

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

**FILED**

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Division of Environmental Protection  
Water Resources/Waste Management TITLE NUMBER: 47

CITE AUTHORITY W. Va. Code 22-1-3, 22-1-3a., 20-11-8(c)

AMENDMENT TO AN EXISTING RULE: YES  NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 38G

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

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

  
Authorized Signature

15.70

**TITLE 47  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION**

**SERIES 38G  
PROPOSED WASTE TIRE MANAGEMENT RULE**

**47-38G-1. GENERAL.**

**1.1. PURPOSE, SCOPE AND APPLICABILITY.**

**1.1.1. Purpose.** This rule is intended to meet the requirements of Chapter 20, Article 11, Section 8(c), as amended. That section directed the Division of Environmental Protection to promulgate rules in accordance with the Solid Waste Management Board Plan established under Chapter 20, Article 11, Section 8(b) to properly handle and manage waste and/or used tires.

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

**1.1.3. Applicability.** This rule applies to any person or persons who manage, collect, store, transport, recycle, process, dispose or otherwise handles waste and/or used tires after June 1, 1995 in the State of West Virginia, except as provided in section 3.1 of this rule.

**1.2. AUTHORITY:** West Virginia Code §22-1-3., §22-1-3a., §20-11-8(c).

**1.3. LEGISLATIVE MANDATE:** Effective June 1, 1995, it will be unlawful to deposit tires in a solid waste facility in West Virginia: Provided, however, That reasonable and necessary exceptions to such prohibition may be, and are, included in this rule (West Virginia Code §20-11-8{a}).

**1.4. FILING DATE:**

**1.5. EFFECTIVE DATE:**

**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.

**1.7. DETERMINATION OF ENVIRONMENTAL PROTECTION ADVISORY COUNCIL.** It is not necessary to make a determination whereas there is no federal counterpart rule.

**1.8. STRINGENCY.** In the event of a federal counterpart rule, this rule is no more less stringent than the federal rule; Provided that, the federal rule meets the specific needs of this state.

**1.9. CONSTITUTIONAL TAKINGS DETERMINATION.** The Director of the Division of Environmental Protection has determined that this rule will not result a constitutional taking of real property.

**47-38G-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 47 CSR 38 are fully incorporated into this rule by reference.

**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. "Bond"** means any performance bond or other form of financial assurance provided by W. Va. Code §22-15-11 and the Solid Waste Management Regulations (47 CSR 38).

**2.4. "Chief"** means the Chief of the Office of Waste Management of the West Virginia Division of Environmental Protection or his authorized representative.

**2.5. "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.

**2.6. "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.

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

2.8. "Tire Dealer" means any person or persons engaged in the business of selling tires to an end user in the State of West Virginia.

2.9. "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.

2.10. "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.

2.11. "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.

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

2.13. "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.

2.14. "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 WV Public Service Commission to lawfully transport waste tires.

2.15. "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.

**2.16. "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.

**2.17. "Waste Tire Storage"** means the temporary containment of waste tires at any facility, property, building, mobile tractor trailer, place of business, private residence, or by any person in a manner that does not constitute solid waste disposal. Provided however, that any waste tires in excess of one (1,000) thousand that are stored before or after processing for a period of time in excess of twelve (12) months, except in a waste tire monofill or storage cell, shall be deemed unlawful disposal and shall constitute an open dump.

**2.18. "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.

#### **47-38G-3. WASTE TIRE MANAGEMENT AND PERMITTING REQUIREMENTS.**

##### **3.1. APPLICABILITY.**

**3.1.1. Regulated Facilities and Activities.** This rule applies to any person or persons who generate, collect, transport, store, process, reuse, dispose, or otherwise manage waste and/or used tires after June 1, 1995, in the State of West Virginia.

**3.1.2. 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 47 CSR 38G is subject to the same criminal penalties as set forth in Chapter 22, Article 11, Section 24.

**3.1.3. Reasonable and Necessary Exceptions to Prohibiting Tire Material 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, 1995 are provided and allowed by Chapter 20, Article 11, Section 8(a). These exceptions include:

**3.1.3.a. Waste Tire Monofills.** Monofills offer the advantage of providing 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.

**3.1.3.b. Alternative Daily Cover.** Tire derived material may be substituted for daily cover material at solid waste facilities not to exceed an application frequency of two consecutive days: Provided, however, that the substitution for daily cover material shall not be exempt from the state solid waste assessment fee or monthly tonnage limits imposed on landfills.

**3.1.3.c. Reuse as Select Waste.** 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 solid waste assessment fee and monthly tonnage limit 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.

**3.1.3.d. Exception For Certain Types of Tires:** Certain types of tires are exempt from this rule including the following: tires with a rim size under twelve (12) inches in diameter, bicycle tires, motorcycle tires, solid rubber tires, split tires or other certain types of tires as determined by the chief.

## **3.2. PERMITS REQUIRED.**

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

**3.2.1.a. Waste Tire Processing Activity.** A permittee of an approved solid waste facility may apply to the chief for a minor permit modification to conduct waste tire processing activities at the facility: Provided, That such activities fully comply with this rule.

**3.2.1.b. Waste Tire Monofill Storage Cell.** A permittee of an approved solid waste facility may apply to the chief 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.

**3.2.2. 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.

**3.2.2.a. 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 chief may allow pilot or test projects using the latest best available technology in his or her determination that a permit is not required.

**3.2.2.b. Beneficial Applications For Waste Tires.** Whole waste tires 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 chief, is put at risk. The chief shall have the authority to determine if an unreasonable number of waste tires are being stored and/or 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.**

**3.3.1. Regulatory Requirements.** Unless otherwise approved by the chief in writing, all applicants for a waste tire monofill/storage cell or waste tire processing facility permit/activity shall comply with the permit application requirements of 47 CSR 38 Section 3.7., as applicable, and the

following additional requirements:

**3.3.2. 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 chief 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 chief to be received, processed and stored has been removed from the facility for marketing.

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

**3.3.3.a. 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.

**3.3.4. 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.

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

**3.3.5.a. 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.

**3.3.5.b. 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.

### **3.4. PERMIT APPLICATION FEES.**

**3.4.1. Amount.** The application 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 and one thousand dollars (\$1,000) for a waste tire processing activity or waste tire monofill storage cell.

**3.4.2. 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.**

**3.5.1. 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.

**3.5.2. 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.

**3.5.3. 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.

**3.5.4. 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.

**3.5.5. 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:

**3.5.5.a. 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 section 3.3.2. of this rule. Include in the application, the calculations necessary for determining the quantity/tonnage.

**3.5.5.b. 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;

**3.5.5.c. Size Restriction on 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.

**3.5.5.d. 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.

**3.5.5.e. 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.

**3.5.5.f. 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.

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

**3.5.6.a. 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:

**3.5.6.a.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;

**3.5.6.a.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.**

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

**3.6.1.a. Liner System.** A liner system shall consist of the following elements:

**3.6.1.a.A.** Subbase;

**3.6.1.a.B.** Compacted soil liner; and

**3.6.1.a.C.** Leachate collection and protective cover zone.

**3.6.1.a.D.** Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.I. as applicable, shall be prepared and maintained in a bound log book at the site in regard to liner system construction.

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

**3.6.1.c.** The compacted soil liner shall:

**3.6.1.c.A.** Be a minimum compacted thickness of one (1) foot;

**3.6.1.c.B.** Be compacted in six (6) inch lifts;

**3.6.1.c.C.** Be no more permeable than  $1 \times 10^{-6}$  cm/sec based on laboratory and field testing;

**3.6.1.c.D.** Be free of particles greater than two (2) inches in any dimension;

**3.6.1.c.E.** Be placed without damaging the subbase;

**3.6.1.c.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;

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

3.6.1.c.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.

3.6.1.c.I. The construction of the compacted soil liner shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of the leachate collection and protective cover zone.

3.6.1.d. The leachate collection and protective cover zone shall:

3.6.1.d.A. Create a flow zone between the compacted soil liner and waste tires and/or tire derived material more permeable than  $1 \times 10^{-3}$  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;

3.6.1.d.B. Be at least nine (9) inches thick;

3.6.1.d.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;

3.6.1.d.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;

3.6.1.d.E. Be graded, uniformly compacted, and smoothed;

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

3.6.1.d.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:

**3.6.1.d.G.(a)** The slope sizing and spacing of the piping system shall assure that liquids drain efficiently from the leachate collection zone;

**3.6.1.d.G.(b)** The distance between pipes in the piping system may not exceed one (100) hundred feet on center;

**3.6.1.d.G.(c)** The pipes shall be installed perpendicular to the flow;

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

**3.6.1.d.G.(e)** The pipe shall be capable of supporting anticipated loads without failure based on facility design;

**3.6.1.d.G.(f)** 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;

**3.6.1.d.G.(g)** 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

**3.6.1.d.G.(h)** The leachate collection system shall be cleaned and maintained as necessary.

**3.6.1.d.H.** The construction of the leachate collection and protective cover zone shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of waste tires or tire derived material in the monofill.

### **3.7. GENERAL OPERATIONAL REQUIREMENTS.**

**3.7.1. General Requirements for a waste tire monofill or processing facility activity.** 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:

**3.7.1.a.** 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 chief;

3.7.1.b. Confining windblown material within the operational area and controlling dust and noise;

3.7.1.c. Installing and maintaining surface water diversion ditches around the areas;

3.7.1.d. Access to the monofill facility/activity must be restricted through the use of fencing (woven wire or chain link not less than six feet in height);

3.7.1.e. Effective means must be taken to control flies, rodents, vectors, insects and vermin;

3.7.1.f. A supervisor must be on duty at the facility at all times while it is open;

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

3.7.1.h. All burning is prohibited;

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

3.7.1.j. 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.

### 3.8. RECORDKEEPING AND REPORTING REQUIREMENTS.

3.8.1. **Recordkeeping and Reporting Requirements.** Recordkeeping and reporting requirements for waste tire monofills/storage cells and processing facilities/activities shall include the following:

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

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

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

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

**3.8.1.a.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.

**3.8.1.b. 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 reoccurrence.

**3.8.1.c. Pesticide Application.** Identify the name, type and quantities of pesticides used during the reporting period for vector control.

**3.8.1.d. Term of Recordkeeping.** The permittee must retain records of the quarterly reports at the facility for not less than five (5) years.

**3.8.2. Annual Recordkeeping and Reporting Requirements for Tire Dealers.** An annual report is to be submitted to the chief within sixty (60) days of the end of the dealer's fiscal year and must include:

**3.8.2.a.** The number of new, used and/or retreaded tires sold to customers;

**3.8.2.b.** The number of waste tires collected from customers (the tire dealer may accept more waste tires from a customer than the number of new tires purchased); and

**3.8.2.c.** The name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the signature of the hauler or their agent transporting waste tires from tire dealer, the number of waste tires transported.

**3.8.2.d.** The tire dealer must retain records of the annual report at the place of business for not less than five (5) years.

**3.8.3. Public Notice Requirements for Tire Dealers.** Tire dealers are required to post written notices on at least 8 1/2 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.)

**3.8.3.a. WASTE TIRE MANAGEMENT**

**3.8.3.b.** It is illegal to improperly discard a waste tire in West Virginia;

**3.8.3.c.** State rules require us to accept waste tires in exchange for new tires purchased by our customers in a quantity at least equal to the number of new tires purchased at the point of transfer;

**3.8.3.d.** The price of a new tire shall include a waste tire management fee;

**3.9. BONDING AND FINANCIAL ASSURANCE REQUIREMENTS.**

**3.9.1. Bonding.** Bonding shall be in the amount of \$6,000 per acre with a minimum amount of \$10,000, as specified in Section 22-15-12 of the Code. An additional bond of two 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 of waste tire processing facilities and waste tire monofills. Such two dollar per tire bond will not be released until all tires are removed from the waste tire processing facility and/or waste tire monofill.

**3.10. CLOSURE REQUIREMENTS FOR A WASTE TIRE MONOFILL/STORAGE CELL OR PROCESSING FACILITY/ACTIVITY.**

**3.10.1. 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 47 CSR 38, Section 6 shall be complied with as applicable including, but not limited to, those specified below:

**3.10.1.a. 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 Section 3.9.1 of this rule, no bond may be released until all provisions of this rule have been met.

**3.10.1.b. Security During Closure.** All trucks, trailers, containers, structures and machinery shall be secured until removed;

**3.10.1.c. Revegetation.** All disturbed ground shall be graded, mulched and seeded; and

**3.10.1.d. Sediment and Erosion Control Structures.** Sediment and erosion control structures shall be installed and maintained as necessary to comply with 47 CSR 38 Section 4.5.2.c.

**3.10.1.e. Facility Closure Plan.** All applicants must submit a closure plan in the permit application.

**3.10.2 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.

**3.10.3. 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:

**3.10.3.a.** A substantial separation filter cloth to prevent soil or any other material from coming in contact with the tire material; and

**3.10.3.b.** 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

**3.10.3.c.** 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 47 CSR 38 Section 4.5.6.

**3.10.3.d.** Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.I. as applicable, shall be prepared and maintained in a bound log book at the site in regard to the closure cap construction.

### **3.11. WASTE TIRE ASSESSMENT FEE**

**3.11.1. Imposition.** On the effective date of this rule, a waste tire assessment fee is hereby levied and imposed upon wholesale distributors engaged in the business of selling new tires to a tire dealer and/or automobile dealers engaged in the business of selling new automobiles, trucks or motorized recreational vehicles in the State of West Virginia. This fee is to be collected at the rate of one dollar and fifty cents per new tire sold to a tire dealer and at the same rate per new tire multiplied by the total number of new tires on any automobile, truck or motorized recreational vehicle sold by an automobile dealer. The fee imposed by this rule shall be in addition to all other fees and taxes levied by law.

**3.11.1.a. Term of Assessment Fee.** The fee imposed

shall take effect on the effective date of this rule and shall remain in effect through June 30, 2004.

**3.11.1.b. Liability.** Each wholesale distributor or automobile dealer is liable for the fee imposed. Each wholesale distributor or automobile dealer who uses new tires, new automobiles, trucks or recreational vehicles in his own business operation in this state is liable for the fee imposed. Each tire dealer who acquires new tires from a person who is not registered with the tax commissioner as a wholesale distributor is liable for the fee imposed.

**3.11.2. Payment and Records.** The wholesale distributor or automobile dealer shall pay the fee imposed to the tax commissioner of the State of West Virginia. The fee imposed accrues at the time of sale and shall be remitted monthly for the full amount to the tax commissioner on or before the twentieth (20th) day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the business is required to file returns on forms and in a manner as prescribed by the tax commissioner.

**3.11.3. Dedication of Proceeds.** The net proceeds of the waste tire assessment fee collected by the tax commissioner shall be deposited at least monthly in the following designated funds:

**3.11.3.a.** Fifty percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Reclamation and Environmental Response Fund" which shall be expended by the director for the purposes of reclamation, cleanup and remedial actions at West Virginia tire piles; and

**3.11.3.b.** Thirty percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Enforcement Fund" which shall be expended by the director for administration, inspection, enforcement and permitting activities; and

**3.11.3.c.** Fifteen percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Management Board Planning Fund" which shall be exclusively dedicated and expended for the purpose of market development, pilot projects, technological research and incentive programs for waste tires and tire derived material.

**3.11.3.d.** Five percent of the net proceeds of the fee collected shall be deposited with the WV Department of Tax and Revenue which shall be expended by the tax commissioner for administering the collection and disbursement of the waste tire assessment fee.



DIVISION OF ENVIRONMENTAL PROTECTION  
10 McJunkin Road  
Nitro, WV 25143-2506

GASTON CAPERTON  
GOVERNOR

DAVID C. CALLAGHAN  
DIRECTOR

November 22, 1994

Ms. Judy Cooper  
Director, Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
Charleston, West Virginia 25305

RE: 47CSR38G - Proposed Waste Tire Management Rule

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule with your Office and Legislative Rule-Making as agency approval of a proposed rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

David C. Callaghan  
Commissioner  
Bureau of Environment

DCC;RTH:cc

Attachment

OFFICE OF THE SECRETARY OF STATE

NOV 23 11 42 AM '94

11/23/94



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1356 Hansford Street  
Charleston, WV 25301-1401

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

*October 4, 1994*

**BRIEF SUMMARY OF PROPOSED RULE**

*Whereas, it will be unlawful to deposit tires in a solid waste facility in West Virginia, effective June 1, 1995, this rule provides for the proper handling and management of waste tires including a permitting procedure and various requirements for persons who manage, collect, store, transport, recycle, process or otherwise handle or manage waste tires after June 1, 1995. This proposed rule has been prepared in conjunction with the "Program For The Proper Handling Of Waste Tires In West Virginia" which was prepared by the Solid Waste Management Board.*



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October 4, 1994

*STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED RULE*

*The adoption of this rule is made necessary by the pending June 1, 1995 legislative ban on the disposal of waste tires in West Virginia, and to require that waste tires which are handled, stored, and processed into tire derived materials are managed in a manner that protects public health and the environment and is consistent with the WV Waste Tire Program as prepared by the Solid Waste Management Board.*

*A waste tire management problem currently exists in the state as evidenced by the large tire piles accounting for approximately 4,650,000 tires requiring clean-up at numerous sites, and eliminating the threat of fire, environmental degradation and eliminating the endangerment to public health.*

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: DEP Office of Waste Management

LEGISLATIVE RULE TITLE: "Waste Tire Management Rule"

1. Authorizing statute(s) citation W. Va. Code 22-1-3, 22-1-3a.,  
20-11-8(c)
2. a. Date filed in State Register with Notice of Hearing  
October 7, 1994
- b. What other notice, including advertising, did you give  
of the hearing?  
News Release - October 18, 1994
- c. Date of Hearing(s) November 10, 1994
- d. Attach list of persons who appeared at hearing,  
comments received, amendments, reasons for amendments.  
Attached XX No comments received
- e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public hearing:  
(be exact)  
October 7, 1994
- f. Name and phone number(s) of agency person(s) to  
contact for additional information:  
Richard P. Cooke - 558-6350

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

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

N/A

b. Date of hearing: \_\_\_\_\_

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

N/A

d. Attach findings and determinations and reasons:

Attached



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**WASTE TIRE MANAGEMENT RULE**

**COMMENTS AND RESPONSES**

The various comments received and the agency's responses are divided into three basic groups: 1) industry associations including the WV Tire Dealers Association, WV Gasoline Dealers and Automotive Repair Association, Inc., WV Mining and Reclamation Association, WV Retailers Association and the Environmental Group, LTD. 2) waste haulers including the WV Association of Waste Haulers and Recyclers, Cummings Collection Services, Inc. and 3) public agencies including the Mercer County Solid Waste Authority and the Solid Waste Management Board.

GROUP 1

*Comment: Section 1.8 page 2. Insert language to provide that state rule is no more stringent than any future federal rule.*

*Response: Changed language by agreeing in part to comment but providing flexibility for more stringent state rule if federal rule yet to be promulgated does not meet specific needs of state.*

*Comment: Section 2.6 page 2. Amend definition to obtain a better definition.*

*Response: Fully adopted commentor's amended definition for improvement.*

*Comment: Section 2.7 page 2. Replace "at retail" with "to an end user" to help distinguish between a retailer and wholesaler.*

*Response: Fully adopted commentor's request to distinguish difference.*

*Comment: Section 2.3. page 3. Remove unnecessary verbage and change waste hauler registration from the PSC to the DEP.*

*Response: Unnecessary verbage removed. However, PSC currently registers motor carriers and the changing to the DEP would duplicate established responsibilities. Also, the DEP does not agree that all liability should be removed from the tire dealers because they are a primary generator of waste tires incidental to their business and should be held to a high standard of selecting competent/responsible haulers for their waste tires. The vast majority of tire dealers are professionally responsible businesses, but may want to monitor and/or evaluate the performance of the waste haulers they select.*

*Comment: Section 3.13.d. page 4. Insert the words "split tires".*

*Response: Agency agrees, words inserted. The other comment to provide chiefs discretion on permitting for pilot or test projects using the best available technology inserted in 3.2.2.a.*

*Comment: Section 3.2.2.a. page 5. This section was not clear to two particular commentors, however, it was very clear to other commentors and the agency.*

*Response: Additional language has been inserted to provide more safeguards for handling, storage and stockpiling of waste tires.*

*Comment: Section 3.2.2.b. page 5. Give oversight powers to the chief.*

*Response: Language added to give oversight powers to the chief for beneficial application of waste tires.*

*Comment: Section 3.4.1. page 6. Deposit money in Waste Tire Management Fund.*

*Response: The agency believes there should be dedicated funds for specific use. No change in section.*

*Comment: Section 3.5.6.a.A. page 8. Add the words "in whole tires".*

*Response: Words added, agency agrees.*

*Comment: Section 3.5.6.a.B. page 8. Change Department of Agriculture to the DEP.*

*Response: The agency believes the DEP is not the proper agency to review vector plans for chemical treatment of pests. No change.*

*Comment: Section 3.8.2. page 12. Change language to accommodate tire dealers recordkeeping on fiscal year.*

*Response: Recommended language added.*

*Comment: Section 3.8.2.a. page 12. Add more language for statistical purposes.*

*Response: Recommended language added.*

*Comment: Section 3.8.2.c. page 12. Change word certificated to registered, require haulers signature and remove language requiring reporting to where tires were transported.*

*Response: No change to first comment, agency disagrees; signature requirement/agency agrees/change made; removed language to report where transported, this should not be dealer's responsibility.*

*Comment: Section 3.8.2.d. and e. page 12. Delete whole section.*

*Response: Agency agrees to deletion of 3.8.2.d. but does not agree to deleting section 3.8.2.e.*

*Comment: Section 3.8.3.d. page 12. Change word "may" to "shall".*

Response: Agency agrees, word changed.

Comment: Section 3.8.3.e. page 12. Delete section.

Response: Agency agrees, section deleted.

Comment: 3.8.3. page 12. Add language that DEP will furnish notice for consistency.

Response: Agency agrees in part and inserted "available from".

Comment: 3.8.3.c. page 12. Add words "whenever possible".

Response: Agency totally disagrees!

Comment: Section 3.11.1. page 14. Establish differential fees.

Response: Agency does not agree.

Comment: Section 3.11.1a. page 14. Add language providing a 5% fee to be kept by the tire dealer.

Response: Agency not clear on impact of recommended language, however, state that nothing in the rule prohibits dealers from charging an administrative fee.

Comment: Section 3.11.2. page 14. Change date to the 20th.

Response: Agency changed 15th to 20th day of the month.

Comment: Delete all after Section 3.11. and insert a conceptual alternative.

Response: The agency believes that all of Section 3.11. is appropriate, workable and reasonable. The agency did study and consider the increased vehicle registration fee alternative suggested.

## Group 2

Comment: To rewrite monofill and storage cell references that rules are "overkill".

Response: Agency believes that rules on monofills and storage cells are reasonable and not cost prohibitive and are environmentally protective.

Comment: Exclude portable grinders and shredders from permitting.

Response: Agency agrees in part and rewrote Section 3.2.1.

Comment: The cost to the consumer will increase. In addition, WV tire dealers located near state borders will be at an economic disadvantage as compared to out-of-state competitors.

Response: The agency recognizes there will be an additional cost to the consumer but feels that some of the additional cost noted is already

being collected. Surrounding state has or will impose such fees of a similar magnitude.

Comment: The addition of a \$2.00 per tire bonding requirement without defining that a mandate exists requiring all tires be removed from monofill before the bond can be released.

Response: Section 3.9.1 has been revised to reflect this requirement.

Comment: (3.1.3.b.) Shredded tire material used as daily cover should be exempted from solid waste assessment fees and tonnage limitations because such materials are being utilized in a beneficial reuse and not being disposed.

Response: The exemption requested by the commentor has been superseded by W. Va. Code §22-15-2.

Comment: (3.1.3.c.) Shredded tires reused as select waste is exempted from both tonnage and assessment fee requirements; commentor feels this policy is inconsistent with the policy concerning daily cover.

Response: The usage of this material as select waste in the liner protection zone is considered as a part of liner construction and therefore, is exempt from tonnage and assessment fee requirements.

Comment: Mobile tire shredders should be exempt from permitting requirements and also, that the proposed rule requires tire dealers to transport waste tires to a shredder or other site.

Response: This agency agrees with the first part of the comment and the appropriate language has been added to section 3.2. of the proposed rule. However, the agency does not believe that this proposed rule prevents tires from being shredded on site by the dealer.

Comment: Commentor feels that Section 1.1.3. does not include businesses who handle used tires for the purpose of recapping or resale.

Response: The agency agrees and the appropriate language has been added.

Comment: Rule should be broadened to include recapping facilities.

Response: Revised language has been added to 1.1.3., 3.1.1., and 3.8.2.a.

Comment: Proposed that waste tires be allowed to go into landfills in areas where there is a lack of available monofills or other permitted processing facilities.

Response: Senate Bill 1021 bans such disposal under §20-11-8.

Comment: Commercial recapping facilities should also keep records of the hauling of tires and submit reports for these activities.

Response: Revised language has been added to 3.8.2. of the proposed rule.

Group 3

*Comment: Why a facility would invest in equipment that could utilize tires as daily cover when they would still be required to pay assessment fees on the tonnage?*

*Response: The agency has provided the facility with an economic choice.*

*Comment: Suggests the use of quartered or whole tires as selected waste.*

*Response: This agency disagrees.*

*Comment: Commentor feels fencing and erosion control are unnecessary.*

*Response: This agency disagrees.*

*Comment: Commentor feels that the proposed rule will negatively affect mining, construction, reclamation and quarry activities.*

*Response: The agency believes there is an existing exemption provided under 3.1.3.d. of the proposed rule that satisfies their concerns.*

*Comment: Section 3.11.3. page 14. Change the dedication of the proceeds to the "Waste Tire Management Fund" and delete all the subsections 3.11.3.a. through 3.11.2.d.*

*Response: The agency disagrees and believes the designated funds proposed are appropriate but has changed the word in 3.11.3.c. "reserve" to "planning" as commented by the SWMB.*



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
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Deputy Director

**AMENDMENTS MADE TO PROPOSED RULE**

1.1.1. Purpose. This rule is intended to meet the requirements of Chapter 20, Article 11, Section 8(c), as amended. That section directed the Division of Environmental Protection to promulgate rules in accordance with the Solid Waste Management Board Plan established under Chapter 20, Article 11, Section 8(b) to properly handle and manage waste and/or used tires.

1.1.3. Applicability. This rule applies to any person or persons who manage, collect, store, transport, recycle, process, dispose or otherwise handles waste and/or used tires after June 1, 1995 in the State of West Virginia, except as provided in section 3.1 of this rule.

1.8. STRINGENCY. In the event of a Whereas there is no federal counterpart rule, this rule is no more or no less stringent than the federal rule; Provided that, the federal rule meets the specific needs of this state.

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

2.7. "Tire Dealer" means any person or persons engaged in the business of selling tires at retail to an end user in the State of West Virginia.

