

NOTICE OF PROPOSED RULEMAKING

Title 14: Natural Resources

Division 7: California Integrated Waste Management Board

Chapter 3: Minimum Standards for Solid Waste Handling and Disposal

Article 4.1: Waste Tire Program Definitions

Sections: 17225.717, 17225.821, 17225.822, and 17225.850

Article 5.4: Waste Tire Monofill Regulatory Requirements

Section: 17346

Article 5.5: Waste Tire Storage and Disposal Standards

Sections: 17350, 17351, 17352, 17353, 17354, 17355, 17356, 17357, 17358, and 17359

Chapter 6: Permitting of Waste Tire Facilities and Waste Tire Hauler Registration and Tire Manifests

Article 1: General

Sections: 18420 and 18420.1

Article 2: Review of Permit Applications

Sections: 18423 and 18424

Article 3: Permit Issuance, Renewal, Revision, Revocation, Denial, Suspension, Reinstatement, Change of Owner, Operator, and/or Address

Sections: 18425, 18426, 18427, and 18428

Article 3.5: Enforcement Criteria for Waste Tire Facilities

Section: 18429

Article 4: Permit Application

Sections: 18431, 18431.1, 18431.2, 18431.3, 18432, and 18433

Article 8.5: Waste Tire Hauler Registration and Manifesting Requirements for Used and Waste Tire Haulers, Retreaders, Used and Waste Tire Generators, and Used and Waste Tire End-Use Facilities

Sections: 18450, 18456.4, 18459, 18460.1.1, 18460.2, 18461, and 18462

PROPOSED REGULATORY ACTION

The Department of Resources Recycling and Recovery (Department) proposes to add, amend, or repeal Title 14 of the California Code of Regulations sections cited above. The proposed rulemaking is intended to:

- Incorporate applicable 2010 California Fire Code (2010 CFC) standards into Article 5.5., Waste Tire Storage and Disposal Standards, of Title 14 of the California Code of Regulations.
- Add three (3), delete two (2), and amend twenty-six (26) definitions.
- Specify requirements for a waste tire collection location.
- Clarify Public Resources Code (PRC) section 42805.7 definition of tire derived product.
- Simplify waste tire facility permit reapplication procedures.
- Establish:
 - A notification requirement for an excluded waste tire facility,
 - An application requirement for an exempt waste tire facility, and
 - Recordkeeping requirements for any person handling waste or used tires.
- Remove requirements that the Department issue a “Cleanup and Abatement Order” before issuing a waste tire facility penalty, and expand and clarify the Department waste tire facility penalty schedule.
- Specify manifest requirements for delivery of waste tires to a port terminal.
- Amend references to the Department for conformity with PRC section 40400, that created the Department, and
- Correct spelling, punctuation, grammatical and typographical errors in the sections cited above.

WRITTEN COMMENT PERIOD

Any interested person or authorized representative may submit written comments relevant to the proposed regulations to the Department. **The written comment period for this rulemaking ends at 5:00 p.m. on October 15, 2013.** The Department will also accept oral and written comments during the public hearing described below.

Please submit written comments to:

State of California
Department of Resources Recycling and Recovery
Waste Evaluation and Enforcement Branch, Attn: Paulino Luna (MS 10A-17)
P.O. Box 4025
Sacramento CA 95812-4025
e-mail: WasteTireRulemaking@CalRecycle.ca.gov
Fax: (916) 319-7761

PUBLIC HEARING

A public hearing to receive comments on the proposed regulations is scheduled for **October 16, 2013**. The hearing will be held at:

Cal/EPA Building, Byron Sher Auditorium
1001 "I" Street, Second Floor
Sacramento, California 95814

The hearing will begin at 1:00 p.m. on October 16, 2013, and conclude after the public gives all testimony. The Department requests that persons who make oral comments at the hearing submit written copies of their testimony at the hearing. The Byron Sher Auditorium is wheelchair accessible.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The PRC (commencing with Section 42800, Article 1, Chapter 16, Part 3, Division 30) and related regulations authorize the Department to regulate hauling, storage and disposal of waste tires. Waste tire storage and disposal requirements, and waste tire hauler registration and manifest requirements, are necessary to protect the public health, safety and the environment from improper waste tire management practices.

Waste Tire Facility Enforcement

From April 2010 through March 2011, the Department initiated a rulemaking by requesting public comment on proposed waste tire facility enforcement regulations. The Department conducted three 30-day informal public comment periods, including public workshops in May 2010, July 2010 and February 2011. The initial focus was to:

- Expand the Department's streamlined penalty program to include waste tire facilities, and
- Clarify enforcement penalty criteria for waste tire facilities.

Beginning with the third 30-day informal public comment period, and based on informal public comment, the Department added proposed penalties for excluded and exempt waste tire facilities.

