solid waste industry associations, such as the W.Va.

Tire Dealers Association, the Association of Waste Haulers & Recyclers, etc.,

as well as remediation contractors and solid waste authorities.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 31, 2000

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

Filed with Sec. of State: 8/18/2000 Published in State Register: 8/25/2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Russ Rader

1900 Kanawha Blvd. E., Building Five, Rm. 350, Chas., WV 25305

304/558-3243, [RRader@mail.dot.state.wv.us]

- g. ***IF DIFFERENT FROM ITEM 'F'***, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Alan Cuervo, Administrative Procedures Supervisor

1900 Kanawha Blvd. E., Building Five, Rm. 715, Chas., WV 25305

Charleston, WV 25305

304/558-3475

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not Applicable

b. Date of hearing or comment period:

Not Applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not Applicable

d. Attach findings and determinations and reasons:

Attached

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee

SUMMARY OF PUBLIC COMMENTS AND RESPONSES

The public comment period was advertised in the State Register, published June 30, 2000. Five letters of comments were received on the proposed amendments. A summary of the comments along with the action taken follows.

Central Ohio Contractors Inc.

Submitted by: David M. Gubanc, P.E., Engineering Consultant

In a letter dated July 28, 2000 the respondent noted the following:

1. There needs to be a clear, concise and unambiguous definition of Tire Derived Fuel (TDF) and a recognition that this material is entitled to the same regulatory consideration as coal. Furthermore, the consumption of TDF must be included in the definition of "Beneficial Use" to make clear to all that West Virginia acknowledges this use of scrap tires as beneficial.

Response:

The definition of "Beneficial Use" used in subsection 2.3 of this rule matches the definition in W. Va. Code §17-24-2. Beneficial use by current practice is "Tire Derived Fuel" and Civil Engineering applications. It is the Division of Highways' intent to continue these practices under the phrase, "or similar types of beneficial applications." The proposed rule was not changed.

2. There needs to be a section in the rules that delineates the general qualifications and experience of scrap tire remediation site contractors. It is important that West Virginia identify that each contractor meet this criteria prior to bidding on any waste tire remediation project.

Response:

The minimum qualifications and bidder eligibility requirements will be included with the advertising, bidding (Request for Proposals) and contractual documents. The proposed rule was not changed.

3. There needs to be a section in the rules that spells out the specific scope of work that will be contained in each Request for Proposal (RFP) that will be issued for the remediation of scrap tire piles and what specific information will be required from responding contractors.

Response:

Considering the wide variation in the size, complexity, environmental impact and other relevant issues, each significant waste tire remediation site may require the identification of a specific "scope of work". A "scope of work" will be included in the Request for Proposal. The proposed rule was not changed.

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
SUMMARY OF COMMENTS AND RESPONSES
Page Two

4. The rules should also include a list of the criteria the State of West Virginia will use to select the preferred contractor and the weight the state will apply to each criteria.

Response:

This too will be appropriately included as part of the RFP "bids package." The proposed rule was not changed.

PKC Landfill

Submitted by: Charles T. Krushansky

In a letter dated July 31, 2000 the respondent noted the following:

1. PKC Landfill recently modified its solid waste facility permit to include a processing facility. A 200' x 100' asphalt pad was installed to accommodate tire processing equipment and temporary storage of waste and processed tires. Please modify this section (subdivision 16.2.g) of the rule to accommodate our existing facility.

Response:

It is recognized that short-term storage of waste tires on asphalt during processing will not normally present any problems; however, the Division of Highways considers any storage of waste tires on asphalt as an important issue of fire safety. The proposed rule was not changed.

West Virginia Association of Waste Haulers & Recyclers

Submitted by: Greg Sayre, Executive Director

In a letter dated July 31, 2000 the respondent noted the following:

1. The WV Association of Waste Haulers and Recyclers strongly supports sections 14.1 through 14.7. We would like to make a change to 14.3. It should read ...and obtained a certificate of convenience and necessity, or be a licensed contract carrier, from the West Virginia Public Service Commission to the extent required by WV Code 24A.