2.13. "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, and a fee is not charged for the service of hauling. Provided that: a waste tire hauler must be a Certificated Motor Carrier regulated by the WV Public Service Commission to lawfully transport waste tires.

3.1.1. Regulated Facilities and Activities. This rule applies to any person or persons who generate, collect, transport, store, process, reuse, dispose, or otherwise manage waste and/or used tires after June 1, 1995, in the State of West Virginia.

3.1.3.d. Exception For Certain Types of Tires: Certain types of tires are exempt from this rule including the following: tires with a rim size under twelve (12) inches in diameter, bicycle tires, motorcycle tires,

solid rubber tires, split tires or other certain types of tires as determined by the chief.

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

3.2.2.a. 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 chief may allow pilot or test projects using the latest best available technology in his or her determination that a permit is not required.

3.2.2.b. Beneficial Applications For Waste Tires. Whole waste tires 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 chief, is put at risk. The chief shall have the authority to determine if an unreasonable number of waste tires are being stored and/or for an unreasonable length of time for beneficial application and may take enforcement action including the removal of said tires.

3.5.6.a.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;

3.8.2. Annual Recordkeeping and Reporting Requirements for Tire Dealers. An annual report is to be submitted to the chief within sixty (60) days of the end of the dealer's fiscal year before the fifteenth (15th) day of January the next succeeding year for the previous year's activity and must include:

3.8.2.a. The number of new, used and/or retreaded tires sold to customers;

3.8.2.b. The number of waste tires collected from customers (the tire dealer may accept more waste tires from a customer than the number of new tires purchased); and

3.8.2.c. The name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the signature of the hauler or their agent transporting waste tires from tire dealer, the number of waste tires transported, and the name, address, and telephone number of the company to which the waste tires were transported.

~~3.8.2.d. The name and address of any customer to whom new tires were sold who did not turn in the waste tire or waste tires at the time of purchase.~~

3.8.2.de. The tire dealer must retain records of the annual report at the place of business for not less than five (5) years.

3.8.3. Public Notice Requirements for Tire Dealers. Tire dealers are required to post written notices on at least 8 1/2 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.)

3.8.3.d. The price of a new tire shall may include a waste tire management fee;

~~3.8.3.e. State rules also require us to keep the name and address of any customer to whom new tires were sold who did not turn in the waste tire or waste tires at the time of purchase.~~

3.9.1. Bonding. Bonding shall be in the amount of \$6,000 per acre with a minimum amount of \$10,000, as specified in Section 22-15-12 of the Code. An additional bond of two 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 of waste tire processing facilities and waste tire monofills. Such two dollar per tire bond will not be released until all tires are removed from the waste tire processing facility and/or waste tire monofill.

3.10.1.a. Removal of Miscellaneous Materials. All waste tires, tire derived materials and/or waste materials including 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 Section 3.9.1 of this rule, no bond may be released until all provisions of this rule have been met.

3.11.1.ba. Liability. Each wholesale distributor or automobile dealer is liable for the fee imposed. Each wholesale distributor or automobile dealer who uses new tires, new automobiles, trucks or recreational vehicles in his own business operation in this state is liable for the fee imposed. Each tire dealer who acquires new tires from a person who is not registered with the tax commissioner as a wholesale distributor is liable for the fee imposed.

3.11.2. Payment and Records. The wholesale distributor or automobile dealer shall pay the fee imposed to the tax commissioner of the State of West Virginia. The fee imposed accrues at the time of sale and shall be remitted monthly for the full amount to the tax commissioner on or before the twentieth (20th) fifteenth day of the month next succeeding the month in

which the fee accrued. Upon remittance of the fee, the business is required to file returns on forms and in a manner as prescribed by the tax commissioner.

3.11.3.c. Fifteen percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Management Board Planning Reserve Fund" which shall be exclusively dedicated and expended for the purpose of market development, pilot projects, technological research and incentive programs for waste tires and tire derived material.



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REASONS FOR PROPOSED AMENDMENTS

- 1.1.1., 1.1.3. - Change was made to include used tires.
- 1.8. - Inserted language to provide that state rule is no more stringent than any future federal rule.
- 2.6. - Amended to obtain a clearer definition.
- 2.7. - To help distinguish between a retailer and wholesaler.
- 2.13. - To remove unnecessary language.
- 3.1.1. - Change was made to include used tires.
- 3.1.3.d. - To more clearly define the agency's intent.
- 3.2.1. - To exclude portable grinding and shredding machine from the permitting process.
- 3.2.2.a. - To more clearly define the agency's intent.
- 3.2.2.b. - To give oversight powers to the chief.
- 3.5.6.a.A. - Words added to give clarification.
- 3.8.2. - Language changed to accommodate tire dealer's recordkeeping on fiscal year.
- 3.8.2.a. - Language added for statistical purposes.
- 3.8.2.c. - Language added to change the reporting responsibility.
- 3.8.2.d. - This section deleted because reporting responsibilities were too stringent.
- 3.8.3. - Added language that DEP will furnish notices for consistency.
- 3.8.3.d. - To demonstrate that the dealer does not have a choice of collecting the fee.
- 3.8.3.e. - This section deleted because reporting responsibilities were too stringent.
- 3.9.1. - To further clarify bonding requirements.
- 3.10.1.a. - To further clarify bonding requirements.
- 3.11.2. - To be more consistent with submission of other taxes.
- 3.11.3.c. - To change the fund's at the Solid Waste Management Board.



FILE

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

MAR 25 11 42 AM '95

1356 Hansford Street  
Charleston, WV 25301-1401

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

TITLE 47  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38G  
PROPOSED WASTE TIRE MANAGEMENT RULE

47-38G-1. GENERAL.

1.1. PURPOSE, SCOPE AND APPLICABILITY.

1.1.1. Purpose. This rule is intended to meet the requirements of Chapter 20, Article 11, Section 8(c), as amended. That section directed the Division of Environmental Protection to promulgate rules in accordance with the Solid Waste Management Board Plan established under Chapter 20, Article 11, Section 8(b) to properly handle and manage waste and/or used tires.

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

1.1.3. Applicability. This rule applies to any person or persons who manage, collect, store, transport, recycle, process, dispose or otherwise handles waste and/or used tires after June 1, 1995 in the State of West Virginia, except as provided in section 3.1 of this rule.

1.2. AUTHORITY: West Virginia Code §22-1-3., §22-1-3a., §20-11-8(c).

1.3. LEGISLATIVE MANDATE: Effective June 1, 1995, it will be unlawful to deposit tires in a solid waste facility in West Virginia: Provided, however, That reasonable and necessary exceptions to such prohibition may be, and are, included in this rule (West Virginia Code §20-11-8(a)).

1.4. FILING DATE: October 5, 1994

1.5. EFFECTIVE DATE: June 1, 1995

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.

1.7. DETERMINATION OF ENVIRONMENTAL PROTECTION ADVISORY COUNCIL. It is not necessary to make a determination whereas there is no federal counterpart rule.

1.8. STRINGENCY. In the event of a Whereas there is no federal counterpart rule, this rule is no more or no less stringent than the federal rule; Provided that, the federal rule meets the specific needs of this state.

1.9. CONSTITUTIONAL TAKINGS DETERMINATION. The Director of the Division of Environmental Protection has determined that this rule will not result a constitutional taking of real property.

47-38G-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 47 CSR 38 are fully incorporated into this rule by reference.

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. "Bond" means any performance bond or other form of financial assurance provided by W. Va. Code §22-15-11 and the Solid Waste Management Regulations (47 CSR 38).

2.4. "Chief" means the Chief of the Office of Waste Management of the West Virginia Division of Environmental Protection or his authorized representative.

2.5. "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.

2.5. "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.

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

2.7. "Tire Dealer" means any person or persons engaged in the business of selling tires at retail to an end user in the State of West Virginia.

2.8. "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.

2.9. "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.

2.10. "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.

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

2.12. "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.

2.13. "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, and a fee is not charged for the service of hauling. Provided that: a waste tire hauler must be a Certificated Motor Carrier regulated by the WV Public Service Commission to lawfully transport waste tires.

2.14. "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.

2.15. "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.

2.16. "Waste Tire Storage" means the temporary containment of waste tires at any facility, property, building, mobile tractor trailer, place of business, private residence, or by any person in a manner that does not constitute solid waste disposal. Provided however, that any waste tires in excess of one (1,000) thousand that are stored before or after processing for a period of time in excess of twelve (12) months, except in a waste tire monofill or storage cell, shall be deemed unlawful disposal and shall constitute an open dump.

2.17. "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.

47-38G-3. WASTE TIRE MANAGEMENT AND PERMITTING REQUIREMENTS.

3.1. APPLICABILITY.

3.1.1. Regulated Facilities and Activities. This rule applies to any person or persons who generate, collect, transport, store, process, reuse, dispose, or otherwise manage waste and/or used tires after June 1, 1995, in the State of West Virginia.

3.1.2. 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 47 CSR 38G is subject to the same criminal penalties as set forth in Chapter 22, Article 11, Section 24.

3.1.3. Reasonable and Necessary Exceptions to Prohibiting Tire Material 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, 1995 are provided and allowed by Chapter 20, Article 11, Section 8(a). These exceptions include:

3.1.3.a. Waste Tire Monofills. Monofills offer the advantage of providing 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.

3.1.3.b. Alternative Daily Cover. Tire derived material may be substituted for daily cover material at solid waste facilities not to exceed an application frequency of two consecutive days: Provided, however, that the substitution for daily cover material shall not be exempt from the state solid waste assessment fee or monthly tonnage limits imposed on landfills.

3.1.3.c. Reuse as Select Waste. 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 solid waste assessment fee and monthly tonnage limit 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.

3.1.3.d. Exception For Certain Types of Tires: Certain types of tires are exempt from this rule including the following: tires with a rim size under twelve (12) inches in diameter, bicycle tires, motorcycle tires, solid rubber tires, split tires or other certain types of tires as determined by the chief.

3.2. PERMITS REQUIRED.

3.2.1. Waste Tire Monofill and Waste Tire Processing Facility. A permit must be obtained from the chief prior to the installation,

establishment, construction or operation of a waste tire monofill or waste tire processing facility. Provided that, a portable tire grinder or shredding machine shall not constitute a waste tire processing facility, unless determined otherwise by the chief.

3.2.1.a. Waste Tire Processing Activity. A permittee of an approved solid waste facility may apply to the chief for a minor permit modification to conduct waste tire processing activities at the facility: Provided, That such activities fully comply with this rule.

3.2.1.b. Waste Tire Monofill Storage Cell. A permittee of an approved solid waste facility may apply to the chief 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.

3.2.2. 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.

3.2.2.a. 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 chief may allow pilot or test projects using the latest best available technology in his or her determination that a permit is not required.

3.2.2.b. Beneficial Applications For Waste Tires. Whole waste tires 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 chief, is put at risk. The chief shall have the authority to determine if an unreasonable number of waste tires are being stored and/or 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.

3.3.1. *Regulatory Requirements.* Unless otherwise approved by the chief in writing, all applicants for a waste tire monofill/storage cell or waste tire processing facility permit/activity shall comply with the permit application requirements of 47 CSR 38 Section 3.7., as applicable, and the following additional requirements:

3.3.2. *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 chief 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 chief to be received, processed and stored has been removed from the facility for marketing.

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

3.3.3.a. *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.

3.3.4. *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.

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

3.3.5.a. *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.

3.3.5.b. *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.

#### 3.4. PERMIT APPLICATION FEES.

3.4.1. Amount. The application 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 and one thousand dollars (\$1,000) for a waste tire processing activity or waste tire monofill storage cell.

3.4.2. 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.

3.5.1. 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.

3.5.2. 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.

3.5.3. 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.

3.5.4. 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.

3.5.5. 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:

3.5.5.a. 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 section 3.3.2. of this rule. Include in the application, the calculations necessary for determining the quantity/tonnage.

3.5.5.b. 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;

3.5.5.c. Size Restriction on 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.

3.5.5.d. 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.

3.5.5.e. 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.

3.5.5.f. 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.

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

3.5.6.a. 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:

3.5.6.a.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;

3.5.6.a.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.

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

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

3.6.1.a.A. Subbase;

3.6.1.a.B. Compacted soil liner; and

3.6.1.a.C. Leachate collection and protective cover zone.

3.6.1.a.D. Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.I. as applicable, shall be prepared and maintained in a bound log book at the site in regard to liner system construction.

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

3.6.1.c. The compacted soil liner shall:

3.6.1.c.A. Be a minimum compacted thickness of one (1) foot;

3.6.1.c.B. Be compacted in six (6) inch lifts;

3.6.1.c.C. Be no more permeable than  $1 \times 10^{-6}$  cm/sec based on laboratory and field testing;

3.6.1.c.D. Be free of particles greater than two (2) inches in any dimension;

3.6.1.c.E. Be placed without damaging the subbase;

3.6.1.c.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;

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

3.6.1.c.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.

3.6.1.c.I. The construction of the compacted soil liner shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of the leachate collection and protective cover zone.

3.6.1.d. The leachate collection and protective cover zone shall:

3.6.1.d.A. Create a flow zone between the compacted soil liner and waste tires and/or tire derived material more permeable than  $1 \times 10^{-3}$  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;

3.6.1.d.B. Be at least nine (9) inches thick;

3.6.1.d.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;

3.6.1.d.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;

3.6.1.d.E. Be graded, uniformly compacted, and smoothed;

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

3.6.1.d.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:

3.6.1.d.G.(a) The slope sizing and spacing of the piping system shall assure that liquids drain efficiently from the leachate collection zone;

3.6.1.d.G.(b) The distance between pipes in the piping system may not exceed one (100) hundred feet on center;

3.6.1.d.G.(c) The pipes shall be installed perpendicular to the flow;

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

3.6.1.d.G.(e) The pipe shall be capable of supporting anticipated loads without failure based on facility design;

3.6.1.d.G.(f) 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;

3.6.1.d.G.(g) 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

3.6.1.d.G.(h) The leachate collection system shall be cleaned and maintained as necessary.

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

### 3.7. GENERAL OPERATIONAL REQUIREMENTS.

3.7.1. General Requirements for a waste tire monofill or processing facility activity. 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:

3.7.1.a. 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 chief;

3.7.1.b. Confining windblown material within the operational area and controlling dust and noise;

3.7.1.c. Installing and maintaining surface water diversion ditches around the areas;

3.7.1.d. Access to the monofill facility/activity must be restricted through the use of fencing (woven wire or chain link not less than six feet in height);

3.7.1.e. Effective means must be taken to control flies, rodents, vectors, insects and vermin;

3.7.1.f. A supervisor must be on duty at the facility at all times while it is open;

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

3.7.1.h. All burning is prohibited;

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

3.7.1.j. 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.

### 3.8. RECORDKEEPING AND REPORTING REQUIREMENTS.

3.8.1. Recordkeeping and Reporting Requirements. Recordkeeping and reporting requirements for waste tire monofills/storage cells and processing facilities/activities shall include the following:

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

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

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

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

3.8.1.a.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.

3.8.1.b. 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 reoccurrence.

3.8.1.c. Pesticide Application. Identify the name, type and quantities of pesticides used during the reporting period for vector control.

3.8.1.d. Term of Recordkeeping. The permittee must retain records of the quarterly reports at the facility for not less than five (5) years.

3.8.2. Annual Recordkeeping and Reporting Requirements for Tire Dealers. An annual report is to be submitted to the chief within sixty (60) days of the end of the dealer's fiscal year before the fifteenth (15th) day of January the next succeeding year for the previous year's activity and must include:

3.8.2.a. The number of new, used and/or retreaded tires sold to customers;

3.8.2.b. The number of waste tires collected from customers (the tire dealer may accept more waste tires from a customer than the number of new tires purchased); and

3.8.2.c. The name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the signature of the hauler or their agent transporting waste tires from tire dealer, the number of waste tires transported, and the name, address, and telephone number of the company to which the waste tires were transported;

~~3.8.2.d. The name and address of any customer to whom new tires were sold who did not turn in the waste tire or waste tires at the time of purchase.~~

3.8.2.de. The tire dealer must retain records of the annual report at the place of business for not less than five (5) years.

3.8.3. Public Notice Requirements for Tire Dealers. Tire dealers are required to post written notices on at least 8 1/2 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.)

3.8.3.a. WASTE TIRE MANAGEMENT

3.8.3.b. It is illegal to improperly discard a waste tire in West Virginia;

3.8.3.c. State rules require us to accept waste tires in exchange for new tires purchased by our customers in a quantity at least equal to the number of new tires purchased at the point of transfer;

3.8.3.d. The price of a new tire shall may include a waste tire management fee;

~~3.8.3.e.~~ State rules also require us to keep the name and address of any customer to whom new tires were sold who did not turn in the waste tire or waste tires at the time of purchase.

3.9. BONDING AND FINANCIAL ASSURANCE REQUIREMENTS.

3.9.1. Bonding. Bonding shall be in the amount of \$6,000 per acre with a minimum amount of \$10,000, as specified in Section 22-15-12 of the Code. An additional bond of two 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 of waste tire processing facilities and waste tire monofills. Such two dollar per tire bond will not be released until all tires are removed from the waste tire processing facility and/or waste tire monofill.

3.10. CLOSURE REQUIREMENTS FOR A WASTE TIRE MONOFILL/STORAGE CELL OR PROCESSING FACILITY/ACTIVITY.

3.10.1. 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 47 CSR 38, Section 6 shall be complied with as applicable including, but not limited to, those specified below:

3.10.1.a. Removal of Miscellaneous Materials. All waste tires, tire derived materials and/or waste materials including 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 Section 3.9.1 of this rule, no bond may be released until all provisions of this rule have been met.

3.10.1.b. Security During Closure. All trucks, trailers, containers, structures and machinery shall be secured until removed;

3.10.1.c. Revegetation. All disturbed ground shall be graded, mulched and seeded; and

3.10.1.d. Sediment and Erosion Control Structures. Sediment and erosion control structures shall be installed and maintained as necessary to comply with 47 CSR 38 Section 4.5.2.c.

3.10.1.e. Facility Closure Plan. All applicants must submit a closure plan in the permit application.

3.10.2 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.

3.10.3. 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:

3.10.3.a. A substantial separation filter cloth to prevent soil or any other material from coming in contact with the tire material; and

3.10.3.b. 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

3.10.3.c. 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 47 CSR 38 Section 4.5.6.

3.10.3.d. Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.I. as applicable, shall be prepared and maintained in a bound log book at the site in regard to the closure cap construction.

### 3.11. WASTE TIRE ASSESSMENT FEE

3.11.1. Imposition. On the effective date of this rule, a waste tire assessment fee is hereby levied and imposed upon wholesale distributors engaged in the business of selling new tires to a tire dealer and/or automobile dealers engaged in the business of selling new automobiles, trucks or motorized recreational vehicles in the State of West Virginia. This fee is to be collected at the rate of one dollar and fifty cents per new tire sold to a tire dealer and at the same rate per new tire multiplied by the total number of new tires on any automobile, truck or motorized recreational vehicle sold by an automobile dealer. The fee imposed by this rule shall be in addition to all other fees and taxes levied by law.

3.11.1.a. Term of Assessment Fee. The fee imposed shall take effect on the effective date of this rule and shall remain in effect through June 30, 2004.

3.11.1.ba. Liability. Each wholesale distributor or automobile dealer is liable for the fee imposed. Each wholesale distributor or automobile dealer who uses new tires, new automobiles, trucks or recreational vehicles in his own business operation in this state is liable for the fee imposed. Each tire dealer who acquires new tires from a person who is not registered with the tax commissioner as a wholesale distributor is liable for the fee imposed.

3.11.2. *Payment and Records.* The wholesale distributor or automobile dealer shall pay the fee imposed to the tax commissioner of the State of West Virginia. The fee imposed accrues at the time of sale and shall be remitted monthly for the full amount to the tax commissioner on or before the twentieth (20th) ~~fifteenth~~ day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the business is required to file returns on forms and in a manner as prescribed by the tax commissioner.

3.11.3. *Dedication of Proceeds.* The net proceeds of the waste tire assessment fee collected by the tax commissioner shall be deposited at least monthly in the following designated funds:

3.11.3.a. Fifty percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Reclamation and Environmental Response Fund" which shall be expended by the director for the purposes of reclamation, cleanup and remedial actions at West Virginia tire piles; and

3.11.3.b. Thirty percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Enforcement Fund" which shall be expended by the director for administration, inspection, enforcement and permitting activities; and

3.11.3.c. Fifteen percent of the net proceeds of the fee collected shall be deposited in the "Solid Waste Management Board Planning Reserve Fund" which shall be exclusively dedicated and expended for the purpose of market development, pilot projects, technological research and incentive programs for waste tires and tire derived material.

3.11.3.d. Five percent of the net proceeds of the fee collected shall be deposited with the WV Department of Tax and Revenue which shall be expended by the tax commissioner for administering the collection and disbursement of the waste tire assessment fee.

## **Waste Tire Management Rule 11/10/94**

**RHEINLANDER:** My name is Bill Rheinlander. I work with the Office of Waste Management. The purpose of this meeting is to give citizens an opportunity to comment on proposed regulations for waste tire management. These regulations were filed with the Secretary of State's Office on October 5, 1994, were advertised in the Secretary of State's bulletin, as well as, we issued a statewide news release. A couple other people from the DEP. To my right is Dick Cook. He's the assistant chief of Solid Waste. And Paul Benedim is an engineering technician in the Solid Waste Management Section. At this time Paul is going to give a brief summary of the regulations.

**BENEDIM:** The adoption of this rule was made necessary by the pending June 1, 1995, legislative ban on disposal of waste tires in West Virginia and to require that waste tires, which are handled, stored, and processed into tire ?? materials are managed in a manner that protects public health and the environment and is consistent with West Virginia Tire Program as prepared by the Solid Waste Management board. A waste tire management problem currently exists in the state as evidenced by the large tire piles accounting for approximately four million six hundred fifty thousand tires requiring cleanup at numerous sites and eliminating the threat of fire, environmental degradation and eliminating the endangerment to the public health. Whereas it would be unlawful to deposit tires in a solid waste facility in West Virginia

effective June 1, 1995, this rule provides for the proper handling and management of waste tires, including the permitting procedure and the various requirements for persons who manage, collect, store, transport, recycle, process, or otherwise handle or manage waste tires after June 1, 1995. This proposed rule is prepared in conjunction with the program for the proper handling of waste tires in West Virginia, which was prepared by the Solid Waste Management Board. The rule itself ... I'll go through the outline of how it's laid out. First off, we have the general information on the rule itself. Secondly, we listed the definitions used throughout the rule. And also it incorporates some other definitions. We have the waste time management and permitting requirements. They're both up in the multiple sections. The first section was the applicability of the rule - to whom it is required underneath of it. Then we have the permits required and also the exemptions for the need of permits. Then the permit application requirements. The permit application fees. The minimum design for a waste tire processing facility or activity and a minimum design for a waste tire monofill or storage cell. Then we have the general operational requirements for both those types of facilities, record keeping and reporting. Then there's bonding and financial assurance requirements, and also closure requirements for a waste tire, monofill, storage cell, or a processing facility activity and also there is within the rule, an implementation of a waste tire management fee which is broken down.

**RHEINLANDER:** We're having a two-part hearing. One will receive your comments

if you come to the podium to my left and speak into the microphone so we can record it well. And then we'll answer questions afterwards informally. We've got eight speakers. Ken Komaraski.

**KOMARASKI:** Good morning. My name is Kenneth Komaraski. I'm an attorney with Kirkpatrick and Lockhart in Pittsburgh, Pennsylvania, and Kirkpatrick and Lockhart represents Riverside Manufacturing. Riverside Manufacturing has submitted written comments to the Division, and I have copies of those that I'll provide to each of the Division participants here as well this morning. Therefore, our comments will be limited to just a few brief oral remarks which are consistent with those written comments. First of all, on behalf of Riverside Manufacturing we'd like to say that we support the rules as they are currently proposed and written. We think that the rules as they are written meet the legislative mandate established in the recycling act and solid waste management act. We believe they are protective of the environment and, furthermore, that they encourage the appropriate processes that allow for the recovery of material. Finally, the exceptions that are included in the proposed rule should be finalized since those rules will help to support those mandates and encourage the appropriate processes. And those exceptions should be included in the final rule. Thank you.

**RHEINLANDER:** Thank you. John West.

**WEST:** Good morning. My name is John West with National Tire Recycling Center. We're located just south of Parkersburg. We are currently the only

legally permitted tire recycling facility in the state, and therefore, we bring some experience to this meeting this morning with what will and what won't work. We have some concerns, which I'm prepared to detail later on, but maybe not at this moment, about some of the provisions that are in the proposed rules. Just briefly, the facilities that are going to receive tires ... their construction requirements, the paperwork requirements ... we feel are an overkill for what is needed in a practical sense. Not only for the operator, but we challenge as to who is going to enforce the regulations and read the paperwork. We have had experience now—directly and indirectly—for approximately five years. It is our belief, and my belief would be supported by members of the state DEP, that there is not the budget to hire the necessary enforcement officers to make sure that the regulations you are proposing are going to be enforced. We have a great problem with those people who are attempting to operate legally within the state in any sense. Those even that are stockpiling less than 1,000 tires at this site, and yet the legally operating people whom I believe are being penalized for trying to live up to the letter of the law, when the illegal operators are continuing to operate with the knowledge of the state, which is making an attempt to curb their activities, but just doesn't have the manpower. So we would like to see primarily that the requirements of the operators are reduced to what they are today but as much as anything, that we have proper enforcement, or the whole program is unfair for those people who are attempting to operate properly. There are some confusing things, we feel, in the regulations.

Paragraph 3.4.1 speaks to fees. It says that the application fees are \$2,500 for a waste tire processing facility, and three lines later, it says it's \$1,000 for a waste tire processing activity. One's a facility; one's an activity. Perhaps there is some explanation that could help us understand what those words are meant to interpret. Paragraph 3.3.2 speaks to the projected maximum quantity or tonnage information, and it also talks about the amount of tires and throughout the proposed regulations, the tires and/or the rubber, and/or other non-tire products that might be found on a site. That could include tubes, that could include rims. And the operator has a maximum of three weeks time to dispose of those non-tire products. It's not feasible to have somebody deliver or come to collect a quantity of rims or flaps or tubes or other matter that would come with the tires in any profitable sense. Not just profitable. It's just not economically feasible at all. And so we believe that needs to be addressed as well. We are concerned about the confidentiality that could be public domain for the legal operators who are going to file for applications to receive and process scrap tires. They are being subjected for a request extensive, we believe, paperwork. Everything from floor diagrams as to how the tires, the product, is going to flow through the site to (as I've indicated earlier) the requirements of fences and gates and paperwork, which we think is an overkill. But the people who are not legal still know how to find out the names of customers from our database that the state would ... if they're going to read the paperwork at all ... I presume would be entering the names of our customers into a database.

