

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**
Form #8

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Division Environmental Prot-Office Waste Management TITLE NUMBER: 33

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 14, 2000

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT: September 15, 2000

SERIES NUMBER OF RULE: 5

TITLE OF RULE: "Waste Tire Management Rule"

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

Use additional sheets if necessary


Authorized Signature



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

September 13, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 33CSR5 - "Waste Tire Management Rule"

Dear Ms. Cooper:

I am requesting the above-referenced Legislative Rule be filed as "Notice of an Emergency Amendment to an Emergency Rule" with your office and the Legislative Rule-Making Review Committee.

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Larry Atha
Carrie Chambers

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**
Form #7

Do Not Mark In This Box
Filing Date

JUL 14 4 06 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Division Environmental Prot-Office Waste Management TITLE NUMBER: 33

CITE AUTHORITY: 22-1-3, 22-1-3a, 20-11-8(d), and 22-15-21(k)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: "Waste Tire Management Rule"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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:

SEE ATTACHED


Authorized Signature

Use additional sheets if necessary



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

July 14, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 33CSR5 - "Waste Tire Management Emergency Rule"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule as "Notice of An Emergency Rule" with your Office and the Legislative Rule-Making Review Committee. This filing will comply with the mandates of SB 427, §22-15-21(k).

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Larry Atha
Carrie Chambers



EMERGENCY RULE QUESTIONNAIRE

DATE: July 14, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division Environmental Protection, Office Waste Management
1356 Hansford Street, Charleston, WV 25301- Phone 558-6350

ATTN: DICK COOKE

EMERGENCY RULE TITLE: "Waste Tire Management Rule"

1. Date of filing July 14, 2000

2. Statutory authority for promulgating emergency rule:

SB 427 - 22-15-21(k)

3. Date of filing of proposed legislative rule: July 14, 2000

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

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.

Mandated by SB 427, §22-15-21(k), which allows the disposal of waste tires in solid waste landfills, but only when agency has determined there is no reasonable alternative available. Emergency rule also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities relative to waste tire disposal.

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

22-15-21(k) and 20-11-8(d)

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

Emergency Rule will allow for proper disposal of waste tires.

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
PROPOSED EMERGENCY RULE**

BRIEFING DOCUMENT

RULE TITLE: "33CSR5 - WASTE TIRE MANAGEMENT RULE"

A. AUTHORITY: 22-1-3, 22-1-3a, 22-15-21(k)

B. SUMMARY OF RULE:

The enclosed Emergency Rule will revise the West Virginia Division of Environmental Protection Office of Waste Management Waste Tire Rule, Title 33, Series 5. Amendments to this Rule were mandated by Senate Bill No. 427 were passed by the West Virginia Legislature March 11, 2000. The proposed Emergency Rule, among other items, will allow both the West Virginia Division of Environmental Protection and the West Virginia Division of Highways to dispose of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed rule also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE: This proposed Emergency Rule is necessary to update the Waste Tire Management Rule, Title 33, Series 5, to comply with the mandates set forth in Senate Bill No. 427, previously passed into law during the 2000 regular session of the West Virginia legislature. Senate Bill No. 427 requires that the West Virginia Division of Environmental Protection promulgate this Emergency Rule pursuant to directives found at West Virginia Code, Chapter 22, Article 15, section 21(k), and Chapter 20, Article 11, section 8(d), as amended.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There are no federal counterpart regulations

E. CONSTITUTIONAL TAKINGS DETERMINATION:

N/A

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

These proposed rule amendments were discussed during the meeting of the Environmental Protection Council in their meeting of July 6, 2000. Those minutes are attached.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes.
The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public

hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPS. The model rule incorporates standards to

allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that 45CSR15 adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to 45CSR16, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits,

which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those

circumstances. However, that should not be that much of a burden since the emissions from a majority (90%) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

- 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

- 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any

taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- 35CSR4 - "Oil and Gas Wells and Other Wells"
- 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- 33CSR3 - "Yard Waste Management Rule"
- 33CSR5 - "Waste Tire Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"
- 33CSR32 - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on 33CSR3. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under 33CSR5. The proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed 33CSR20. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, 33CSR30, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST

systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- 38CSR2 - "WV Surface Mining Reclamation Rule"
- 38CSR3 - "Rules for Quarrying and Reclamation"

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to 38CSR2, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the

point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000 feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required

to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 33CSR5 - Waste Tire Management Rule

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Environmental Protection

Address: Office of Waste Management, 1356 Hansford Street, Charleston, WV 25301

AHN: Dick Cooke

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$362,932			340,932	340,932
PERSONAL SERVICES	\$266,732			266,732	266,732
CURRENT EXPENSE	71,800			71,800	71,800
REPAIRS & ALTERATIONS	2,400			2,400	2,400
EQUIPMENT	22,000			-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of Above Estimates:

Two positions in permitting and four positions in enforcement will be needed to administer and enforce the proposed rule. Six computers, five vehicles, rent, etc, will also be needed to support personal services.

3. Objectives of These Rules:

To require licensed salvage yards who have or will retain more than 100 waste tires not attached to vehicles to obtain solid waste permits or enter into a plan in conjunction with DEP to remove and lawfully dispose of waste tires per SB247.

Rule Title: 33CSR5 - "Waste Tire Management Rule"

4. Explanation of Overall Economic Impact of Proposed Rule:

- A. **Economic Impact on State Government:**
The Division of Environmental Protection and the Division of Highways will be required to pay solid waste disposal assessment fees for waste tires disposed in landfills, generated from agency-sponsored tire pile remediation projects or open dump cleanup programs.
- B. **Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:** The salvage yard industry may incur added costs to properly managed waste tires not attached to vehicles. The tire industry, waste tire transporters, groups of citizens such as watershed associations, may realize a beneficial economic impact by having more management alternatives.
- C. **Economic Impact on Citizens/Public at Large.**
The citizens and public-at-large may realize a beneficial economic impact whereby this rule, in concert with SB 427, expands upon waste tire management alternatives.

Date: July 14, 2006

Signature of Agency Head or Authorized Representative:

Carri J. Chambers

FILED

SEP 15 3 39 PM '00

TITLE 33
EMERGENCY RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT

OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

SERIES 5
WASTE TIRE MANAGEMENT RULE

§33-5-1. General.

1.1. Purpose Scope and Applicability.

1.1.a. Purpose. This rule is intended to meet the requirements of W. Va. Code §20-11-8(c) and §22-15-21, as amended, That section directed the Division of Environmental Protection to promulgate rules in accordance with the solid waste management board plan established under W. Va. §20-11-8(b) to properly handle and manage waste tires and used tires, including collection, accumulation, storage, disposal, processing, monofilling, reusing, transporting, recycling, permitting and recordkeeping.

1.1.b. Scope. -- This legislative rule establishes requirements for the proper handling and management of waste tires and used tires including permitting and reporting procedures pertaining to any facility or activity that generates, processes, or otherwise reuses or recycles tires by whatever means.

1.1.c. 1.1.b. Applicability. This rule applies to and establishes requirements for any person or persons who manage, collect, store, transport, recycle, process, dispose or otherwise handles waste tires and used tires after June 1, 1996 by whatever means in the State of West Virginia, as of the effective date of this rule, except as provided in subsection 3.1 of this rule.

1.1.c. Reference to Other Agency Requirements. -- Persons who manage waste tires may also be regulated under W. Va. Code, §§17-23 or 24, 20-11, 24-2, and rules promulgated thereunder.

1.2. Authority. W. Va. Code §22-1-3, §22-1-3a, and ~~20-11-8(c)~~, §20-11-8(d), and §22-15-21(k), as amended.

1.3. Filing Date. -- April 17, 1996.

1.4. Effective Date. -- June 2, 1996.

1.5. Legislative Mandate. Effective June 1, 1996, it will be is unlawful to deposit dispose of tires in a solid waste facility landfill in West Virginia. Provided, however, That reasonable and necessary exceptions to such prohibition may be, and are, included in this rule (W. Va. Code §20-11-8(a))., except for waste tires collected as part of the division of highways waste tire remediation projects or other collection efforts in accordance with W. Va. Code §17-24 or the division of environmental protection's pollution prevention and open dump program or other state authorized remediation or cleanup programs. Provided, That waste tires may be disposed of in solid waste landfills only when the state agency authorizing the remediaton or cleanup program has determined there is no reasonable alternative available.

1.6. Incorporation by Reference. -- Whenever state statutes or rules are incorporated into this rule by reference, the reference is to the statute or rule in effect on the effective date of this rule.

1.6. Penalties. Any person who violates the provisions of the "Solid Waste Management Act"; W. Va. Code §22-15, or any permit, rule, or order issued pursuant to W. Va. Code §22-15, is subject to the same criminal and or civil

penalties as set forth in W. Va. Code §22-11-24 and §22-15-15.

§33-5-2. Definitions.

~~The following definitions specifically apply to this rule and are listed accordingly. All other definitions unique to W. Va. Code §22-15-2 and 33CSR1 are fully incorporated into this rule by reference;~~

Unless the context clearly requires a different meaning, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this rule.

2.1. "Access Road" means all roads providing access to a solid waste facility from a road that is under federal, state, or local authority, or internal roads providing access from one portion of the facility to another.

2.2. "Automobile Dealer" means any business engaged in the sale of new automobiles, trucks or motorized recreational vehicles in the State of West Virginia.

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 subbase, building highway crash attenuation barriers, and other civil engineering applications, feed hopper or watering troughs for livestock, or 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, recapping, alternative daily cover, 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.

~~2.3:~~ 2.4. "Bond" means any performance bond or other form of financial assurance provided by W. Va. Code ~~§22-15-11~~ §22-15-12 and the solid waste management rule (33CSR1).

~~2.4:~~ 2.5. "Chief" means the chief of the office of waste management of the West Virginia division of environmental protection or his or her authorized representative.

~~2.5:~~ 2.6. "Department of Transportation Symbol" means the identification number placed on new tires mandated by the Federal Motor Vehicle Safety Standards for motor vehicles and motor vehicle equipment pursuant to Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

~~2.6:~~ 2.7. "D.O.T. Regulated Tire" means any tire that was originally used for those purposes defined under "tire" or "used tire" or meets the definition of "waste tire" that is identified with a Department of Transportation symbol.

2.8. "Remediate or Remediation" means to remove all tires located above grade at a site and may also include 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 hazardous waste.