Response:

Thornton Cooper, Deputy Director of the Transportation Division of the West Virginia Public Service Commission, wrote the referenced language of subsection 14.3. Therefore, the proposed rule was not changed.

West Virginia Tire Dealers Association

Submitted By: Floyd M. Sayre, Executive Director

1. The words "recapper, recapping and recapped" should be replaced with "retreader, retreading and retreaded" which are the prevailing industry terms.

Response:

The words "recapper, recapping and recapped" were taken from the authorizing legislation, S.B. 427, and are a part of W. Va. Code Chapter 17. Therefore, the proposed rule was not changed.

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
SUMMARY OF COMMENTS AND RESPONSES
Page Three

2. Generators of waste tires should be required to use waste haulers from a list that the PSC would publish regularly.

Response:

This issue is not within code authority of the Commissioner of Highways. The proposed rule was not changed.

3. Firms that are permitted to haul waste tires should be in the business of hauling waste tires and should be required to haul waste tires.

Response:

This issue is not within code authority of the Commissioner of Highways. The proposed rule was not changed.

4. The State should recognize that many times a landowner is unaware that their property has been dumped on. They should not be penalized. In the case where a landowner is deemed not the cause of the problem, the state program should remove the waste tires.

Response:

The provisions of this rule concerning liability are in agreement with W. Va. Code §17-24-7. When sufficient evidence is available, the Division of Highways will assign the responsibility and costs for waste tire site remediation to the responsible party(ies) if not the landowner. However, W. Va. Code §17-24-7 specifies that any person that illegally disposed of waste tires or has waste tires illegally disposed on his or her property shall be liable. Therefore, the proposed rule was not changed.

5. 2.7. Contract -- While this would be an extremely hot issue, the contracting contractor should not be required to follow the State's prevailing wage law.

Response:

This comment refers to the definition of "Contract" in subsection 2.7 of the proposed rule. The definition in the proposed rule matches the definition used in other Highways' rules and is deemed to be necessary for consistency. The proposed rule was not changed.

6. 2.41. The "Tire" definition should exclude extremely large tires of the type used in coal mining operations, etc., or verbiage needs to be in place for exceptions. These tires are usually buried on-site and has been so allowed by the DEP in the past.

Response:

The definition of "Tire" in subsection 2.41 is consistent with current Division of Environmental Protection rules. The proposed rule was not changed.

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
SUMMARY OF COMMENTS AND RESPONSES
Page Four

7. 2.49. The rule is not clear on the procedures for a seller of tires, while not consider a "waste tire hauler", who delivers waste tires to a disposal site. It should be clear that it is permitted.
Response:
The referenced subsection is a definition of "Waste Tire Hauler." This definition specifically excludes 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. Therefore, the sellers of tires are allowed to haul waste tires generated by their own business activities and would not be subject to the requirements of "Waste Tire Haulers" as specified in this rule. The proposed rule was not changed.
8. 2.50. The definition of Waste Tire Pile should provide for an exception, exclusion or permit so that dealers, etc., can accumulate more than 100 waste tires.
Response:
The referenced subsection (actually 2.51, not 2.50 as referenced) defining a Waste Tire Pile was revised to read as follows. "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. **This definition excludes and will not conflict with definitions of waste tire piles elsewhere in W. Va. Code or Legislative Rules for other purposes such as, regulating the number of waste tires that sellers of tires may retain.**
9. 4.7. Proper Transportation -- Some method needs to be (in) place so that a dealer can make this determination on out of state shipments.
Response:
Approved disposition of waste tires is identified in state and federal code as well as these rules 157CSR8 and is further determined by the agencies of jurisdiction, such as the West Virginia Division of Environmental Protection and the West Virginia Division of Highways. The proposed rule was not changed.
10. 5.1.e. The verbiage needs to be clearer that a person or company CAN participate in the clean up so long that they do not receive state funding for their efforts.
Response:
Section 5, including Subdivision 5.1.e., is entitled "Contractual Services" and only addresses this method for waste tire remediation. Section 15, "Owner Remediation" addresses (non-contractual) participation in waste tire remediation by property owners with waste tire piles. The proposed rule was not changed.