We are also required to submit information concerning our personal backgrounds, our financial backgrounds. And we think this is grossly out of order for the state to request this kind of information and then have it publicly available to the people whom the state is not enforcing to be put out of business. So, to summarize the whole thing. From the experience that we have had, live five years experience, not from an ivory tower, but from the yard itself. We know what it takes to make an operation work. We know the cost of operation. We know you need to have volume, you need to have tipping fees, of course, and you need to have volume of product if you can send the end product as well, which is, of course, all our goals to do that ... to sell the end product. But we know from experience what it takes to operate a facility, even to operate a truck to pick up tires, and to pay labor. And we have a problem with the demands that are being made on the legal operators, or those who are attempting to be legal, without appropriate enforcement. And they're the people who should be prohibited from doing what the legal people are attempting to do before the state comes after the legal people. That does not contravene our appreciation for the work that's being done. As the former speaker said, we believe in principle with everything that's being tabled here today. The details that might need to be changed or that we would like to see changed are minute compared to the big picture. so we appreciate and believe in and support the principle of what is trying to be achieved here, but the way it's being handled as far as allowing illegal operators to operate and have access to

confidential information of the legal operators. We just don't think that is fair, and we would like to protest that position. Thank you very much.

**RHEINLANDER:** Roger New.

**NEW:** Good morning. I'm here today on behalf of Cummings Collection Service.

We have provided you with a letter containing the specific written comments of Cummings Collection Service. I'm going to address one particular area of those comments, and I'll leave the bulk of our comments to our written submission. One of the issues DEP has faced off and on for a number of years in the landfill business is what to do with the use of shredded tires as daily cover at landfills. We believe it is time for DEP to reevaluate its current policy of requiring the landfills to count the shredded tires used as daily cover in the tonnage and also to pay the solid waste assessment fees on the shredded tires used as daily cover. The agency historically has been very concerned about this issue. This issue came up particularly in the context of the use of sewage sludge being recycled for use as daily cover. There is a specific statutory provision now with regard to sewage sludge which answers that question. And I submit to the agency that it is very important now to look at this question again. I think we all recognize that there's a very serious problem with used tires that are simply being thrown over the hillside or being put into large piles that are going to have to be dealt with. The agency's regulation is simply too restrictive to allow the proper use of shredded tires in landfills. The use of the tire to provide for daily cover is an appropriate use of that material. I would point out to you as we have in this

letter, that the actual activity that's going on with the use of the shredded tire as daily cover is a recycling activity. And in fact when the shredded tire is used as daily cover, it is being used and not disposed of. And if you'll look at the specifics that I've put into this letter, I think you'll understand the basis for this legal analysis. But I urge you that it's come to a point now where you have an opportunity to look at this issue again. And in particular, the basis that you've used in the past for the reason for requiring shredded tires can be counted in the tonnage and have the solid waste assessment fees paid no longer exists. Because you're not concerned now with the possibility of other daily covers, particularly sewage sludge, being put into this same category. And I submit to you that this is a very important use of shredded tires. It's a very desirable environmental use, and it will go a long way towards taking care of the shredded tires and the used tire problem that exists. And I suggest to you that the time has come to reevaluate this issue.

Thank you very much.

**RHEINLANDER:** Thank you. Zane Summerfield.

**SUMMERFIELD:** My name is Zane Summerfield. I'm here representing Cummings Collection Service also. I help them prepare the written comments. Some of the areas they're concerned with in the waste tire management act. One is the monofill. There's a provision in there within the bonding for a \$2 per tire addition bond above the bonding of the acreage limit. There is no provision that says those tires must be removed. You also provide that you can close that monofill and conceivably get your bond back, which would give

somebody an awful nice windfall at \$2 a tire. That's one thing we see is wrong. The alternate thing we covered is addressed. There is some confusion within the regulation, such as 3.1.3.C with the reuse as a select waste. Here again, you allow the shredded tires to be placed in the initial eight foot with no tipping fee or not counting against your tonnage, just keep a record of it. And then you turn right back around and go, "Well, it's okay to put it here and that's a good use of the material, but when we use it for a daily cover, but then here again it's a waste material, and it counts against your tonnage." That's one thing that we were concerned about. The permitting requirements ... the major concern there is that you have not ... or the regulations have not specifically exempted mobile shredding units from the regulations. So anytime you have a cleanup, say if you go to a big tire pile someone has made to clean it up, then conceivably the contractor who is doing the cleanup would have to go through the permitting process, building fences, intend for ?? facilities, and so forth. And all this, of course, would be tacked on to the limited funds available for the cleanup. The other option then would be is using the limited funding to haul the tires to one of the few facilities within the state to take care of the problem, which that does not seem to us to be a good use of limited funding to clean up a problem. We have four to five million tires that's known in the state right now. And we have ... you're projecting 2.8 million I believe to clean up the problem on an annual basis. But that won't go too far in the long-run if you don't watch it. The other one ... I guess that should be the same section

3.10, which is on the monofill again, on the bonding. Whereas the \$2 a tire unit again. Thank you very much.

**RHEINLANDER:** Floyd Sayer.

**SAYER:** My name is Floyd Sayer. I'm Executive Director of the West Virginia Tire Dealers Association. And in lieu of making extended remarks, I have our written comments here and would present them to you. I would like to note that the majority of our comments are based on meetings with other concerned groups and from those meetings, these are the comments that we have gleaned from those meetings that we feel we would support very handily. Thank you very much.

**RHEINLANDER:** Marvin Gray.

**GRAY:** I'm Marvin Gray, Executive Director of the West Virginia Gasoline Dealers Association. Our group is one of the ones that met with the West Virginia Tire Dealers Association in an effort to expedite and not be repetitive of the comments as provided by the West Virginia Tire Dealers Association. We concur with and certainly urge the agency not to burden us so much with paperwork that we have to hire additional people to help the employment situation in the state. Thank you.

**RHEINLANDER:** K. O. Damron.

**DAMRON:** Good morning. I'm K. O. Damron, Vice President of the West Virginia Mining and Reclamation Association here in Charleston. I have a couple of comments regarding the proposed rules. Going back to the legislative session . . . as an active lobbyist, I remember the discussion of some of

these matters regarding tire disposal taking place at the capitol. However, I don't remember any applicability being discussed regarding off-site, off-road industrial tires. And they are apparently covered in some of the provisions you have here in the proposed reg. In trying to research the authority for this reg., I could not find in the new house bill 4065, which reconfigured DEP, I could not find any section numbered 20-11-8C. The numbering system, I believe, goes from 20-11-5 to 20-11-9, and no 8C is used as a reference. It appears to me that this proposed rule is a solid waste rule. And it deals with what items could be placed in a solid waste facility, and that seems to be the focus. However, in looking at your definition sections, you say in 2.6 that tire means a rubber object produced for the purposes of aiding transportation and may include the following types of tires. And in your "may," that seems rather discretionary. And it does include in the "may" off-road agricultural, slow-speed industrial tires. And we feel very comfortable that the mining industry and the construction industry, the reclamation industry, the quarry industry, should not have been included in the provisions for this particular rule and would ask you to consider revising the rule to thoroughly provide for that exemption because we never thought that to be the legislative intent. We thought the legislative intent was to deal with over-the-road tires and how they were being infused into the process of solid waste disposal. I may have a written comment for you following the question and answer session depending on the results of the questions and answers. Thank you very much for this opportunity to speak

this morning.

**RHEINLANDER:** John Mendez.

**MENDEZ:** My name is John Mendez with RDS, Inc. of Admen, Virginia. And in reading the regs and going over the regs that were faxed to me from the Department of the Secretary of State, I had a question about Chapter, Code 22, Article 25. That was not sent to me, and they could not located it. And I was wondering if that can be located because they had no record of it, although it is in your data that was sent to me by your office. I was trying to review that, but I couldn't find it. And it's addressed under the scope. It says, "This legislative rule establish requirement for any facility that stores, processes, or recycles solid waste Pursuant to West Virginia Code Chapter 22, Article 25. This rule applies to any person who owns and operates any solid waste facility with a waste tire monofill or who is responsible for the process in recycling and storing of waste tires." They could not locate that. Do you have a copy of that? It's addressed, but no one has a record of it at the secretary's office. Thanks. If you will send that to me.

**RHEINLANDER:** We'll look for the Code. Somebody in this building probably has a copy. We didn't bring it with us. I don't know what happened down at the Secretary of State's Office. That's all the people who've signed up to speak. Is there anybody else who would like to make a comment? Just give your name into the mike.

**FOLTEY:** I'm Mike Foltey with the Solid Waste Management Board. I'd just like to draw your attention to 3.11.3.C. It says 15% of the net proceeds of the fee

collected shall be deposited in the Solid Waste Management Board reserve fund. We feel that it should be the Solid Waste Management Board planning fund. That's the fund account from which the Solid Waste Management Board spends money. Thank you.

**RHEINLANDER:** Thank you. Anyone else?

**BSHARA:** Good morning. My name is Michael Bshara, and I am this morning representing the West Virginia Association of Waste Haulers and Recyclers and thank you for the opportunity to make these comments. The Association is speaking in response to a proposed rule under West Virginia Codes 22-1-3, 22-1-3A, 20-11-8C. These rules are proposed as Title 47, Series 38G. Our Association, which comprises private waste haulers and recyclers across the state proposes the following changes in the proposed rule. We believe applicability, Section 113, must be expanded to include businesses which handle used tires for the purposes of recapping or resale. The inclusion of used tires for recapping or resale would then require some accountability for this type of facility. If used tire facilities are not governed by standards for operational procedures, storage capability, length of storage time, marketing plan and analysis, and emergency response plans, we believe your agency leaves the door open to the creation of open tire dumps. Section 2.1.2, the waste tire definition includes the statement, "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." We agree that some used tires are not quite at the end of their useful life and

recapping allows a recycling effort. However, we believe your agency should define what constitutes a recapped tire, how many can be stored at the dealer or recap facility, and for how long they can be stored. Without a broadening of these regulations to include recapping facilities, many waste tires will be accumulated under the pretense of recapping, thus allowing these facilities to be beyond the scope of this proposed rule designed to control the tire management problem. Section 3.2, which concerns permit required should be amended to exempt mobile tire shredders. The tire shredder is, in fact, a waste tire processing facility. By not excluding mobile tire shredders from the provision of this rule, the burden and expense of permitting, along with the installation of fencing and other provisions which are intended for long-term facilities, along with bonding requirements will be added to every cleanup activity. This will require the excessive use of the limited funding for transportation of whole tires to one of the few permitted tire shredders in the state. This provision also requires tire dealers to transport their mandated waste tires to a shredder or other site, when a mobile unit could reduce the volume of material more economically on site prior to transportation. We envision that waste tires can be shredded at various sites around West Virginia with a mobile unit and then be beneficially used as ?? ?? for some economically feasible process used as either select waste material within the first eight feet of a landfill or as daily cover material until a market for this product exists. Furthermore, mobile tire shredders are very expensive. A member of our association has recently

purchased a used shredder which cost him over \$300,000. We believe that by not exempting mobile tire shredders from this section, haulers in the West Virginia environment will suffer unnecessarily. Section 3.7.1J requires that quartered, split, shredded, or shipped tire waste be dumped in a monofill. The Association proposes that waste tires be allowed to go into landfills and areas where there is a lack of facility siting available, monofills or other permitted processing facilities. The Association would also ask you to provide a list of appropriate facilities in West Virginia so that we can make a list of these facilities available to our members. The Association is, however, unaware of any permitted monofills permitted in the state. The restrictions to monofills only could considerably increase the cost of transportation because of long hauls. By saving this cost, consumers will benefit. We also propose section 3.8.2 as language which establishes the record keeping system to monitor an accurate number of tires accepted and hauled. Section 3.8.2C details the reporting requirements, and we believe the tire dealers and commercial recapping facilities must also be required to submit such records for the hauling of tires as called for in this section. These reports must include a complete and accurate accounting of all tires collected from customers. Exclusion of tire dealers and recappers from appropriate sections will leave a large loophole even as your agency implements a waste tire management program. The haulers respectfully urge the agency to consider our comments on this proposed rule. And we also respectfully ask your adoption of our suggestions. Thanks.

**RHEINLANDER:** Anyone else? Okay, let's close out the formal part of the hearing.

The comment period ends at the end of working today at around 4 or 4:30.

Our offices are open over on Hansford Street if you want to drop off any

written comments. If you'd like a transcript, we're going to have a

transcript typed up. I don't know when it will be ready ... probably within

two weeks we could have that for you. If you want a copy of that, I have a

business card, you can send me a letter requesting that, or call me,

whichever. So at this time let's close out the formal part of the hearing and

we'll try to answer some questions. [End of Recording]

[Transcribed by Happy Fingers Typing Service (304-345-4495) as a rough draft, for general content only. This work does not claim to be a verbatim transcript and has not been verified against the original recording nor proofread for typographical errors. (This was done at your request to keep costs to a minimum.) This transcript will be stored on computer disk until January 1, 1995. Additions, corrections, or revisions to this material can be made at additional charge before this deadline. If you supply a computer diskette, the file will be transferred to you for a fee of \$5.]

# KIRKPATRICK & LOCKHART

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WRITER'S DIRECT DIAL NUMBER

355-6556

November 9, 1994

William Rheinlander  
Office of Waste Management  
1356 Hansford St.  
Charleston, WV 25301

Dear Mr. Rheinlander:

The following written comments are hereby respectfully submitted on behalf of Riverside Manufacturing Limited Liability Company ("Riverside Manufacturing"), Benwood, West Virginia, concerning the Proposed "Waste Tire Management Rule" ("Proposed Rule") to be added to Title 47, as Series 38G. Riverside Manufacturing proposes to construct and operate a manufacturing facility in Benwood, West Virginia, which utilizes pyrolysis as the primary means of converting, inter alia, scrap tires and other rubber materials into oil, gas, char and steel. Riverside Manufacturing appreciates this opportunity to comment on the Proposed Rule.

Riverside Manufacturing supports the Proposed Rule, as drafted by the Division of Environmental Protection ("Division"). Riverside Manufacturing has closely followed the enactment of the legislative ban on the disposal of waste tires and the development of this legislative rule which proposes to implement a regulatory program which properly implements the legislative ban. Riverside Manufacturing specifically supports the exception set forth at Section 3.2.2.a in the Proposed Rule relating to the use of waste tires as a raw material feedstock.

As mentioned above, Riverside Manufacturing proposes to construct and operate a facility which will utilize waste tires and other rubber materials as raw material feedstock for its pyrolysis process. Pyrolysis is a process which accomplishes

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William Rheinlander

November 9, 1994

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complete utilization of waste tires and similar materials and generates no solid waste. The pyrolysis process has been likened to a similarly effective processing by pig farmers who use EBTS ("Everything But The Squeal") and, in the context of waste tire utilization, is unique in this regard. Riverside Manufacturing will utilize pyrolysis and related refining measures to convert "EBTS" from waste tires into usable commodities and commercial products.

The Division has appropriately recognized that waste tires can be converted into their respective constituents. These constituents - oil, gas, char and steel - are valuable commodities and have definable market uses. The pyrolysis process allows utilization of these valuable constituents and, thus, the avoidance of land disposal of waste tires which are processed in this fashion. Riverside Manufacturing supports the exception as currently proposed. However, should concerns be raised with the Division regarding the exception, Riverside Manufacturing offers the following comments.

Riverside Manufacturing notes that the exception is completely consistent with the legislative ban on the disposal of waste tires in West Virginia. The pyrolysis process affords one of the few realistic alternatives to landfill disposal which will convert waste tires into commonly recognized commercially valuable commodities and products. The proposed exception is authorized by the legislative ban and is completely consistent with the intent of this ban. If the Division determines that it must change this exception, Riverside Manufacturing would support further limitation which would nonetheless continue to except facilities which, like pyrolysis operations, can legitimately convert waste tires into their constituents. Without such an exception, the Proposed Rule would effectively preclude legitimate alternatives to solid waste disposal for waste tires; would encourage the continued usage of disposal instead of reuse; and would encourage illegal disposal practices by those who would find it too expensive or difficult to comply.

Riverside Manufacturing believes that the Proposed Rule, when finalized, will appropriately implement the legislative ban and will further establish a program to encourage the beneficial use of waste tires. The Proposed Rule would ban or regulate the deposit of tires in solid waste facilities in West Virginia, but would not unnecessarily regulate legitimate manufacturing operations which would utilize these tires. The Proposed Rule will appropriately require that Riverside Manufacturing, and other excepted facilities, must be permitted and regulated by the Division's Office of Air Quality, Office of

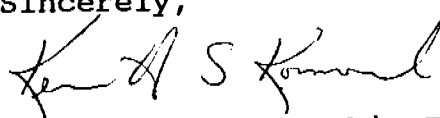
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William Rheinlander  
November 9, 1994  
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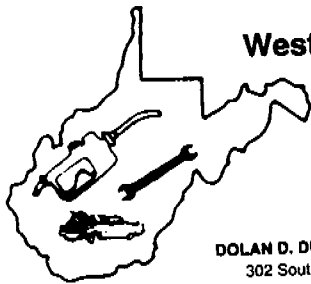
Water Resources or other appropriate state regulatory agency. Furthermore, the Proposed Rule will appropriately encourage recognized technologies which beneficially use waste tires, without unnecessarily burdensome and expensive regulation.

Riverside Manufacturing appreciates this opportunity to comment and supports promulgation of the Proposed Rule in its current form. Riverside Manufacturing specifically supports the language as proposed at Section 3.2.2.a which legally and expressly excepts pyrolysis facilities consistent with the West Virginia Solid Waste Management Act and West Virginia Recycling Act.

Sincerely,



Kenneth S. Komoroski, Esquire  
Counsel for Riverside Manufacturing  
Limited Liability Company



**West Virginia Gasoline Dealers & Automotive Repair Association, Inc.**

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November 10, 1994

Bill Rheinlander, Public Information Officer  
Office of Waste Management  
Division of Environmental Protection  
State of West Virginia  
Charleston, West Virginia

Re: Comments of Title 47,  
Legislative Rules from the Division  
of Environmental Protection on the  
Proposed Waste Management Rules - Series 38G

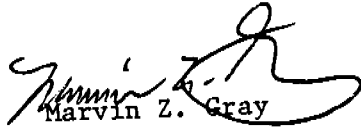
Dear Mr. Rheinlander,

We have received the above referenced proposed rules on waste tire management.

In our effort to expedite and not be repetitive, we have reviewed the proposed rules and met with the West Virginia Tire Dealer's Association and we concur with their comments and proposed changes to the rules.

If you require additional information, please do not hesitate to contact us. We appreciate the opportunity to share our views with you.

Sincerely,

  
Marvin Z. Gray  
Executive Director

MZG/rmg

# West Virginia Tire Dealers Association

P. O. Box 1335 ♦ Charleston, WV 25325 ♦ (303)342-4441

November 10, 1994

Bill Rheinlander, Public Information Officer  
Office of Waste Management  
Division of Environmental Protection  
State of West Virginia  
Charleston, West Virginia

Re: Public Comments on Title 47,  
Legislative Rules from the Division of  
Environmental Protection on the  
proposed Waste Tire Management  
Rules- Series 38G.

Dear Mr. Rheinlander,

We have reviewed the above referenced rules on Waste Tire Management and submit the following commits.

This Association has long felt the need for a program to manage the disposal of waste tires. While there appears to be no health hazard other than mosquito breeding in water collected in abandoned whole tires, there are other problems that are of greater concern. We need not elaborate on the visual aspects or the abandonment of tires or the problems of and with landfills. These are obvious. Suffice to say that the Association and its members support most efforts to manage this massive and complicated problem.

There are many facets to this problem. Many sides of the issue need to be considered. The paramount consideration should be to the consumer and the public. If their interest in and **perceptions** of the program are not met **no program will succeed**. The second concern is the environment in all its definitions while the third consideration is for those who, in fact, are the initial level of "enforcement", the tire dealers. This Association has made every effort to garner information and ideas to make this program successful. Our recommendations are designed, we hope, with all points of view in mind.

The staff of the Waste Tire Management Board should be commended for a well thought out Program. The staff of the Office of Waste Management has put together well designed rules that were well thought out and mostly complete in the **procedures for the concept presented**. We most point out that the staff met with members of this Association in August to review the concept that appears in the rules before us. Many of the

suggestions from that meeting appear in these rules for which we are appreciative. No other concepts were reviewed. However, in the intervening weeks, and particularly since the rules were released, we now believe that there **several approaches or alternatives** that would serve West Virginia much **better** and that **the current proposal will not work and is not enforceable** because of the in-state out-of-state ramifications and marketing methods.

Our remaining commits will be in two parts. The first part will be to commit on individual items in the **concept covered in the rules**. The second part will be to discuss **conceptual alternatives** that we believe will work and monofill requirements.

Page and line numbers are based on the copy of the rule as submitted to the Secretary of State on October 4, 1994.

- On page 2, section 1.8., line 1, strike all after the word "STRIGENCY." and insert the following: "In the event of a federal counterpart rule, this rule is to be no more stringent than the federal rule." We understand that in the future there may be rules from unrelated agencies that might effect these rules. These rules may give guidelines, suggestions or concepts to states but leave the exact method to the states. With this in mind, we think this verbiage would be less likely to tie the hands of state regulation writers.
- On page 2, section 2.6., line 1, strike all after the word "means" to the "comma" on line 2 and insert "any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle." We believe this to be a better definition.
- On page 2, section 2.7., strike out the words "at retail" and insert the words "to an end user". This should eliminate the argument that the "dealer" is really a "discounter or sells at wholesale" and not at retail. This should also help in defining the difference between a retailer and wholesaler.
- On page 3, section 2.13., place a period after the "activities" on line 6 and strike the remainder of the sentence and on line 7, after the word "be" strike the remainder of the sentence and insert "registered by the Division of Environmental Protection to lawfully transport waste tires. Use of such hauler approved by the Division shall remove all liability from the tire dealer." The verbiage in the first deletion is not necessary and could create bookkeeping problems with interrelated company divisions.

The second part makes a major change. Our belief is that this would simplify receiving information as to haulers who are not living up to standards. It is the DEP who first becomes aware of the shortcomings of a hauler. If the Public Service Commission becomes involved there would be a time lag before the tire dealer becomes aware of problems. By necessity the DEP would need to keep track of haulers. It would probably be the DEP bringing "charges" against a hauler first.

While the third part may not stand up in court or federal rulings, this may add to the

defense of a dealer who has used a "registered" hauler approved by the DEP (or PSC). There are too many horror stories of companies who have operated legally, with state and federally approved haulers, still found "guilty" of improper disposal of tires even when using approved haulers who had certified to a state that they had legally disposed of the tires.

- On page 4, section 3.1.3.d., line 4 after the word "tires," add "split tires," and after the period at the end of the section add the following additional sentence: " The chief may initiate pilot or test projects using the latest technology in his determination." This may not be the proper place for the added sentence but some such statement needs to be some placed somewhere to permit the chief to test projects that could be useful in marketing waste material and which types of tires should be excepted.
- On page 5, section 3.2.2.a. -- The entire section needs to be revisited. The intent of this section is not very clear, or if it is clear, it may need to be revised. It appears to exempt pyrolysis facilities, cryogenic processing facilities and waterjetting facilities from the permit requirements, where those facilities may be covered by other permitting agencies. However, it would not appear to exempt facilities producing ground rubber from tires through ambient grinding. First, the intent of these regulations is to ensure effective control over waste tires. If the regulations of the other agency do not deal as effectively, or perhaps not at all, with this problem, the fact that a pyrolysis facility may have an air permit may not mean that its handling of tires is being regulated at all. Second, the process by which ground rubber is produced should not be the basis for exempting a facility from the appropriate safeguards established in these regulations. When the final product is the same, ground rubber, the process by which it is produced -- cryogenic grinding, ambient grinding, waterjetting, or otherwise -- should not be a factor in imposing different sets of regulatory requirements and safeguards. If the intent is to exempt all facilities producing a raw material feedstock from tires, then all processes producing the same end raw material should be treated alike.
- On page 6, section 3.2.2.b., line 11, after the period add "The chief shall have the responsibility of determining if an unreasonable number of tires are being stored for a particular beneficial application or an unreasonable length of time used to begin a beneficial application." This should give the DEP some oversight powers.
- On page 6, section 3.4.1., after the period on line 4, insert the following sentence - "All fees so collected shall be deposited in the "Waste Tire Management Fund". We very strongly believe that there be only one "fund". (see item on section 3.11.3 below)
- On page 8, section 3.5.6.a.A., line 3, after the word "precipitation" add "in whole tires". This makes intent clearer.
- On page 8, section 3.5.6.a.B., line 4, strike all after the word "Virginia" and insert

"Division of Environmental Protection." This should be kept within the DEP since they are responsible for the tire program. If too much of the program is spread through government the program is less likely to succeed.

- On page 12, section 3.8.2., line 2, strike all after the word "chief" and insert "within sixty (60) days of the end of the tire dealers fiscal year and must include:" This is to make tax coincide with normal reporting dates
- On page 12, section 3.8.2.a., after the word "new" insert the words ", used and or retreaded". Used and retreaded tires should be included for statistical purposes.
- On page 12, section 3.8.2.c., line 1, strike the words "and certificated" and insert the word with comma ", registered" and on line 2 after the word "haulers" insert the words "and the signature of the hauler or their agent. Such compliance will hold harmless the tire dealer of any actions of the waste tire hauler." and on line 3, place a period after the word "transported" and strike the remainder of the sentence. See commits for section 2.13.
- On page 12, section 3.8.2.d, delete entire section. This section will not work because the customer will object and or give false information. This will put a few dealers into a position where they might use the telephone directory to fill out the forms, etc.
- On page 12, section 3.8.2.e, delete entire section. Keeping this information for that period of time is unreasonable. Since the report is sent to the state why not have the DEP retain the information.
- On page 12, section 3.8.3.d., line 1, after the word "tier", strike the word "may" and insert the word "shall". This may indicate to the public that the dealer has the choice of collecting the fee or not.
- On page 12, section 3.8.3.e., delete the entire section. See section 3.8.2.d. above.
- On page 14, section 3.11.1.a Liability. (the little "a" may actually be intended to be a little "b"), line 7, after the period add the following: "A tire dealer who files timely the proper amount due to the tax commissioner from the net proceeds of the waste tire assessment fee shall be entitled to an administering and collection fee of 5% of the gross amount of the waste tire assessment fee collected." The dealer should be reimbursed for a part of the administration and reporting costs they incur. At least one state recognizes a 10%.cost figure.
- On page 14, section 3.11.3., line 3, after the word "the" delete all the remaining of this section to include 3.11.3.a., 3.11.3.b., 3.11.3.c and 3.11.3.d and insert "account designated as the Waste Tire Management Fund. These funds are to be used only for waste tire related cleanup, enforcement and market development. No waste tire derived funds should be used for any other solid waste management purpose." We

believe that all the funds collected from the program should be used to take care of the tires on which the fees were collected. The verbiage in the rules would lead one to believe that most of the fees would be use to clean up existing problem sites.

