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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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December 04, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers
DEP-Waste Management, Office of
10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Waste Tire Management Rule, 33CSR5**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: DEP, Office of Waste Management

Subject: Waste Tire Management Rule

CSR Cite: 33CSR5

Counsel: JAA

OFFICE OF THE
SECRETARY OF STATE

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PERTINENT DATES

Filed for public comment:
Public comment period ended:
Filed following public comment period:
Filed LRMRC: August 31, 2000
Filed as emergency: Yes.

Fiscal Impact: None.

ABSTRACT

Brief Summary

The changes in this rule make several revisions to reflect the adoption of SB427 (2000 RS) which authorizes the Division of Highways to administer a cleanup program for waste tire piles. The rule amendments allow the Division of Highways to dispose of waste tires in solid waste landfills when no reasonable alternative is available. The rule also is amended to provide tire management requirements on auto salvage yards, waste tire dealers, waste tire transporters and commercial landfill facilities.

Section Summary

Section 1.1 is amended to provide that this rule intends to manage all aspects of handling and disposing waste tires in West

Virginia. If there is any conflict in this rule and another agency rule, the more stringent rule provision applies.

Section 1.5 is amended to recognize the Division of Highways authority to manage waste tire piles and exempts Highways remediation activities from certain requirements of the rule as is required by statute.

Section 1.6 incorporates penalties for violations of this rule consistent with the Solid Waste Management Act.

Section 2 is definitions. A definition of "beneficial use" is inserted which lists uses of waste tires which exclude those tires from being deemed waste tires and requiring remediation under this rule. "Remediation" is defined as the removal of all waste tires above grade at a site, and may include any solid waste mixed with the waste tires. Automobile "salvage yards" that have a waste tire pile of more than 100 tires is required to get a permit for a monofill or other type of appropriate solid waste facility, otherwise any existing salvage yards with tire piles above 100 must develop a remediation plan with the agency. Definitions are also provided for "waste tire pile," "waste tire processing facility," and "waste tire transporter."

Section 3, permitting requirements is amended to authorize remediation activities by the Division of Highways, and other beneficial uses of waste tires authorized by S.B. 427. The DEP is authorized to allow persons to accumulate more than 100 waste tires for beneficial uses. The agency may establish terms and conditions for these tire piles. Recycling facilities which receive or transfer source separated materials, facilities which utilize waste tires as raw material feed stock, and other beneficial uses are exempt from permitting requirements.

Section 3.1.d. requires commercial solid waste facilities to accept waste tires. The facilities may charge a reasonable fee for accepting the tires. Waste tires cannot be permanently disposed of in the landfill except for waste tires being disposed of under the state tire pile remediation project. Tires can only be disposed of in a landfill when no other reasonable alternative is available.

Section 3.1.e.5. allows the use of shredded waste tires as alternative daily cover and exempts shredded waste tires from solid waste disposal fees. The DEP must authorize this use.

Section 3.2.a.2. provides that any auto salvage yard that has 100 or more waste tires not mounted on a vehicle must enter into an agreement with the DEP for proper disposal of the waste tires.

Section 3.3.f. Requires that all mono-fills, salvage yards and waste tire processing facilities shall submit a groundwater protection plan as part of any permit application.

Section 3.4.a. is amended to reduce the application fee for waste tire processing activities or waste tire storage cells at existing solid waste facilities from \$1,000.00 to \$500.00.

Section 3.5.e.3.A is amended to reduce the size of waste tire storage piles. Currently these piles can be up to 100' long, and the amendment reduced the maximum length of a tire pile to 50'. Where no fire hydrant is nearby the waste tire storage facility, the permittee must keep a minimum water supply of 10,000 gallons which is solely dedicated to fire control at the tire pile.

Section 3.7.b. establishes requirements for monitoring wells required for waste tire mono-fills. Two wells are required for a monofill between 5 and 10 acres and three wells for mono-fills above 10 acres. Four tests are required in the first semi-annual time period, and one sample from subsequent semiannual sampling time period.

Section 3.8.b.1. requires that permittees provide groundwater sampling analysis reports semiannually. Current bonding requirements of least \$6,000.00 an acre with an additional financial assurance of \$2.00 per tire are now required of salvage yards. Solid waste landfills are excluded from these additional bonding requirements.

Section 3.10 establishes procedures for closure of a waste tire mono-fill or storage cells, or processing facilities. These are current provisions and should not have been indicated as new in the proposed rule.

Current Section 3.8.a.1., quarterly reports for monofill/storage cells and processing activities have been deleted.

Section 3.11.c.3 inserts the new notice requirements required by statute to be posted by all tire dealers notifying the public that state law requires waste tires be properly disposed.

Section 3.12 provides new requirements for waste transporters and other persons transporting waste tires. No transporter can deliver tires to a facility that does not have a permit or license to accept waste tires. Records of tire deliveries must be kept by waste tire transporters for at least three years.

AUTHORITY

Statutory authority: W.Va. Code, §22-15-5 provides:

In addition to all other powers, duties, responsibilities and authority granted and assigned to the director in this code and elsewhere described by law, the director is empowered as follows:

(a) The director shall promulgate rules in compliance with the West Virginia administrative procedures act to carry out the provisions of this article [Solid Waste Management Act] including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review.

And, §22-15-21 which provides:

(a) No person, except those persons who have received and maintained a valid permit or license from the state for the operation of a solid waste facility, waste tire monofill, waste tire processing facility, or other such permitted activities, shall accumulate waste tires without obtaining a license or permit from the division: *Provided*, That persons who use waste tires for beneficial uses may in the discretion of the director of the division of environmental protection accumulate waste tires without a permit....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.