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
SUMMARY OF COMMENTS AND RESPONSES
Page Five

11. 17.1.a. The verbiage in this subsection on recycling of tires in a nonpolluting manner, may preclude one of the best uses of waste tires, that being tire derived fuel (TDF) and possibly some engineering uses.

Response:

The use of waste tires as Tire Derived Fuel will be unaffected by Section 17. Regardless of the use or method of disposal, this rule specifies that waste tires must be used or disposed of in a legal manner. Using waste tires as fuel for boilers/furnaces must be within State and Federal air pollution regulations. The proposed rule was not changed.

12. 18.2. This section on fees for tires needs to be revisited. As written, the rule will encourage buyers of new tires to keep their waste tires to avoid paying a disposal fee to the dealer. This shifts the burden of the cost of disposal from the tire owner to the state. Additionally, the holder of such tires may find that it is not worth their while to take them to a collect(ion) site and will simply toss them over the hill for the state to pickup.

Response:

The Commissioner of Highways' Waste Tire Collection Program and the possible payment of a fee for each tire turned in is a requirement of W. Va. Code §17-24-4g. However, implementation of this program is discretionary and may or may not be funded or implemented. Given that persons have and are still illegally disposing of waste tires, the Waste Tire Collection Program, if implemented, should not adversely affect this phenomenon. The proposed rule was not changed.

13. 18.2.b. Businesses should not participate in receiving a fee for turning in waste tires.

Response:

Extending the Waste Tire Collection Program to West Virginia businesses is a provision of W. Va. Code §17-24-4g. The proposed rule was not changed.

West Virginia Division of Environmental Protection
Submitted By: B.F. Smith, P.E., Chief

In a letter dated July 31, 2000 the respondent noted the following:

1. Page 3, subsection 2.21. To the end of the definition of "Hazardous Waste": the DOH may wish to add "as amended."

Response:

The proposed rule was changed as suggested.

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
SUMMARY OF COMMENTS AND RESPONSES
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2. For the purposes of consistency with SB427 and DEP proposed rule 33CSR5, the DOH may wish to adopt the new definitions as follows:
- a. "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.~~
 - b. "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.

Response:

The DEP suggested changes are not considered material; therefore, the proposed rule was not changed.

3. Page 8, subsection 4.4. The DOH may wish to consider changing the word "depositing" to "transferring" since transferring is the function described in this subsection.

Response:

The DEP suggested changes are not considered material; therefore, the proposed rule was not changed.

4. Page 6, subsection 2.49. The DOH apparently adopted the former 33CSR5, Solid Waste Management Rule definition of "Waste Tire Hauler." This subsection was replaced in our rule, as filed with the Secretary of State July 14, 2000 with "Waste Tire Transporter," to be consistent with terminology in SB427. The DOH may wish to adopt the new definition which reads:

"Waste Tire Transporter" means any person who transports waste tires collected from retail tire dealers or other sources in this state. Waste tire transporters must be in compliance with W. Va. Code 24-2-1b(a) to lawfully transport tires. Provided that, persons transporting waste tires generated by their own business activities, citizens transporting their own waste tires, or persons who are transporting waste tires generated from state authorized waste tire remediation or cleanup projects are not, in this instance, waste tire transporters.

Response:

The Division of Highways' rules 157CSR8, by authority of W. Va. Code, are preeminent to those of the DEP concerning waste tire remediation. Also, the DOH rules were filed weeks before DEP's rule changes were filed. Furthermore, the term "Waste Tire Hauler" is common terminology used by the Public Service Commission. Finally, the wording in BEP's definition of "Waste Tire Transporter" is materially the same as DOH's "Waste Tire Hauler;" therefore, the proposed rule was not changed.

5. Page 5, subsection 2.47. The definition of "Waste Tire" contains a typographical error. The word "no" on line 4 should be "nor." Also, on line 6, the phrase "of this code" was inadvertently included and should be deleted.

Response:

The proposed rule was changed as suggested.