~~2.11:~~ 2.9. "Retail Tire Dealer" means any person or persons engaged in the business of selling tires retail sale of tires to an end user in the state of West Virginia.

~~2.7:~~ 2.10. "Sale and/or Selling" includes exchange, consignment, barter, gift, and offer for sale. Sale and/or selling includes the removal of tires from a stock of merchandise by a wholesale distributor, or a retail tire dealer, for its own use.

2.11. "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.

2.12. "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 shall accept, store or process more than one hundred waste tires unless it has all of the 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.

~~2-8:~~ 2.13. "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.

~~2-9:~~ 2.14. "Storage Cell" means a dedicated monofill area for long term storage for waste tires or tire derived material located within an approved solid waste disposal facility for the purpose of long term storage for the eventual retrieval for marketing purposes.

~~2-10:~~ 2.15. "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-duty 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).

~~2-11:~~ "Tire Dealer" means any person or persons engaged in the business of selling tires to an end user in the State of West Virginia.

~~2-12:~~ 2.16. "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.

~~2-13:~~ "Used Tire" means any tire that was originally used for the purposes defined under "tires," but has sufficient tread life or can be recapped for marketability to be safely reused for those same purposes.

~~2-14:~~ 2.17 "Vector" means any insect, rodent, or other organism capable of directly or indirectly transmitting infectious diseases or pathogenic organisms from one person to another or from an animal to a person.

~~2-16:~~ "Waste Tire" means any tire that was originally used for those purposes defined under "tire", or "used tire" and which has been discarded or is not suitable for its original intended purpose: Provided, That 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 reused or recapped are not considered to be a waste tire.

2.18. "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 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 retail tire dealer for the purpose of being reused or recapped are not waste tires.

~~2.15; 2.19~~ "Waste Tire Chips" means tires or tire derived materials that have been reduced to particle sizes not greater than 2 inches by 2 inches.

~~2.17.~~ "Waste Tire Hauler" means any person or persons who collects waste tires from a tire dealer or other sources and transports waste tires in this state, but shall 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 certificated motor carrier regulated by the West Virginia public service commission to lawfully transport waste tires.~~

~~2.18.~~ "Waste Tire Monofill" means an approved solid waste facility where waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes; provided, That they are not mixed with any other solid waste.

2.20. "Waste Tire Monofill" or "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.

~~2.19.~~ "Waste Tire Processing Facility or Activity" means a solid waste facility or activity who accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cutting, splitting, shredding, quartering, grinding, etc. or otherwise breaking down waste tires for the purpose of disposal, reuse, recycling and/or marketing.

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

2.22. "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 or marketing.

2.23. "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.

~~2.20.~~ "Wholesale Distributor" means a person or persons who distribute tires to tire dealers in this state or to its own retail establishments in this state.

~~§33-5-3. Waste Tire Management and Permitting Requirements.~~

~~3.1. Applicability.~~

~~3.1.a. Regulated Facilities and Activities:~~

3.1.a. A permit from the division of environmental protection is required for This rule applies to any person or persons who generate, accumulate, collect, transport, store, process, reuse, dispose, or otherwise manage waste tires in the State of West Virginia and used tires on and after June 1, 1996 the effective date of this rule.

3.1.b. Exceptions to permitting requirements. Persons who use no more than

one hundred waste tires for beneficial use, as defined in this rule, may, in the discretion of the director, accumulate waste tires for this specific purpose without a permit. The commissioner of the division of highways may temporarily accumulate, without a permit, as many waste tires as he or she deems necessary at any location or locations necessary to effectuate waste tire pile remediation. A recycling facility is exempt from permitting whose only function is to accept at no charge, buy or transfer source separated material, including waste tires for reuse, resale or transfer for further processing.

3.1.c. Use of Waste Tires as Alternative Fuel. Waste tires or tire derived material that is used as an alternative or supplemental fuel shall not require a solid waste facility permit or be regulated under this rule: Provided, That the facility utilizing such material is permitted and regulated by the office of air quality within the division of environmental protection or other appropriate state regulatory agency.

3.1.c.1. Use of Waste Tires as a Raw Material Feedstock. A facility or pilot project which utilizes waste tires as raw material feedstock in a process such as pyrolysis, cryogenics, (chemical/thermal) or high pressure waterjetting to break down waste tires into their respective constituents of crumb rubber, polyester or nylon fiber, steel belts and other constituents not herein specified to develop new and/or recyclable materials shall not require a solid waste facility permit or be regulated under this rule: Provided, That the facility is permitted and regulated including the handling, storage, and stockpiling of waste tires consistent with this rule by the Office of Air Quality, Office of Water Resources or other appropriate state regulatory agency. Additionally, the director may allow, without a solid waste facility permit, pilot or test projects using the latest best available technology.

3.1.c.2. Beneficial Use of Waste Tires. Whole waste tires or tire derived materials

may be reused in the applications described under the definition of "beneficial use" in section 2 of this rule, or in other acceptable civil engineering applications. At the discretion of the director, the division may require a permit for the accumulation of more than 100 waste tires for beneficial use. Additionally, the director has the authority to determine if an unreasonable number of waste tires have been accumulated for an unreasonable length of time for beneficial use. In such determination, the director may take enforcement action for creating an open dump and require the removal and proper disposal of the waste tires.

3.1.b. Penalties. Any person who willfully or negligently violates the provisions of the "Solid Waste Management Act", Chapter 22, Article 15, or any permit, or order issued pursuant to Article 15, or rule pursuant to this rule is subject to the same criminal penalties as set forth in W. Va. §22-11-24.

3.1.d. Commercial Solid Waste Facilities Required to Accept Waste Tires.

3.1.d.1. Commercial solid waste facilities shall accept whole waste tires from any person and may charge a reasonable fee for acceptance of waste tires. Provided however, whole waste tires accepted may not be disposed of in a landfill except as allowed in paragraph 3.1.e.1 of this section and W. Va. Code §22-15-21(j).

3.1.d.2. Except as required in paragraph 3.1.e.2 of this section, whole waste tires accepted by commercial solid waste facilities are exempt from the calculation of monthly tonnage limits and from any solid waste disposal assessment fees.

3.1.c.3.1.e. Reasonable and Necessary Exceptions to Prohibiting Fire Material Waste Tires from Disposal in Landfills. Reasonable and necessary exceptions to the prohibition of depositing waste tires in a solid

waste facility, which will occur on June 1, 1996 are provided and allowed by W. Va. §20-11-8(a). These exceptions include:

3.1.e.1 Commercial solid waste landfill facilities may only dispose of whole waste tires generated from the division of highways waste tire remediation projects and the division of environmental protection open dump program when the division of highways or the division of environmental protection has determined that there is no other reasonable alternative available.

3.1.e.2. Whole waste tires accepted from the two division's projects and program which are permanently disposed of in a landfill are not exempt from the calculation of monthly tonnage limits or any solid waste disposal assessment fees.

3.1.e.3. The division of highways and the division of environmental protection may negotiate with a solid waste landfill facility for rates and charges for the disposal of waste tires regardless of the rates and charges established by the public service commission.

~~3.1.c.1.~~ 3.1.e.4. Waste Tire Monofills. Waste tires may be disposed in waste tire monofills to offer the advantage of provide a long term storage site for waste tires or tire derived material, while minimizing the risk of vector attraction, fire and leachate generation until such time that markets are further developed for reuse and recycling.

~~3.1.c.2.~~ 3.1.e.5. Alternative Daily Cover. Tire derived material Beneficial use of shredded waste tires is acceptable and may be substituted for as alternative daily cover material at solid waste facilities not to exceed an application frequency of two consecutive days: landfills, if approved in writing by the division: Provided, however, that the substitution Beneficial use of shredded waste tires as for alternative daily cover material shall be is exempt

from the calculation of monthly tonnage limits and solid waste disposal assessment fees imposed on landfills, Provided, That the amount (tons) of shredded waste tires used beneficially as alternative daily cover must be included in each monthly tonnage report.

~~3.1.c.3.~~ 3.1.e.6. Beneficial Reuse as Select Waste in Commercial Solid Waste Landfill Facilities. Tire derived material may be beneficially reused as a substitute material for the first eight (8) feet of select solid waste by being placed on the protective cover of the composite liner system and shall be exempt from the state calculation of monthly tonnage limits and solid waste disposal assessment fees.. imposed on landfills when beneficially reused for this purpose: Provided, however, that the permittee is required to keep daily logs and include in the monthly tonnage report the amount (tonnage) of tire derived material beneficially reused for this purpose.

~~3.1.d. Prohibitions. -- Temporary containment or long term storage of waste tires is prohibited and is deemed unlawful disposal and shall constitute an open dump, unless such temporary containment or long term storage is conducted in strict accordance with the provisions of this rule.~~

3.2. Types of Permits Required.

3.2.a. Waste Tire Monofill and Waste Tire Processing Facility. A permit must be obtained from the director prior to the installation, establishment, construction or operation of a waste tire monofill or a waste tire processing facility. Provided, That a portable tire grinder or tire shredding machine shall not constitute a waste tire processing facility, unless determined otherwise by the director.

3.2.a.1. Minor Modifications. Waste Tire Processing Activity. A permittee of an existing approved commercial solid waste facility may shall apply to the director for a

minor permit modification to conduct waste tire processing activities. The permittee may also apply for a minor permit modification to install and operate a designated monofill storage cell for the placement of waste tires and/or tire derived material at the facility: Provided, That such activities fully comply with this rule. Provided further, That the designated monofill storage cell is located at least two hundred (200) feet from any other solid waste disposal cells.

~~3.2.a.2. Waste Tire Monofill Storage Cell.~~ A permittee of an approved solid waste facility may apply to the director for a minor permit modification to install and operate a designated storage cell for the placement of waste tires and/or tire derived material at the facility. ~~Provided, That the designated storage cell is located at least two hundred (200) feet from all solid waste disposal cells and fully comply with this rule.~~

3.2.a.2. Salvage Yard. In addition to a license issued by the division of highways, a salvage yard which on and after the effective date of this rule has on its premises, at any given time, more than 100 waste tires not mounted on wheels on vehicles or machines must obtain a commercial solid waste facility permit to store said tires or have entered into an agreement with the division of environmental protection for the proper disposal of the waste tires.