Waste Tire Storage, Disposal, and Permitting

From July 2010 through July 2011, the Department initiated a separate rulemaking by requesting public comment on proposed Waste Tire Storage, Disposal, and Permitting regulations. It conducted three 30-day informal public comment periods, including public workshops in July 2010, February 2011 and June 2011. The initial focus was revision of 14 CCR section 17354, Storage of Waste Tires Outdoors, and 14 CCR section 17356, Indoor Storage, for consistency with changes applicable to waste tires in the 2010 edition of the CFC which took effect January 1, 2011. CFC changes are in CFC Chapter 23, High-Piled Combustible Storage, and Chapter 25, Tire Rebuilding and Tire Storage. Beginning with the second 30-day informal public comment period, and based on informal public comment, the Department added proposed regulation changes to:

- Waste tire facility permit requirements to allow for 5-year permit reviews, and

- Manifest Form requirements applicable to exempt common carriers who deliver waste tires to port terminals.

Waste Tire Storage/Permit and Penalty Criteria

To maximize Department resources, and because the above rulemakings are closely related, in June 2011 the Department decided to notice these informal rulemakings as a single regulations change package, *Waste Tire Storage, Permit, and Penalty Criteria Regulations Revisions*, with the objectives described below.

- Current regulations concerning storage of waste tires indoors or outdoors contain outdated CFC sections and borrow from the 1989 National Fire Protection Association (NFPA) publication, *The Standard for Storage of Rubber Tires*. The proposed regulations eliminate regulatory duplication by deferring to the CFC, and defining “Indoor or Indoors” storage. These proposed regulations also delete references to the 1989 NFPA publication.
- Current waste tire program definitions and State Minimum Standards (SMS) for Solid Waste Handling and Disposal do not regulate exempt or excluded waste tire facilities in a manner consistent with statute. The proposed regulations contain amended and new definitions and SMS revisions intended to provide clarity and consistency with regard to the Department’s statutory/regulatory purview over permitted, excluded or exempt waste tire facilities, and beneficial reuse projects.
- Current regulations require operators to reapply for a major or minor waste tire facility permit every five years. The proposed regulations modify this periodic permit reapplication process by applicant waste tire facility operators to file a permit revision application that only identifies proposed permit changes, as opposed to filing a complete permit application.
- Current regulations require the Department to issue a “Cleanup and Abatement Order” before imposing penalties against a person who violates a waste tire facility statute or regulation. The proposed regulations delete this requirement and allow the Department to propose a streamlined penalty enforcement action to a person who violates waste tire facility law. The proposed regulation changes will allow the Department to settle waste tire facility enforcement cases through a cost-effective, voluntary, and administrative process.
- Current regulations do not specify California Uniform Waste and Used Tire Manifest system requirements for an exempt common carrier or a registered tire hauler who delivers waste tires to a port terminal. The proposed regulations authorize an exempt common carrier or a registered waste tire hauler to provide a waste tire generator, rather than a port terminal operator, with a copy of the completed Manifest Form and other load-specific documentation.
- Proposed regulations address changes mandated by Senate Bill 63 (Statutes of 2009, commencing with PRC Section 40400 of Article 1, Chapter 3, Part 1, Division 30) that created the Department, and correct spelling, punctuation, grammatical and typographical errors in current waste tire regulations.

Policy Statement Overview

The passage of SB 63 (Stats.2009 c.21 section 5) eliminated the California Integrated Waste Management Board (also known as CIWMB, IWMB or Board) and transferred the regulatory and programmatic functions to the Department of Resources Recycling and Recovery (Department) effective January 1, 2010. The Department is responsible for implementing State laws related to handling, hauling, storage, and disposal of waste and used tires in a manner that protects public health, safety, and

the environment. The Department also recognizes beneficial reuse projects as part of a comprehensive approach aimed at solving the problem posed by waste tire storage by administering a tire recycling program that promotes and develops alternatives to the landfill disposal of waste tires pursuant to PRC section 42871.

Anticipated Benefits from this Regulatory Action/Determination of Inconsistency or Incompatibility

The benefits associated with this rulemaking are the result of goals developed by the Department based on its broad statutory authority. The Department has worked to streamline its waste tire permit processes, equitably enforce California waste tire law, and modify California waste tire regulations to address statewide and global waste tire industry changes.

California residents will have improved protection of public health, safety and the environment. Businesses with waste tires will have: more equitable waste tire business competition within California, reduced regulatory duplication, more complete and better organized waste tire facility penalty criteria, and a streamlined penalty process.

As required by Government Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing statute or regulations.

PLAIN ENGLISH REQUIREMENTS

The Department prepared these proposed regulations pursuant to the standard of clarity provided in Government Code (GC) section 11349 and the plain English requirements of GC sections 11342.580 and 11346.2(a)(1). The Department considers the proposed regulations non-technical and easily understood by persons who may use them.