Division of Highways, Series 8
Waste Tire Remediation/Environmental Clean Up
SUMMARY OF COMMENTS AND RESPONSES
Page Seven

6. Page 8, subsection 4.2. The word "licensed" should be replaced by "Permitted by the DEP," since the DEP only issues permits, not licenses.

Response:

The proposed rule was changed to read: "properly permitted."

7. Page 23, subdivision 17.1.c. The DOH may wish to insert the phrase "from tire pile remediation projects" after the word "tires" in line 1 of the subdivision.

Response:

Considering the context of this rule being Waste Tire Remediation, the suggested wording is not considered material. However, the reference to 17CSR3.1 as "Legislative Rules" is incorrect. The proposed rule will be changed to read: "as per DEP's Regulations."

Other Editorial Revisions

W. Va. Division of Highways

The following editorial revisions were included in this document.

1. Paragraph 3.3.a.4. - added: "or public road"
2. Subsection 4.12. - added: "DOH and DEP or these rules"
3. Paragraph 5.1.a.3. - added: "Regional" and "Authority"
4. Subdivision 6.9.a. - deleted: "up"
5. Subdivision 16.1.c. - added: "chipped"
6. Subdivision 17.1.c. - added: "from tire pile remediation projects"

CENTRAL OHIO CONTRACTORS, INC.

2879 Jackson Pike
Grove City, Ohio 43123-9737
FAX (614) 539-2590

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JUL 31 2000

Rolloff Service
Semi-Dump Trucks
(614) 274-5592

HIGHWAY OPERATIONS
DIVISION

Landfill
Fill Material
(614) 274-5595

July 28, 2000

Mr. Russ Rader
Waste Tire Program Manager
WV Division of Highways
1900 Kanawha Boulevard East
Room A-350, Bldg. 5.
Charleston, WV 25305-0430

Subject: Comments

Re: WVDOT, DOH Proposed Rules on Waste Tire Remediation/Environmental Clean Up

Dear Mr. Rader:

Central Ohio Contractors, Inc. (COC) is pleased to comment to the WV Department of Transportation, Division of Highways on their Waste Tire Remediation/Environmental Clean Up rules dated June 27, 2000. COC has operated a scrap tire collection and recycling business since 1988. COC is one of the pioneers in the tire recycling business, and has achieved unparalleled success in the beneficial reuse of large quantities of Tire Derived materials. During 1998 and 1999, COC successfully sold or placed over 6,800,000 Passenger Tire Equivalents of Tire Derived Fuel and Chip as drainage media or fuel in civil engineering and energy projects within Ohio and West Virginia.

We have three general comments that apply to the entire Waste Tire Remediation/Environmental Clean Up project, and want to be sure our concerns are registered with the State of West Virginia as it pursues this important statewide program.

- There needs to be a clear, concise and unambiguous definition of Tire Derived Fuel (TDF), and a recognition that this material is entitled to the same regulatory consideration as coal. Furthermore, the consumption of TDF must be included in the definition of "Beneficial Use", currently found in KAR 157-8-2.3. It makes little difference to COC whether a new definition of TDF is added, or KAR 157-8-2.3 is modified, as long as TDF is mentioned and it is crystal clear to all persons that read this rule that West Virginia acknowledges that the production and eventual consumption of Tire Derived Fuel is a bona fide beneficial use of scrap tires.
- There needs to be a section in the rules that delineates the general qualifications and experience of scrap tire remediation site contractors. The proposed rules only address the hauling of scrap tires, and do not contemplate the on-site processing of scrap tires and delivery of tire derived material to a designated beneficial use or disposal site. It is very important that the State of West Virginia clearly identify that each and every contractor that proposes to manage the remediation of a scrap tire accumulation meet the following criteria, prior to bidding on any project:
 - Adequate Financial Bonding and Insurance to assure the State is protected from non-performance.
 - Sufficient previous experience remediating scrap tire piles such that familiarity with the unique characteristics of cutting and shredding tires and beneficially using tire derived products is well established.
 - Appropriate licenses, permits and/or authorizations to perform the services offered.
 - Substantial ownership of the tire shredders, trucks, grapples, hoes, cranes and other heavy construction equipment required to remediate scrap tire piles. This is essential to avoid contracting with firms that subcontract all of the critical path tasks to others, increasing risk of non-performance.