As we stated at the outset, we do not believe the concept used in the above rule is workable. There are simply too many ways for the system to be misused by wholesalers, tire dealers and the public. We also believe that **any one of several other concepts** would be more acceptable to the public, easier to enforce and more likely to provide the necessary funding to carry out the legislative intent.

We would propose that **all after section 3.11. be deleted** and in its place any one of several conceptual alternatives be inserted.

### Conceptual Alternatives

Funding and how that funding is collected is the key to concept differences. They fall into the following categories:

- **Waste Management fee on all tires:** In this case, the fee should be imposed on tire sales including those on new automobiles. A fee of 2% of cost on tires of bead diameter of less than 20 inches and 1% on larger tires would be reasonable. The fee would be collected at time of sale and reported as an additional line on the regular sales tax return of the seller. There should be little or no increase in administration cost to the tax department. The funds should be placed in an account of the DEP for the sole use of the waste tire program.

Attached you will find a copy of the legislation from North Carolina. Their program has been in place for a number of years and seems to be successful. We believe this to be the model to follow.

- **Dollar amount surcharge:** Same above except that a flat dollar amount would be charged, say \$2.00 for tires of bead diameter less than 20 inches and sliding scale for larger tires. It may be fairer or more acceptable to have only \$1.00 on smaller used or retreaded tires.
- **Increased vehicle registration fee:** Each year, at the time a vehicle is registered include a fee of about \$2.00. Since fees are already being collected there should be little cost or increased time in making the collection.

In each alternative the funds received by the DEP, less an amount of about 20% for administration, enforcement and market development, should be distributed to each county solid waste authority. The distribution should be on the basis of vehicle registration (or tire sales).

These authorities would then be responsible for the collection the tires from the dealer at no addition fee (may be subcontracted) (may pay dealer a small fee for drop instead of pickup). The tires are then deposited at a county collection point. There should be no tipping fee. The tires are then owned by the county and can be stored, monofilled, made into salable sizes if necessary and or sold. If the tires are salvageable as used or retreadable tires, they should be sold to a dealer as such for repair and resale and not compete with private businesses. The counties should be permitted to join with other counties or private businesses to further their enterprise.

All of the above would encourage individuals to turn in tires and not to dispose of the tires themselves.

### **Monofills Requirements**

We believe that all references to monofills and storage cells should be reviewed and rewritten. Our best information is that the Rules as written would be prohibitive in cost and is an "over kill" on design and construction requirements. Studies to our knowledge show that there is no leaching and no leachate. The result of no or fewer monofills would be:

- There would be fewer opportunities to develop facilities to use waste tire material and jobs.
- Higher cost to transport waste tires to storage areas that can afford the cost.
- More storage areas above ground creating additional unsightly vistas.
- If counties are involved the cost would be such that local programs would find it more difficult to succeed.
- And there are other reasons.

If you require additional information please do not hesitate to contact us. We sincerely appreciate the opportunity to share our ideas with you.

Sincerely yours,

  
Jesse Perry  
President

## SECTION .1100 - SCRAP TIRE MANAGEMENT

**.1101 DEFINITIONS**

The definitions in G.S. 130A-309.53 and the following definitions shall apply throughout this Section:

- (1) "Disposal site" means any place at which scrap tires are disposed of by sanitary landfill, incineration, or other method as may be approved by the Division.
- (2) "Processing" means chopping, chipping, shredding, slicing, cutting, stamping, dyeing, pyrolyzing or other physicochemical processing of scrap tires either for disposal or production of useable materials.
- (3) "Scrap tire monofill" means a sanitary landfill, or portion thereof, permitted exclusively for scrap tire disposal.

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

**.1102 APPLICATION FEE AND ANNUAL PERMIT FEE**

(a) A permit application for a scrap tire collection site or scrap tire disposal site shall be accompanied by a non-refundable twenty-five dollar (\$25.00) application fee. The application fee shall be credited toward the permit fee which shall be paid before a permit is issued.

(b) An annual permit fee shall be paid to the Division on or before July 1, as follows:

- (1) A scrap tire collection site: two hundred and fifty dollars (\$250.00); and
- (2) A scrap tire disposal site: two hundred and fifty dollars (\$250.00).

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

**.1103 GENERATOR OF SCRAP TIRES**

No person shall discard, deposit or dispose of a scrap tire except at a site or facility permitted to receive scrap tires under these Rules, or at a legitimate business exempt from a permit under G.S. 130A-309.57(d).

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

**.1104 GENERAL CONDITIONS**

- (a) Landfilling of whole scrap tires is prohibited.
- (b) Demonstrated methods of scrap tire disposal, in addition to the disposal methods in G.S. 130A-309.58, may be approved by the Division.
- (c) The tire collector shall notify the Division by submitting a form giving complete information regarding the location, size, period of operation, ownership and operation of the site, and the number of scrap tires accumulated at the site.
- (d) Scrap tire certification forms, in accordance with G.S. 130A-309.58(f) shall be obtained from units of local government.

*History Note: Statutory Authority G.S. 130A-309.58;  
Eff. October 1, 1990.*

**.1105 PERMIT REQUIRED**

(a) No person, other than a person exempted by G.S. 130A-309.57(d), shall establish, operate or maintain, or allow to be established, operated or maintained upon his land, a scrap tire collection site or scrap tire disposal site unless a permit for the site has been obtained from the Division.

(b) Application for permits required by this Rule shall be forwarded to the Solid Waste Section, Solid Waste Management Division, P.O. Box 27687, Raleigh, North Carolina 27611.

(c) A permit is issued to the permit applicant for a particular site and is non-transferrable.

(d) Scrap tire collection sites exempt from permitting under G.S. 130A-309.57(d) and Rule .1105 (i) of this Section are not subject to the storage requirements of Rule .1107 of this Section with the exception of Rule .1107(1) and (2)(c).

- (8) Projected date of commencing operation.
- (9) A description of how any waste resulting from the operation of the tire site will be disposed.
- (10) A description of how the scrap tire collection site will meet the siting and design requirements of Rule .1106(c).
- (11) A letter stating that this use complies with local zoning from the unit of local government having zoning authority over the site. If no zoning is applicable, the unit of local government shall provide documentation to that effect.
- (12) A letter from the local fire protection authority accepting the responsibility for fire protection services for the site.
- (13) A description of how the scrap tire collection site will meet the operational requirements of Rule .1107 of this Section.
- (14) Documentation of the operator's ability to meet the financial responsibility requirements of Rule .1111 of this Section.

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

### **.1107 SCRAP TIRE COLLECTION SITE OPERATIONAL REQUIREMENTS**

Scrap tire collection sites shall meet the following operational requirements:

- (1) Scrap tires stored indoors shall be stored under conditions that meet those in "The Standard for Storage of Rubber Tires", NFPA 231D-1986 edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts, which has been adopted in accordance with G.S. 150B-14(c). Copies of this document are available for inspection at the Department.
- (2) All scrap tire collection, processing or disposal sites which store scrap tires or processed tires outdoors must comply with the following technical and operational standards:
  - (a) Whole scrap tires shall be placed in an outdoor scrap tire pile(s) having dimensions no greater than 200 feet in length, 50 feet in width and 15 feet in height.
  - (b) A 50-foot wide fire lane shall be placed around the perimeter of each scrap tire pile. Access to the fire lane for emergency vehicles shall be unobstructed and passable at all times.
  - (c) The owner or operator of any scrap tire collection site shall control mosquitoes and rodents so as to protect the public health and welfare. Whole and sliced scrap tires, and other scrap tires capable of holding water shall be covered upon receipt with a water shedding material or disposed of, processed or removed from the site within ten days of receipt. Sliced scrap tires stacked concave-side down are not required to be covered.
  - (d) If the scrap tire collection site receives tires from persons other than the operator of the site, a sign shall be posted at the entrance of the site and the sign shall state the operating hours. An attendant shall be present when the site is open for receipt of tires.
  - (e) No operations involving the use of open flames, blow torches or highly flammable substances shall be conducted within 50 feet of a scrap tire pile.
  - (f) A fire safety survey shall be conducted annually by local fire protection authorities or other persons as approved by the Division.
  - (g) Communication equipment shall be maintained at the scrap tire collection site to assure that the site operator can contact local fire protection authorities in case of a fire.
  - (h) The scrap tire storage area(s) within the scrap tire collection site shall be kept free of grass, underbrush, and other potentially flammable vegetation at all times.
  - (i) The operator of the scrap tire collection site shall prepare and keep an emergency preparedness manual at the site. The manual shall be updated at least once a year, upon changes in operations at the site, or as required by the Department. The manual shall contain the following elements:
    - (i) A list of names and numbers of persons to be contacted in the event of a fire, flood or other emergency;
    - (ii) A list of the emergency response equipment at the scrap tire collection site, its location, and how it should be used in the event of a fire or other emergency;
    - (iii) A description of the procedures that should be followed in the event of a fire, including procedures to contain and dispose of the oily material generated by the combustion of large numbers of tires; and
    - (iv) A listing of all hazardous materials stored on-site, their locations and information regarding precautions which should be taken with these materials.

- (2) Post a notice indicating the site is closed and the nearest permitted site where scrap tires can be deposited;
- (3) Notify the Division of the closing and obtain Departmental approval of the plan to remove tires prior to tire removal;
- (4) Remove all scrap tires, processed tires and residuals to a waste tire processing facility, solid waste management facility permitted to accept scrap tires or processed tires, a legitimate user of processed tires, or other facility approved by the Division;
- (5) Remove any solid waste to a permitted solid waste management facility;
- (6) Provide documentation that tires were received by approved facility; and
- (7) Notify the Department when closure is complete.

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

#### .1110 SCRAP TIRE PROCESSING FACILITIES

(a) Scrap tire collection sites to be permitted in association with scrap tire processing facilities shall be permitted and operated in accordance with the provisions of Rules .1106 and .1107 of this Section, except that the storage limit shall be determined by multiplying the daily through-put of the processing equipment used by 30. A scrap tire processing facility shall not accept any scrap tires for processing above the number which can be processed daily if it has reached its storage limit. At least 75 percent of both the scrap tires and processed tires that are delivered to or maintained on the site of the scrap tire processing facility site shall be processed and removed for recycling or disposal at a permitted solid waste management facility within one year of their receipt. Processed tires stored for recycling or disposal are subject to the storage requirements specified in Rule .1107 of this Section unless otherwise authorized by the Division.

(b) Wastes resulting from the operation of the scrap tire processing facility shall be evaluated in accordance with 15A NCAC 13B .0103(e) prior to disposal.

(c) The owner or operator of a scrap tire processing facility shall record and maintain for three years the following information, and these records shall be available for inspection by Division personnel during normal business hours:

- (1) For all scrap tires and processed tires shipped from the facility: the name of the hauler, the hauler or merchant identification number of the tire hauler who accepted the scrap or processed tires for transport, the quantity of scrap or processed tires shipped with that hauler, designation of scrap or processed tires (name and address of facility), and documentation of receipt of tires by the receiving facility;
- (2) For all scrap tires and processed tires received at the facility: the name of the hauler, the hauler or merchant identification number of the scrap tire hauler who delivered the scrap or processed tires to the facility, the quantity of scrap or processed tires received from that hauler and where the tires originated (name and address of facility);
- (3) For tires received, stored, shipped or processed, completed certification forms as required by G.S. 130A-309.58(f) except for quantities of five tires or less brought for processing by someone other than a tire collector, tire processor or tire hauler.

(d) Owners and operators of scrap tire processing facilities shall submit to the Division an annual report, by March 1 of each year, that summarizes the information collected under Paragraph (c) of this Rule for the previous calendar year. The report shall be submitted on a form prescribed and provided by the Division. The following information shall be included, at a minimum:

- (1) The facility name, address, and permit number, if any;
- (2) The year covered by the report;
- (3) The total quantity and type of scrap tires or processed tires received at the facility during the year covered by the report;
- (4) The total quantity and type of scrap tires or processed tires shipped from the facility during the year covered by the report;
- (5) The quantity of scrap tires or processed tires shipped to each receiving facility identified by name and address;
- (6) The total quantity and type of scrap tires or processed tires located at the facility on the first day of the calendar year.

*History Note: Statutory Authority G.S. 130A-309.57;*

DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES  
**SCRAP TIRE HAULER REGISTRATION APPLICATION**

(Temporary through 10-1-90)

Pursuant to N.C.G.S. 130-A-309.59(a), to obtain a Scrap Tire Hauling identification number and approval to transport scrap tires, a hauler shall submit the following information on this form to the Department.

- 1. Business name of Hauler: \_\_\_\_\_
- 2. Owner of Hauling Service: \_\_\_\_\_
- 3. Mailing address of Hauler: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
- 4. Street address of Hauler: \_\_\_\_\_  
City: \_\_\_\_\_ County: \_\_\_\_\_ Zip: \_\_\_\_\_
- 5. Telephone number of Hauler: (\_\_\_\_) \_\_\_\_\_
- 6. Federal Employer Identification (FEID) number of Hauler: \_\_\_\_\_
- 7. Counties to be served: \_\_\_\_\_

8. List all known sites where you will be depositing waste tires or processed tires for disposal or recycling (attach additional sheets if necessary):

Name	Address	County
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- 9. Number of vehicles to be used: \_\_\_\_\_
- 10. Please submit the following information for each vehicle you will use to transport scrap tires. If you are using more than one vehicle, you may attach additional sheets to this form that provide the required information for each vehicle.
  - a. Description of vehicle: \_\_\_\_\_
  - b. License number of vehicle: \_\_\_\_\_
  - c. Department of Motor Vehicle registration number: \_\_\_\_\_
  - d. Name of registered vehicle owner: \_\_\_\_\_

11. Scrap tire hauler registration status:    New                       Renewal   
If registration is a renewal, list previous registration number (s): \_\_\_\_\_

\_\_\_\_\_  
Signature of Scrap Tire Hauler



State of North Carolina  
Department of Environment, Health, and Natural Resources  
Division of Solid Waste Management  
P.O. Box 27687 · Raleigh, North Carolina 27611-7687

James G. Martin, Governor  
William W. Cobey, Jr., Secretary

William L. Meyer  
Director

June 8, 1992

**TECHNICAL GUIDANCE  
FOR  
ESTABLISHING SCRAP TIRE FACILITY  
FINANCIAL ASSURANCE**

**PURPOSE**

It is the intent of this guidance document to assist Scrap Tire Collection Site and Scrap Tire Processing/Recycling Facility owners and operators in meeting the Solid Waste Section's Rules and policies regarding the establishment of financial assurance.

Establishment of financial assurance is required for Scrap Tire Collection Sites and scrap tire collection activities associated with Scrap Tire Processing/Recycling Facilities. In accordance with 15A NCAC 13B, Section .1100, establishment of financial assurance is required to ensure closure, proper clean up, third party liability, and environmental protection of tire collection sites. The long term objective is to establish financial responsibility for these facilities in accordance with the goals and policies of the North Carolina Scrap Tire Disposal Act (under the Solid Waste Management Act of 1989, Senate Bill 111).

According to the Rules, owners of Scrap Tire Collection Sites and Processing/Recycling Facilities must establish a minimum financial assurance equal to \$1.50 per tire times the maximum amount of permitted tire storage capacity of the facility for closure and clean up. The amount of tires permitted to be stored at the site is determined by the type of facility. For Tire Processing/Recycling Facilities, additional financial assurance may be required for tire derived end products which are stockpiled on site.

## COMPLIANCE

In the event the Tire Site/Facility Owner or Operator fails to comply with the storage and collection aspects of the rules or permit conditions, the funds established for financial assurance shall be used by the State to ensure proper management of any stored scrap tires or processed tire product. The State will access such funds using the methods and procedures set forth in the instrument used for providing the financial assurance.

## LIABILITY COVERAGE

15A NCAC 13B, Section .1100 also requires that Scrap Tire Collection Sites and Scrap Tire Processing/Recycling Facilities maintain financial coverage for property damage and injury to third parties or public property. Required coverage amounts are determined by the maximum amount of tire storage permitted at a Scrap Tire Collection Site or monthly processing amount at a Tire Processing/Recycling Facility. Two thousand five hundred dollars (\$2,500.00) per one thousand (1,000) tires is required for each occurrence with a total annual aggregate of five thousand dollars (\$5,000.00) per one thousand (1,000) tires.

Financial coverage must be comprehensive in scope providing coverage for personal injuries occurring on and off site, damage resulting from the release of pollutants into the environment, nuisance, vector concentration, and spread of disease through vectors or pollutants.

Additional liability amounts covering tire derived products generated and stored at Tire Processing/Recycling Facilities may be required. Financial liability requirements associated with these potential products will be addressed on individual cases, based upon the intent of current legislation and rules to protect public property, third parties, and the environment. Tire Processing/Recycling Facilities will be reviewed annually to determine if additional liability financial assurance for stored products is required.

Issuing Bank Letterhead  
Sample Draft of Letter of Credit

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Letter of Credit Number: \_\_\_\_\_

Date: \_\_\_\_\_

State of North Carolina  
Department of Environment, Health, and Natural Resources  
Division of Solid Waste Management  
Solid Waste Section  
Post Office Box 27687  
Raleigh, North Carolina 27611-7687

Ref: (name of Tire Site/Facility) \_\_\_\_\_

Gentlemen:

We hereby establish, at the request and for the account of:

(name of tire site/facility) \_\_\_\_\_

(address/location of facility) \_\_\_\_\_

\_\_\_\_\_

in your favor, our Irrevocable Standby Letter of Credit Number \_\_\_\_\_ whereby we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions, set forth in this Irrevocable Standby Letter of Credit, by your draft at sight, an aggregate amount not exceeding:

\_\_\_\_\_, (U.S. \$ \_\_\_\_\_)

which amount is the minimum estimated amount necessary to reimburse the Division of Solid Waste Management, State of North Carolina, for site closure, clean up, and other costs directly related to site closure or cleanup.

Funds established by this Irrevocable Standby Letter of Credit are available to you upon presentation of your sight draft drawn on us, in the form attached as "SIGHT DRAFT ON IRREVOCABLE STANDBY LETTER OF CREDIT ISSUED BY (NAME OF ISSUING BANK), executed by you, with appropriate insertions. Presentation of said draft shall be made to the following:

(name and title of bank officer) \_\_\_\_\_

(name and address of issuing bank) \_\_\_\_\_

\_\_\_\_\_

or at any other North Carolina office or officer which may be designated by us in a written notice delivered to you. If we receive your sight draft, conforming with the terms and conditions of this Irrevocable Standby Letter of Credit, on or prior to the expiration, we will promptly honor the same.



State of North Carolina  
 Department of Environment, Health, and Natural Resources  
 Division of Solid Waste Management  
 P.O. Box 27687 · Raleigh, North Carolina 27611-7687

James G. Martin, Governor  
 William W. Cobey, Jr., Secretary

William L. Meyer  
 Director

**SIGHT DRAFT  
 ON  
 IRREVOCABLE STANDBY LETTER OF CREDIT  
 ISSUED BY  
 (NAME OF ISSUING BANK)**

(Date)

(Name of official set forth in Letter of Credit)  
 (Title of official set forth in Letter of Credit)  
 (Address of bank set forth in Letter of Credit)

Ref: Irrevocable Standby Letter of Credit Number: \_\_\_\_\_

Name (of official:)

At sight, PAY TO:

Division of Solid Waste Management

the amount of:

\_\_\_\_\_ U. S. Dollars \$ \_\_\_\_\_

and charge to the account of the above referenced Irrevocable Standby Letter of Credit.

The undersigned certifies that:

- (1) The amount which is now due and payable in accordance with the terms and conditions of the above referenced Irrevocable Standby Letter of Credit does not exceed the total aggregate amount authorized by the Irrevocable Standby Letter of Credit.
- (2) The undersigned is a duly authorized official of:

State of North Carolina  
 Department of Environment, Health, and Natural Resources  
 Solid Waste Management Division

PART 2B. SCRAP TIRE DISPOSAL ACT.

**GS 130A-309.51. TITLE.**

This Part may be cited as the "North Carolina Scrap Tire Disposal Act."

**GS 130A-309.52. FINDINGS; PURPOSE.**

(a) The General Assembly finds that:

- (1) Scrap tire disposal poses a unique and troublesome solid waste management problem.
- (2) Scrap tires are a usable resource that may be recycled for energy value.
- (3) Uncontrolled disposal of scrap tires may create a public health and safety problem because tire piles act as breeding sites for mosquitoes and other disease-transmitting vectors, pose substantial fire hazards, and present a difficult disposal problem for landfills.
- (4) A significant number of scrap tires are illegally dumped in North Carolina.
- (5) It is in the State's best interest to encourage efforts to recycle or recover resources from scrap tires.
- (6) It is desirable to allow units of local government to control tire disposal for themselves and to encourage multicounty, regional approaches to scrap tire disposal and collection.
- (7) It is desirable to encourage reduction in the volume of scrap tires being disposed of at public sanitary landfills.

(b) The purpose of this Part is to provide statewide guidelines and structure for the environmentally safe disposal of scrap tires to be administered through units of local government.

**GS 130A-309.53. DEFINITIONS.**

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

- (1) "Collection site" means a site used for the storage of scrap tires.
- (2) "Disposal fee" is any amount charged by a tire collector, tire processor, or unit of local government in exchange for accepting scrap tires.
- (3) "In-county scrap tire" means any scrap tire brought for disposal from inside the county in which the collection or processing site is located.
- (4) "Out-of-county scrap tire" means any scrap tire brought for disposal from outside the county in which the collection or processing site is located.
- (5) "Processing site" means a site actively used to produce or manufacture usable materials, including fuel, from scrap tires. Commercial enterprises processing scrap tires shall not be considered solid waste management facilities insofar as the provisions of G.S. 130A-294(a)(4) and G.S. 130A-294(b) are concerned.
- (6) "Scrap tire" means a tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.
- (7) "Tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a vehicle and is subject to the tax imposed by Article 5B of Chapter 105.
- (8) "Tire collector" means a person who owns or operates a site used for the storage, collection, or deposit of more than 50 scrap tires.
- (9) "Tire hauler" means a person engaged in the picking up or transporting of scrap tires for the purpose of storage, processing, or disposal.
- (10) "Tire processor" means a person who engages in the processing of scrap tires or one who owns or operates a tire processing site.
- (11) "Tire retailer" means a person who engages in the retail sale of a tire in any quantity for any use or purpose by the purchaser other than for resale.

**GS 130A-309.54. USE OF SCRAP TIRE TAX PROCEEDS.**

Article 5B of Chapter 105 imposes a tax on new tires to provide funds for the disposal of scrap tires. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60.

Editor's Note. - Session Laws 1993, c. 364, s. 1(a) added a sentence at the end of former G.S. 130A-309.54(a), repealed by Section 3 of Chapter 221 of Session Laws 1991, to read: "This fee does not apply to tires sold for placement on newly manufactured vehicles."; pursuant to ss. 1(b) and 3 of c. 364, s. 1 applied retroactively to tires sold on or after Jan. 1, 1990, and expired June 30, 1991.

Session Laws 1993, c. 364, which amended this section, in s. 3 provides: "Notwithstanding the time limitations of G.S. 105-266 and G.S. 105-266.1, a refund of an overpayment of a tax levied on tires sold for placement on newly manufactured vehicles under former G.S. 130A-309.54(a) (repealed) or under G.S. 105-187.16 is timely if a demand for the refund is filed on or before July 1, 1994. Notwithstanding G.S. 105-266, an interest rate of five percent (5%) per year applies to refunds of tax paid on new tires that were purchased before July 15, 1992, and are exempted from the scrap tire tax by this act."

**GSGS 130A-309.55, 130A-309.56: REPEALED BY SESSION LAWS 1991, C. 221, S. 4, EFFECTIVE JULY 1, 1991.**

Cross References. - As to privilege taxes imposed upon new tire sales, see GS 105-187.16. As to use of such tax proceeds, see GS 105-187.19.

**GS 130A-309.57. SCRAP TIRE DISPOSAL PROGRAM.**

(a) The owner or operator of any scrap tire collection site shall, within six months after October 1, 1989, provide the Department with information concerning the site's location, size, and the approximate number of scrap tires that are accumulated at the site and shall initiate steps to comply with subsection (b) of this section.

(b) On or after July 1, 1990:

(1) A person may not maintain a scrap tire collection site or a scrap tire disposal site unless the site is permitted.

(2) It is unlawful for any person to dispose of scrap tires in the State unless the scrap tires are disposed of at a scrap tire collection site or at a tire disposal site, or disposed of for processing at a scrap tire processing facility.

(c) By January 1, 1990, the Commission shall adopt rules to carry out the provisions of this section. Such rules shall:

(1) Provide for the administration of scrap tire collector and collection center permits and scrap tire disposal site permits, which may not exceed two hundred fifty dollars (\$250.00) annually;

(2) Set standards for scrap tire processing facilities and associated scrap tire sites, scrap tire collection centers, and scrap tire collectors; and

(3) Authorize the final disposal of scrap tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal.

(d) A permit is not required for:

(1) A tire retreading business where fewer than 1,000 scrap tires are kept on the business premises;

(2) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,000 of these tires are kept on the business premises; or

(3) A retail tire-selling business which is serving as a scrap tire collection center if fewer than 1,000 scrap tires are kept on the business premises.

(e) The Department shall encourage the voluntary establishment of scrap tire collection centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of used and scrap tires. The Department may establish an incentives program for individuals to encourage them to return their used or scrap tires to a scrap tire collection center.

**GS 130A-309.58. DISPOSAL OF SCRAP TIRES.**

(a) Each county is responsible for providing for the disposal of scrap tires located within its boundaries in accordance with the provisions of this Part and any rules issued pursuant to this Part. The following are permissible methods of scrap tire disposal:

- (1) Incinerating;
- (2) Retreading;
- (3) Constructing crash barriers;
- (4) Controlling soil erosion when whole tires are not used;
- (5) Chopping or shredding;
- (6) Grinding into crumbs for use in road asphalt, tire derived fuel, and as raw material for other

products;

- (7) Slicing vertically, resulting in each scrap tire being divided into at least two pieces;

- (8) Sludge composting;

- (9) Using for agriculture-related purposes;

- (10) Chipping for use as an oyster cultch as approved by rules adopted by the Marine Fisheries

Commission;

- (11) Cutting, stamping, or dyeing tires;

- (12) Pyrolizing and other physico-chemical processing;

- (13) Hauling to out-of-State collection or processing sites; and

- (14) Monofilling split, ground, chopped, sliced, or shredded scrap tires.

(b) The Commission may adopt rules approving other permissible methods of scrap tire disposal. Landfilling of whole scrap tires is prohibited.

(c) Units of local government may enter into joint ventures or other cooperative efforts with other units of local government for the purpose of disposing of scrap tires. Units of local government may enter into leases or other contractual arrangements with units of local government or private entities in order to dispose of scrap tires.