~~3.2.b. Exceptions to Permits Required.~~ Waste tires or tire derived material that is used as an alternative or supplemental fuel shall not require a solid waste facility permit or be regulated under this rule. ~~Provided, That the facility utilizing such material is permitted and regulated by the Office of Air Quality within the Division of Environmental Protection or other state regulatory agency.~~

~~3.2.b.1. Use of Waste Tires as a Raw Material Feedstock.~~ A facility or pilot project which utilizes waste tires as raw material feedstock in a process such as pyrolysis,

~~cryogenics, (chemical/thermal) or high pressure waterjetting to break down waste tires into their respective constituents of crumb rubber, polyester or nylon fiber, steel belts and other constituents not herein specified to develop new and/or recyclable materials shall not require a solid waste facility permit or be regulated under this rule. Provided, That the facility is permitted and regulated including the handling, storage, and stockpiling of waste tires consistent with this rule by the office of air quality, office of water resources or other appropriate state regulatory agency. Additionally, the director may allow pilot or test projects using the latest best available technology in his or her determination that a permit is not required.~~

~~3.2.b.2. Beneficial Applications for Waste Tires.~~ Whole waste tires or tire derived materials which are reused in the application of constructing retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers, feedhoppers or watering troughs for livestock, playground equipment, boat or truck dock construction, house or building construction, go-cart/motorbike or race track barriers, or other beneficial applications not herein specified, shall not require a solid waste facility permit or be regulated under this rule. ~~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, is put at risk. the director shall have the authority to determine if an unreasonable number of waste tires are being stored for an unreasonable length of time for beneficial application and may take enforcement action including the removal of said tires.~~

3.3. Permit Application Requirements.

3.3.a. Regulatory Requirements. Unless otherwise approved by the director in writing, all applicants for a waste tire monofill/storage monofill, storage cell, salvage yard or waste tire processing facility or permit/activity shall comply

with the permit application requirements of §33CSR1 subsection 3.7, as applicable, and the following additional requirements:

3.3.b. Projected Maximum Quantity/Tonnage Information. The proposed annual quantity/tonnage of waste tires and tire derived material to be received, processed and stored at the processing facility/activity shall be stated in the application. The maximum quantity/tonnage received, processed and stored at any given time, may not exceed a projected (quarterly) three month supply. However, if the applicant can verify a market or an end use for the tire derived material by copies of signed contractual agreements, the applicant may be eligible, if approved by the director in writing, to receive, process and store at any given time, up to a six month supply: Provided, That no more waste tires and tire derived material shall be received at the facility until the previous maximum quantity/tonnage allowed by the director to be received, processed and stored has been removed from the facility for marketing.

3.3.c. Market Analysis Information. A market analysis relating to waste tires and tire derived material shall be provided by the applicant including:

3.3.c.1. Identification of Potential and Verified Markets. A listing of specific information utilized by the applicant to identify potential and verified markets for the material to be received and processed at the facility shall be provided. Data supplied must also include any material quality requirements of the potential market contacts, market pricing structures, as available and applicable; and the identification of marketing services available for assistance in product quality or material preparation and transportation.

3.3.d. Flow Diagram. The applicant shall provide a flow diagram along with a narrative description of the operation and activities involving the flow of the waste tires

from their receipt, processing into tire derived material, storage and transport to market (end use). There must be sufficient explanation in the flow diagram and narrative descriptions to explain the complete flow of the proposed facility's operation and activities.

3.3.e. Emergency Response Plan. An emergency response plan must be included in the application that includes, at a minimum, the following:

3.3.e.1. Notification Procedures. A notification procedure to summon emergency assistance from the local police departments, fire departments, Division of Environmental Protection and state or local emergency response teams. This procedure must be posted at the facility's office in a conspicuous location and at the main entrance gate visible and legible to the public.

3.3.e.2. Fire Plan. The application shall include a written fire plan with a description of the procedures to be implemented, detailed map depicting location of existing and/or proposed fire hydrants, water supply lines, fire extinguishers or fire ponds if no fire hydrants are to be included in the facility operation or activity and any other proposed fire control equipment. The fire plan must be designed to effectively control a worst case scenario tire fire which could occur at the facility.

3.3.f. Groundwater Protection Plan. All applicants for a waste tire monofill or storage cell, salvage yard, waste tire processing facility or activity shall submit a groundwater protection plan in accordance with 47CSR58 as part of the application.

3.4. Permit Application Fees.

3.4.a. Amount. The application fee is ~~fees~~ are two thousand five hundred dollars (\$2,500) for a waste tire processing facility and three thousand dollars (\$3,000) for a waste tire

monofill or salvage yard. The application fee and one thousand dollars (\$1,000) for a waste tire processing activity or waste tire monofill storage cell at an existing permitted solid waste facility is five hundred dollars (\$500).

3.4.b. Incomplete Application Fee. The Division of Environmental Protection may require an additional fee of ten percent (10%) of the applicable application fee for any application refiled due to deficiency or incompleteness.

3.5. Minimum Design and Construction Requirements for a Waste Tire Processing Facility or Activity.

3.5.a. Perimeter Security. A waste tire processing facility or activity must be secured and enclosed within a minimum six (6) foot high woven wire or chain link perimeter fence with a lockable entrance gate and an emergency exit gate at another location.

3.5.b. Grade. No portion of the surface of the ground on which waste tires or tire derived material is stored may be less than two percent or greater than eight percent in grade.

3.5.c. Access Roads. All access roads including fire lanes/fire breaks and the buffer zone must be designed and constructed for all-weather conditions with proper storm drainage provisions.

3.5.d. Access Flow and Restrictions. The facility shall be designed in a manner that restricts unauthorized access. Signs shall be posted at the main entrance gate that direct persons entering the facility during regular business hours to report to the site office.

3.5.e. Storage Plan for Waste Tire and Tire Derived Material. The storage plan must address the receiving and handling of waste tires and tire derived material at, to and from the facility. The plan must address the following items at a minimum:

3.5.e.1. Storage Requirements. The facility or activity must be designed to receive, process and store a quantity/tonnage of waste tires and tire derived material in accordance with the provisions of subsection/division 3.3.b of this rule. Include in the application, the calculations necessary for determining the quantity/tonnage.

3.5.e.2. Other Solid Waste Materials. All miscellaneous solid waste materials generated as a result of operations must be properly disposed at an approved solid waste facility within one week after being received and/or generated at the facility.

3.5.e.3. Size Restriction on Waste Tire Storage Piles. ~~Piles of whole waste tires or tire derived material must not exceed fifteen (15) feet in height, one hundred (100) feet in length and fifty (50) feet in width at the base:~~

3.5.e.3.A. Waste tire storage piles may not exceed a maximum dimension of 50 feet wide by 50 feet long by 15 feet in height. A minimum of a 50 foot wide zone around each pile shall be maintained free of all debris and vegetation at all times. The facility shall not exceed a maximum of 18 piles of tires or tire derived material.

3.5.e.3.B. In the absence of an available water supply of at least 500 gallons per minute provided by fire hydrants within 1,000 feet of the facility, a minimum of 10,000 gallon water supply on site for the exclusive use of fire fighting personnel shall be established.

3.5.e.4. Location of Storage Piles. Waste tire and tire derived material storage piles at the proposed facility or activity must be shown on a map in sufficient detail including the length, width and height of each storage pile and the location and dimensions of all fire lanes/fire breaks and buffer zones.

3.5.e.5. Spacing of Storage Piles (Fire Lane/Fire Break). Waste tire and tire

derived material storage piles must have a minimum fire lane/fire break spacing of fifty (50) feet between piles at the base and fifty (50) feet from buildings or other structures at the base. Fire lanes/fire breaks must be maintained free of any obstructions at all times so that emergency fire fighting equipment will always have access in the event of an incident.

3.5.e.6. Buffer Zone. A buffer zone of fifty (50) feet wide minimum shall be provided between the perimeter fence and any storage piles. The buffer zone must be kept clear of weeds, trees, vegetation, debris or other materials that may restrict access to all portions of the facility by emergency fire fighting equipment.

3.5.f. Vector Control Plan. A vector control plan shall be submitted that includes the following:

3.5.f.1. Methods of Vector Control. A description of how storage piles and any fire pond impoundment will be maintained to prevent and/or control mosquito breeding and harborage of disease carrying vectors. Methods of acceptable vector control may include, but are not limited to, the following:

3.5.f.1.A. Covering of Storage Pile. Covering by plastic sheets or other impermeable barriers, other than soil, to prevent the accumulation of precipitation in whole tires; and

3.5.f.1.B. Chemical Treatment. Chemical treatment to eliminate harborage or breeding may be utilized. Provided, That any chemical treatment program utilized as part of the vector control plan must be approved by the West Virginia Department of Agriculture.

3.6. Minimum Design and Construction Requirements for a Waste Tire Monofill or Storage Cell.

3.6.a. Unless otherwise approved by the director in writing, the following specific requirements must be followed in designing and constructing a waste tire monofill or storage cell.

3.6.a.1. Liner System. A liner system shall consist of the following elements:

3.6.a.1.A. Subbase;

3.6.a.1.B. Compacted soil liner;

3.6.a.1.C. Leachate collection and protective cover zone; and

3.6.a.1.D. Daily Q.A./Q.C. reports in accordance with §33CSR1 subparagraph 4.5.e.2.I as applicable, shall be prepared and maintained in a bound log book at the site in regard to liner system construction.

3.6.a.2. The subbase portion of the liner system shall consist of a cleared and grubbed natural ground surface capable of supporting the entire liner system.

3.6.a.3. The compacted soil liner shall:

3.6.a.3.A. Be a minimum compacted thickness of one (1) foot;

3.6.a.3.B. Be compacted in six (6) inch lifts;

3.6.a.3.C. Be no more permeable than 1×10^{-6} cm/sec based on laboratory and field testing;

3.6.a.3.D. Be free of particles greater than two (2) inches in any dimension;

3.6.a.3.E. Be placed without damaging the subbase;

3.6.a.3.F. Be placed during a period of time when both the air temperature and

the soil temperature are above freezing so that neither the compacted soil nor the subbase are frozen;

3.6.a.3.G. Have a slope of at least two percent (2%) to facilitate the drainage of any leachate across the liner surface; and

3.6.a.3.H. Be designed, operated, and maintained so that the physical and chemical characteristics of the liner and its ability to restrict the flow of constituents, or leachate is not adversely affected by the leachate.

3.6.a.3.I. The construction of the compacted soil liner shall be certified by a W. Va. registered professional engineer and a Q.A./Q.C. report shall be submitted to the director prior to the placement of the leachate collection and protective cover zone.