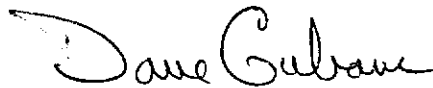
- There also needs to be a section in the rules that spells out the specific scope of work that will be contained in each Request for Proposal (RFP) that will be issued for the remediation of the scrap tire piles, and what specific information will be required from responding contractors. For example, the statute allows the Division to contract with the West Virginia Division of Corrections for some of the labor associated with the site remediation projects. The labor rates of such personnel and other costs associated with utilizing such resources should be clearly identified and available to all scrap tire pile remediation contractors asked to submit proposals on a specific tire remediation project. This will substantially reduce proposal preparation costs, and assure that every contractor has the same cost and availability data on subcontractor resources that are of interest to the State of West Virginia. Another key item that must be included in each RFP is a detailed inventory and drawing of the accumulation of the scrap tires to be remediated. Elevation contours must be included in the drawings. This is absolutely critical due to the difficult terrain encountered in many counties in West Virginia, which has a direct bearing on costs and specific equipment that must be available.

In addition to providing a scope of work for any responding contractor, the rules should also include a list of the criteria the State of West Virginia will use to select the preferred contractor, and the weight the state will apply to each criteria. This information will greatly assist any contractor prepare an efficient and well focused proposal, and ensure the key objectives of the project are satisfied.

Please realize that these comments are NOT all inclusive of every concern about the proposed rules. In some respects the rule is just a direct transcription of the statute, and therefore any comment would be of little consequence, since changing the statute is highly unlikely. The key comments herein provided are intended to substantially improve the package as it now stands, and allow the State of West Virginia to proceed with its scrap tire pile remediation program without making the kind of mistakes and missteps made by other states.

COC appreciates the opportunity to provide these comments, and looks forward to working with the State of West Virginia as it pursues this important project.

Sincerely,



David M. Gubanc, P.E.
Engineering Consultant to
Central Ohio Contractors, Inc

Cc: Brian Hatfield
Joseph H. Loewendick

Mr. Russ Rader
WV Division of Highways
1900 Kanawa Blvd. East
Room A-350
Charleston, WV 25305-0430

July 31, 2000

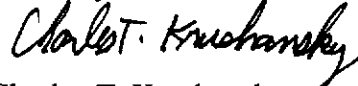
Dear Mr. Rader,

Thank you for providing a copy of the Emergency Rules regarding the Waste Tire Remediation/Environmental Cleanup scheduled to go into effect next month. This letter concerns 157-8-16.2g of the rule, which deals with the storage of waste tires on an asphalt pad.

PKC Landfill recently modified its solid waste facility permit to include a processing facility. A 200'x100' asphalt pad has already been installed to accommodate tire processing equipment and the temporary storage of waste tires and processed tires.

Although tires will not be stored on the pad for extended periods of time, they will be stacked while being processed. Please modify this section of the rule to accommodate our existing facility.

Sincerely,


Charles T. Krushansky

West Virginia Association of Waste Haulers & Recyclers
P.O. Box 3706 Charleston, WV 25337 Phone 342-4388

Mr. Russ Rader
WV Division o Highways
1900 Kanawha Blvd East
Room A-350
Charleston, WV 25305-0430

July 31, 2000

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JUL 31 2000
HIGHWAY OPERATIONS
DIVISION

Dear Russ,

In response to rules for Waste tire remediation and cleanup the WV Association of Waste Haulers and Recyclers strongly supports sections 14.1 through 14.7. Part of our problem with waste tires is that uncertificated fly by night outfits have been doing illegal hauling and disposal. We would like to make one small change to 14.3. It should read ...and obtained a certificate of convenience and necessity, or be a licensed contract carrier, from the West Virginia Public Service Commission to the extent required by WV Code 24A.

We were strongly supportive of this legislation and hope that it will become a successful remediation program. Thanks again.