(d) Each county is responsible for developing a description of scrap tire disposal procedures. These procedures shall be included in any solid waste management plan required by the Department under this Article. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department.

(e) (Effective until June 30, 1997) A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may not charge a disposal fee for the disposal of scrap tires except as provided in this subsection. A unit of local government or contracting party may charge a disposal fee that does not exceed the cost of disposing of the scrap tires only if:

(1) The scrap tires are new tires that are being disposed of by their manufacturer because they do not meet the manufacturer's standards for salable tires; or

(2) The scrap tires are delivered to a local government scrap tire disposal site without an accompanying certificate required by G.S. 130A-309.58(f) that indicates that the tires originated in a county within North Carolina. (e) (Effective June 30, 1997) A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires only to the extent that the cost per tire of disposal exceeds the amount received by the county under G.S. 105-187.19 during the preceding 12-month period, divided by the number of tires disposed of within the county according to the tire disposal procedures during that period. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires regardless

of whether a tax has been paid on the tire under Article 5B of Chapter 105 and regardless of the tire's place of origin.

(f) Every tire retailer or other person disposing of scrap tires shall complete and sign a certification form prescribed by the Department and distributed to each county, certifying that the tires were collected in the normal course of business for disposal, the county in which the tires were collected, and the number of tires to be disposed of. This form also shall be completed and signed by the tire hauler, certifying that the load contains the same tires that were received from the tire retailer or other person disposing of scrap tires. The tire hauler shall present this certification form to the tire processor or tire collector at the time of delivery of the scrap tires for disposal, collection, or processing. Copies of these certification forms shall be retained for a minimum of three years after the date of delivery of the scrap tires.

(g) The provisions of subsection (f) of this section do not apply to tires that are brought for disposal in quantities of five or less by someone other than a tire collector, tire processor, or tire hauler.

Subsection (e) Set Out Twice. - The first version of subsection (e) set out above is effective until June 30, 1997. The second version of subsection (e) set out above is effective June 30, 1997.

Editor's Note. - Section 9 of Session Laws 1993, c. 548 provides that s. 4 of c. 548, which amended subsection (e) of this section, will expire June 30, 1997.

#### **GS 130A-309.59. REGISTRATION OF TIRE HAULERS.**

(a) Before engaging in the hauling of scrap tires in this State, any tire hauler must register with the Department whereupon the Department shall issue to the tire hauler a scrap tire hauling identification number. A tire retailer licensed under G.S. 105-164.29 and solely engaged in the hauling of scrap tires received by it in connection with the retail sale of replacement tires is not required to register under this section.

(b) Each tire hauler shall furnish its hauling identification number on all certification forms required under G.S. 130A-309.58(f). Any tire retailer engaged in the hauling of scrap tires and not required by subsection (a) of this section to be registered shall supply its merchant identification number on all certification forms required by G.S. 130A-309.58(f).

#### **GS 130A-309.60. NUISANCE TIRE COLLECTION SITES.**

(a) On or after July 1, 1990, if the Department determines that a tire collection site is a nuisance, it shall notify the person responsible for the nuisance and request that the tires be processed or removed within 90 days. If the person fails to take the requested action within 90 days, the Department shall order the person to abate the nuisance within 90 days. If the person responsible for the nuisance is not the owner of the property on which the tire collection site is located, the Department may order the property owner to permit abatement of the nuisance. If the person responsible for the nuisance fails to comply with the order, the Department shall take any action necessary to abate the nuisance, including entering the property where the tire collection site is located and confiscating the scrap tires, or arranging to have the scrap tires processed or removed.

(b) When the Department abates the nuisance pursuant to subsection (a) of this section, the person responsible for the nuisance shall be liable for the actual costs incurred by the Department for its nuisance abatement activities and its administrative and legal expenses related to the abatement. The Department may ask the Attorney General to initiate a civil action to recover these costs from the person responsible for the nuisance. Nonpayment of the actual costs incurred by the Department shall result in the imposition of a lien on the owner's real property on which the tire collection site is located.

(c) This section does not apply to any of the following:

(1) A retail business premises where tires are sold if no more than 500 scrap tires are kept on the premises at one time;

(2) The premises of a tire retreading business if no more than 3,000 scrap tires are kept on the premises at one time;

(3) A premises where tires are removed from motor vehicles in the ordinary course of business if no more than 500 scrap tires are kept on the premises at one time;

(4) A solid waste disposal facility where no more than 60,000 scrap tires are stored above ground at one time if all tires received for storage are processed, buried, or removed from the facility within one year after receipt;

(5) A site where no more than 250 scrap tires are stored for agricultural uses; and

(6) A construction site where scrap tires are stored for use or used in road surfacing and construction of embankments.

(d) The descending order of priority for the Department's abatement activities under subsection (a) of this section is as follows:

(1) Tire collection sites determined by the Department to contain more than 1,000,000 tires;

(2) Tire collection sites which constitute a fire hazard or threat to public health;

(3) Tire collection sites in densely populated areas; and

(4) Any other tire collection sites that are determined to be a nuisance.

(e) This section does not change the existing authority of the Department to enforce any existing laws or of any person to abate a nuisance.

(f) As used in this section, "nuisance" means an unreasonable danger to public health, safety, or welfare or to the environment.

#### **GS 130A-309.61. (Effective until June 30, 1997) EFFECT ON LOCAL ORDINANCES.**

This Part preempts any local ordinance regarding the disposal of scrap tires to the extent the local ordinance is inconsistent with this Part or the rules adopted pursuant to this Part.

Section set out twice. - The section above is effective until June 30, 1997. For the section as amended effective June 30, 1997, see the following section, also numbered GS 130A-309.61.

Editor's Note. - Session Laws 1993, c. 548, s. 9 provides that s. 5 of c. 548, which amended this section, will expire June 30, 1997.

#### **GS 130A-309.61. (Effective June 30, 1997) PREEMPTION.**

This Part preempts any local ordinance regarding the disposal of scrap tires to the extent that any local ordinance is inconsistent with this Part or rules adopted pursuant to this Part. A unit of local government may not charge any fees for the disposal of scrap tires except as authorized by this Part.

Section set out twice. - The section above is effective June 30, 1997. For the section as in effect until June 30, 1997, see the preceding section, also numbered GS 130A-309.61.

#### **GS 130A-309.62. FINES AND PENALTIES.**

Any person who knowingly hauls or disposes of a tire in violation of this Part or the rules adopted pursuant to this Part shall be assessed a civil penalty of fifty dollars (\$50.00) per violation. Each tire hauled or disposed of in violation of this Part or rules adopted pursuant to this Part constitutes a separate violation.

**GS 130A-309.63. (Expires June 30, 1997) SCRAP TIRE DISPOSAL ACCOUNT.**

(a) Creation. - The Scrap Tire Disposal Account is established as a nonreverting account within the Department. The Account consists of revenue credited to the Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes.

(b) Use. - The Department may use revenue in the Account only as authorized by this section. The Department may use up to twenty-five percent (25%) of the revenue in the Account to make grants to units of local government to assist them in disposing of scrap tires. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit of local government to provide for scrap tire disposal, the severity of a unit of local government's scrap tire disposal problem, and the effort made by a unit of local government to provide for scrap tire disposal within the resources available to it.

(c) Eligibility. - A unit of local government is not eligible for a grant unless its costs for disposing of scrap tires for the six-month period preceding the date the unit of local government files an application for a grant exceeded the amount the unit of local government received during that period from the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local government may not exceed the unit of local government's unreimbursed cost for the six-month period.

(d) Cleanup of Nuisance Tire Sites. - The Department may use the remaining revenue in the Account only to clean up scrap tire collection sites that the Department has determined are a nuisance. The Department may use funds in the Account to clean up a nuisance tire collection site only if no other funds are available for that purpose.

(e) Reports. - The Department shall make quarterly reports on the Scrap Tire Disposal Account to the Environmental Review Commission. The report shall show the beginning and ending balances in the Account for the reporting period, the amount credited to the Account during the quarter, and the amount of revenue used for grants and to clean up nuisance tire collection sites. A quarterly report shall be filed within 60 days after the end of a calendar quarter.

Editor's Note. - Session Laws 1993, c. 548, s. 9 makes this section become effective October 1, 1993. For expiration date, see the Editor's note below.

Session Laws 1993, c. 548 provides that s. 6, which added this section, will expire June 30, 1997.

Session Laws 1993, c. 548, s. 7, effective October 1, 1993, and expiring June 30, 1995, provides: "Of the revenue credited to the Scrap Tire Disposal Account created by this act, the Department of Environment, Health, and Natural Resources may use up to five hundred thousand dollars (\$500,000) to develop and implement pilot programs to demonstrate alternative, market-based approaches to scrap tire collection and recycling in North Carolina. A grant to any one private company shall not exceed one hundred thousand dollars (\$100,000). In developing and implementing these pilot programs, the Department may contract with private companies that have expertise in the collection and recycling of scrap tires. The Department shall report the results of the pilot programs, along with the recommendations regarding the implementation of a market-based scrap tire collection and recycling program on a statewide basis, to the Environmental Review Commission by 1 January 1995."

Session Laws 1993, c. 548, s. 9 provides in part: "Any funds remaining in the Scrap Tire Disposal Account created by this act on June 30, 1997, shall be transferred to the Solid Waste Management Fund. . . . The first quarterly report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days after the quarter that ends December 31, 1993."

**GSGS 130A-309.64 through 130A-309.69:**

**RESERVED FOR FUTURE CODIFICATION PURPOSES.**



# ***West Virginia Association of Waste Haulers & Recyclers***

205 First Avenue • Nitro, WV 25143-2237 • Phone: (304) 722-6175 Fax: (304) 727-1172

My name is Michael Bsharah and I am this morning representing the West Virginia Association of Waste Haulers and Recyclers. The Association is speaking in response to a proposed rule under West Virginia Codes 22-1-3, 22-1-3(a), and 20-11-8(c). These rules are proposed as Title 47, Series 38 G.

Our Association, which comprises private waste haulers and recyclers across the state, proposes the following changes in the rule:

-- We believe that Applicability, Section 1.1.3, must be expanded to include businesses which handle used tires for the purposes of recapping and or resale. The inclusion of used tires for recapping or resale would then require some accountability for this type of facility. If used tire facilities are not governed by standards for operational procedures, storage capability, length of storage time marketing plan and analysis, and emergency response plans, we believe your agency leaves open the door to the creation of open tire dumps.

--Section 2.12, the waste tire definition includes the last statement, "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." We agree that some used tires are not quite at the end of their useful life and recapping allows a recycling effort. However, we believe your agency should define what constitutes a recapped tire, how many can be stored at the dealer or recap facility and for how long they can be stored. Without a broadening of the regulations to include recapping facilities, many waste tires will be accumulated and stored under the pretense of recapping, thus allowing these facilities to be beyond the scope of this proposed rule designed to control the tire management problem.

-- Section 3.2, which concerns permits required, should be amended to exempt mobile tire shredders. A tire shredder is in fact a waste tire processing facility. By not excluding mobile shredders from this provision of the rule, the burden and expense of permitting along with the installation of fencing and other provisions (intended for long term facilities) along with bonding requirements will be added to every cleanup activity. This will likely require the excessive use of limited funding for transportation of whole tires to one of a few permitted tire shredders in the state. This provision also requires tire dealers to transport their mandated waste tires to a shredder or other site when a mobile unit could reduce the volume of material more economically on site prior to transportation.



THIS PRODUCT  
CAN BE RECYCLED

We envision that waste tires can be shredded at various sites around West Virginia and then beneficially be used as a feedstock for some economically feasible process, utilized as either a select waste material within the first eight feet of a landfill or as a daily cover material until a market exists for this product.

Mobile tire shredders are very expensive. A member of our Association has recently purchased a used shredder for over \$300,000. We believe that by not exempting mobile tire shredders from this Section, haulers and the West Virginia environment will suffer unnecessarily.

-- Section 3.7.1(j), requires that quartered, split, shredded or chipped tire waste be dumped in a monofill. The Association proposes that waste tires be allowed to go into landfills in areas where there is a lack of facility siting of available monofills or other permitted processing facilities. The Association would ask you to provide a list of appropriate facilities in West Virginia so that we can make a list of such facilities available to our members. The Association, is however, unaware of any permitted monofills located in the state of West Virginia. The restrictions to monofills only could considerably increase the cost of transportation due to long hauls. By saving this cost, consumers will benefit.

-- We propose Section 3.8.2 add language which establishes a record keeping system to monitor an accurate number of tires accepted and hauled. Section 3.8.2(c) details the reporting requirements. We believe that tire dealers and commercial recapping facilities must also be required to submit such records for the hauling of tires as called for in this section. -- these reports must include a complete and accurate accountability of all tires collected from customers.

Exclusion of tire dealers and recappers from appropriate Sections will leave a large loophole even as your agency implements a waste tire management program.

The Haulers respectfully urge the Agency to consider our comments on this proposed rule. We also respectfully request adoption of our proposed policy changes.

NOV 10 1994 THU 11:09 MCSWA 3044879455 P.02

## MERCER COUNTY SOLID WASTE AUTHORITY

Rt. 1 Box 631  
Princeton, West Virginia  
(304) 425-2939  
(304) 487-9455 (fax)

November 9, 1994

WV DEP/Office of Air Quality  
1558 Washington Street East  
Charleston, W.V. 25311

Dear Gentlemen:

I would like to address the following comments/concerns in regard to the proposed new rule 38G "WASTE TIRE MANAGEMENT RULE".

### GENERAL CONCERN

I have an general concern that this proposed legislature is another example of taking strong environmental steps without regard to economic impact. As an environmental engineer, no one has any stronger recognition that we must be good "stewards" of our world, but also as an engineer, I know that we must also be willing to face the fact of what actions are suitable considering benefit-to-cost decision making. We are looking at banning tires in an entirety from lined landfills that will assure a safe disposal, without offering any viable solutions for how to eliminate them following the ban.

I project in Mercer County, about 70,000 tires are disposed annually. About 24,000 are brought to the landfill at a cost. About 15,000 are brought in my our clean-up program under PPOD, and are not charged. I estimate that about 5,000 - 10,000 are properly disposed of out-of-state by major tire dealers in the county. This currently leaves about 20,000 - 30,000 that are improperly disposed..

The scenario I foresee if the proposed regulation is promulgated is:

There will be approximately 30,000 - 40,000 tires disposed of improperly in Mercer County. Our clean-up crew, which was recently honored by the Governor for their efforts in removing 5,000,000 pounds of litter in Mercer County in the last 3 1/2 years, will be forced to spend the majority of their time cleaning up tire dumps. Instead of the Mercer County Sanitary Landfill taking these tires free, now the MCSWA will have to pay \$2 - \$3 each to dispose of them.

We can't continue burning our bridges behind us, without building new ones before us.

SPECIFIC COMMENTS:

I am very disappointed that assessment fees collected from this landfill, and others across this state, has been diverted to close-out two privately owned tire facilities (i.e. Inwood Tire Pile and Shorty's Tire Pile). Many landfills were depending on receiving revenue from these assessments for closure assistance.

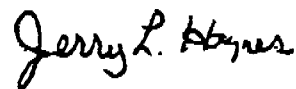
3.1.3.a. Why should a facility that invest in equipment that could utilize tires as occasional daily cover be required to pay assessment fees on this tonnage?

3.1.3.c. I applaud the action that tires will be allowed for select waste, but disagree that it should be in shredded form. There is a lot of data supporting the use of quartered, and even whole, tires as selected waste. Also won't special legislature be required that will allow for storage of these tires until a new cell is constructed. For many landfills, this may be 3 to 5 years.

3.2.2.b. I take exception to some of the restrictions, especially fencing and erosion control. I find no supporting data that links this use with any hazard to human health or the environment. This one proved especially devastating to our SWA as it was used as a basis for denying our DNR grant request for performing a marketing study on utilizing tire bales for many of these purposes.

I do not have all the answers either, but I believe we need to put more thought into many of our regulations before feeling rushed to take them to legislature.

Sincerely yours,



Jerry L. Haynes, Manager

\*\*\*\*\*  
\*\*\* ACTIVITY REPORT \*\*\*  
\*\*\*\*\*

RECEPTION OK

TX/RX NO.	6951	
CONNECTION TEL		3044879455
CONNECTION ID		
START TIME	11/10 10:08	
USAGE TIME	02'00	
PAGES	3	
RESULT	OK	

MERCER COUNTY SOLID WASTE AUTHORITY

FAX Transmission

From: JERRY L. HAYNES  
To: Bill Rheinlander  
Company: Office of Waste Management

Date: 11-10-94  
Time: 10:00  
FAX #: 1304 558-3287

Message: "PLEASE DELIVER TO HEARING  
PRIOR TO 12:00"

Mr. Rheinlander,

I had hoped to make it to Charleston  
this morning, but a problem arose. I have  
put down some comments that I hope  
you will share in the hearing.

Thanks.

FAX (304) 487-9455

RT. 1 BOX 631, PRINCETON, WEST VIRGINIA 24740

OFFICE (304) 425-2939

**Cummings Collection Service, Inc.**  
126 LOCUST STREET  
HURRICANE, WV 25526

562-9291  
562-5871

'SERVICE A FACT  
NOT A PROMISE'

November 10, 1994

Office of Waste Management  
1356 Hansford Street  
Charleston, West Virginia 25301

Attn: Mr. Bill Rheinlander

Re: Proposed Waste Tire Management Rule  
Written Comment

Dear Sirs:

Having reviewed the above referenced proposed rule, We feel compelled to comment upon certain aspects of the proposed rule which we view as detrimental to the public good. We have referenced our comments to their respective sections within the proposed Rule.

**EXPLANATION OF OVERALL ECONOMIC IMPACT OF PROPOSED RULE.**

**4.C ECONOMIC IMPACT ON CITIZENS/PUBLIC AT LARGE.**

The true momentary cost to the citizens of this state extend beyond the \$1.50 per tire waste tire management fee. Implementation of the proposed rule in its current form will increase the cost of proper disposal of waste tires from the now \$1.00 to \$2.00 for automotive tires to approximately \$5.00 per tire. The cost of larger tires will increase proportionally.

West Virginia tire dealers located near the state borders will be at an economic disadvantage when competing for business with the out of state tire dealers. Additionally, the mail order of tires will be most difficult to control.

---

ROBERT L. CUMMINGS  
PRESIDENT

ERNEST F. CUMMINGS  
VICE-PRESIDENT

CARRIE F. CUMMINGS  
SECRETARY

**APPLICABILITY:**

**3.1.3.A WASTE TIRE MONOFILLS.**

A lined solid waste disposal fill no matter what you call it is still disposal of tires in a landfill. The addition of a \$2.00 per tire (Reference Section 3.9) bonding requirement without defining that a mandate exists that all tires be removed from the monofill before the bond can be released is going to provide some operator(s) a nice windfall once they close and revegetate their monofill(s).

**3.3.1.3.B ALTERNATIVE DAILY COVER.**

The use of tire derived material as a substitute for daily cover material at solid waste landfills is a good reuse for this material. The limitation of two consecutive days of "tire waste" cover material to one day of normal (soil?) cover material appears at first reasonable. However, we feel the augmentation with "soil" cover on a weekly basis would be sufficient during periods of dry weather. A more fitting wording might include limitations weather specific instead of being based solely upon a time limitation.

The provision of this section which we disagree with deals with the addition of the State Solid Waste Assessment Fee and counting the weight of the daily cover tonnage against the monthly tonnage allowed at the facility. As indicated within the proposed rule there are approximately 4,650,000 tires requiring clean-up at numerous sites within this state. Transforming a nuisance material into a useful civil engineering material which will allow for the orderly flow of leachate and waste gas within a solid waste landfill would better fulfill the mandate the legislature imposed upon the WVDEP in providing for the orderly disposal and recycling of solid waste in a non-polluting manner.

The addition of a tax and reducing the amount of solid waste a landfill facility can accept defeats the purpose of the use of waste tires as a daily cover and most likely will exclude their use at landfills. As a market for waste tire material has not been developed and the use of monofills, as proposed, will not prove to be an economic method for the short or long term storage of waste tires due to the \$2.00 per tire additional bonding requirement, We fear these provisions will be self defeating.

Shredded tires used as daily cover are not solid waste and are not subject to the solid waste assessment fees, and the monthly tonnage limitations. By statutory provision, a solid waste

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assessment fee has been imposed "upon the disposal of solid waste at any solid waste disposal facility in this state. ." W.Va, Code 22-15-11 (emphasis added). Likewise, the legislature has placed monthly tonnage limitations upon the disposal of solid waste at any "commercial solid waste facility." W. Va. Code 22-15-8. "Solid waste" currently is defined in the Solid Waste Management Act (the "Act") to include the following:

any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities....

W.Va. Code 22-15-2(27) (emphasis added). Although neither the relevant statute nor its implementing regulations define the term "discarded", Webster's New Collegiate Dictionary' defines the term "discard" as meaning "to get rid of as of no further use, value, or service." Therefore, the term "discarded" would indicate material that is thrown away because it is of no further use or value. Clearly, shredded tire material used as daily cover at landfills does not fall within the commonly accepted meaning of this term.

While it is true that waste tires traditionally have been considered as discarded solid waste when deposited at landfills for disposal, such tires are not discarded when used as daily cover. In such cases, the tire material is shredded and used for the express purpose of satisfying regulations which require the application of daily cover to landfill cells in order to prevent problems such as odors, access to the waste by vermin, and vectors. In this manner, the tire material never enters the waste stream in the first instance. Therefore, the material can hardly be considered as something that is being discarded because it no longer serves a useful purpose. In addition, tire material used as daily cover is not without value. Although landfills often use soil for daily cover, problems often occur due to the limited quantities of soil on site or due to the existence of more beneficial uses of on-site soil. Consequently, solid waste facilities often are forced to purchase soil substitutes for use as daily cover, including such products as fabri-soil and crushed shale. Because of the requirement for daily cover, each of these substitute products has market value. Therefore, anything that may be used as a substitute daily cover, including tire material, has value.

In addition to the fact that the statutory definition of "solid waste" does not include tire material used as daily cover, DEP regulations implementing the statute expressly do not include such material in the definition of "solid waste." The regulatory definition of "solid waste" employed by DEP basically tracks the statute with respect to items specifically included within the definition. However, DEP regulations also list items specifically not included in the definition of solid waste, including the following:

2.53.7. Materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products or are returned to the original process as a substitute for raw material feedstock.

**47CSR38.**

When used as daily cover at a landfill facility, shredded tire material falls squarely within the regulatory exclusion for "effective substitutes for commercial products." As discussed above, a market exists for substitutes for daily cover material, and such materials regularly are sold to solid waste facilities as commercial products. In addition, shredded tire material, fabri-soil, and other such materials used as daily cover are processed expressly for this purpose and in such manner, are produced as commercial products for sale to solid waste facilities. Finally, proposed Section 3.1.3.b itself states that the shredded tire material "may be substituted for daily cover material at solid waste facilities... ." Accordingly such material, when being used as daily cover, constitutes material that is recycled as an effective substitute for commercial products.

Finally, with respect to the solid waste management fees which the proposed rule seeks to impose on tire material being used as daily cover, such fees are paid to the State Tax Department, which has developed its own regulations regarding the coverage of such fees. See 110 CSR 6A-2.19 ("solid waste assessment fee" means "that fee imposed upon the disposal of solid waste pursuant to W. Va. Code 20-5F-5a"). This regulation tracks the statutory and DEP definitions of "solid waste" which, as explained above, does not include materials being reused or recycled and materials that have not been discarded. Because the solid waste management fee system is being managed and implemented by the Tax

Department, DEP is without authority or jurisdiction to arbitrarily decide matters related to the accrual of such fees' so long as the Tax Department is in compliance with the statutory directive regarding the coverage of the fees.

For the reasons stated above, tire material used as daily cover at solid waste facilities is not within the statutory definition of "solid waste" and is not, therefore, subject to solid waste assessment fees or tonnage limitations. Therefore, DEP is without authority to impose such requirements as part of Section 3.1.3.b of its proposed Waste Tire Management Rule.

### **3.1.3.C REUSE AS SELECT WASTE.**

We are in agreement with this section, although this section as written within the rule causes confusion with the distinction in using an eight (8) foot lift of shredded tires in the bottom of a landfill and the use of a daily application of six (6) inches of the same material. The use of this lift of eight feet does not require the payment of the State Solid Waste Assessment fee or count as solid waste received at the facility. This rule appears to state that the installation of an initial "select solid waste layer" is viewed as beneficially reusing a material and the installation of mandated daily cover using the same material is disposal of (waste tires) solid waste instead of conservation of soil.

### **3.2 PERMITS REQUIRED.**

We suggest that this provision be amended to clearly exempt mobile tire shredders. A tire shredder is arguably under the structure of the regulations a WASTE TIRE PROCESSING FACILITY. By not excluding mobile shredders from this provision of the rule it may be interpreted as imposing such requirements on mobile tire shredders, and imposing the burden and expense of permitting along with the installation of fencing and other provisions (intended for long term facilities) along with the bonding requirements to every cleanup activity. This will most likely require the excessive use of limited funding for transportation of whole tires to one of a few permitted tire sheading facilities within the state.

Proposed Waste Tire Management Rule  
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This provision also requires tire dealers to transport their mandated waste tires to a shredder or other site when a mobile unit could reduce the volume of material more economically on site prior to transportation. We envision that waste tires can be shredded at various sites around West Virginia and then beneficially used either as a feedstock for some economically feasible process or utilized as either a select waste material within the first eight feet of a landfill or as a daily cover material until a market exists for this product.

**3.10 CLOSURE REQUIREMENTS FOR A WASTE TIRE MONOFILL/STORAGE CELL OR PROCESSING FACILITY/ACTIVITY.**

We suggest that this rule mandate that all tires must be removed from any "Waste Tire Monofill" before the bond can be released. If this is not included within the rule, we feel the rule is not meeting the pending June 1, 1995 legislative ban on the disposal of waste tires in West Virginia.

We thank you for your consideration of our opinions regarding this proposed rule. We urge the DEP to consider these comments prior to the promulgation and filing of a final rule. We trust that the minor changes we have suggested can be implemented and result in a more workable rule for governing the orderly management of waste tires in our state.

Sincerely,  
Cummings Collection Service, Inc.

*Robert L. Cummings*  
Robert L. Cummings  
President

My name is Michael Bsharah and I am this morning representing the West Virginia Association of Waste Haulers and Recyclers. The Association is speaking in response to a proposed rule under West Virginia Codes 22-1-3, 22-1-3(a), and 20-11-8(c). These rules are proposed as Title 47, Series 38 G.