3.6.a.4. The leachate collection and protective cover zone shall:

3.6.a.4.A. Create a flow zone between the compacted soil liner and waste tires and/or tire derived material more permeable than 1×10^{-3} cm/sec based on laboratory and field testing. The leachate collection zone including the piping system must be designed and placed on a minimum slope of two percent (2%) to facilitate efficient leachate drainage and prevent ponding on the compacted soil liner;

3.6.a.4.B. Be at least nine (9) inches thick;

3.6.a.4.C. Be constructed of soil or earthen materials to ensure that the hydraulic leachate head on the compacted soil liner does not exceed one (1) foot at the expected flow capacity from the drainage area except during storm events;

3.6.a.4.D. Be comprised of clean soil or earthen materials that contain no debris, plant material, rocks, or other solid

material larger than one-quarter (1/4) inch in diameter and no material with sharp edges;

3.6.a.4.E. Be graded, uniformly compacted, and smoothed;

3.6.a.4.F. Be installed in a manner that prevents damage to the compacted soil liner; and

3.6.a.4.G. Contain a perforated piping system capable of intercepting liquid within the leachate collection zone and conveying the liquid to control collection points. The piping system shall also meet the following:

3.6.a.4.G.1. The slope sizing and spacing of the piping system shall assure that liquids drain efficiently from the leachate collection zone;

3.6.a.4.G.2. The distance between pipes in the piping system may not exceed one (100) hundred feet on center;

3.6.a.4.G.3. The pipes shall be installed perpendicular to the flow;

3.6.a.4.G.4. The minimum diameter of the perforated pipe shall be four (4) inches with a wall thickness of Schedule 40 or greater;

3.6.a.4.G.5. The pipe shall be capable of supporting anticipated loads without failure based on facility design;

3.6.a.4.G.6. Rounded stones or aggregates shall be placed around the pipes of the piping system. The stones or aggregates shall be sized to prevent clogging of the pipes and damage to the composite liner;

3.6.a.4.G.7. The piping system shall be installed in a fashion that facilitates cleanout, maintenance, and monitoring. Manholes or cleanout risers shall be located

along the perimeter of the leachate collection piping system. The number and spacing of the manholes or cleanout risers shall be sufficient to insure proper maintenance of the piping system by water jet flushing or an equivalent method; and

3.6.a.4.G.8. The leachate collection system shall be cleaned and maintained as necessary.

3.6.a.4.H. The construction of the leachate collection and protective cover zone shall be certified by a W. Va. registered professional engineer and a Q.A./Q.C. report shall be submitted to the director prior to the placement of waste tires or tire derived material in the monofill.

3.7. General Operational Requirements.

3.7.a. General Requirements for a Waste Tire Monofill or Processing Facility or Activity. Unless otherwise approved by the director in writing, no person may operate a waste tire monofill, processing facility or activity that does not conform to an approved plan of operation and the following:

3.7.a.1. Provisions must be made to secure the facility from theft, vandalism and fire, which may include posting a security guard during non-operational hours if so directed by the director;

3.7.a.2. Confining windblown material within the operational area and controlling dust and noise;

3.7.a.3. Installing and maintaining surface water diversion ditches around the areas;

3.7.a.4. Access to the monofill, processing facility or activity must be restricted through the use of fencing (woven wire or chain link), not less than six feet in height;

3.7.a.5. Effective means must be taken to control flies, rodents, vectors, insects and vermin;

3.7.a.6. A supervisor must be on duty at the facility at all times while it is open;

3.7.a.7. The main entrance gate and emergency exit gate must be kept locked when an attendant is not on duty;

3.7.a.8. All burning is prohibited; No person shall engage in the open burning of waste tires.

3.7.a.9. All topsoil within the facility construction limits shall be salvaged and stored/seeded within the property boundaries for use in the facility closure; and

3.7.a.10. Whole waste tires must be cut into at least four (4) near equal portions, or split into at least two (2) near equal portions, or shredded or chipped prior to placement in a monofill.

3.7.b. Monitoring Wells Required for Waste Tire Monofills. A minimum of one (1) downgradient monitoring well must be drilled to intersect the uppermost significant aquifer. If the disposal area is between five (5) to ten (10) acres, a minimum of two (2) downgradient monitoring wells must be drilled. If the disposal area is greater than ten (10) acres, a minimum of three (3) monitoring wells must be drilled.

3.7.b.1. A minimum of four (4) independent samples from each well (background and downgradient) must be collected and analyzed in accordance with 33CSR1, subparagraph 4.11.b.2.B, during the first semiannual sampling event.

3.7.b.2. At least one (1) sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events.

3.7.b.3. The director may specify an appropriate alternative frequency for repeated sampling and analysis for Appendix I constituents, or the alternative list approved in accordance with 33CSR1 subparagraph 4.11.b.2.B, during the active life (including closure) and the post-closure care period.

3.8. Quarterly, and Semiannually Recordkeeping and Reporting Requirements.

3.8.a. Record Keeping and Reporting Requirements: Recordkeeping and reporting requirements for waste tire monofills/storage cells, and processing facilities/activities and salvage yards shall include the following:

3.8.a.1. Quarterly Reports.

Quarterly reports shall be submitted to the director prior to the fifteenth day of the next quarterly reporting period on forms provided by, or acceptable to, the director. More specifically, the report must include:

3.8.a.1.A. Date, quantity and origin of waste tires and tire derived material received at the facility;

3.8.a.1.B. Quantity/tonnage of waste tires and tire derived material processed at the facility;

3.8.a.1.C. Quantity/tonnage of waste tires and tire derived material stored at the facility; and

3.8.a.1.D. Name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers transporters who transport waste tires and tire derived material transported to and from the facility, including the quantity/tonnage of waste tires and tire derived material so transported.

3.8.a.2. Problems, Conditions or Changes. Also, describe in the quarterly report any fires, vector or environmental problems,

other conditions, or changes in the facility's operational procedures. In regard to fire, vector or environmental problems which have occurred, describe steps taken to prevent a recurrence.

3.8.a.3. Pesticide Application. Identify the name, type and quantities of pesticides used during the reporting period for vector control.

~~3.8.a.4. Term of Record Keeping. The permittee must retain records of the quarterly reports at the facility for not less than five (5) years.~~

3.8.b. Semiannual Groundwater Monitoring Reports.

3.8.b.1. The groundwater sampling analysis monitoring reports and accompanying report of determining whether there was a statistically significant increase over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the facility, as determined for Phase I and Phase II monitoring programs, as required in 33CSR1 subsection 4.11 and must be submitted semiannually.

3.8.c. Term of Record Keeping. The permittee must retain records of the quarterly reports at the facility for not less than five (5) years.

3.9. Bonding and Financial Assurance Requirements for Permitted Waste Tire Processing Facilities/Activities, Monofills/ Storage Cells and Salvage Yards.

3.9.a. Bonding. Bonding shall be in the amount of six thousand (\$6,000) dollars per acre with a minimum amount of ten thousand (\$10,000) dollars as specified in W. Va. Code §22-15-12 of the Code. An additional financial assurance of two (\$2) dollars per whole waste tire, accumulated at any given time, as projected in the application and/or permit shall be required.

Such two (\$2) dollar per tire bond will not be released until all tires are removed from the waste tire processing facility, waste tire monofill, storage cell or salvage yard.

3.10. Closure Requirements for a Waste Tire Monofill/Storage Cell or Processing Facility/Activity.

3.10.a. Closure of a Waste Tire Monofill/Storage Cell or Processing Facility/Activity. Should a facility or activity cease operations, or be required to do so by any agency, all of the requirements of §33CSR1, section 6 shall be complied with as applicable including, but not limited to, those specified below:

3.10.a.1. Removal of Miscellaneous Materials. All miscellaneous waste materials including but not limited to wheel rims, hubcaps, paper, trucks, trailers, containers, machinery and other items or debris remaining at the facility at closure shall be removed and taken to a Division of Environmental Protection approved solid waste facility for reuse, recycling and/or disposal as provided in subdivision 3.9.a of this rule, no bond may be released until all provisions of this rule have been met;

3.10.a.2. Security During Closure. All trucks, trailers, containers, structures and machinery shall be secured until removed;

3.10.a.3. Revegetation. All disturbed ground shall be graded, mulched and seeded; and

3.10.a.4. Sediment and Erosion Control Structures. Sediment and erosion control structures shall be installed and maintained as necessary to comply with §33CSR1, paragraph 4.5.b.3.

3.10.a.5. Facility Closure Plan. All applicants must submit a closure plan in the permit application.

3.10.b. Storm Water. Storm water and surface water drainage must be directed away from the facility or activity in a manner consistent with state water quality standards.

3.10.c. Closure Cap for a Waste Tire Monofill. A closure cap shall immediately be installed over the final placement of waste tires or tire derived material consisting of:

3.10.c.1. A substantial separation filter cloth to prevent soil or any other material from coming in contact with the tire material;

3.10.c.2. A minimum of one (1) foot of intermediate cover soil shall be placed and compacted directly over the filter cloth to create a fire break, minimize the inflow of precipitation and to protect the filter cloth from damage; and

3.10.c.3. A final one (1) foot minimum layer of soil sloped not less than three percent (3%) nor more than twenty-five percent (25%) grade shall be placed and compacted directly over the intermediate cover and revegetated (amendments, mulch, seed) as applicable in accordance with §33CSR1 subdivision 4.5.f.

3.10.d. Daily Q.A./Q.C. reports in accordance with §33CSR1 subparagraph 4.5.e.2.I as applicable, shall be prepared and maintained in a bound log book at the site in regard to the closure cap construction.

3-7.b. 3.11. General Requirements for Retail Tire Dealers. Tire dealers shall be required to accept D.O.T. regulated tires if offered by their customers in exchange for tires purchased in a quantity equal to the number of tires purchased at the point of transfer.

3-7.b.1. 3.11.a. A tire dealer may temporarily contain five hundred (500) or less waste tires on the premises for a period not exceeding ninety (90) days, unless otherwise approved by the director in writing. The

temporary containment shall be in a safe and orderly manner which does not constitute solid waste disposal. However, the director is authorized to limit the number of waste tires stored by a tire dealer if the director determines that the waste tires are stored in an unsafe, disorderly, or unsightly manner.