Greg Sayre
Executive Director

West Virginia Tire Dealers Association

P. O. Box 1335 • Charleston, West Virginia 25325 • (304) 342-4441

July 28, 2000

RECEIVED
JUL 28 2000

Russ Rader
WV Division of Highways
1900 Kanawha Blvd. East
Charleston, West Virginia 25305-0430

HIGHWAY OPERATIONS
DIVISION

Re: Proposed Legislative Rule, Series 8,
Concerning Waste Tire Remediation/
Environmental Clean Up

Dear Mr. Rader:

The West Virginia Tire Dealers Association is an association composed primarily of retailers and wholesalers of tires of all types. Members of this association have, for many years, studied all components of the problem of waste tire disposal. Over the last eight years, we have been involved in numerous proposals to resolve the problem to include the program just passed by the legislature.

While the proposed rule does not directly involve our members, it does indirectly. It also falls into some of the areas in which our committees have studied and worked over the past few years. Thus, we feel encumbered to share our thoughts with the Department to make the rule better. We are aware that many of our concerns might fall under the purview of another agency, but verbiage in these rules may require the other agencies to visit it's rules on the subject.

GENERAL OBSERVATIONS

1. In many areas of the rule, the words "recapper, recapping and recapped" are used. The preferred words would be "retreader, retreading and retreaded" and are the prevailing industry terms.
2. Generators of waste tires should be required to use waste haulers from a list that the PSC would publish regularly. (Dealers find it very difficult to locate and qualify a hauler - there is no published list. It is difficult to confirm that a hauler is truly permitted)
3. Firms that are permitted to haul waste tires should be in the business of hauling waste tires and should be required to haul waste tires. (Many trash haulers are also permitted to haul waste tires but refuse or charge a rate that discourages their use)

4. The State should recognize that many times a landowner is unaware that their property has been dump on. They should not be penalized. The Department should encourage the landowner to report such happenings rather than encourage them to "cover up" the problem. The rule seems to make the assumption the landowner is responsible in all cases. In the case where a landowner is deemed not the cause of the problem, the state program should remove the waste tires.

COMMENTS BY SECTION of §157-8

- 2.7 Contract --While this would be an extremely hot issue, the contracting contractor should not be required to follow the States prevailing wage law. The work is very labor intensive, thus in this case, the cost would be doubled over the Departments use of their force account or prison labor.
- 2.41 The "Tire" definition should exclude extremely large tires of the type used in coal mining operations, etc. These tires are usually buried on site and has been so allowed by the DEP in the past. Or, verbiage needs to be in place for exceptions.
- 2.49 We are concerned that the rule is not clear on the procedures for a seller of tires, while not considered a "waste tire hauler", who delivers waste tires to a disposal site. It should be clear that it is permitted. This may be covered in 18.3
- 2.50 The definition of Waste Tire Pile should provide for an exception, exclusion or permit so that dealers, etc. can accumulate more than 100 waste tires. Trailers are often placed on site that accommodate 1,000 or more tires and haulers like a larger number for economical pickup. Some dealers will accumulate more than 100 waste tires in a day.
- 4.7 Proper Transportation -- Some method needs to be place so that a dealer can make this determination on out of state shipments.
- 5.1e The verbiage needs to be clearer that a person or company CAN participate in the clean up so long that they do not receive state funding for their efforts.
- 17.1.aThe verbiage in this subsection on recycling of tires in a nonpolluting manner, may preclude (or open to door for objection and court cases by certain groups) one of the best uses of waste tires, that being tire derived fuel (TDF) and possibly some engineering uses.
- 18.2 The whole section on fees for tires needs to be revisited. As written, the rule will encourage buyers of new tires to keep their waste tires to avoid paying a disposal fee to the dealer. This shifts the burden of the cost of disposal from the tire owner to the state, plus provides the tire owner a sort of discount on their tire purchase. When all costs to the dealer is included, the dealer saves money by allowing the buyer keep the tire. The \$1.50 or \$2.00 does not cover the full cost to the dealer.

Additionally, the holder of such tires may find that it is not worth their while to take them to a collect site and will simply toss them over the hill for the state to pickup.

18.2.b Businesses should not participate in receiving a fee for turning in waste tires.