Our Association, which comprises private waste haulers and recyclers across the state, proposes the following changes in the rule:

-- We believe that Applicability, Section 1.1.3, must be expanded to include businesses who recap tires. Section 2.12, Waste Tires, must include used tires at recapping facilities and dealers who store tires for the purposes of recapping. By not broadening this Section, your agency leaves open the door to the creation of open tire dumps. Further, the agency should define what constitutes a recapped tire, how many can be stored at the dealer or recap facility and for how long they can be stored. We propose Section 3.8.2 add language which establishes a record keeping system to monitor an accurate number of tires accepted and hauled for recapping by recapping companies. Exclusion of tire recappers from these sections will leave a large loophole even as your agency implements a waste tire management program.

-- Section 3.2, which concerns permits required, should be amended to exempt mobile tire shredders. A tire shredder is in fact a waste tire processing facility. By not excluding mobile shredders from this provision of the rule, the burden and expense of permitting along with the installation of fencing and other provisions (intended for long term facilities) along with bonding requirements will be added to every cleanup activity.

This will likely require the excessive use of limited funding for transportation of whole tires to one of a few permitted tire shredders in the state. This provision also requires tire dealers to transport their mandated waste tires to a shredder or other site when a mobile unit could reduce the volume of material more economically on site prior to transportation.

We envision that waste tires can be shredded at various sites around West Virginia and then beneficially be used as a feedstock for some economically feasible process, utilized as either a select waste material within the first eight feet of a landfill or as a daily cover material until a market exists for this product.

Mobile tire shredders are very expensive. A member of our Association has recently purchased a used shredder for over \$300,000. We believe that by not exempting mobile tire shredders from this Section, haulers and the West Virginia environment will suffer unnecessarily.

-- Section 3.7.1(j), requires that quartered, split, shredded or chipped tire waste be dumped in a monofill. The Association proposes that tire waste be allowed to go into landfills in addition to monofills. Understanding that it is easier to travel to a landfill than a monofill, transport cost savings should be considerable. By saving this cost, consumers will benefit.

The Haulers respectfully urge the Agency to consider our comments on this proposed rule. We also respectfully request adoption of our proposed policy changes.

# KIRKPATRICK & LOCKHART

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WRITER'S DIRECT DIAL NUMBER

355-6556

November 9, 1994

William Rheinlander  
Office of Waste Management  
1356 Hansford St.  
Charleston, WV 25301

Dear Mr. Rheinlander:

The following written comments are hereby respectfully submitted on behalf of Riverside Manufacturing Limited Liability Company ("Riverside Manufacturing"), Benwood, West Virginia, concerning the Proposed "Waste Tire Management Rule" ("Proposed Rule") to be added to Title 47, as Series 38G. Riverside Manufacturing proposes to construct and operate a manufacturing facility in Benwood, West Virginia, which utilizes pyrolysis as the primary means of converting, inter alia, scrap tires and other rubber materials into oil, gas, char and steel. Riverside Manufacturing appreciates this opportunity to comment on the Proposed Rule.

Riverside Manufacturing supports the Proposed Rule, as drafted by the Division of Environmental Protection ("Division"). Riverside Manufacturing has closely followed the enactment of the legislative ban on the disposal of waste tires and the development of this legislative rule which proposes to implement a regulatory program which properly implements the legislative ban. Riverside Manufacturing specifically supports the exception set forth at Section 3.2.2.a in the Proposed Rule relating to the use of waste tires as a raw material feedstock.

As mentioned above, Riverside Manufacturing proposes to construct and operate a facility which will utilize waste tires and other rubber materials as raw material feedstock for its pyrolysis process. Pyrolysis is a process which accomplishes

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William Rheinlander

November 9, 1994

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complete utilization of waste tires and similar materials and generates no solid waste. The pyrolysis process has been likened to a similarly effective processing by pig farmers who use EBTS ("Everything But The Squeal") and, in the context of waste tire utilization, is unique in this regard. Riverside Manufacturing will utilize pyrolysis and related refining measures to convert "EBTS" from waste tires into usable commodities and commercial products.

The Division has appropriately recognized that waste tires can be converted into their respective constituents. These constituents - oil, gas, char and steel - are valuable commodities and have definable market uses. The pyrolysis process allows utilization of these valuable constituents and, thus, the avoidance of land disposal of waste tires which are processed in this fashion. Riverside Manufacturing supports the exception as currently proposed. However, should concerns be raised with the Division regarding the exception, Riverside Manufacturing offers the following comments.

Riverside Manufacturing notes that the exception is completely consistent with the legislative ban on the disposal of waste tires in West Virginia. The pyrolysis process affords one of the few realistic alternatives to landfill disposal which will convert waste tires into commonly recognized commercially valuable commodities and products. The proposed exception is authorized by the legislative ban and is completely consistent with the intent of this ban. If the Division determines that it must change this exception, Riverside Manufacturing would support further limitation which would nonetheless continue to except facilities which, like pyrolysis operations, can legitimately convert waste tires into their constituents. Without such an exception, the Proposed Rule would effectively preclude legitimate alternatives to solid waste disposal for waste tires; would encourage the continued usage of disposal instead of reuse; and would encourage illegal disposal practices by those who would find it too expensive or difficult to comply.

Riverside Manufacturing believes that the Proposed Rule, when finalized, will appropriately implement the legislative ban and will further establish a program to encourage the beneficial use of waste tires. The Proposed Rule would ban or regulate the deposit of tires in solid waste facilities in West Virginia, but would not unnecessarily regulate legitimate manufacturing operations which would utilize these tires. The Proposed Rule will appropriately require that Riverside Manufacturing, and other excepted facilities, must be permitted and regulated by the Division's Office of Air Quality, Office of

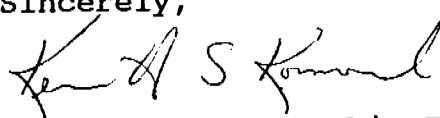
KIRKPATRICK & LOCKHART

William Rheinlander  
November 9, 1994  
Page 3

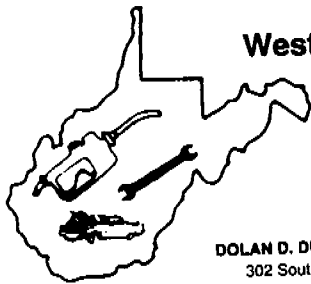
Water Resources or other appropriate state regulatory agency. Furthermore, the Proposed Rule will appropriately encourage recognized technologies which beneficially use waste tires, without unnecessarily burdensome and expensive regulation.

Riverside Manufacturing appreciates this opportunity to comment and supports promulgation of the Proposed Rule in its current form. Riverside Manufacturing specifically supports the language as proposed at Section 3.2.2.a which legally and expressly excepts pyrolysis facilities consistent with the West Virginia Solid Waste Management Act and West Virginia Recycling Act.

Sincerely,



Kenneth S. Komoroski, Esquire  
Counsel for Riverside Manufacturing  
Limited Liability Company



**West Virginia Gasoline Dealers & Automotive Repair Association, Inc.**

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November 10, 1994

Bill Rheinlander, Public Information Officer  
Office of Waste Management  
Division of Environmental Protection  
State of West Virginia  
Charleston, West Virginia

Re: Comments of Title 47,  
Legislative Rules from the Division  
of Environmental Protection on the  
Proposed Waste Management Rules - Series 38G

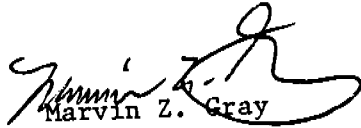
Dear Mr. Rheinlander,

We have received the above referenced proposed rules on waste tire management.

In our effort to expedite and not be repetitive, we have reviewed the proposed rules and met with the West Virginia Tire Dealer's Association and we concur with their comments and proposed changes to the rules.

If you require additional information, please do not hesitate to contact us. We appreciate the opportunity to share our views with you.

Sincerely,

  
Marvin Z. Gray  
Executive Director

MZG/rmg

# West Virginia Tire Dealers Association

P. O. Box 1335 ♦ Charleston, WV 25325 ♦ (303)342-4441

November 10, 1994

Bill Rheinlander, Public Information Officer  
Office of Waste Management  
Division of Environmental Protection  
State of West Virginia  
Charleston, West Virginia

Re: Public Comments on Title 47,  
Legislative Rules from the Division of  
Environmental Protection on the  
proposed Waste Tire Management  
Rules- Series 38G.

Dear Mr. Rheinlander,

We have reviewed the above referenced rules on Waste Tire Management and submit the following commits.

This Association has long felt the need for a program to manage the disposal of waste tires. While there appears to be no health hazard other than mosquito breeding in water collected in abandoned whole tires, there are other problems that are of greater concern. We need not elaborate on the visual aspects or the abandonment of tires or the problems of and with landfills. These are obvious. Suffice to say that the Association and its members support most efforts to manage this massive and complicated problem.

There are many facets to this problem. Many sides of the issue need to be considered. The paramount consideration should be to the consumer and the public. If their interest in and **perceptions** of the program are not met **no program will succeed**. The second concern is the environment in all its definitions while the third consideration is for those who, in fact, are the initial level of "enforcement", the tire dealers. This Association has made every effort to garner information and ideas to make this program successful. Our recommendations are designed, we hope, with all points of view in mind.

The staff of the Waste Tire Management Board should be commended for a well thought out Program. The staff of the Office of Waste Management has put together well designed rules that were well thought out and mostly complete in the **procedures for the concept presented**. We most point out that the staff met with members of this Association in August to review the concept that appears in the rules before us. Many of the

suggestions from that meeting appear in these rules for which we are appreciative. No other concepts were reviewed. However, in the intervening weeks, and particularly since the rules were released, we now believe that there **several approaches or alternatives** that would serve West Virginia much **better** and that **the current proposal will not work and is not enforceable** because of the in-state out-of-state ramifications and marketing methods.

Our remaining commits will be in two parts. The first part will be to commit on individual items in the **concept covered in the rules**. The second part will be to discuss **conceptual alternatives** that we believe will work and monofill requirements.

Page and line numbers are based on the copy of the rule as submitted to the Secretary of State on October 4, 1994.

- On page 2, section 1.8., line 1, strike all after the word "STRIGENCY." and insert the following: "In the event of a federal counterpart rule, this rule is to be no more stringent than the federal rule." We understand that in the future there may be rules from unrelated agencies that might effect these rules. These rules may give guidelines, suggestions or concepts to states but leave the exact method to the states. With this in mind, we think this verbiage would be less likely to tie the hands of state regulation writers.
- On page 2, section 2.6., line 1, strike all after the word "means" to the "comma" on line 2 and insert "any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle." We believe this to be a better definition.
- On page 2, section 2.7., strike out the words "at retail" and insert the words "to an end user". This should eliminate the argument that the "dealer" is really a "discounter or sells at wholesale" and not at retail. This should also help in defining the difference between a retailer and wholesaler.
- On page 3, section 2.13., place a period after the "activities" on line 6 and strike the remainder of the sentence and on line 7, after the word "be" strike the remainder of the sentence and insert "registered by the Division of Environmental Protection to lawfully transport waste tires. Use of such hauler approved by the Division shall remove all liability from the tire dealer." The verbiage in the first deletion is not necessary and could create bookkeeping problems with interrelated company divisions.

The second part makes a major change. Our belief is that this would simplify receiving information as to haulers who are not living up to standards. It is the DEP who first becomes aware of the shortcomings of a hauler. If the Public Service Commission becomes involved there would be a time lag before the tire dealer becomes aware of problems. By necessity the DEP would need to keep track of haulers. It would probably be the DEP bringing "charges" against a hauler first.

While the third part may not stand up in court or federal rulings, this may add to the

defense of a dealer who has used a "registered" hauler approved by the DEP (or PSC). There are too many horror stories of companies who have operated legally, with state and federally approved haulers, still found "guilty" of improper disposal of tires even when using approved haulers who had certified to a state that they had legally disposed of the tires.

- On page 4, section 3.1.3.d., line 4 after the word "tires," add "split tires," and after the period at the end of the section add the following additional sentence: " The chief may initiate pilot or test projects using the latest technology in his determination." This may not be the proper place for the added sentence but some such statement needs to be some placed somewhere to permit the chief to test projects that could be useful in marketing waste material and which types of tires should be excepted.
- On page 5, section 3.2.2.a. -- The entire section needs to be revisited. The intent of this section is not very clear, or if it is clear, it may need to be revised. It appears to exempt pyrolysis facilities, cryogenic processing facilities and waterjetting facilities from the permit requirements, where those facilities may be covered by other permitting agencies. However, it would not appear to exempt facilities producing ground rubber from tires through ambient grinding. First, the intent of these regulations is to ensure effective control over waste tires. If the regulations of the other agency do not deal as effectively, or perhaps not at all, with this problem, the fact that a pyrolysis facility may have an air permit may not mean that its handling of tires is being regulated at all. Second, the process by which ground rubber is produced should not be the basis for exempting a facility from the appropriate safeguards established in these regulations. When the final product is the same, ground rubber, the process by which it is produced -- cryogenic grinding, ambient grinding, waterjetting, or otherwise -- should not be a factor in imposing different sets of regulatory requirements and safeguards. If the intent is to exempt all facilities producing a raw material feedstock from tires, then all processes producing the same end raw material should be treated alike.
- On page 6, section 3.2.2.b., line 11, after the period add "The chief shall have the responsibility of determining if an unreasonable number of tires are being stored for a particular beneficial application or an unreasonable length of time used to begin a beneficial application." This should give the DEP some oversight powers.
- On page 6, section 3.4.1., after the period on line 4, insert the following sentence - "All fees so collected shall be deposited in the "Waste Tire Management Fund". We very strongly believe that there be only one "fund". (see item on section 3.11.3 below)
- On page 8, section 3.5.6.a.A., line 3, after the word "precipitation" add "in whole tires". This makes intent clearer.
- On page 8, section 3.5.6.a.B., line 4, strike all after the word "Virginia" and insert

"Division of Environmental Protection." This should be kept within the DEP since they are responsible for the tire program. If too much of the program is spread through government the program is less likely to succeed.

- On page 12, section 3.8.2., line 2, strike all after the word "chief" and insert "within" sixty (60) days of the end of the tire dealers fiscal year and must include:" This is to make tax coincide with normal reporting dates
- On page 12, section 3.8.2.a., after the word "new" insert the words ", used and or retreaded". Used and retreaded tires should be included for statistical purposes.
- On page 12, section 3.8.2.c., line 1, strike the words "and certificated" and insert the word with comma ", registered" and on line 2 after the word "haulers" insert the words "and the signature of the hauler or their agent. Such compliance will hold harmless the tire dealer of any actions of the waste tire hauler." and on line 3, place a period after the word "transported" and strike the remainder of the sentence. See commits for section 2.13.
- On page 12, section 3.8.2.d, delete entire section. This section will not work because the customer will object and or give false information. This will put a few dealers into a position where they might use the telephone directory to fill out the forms, etc.
- On page 12, section 3.8.2.e, delete entire section. Keeping this information for that period of time is unreasonable. Since the report is sent to the state why not have the DEP retain the information.
- On page 12, section 3.8.3.d., line 1, after the word "tier", strike the word "may" and insert the word "shall". This may indicate to the public that the dealer has the choice of collecting the fee or not.
- On page 12, section 3.8.3.e., delete the entire section. See section 3.8.2.d. above.
- On page 14, section 3.11.1.a Liability. (the little "a" may actually be intended to be a little "b"), line 7, after the period add the following: "A tire dealer who files timely the proper amount due to the tax commissioner from the net proceeds of the waste tire assessment fee shall be entitled to an administering and collection fee of 5% of the gross amount of the waste tire assessment fee collected." The dealer should be reimbursed for a part of the administration and reporting costs they incur. At least one state recognizes a 10%.cost figure.
- On page 14, section 3.11.3., line 3, after the word "the" delete all the remaining of this section to include 3.11.3.a., 3.11.3.b., 3.11.3.c and 3.11.3.d and insert "account designated as the Waste Tire Management Fund. These funds are to be used only for waste tire related cleanup, enforcement and market development. No waste tire derived funds should be used for any other solid waste management purpose." We

believe that all the funds collected from the program should be used to take care of the tires on which the fees were collected. The verbiage in the rules would lead one to believe that most of the fees would be use to clean up existing problem sites.

As we stated at the outset, we do not believe the concept used in the above rule is workable. There are simply too many ways for the system to be misused by wholesalers, tire dealers and the public. We also believe that **any one of several other concepts** would be more acceptable to the public, easier to enforce and more likely to provide the necessary funding to carry out the legislative intent.

We would propose that **all after section 3.11. be deleted** and in its place any one of several conceptual alternatives be inserted.

### Conceptual Alternatives

Funding and how that funding is collected is the key to concept differences. They fall into the following categories:

- **Waste Management fee on all tires:** In this case, the fee should be imposed on tire sales including those on new automobiles. A fee of 2% of cost on tires of bead diameter of less than 20 inches and 1% on larger tires would be reasonable. The fee would be collected at time of sale and reported as an additional line on the regular sales tax return of the seller. There should be little or no increase in administration cost to the tax department. The funds should be placed in an account of the DEP for the sole use of the waste tire program.

Attached you will find a copy of the legislation from North Carolina. Their program has been in place for a number of years and seems to be successful. We believe this to be the model to follow.

- **Dollar amount surcharge:** Same above except that a flat dollar amount would be charged, say \$2.00 for tires of bead diameter less than 20 inches and sliding scale for larger tires. It may be fairer or more acceptable to have only \$1.00 on smaller used or retreaded tires.
- **Increased vehicle registration fee:** Each year, at the time a vehicle is registered include a fee of about \$2.00. Since fees are already being collected there should be little cost or increased time in making the collection.

In each alternative the funds received by the DEP, less an amount of about 20% for administration, enforcement and market development, should be distributed to each county solid waste authority. The distribution should be on the basis of vehicle registration (or tire sales).

These authorities would then be responsible for the collection the tires from the dealer at no addition fee (may be subcontracted) (may pay dealer a small fee for drop instead of pickup). The tires are then deposited at a county collection point. There should be no tipping fee. The tires are then owned by the county and can be stored, monofilled, made into salable sizes if necessary and or sold. If the tires are salvageable as used or retreadable tires, they should be sold to a dealer as such for repair and resale and not compete with private businesses. The counties should be permitted to join with other counties or private businesses to further their enterprise.

All of the above would encourage individuals to turn in tires and not to dispose of the tires themselves.

### **Monofills Requirements**

We believe that all references to monofills and storage cells should be reviewed and rewritten. Our best information is that the Rules as written would be prohibitive in cost and is an "over kill" on design and construction requirements. Studies to our knowledge show that there is no leaching and no leachate. The result of no or fewer monofills would be:

- There would be fewer opportunities to develop facilities to use waste tire material and jobs.
- Higher cost to transport waste tires to storage areas that can afford the cost.
- More storage areas above ground creating additional unsightly vistas.
- If counties are involved the cost would be such that local programs would find it more difficult to succeed.
- And there are other reasons.

If you require additional information please do not hesitate to contact us. We sincerely appreciate the opportunity to share our ideas with you.

Sincerely yours,

  
Jesse Perry  
President

## SECTION .1100 - SCRAP TIRE MANAGEMENT

**.1101 DEFINITIONS**

The definitions in G.S. 130A-309.53 and the following definitions shall apply throughout this Section:

- (1) "Disposal site" means any place at which scrap tires are disposed of by sanitary landfill, incineration, or other method as may be approved by the Division.
- (2) "Processing" means chopping, chipping, shredding, slicing, cutting, stamping, dyeing, pyrolyzing or other physicochemical processing of scrap tires either for disposal or production of useable materials.
- (3) "Scrap tire monofill" means a sanitary landfill, or portion thereof, permitted exclusively for scrap tire disposal.

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

**.1102 APPLICATION FEE AND ANNUAL PERMIT FEE**

(a) A permit application for a scrap tire collection site or scrap tire disposal site shall be accompanied by a non-refundable twenty-five dollar (\$25.00) application fee. The application fee shall be credited toward the permit fee which shall be paid before a permit is issued.

(b) An annual permit fee shall be paid to the Division on or before July 1, as follows:

- (1) A scrap tire collection site: two hundred and fifty dollars (\$250.00); and
- (2) A scrap tire disposal site: two hundred and fifty dollars (\$250.00).

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

**.1103 GENERATOR OF SCRAP TIRES**

No person shall discard, deposit or dispose of a scrap tire except at a site or facility permitted to receive scrap tires under these Rules, or at a legitimate business exempt from a permit under G.S. 130A-309.57(d).

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

**.1104 GENERAL CONDITIONS**

- (a) Landfilling of whole scrap tires is prohibited.
- (b) Demonstrated methods of scrap tire disposal, in addition to the disposal methods in G.S. 130A-309.58, may be approved by the Division.
- (c) The tire collector shall notify the Division by submitting a form giving complete information regarding the location, size, period of operation, ownership and operation of the site, and the number of scrap tires accumulated at the site.
- (d) Scrap tire certification forms, in accordance with G.S. 130A-309.58(f) shall be obtained from units of local government.

*History Note: Statutory Authority G.S. 130A-309.58;  
Eff. October 1, 1990.*

**.1105 PERMIT REQUIRED**

(a) No person, other than a person exempted by G.S. 130A-309.57(d), shall establish, operate or maintain, or allow to be established, operated or maintained upon his land, a scrap tire collection site or scrap tire disposal site unless a permit for the site has been obtained from the Division.

(b) Application for permits required by this Rule shall be forwarded to the Solid Waste Section, Solid Waste Management Division, P.O. Box 27687, Raleigh, North Carolina 27611.

(c) A permit is issued to the permit applicant for a particular site and is non-transferrable.

(d) Scrap tire collection sites exempt from permitting under G.S. 130A-309.57(d) and Rule .1105 (i) of this Section are not subject to the storage requirements of Rule .1107 of this Section with the exception of Rule .1107(1) and (2)(c).

- (8) Projected date of commencing operation.
- (9) A description of how any waste resulting from the operation of the tire site will be disposed.
- (10) A description of how the scrap tire collection site will meet the siting and design requirements of Rule .1106(c).
- (11) A letter stating that this use complies with local zoning from the unit of local government having zoning authority over the site. If no zoning is applicable, the unit of local government shall provide documentation to that effect.
- (12) A letter from the local fire protection authority accepting the responsibility for fire protection services for the site.
- (13) A description of how the scrap tire collection site will meet the operational requirements of Rule .1107 of this Section.
- (14) Documentation of the operator's ability to meet the financial responsibility requirements of Rule .1111 of this Section.

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

### **.1107 SCRAP TIRE COLLECTION SITE OPERATIONAL REQUIREMENTS**

Scrap tire collection sites shall meet the following operational requirements:

- (1) Scrap tires stored indoors shall be stored under conditions that meet those in "The Standard for Storage of Rubber Tires", NFPA 231D-1986 edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts, which has been adopted in accordance with G.S. 150B-14(c). Copies of this document are available for inspection at the Department.
- (2) All scrap tire collection, processing or disposal sites which store scrap tires or processed tires outdoors must comply with the following technical and operational standards:
  - (a) Whole scrap tires shall be placed in an outdoor scrap tire pile(s) having dimensions no greater than 200 feet in length, 50 feet in width and 15 feet in height.
  - (b) A 50-foot wide fire lane shall be placed around the perimeter of each scrap tire pile. Access to the fire lane for emergency vehicles shall be unobstructed and passable at all times.
  - (c) The owner or operator of any scrap tire collection site shall control mosquitoes and rodents so as to protect the public health and welfare. Whole and sliced scrap tires, and other scrap tires capable of holding water shall be covered upon receipt with a water shedding material or disposed of, processed or removed from the site within ten days of receipt. Sliced scrap tires stacked concave-side down are not required to be covered.
  - (d) If the scrap tire collection site receives tires from persons other than the operator of the site, a sign shall be posted at the entrance of the site and the sign shall state the operating hours. An attendant shall be present when the site is open for receipt of tires.
  - (e) No operations involving the use of open flames, blow torches or highly flammable substances shall be conducted within 50 feet of a scrap tire pile.
  - (f) A fire safety survey shall be conducted annually by local fire protection authorities or other persons as approved by the Division.
  - (g) Communication equipment shall be maintained at the scrap tire collection site to assure that the site operator can contact local fire protection authorities in case of a fire.
  - (h) The scrap tire storage area(s) within the scrap tire collection site shall be kept free of grass, underbrush, and other potentially flammable vegetation at all times.
  - (i) The operator of the scrap tire collection site shall prepare and keep an emergency preparedness manual at the site. The manual shall be updated at least once a year, upon changes in operations at the site, or as required by the Department. The manual shall contain the following elements:
    - (i) A list of names and numbers of persons to be contacted in the event of a fire, flood or other emergency;
    - (ii) A list of the emergency response equipment at the scrap tire collection site, its location, and how it should be used in the event of a fire or other emergency;
    - (iii) A description of the procedures that should be followed in the event of a fire, including procedures to contain and dispose of the oily material generated by the combustion of large numbers of tires; and
    - (iv) A listing of all hazardous materials stored on-site, their locations and information regarding precautions which should be taken with these materials.

- (2) Post a notice indicating the site is closed and the nearest permitted site where scrap tires can be deposited;
- (3) Notify the Division of the closing and obtain Departmental approval of the plan to remove tires prior to tire removal;
- (4) Remove all scrap tires, processed tires and residuals to a waste tire processing facility, solid waste management facility permitted to accept scrap tires or processed tires, a legitimate user of processed tires, or other facility approved by the Division;
- (5) Remove any solid waste to a permitted solid waste management facility;
- (6) Provide documentation that tires were received by approved facility; and
- (7) Notify the Department when closure is complete.

*History Note: Statutory Authority G.S. 130A-309.57;  
Eff. October 1, 1990.*

#### .1110 SCRAP TIRE PROCESSING FACILITIES

(a) Scrap tire collection sites to be permitted in association with scrap tire processing facilities shall be permitted and operated in accordance with the provisions of Rules .1106 and .1107 of this Section, except that the storage limit shall be determined by multiplying the daily through-put of the processing equipment used by 30. A scrap tire processing facility shall not accept any scrap tires for processing above the number which can be processed daily if it has reached its storage limit. At least 75 percent of both the scrap tires and processed tires that are delivered to or maintained on the site of the scrap tire processing facility site shall be processed and removed for recycling or disposal at a permitted solid waste management facility within one year of their receipt. Processed tires stored for recycling or disposal are subject to the storage requirements specified in Rule .1107 of this Section unless otherwise authorized by the Division.

(b) Wastes resulting from the operation of the scrap tire processing facility shall be evaluated in accordance with 15A NCAC 13B .0103(e) prior to disposal.

(c) The owner or operator of a scrap tire processing facility shall record and maintain for three years the following information, and these records shall be available for inspection by Division personnel during normal business hours:

- (1) For all scrap tires and processed tires shipped from the facility: the name of the hauler, the hauler or merchant identification number of the tire hauler who accepted the scrap or processed tires for transport, the quantity of scrap or processed tires shipped with that hauler, designation of scrap or processed tires (name and address of facility), and documentation of receipt of tires by the receiving facility;
- (2) For all scrap tires and processed tires received at the facility: the name of the hauler, the hauler or merchant identification number of the scrap tire hauler who delivered the scrap or processed tires to the facility, the quantity of scrap or processed tires received from that hauler and where the tires originated (name and address of facility);
- (3) For tires received, stored, shipped or processed, completed certification forms as required by G.S. 130A-309.58(f) except for quantities of five tires or less brought for processing by someone other than a tire collector, tire processor or tire hauler.

