

NOTICE OF INTENT

Department of Environmental Quality
Office of Solid and Hazardous Waste
Solid Waste Division

Waste Tire (LAC 33:VII.Chapter 105)(SW021)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste Division regulations, LAC 33:VII.Chapter 105 (SW021).

The proposed rule will make modifications to the Waste Tire Management Fund Prioritization System providing more equity in cleanups and make the emergency rule in effect permanent. The rule also provides for grammatical cleanup of the waste tire regulations.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 2. Recycling
Chapter 105. Waste Tires
§10505. Definitions

The following words, terms, and phrases, when used in conjunction with the solid waste rules and regulations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

* * *

[See Prior Text]

Major Highway—all asphaltic concrete and concrete interstate and intrastate highways and roads maintained by the United States government or Louisiana state government, or both, or any agencies or departments thereof.

* * *

[See Prior Text]

Marketing—the selling and transferring of waste tires or waste tire material for recycling and/or beneficial use or reuse.

* * *

[See Prior Text]

Promiscuous Tire Pile—an unauthorized waste tire pile that has resulted from storage or disposal activities by anyone other than the landowner without the landowner's knowledge.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:

§10525. Standards and Responsibilities of Waste Tire Processors

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[See Prior Text in A-E.10]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), amended LR 22:

§10535. Fees and Fund Disbursement

* * *

[See Prior Text in A-D.10]

11. After January 1, 1998, a payment of \$1 per 20 pounds of shredded waste tire material or an equivalent amount for waste tire material produced by other processes shall be made when it is documented to the administrative authority that this material has been marketed and delivered for beneficial use.

* * *

[See Prior Text in D.12-D.13]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:

§10536. Cleanup of Promiscuous/Unauthorized Tire Piles

A. Upon promulgation of these regulations, the administrative authority may issue agreements for cleanup of promiscuous/unauthorized tire piles. The number of agreements issued each year shall be determined based on the availability of funds in the Waste Tire Management Fund that are designated for promiscuous/unauthorized tire pile cleanup. Any such agreements will designate specific eligible sites and the department will monitor the cleanup activities, which shall be made in accordance with the standards and responsibilities outlined in the solid waste regulations, LAC 33:VII. Any such agreements shall stipulate a maximum amount of total allowable costs that shall be paid from the Waste Tire Management Fund. These monies shall not be applied to indirect costs and other unallowable costs, which include but are not limited to, administrative costs, consulting fees, or legal fees. Furthermore, they shall not be applied to reclamation efforts or cleanup costs associated with other types of contaminants, which may be detected during the remediation process. Rather, these funds shall be applied to direct costs such as labor, transportation, processing, and disposal costs of the waste tires.

B. In order to apply for and receive funding for promiscuous/unauthorized tire site cleanup, local governments must provide the administrative authority with promiscuous/unauthorized tire site information. This information includes, but is not limited to, accurate site location, number of tires on site, visual report on site with photographs and proximity to residences, schools, hospitals and/or nursing homes, and major highways. Such information will be submitted using forms available from the administrative authority.

C. Promiscuous/unauthorized tire piles shall be chosen for cleanup based on their placement on the waste tire priority cleanup list. Point values will be assigned in accordance with the Waste Tire Management Fund Prioritization System located in Appendix B. These ranking criteria were developed in consideration of threat to human health, threat of damage to surrounding property, and adverse impact on the environment.

Appendix A. Louisiana Department of Environmental Quality Financial Assurance Documents For Waste Tire Facilities (August 4, 1994)

The following documents are to be used to demonstrate financial responsibility for the closure of waste tire facilities. The wording of the documents shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

* * *

[See Prior Text in Sample Document 1]

SAMPLE DOCUMENT 2:

WASTE TIRE FACILITY PERFORMANCE BOND

Date bond was executed: [date bond executed]

Effective date: [effective date of bond]

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:

Surety: [name(s) and business address(es)]

[Site identification number, site name, facility name, facility address, and closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality, Waste Tire Management Fund, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA) and the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the waste tire facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure care, as a condition of the permit;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in LAC 33.VII.10525.D.26-28 and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of the Louisiana Administrative Code, Title 33, Part VII, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the Waste Tire Management Fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance as specified in LAC 33.VII.10525.D.26-28 and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the surety shall place funds in the amount guaranteed for the facility into the Waste Tire Management Fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified by the Louisiana Department of Environmental Quality's Financial Assurance Documents dated August 4, 1993, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETY

[Name and Address]
State of incorporation:
Liability limit:
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond Premium: \$

* * *

[See Prior Text in D]

E. Waste tires may not be removed from promiscuous/unauthorized waste tire piles without prior approval of the administrative authority.

F. The administrative authority will seek reimbursement from all responsible parties for any waste tire cleanup costs incurred by the state by any method allowed by law, provided same is practicable and cost effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:

* * *

[See Prior Text in Sample Document 3]

**Appendix B. Waste Tire Management
Fund Prioritization System**

Each waste tire site for which cleanup funds are solicited will be ranked according to the point system described below. The total number of points possible for any one site is 145 points. The points shall be allocated according to the following criteria:

I. Approximate Number of Tires in the Pile. This figure shall be an estimate by the department.

Number of Tires in Pile	Point Value
>1,000,000	50
250,001 - 1,000,000	40
100,001 - 250,000	30
50,001 - 100,000	20
<50,000	10

II. Proximity to Nearest Schools. If a school is located within the radius described below then the corresponding point value is assigned. Only one category may be chosen such that the maximum value allowed is 25.

Proximity to Nearest School	Point Value
School within 2 mile radius	25
School within 4 mile radius	17
School within 6 mile radius	9

III. Proximity to Residences. If 50 or more residences are located within the radius described below then the corresponding point value is assigned. Only one category may be chosen such that the maximum value allowed is 25.

Proximity to 50+ Residences	Point Value
50 or more within 2 mile radius	25
50 or more within 4 mile radius	17
50 or more within 6 mile radius	9

IV. Proximity to Hospitals and/or Nursing Homes. If a hospital and/or nursing home is located within the radius described below then the corresponding value is assigned. Only one category may be chosen such that the maximum value is 25.

Proximity to Hospital and/or Nursing Home	Point Value
Hospital and/or nursing home within 2 mile radius	25
Hospital and/or nursing home within 4 mile radius	17
Hospital and/or nursing home within 6 mile radius	9

V. Proximity to Major Highways. If a major highway is located within the radius described below then the corresponding value is assigned. Only one category may be chosen such that the maximum value is 20.

Proximity to Major Highway	Point Value
Major highway within ¼ mile radius	20
Major highway within ½ mile radius	10

A public hearing will be held on September 26, 1996, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by SW021. Such comments should be submitted no later than October 3, 1996, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70810; or to FAX number (504) 765-0486.

Mike Strong
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Waste Tire**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs to state governmental units as the job functions are already being performed. No local governmental units with solid waste facilities will be affected by the rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated effect on revenue collections to the state governmental unit will be zero as the rule only provides equity to the waste tire prioritization system.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no estimated costs to directly affected persons as the rule is only accomplishing equalizing the waste tire prioritization system and grammatical clean up.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no estimated effect on competition or employment to facilities or individuals within the state.

H.M. "Mike" Strong
Assistant Secretary
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Legislative Fiscal Officer

RichardW.England
Assistant to the