

Minutes of the TCEQ Stakeholders Meeting

On changes to the Scrap Tire Rules

30 TAC Chapter 328: Waste Minimization and Recycling of Used Scrap Tires

Bldg E Room 201S

December 15, 2008

A stakeholder meeting was held to invite and accept public discussion and comments on proposed modifications to rules on scrap tires 30 TAC Chapter 328, Subchapter F. The Texas Commission on Environmental Quality (TCEQ) is considering a requirement which would allow for increased levels of coordination with the local government authority and fire marshal for applications for a land reclamation project using tires and scrap-tire facilities. Specifically, applicants may have to document written approval from local governments as a prerequisite to obtaining an authorization from the TCEQ.

Interested persons who were notified about the meeting included the Texas Association of County Governments, Texas Conference of Urban Counties Association, The County Judges and Commissioners Association of Texas, the Texas Municipal League, registered owners of a land reclamation project using tires and scrap-tire facilities. The meeting was webcast. Spoken and written comments were accepted. Written comments provided to the TCEQ are attached in their entirety following this meeting summary.

I. Welcome and Introduction

Ms. Grace Montgomery Faulkner welcomed participants in the room and any who might be viewing on the webcast. Ms. Faulkner introduces some TCEQ employees including Mr. Frank Espino, Waste Section Manager, Mr. John Forehand, past Tire Liaison, and Mr. Steve Shepherd.

II. Purpose of the Meeting

Mr. John Forehand thanked participants regional offices for participating in stakeholder meeting and noted that input is very valuable to help develop a better rule. Mr. Forehand explained that a stakeholder meeting is conducted early in rule making processes to ensure TCEQ awareness of the various positions and concerns. Mr. Forehand continued by explaining that TCEQ Executive Management directed the Field Operations Support Division to initiate rulemaking.

The proposed rule being developed will do two things:

- Delete obsolete portions of the existing rules relating to Special Authorization Priority Enforcement List (SAPEL) sites and cleanup of Priority Enforcement List (PEL) sites (Chapter 328.67 and 328.68). The portion of the rules to be deleted dealt with using funds generated by the "Waste Tire Recycling Fund" Program to cleanup abandoned scrap tires sites. This program was sunset by the legislature on January 1, 1998 so this portion of the rules has been obsolete since that time; and
- More significantly, the proposed rules will require applicants for Scrap Tire Processing Facilities (including Energy Recovery and Processors), and land reclamation project using tires to, as part of the application process, obtain written comment from Local Governmental authorities that the proposed facility will meet all applicable local codes and ordinances (including fire codes). The TCEQ is also considering these requirements for Storage sites. Responses will be provided by municipalities, county governments, and fire department authorities;

WHAT WILL BE IMPACTED BY RULE? APPLICATIONS FOR:

Scrap Tire Processing Facilities: Facilities registered by the TCEQ under Chapter 328 Subchapter F, Section 328.63 to process, conduct energy recovery, or recycle used or scrap tires, and

Land Reclamation Project Using Tires: Sites authorized by TCEQ by Notification under section 328.66 that reclaim previously excavated land with a 50/50 mixture of tire pieces and inert fill material.

The proposed rule will require applications for these facilities to include a written statement from local governmental authorities that the proposed application meets local codes and ordinances including fire codes.

TCEQ discussed that the rule would specify: 1) how an applicant would be required to make the request (probably certified letter), 2) the information the applicant must request, and 3) the time frames for the governmental entity to respond. The rule may also address steps taken if no response is provided by the local governmental authority to the applicant's request (probably provide verification that two certified letters provided no response).

The intent of this rulemaking was explained. These rules would provide local governments the opportunity to comment during the application period regarding a pending facility's ability to meet local requirements. Mr. Forehand concluded his comments with an open invitation for comments.

III. Comments

Comment or Question: Chris Waller Tire Tex asked will these reviews be given a priority by the Fire Marshal. Local authorities may not understand the application, so how would that impact getting the approval?

TCEQ Reply: The plans will be reviewed to see if it is compliant with some ordinance in place. Fire marshals currently review these. Beyond the fire marshals, other local government officials may not initially understand what is required. This is already a general comment from facilities. Educating officials in the process will be part of the process and timing will require it happen prior to the submittal to the TCEQ. If officials respond that they need more time, we would work with them; but applicants need to work on this during the application process. Local governments are trying to understand and review in accordance with local requirements. If they are not given enough notice, the project is not likely to move forward. TCEQ is considering imposing specific timeframes for response and for response with disputes. If no response is received from officials in that timeframe, the process would move forward. TCEQ would not dispute local codes. That will have to be worked out between the applicant and local officials. This process should allow time to work-out issues with totally non-responsive officials since the applicant would have to get with them early in the process.