(d) Owners and operators of scrap tire processing facilities shall submit to the Division an annual report, by March 1 of each year, that summarizes the information collected under Paragraph (c) of this Rule for the previous calendar year. The report shall be submitted on a form prescribed and provided by the Division. The following information shall be included, at a minimum:

- (1) The facility name, address, and permit number, if any;
- (2) The year covered by the report;
- (3) The total quantity and type of scrap tires or processed tires received at the facility during the year covered by the report;
- (4) The total quantity and type of scrap tires or processed tires shipped from the facility during the year covered by the report;
- (5) The quantity of scrap tires or processed tires shipped to each receiving facility identified by name and address;
- (6) The total quantity and type of scrap tires or processed tires located at the facility on the first day of the calendar year.

*History Note: Statutory Authority G.S. 130A-309.57;*

# SCRAP TIRE HAULER REGISTRATION APPLICATION

(Temporary through 10-1-90)

Pursuant to N.C.G.S. 130-A-309.59(a), to obtain a Scrap Tire Hauling identification number and approval to transport scrap tires, a hauler shall submit the following information on this form to the Department.

1. Business name of Hauler: \_\_\_\_\_

2. Owner of Hauling Service: \_\_\_\_\_

3. Mailing address of Hauler: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

4. Street address of Hauler: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ Zip: \_\_\_\_\_

5. Telephone number of Hauler: (\_\_\_\_) \_\_\_\_\_

6. Federal Employer Identification (FEID) number of Hauler: \_\_\_\_\_

7. Counties to be served: \_\_\_\_\_

8. List all known sites where you will be depositing waste tires or processed tires for disposal or recycling (attach additional sheets if necessary):

Name	Address	County
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. Number of vehicles to be used: \_\_\_\_\_

10. Please submit the following information for each vehicle you will use to transport scrap tires. If you are using more than one vehicle, you may attach additional sheets to this form that provide the required information for each vehicle.

a. Description of vehicle: \_\_\_\_\_

b. License number of vehicle: \_\_\_\_\_

c. Department of Motor Vehicle registration number: \_\_\_\_\_

d. Name of registered vehicle owner: \_\_\_\_\_

11. Scrap tire hauler registration status: New  Renewal   
If registration is a renewal, list previous registration number (s): \_\_\_\_\_

\_\_\_\_\_  
Signature of Scrap Tire Hauler



State of North Carolina  
Department of Environment, Health, and Natural Resources  
Division of Solid Waste Management  
P.O. Box 27687 · Raleigh, North Carolina 27611-7687

James G. Martin, Governor  
William W. Cobey, Jr., Secretary

William L. Meyer  
Director

June 8, 1992

**TECHNICAL GUIDANCE  
FOR  
ESTABLISHING SCRAP TIRE FACILITY  
FINANCIAL ASSURANCE**

**PURPOSE**

It is the intent of this guidance document to assist Scrap Tire Collection Site and Scrap Tire Processing/Recycling Facility owners and operators in meeting the Solid Waste Section's Rules and policies regarding the establishment of financial assurance.

Establishment of financial assurance is required for Scrap Tire Collection Sites and scrap tire collection activities associated with Scrap Tire Processing/Recycling Facilities. In accordance with 15A NCAC 13B, Section .1100, establishment of financial assurance is required to ensure closure, proper clean up, third party liability, and environmental protection of tire collection sites. The long term objective is to establish financial responsibility for these facilities in accordance with the goals and policies of the North Carolina Scrap Tire Disposal Act (under the Solid Waste Management Act of 1989, Senate Bill 111).

According to the Rules, owners of Scrap Tire Collection Sites and Processing/Recycling Facilities must establish a minimum financial assurance equal to \$1.50 per tire times the maximum amount of permitted tire storage capacity of the facility for closure and clean up. The amount of tires permitted to be stored at the site is determined by the type of facility. For Tire Processing/Recycling Facilities, additional financial assurance may be required for tire derived end products which are stockpiled on site.

## COMPLIANCE

In the event the Tire Site/Facility Owner or Operator fails to comply with the storage and collection aspects of the rules or permit conditions, the funds established for financial assurance shall be used by the State to ensure proper management of any stored scrap tires or processed tire product. The State will access such funds using the methods and procedures set forth in the instrument used for providing the financial assurance.

## LIABILITY COVERAGE

15A NCAC 13B, Section .1100 also requires that Scrap Tire Collection Sites and Scrap Tire Processing/Recycling Facilities maintain financial coverage for property damage and injury to third parties or public property. Required coverage amounts are determined by the maximum amount of tire storage permitted at a Scrap Tire Collection Site or monthly processing amount at a Tire Processing/Recycling Facility. Two thousand five hundred dollars (\$2,500.00) per one thousand (1,000) tires is required for each occurrence with a total annual aggregate of five thousand dollars (\$5,000.00) per one thousand (1,000) tires.

Financial coverage must be comprehensive in scope providing coverage for personal injuries occurring on and off site, damage resulting from the release of pollutants into the environment, nuisance, vector concentration, and spread of disease through vectors or pollutants.

Additional liability amounts covering tire derived products generated and stored at Tire Processing/Recycling Facilities may be required. Financial liability requirements associated with these potential products will be addressed on individual cases, based upon the intent of current legislation and rules to protect public property, third parties, and the environment. Tire Processing/Recycling Facilities will be reviewed annually to determine if additional liability financial assurance for stored products is required.

Issuing Bank Letterhead  
Sample Draft of Letter of Credit

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Letter of Credit Number: \_\_\_\_\_

Date: \_\_\_\_\_

State of North Carolina  
Department of Environment, Health, and Natural Resources  
Division of Solid Waste Management  
Solid Waste Section  
Post Office Box 27687  
Raleigh, North Carolina 27611-7687

Ref: (name of Tire Site/Facility) \_\_\_\_\_

Gentlemen:

We hereby establish, at the request and for the account of:

(name of tire site/facility) \_\_\_\_\_

(address/location of facility) \_\_\_\_\_

\_\_\_\_\_

in your favor, our Irrevocable Standby Letter of Credit Number \_\_\_\_\_ whereby we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions, set forth in this Irrevocable Standby Letter of Credit, by your draft at sight, an aggregate amount not exceeding:

\_\_\_\_\_, (U.S. \$ \_\_\_\_\_)

which amount is the minimum estimated amount necessary to reimburse the Division of Solid Waste Management, State of North Carolina, for site closure, clean up, and other costs directly related to site closure or cleanup.

Funds established by this Irrevocable Standby Letter of Credit are available to you upon presentation of your sight draft drawn on us, in the form attached as "SIGHT DRAFT ON IRREVOCABLE STANDBY LETTER OF CREDIT ISSUED BY (NAME OF ISSUING BANK), executed by you, with appropriate insertions. Presentation of said draft shall be made to the following:

(name and title of bank officer) \_\_\_\_\_

(name and address of issuing bank) \_\_\_\_\_

\_\_\_\_\_

or at any other North Carolina office or officer which may be designated by us in a written notice delivered to you. If we receive your sight draft, conforming with the terms and conditions of this Irrevocable Standby Letter of Credit, on or prior to the expiration, we will promptly honor the same.



State of North Carolina  
 Department of Environment, Health, and Natural Resources  
 Division of Solid Waste Management  
 P.O. Box 27687 · Raleigh, North Carolina 27611-7687

James G. Martin, Governor  
 William W. Cobey, Jr., Secretary

William L. Meyer  
 Director

**SIGHT DRAFT  
 ON  
 IRREVOCABLE STANDBY LETTER OF CREDIT  
 ISSUED BY  
 (NAME OF ISSUING BANK)**

(Date)

(Name of official set forth in Letter of Credit)  
 (Title of official set forth in Letter of Credit)  
 (Address of bank set forth in Letter of Credit)

Ref: Irrevocable Standby Letter of Credit Number: \_\_\_\_\_

Name (of official):

At sight, PAY TO:

Division of Solid Waste Management

the amount of:

\_\_\_\_\_ U. S. Dollars \$ \_\_\_\_\_

and charge to the account of the above referenced Irrevocable Standby Letter of Credit.

The undersigned certifies that:

- (1) The amount which is now due and payable in accordance with the terms and conditions of the above referenced Irrevocable Standby Letter of Credit does not exceed the total aggregate amount authorized by the Irrevocable Standby Letter of Credit.
- (2) The undersigned is a duly authorized official of:

State of North Carolina  
 Department of Environment, Health, and Natural Resources  
 Solid Waste Management Division

PART 2B. SCRAP TIRE DISPOSAL ACT.

**GS 130A-309.51. TITLE.**

This Part may be cited as the "North Carolina Scrap Tire Disposal Act."

**GS 130A-309.52. FINDINGS; PURPOSE.**

(a) The General Assembly finds that:

- (1) Scrap tire disposal poses a unique and troublesome solid waste management problem.
- (2) Scrap tires are a usable resource that may be recycled for energy value.
- (3) Uncontrolled disposal of scrap tires may create a public health and safety problem because tire piles act as breeding sites for mosquitoes and other disease-transmitting vectors, pose substantial fire hazards, and present a difficult disposal problem for landfills.
- (4) A significant number of scrap tires are illegally dumped in North Carolina.
- (5) It is in the State's best interest to encourage efforts to recycle or recover resources from scrap tires.
- (6) It is desirable to allow units of local government to control tire disposal for themselves and to encourage multicounty, regional approaches to scrap tire disposal and collection.
- (7) It is desirable to encourage reduction in the volume of scrap tires being disposed of at public sanitary landfills.

(b) The purpose of this Part is to provide statewide guidelines and structure for the environmentally safe disposal of scrap tires to be administered through units of local government.

**GS 130A-309.53. DEFINITIONS.**

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

- (1) "Collection site" means a site used for the storage of scrap tires.
- (2) "Disposal fee" is any amount charged by a tire collector, tire processor, or unit of local government in exchange for accepting scrap tires.
- (3) "In-county scrap tire" means any scrap tire brought for disposal from inside the county in which the collection or processing site is located.
- (4) "Out-of-county scrap tire" means any scrap tire brought for disposal from outside the county in which the collection or processing site is located.
- (5) "Processing site" means a site actively used to produce or manufacture usable materials, including fuel, from scrap tires. Commercial enterprises processing scrap tires shall not be considered solid waste management facilities insofar as the provisions of G.S. 130A-294(a)(4) and G.S. 130A-294(b) are concerned.
- (6) "Scrap tire" means a tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.
- (7) "Tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a vehicle and is subject to the tax imposed by Article 5B of Chapter 105.
- (8) "Tire collector" means a person who owns or operates a site used for the storage, collection, or deposit of more than 50 scrap tires.
- (9) "Tire hauler" means a person engaged in the picking up or transporting of scrap tires for the purpose of storage, processing, or disposal.
- (10) "Tire processor" means a person who engages in the processing of scrap tires or one who owns or operates a tire processing site.
- (11) "Tire retailer" means a person who engages in the retail sale of a tire in any quantity for any use or purpose by the purchaser other than for resale.

**GS 130A-309.54. USE OF SCRAP TIRE TAX PROCEEDS.**

Article 5B of Chapter 105 imposes a tax on new tires to provide funds for the disposal of scrap tires. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60.

Editor's Note. - Session Laws 1993, c. 364, s. 1(a) added a sentence at the end of former G.S. 130A-309.54(a), repealed by Section 3 of Chapter 221 of Session Laws 1991, to read: "This fee does not apply to tires sold for placement on newly manufactured vehicles."; pursuant to ss. 1(b) and 3 of c. 364, s. 1 applied retroactively to tires sold on or after Jan. 1, 1990, and expired June 30, 1991.

Session Laws 1993, c. 364, which amended this section, in s. 3 provides: "Notwithstanding the time limitations of G.S. 105-266 and G.S. 105-266.1, a refund of an overpayment of a tax levied on tires sold for placement on newly manufactured vehicles under former G.S. 130A-309.54(a) (repealed) or under G.S. 105-187.16 is timely if a demand for the refund is filed on or before July 1, 1994. Notwithstanding G.S. 105-266, an interest rate of five percent (5%) per year applies to refunds of tax paid on new tires that were purchased before July 15, 1992, and are exempted from the scrap tire tax by this act."

**GSGS 130A-309.55, 130A-309.56: REPEALED BY SESSION LAWS 1991, C. 221, S. 4, EFFECTIVE JULY 1, 1991.**

Cross References. - As to privilege taxes imposed upon new tire sales, see GS 105-187.16. As to use of such tax proceeds, see GS 105-187.19.

**GS 130A-309.57. SCRAP TIRE DISPOSAL PROGRAM.**

(a) The owner or operator of any scrap tire collection site shall, within six months after October 1, 1989, provide the Department with information concerning the site's location, size, and the approximate number of scrap tires that are accumulated at the site and shall initiate steps to comply with subsection (b) of this section.

(b) On or after July 1, 1990:

(1) A person may not maintain a scrap tire collection site or a scrap tire disposal site unless the site is permitted.

(2) It is unlawful for any person to dispose of scrap tires in the State unless the scrap tires are disposed of at a scrap tire collection site or at a tire disposal site, or disposed of for processing at a scrap tire processing facility.

(c) By January 1, 1990, the Commission shall adopt rules to carry out the provisions of this section. Such rules shall:

(1) Provide for the administration of scrap tire collector and collection center permits and scrap tire disposal site permits, which may not exceed two hundred fifty dollars (\$250.00) annually;

(2) Set standards for scrap tire processing facilities and associated scrap tire sites, scrap tire collection centers, and scrap tire collectors; and

(3) Authorize the final disposal of scrap tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal.

(d) A permit is not required for:

(1) A tire retreading business where fewer than 1,000 scrap tires are kept on the business premises;

(2) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,000 of these tires are kept on the business premises; or

(3) A retail tire-selling business which is serving as a scrap tire collection center if fewer than 1,000 scrap tires are kept on the business premises.

(e) The Department shall encourage the voluntary establishment of scrap tire collection centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of used and scrap tires. The Department may establish an incentives program for individuals to encourage them to return their used or scrap tires to a scrap tire collection center.

**GS 130A-309.58. DISPOSAL OF SCRAP TIRES.**

(a) Each county is responsible for providing for the disposal of scrap tires located within its boundaries in accordance with the provisions of this Part and any rules issued pursuant to this Part. The following are permissible methods of scrap tire disposal:

- (1) Incinerating;
- (2) Retreading;
- (3) Constructing crash barriers;
- (4) Controlling soil erosion when whole tires are not used;
- (5) Chopping or shredding;
- (6) Grinding into crumbs for use in road asphalt, tire derived fuel, and as raw material for other

products;

- (7) Slicing vertically, resulting in each scrap tire being divided into at least two pieces;
- (8) Sludge composting;
- (9) Using for agriculture-related purposes;
- (10) Chipping for use as an oyster cultch as approved by rules adopted by the Marine Fisheries

Commission;

- (11) Cutting, stamping, or dyeing tires;
- (12) Pyrolizing and other physico-chemical processing;
- (13) Hauling to out-of-State collection or processing sites; and
- (14) Monofilling split, ground, chopped, sliced, or shredded scrap tires.

(b) The Commission may adopt rules approving other permissible methods of scrap tire disposal. Landfilling of whole scrap tires is prohibited.

(c) Units of local government may enter into joint ventures or other cooperative efforts with other units of local government for the purpose of disposing of scrap tires. Units of local government may enter into leases or other contractual arrangements with units of local government or private entities in order to dispose of scrap tires.

(d) Each county is responsible for developing a description of scrap tire disposal procedures. These procedures shall be included in any solid waste management plan required by the Department under this Article. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department.

(e) (Effective until June 30, 1997) A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may not charge a disposal fee for the disposal of scrap tires except as provided in this subsection. A unit of local government or contracting party may charge a disposal fee that does not exceed the cost of disposing of the scrap tires only if:

(1) The scrap tires are new tires that are being disposed of by their manufacturer because they do not meet the manufacturer's standards for salable tires; or

(2) The scrap tires are delivered to a local government scrap tire disposal site without an accompanying certificate required by G.S. 130A-309.58(f) that indicates that the tires originated in a county within North Carolina. (e) (Effective June 30, 1997) A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires only to the extent that the cost per tire of disposal exceeds the amount received by the county under G.S. 105-187.19 during the preceding 12-month period, divided by the number of tires disposed of within the county according to the tire disposal procedures during that period. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires regardless

of whether a tax has been paid on the tire under Article 5B of Chapter 105 and regardless of the tire's place of origin.

(f) Every tire retailer or other person disposing of scrap tires shall complete and sign a certification form prescribed by the Department and distributed to each county, certifying that the tires were collected in the normal course of business for disposal, the county in which the tires were collected, and the number of tires to be disposed of. This form also shall be completed and signed by the tire hauler, certifying that the load contains the same tires that were received from the tire retailer or other person disposing of scrap tires. The tire hauler shall present this certification form to the tire processor or tire collector at the time of delivery of the scrap tires for disposal, collection, or processing. Copies of these certification forms shall be retained for a minimum of three years after the date of delivery of the scrap tires.

(g) The provisions of subsection (f) of this section do not apply to tires that are brought for disposal in quantities of five or less by someone other than a tire collector, tire processor, or tire hauler.

Subsection (e) Set Out Twice. - The first version of subsection (e) set out above is effective until June 30, 1997. The second version of subsection (e) set out above is effective June 30, 1997.

Editor's Note. - Section 9 of Session Laws 1993, c. 548 provides that s. 4 of c. 548, which amended subsection (e) of this section, will expire June 30, 1997.

#### **GS 130A-309.59. REGISTRATION OF TIRE HAULERS.**

(a) Before engaging in the hauling of scrap tires in this State, any tire hauler must register with the Department whereupon the Department shall issue to the tire hauler a scrap tire hauling identification number. A tire retailer licensed under G.S. 105-164.29 and solely engaged in the hauling of scrap tires received by it in connection with the retail sale of replacement tires is not required to register under this section.

(b) Each tire hauler shall furnish its hauling identification number on all certification forms required under G.S. 130A-309.58(f). Any tire retailer engaged in the hauling of scrap tires and not required by subsection (a) of this section to be registered shall supply its merchant identification number on all certification forms required by G.S. 130A-309.58(f).

#### **GS 130A-309.60. NUISANCE TIRE COLLECTION SITES.**

(a) On or after July 1, 1990, if the Department determines that a tire collection site is a nuisance, it shall notify the person responsible for the nuisance and request that the tires be processed or removed within 90 days. If the person fails to take the requested action within 90 days, the Department shall order the person to abate the nuisance within 90 days. If the person responsible for the nuisance is not the owner of the property on which the tire collection site is located, the Department may order the property owner to permit abatement of the nuisance. If the person responsible for the nuisance fails to comply with the order, the Department shall take any action necessary to abate the nuisance, including entering the property where the tire collection site is located and confiscating the scrap tires, or arranging to have the scrap tires processed or removed.

(b) When the Department abates the nuisance pursuant to subsection (a) of this section, the person responsible for the nuisance shall be liable for the actual costs incurred by the Department for its nuisance abatement activities and its administrative and legal expenses related to the abatement. The Department may ask the Attorney General to initiate a civil action to recover these costs from the person responsible for the nuisance. Nonpayment of the actual costs incurred by the Department shall result in the imposition of a lien on the owner's real property on which the tire collection site is located.

(c) This section does not apply to any of the following:

(1) A retail business premises where tires are sold if no more than 500 scrap tires are kept on the premises at one time;

(2) The premises of a tire retreading business if no more than 3,000 scrap tires are kept on the premises at one time;

(3) A premises where tires are removed from motor vehicles in the ordinary course of business if no more than 500 scrap tires are kept on the premises at one time;

(4) A solid waste disposal facility where no more than 60,000 scrap tires are stored above ground at one time if all tires received for storage are processed, buried, or removed from the facility within one year after receipt;

(5) A site where no more than 250 scrap tires are stored for agricultural uses; and

(6) A construction site where scrap tires are stored for use or used in road surfacing and construction of embankments.

(d) The descending order of priority for the Department's abatement activities under subsection (a) of this section is as follows:

(1) Tire collection sites determined by the Department to contain more than 1,000,000 tires;

(2) Tire collection sites which constitute a fire hazard or threat to public health;

(3) Tire collection sites in densely populated areas; and

(4) Any other tire collection sites that are determined to be a nuisance.

(e) This section does not change the existing authority of the Department to enforce any existing laws or of any person to abate a nuisance.

(f) As used in this section, "nuisance" means an unreasonable danger to public health, safety, or welfare or to the environment.

#### **GS 130A-309.61. (Effective until June 30, 1997) EFFECT ON LOCAL ORDINANCES.**

This Part preempts any local ordinance regarding the disposal of scrap tires to the extent the local ordinance is inconsistent with this Part or the rules adopted pursuant to this Part.

Section set out twice. - The section above is effective until June 30, 1997. For the section as amended effective June 30, 1997, see the following section, also numbered GS 130A-309.61.

Editor's Note. - Session Laws 1993, c. 548, s. 9 provides that s. 5 of c. 548, which amended this section, will expire June 30, 1997.

#### **GS 130A-309.61. (Effective June 30, 1997) PREEMPTION.**

This Part preempts any local ordinance regarding the disposal of scrap tires to the extent that any local ordinance is inconsistent with this Part or rules adopted pursuant to this Part. A unit of local government may not charge any fees for the disposal of scrap tires except as authorized by this Part.

Section set out twice. - The section above is effective June 30, 1997. For the section as in effect until June 30, 1997, see the preceding section, also numbered GS 130A-309.61.

#### **GS 130A-309.62. FINES AND PENALTIES.**

Any person who knowingly hauls or disposes of a tire in violation of this Part or the rules adopted pursuant to this Part shall be assessed a civil penalty of fifty dollars (\$50.00) per violation. Each tire hauled or disposed of in violation of this Part or rules adopted pursuant to this Part constitutes a separate violation.

**GS 130A-309.63. (Expires June 30, 1997) SCRAP TIRE DISPOSAL ACCOUNT.**

(a) Creation. - The Scrap Tire Disposal Account is established as a nonreverting account within the Department. The Account consists of revenue credited to the Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes.

(b) Use. - The Department may use revenue in the Account only as authorized by this section. The Department may use up to twenty-five percent (25%) of the revenue in the Account to make grants to units of local government to assist them in disposing of scrap tires. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit of local government to provide for scrap tire disposal, the severity of a unit of local government's scrap tire disposal problem, and the effort made by a unit of local government to provide for scrap tire disposal within the resources available to it.

(c) Eligibility. - A unit of local government is not eligible for a grant unless its costs for disposing of scrap tires for the six-month period preceding the date the unit of local government files an application for a grant exceeded the amount the unit of local government received during that period from the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local government may not exceed the unit of local government's unreimbursed cost for the six-month period.

(d) Cleanup of Nuisance Tire Sites. - The Department may use the remaining revenue in the Account only to clean up scrap tire collection sites that the Department has determined are a nuisance. The Department may use funds in the Account to clean up a nuisance tire collection site only if no other funds are available for that purpose.

(e) Reports. - The Department shall make quarterly reports on the Scrap Tire Disposal Account to the Environmental Review Commission. The report shall show the beginning and ending balances in the Account for the reporting period, the amount credited to the Account during the quarter, and the amount of revenue used for grants and to clean up nuisance tire collection sites. A quarterly report shall be filed within 60 days after the end of a calendar quarter.

Editor's Note. - Session Laws 1993, c. 548, s. 9 makes this section become effective October 1, 1993. For expiration date, see the Editor's note below.

Session Laws 1993, c. 548 provides that s. 6, which added this section, will expire June 30, 1997.

Session Laws 1993, c. 548, s. 7, effective October 1, 1993, and expiring June 30, 1995, provides: "Of the revenue credited to the Scrap Tire Disposal Account created by this act, the Department of Environment, Health, and Natural Resources may use up to five hundred thousand dollars (\$500,000) to develop and implement pilot programs to demonstrate alternative, market-based approaches to scrap tire collection and recycling in North Carolina. A grant to any one private company shall not exceed one hundred thousand dollars (\$100,000). In developing and implementing these pilot programs, the Department may contract with private companies that have expertise in the collection and recycling of scrap tires. The Department shall report the results of the pilot programs, along with the recommendations regarding the implementation of a market-based scrap tire collection and recycling program on a statewide basis, to the Environmental Review Commission by 1 January 1995."

Session Laws 1993, c. 548, s. 9 provides in part: "Any funds remaining in the Scrap Tire Disposal Account created by this act on June 30, 1997, shall be transferred to the Solid Waste Management Fund. . . . The first quarterly report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days after the quarter that ends December 31, 1993."

**GSGS 130A-309.64 through 130A-309.69:**

**RESERVED FOR FUTURE CODIFICATION PURPOSES.**



# ***West Virginia Association of Waste Haulers & Recyclers***

205 First Avenue • Nitro, WV 25143-2237 • Phone: (304) 722-6175 Fax: (304) 727-1172

My name is Michael Bsharah and I am this morning representing the West Virginia Association of Waste Haulers and Recyclers. The Association is speaking in response to a proposed rule under West Virginia Codes 22-1-3, 22-1-3(a), and 20-11-8(c). These rules are proposed as Title 47, Series 38 G.

Our Association, which comprises private waste haulers and recyclers across the state, proposes the following changes in the rule:

-- We believe that Applicability, Section 1.1.3, must be expanded to include businesses which handle used tires for the purposes of recapping and or resale. The inclusion of used tires for recapping or resale would then require some accountability for this type of facility. If used tire facilities are not governed by standards for operational procedures, storage capability, length of storage time marketing plan and analysis, and emergency response plans, we believe your agency leaves open the door to the creation of open tire dumps.

--Section 2.12, the waste tire definition includes the last statement, "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." We agree that some used tires are not quite at the end of their useful life and recapping allows a recycling effort. However, we believe your agency should define what constitutes a recapped tire, how many can be stored at the dealer or recap facility and for how long they can be stored. Without a broadening of the regulations to include recapping facilities, many waste tires will be accumulated and stored under the pretense of recapping, thus allowing these facilities to be beyond the scope of this proposed rule designed to control the tire management problem.

-- Section 3.2, which concerns permits required, should be amended to exempt mobile tire shredders. A tire shredder is in fact a waste tire processing facility. By not excluding mobile shredders from this provision of the rule, the burden and expense of permitting along with the installation of fencing and other provisions (intended for long term facilities) along with bonding requirements will be added to every cleanup activity. This will likely require the excessive use of limited funding for transportation of whole tires to one of a few permitted tire shredders in the state. This provision also requires tire dealers to transport their mandated waste tires to a shredder or other site when a mobile unit could reduce the volume of material more economically on site prior to transportation.