AUTHORITY AND REFERENCES

PRC sections 40052, 40400, 40401, 40502, 42820, 42830, 42966, 43020, and 43021 provide authority for the proposed regulations. PRC sections 21068, 21082.2, 40052, 40110, 40400, 40401, 41700, 42800, 42806.5, 42808, 42820, 42821, 42822, 42825, 42830, 42831, 42832, 42833, 42835, 42840, 42841, 42850, 42843, 42852, 42950, 42951, 42952, 42953, 42954, 42955, 42956, 42958, 42961.5, 42962, 43020, 43021, and 44014 provide reference for the proposed regulations. Existing regulations also reference GC sections 15376, 65940, and 65941, and 14 CCR California Environmental Quality Act (CEQA) Guidelines, sections 15002, 15064, and 15382. The Department proposes to reference CFC sections 202, 2501 through 2508, 2301, 2305, and 2509.

FEDERAL LAW OR REGULATIONS MANDATE

There are no federal laws or regulations that contain comparable waste tire facility storage and permitting requirements. The Department derives waste tire permit, inspection and enforcement regulations only from State law. Therefore, no impacts to federal funding sources, laws, or regulations should result from the proposed regulations.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

The Department has determined that adoption of the proposed regulations will not impose a mandate on local agencies or school districts.

Fiscal Effect on Local Government

Additional local government expenditures in the current and two subsequent State Fiscal Years (SFYs) would not be reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because they are not the result of a mandate. Local agency participation as a WT facility is voluntary. The proposed regulations revisions would impose an annual recordkeeping, but not reporting, requirement on 300 local government WT facilities. Given the limited voluntary survey responses by local government agencies, the Department opted to use the business cost data to ensure local government costs are not underestimated. The Department estimates a local government WT facility average SFY cost would be the same as the Department's estimated annual cost for a private sector WT facility: \$1,274. The estimated expenditures for the second half of SFY 2013-14 through SFY 2015-16 would be \$0.95M.

Based on survey results, it is anticipated that local governments will be able to absorb these additional costs within their existing budgets and resources.

Fiscal Effect on State Government

State government would have additional expenditures of approximately \$0.065M in the current SFY and \$0.130M in each of the two subsequent SFYs.

The Department would absorb an additional cost of approximately \$0.005M for SFY 2013-14, \$0.010 for SFY 2014-15, and \$0.010 for SFY 2015-16 for mailing and serving enforcement actions.

The proposed regulations revisions would impose an annual recordkeeping, but not reporting, requirement on some State government agencies. Given the limited voluntary survey responses by 92 State government WT facilities, the Department opted to use business cost data to ensure State government costs are not underestimated. The Department estimates a State government WT facility average SFY cost would be the same as the Department's estimated annual cost for a private sector WT facility: \$1,274. The estimated expenditures for the second half of SFY 2013-14 through SFY 2015-16 would be \$0.30M.

Based on survey results, it is anticipated that State agencies will be able to absorb these additional costs within their existing budgets and resources.

There are no other nondiscretionary costs or savings imposed on local agencies. There are no other costs or savings in federal funding to the state.

FINDING ON NECESSITY OF REPORTS

The proposed regulations do not require a report.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed regulations would not have a significant effect on housing costs.

EFFECT ON BUSINESSES

Pursuant to GC Section 11346.5(a)(8), the Department has made an initial determination that the proposed regulations would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

Pursuant to Title 1, Section 4, CCR, the Department has made an initial determination that the proposed regulations will not have an effect on small business, including the ability of California small businesses to compete with businesses in other states. Based on results the Department received from surveyed waste tire facilities, these waste tire facilities did not indicate that the proposed regulations revisions would impact the ability of California businesses to compete with businesses in other states to produce goods or services within California. The proposed regulations revisions are intended to create more equitable waste tire business competition within California.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department analyzed the economic impact of the proposed action. The Department estimates the five-year average annual cost of proposed section 17357 recordkeeping requirements is:

- \$2 for each of 2,967 agricultural businesses
- \$1,274 for each of 5,067 non-agricultural businesses, and
- \$0 for each California resident to acquire products or services provided by the impacted businesses.

The Department also estimated business costs/savings of proposed section 18426, 18427, 18431.1, and 18431.2 waste tire storage permit regulations. The Department estimates the:

- Five-year annual average permit review/revision savings to each of 36 waste tire facilities with a minor or major permit is \$341
- One-time permit exemption application cost to each of 750 agricultural businesses with more than 499 waste tires is \$298
- One-time permit exemption application cost to each of 71 tire retreaders, 5 cement plants, and zero beneficial reuse projects is \$485, and
- One-time permit exclusion notification cost to each of 1,236 auto dismantlers, 3,738 tire dealers and other waste tire-related businesses, and 17 waste tire collection locations is \$485.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Effect on Creation or Elimination of Jobs, Existing, or New Businesses in the State of California

Surveyed businesses with waste tires indicated that there would be minimal cost impacts for each business, and therefore no creation or elimination of jobs in California. There would be no expansion of current California businesses as a result of these regulations.

