

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FILED

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Form #4

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Environmental Protection
Office of Waste Management TITLE NUMBER: 47

CITE AUTHORITY WV Code 22-1-3, 22-1-3a, 20-11-8c

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

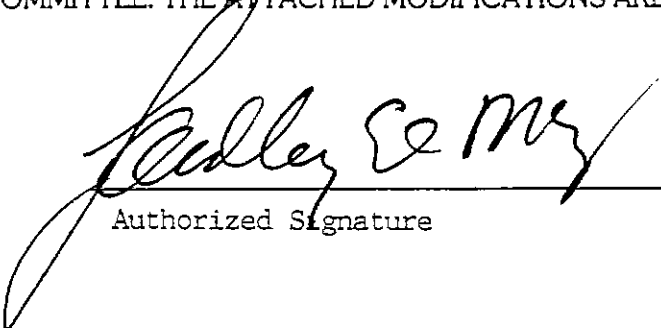
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature



DIVISION OF ENVIRONMENTAL PROTECTION
1356 Hansford Street
Charleston, WV 25301-1401

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, Ph.D.
DIRECTOR

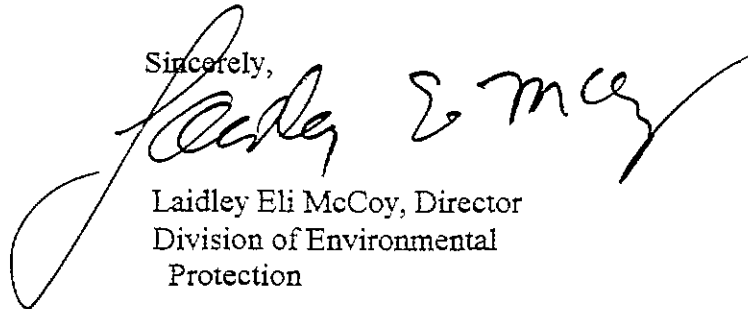
December 18, 1995

Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
1900 Kanawha Blvd., East
Charleston, West Virginia, 25305

Dear Mr. Hechler:

Please find attached the "Waste Tire Management Rule" as modified by recommendation of the Legislative Rule-Making Review Committee. Please accept this letter as an approval for its filing as a "Modified Rule."

Sincerely,



Laidley Eli McCoy, Director
Division of Environmental
Protection

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 tires and used tires.

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

1.1.3. Applicability. This rule applies to any person or persons who manage, collect, store, transport, recycle, process, dispose or otherwise handles waste tires and used tires after June 1, 1996 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~~ 1996, 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. "Department of Transportation Symbol" means the identification number placed on new tires mandated by the Federal Motor Vehicle Safety Standards for motor vehicles and motor vehicle equipment pursuant to Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

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

2.5-2.7. "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.

2.6-2.8. "Shredded Waste Tires" means tires or tire derived material, which has been processed by shredding to particle sizes not greater than 72 square inches, or approximately 6 inches by 12 inches.

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

2.8-2.10 "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).

2.9-2.11. "Tire Dealer" means any person or persons engaged in the business of selling tires to an end user in the State of West Virginia.

2.10-2.12. "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.

2.11-2.13. "Used Tire" means any tire that was originally used for the purposes defined under "tires", but has sufficient tread life or can be recapped for marketability to be safely reused for those same purposes.

2.12-2.14. "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.

2.13-2.15. "Waste Tire Chips" means tires or tire derived materials that have been reduced to particle sizes not greater than 2 inches by 2 inches.

2.14-2.16. "Waste Tire" means any tire that was originally used for those purposes defined under "tire", or "used tire" and which has been discarded or is not suitable for its original intended purpose: Provided, That a tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not considered to be a waste tire.

~~2.15-2.17.~~ "Waste Tire Hauler" means any person or persons who collects waste tires from a tire dealer or other sources and transports waste tires in this state, but shall not include a person or persons who haul waste tires generated by their own business activity, persons hauling their own tires, or where the hauling of waste tires to a solid waste facility is incidental to business activities. Provided that: a waste tire hauler must be a Certificated Motor Carrier regulated by the WV Public Service Commission to lawfully transport waste tires.

~~2.16-2.18.~~ "Waste Tire Monofill" means an approved solid waste facility where waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes, provided that, they are not mixed with any other solid waste.

~~2.17-2.19.~~ "Waste Tire Processing Facility or Activity" means a solid waste facility or activity who accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cutting, splitting, shredding, quartering, grinding, etc. or otherwise breaking down waste tires for the purpose of disposal, reuse, recycling and/or marketing.

~~2.18-2.20.~~ "~~Waste Tire Storage~~" means ~~the temporary containment of one thousand (1,000) or less 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.~~

~~2.19-2.20.~~ "Wholesale Distributor" means a person or persons who distribute tires to tire dealers in this state or to its own retail establishments in this state.

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 tires and used tires after June 1, 1995 1996, 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 1996 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 and solid rubber tires, split tires or other certain types of tires as determined by the Chief.~~

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

3.2. 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 or tire derived material 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 1×10^{-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 1×10^{-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. Unless otherwise approved by the Chief in writing, no person may operate a waste tire monofill, processing facility or activity that does not conform to an approved plan of operation and the following:

3.7.1.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.

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

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

3.8. RECORD KEEPING AND REPORTING REQUIREMENTS.

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

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

3.8.2. **Annual RECORD KEEPING 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: Tire dealers must keep records which include the name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the number of waste tires transported from the tire dealer by the waste tire haulers to verify the proper handling and management of waste tires. These records must be made available for inspection by the Chief or by his authorized representative within five (5) days upon request. All records shall be retained for a period of not less than three (3) years.~~

~~3.8.2.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 ½ inch by 11 inch poster clearly visible to all customers and containing the universal recycling symbol and the following language: (Notices are available from the Division of Environmental Protection.)

3.8.3.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 D.O.T. regulated waste tires if offered by our customers 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; A fee may be charged by the tire dealer for the proper disposal of the waste tire.~~

3.9. BONDING AND FINANCIAL ASSURANCE REQUIREMENTS FOR WASTE TIRE PROCESSING FACILITIES, MONOFILLS AND STORAGE CELLS.

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, waste tire monofills.~~ Such two dollar per tire bond will not be released until all tires are removed from the waste tire processing facility, waste tire monofill or storage cell.

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

3.10.1. 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, 2005.~~

~~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;~~

~~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;~~

~~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; and~~

~~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.~~



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West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

December 12, 1995

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Hickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Eli McCoy, Commissioner
Bureau of Environment
10 McJunkin Road
Nitro, WV 25143-2506
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: Waste Tire Management Rule

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

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

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Roger Hall
Richard P. Cooke
Asst. Chief, Solid Waste
Floyd M. Sayre
Eleanor Dewey
Tom Degan
Charles Capet

47-389