THIS PRODUCT  
CAN BE RECYCLED

We envision that waste tires can be shredded at various sites around West Virginia and then beneficially be used as a feedstock for some economically feasible process, utilized as either a select waste material within the first eight feet of a landfill or as a daily cover material until a market exists for this product.

Mobile tire shredders are very expensive. A member of our Association has recently purchased a used shredder for over \$300,000. We believe that by not exempting mobile tire shredders from this Section, haulers and the West Virginia environment will suffer unnecessarily.

-- Section 3.7.1(j), requires that quartered, split, shredded or chipped tire waste be dumped in a monofill. The Association proposes that waste tires be allowed to go into landfills in areas where there is a lack of facility siting of available monofills or other permitted processing facilities. The Association would ask you to provide a list of appropriate facilities in West Virginia so that we can make a list of such facilities available to our members. The Association, is however, unaware of any permitted monofills located in the state of West Virginia. The restrictions to monofills only could considerably increase the cost of transportation due to long hauls. By saving this cost, consumers will benefit.

-- We propose Section 3.8.2 add language which establishes a record keeping system to monitor an accurate number of tires accepted and hauled. Section 3.8.2(c) details the reporting requirements. We believe that tire dealers and commercial recapping facilities must also be required to submit such records for the hauling of tires as called for in this section. -- these reports must include a complete and accurate accountability of all tires collected from customers.

Exclusion of tire dealers and recappers from appropriate Sections will leave a large loophole even as your agency implements a waste tire management program.

The Haulers respectfully urge the Agency to consider our comments on this proposed rule. We also respectfully request adoption of our proposed policy changes.

NOV 10 1994 THU 11:09 MCSWA 3044879455 P.02

## MERCER COUNTY SOLID WASTE AUTHORITY

Rt. 1 Box 631  
Princeton, West Virginia  
(304) 425-2939  
(304) 487-9455 (fax)

November 9, 1994

WV DEP/Office of Air Quality  
1558 Washington Street East  
Charleston, W.V. 25311

Dear Gentlemen:

I would like to address the following comments/concerns in regard to the proposed new rule 38G "WASTE TIRE MANAGEMENT RULE".

### GENERAL CONCERN

I have an general concern that this proposed legislature is another example of taking strong environmental steps without regard to economic impact. As an environmental engineer, no one has any stronger recognition that we must be good "stewards" of our world, but also as an engineer, I know that we must also be willing to face the fact of what actions are suitable considering benefit-to-cost decision making. We are looking at banning tires in an entirety from lined landfills that will assure a safe disposal, without offering any viable solutions for how to eliminate them following the ban.

I project in Mercer County, about 70,000 tires are disposed annually. About 24,000 are brought to the landfill at a cost. About 15,000 are brought in my our clean-up program under PPOD, and are not charged. I estimate that about 5,000 - 10,000 are properly disposed of out-of-state by major tire dealers in the county. This currently leaves about 20,000 - 30,000 that are improperly disposed..

The scenario I foresee if the proposed regulation is promulgated is:

There will be approximately 30,000 - 40,000 tires disposed of improperly in Mercer County. Our clean-up crew, which was recently honored by the Governor for their efforts in removing 5,000,000 pounds of litter in Mercer County in the last 3 1/2 years, will be forced to spend the majority of their time cleaning up tire dumps. Instead of the Mercer County Sanitary Landfill taking these tires free, now the MCSWA will have to pay \$2 - \$3 each to dispose of them.

We can't continue burning our bridges behind us, without building new ones before us.

SPECIFIC COMMENTS:

I am very disappointed that assessment fees collected from this landfill, and others across this state, has been diverted to close-out two privately owned tire facilities (i.e. Inwood Tire Pile and Shorty's Tire Pile). Many landfills were depending on receiving revenue from these assessments for closure assistance.

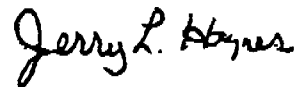
3.1.3.a. Why should a facility that invest in equipment that could utilize tires as occasional daily cover be required to pay assessment fees on this tonnage?

3.1.3.c. I applaud the action that tires will be allowed for select waste, but disagree that it should be in shredded form. There is a lot of data supporting the use of quartered, and even whole, tires as selected waste. Also won't special legislature be required that will allow for storage of these tires until a new cell is constructed. For many landfills, this may be 3 to 5 years.

3.2.2.b. I take exception to some of the restrictions, especially fencing and erosion control. I find no supporting data that links this use with any hazard to human health or the environment. This one proved especially devastating to our SWA as it was used as a basis for denying our DNR grant request for performing a marketing study on utilizing tire bales for many of these purposes.

I do not have all the answers either, but I believe we need to put more thought into many of our regulations before feeling rushed to take them to legislature.

Sincerely yours,



Jerry L. Haynes, Manager

\*\*\*\*\*  
\*\*\* ACTIVITY REPORT \*\*\*  
\*\*\*\*\*

RECEPTION OK

TX/RX NO.	6951	
CONNECTION TEL		3044879455
CONNECTION ID		
START TIME	11/10 10:08	
USAGE TIME	02'00	
PAGES	3	
RESULT	OK	

MERCER COUNTY SOLID WASTE AUTHORITY

FAX Transmission

From: JERRY L. HAYNES  
To: Bill Rheinlander  
Company: Office of Waste Management

Date: 11-10-94  
Time: 10:00  
FAX #: 1304 558-3287

Message: "PLEASE DELIVER TO HEARING  
PRIOR TO 12:00"

Mr. Rheinlander,

I had hoped to make it to Charleston  
this morning, but a problem arose. I have  
put down some comments that I hope  
you will share in the hearing.

Thanks.

FAX (304) 487-9455

RT. 1 BOX 631, PRINCETON, WEST VIRGINIA 24740

OFFICE (304) 425-2939

**Cummings Collection Service, Inc.**  
126 LOCUST STREET  
HURRICANE, WV 25526

562-9291  
562-5871

'SERVICE A FACT  
NOT A PROMISE'

November 10, 1994

Office of Waste Management  
1356 Hansford Street  
Charleston, West Virginia 25301

Attn: Mr. Bill Rheinlander

Re: Proposed Waste Tire Management Rule  
Written Comment

Dear Sirs:

Having reviewed the above referenced proposed rule, We feel compelled to comment upon certain aspects of the proposed rule which we view as detrimental to the public good. We have referenced our comments to their respective sections within the proposed Rule.

**EXPLANATION OF OVERALL ECONOMIC IMPACT OF PROPOSED RULE.**

**4.C ECONOMIC IMPACT ON CITIZENS/PUBLIC AT LARGE.**

The true momentary cost to the citizens of this state extend beyond the \$1.50 per tire waste tire management fee. Implementation of the proposed rule in its current form will increase the cost of proper disposal of waste tires from the now \$1.00 to \$2.00 for automotive tires to approximately \$5.00 per tire. The cost of larger tires will increase proportionally.

West Virginia tire dealers located near the state borders will be at an economic disadvantage when competing for business with the out of state tire dealers. Additionally, the mail order of tires will be most difficult to control.

---

ROBERT L. CUMMINGS  
PRESIDENT

ERNEST F. CUMMINGS  
VICE-PRESIDENT

CARRIE F. CUMMINGS  
SECRETARY

**APPLICABILITY:**

**3.1.3.A WASTE TIRE MONOFILLS.**

A lined solid waste disposal fill no matter what you call it is still disposal of tires in a landfill. The addition of a \$2.00 per tire (Reference Section 3.9) bonding requirement without defining that a mandate exists that all tires be removed from the monofill before the bond can be released is going to provide some operator(s) a nice windfall once they close and revegetate their monofill(s).

**3.3.1.3.B ALTERNATIVE DAILY COVER.**

The use of tire derived material as a substitute for daily cover material at solid waste landfills is a good reuse for this material. The limitation of two consecutive days of "tire waste" cover material to one day of normal (soil?) cover material appears at first reasonable. However, we feel the augmentation with "soil" cover on a weekly basis would be sufficient during periods of dry weather. A more fitting wording might include limitations weather specific instead of being based solely upon a time limitation.

The provision of this section which we disagree with deals with the addition of the State Solid Waste Assessment Fee and counting the weight of the daily cover tonnage against the monthly tonnage allowed at the facility. As indicated within the proposed rule there are approximately 4,650,000 tires requiring clean-up at numerous sites within this state. Transforming a nuisance material into a useful civil engineering material which will allow for the orderly flow of leachate and waste gas within a solid waste landfill would better fulfill the mandate the legislature imposed upon the WVDEP in providing for the orderly disposal and recycling of solid waste in a non-polluting manner.

The addition of a tax and reducing the amount of solid waste a landfill facility can accept defeats the purpose of the use of waste tires as a daily cover and most likely will exclude their use at landfills. As a market for waste tire material has not been developed and the use of monofills, as proposed, will not prove to be an economic method for the short or long term storage of waste tires due to the \$2.00 per tire additional bonding requirement, We fear these provisions will be self defeating.

Shredded tires used as daily cover are not solid waste and are not subject to the solid waste assessment fees, and the monthly tonnage limitations. By statutory provision, a solid waste

Proposed Waste Tire Management Rule  
Written Comment  
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Page 3

assessment fee has been imposed "upon the disposal of solid waste at any solid waste disposal facility in this state. ." W.Va, Code 22-15-11 (emphasis added). Likewise, the legislature has placed monthly tonnage limitations upon the disposal of solid waste at any "commercial solid waste facility." W. Va. Code 22-15-8. "Solid waste" currently is defined in the Solid Waste Management Act (the "Act") to include the following:

any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities....

W.Va. Code 22-15-2(27) (emphasis added). Although neither the relevant statute nor its implementing regulations define the term "discarded", Webster's New Collegiate Dictionary' defines the term "discard" as meaning "to get rid of as of no further use, value, or service." Therefore, the term "discarded" would indicate material that is thrown away because it is of no further use or value. Clearly, shredded tire material used as daily cover at landfills does not fall within the commonly accepted meaning of this term.

While it is true that waste tires traditionally have been considered as discarded solid waste when deposited at landfills for disposal, such tires are not discarded when used as daily cover. In such cases, the tire material is shredded and used for the express purpose of satisfying regulations which require the application of daily cover to landfill cells in order to prevent problems such as odors, access to the waste by vermin, and vectors. In this manner, the tire material never enters the waste stream in the first instance. Therefore, the material can hardly be considered as something that is being discarded because it no longer serves a useful purpose. In addition, tire material used as daily cover is not without value. Although landfills often use soil for daily cover, problems often occur due to the limited quantities of soil on site or due to the existence of more beneficial uses of on-site soil. Consequently, solid waste facilities often are forced to purchase soil substitutes for use as daily cover, including such products as fabri-soil and crushed shale. Because of the requirement for daily cover, each of these substitute products has market value. Therefore, anything that may be used as a substitute daily cover, including tire material, has value.

In addition to the fact that the statutory definition of "solid waste" does not include tire material used as daily cover, DEP regulations implementing the statute expressly do not include such material in the definition of "solid waste." The regulatory definition of "solid waste" employed by DEP basically tracks the statute with respect to items specifically included within the definition. However, DEP regulations also list items specifically not included in the definition of solid waste, including the following:

2.53.7. Materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products or are returned to the original process as a substitute for raw material feedstock.

**47CSR38.**

When used as daily cover at a landfill facility, shredded tire material falls squarely within the regulatory exclusion for "effective substitutes for commercial products." As discussed above, a market exists for substitutes for daily cover material, and such materials regularly are sold to solid waste facilities as commercial products. In addition, shredded tire material, fabri-soil, and other such materials used as daily cover are processed expressly for this purpose and in such manner, are produced as commercial products for sale to solid waste facilities. Finally, proposed Section 3.1.3.b itself states that the shredded tire material "may be substituted for daily cover material at solid waste facilities... ." Accordingly such material, when being used as daily cover, constitutes material that is recycled as an effective substitute for commercial products.

Finally, with respect to the solid waste management fees which the proposed rule seeks to impose on tire material being used as daily cover, such fees are paid to the State Tax Department, which has developed its own regulations regarding the coverage of such fees. See 110 CSR 6A-2.19 ("solid waste assessment fee" means "that fee imposed upon the disposal of solid waste pursuant to W. Va. Code 20-5F-5a"). This regulation tracks the statutory and DEP definitions of "solid waste" which, as explained above, does not include materials being reused or recycled and materials that have not been discarded. Because the solid waste management fee system is being managed and implemented by the Tax

Department, DEP is without authority or jurisdiction to arbitrarily decide matters related to the accrual of such fees' so long as the Tax Department is in compliance with the statutory directive regarding the coverage of the fees.

For the reasons stated above, tire material used as daily cover at solid waste facilities is not within the statutory definition of "solid waste" and is not, therefore, subject to solid waste assessment fees or tonnage limitations. Therefore, DEP is without authority to impose such requirements as part of Section 3.1.3.b of its proposed Waste Tire Management Rule.

### **3.1.3.C REUSE AS SELECT WASTE.**

We are in agreement with this section, although this section as written within the rule causes confusion with the distinction in using an eight (8) foot lift of shredded tires in the bottom of a landfill and the use of a daily application of six (6) inches of the same material. The use of this lift of eight feet does not require the payment of the State Solid Waste Assessment fee or count as solid waste received at the facility. This rule appears to state that the installation of an initial "select solid waste layer" is viewed as beneficially reusing a material and the installation of mandated daily cover using the same material is disposal of (waste tires) solid waste instead of conservation of soil.

### **3.2 PERMITS REQUIRED.**

We suggest that this provision be amended to clearly exempt mobile tire shredders. A tire shredder is arguably under the structure of the regulations a WASTE TIRE PROCESSING FACILITY. By not excluding mobile shredders from this provision of the rule it may be interpreted as imposing such requirements on mobile tire shredders, and imposing the burden and expense of permitting along with the installation of fencing and other provisions (intended for long term facilities) along with the bonding requirements to every cleanup activity. This will most likely require the excessive use of limited funding for transportation of whole tires to one of a few permitted tire sheading facilities within the state.

Proposed Waste Tire Management Rule  
Written Comment  
November 10, 1994  
Page 6

This provision also requires tire dealers to transport their mandated waste tires to a shredder or other site when a mobile unit could reduce the volume of material more economically on site prior to transportation. We envision that waste tires can be shredded at various sites around West Virginia and then beneficially used either as a feedstock for some economically feasible process or utilized as either a select waste material within the first eight feet of a landfill or as a daily cover material until a market exists for this product.

**3.10 CLOSURE REQUIREMENTS FOR A WASTE TIRE MONOFILL/STORAGE CELL OR PROCESSING FACILITY/ACTIVITY.**

We suggest that this rule mandate that all tires must be removed from any "Waste Tire Monofill" before the bond can be released. If this is not included within the rule, we feel the rule is not meeting the pending June 1, 1995 legislative ban on the disposal of waste tires in West Virginia.

We thank you for your consideration of our opinions regarding this proposed rule. We urge the DEP to consider these comments prior to the promulgation and filing of a final rule. We trust that the minor changes we have suggested can be implemented and result in a more workable rule for governing the orderly management of waste tires in our state.

Sincerely,  
Cummings Collection Service, Inc.

*Robert L. Cummings*  
Robert L. Cummings  
President

My name is Michael Bsharah and I am this morning representing the West Virginia Association of Waste Haulers and Recyclers. The Association is speaking in response to a proposed rule under West Virginia Codes 22-1-3, 22-1-3(a), and 20-11-8(c). These rules are proposed as Title 47, Series 38 G.

Our Association, which comprises private waste haulers and recyclers across the state, proposes the following changes in the rule:

-- We believe that Applicability, Section 1.1.3, must be expanded to include businesses who recap tires. Section 2.12, Waste Tires, must include used tires at recapping facilities and dealers who store tires for the purposes of recapping. By not broadening this Section, your agency leaves open the door to the creation of open tire dumps. Further, the agency should define what constitutes a recapped tire, how many can be stored at the dealer or recap facility and for how long they can be stored. We propose Section 3.8.2 add language which establishes a record keeping system to monitor an accurate number of tires accepted and hauled for recapping by recapping companies. Exclusion of tire recappers from these sections will leave a large loophole even as your agency implements a waste tire management program.

-- Section 3.2, which concerns permits required, should be amended to exempt mobile tire shredders. A tire shredder is in fact a waste tire processing facility. By not excluding mobile shredders from this provision of the rule, the burden and expense of permitting along with the installation of fencing and other provisions (intended for long term facilities) along with bonding requirements will be added to every cleanup activity.

This will likely require the excessive use of limited funding for transportation of whole tires to one of a few permitted tire shredders in the state. This provision also requires tire dealers to transport their mandated waste tires to a shredder or other site when a mobile unit could reduce the volume of material more economically on site prior to transportation.

We envision that waste tires can be shredded at various sites around West Virginia and then beneficially be used as a feedstock for some economically feasible process, utilized as either a select waste material within the first eight feet of a landfill or as a daily cover material until a market exists for this product.

Mobile tire shredders are very expensive. A member of our Association has recently purchased a used shredder for over \$300,000. We believe that by not exempting mobile tire shredders from this Section, haulers and the West Virginia environment will suffer unnecessarily.

-- Section 3.7.1(j), requires that quartered, split, shredded or chipped tire waste be dumped in a monofill. The Association proposes that tire waste be allowed to go into landfills in addition to monofills. Understanding that it is easier to travel to a landfill than a monofill, transport cost savings should be considerable. By saving this cost, consumers will benefit.

The Haulers respectfully urge the Agency to consider our comments on this proposed rule. We also respectfully request adoption of our proposed policy changes.

November 7, 1994

Mr. Bill Rheinlander  
Office of Waste Management  
Dept. Environmental Protection  
1356 Hansford St.  
Charleston, WV 25301

RE: Comments relating to Title 47 Legislative Rules DEP Series 38G  
Proposed Waste Tire Management Rule

Dear Mr. Rheinlander:

As President of the WV Retailers Association, after extensive review, I would like to submit the following amendments and comments to the Rule proposed.

Section 3.8.2(d)(e) We feel this is an impossible task and would be a bookkeeping nightmare for smaller businesses. Therefore, these two sections should be deleted.

Section 3.8.3. Notice be furnished by DEP to be consistent statewide.

Section 3.8.3c By adding after the word transfer: whenever possible;

Section 3.8.3.e This should be deleted because of 3.8.2.(d)(e) being deleted.

Section 3.11.1 Fee should be reduced for auto tires of 15" or less to .75. Tires over 15" 1.00. Large truck tires some reasonable fee.

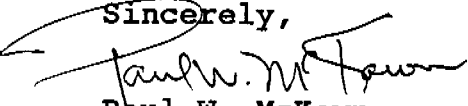
Section 3.11.2 Submitting fee to tax department should be more consistent with submissions of other taxes, such as personal income and consumer sales tax, which are submitted the 20th day of the month following the collection.

Section 3.11.3 Dedication of Proceeds. The net proceeds of the Waste Tire assessment fee collected by the Tax Commissioner shall be deposited at least monthly into a Waste Tire Management fund. Provided that 5% of net proceeds of the fee collected shall be deposited by the Tax Commissioner for administering the collection and 2.5% of net proceeds of the waste tire assessment fee be retained by the tire distributor who collected the tax on the new tire.

Section 3.11.3.a Delete  
Section 3.11.3.b Delete  
Section 3.11.3.c Delete  
Section 3.11.3.d Delete

Thank you for your consideration.

Sincerely,

  
Paul W. McKown,  
President WVRA

bl

# **The West Virginia Mining & Reclamation Association**

1624 Kanawha Blvd., East  
Charleston, WV 25311

\*\*\*\*\*

Mr. K.O. Damron, Vice President,  
West Virginia Mining & Reclamation Association  
submits the following comments  
this 10th day of November, 1994  
to supplement verbal comments  
presented during a formal

Public Hearing  
in Charleston, West Virginia  
today, in response to

\*\*\*\*\*

Proposed Rule

## **Division of Environmental Protection**

Series 38G  
Waste Tire Management

Mr. K.O. Darron, Vice President, West Virginia Mining & Reclamation Association submits the following comments, this 10th day of November, 1994, to supplement verbal comments presented during a formal Public Hearing in Charleston, West Virginia, today, in response to the Waste Tire Management Rule, Series 38G, Division of Environmental Protection, Water Resources/Waste Management:

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## **I. ABOUT THE PUBLIC HEARING:**

### **A. OUR REPRESENTATION:**

The West Virginia Mining and Reclamation Association represents over 125 coal producing member companies and over 200 associate member companies who provide products and services to the coal industry. Our comments on this proposed rule are on behalf of all of the members of our Association.

### **B. OUR APPRECIATION FOR THIS OPPORTUNITY:**

Our Association is grateful for this opportunity to offer suggested improvements to this rule.

## **II. BACKGROUND:**

### **A. THE INDUSTRY:**

The coal mining industry in West Virginia produces hundreds of millions of tons of high quality coal for domestic and foreign use as an energy source for the production of electricity, steel and a host of other applications. Employment directly in West Virginia mines and indirectly in the mining support trades and the hundreds of millions of dollars of taxes generated by coal related sources are the **economic backbone** of the Mountain State.

A recent study found that one out of every ten payroll dollars in West Virginia comes from the coal industry. It was further revealed that one of every three business tax dollars being collected by the State comes directly from the coal industry.

Mr. K.O. Darron, Vice President, West Virginia Mining & Reclamation Association submits the following comments, this 10th day of November, 1994, to supplement verbal comments presented during a formal Public Hearing in Charleston, West Virginia, today, in response to the Waste Tire Management Rule, Series 38G, Division of Environmental Protection, Water Resources/Waste Management.

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Every influence which alters the production of West Virginia coal or adds to the cost of producing West Virginia coal, changes the fragile **competitive balance** between coal mines here and coal mines in other coal producing states and other nations.

### **III. SUGGESTED AMENDMENTS TO THE PROPOSED RULE:**

#### **A. ABOUT OUR WRITTEN COMMENTS:**

The following suggested amendments are intended to improve the language of the proposed rule. We do believe the Legislature DID NOT intend for mining, construction, reclamation and quarry activities to be negatively affected by this rule.

#### **B. SPECIFIC AMENDMENTS RECOMMENDED:**

##### **AMENDMENT NUMBER 1:**

Amend section 3.1, by adding the following new sub-section on page 4:

3.1.3.e. Exemption for mining and construction tires: Tires utilized in the process of mining, reclamation, excavation, coal processing, and quarries may be disposed of on the respective worksites where they are utilized, provided that each tire be subdivided into at least four pieces prior to disposal. Business entities exercising this option shall notify the Division of Environmental Protection in writing of their intent to dispose of tires and the approximate locations where the tires will be placed and are not required to seek a permit nor pay any fees for this activity.

##### **JUSTIFICATION FOR AMENDMENT 1:**

Since the Legislature DID NOT intend for mining, construction, reclamation and quarry activities to be negatively affected by this rule, this amendment is necessary

Mr. K.O. Damron, Vice President, West Virginia Mining & Reclamation Association submits the following comments, this 10th day of November, 1994, to supplement verbal comments presented during a formal Public Hearing in Charleston, West Virginia, today, in response to the Waste Tire Management Rule, Series 38G, Division of Environmental Protection, Water Resources/Waste Management:

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**U. SUMMARY:**

We hope you will agree the amendment suggested herein will improve the language of the proposed procedural rule and more accurately reflect the intent of the Legislature.



**K.O. DAMRON  
VICE PRESIDENT  
WEST VIRGINIA MINING &  
RECLAMATION ASSOCIATION**



Pt 1 Box 238 -- Lost Creek, WV 26385

Phone (304) 745-5223 Fax (304) 745-5228

11/94

Division of Waste Management  
Attn: Bill Rheinlander  
1076 Hansford St.  
Charleston, WV 25301

Mr. Rheinlander,

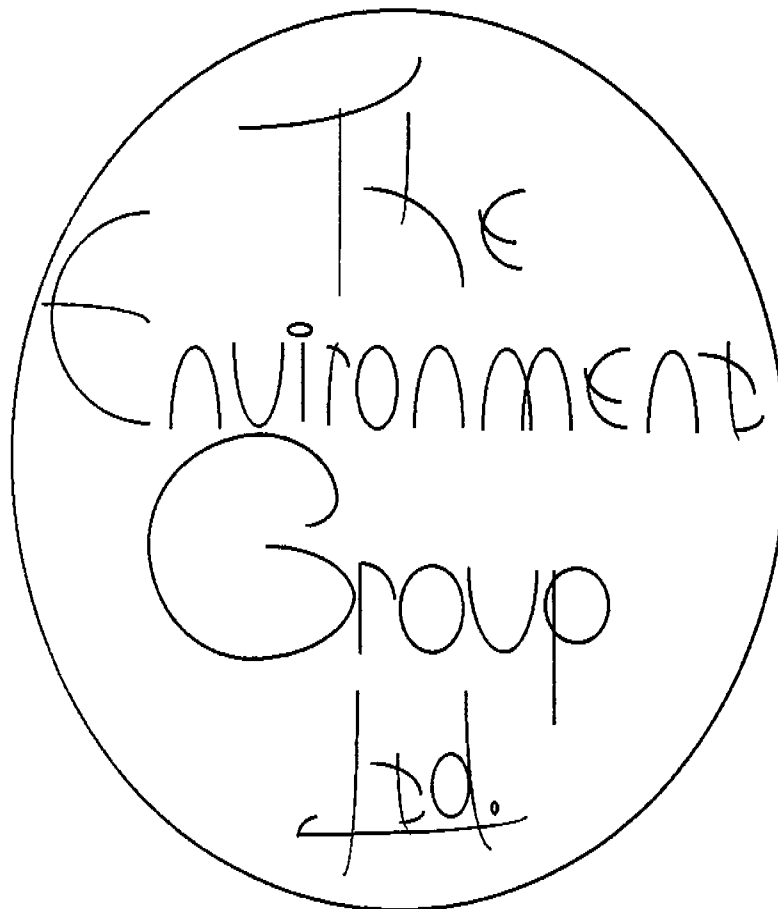
Regarding the Division of Environmental Protection Water Resources/Waste Management "Waste Tire Management Rule."

The Brief Summary of Proposed Rule provides that "persons who manage, collect, transport, recycle, process or otherwise handle or manage waste tires..." undergo a permitting procedure.

We ask that portable grinding or shredding service be excluded from the permitting process.

Thank You,

David M. Lambert  
President.



Pub. Info. Sup. Bill Rheinlander, - Office of Waste Management

From: John M. Lambert, The Environment Group Ltd.

Fax Phone Number: 304-745-5228

Date: Thu, Nov 10, 1994 • 3:32 PM

Transmitting (2) pages, including cover sheet.

If there is difficulty with this transmission, please call: 304-745-5223

John M.