Many of our concerns may be covered in some section that we did not recognized as such. If you have any questions of what we meant by our commits, please call and we will explain.

Sincerely yours,

A handwritten signature in cursive script that reads "Floyd M. Sayre, Jr.".

Floyd m. Sayre, Jr. CAE, CMP
Executive Director



Office of Waste Management
1356 Hansford Street
Charleston, WV 25301-1401
Telephone Number 304-558-6350
Fax Number 304-558-1574

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JUL 31 2000

HIGHWAY OPERATIONS
DIVISION

West Virginia Division of Environmental Protection

Cecil H. Underwood
Governor

Michael C. Castle
Director

July 31, 2000

Mr. Russ Rader
WV Division of Highways
1900 Kanawha Boulevard East
Room A-350
Charleston, WV 25305-05301

RECEIVED

ENGINEERING DIVISION
WV DOH

Dear Mr. Rader:

My staff of the Solid Waste Management and Environmental Restoration Section has reviewed the WV Department of Transportation, Division of Highways Waste Tire Remediation/Environmental Clean Up Emergency Rule, Title 157, Series 8. We respectfully offer the following comments for your consideration.

1. Page 3, subsection 2.21. To the end of the definition of "Hazardous Waste" the DOH may wish to add "as amended."
2. For the purposes of consistency with SB427 and DEP proposed rule 33CSR5, the DOH may wish to adopt the new definitions as follows:
 - a. "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.~~
 - b. "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.
3. Page 8, subsection 4.4. The DOH may wish to consider changing the word "depositing" to "transferring" since transferring is the function described in this subsection.

"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."



West Virginia
Division of
Environmental Protection

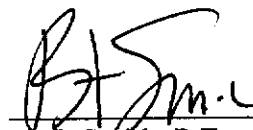
4. Page 6, subsection 2.49. The DOH apparently adopted the former 33CSR5, Solid Waste Management Rule definition of "Waste Tire Hauler." This subsection was eliminated in our rule, as filed with the Secretary of State July 14, 2000, and replaced with "Waste Tire Transporter, again to be consistent with terminology in SB427." The DOH may wish to adopt the new definition which reads as follows:

"Waste Tire Transporter" means any person who transports waste tires collected from retail tire dealers or other sources in this state. Waste tire transporters must be in compliance with W. Va. Code 24-2-1b(a) to lawfully transport tires. Provided, That persons transporting waste tires generated by their own business activities, citizens transporting their own waste tires, or persons who are transporting waste tires generated from state authorized waste tire remediation or cleanup projects are not, in this instance, waste tire transporters.

5. Page 6, subsection 2.47. The definition of "Waste tire" contains a typographical error. The word "no" on line 4 should be "nor." Also, on line 6, the phrase "of this code" was inadvertently included and should be deleted.
6. Page 8, subsection 4.2. The word "licensed" should be replaced by "Permitted by the DEP, since the DEP only issues permits, not licenses.
7. Page 23, subdivision 17.1.c. The DOH may wish to insert the phrase "from tire pile remediation projects" after the word "tires" in line 1 of the subdivision.

In closing, if you have any questions, please feel free to contact Dick Cooke at 558-6350.

Sincerely yours,



B. F. Smith, P.E.
Chief

LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

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TITLE 157
LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 than 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, as amended.

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 tire 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 than 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 encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use, as defined in ~~section two, article twenty-four, chapter seventeen of this code~~ W. Va. Code §17-24-2, 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. This definition excludes and will not conflict with definitions of waste tire piles defined elsewhere in W. Va. Code or Legislative Rules for other purposes such as, regulating the number of waste tires that sellers of tires may retain.

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, pyroprocessing 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 Quadrangle 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) or public road, 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~~ Properly permitted 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 DOH and DEP applicable rules or these 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 Regional Jail and Corrections Authority 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 Determination 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.

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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 Responsibilities.

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, chipped 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 than 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, from tire pile remediation projects, may be disposed of in approved solid waste landfills and/or approved monofills as per DEP's ~~Legislative Rules 17CSR3.1~~ regulations. 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;

22.1.1 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.