~~3.8. Record Keeping and Reporting Requirements:~~

~~3.8.a. Record Keeping and Reporting Requirements. Record keeping and reporting requirements for waste tire monofills/storage cells and processing facilities/activities shall include the following:~~

~~3.8.a.1. Quarterly Reports. Quarterly reports shall be submitted to the director prior to the fifteenth day of the next quarterly reporting period on forms provided by, or acceptable to, the director. More specifically, the report must include:~~

~~3.8.a.1.A. Date, quantity and origin of waste tires and tire derived material received at the facility;~~

~~3.8.a.1.B. Quantity/tonnage of waste tires and tire derived material processed at the facility;~~

~~3.8.a.1.C. Quantity/tonnage of waste tires and tire derived material stored at the facility; and~~

~~3.8.a.1.D. Name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers transporting waste tires and tire derived material to and from the facility, including the quantity/tonnage of waste tires and tire derived material so transported.~~

~~3.8.a.2. Problems, Conditions or Changes. Also, describe in the quarterly report any fires, vector or environmental problems,~~

~~other conditions, or changes in the facility's operational procedures. In regard to fire, vector or environmental problems which have occurred, describe steps taken to prevent a recurrence.~~

~~3.8.a.3. Pesticide Application. Identify the name, type and quantities of pesticides used during the reporting period for vector control.~~

~~3.8.b. 3.11.b. Annual Record Keeping and Reporting Requirements for Retail Tire Dealers.~~

~~3.8.b.1. 3.11.b. Retail tire dealers must keep records which include the name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers transporter and the number of whole waste tires transported from the retail tire dealers business location(s) by the waste tire haulers transporter(s). These records must be kept on site at each business location and made available for inspection by the director or by his or her authorized representative within five (5) days upon request. All records shall be retained for a period of not less than three (3) years.~~

~~3.8.c. 3.11.c Public Notice and waiver Requirements for Retail Tire Dealers. Tire dealers are required to post written notices on at least 8 ½ inch by 11 inch poster clearly visible to all customers and containing the universal recycling symbol and the following language: (Notices are available from the Division of Environmental Protection.)~~

~~3.8.c.1. 3.11.c.1 "Waste Tire Management;"~~

~~3.8.c.2. It is illegal to properly discard a tire in West Virginia;"~~

~~3.8.c.3. 3.11.c.2. State rules require us to accept D.O.T. regulated tires if offered by our customers in exchange for tires purchased in a quantity equal to the number of~~

tires purchased at the point of transfer; "State law requires us to accept your (old) waste tires for recycling or proper disposal if you purchase new tires from us."

3.8.c.3. 3.11.c.3. "State law authorizes us to charge you no more than the actual cost of disposal of your waste tires even if you do not leave your tires with us."

3.8.c.5. 3.11.c.4. "It is a crime to burn, bury, abandon or throw away waste tires without authorization and or permits from the Division of Environmental Protection."

3.11.c.5. Public notices and waiver forms are available from the division of environmental protection, office of waste management.

3.11.c.6. Retail tire dealers may not charge a disposal fee to persons having winter tires changed or buying new winter tires and keeping usable summer tires for later installation or require such persons to provide a used or waste tire or sign a waiver

3.8.c.4. A fee may be charged by the tire dealer for the proper disposal of the waste tire.

3.12. General Requirements for Waste Tire Transporters and Other Persons Transporting Waste Tires.

3.12.a. No waste tire transporter or other person shall knowingly transport or knowingly allow waste tires under his or her control to be transported to a site or facility that does not have a valid permit or license to accept waste tires.

3.12.b. Recordkeeping Requirements for Waste Tire Transporters. Waste tire transporters must keep records which include the name, address and telephone number of the retail tire dealer(s), and the number of whole waste tires

transported from the retail tire dealer(s) business location(s) by the waste tire transporter. Also, records showing the name, address and telephone number of the permitted site or facility to where the whole waste tires were transported by the waste tire transporter. These records must be made available for inspection by the director or his or her authorized representative within five (5) days upon request. All records shall be retained by the waste tire transporter for a period of not less than three (3) years.

3.9. Bonding and Financial Assurance Requirements for Waste Tire Processing Facilities, Monofills and Storage Cells.

3.9.a. Bonding. Bonding shall be in the amount of six thousand (\$6,000) dollars per acre with a minimum amount of ten thousand (\$10,000) dollars as specified in §22-15-12 of the Code. An additional bond of two (\$2) dollars per whole waste tire to be received and stored at any given time as projected in the application and/or permit shall be required. Such two (\$2) dollar per tire bond will not be released until all tires are removed from the waste tire processing facility, waste tire monofill or storage cell.

3.10. Closure Requirements for a Waste Tire Monofill/Storage Cell or Processing Facility/Activity.

3.10.a. Closure of a Waste Tire Monofill/Storage Cell or Processing Facility/Activity. Should a facility or activity cease operations, or be required to do so by any agency, all of the requirements of §33CSR1, section 6 shall be complied with as applicable including, but not limited to, those specified below:

3.10.a.1. Removal of Miscellaneous Materials. All miscellaneous waste materials including but not limited to wheel rims, hubcaps, paper, trucks, trailers, containers, machinery and other items or debris remaining at the facility at closure shall be removed and taken to a Division

of Environmental Protection approved solid waste facility for reuse, recycling and/or disposal as provided in subdivision 3.9.a of this rule, no bond may be released until all provisions of this rule have been met;

~~3.10.a.2. Security During Closure. All trucks, trailers, containers, structures and machinery shall be secured until removed;~~

~~3.10.a.3. Revegetation. All disturbed ground shall be graded, mulched and seeded; and~~

~~3.10.a.4. Sediment and Erosion Control Structures. Sediment and erosion control structures shall be installed and maintained as necessary to comply with §33CSR1, paragraph 4.5.b.3.~~

~~3.10.a.5. Facility Closure Plan. All applicants must submit a closure plan in the permit application.~~

~~3.10.b. Storm Water. Storm water and surface water drainage must be directed away from the facility or activity in a manner consistent with state water quality standards.~~

~~3.10.c. Closure Cap for a Waste Tire Monofill. A closure cap shall immediately be installed over the final placement of waste tires or tire derived material consisting of:~~

~~3.10.c.1. A substantial separation filter cloth to prevent soil or any other material from coming in contact with the tire material;~~

~~3.10.c.2. A minimum of one (1) foot of intermediate cover soil shall be placed and compacted directly over the filter cloth to create a fire break, minimize the inflow of precipitation and to protect the filter cloth from damage; and~~

~~3.10.c.3. A final one (1) foot minimum layer of soil sloped not less than three percent (3%) nor more than twenty-five percent~~

(25%) grade shall be placed and compacted directly over the intermediate cover and revegetated (amendments, mulch, seed) as applicable in accordance with §33CSR1 subdivision 4.5.f.

~~3.10.d. Daily Q.A./Q.C. reports in accordance with §33CSR1 subparagraph 4.5.c.2.I as applicable, shall be prepared and maintained in a bound log book at the site in regard to the closure cap construction.~~

Division of Environmental Protection

Public Hearing: Office of Waste Management - 33 CSR 3, 33 CSR 5, 33 CSR 20, **Time/Date:** August 15 2000 6pm.

33 CSR 30 & 33 CSR 32

NAME	ADDRESS	COMMENT	YES	NO
1. <u>Flayd Saylor</u>	<u>WV Tire Dealers Assn P.O. Box 1335 Clarksburg 25325</u>	?		
2. <u>Melvin S. Fustoni</u>	<u>105 Carnuel Road Wheeling WV 26003-1525</u>	✓		
3. <u>Greg Saylor</u>	<u>WV ASSOCIATION OF WASTE Haulers 1356 Howard St.</u>	✓		
4. <u>Mild Dorsey</u>	<u>Robinson WHEELER, 500 WYMAN ST. E, CHARLESTON</u>	✓		
5. <u>LARRY ATHA</u>	<u>1356 HANFORD ST</u>			✓
7. <u>Bill Rheinlander</u>	<u>OWN</u>			✓
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ORIGINAL

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

33 CSR 5 " Waste Tire Management Rule."

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Waste Management, Conference Room, 1356 Hansford Street, Charleston, West Virginia, commencing at 6:00 p.m., on the 15th day of August 2000, pursuant to notice.

Missy L. Young, C.C.R.
Post Office Box 13221
Sissonville, WV 25360
(804) 984-2300 or 540-8179

P R O C E E D I N G S

MS. CHANDLER:

The purpose of this public hearing is to receive comments on 33CSR5- Waste Tire Management Rule.

This emergency rule will revise the West Virginia Division of Environmental Protection, Office of Waste Management, Waste Tire Rule, Title 33, Series 5. Amendments to this rule were mandated by Senate Bill 427 and passed by the West Virginia Legislature March 11, 2000. Senate Bill No. 427 requires that the West Virginia Division of Environmental Protection promulgate this emergency rule pursuant to directives found in the West Virginia Code, Chapter 22, Article 15, Section 21(k), and Chapter 20, Article 11, Section 8(d), as amended. The proposed emergency rule amendments, among other items, will allow both the West Virginia Division of Environmental Protection and the West Virginia Division of Highways to dispose of waste tires in solid waste landfills. But only when the State agency authorizing the remediation or cleanup program has determined that there is no reasonable alternative available. The proposed rule also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

1 The floor is now open for public comment.

2 Please identify yourself and affiliation, if
3 any, prior to making your comments.

4 MR. SAYRE: I'm Greg Sayre. I'm representing
5 several people here tonight and I'll try to go through
6 these as quickly as possible. The first comment I'd like
7 to make is on behalf of West Virginia Cash and Recyclables
8 and this is related to this one rule in the proposed rules
9 and that's 3.1(b) and that's the exceptions to the
10 permitting rules. The rule exempts recycling facilities
11 who's only function is to accept at no charge buy or
12 transfer source separated material, such as waste tires
13 for reuse, resell or transfer. The rule puts an exemption
14 or exception for recycling facilities. The problem we see
15 with that rule is that salvage yards and recycling
16 facilities were sort of splitting hairs on their
17 definition. A salvage yard is under a requirement. If it
18 has a hundred waste tires or more, that it has to,
19 basically, come before the Division of Environmental
20 Protection and develop a waste tire handling program.

21 A salvage yard would be doing very much
22 what a recycling facility -- they're not charging people
23 who bring in cars or bring in metal, yet if they have a
24 hundred tires, they have to have a waste tire management

1 plan. If a recycling facility has a hundred or more
2 tires, they're exempt and we believe that probably they
3 both should be under the same requirement.