Comment or Question: Roy Knowles of Abilene Environmental Landfill asked if this would be retroactive or impact sites already in existence. Will public comment be required?

TCEQ Reply: TCEQ is looking to require this for new applications only – not previously existing sites. It will not change the process which is currently in place for public comment. It will be the same as the current requirement.

Comment or Question: Yasmin Martinez of J&M Truck Tire Shop, Inc restated that these rules would only impact new applications and that existing applications would be grandfathered? What about fire codes and local compliances that keep changing? What new things will sites need to do?

TCEQ Reply: Local codes which are enforced (like zoning) will be one of the issues that local county or fire marshal will have to review for compliance. That would include county fire marshals. It's the normal approach during renewal. This would only impact storage sites for processing because existing facilities which are land reclamation project using tires and other sites will either be grandfathered or do not have a renewal required by rules. Registered storage sites would be impacted when issuing the renewal.

Comment or Question: Geo Martinez from J&M Truck Tire Inc. stated that the fire marshal made Safe Tire put in water because codes changed when Toyota moved in San Antonio and the city annexed the land. Will that happen to others?

TCEQ Reply: Each county or city has their own ordinances. The TCEQ rules say that the submittal must comply with ordinances. Safe Tire was required to put in the fire water system to comply. This issue will not change. Whatever these ordinances are, the applications and registrations will have to comply.

Comment or Question: Mr. Butch Battreall, Green Tree owner of a land reclamation project using tires in Houston stated that nearly 1/3 of the tires in Texas go to his facility. He is concerned about the rule change. He understands that these rules will give local government more “teeth” but wonders why it is needed when local government requirements are already more stringent. It seemed that the TCEQ is attempting to get stringent with state rules that already give local governments the ability to adopt local ordinances which are stringent. He stated, it’s already in the rules; why do we need another set of rules when it’s already there?

TCEQ Reply: TCEQ intends to insert local government review early into the application process and an application would not go forward if there is an outstanding issue with a local government. This will add balance with local government officials and the TCEQ. This will require that applicants go the next step and check with the local government officials before we go forward with TCEQ review. In the past, it could happen that the TCEQ would go through an evaluation of an application and give approval before the county or city could review.

Comment or Question: Mr. Butch Battreall stated it seemed that county(ies) want(s) the state to fix rules so they don’t have to fix local ordinances. He suggested that the state let local officials fix it in their county and handle complaints in their local area since they have the power to do it. He stated that he is not in El Paso or West Texas yet but they take all tires when they can’t go into a kiln, but that the best source is tire derived fuel. He stated his company is just one solution today, but he would hate to see bigger problems like occurred in the past. He stated that more areas need to be recycling tires. He hopes this rule doesn’t create more problems.

Mr. Battreall continued that he had situations in the past (on his second land reclamation project using tires) when the county fire marshal never responded to him. He sent 3 or 4 letters registered. He discussed the issue with the TCEQ and TCEQ sent a registered letter, which did not get a response. He explains that until the officials see what the site is and what they do, it is a negative. At that same site about a year later, the local fire marshal responded to a medical 911 call at that facility. Mr. Battreall stated that the fire marshal was impressed with the facility and, after the fact, apologized. He stated that educating the public and local government is important, but they have to at least get the chance to explain. That was the concern that he has.

TCEQ Reply: The problem comes when locals will not comply. It is really important that if a county is non-responsive, then the applicant notify the state. We will have procedures in place that will enable the process to move forward.

Comment: Chris Waller from Tire Tex stated that local government officials already have the right to adopt new rules which may block a site. Local government could fix issues in their own area already. We concur - education is needed. **No TCEQ reply was provided as this was a comment.**

Comment or Question: Roy Knowles, AEL stated if this causes locals to come to the tables – new rules to cause authorities to have to respond – make everyone come to the table... if it brings them to the table, that's good. We go through the money, cost, effort, and engineering. He hopes it works.

TCEQ Reply: This is an opportunity to comment. The TCEQ would not get hung-up trying to address both applicants and officials. Some facilities need local approval already, some do not. This rule will bring consistency with land reclamation project using tires, processors, storage requirements. It would make it consistent. Applications would not be hung up with locals if they did not reply.

Comment or Question: Ms. Cathy Maynard, Vista International Technologies, Inc., Hutchins, read a letter of comment and provided a copy to the TCEQ. **No TCEQ reply was provided as this was a comment.**

Comment or Question: Mr. Jerry Murray, Able Tire Disposal asked, if officials do not respond, do applicants get to move forward?

TCEQ Reply: That is what the TCEQ intends after a specific process.

IV. Closing

Mr. Steve Shepherd closed the meeting and stated that there would be future opportunity to provide comments. He noted that the rule proposal will be on the TCEQ agenda on April 8, 2009 and would be posted in the Texas Register. He noted to check the TCEQ website for updates.

The meeting was concluded.