The primary annual economic impact would be an estimated additional 65 hours per year of recordkeeping by a non-agricultural business with waste tires. Based on December 2011 through April 2012 Department survey results, businesses said this would not affect the creation or elimination of businesses within California.

Benefits to the Health and Welfare of California Residents, Worker Safety, the State Environment

The benefits are the result of goals developed by the Department based on its broad statutory authority. The Department has worked to streamline its waste tire permit processes, equitably enforce California waste tire law, and modify California waste tire regulations to address statewide and global waste tire industry changes.

California residents will have improved protection of public health, safety, and the environment. Businesses with waste tires will have: more equitable waste tire business competition within California, reduced regulatory duplication, more complete and better organized waste tire facility penalty criteria, and a streamlined penalty process.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Inquiries concerning the proposed administrative action, or the substance of proposed *Modifications to Existing Waste Tire Storage/Permit Criteria* (excluding Division 7, Chapter 6, Article 3.5, Enforcement Criteria for Waste Tire Facilities), may be directed to:

Paulino Luna
Department of Resources Recycling and Recovery
Waste Evaluation and Enforcement Branch (MS 10A-17)
P.O. Box 4025
Sacramento CA 95812-4025

e-mail: Paulino.Luna@CalRecycle.ca.gov

Fax: (916) 341-3884

Phone: (916) 341-6412

The back-up contact person to whom inquiries concerning the proposed administrative action, or the substance of proposed *Modifications to Existing Waste Tire Storage/Permit Criteria* (excluding Division 7, Chapter 6, Article 3.5, Enforcement Criteria for Waste Tire Facilities), may be directed is:

Nicholas Cavagnaro
Department of Resources Recycling and Recovery
Waste Evaluation and Enforcement Branch (MS 10A-17)
P.O. Box 4025
Sacramento CA 95812-4025

e-mail: Nicholas.Cavagnaro@CalRecycle.ca.gov
Fax: (916) 341-3884
Phone: (916) 324-3756

Inquiries concerning the substance of Division 7, Chapter 6, Article 3.5, Enforcement Criteria for Waste Tire Facilities, may be directed to:

Heather Hunt, Senior Staff Counsel
Department of Resources Recycling and Recovery
Legal Office (MS 24B)
P.O. Box 4025
Sacramento CA 95812-4025

e-mail: Heather.Hunt@CalRecycle.ca.gov
Fax: (916) 319-7677
Phone: (916) 341-6068

The back-up contact person to whom inquiries concerning the substance of Division 7, Chapter 6, Article 3.5, Enforcement Criteria for Waste Tire Facilities, may be directed is:

Martha Perez, Staff Counsel
Department of Resources Recycling and Recovery
Legal Office (MS 24B)
P.O. Box 4025
Sacramento CA 95812-4025

e-mail: Martha.Perez@CalRecycle.ca.gov
Fax: (916) 319-7579
Phone: (916) 341-6494

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file, and all information upon which the proposed regulations changes are based, available for inspection and copying throughout the rulemaking process at the above street address. As of the date the Office of Administrative Law publishes this Notice, the rulemaking file will consist of this Notice, the proposed text of the regulations, the initial statement of reasons, the Economic and Fiscal Impact Statement, and the Economic Impact Assessment required by GC section 11346.3(b). To obtain copies, contact Paulino Luna or Nicholas Cavagnaro at the address, e-mail, phone, or Fax numbers listed above. For more timely access to the proposed text of the regulations and the initial statement of reasons, and in the interest of waste prevention, interested persons are encouraged to visit the Department *Proposed Regulations (Rulemaking)* webpage at: <http://www.calrecycle.ca.gov/Laws/Rulemaking/>. From this webpage, select the “Waste Tire Storage, Permit, and Penalty Criteria” link from the topic list. The final statement of reasons will be available at a subsequent date on this same web page and from the contact persons listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Department may adopt the proposed regulations changes as described in this Notice. If the Department makes modifications sufficiently related to the proposed text, it will make the modified text – with modifications clearly indicated – available to the public for at least 15 days before it adopts the regulations as revised. Requests for modified text may be directed to each contact person named above. The Department will transmit modified text to all persons:

- Who testify at a public hearing, if one is held
- Who submit written comments at a public hearing
- Whose comments are received during the comment period, or
- Who request notification of the availability of such modified text.

The Department will accept written comments on modified regulations for 15 days after the date the Department makes the modified regulations available.