4 Our concern is, is that a salvage yard has
5 a permit from the Division of Highways. It's under
6 certain restrictions, more than likely, many of them are
7 now in the process of getting like a strong water permit
8 or maybe an even an MPES permit. We're very much
9 concerned that you've got people out there saying that
10 they have got recycling facilities, when actually they
11 really do have a salvage yard. We're concerned about this
12 difference between a salvage yard, if it's receiving
13 materials free of charge, and if they have a hundred
14 tires, fine. We don't mind that they've got to do this
15 extra work, but someone out there could have a recycling
16 facility and being doing exactly the same thing as the
17 salvage yard, and be taking tires, for whatever reason and
18 still not be under a requirement to work with the DEP with
19 this waste tire management program.

20 So, on behalf of West Virginia Cash and
21 Recyclables, I think we'd like to see some conformity
22 between the two, so we don't have a lot of people out
23 there perhaps doing things with tires, trying to use the
24 recycling facility exemption, as perhaps some type of

1 escape clause.

2 The second comments I'd like to make are on
3 behalf of the West Virginia Association of Waste Haulers
4 and Recyclers. The first of these deal with the clause in
5 1.5 and in 3.1.e.1. It deals with the disposal
6 alternatives. The reasonable disposable alternative of
7 waste tires. And I think, overall, as an association, we
8 probably feel that most of the waste tires that are going
9 to be collected in remediation projects will probably end
10 up in the monofields. That's where most of them would
11 probably go.

12 However, one of the things that in terms
13 of the reasonable alternative, I guess we're trying to
14 look at as reasonable, does it include effective, or does
15 it include efficient. And for example, to put on the
16 tape, I guess, an example is let's take the Brown's Creek
17 tire pile in Putnam County. Those tires could be
18 transported and hauled to one of the monofields. There's
19 no doubt that space is available. They could be cleaned
20 up and that is a disposal option.

21 However, given that there are two
22 landfills, 7 1/2 miles away from Brown's Creek and there
23 is no doubt that transportation charges -- 7 1/2 miles
24 versus probably 100 miles, would be greatly reduced. We

1 want to make certain that we don't rule out, perhaps using
2 solid waste facilities, because I'm not certain if under
3 that -- I'm not certain what reasonable means, that in
4 terms of -- I guess, what I'm saying is, we'd like to
5 still, perhaps, if cost effective, cost deficiencies, if
6 that is really what "reasonable alternative" is, that some
7 are solid waste facilities, I think probably given their
8 location to some of these major tire piles and given their
9 life span too.

10 It's not like they're running out of
11 space, could be, perhaps, more efficient, more effective
12 in handling some of these tire piles than perhaps hauling
13 everything to Jane Lew or Summersville. And I hope, under
14 that rule, that we still have that option and they're not
15 left out of the mix because, perhaps, -- I'm not real
16 clear what "reasonable alternative" is.

17 The other thing that primarily effects the waste
18 tire hauling industry, or the waste tire hauling
19 transporter -- and this is one these things where there's
20 like giving the owner's too many rules on waste tires.
21 But, in the definition of waste tire transport, it's good
22 that we've got Chapter 24 in there, dealing with,
23 basically, the PSC jurisdiction.

24 However, on the bottom part of that rule,

1 there's an exemption in terms of people that are hauling
2 tires for a mediation project. And the problem comes in -
3 - if I'm the contractor, if I'm there person who's
4 contracted, if I'm Joe Smith, Contracting Service, and
5 I've been hired for, I don't know, a million dollars to
6 clean up this tire pile and I have a bunch of dump trucks,
7 I probably can haul those tires, being the contractor is
8 doing the clean-up work.

9 However, if I'm the contractor doing the
10 clean-up work, and I put out for hire, the hauling of the
11 waste tires, well, basically, if you go to Chapter 24, if
12 you're hauling for hire, you fall under the PSC
13 jurisdiction. If I'm there with the truck and I'm not
14 cleaning up the tires, I'm hauling them, then within their
15 section of the code, I have to be a certificated hauler.
16 I'm being paid to transport. And we see a little bit, I
17 guess a little untidiness, perhaps, in that clause.

18 I believe there's a way that some people
19 could probably do mediation work and perhaps not have to
20 have a certificate, however, there's probably a lot of
21 cases where that is a problem and I think people are going
22 to have to deal with a certificate entity.

23 And then again, in terms of the permit
24 exceptions, and this is one, just a point of curiosity,

1 and also just a point of concern, that in terms of it's
2 unclear to me as a certificated waste transporter, if I
3 have a PSC certificate, if I look at 3.1(b) and that whole
4 section that deals with who needs a DEP permit, it's
5 unclear to me if the waste transporter, if I have a
6 certificate of convenience and necessity from the Public
7 Service Commission, to haul tires by a licensed
8 certificated hauler, if I'm going to need an additional
9 permit from the DEP. Within my certificate from the PSC -
10 - you know, I've already got the okay from them to haul
11 tires. So, I'm not certain if I have to get another
12 permit to haul tires or not.

13 It's a little bit unclear to me. There
14 seems to be some overlap there, because the way that reads
15 it's transport, collect, everything falls under the DEP
16 permit. As I read that section of the rule, you're
17 transporting tires, you're collecting tires, it's within
18 your permit guidelines. Now, within your permit
19 regulations, most of the regulations deal with solid waste
20 facilities, and I think that's the whole intent, but
21 there's a lot of things there I'm not certain if it's --
22 I'm not certain if we're going to be required to get
23 another permit. I guess, naturally, our position would
24 be, give us a break here. We've already got one permit

1 from the PSC.

2 We can comply, I think, with the rule
3 3.1(a) and 3.1(b), that in terms of your tire transporter,
4 yes, we've got to maintain records, we've got to take
5 things to a licensed permitted solid waste facility. I
6 think those are fine. We need to do that and I think the
7 PSC requires us to do that now. I just don't know if
8 we're going to need another permit. I don't know what
9 that's going to cost. I don't know -- it looks like
10 you're asking us to get a permit from the DEP, and I would
11 hope you would cut us a break on that one.

12 The other thing, in terms of a waste tire
13 transporter, we have similar problems as waste tire
14 dealers that in terms of what many haulers will do. They
15 will collect from their route a few tires, five tires this
16 day, ten tires the next day. They will generally go back
17 to their shop, as opposed to taking those to the landfill,
18 and this may change, eventually, but many of them will
19 have a roll-off box or something like that; in which they
20 will put the tires in. Once they get a roll-off box full
21 of tires, they'll take it to the monofill. Many people
22 used to take them to Porter Tire in Kentucky or one of the
23 tire monofills over there.

24 But once of the things we would like to

1 see is perhaps, a rule that would allow a waste
2 transporter to temporarily contain a limited number of
3 tires, a roll-off box full, two or three hundred, in which
4 they can be accumulated and then be taken at one time to a
5 proper site of disposal, because most waste tire haulers
6 are picking up things in the countryside or in town and
7 they are getting a couple of tire a day. If they have to
8 make a special run somewhere, it's kind of problematic to
9 take two tire here and five tires there. It's a lot
10 easier to put those tires into some type of container and
11 once you get the container full, to take those to the
12 monofill or even to take them to the landfill, whatever
13 that might be.

14 A roll-off box, you know, can probably
15 hold a couple to three hundred passenger tires. And
16 that's generally how many people -- if they are put in
17 there right. If they're just kind of dumped in there,
18 you're probably looking at about 150.

19 But, basically, what we're looking at is
20 much like the tire dealer has some latitude of containing
21 tires on premises for a number of days. We'd like that
22 same latitude and I'm not talking thousands, but something
23 like a roll-off box full, so that once those are
24 accumulated, they can be properly disposed of.

1 Those are primarily, I think, our concerns
2 with the waste transport or with the waste management
3 rules, and again, I think the prior our biggest thing is
4 whether or not it's unclear to us if we're going to be
5 asked to get another type of permit, and like I say, I
6 don't have a problem with accounting and accountability
7 rules and things like that. It just seems like, I don't
8 know if that was the intent, to put everybody under DEP
9 and we'd like some clarification on that.

10 MS. CHANDLER: Thank you, Mr. Sayre.

11 MR. SAYRE: I'm Floyd Sayre and I represent the
12 West Virginia Tire Dealers Association. We have submitted
13 a letter on some specifics of the rules, which do not need
14 to be discussed and read at this time. But, I would like
15 to reiterate that our major concern is that all of the
16 holes or gaps in the rules are filled. Tire dealers
17 themselves make every effort to make sure that the tires
18 do not wind up over the hill. There are certain areas
19 that we feel that there might be some gaps and we want to
20 make sure that those are filled.

21 We are vitally concerned, for example, about
22 tires that are being purchased out-of-state. And the
23 individual will bring their waste tires back. What
24 happens to those waste tires? What responsibility does

1 the buyer of the tire have? We're just vitally concerned
2 about closing many of the gaps that are out there.

3 Thank you.

4 MS. CHANDLER: In your comments, do you site the
5 subsection so we can find them easier.

6 MR. SAYRE: Well, there's a couple in there.
7 There's observations on page 2, I only cite three
8 examples. I guess this is mainly the concern up here and
9 this isn't to do with the signing, but you've got them.

10 MS. CHANDLER: And these are the comments as
11 well?

12 MR. SAYRE: Yes, these are the comments as well.

13 MS. CHANDLER: Any further comments on the rule?

14 There being nothing further, this public hearing
15 for 33CSR5 is concluded.

16 (WHEREUPON, the public hearing
17 was concluded.)


BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a
Certified Court Reporter and Commissioner within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing is, to the
best of my skill and ability, a true and accurate
transcript of all the proceedings had in the
aforementioned matter.

Given under my hand and official seal this
22nd day of August, 2000.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

To: Larry Atha

From: Donald Hill
Assistant Chief Inspector
Environmental Enforcement

Subject: Comment on Emergency Rule 33CSRS

I would like the Office of Waste Management to consider the following rule change:

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

RECEIVED
AUG 15 2000

Division of Environmental Protection
Office of Waste Management

Respectfully submitted,

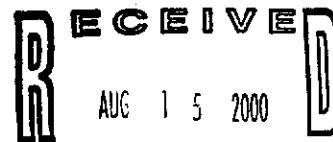
Donald R Hill

August 15, 2000

West Virginia Tire Dealers Association

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

August 15, 2000



WV DIVISION OF ENVIRONMENTAL PROTECTION
PUBLIC INFORMATION OFFICE/OWM

B. F. "Cap" Smith
Office of Waste Management
WV Division of Environmental Protection
1356 Hanford Street
Charleston, West Virginia 25301

Re: Proposed Legislative Rule, Series 5,
Concerning Waste Tire Management.

Dear Mr. Smith:

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 and management. 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.

The proposed rule does directly involve our members. It falls into the areas in which our committees have studied and worked over in the past. 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. We note that there is no obvious reference to individuals, businesses or governmental units that purchase tires from out-of-state tire dealers and wholesalers. How are these elements to be controlled. An example would be used car dealers who purchase tires at used car sales in, say, North Carolina and return to West Virginia with waste tires. Also note that these same used car dealers sometimes bring back tires to sell to "friends or relatives". Reworking of definitions in §33-5-2.9 and 2.10 may be helpful in solving this problem.
2. There are some vehicle fleet owners and others (including governmental units) that buy large quantities of tires and place them in inventory. When tires are removed from service, what are the requirements placed upon these firms in disposal of waste tires? How are these firms treated? Does an out-of-state

wholesaler or dealer or an in-state wholesaler then become a supplier to an end user?

3. There are some vehicle fleet owners and others (including governmental units) that store out-of-service tires for long periods of time, possibly for a year or more. These tires usually number less than 100 and are being held for recapping. The tires would not be waste tires until the recapper rejects the tire. What, if any, are the storage requirements?
4. We continue to believe that the construction and daily maintenance requirements of waste tire monofills, is pure overkill. The additional cost will be paid for by the citizens of West Virginia, not the monofill owner.

COMMENTS BY SECTION of §13-5

- 2.2 - "Automobile Dealer"- This definition should include "used" car dealers.
- 3.11 - "General Requirements" - This section is confusing and contradictory to other sections. The law indicates that the dealer shall "take" the waste tire unless the new tire buyer requests retention of the waste tire and signs a waiver. This section reads as though the dealer does not even have to suggest the buyer leave their waste tire. This section should suggest that a waiver is required.
- 3.11.c.3 - Posted sign requirements - We would be remiss if we did not point out here that the true cost of a dealers tire disposal expense includes a payment to a transporter or dealers cost of transporting the tire to a disposal facility, labor on moving the waste tire from one point to another (sometimes more than once), bookkeeping and record keeping, rent on waste tire storage area and other costs.

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,



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



West Virginia Association of Waste Haulers & Recyclers

Post Office Box 3706 • Charleston, WV 25337 • (800) 342-4388

August 15, 2000

The West Virginia Association of Waste Haulers and Recyclers would like to make some brief comments on the proposed waste tire management rules. We think these rule changes will make for a better program and improve our waste tire management capability.

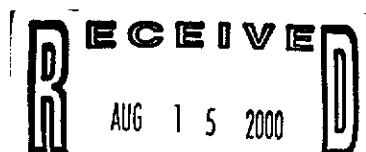
1.5 What is no reasonable alternative? The rule should make it clear that cost effectiveness is taken into account when considering available alternatives. Same is true in 3.1.e.1.

2.23 The definition of waste tire transporter needs to be refined. WV Code 24-2-1b(a) would define anyone who transports waste tires for hire, as falling under the jurisdiction of the PSC. This would make any person who transports tires from a state authorized waste tire remediation project a waste tire transporter if done for hire. This section of the rule needs to be rethought.

3.1.b. Add to permit exceptions. "A waste transporter in compliance with WV Code 24-2-1b(a) is exempt from permitting for transporting activities. There seems to be overlap here. Transporters should be held accountable to rules 3.12. a. and 3.12.b.

This rule will allow waste tire transporters to temporarily contain a limited number of tires. For many waste tire transporters the most efficient means to transport tires is to utilize roll-off boxes that might contain up to 300 to 400 tires. This rule would allow waste tire transporters to improve tire-handling efficiencies.

3.12.c Waste Tire Transporters may temporarily contain five hundred (500) or less waste tires on the premises for a period not exceeding ninety (90) days, unless otherwise approved by the director in writing. The temporary containment shall be in a safe and orderly manner, which does not constitute solid waste disposal. However, the director is authorized to limit the number of waste tires stored by a waste tire transporter if the director determines that the waste tires are stored in an unsafe disorderly, or unsightly manner.



WV DIVISION OF ENVIRONMENTAL PROTECTION
PUBLIC INFORMATION OFFICE/DWM

Sincerely yours

Greg Sayre, Executive Director



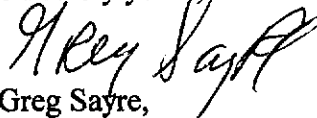
THIS PRODUCT
CAN BE RECYCLED

**West Virginia Cashin Recyclables, Inc. P.O. Box 336 Pickens
Road, Nitro WV**

August 15, 2000

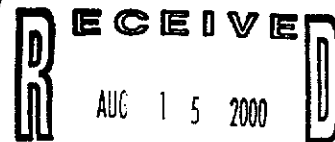
In regard to waste tire rule 3.1b. exceptions to permitting requirements. The rule exempts a recycling facility whose only function is to accept at no charge, buy, or transfer source separated material, including waste tires for reuse, resale or transfer. The problem here is that salvage yards and recycling facilities are very much alike. The requirements for salvage yards are far more stringent than they are for recycling facilities. A salvage yard can only have 100 waste tires on site before it must establish a plan in conjunction with the division of environmental protection. A recycling facility can have an unlimited number of tires on site. I believe conformity between the two should be required. 3.1.b. should be removed and recycling facilities should meet the same requirements as salvage yards.

Sincerely yours,


Greg Sayre,
Corporate Affairs

R E C E I V E D
AUG 15 2000

WV DIVISION OF ENVIRONMENTAL PROTECTION
PUBLIC INFORMATION OFFICE



WV DIVISION OF ENVIRONMENTAL PROTECTION
PUBLIC INFORMATION OFFICE/OWM

COMMENTS
OF
WASTE MANAGEMENT, INC.
ON
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
"WASTE TIRE MANAGEMENT RULE"
33 CSR 5

I. Introduction

On or about July 14, 2000, the Division of Environmental Protection, Office of Waste Management ("DEP" or "OWM") proposed for promulgation revisions to its "Waste Tire Management Rule" 33 CSR 5. In accordance with the notice of public hearing, comments on the proposed rule changes may be submitted until Tuesday, August 15, 2000. These comments are filed pursuant to this notice.

Waste Management, Inc. ("WMI") is the parent company of several solid waste concerns operating in West Virginia. WMI subsidiary companies are engaged in both the collection and transportation of solid waste as well as operating transfer stations and landfills. Because any proposed rules or revisions may affect WMI operations, WMI possesses a direct interest in the proposed changes.

Solid waste management in West Virginia is under the governmental auspices of not only the DEP, but also is highly regulated by the Public Service Commission ("PSC"). Solid waste operations are further subject to requirements which may invoke the jurisdiction of the Solid Waste Management Board, the local or regional solid waste authorities, the Department of Tax and Revenue, and now the Department of Transportation with respect to remediation of old waste tire piles. Thus, any changes in one agency's rules must be consistent with those of its sister agencies. WMI has strived to ensure a smooth and workable regulatory structure avoiding duplication of oversight, conflicting regulations, and increased costs to consumers.

As WMI was integrally involved in the development of Senate Bill 427, providing a regulatory structure for the remediation of waste tire piles and to prevent creation of future waste tire piles, WMI offers its continued assistance in improving waste tire management in West Virginia. WMI companies have extensive experience in all facets of waste management, including waste tires. However, it should be noted that different WMI landfills and hauling companies operate independently and provide different levels of services. For example, some landfills have been accepting tires for recycling and reuse for many years, and indeed, two locations have made a substantial investment in purchasing tire grinders. Other locations have not routinely accepted tires since the Legislature banned the disposal of whole tires. These latter facilities will now be required to accept tires pursuant to the mandates imposed by SB 427. Thus, the DEP

must be sensitive to the varying operations and provide assistance to ensure that these facilities are not unduly burdened by administrative changes. WMI pledges its continued support in crafting reasonable regulations that ensure proper collection and disposal of solid waste, including waste tires, and offers these comments in furtherance of WMI's continual participation in effective and efficient waste management practices in West Virginia.

II. General Comments

Overall, WMI commends the DEP for crafting the rules to strictly interpret the rules to closely adhere to the statutory mandates. As the DEP is well aware, extensive discussion on the regulatory strategy was undertaken during the development of the provisions of SB 427.

Landfills are a logical location for the siting of waste tire processing facilities. Experience has shown the difficulty in obtaining permit approval to include a tire processing operation at an existing solid waste landfill, including the acquisition and posting of financial assurance. Under existing federal Subtitle D requirements under RCRA, as well as state law imposing bonding requirements on solid waste facilities, landfills are presently required to provide financial assurance. Thus, to the extent the waste tire rules require additional bonding, \$2 per tire, there may be over-bonding or duplicate bonding. Therefore, the rule should allow for the existing financial assurance mechanisms to cover the tire processing activity as well.

The DEP must be cognizant that several landfills, which are now mandated to accept whole tires from the public, must then find a location for disposal. First, the acceptance of whole tires should be limited to noncommercial generators; that is, landfills must not be mandated to accept tires from commercial sources. The tires that landfills are required to accept should also be limited to passenger vehicles, light-duty trucks, motorcycle and recreational vehicle tires. Large industrial tires would be unmanageable for the solid waste facilities, and there are other available avenues of recycling, reuse and disposal for those tires.

Furthermore, commercial retailers of tires should use more appropriate means of disposal of tires they collect upon the sale of new tires. The rule should limit the tires that a landfill is required to accept to non-commercial, tires unless the landfill is otherwise in the business of accepting other tires from retailer sources. Thus, the rule should limit the types of tires that a landfill is required to accept from the public to only noncommercial generator sources.

There also needs to be allowance in the rule for the storage of tires by landfills, which, by statute, are required to accept tires. The rule should state that landfills may temporarily contain one thousand or less waste tires on the premises for a period not exceeding 180 days, unless otherwise approved by the director in writing.

For landfills with tire processing facilities, the rule provides the storage, permitting and bonding requirements. However, for landfills which are now mandated to accept tires, and which are only acting as a receiving facility and conduit to recycling, reuse or disposal, the DEP should not require additional bonding, permits or storage restrictions.

Another concern that has been continual is the overlap of jurisdiction between the DEP and the PSC, particularly over major permit modifications. With this new statutory scheme for waste tires, again there is a minimum of three agencies with jurisdiction over waste tire management, including collection, hauling and disposal (including reuse, recycling and landfilling). Here, the DEP, the PSC and now the DOH have jurisdiction. Although the rules proposed are limited to the jurisdictional elements of the DEP, care and coordination needs to be paramount to ensure that each agency exercises the jurisdictional limits in accordance with the legislative intent. Clearly, experience has shown that DEP has not been the offender, but rather the recipient of overreaching. The result for the regulated community and the public is increased costs, delays and indecision. A concerted effort must be made to ensure the agencies do not duplicate effort or invade the province of another agency. Otherwise, landfills will be unable to fulfill the rule contemplated by the new law until all required authorizations are first issued, which could take a very long while if both DEP and PSC approvals are mandated.

III. Specific Comments

Section 2.13 – This section defines “shredded waste tires.” WMI commends the DEP in revising the definition to remove the 6-inch by 12-inch measurement. As the DEP is aware, the tire shredding process is not an exact science and the shredded tires can take multiple sizes and shapes. This clarification will ensure that tire shreds are not held to an artificially specific 6 x 12 standard.

Section 3.1.b. – This section provides the exceptions to permitting requirements. First, landfills that are currently permitted and that under the statute must accept tires should not be required to obtain any additional permit unless the facility is engaging in tire processing activities. Whether additional language specifically exempting landfills from permit requirements or modifications is necessary is a matter of interpretation so long as the DEP’s understanding is that no additional permit or permit modification will be required. Secondly, the provision that exempts a recycling facility from permitting requirements creates an extensive loophole that may result in open dump tire piles. By claiming that an entity is a recycling facility, the facility could accumulate large quantities of tires without any oversight by the DEP. Thus the recycling facility exemption should be deleted.

Section 3.1.d.1 – This section requires commercial solid waste facilities to accept whole waste tires from “any person.” This section should be limited to acceptance of tires from noncommercial sources, i.e. individuals, as that was the legislative intent driving the mandate that landfills be a collection point for tires. Moreover, a new section 3.1.d.3 needs to be added to limit the types of waste tires that must be accepted to

passenger, light-duty truck, and motorcycle or recreational vehicle tires excluding, therefore, industrial tires and heavy-duty truck tires. This section should be rewritten as follows:

3.1.d.1 Commercial solid waste facilities shall accept whole waste tires from any non-commercial state resident and may charge a reasonable fee for acceptance of waste tires: Provided however, whole waste tires accepted may not be disposed of in a landfill except as allowed in paragraph 3.1.e.1 of this section and W.Va. Code 22-15-21(j). For purposes of this section, "whole waste tires" means passenger, light-duty truck, motorcycle and all-terrain vehicle tires but does not include heavy-duty truck tires, industrial truck tires or off-road vehicle tires except for recreational vehicles.

This language will limit the mandate in accordance with legislative intent, but not prohibit facilities from accepting other types of tires if they so desire.

Section 3.1.e.2. – This section is new and states that whole waste tires accepted from the DOH or the DEP which are permanently disposed of in a landfill are not exempt from the calculation of monthly tonnage limits or any solid waste disposal assessment fees. Although a quirk in the law produces this result, the effect is that the state will be required to pay solid waste disposal assessment fees for whole waste tires that are permanently disposed in a landfill.

Section 3.9 – This section imposes financial assurance requirements for waste tire processing facilities, monofills, storage cells and salvage yards. The bonding requirements should also apply to any recycling facility that engages in tire processing activities regardless of the characterization of the facility as "recycling." Secondly, no bond should be required for landfills whose only function is to accept tires from the public. Such facilities are already required to provide financial assurance; thus, a specific exemption should be added. Similarly, landfills with adequate financial assurance should not be required to post additional bond if the current financial assurance is sufficient. In sum, bond or financial assurance should be required of all facilities which accept waste tires, except for the landfills and tire retailers under the threshold quantities.

IV. Conclusion

WMI appreciates the opportunity to provide input on the proposed changes to the waste tire management rules. WMI stands ready to assist the DEP in development of the rules and ensuring that the waste tire management programs function as intended. WMI has strived to become a part of the solution to waste tire disposal problems of the past and has endeavored to provide an outlet for disposal. WMI maintains two waste tire processing operations in West Virginia in Harrison and Wood counties. WMI is pleased to work with the DEP, the DOH and the Legislature in finding avenues to reuse, recycle and dispose of waste tires.

Respectfully submitted,

WASTE MANAGEMENT, INC.

By Counsel

Michael P. McThomas
Robinson & McElwee LLP
P.O. Box 1791
Charleston, WV 25326
304.347.8339

**TITLE 33, SERIES 5
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
WASTE TIRE MANAGEMENT RULE**

The various comments were made by the following:

Mr. William Samples, WVDEP Advisory Council Member
Mr. Donald Hill, Assistant Chief Inspector, Environmental Enforcement, WVDEP
Mr. Floyd M. Sayre, Jr. CAE, CMP Executive Director
Mr. Greg Sayre,
 Executive Director, West Virginia Association of Waste Haulers & Recyclers;
 Corporate Affairs, West Virginia Cashin Recclables
Mr. Michael P. McThomas, Counsel, Robinson & McElwee LLP for Waste Management, Inc.

Comment: On July 6, 2000, the WVDEP Advisory Council met. Bill Samples of the Avisory Council noted that the word "generator" was not defined in the rule.

Response: The Agency agrees. The word "generator" will be added to the definitions.

Comment: That there should be a provision in the rule to provide for any conflict between our rule and other agencies' rules. If so, the more stringent rule should prevail.

Response: The agency agrees and will provide a rule section accordingly.

Comment: That subsection 1.5 and paragraph 3.1.e.1 should include cost effectiveness to help define the rule terminology "no available alternative."

Response: The agency disagrees. The language used in the rule was taken directly from SB427.

Comment: That the definition of "waste tire transporter," under subsection 2.23 should provide an exemption for persons transporting tires for hire from a state authorized waste tire remediation from falling under the jurisdiction of the PSC.

Response: The agency disagrees. The commentor apparently overlooked the fact that persons transporting waste tires from a state authorized or cleanup project are not "for hire" in this instance and are not considered waste tire transporters under this proposed rule.

Comment: That subdivision 3.1.b should provide for waste tire transporters in compliance with PSC requirements to be exempt from permitting for transporting activities. However, waste tire transporters should be in compliance with subdivisions 3.12.a and 3.12.b.

Response: The agency agrees and has further clarified the rule to provide for this exemption.

Comment: That a subdivision 3.12.c should be added in the rule that would allow waste tire transporters to temporarily store up to five hundred (500) waste tires on the premises for a period not exceeding ninety (90) days in roll-off boxes, unless approved by the director in writing. The commentor suggests the DEP require the temporary containment be maintained in a safe and orderly manner that does not constitute disposal. The director would limit the number of waste tires if not stored in a safe, orderly or sightly manner.

Response: The agency disagrees. Such authority was not granted by SB 427.

Comment: That there needs to be an allowance in the rule for temporary storage of up to one thousand (1000) waste tires on the landfill premises for a period not exceeding (180) days in roll-off boxes, unless otherwise approved by the director in writing.

Response: The agency agrees that there should be an allowance included in the rule, but disagrees with the number and time period. The temporary storage of whole waste tires should be equivalent to the requirements of other solid waste facilities, and has reflected such change in paragraph 3.1.d.2.

Comment: The following questions are posed: What requirements are placed upon vehicle fleet owners and others including governmental units in the disposal of waste tires, how are these firms treated, and how does out-of-state tire dealers become a supplier to an end-user?

Response: Lawful disposal of waste tires for vehicle fleet owners and others including governmental units are treated no differently than any other person. This comment lacks specificity to determine if the comment is applicability to our rule, or if it is simply a question posed to the agency.

Comment: That the definitions in subsections 2.9 and 2.10 should be amended to address individuals, businesses or governmental agencies who may bypass our rule when purchasing waste tires out-of-state for resale in West Virginia.

Response: The agency disagrees. A waste tire is not generated until the tires are mounted on the vehicle, and should be lawfully disposed by the owner of the waste tire at that time or use of the disposal service offered by the person doing the mounting.

Comment: That the costs of construction and daily maintenance of waste tires monofills should not be paid for by the citizens of West Virginia, but instead the monofill owner.

Response: The agency disagrees.

Comment: That the definition of "automobile dealer" in subsection 2.2 should be amended to include "used" car dealers.

Response: The agency disagrees. The Agency, in this rule amendment, struck the word "new." This action broadened the definition of "automobile dealer" to include both new and used.

Comment: That subsection 3.11 should be amended to include the waiver option of subdivision 3.11.c.

Response: The agency agrees and will amend the rule accordingly.

Comment: That the actual cost of disposal as stated in the posting may include hidden costs such as transportation, labor, bookkeeping, rent and other costs.

Response: The Agency agrees that the actual costs may include hidden expenses other than just the cost of disposal. However, each tire dealer should maintain adequate records showing these actual costs and no change it the rule is necessary.

Comment: That the exemption provided for recycling facilities in subdivision 3.1.b should be eliminated to make recycling facilities meet the same requirements as salvage yards.

Response: The agency disagrees.

Comment: That the bonding provided under the rule in compliance with the Federal Subtitle D and the \$2 per tire constitutes duplicate bonding.

Response: The agency disagrees.

Comment: That a new section, 3.1.d.3 should be added to stipulate that landfills should only be required to accept passenger vehicle, light-duty trucks, motorcycle and recreational vehicle tires from noncommercial sources such as individuals. Landfills should not be required to accept large industrial tires or off-road vehicle tires except for recreational vehicles.

Response: The agency disagrees. The commentor's list of tires to be accepted was too restrictive. Section 3.1.d.1 of the rule requires solid waste facilities to accept whole waste tires and may charge a reasonable fee.

Comment: That storage, permitting and bonding requirements should not apply to landfills with tire processing facilities.

Response: The agency disagrees.

Comment: That paragraph 3.1.d.1 should be amended. "Any person" should be eliminated and "any noncommercial state resident" should be added.

Response: The agency disagrees.

Comment: That subsection 3.9 should include bonding requirements for recycling facilities that engages in tire processing activities, and that permitted landfills which currently have sufficient bond/financial assurance should be exempt.

Response: The agency agrees and has amended the rule accordingly.