

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §330.602, concerning Municipal Solid Waste Disposal Fees and new §330.804, concerning The Use of Tire Shreds in Landfills. The amendment and new section are adopted without changes to the proposed text as published in the July 23, 1996, issue of the *Texas Register* (21 TexReg 6873) and will not be republished. Similar rules were adopted on an emergency basis by the commission on March 20, 1996, as necessary to prevent imminent peril to the public health, safety or welfare. The emergency rules were published in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3103) with an expiration date of July 18, 1996, and were subsequently extended by the commission until September 16, 1996, as published in the July 23, 1996, issue of the *Texas Register* (21 TexReg 6861).

The commission had received numerous reports from state, city and county health officials that whole waste tires were piling up at generator locations due to the lack of sufficient end-use markets to meet the volume of tires generated. The concerns associated with this problem included fire, the creation of breeding grounds for mosquitoes, snakes and rodents, and human health problems, as well as traffic safety due to tires piling up alongside roadways. Whole tire piles are easily ignited and extremely difficult to control. An uncontrolled burning tire pile releases toxic chemicals into the air and may also result in contamination to groundwater.

The dangerous conditions involving the overabundance of whole tire piles is connected in large part to the fact that many waste tire processors are close to or over authorized tire shred storage capacity. This situation intensified significantly after January 1, 1996, when the end-use market requirement became a condition of reimbursement for processors. In spite of significant efforts to promote the development of

end-use markets for whole tires and tire shreds, only 37% of the scrap tires generated in Texas are being forwarded to end use markets. Due to the lack of sufficient end-use markets to meet the volume of tires generated, tire shreds have piled up at storage sites. Although several landfills throughout the state had been using tire shreds for landfill drainage layers, protective covers or final covers, high transportation costs have made the use of tire shreds cost prohibitive for many landfill owners and operators.

Under the amendment and new section, as an incentive to encourage increased usage of tire shreds in landfills, owners and operators of municipal solid waste landfills who utilize tire shreds in their landfill design may receive a reduction in the fee they pay for waste disposal. This is a one-time, 50% (62.5 cents per ton) reduction in the fee corresponding to the number of tire-shred tons used in the landfill design. Therefore, a landfill using 15 tons of tire shreds in an approved component of landfill design can receive a 50% reduction in its Municipal Solid Waste Disposal Fee for 15 tons of municipal waste in the quarterly billing period following use of the tire shreds. This fee reduction is designed to mitigate the cost differential between tire shreds and other more commonly used materials. Utilizing tire shreds as part of the landfill design is an approved method for recycling tires. Since the adoption of the emergency rule, there has been an increase in the number of landfills which utilize tire shreds. With the reduction in the disposal fee, it is anticipated that 950,000 tons of tire shreds could be recycled through use in landfills. This will enable the continued collection of tires, because storage space will be made available with the movement of the existing shred piles, which will in turn reduce whole tire piles

and the hazards these piles represent. In authorizing the fee reduction for the use of tire shreds in landfill design, the agency is in no manner approving or advocating the use of any particular method or process for the use of tire shreds.

The comment period closed on August 22, 1996. The commission did not receive any comments concerning the amendment and new rule.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated Section 2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to provide procedures that will allow the commission to prevent imminent peril to the public health, safety, and welfare by establishing an incentive for the beneficial use of shredded tires in landfills. Due to the lack of sufficient end-use markets to meet the volume of tire shreds produced, tire shreds have piled up at storage sites, and whole tires are piling up at generator locations resulting in numerous reports from state, county and city health officials about their concerns of the threat of fires, creation of breeding grounds for mosquitos, snakes and rodents, and their attendant human health nuisances and problems, as well as traffic safety due to tires piling up alongside roadways. Because of those concerns, the commission adopted emergency rules on March 20, 1996, to temporarily alleviate the problems pending adoption of the permanent rules through the normal rulemaking process. When tire storage sites are filled to capacity, tire processors cannot legally accept additional tires for shredding and, therefore, cannot collect waste tires from generators. The rules will substantially advance this specific purpose by allowing landfill operators to use tire shreds in their landfills as part of the leachate collection system drainage layer, protective cover, or final cover as a

means of reducing the amount of tire shreds in storage which prevent tire processors from shredding additional tires. The rules only provide an incentive to expedite the elimination of waste tire piles and therefore do not place a burden on any individual. These rules make existing rules less stringent only to the extent that they provide for a reduction in fees paid and allow the use of an additional type of material for landfill construction. Since transportation of the tire shreds to a landfill location is expensive, the commission will provide an incentive by reducing the amount of solid waste disposal fees paid to the commission by 50% for the equivalent tonnage of tire shreds used at the landfill. Promulgation and enforcement of these rules will not affect private real property because the rules pertain only to a new incentive to increase the level of collection, shredding, and beneficial use of waste tires, all of which are currently authorized. The rules will not create a burden on private real property because they are specifically designed to remove any threat to its safety or its environment by providing an incentive to remove any nearby waste tire piles that could result in uncontrolled fires. This action is also covered by exemptions in Senate Bill 14 concerning public nuisances and actions taken in response to a real and substantial threat to public health and safety.

SUBCHAPTER P: FEES AND REPORTS

§330.602

The amendment is adopted under Health and Safety Code §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health & Safety Code, and under Health and Safety Code §361.484 which gives the commission the authority to adopt rules necessary to implement Subchapter P, Chapter 361, Health and Safety Code, relating to the Waste Tire Recycling Program.

§330.602. Fees.

(a) Landfilling. Each operator of a facility in Texas that disposes of municipal solid waste by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the commission for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used. It is recommended that waste amounts be measured and reported in short tons (2,000 pounds); however, reporting by cubic yards is acceptable.

(1) - (7) No change.

(8) Fee Reduction. The fee may be reduced in accordance with §330.804 of this title (relating to The Use of Tire Shreds in Landfills) through December 31, 1996, upon which date this paragraph will expire.

(b) - (c) No change.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 18, 1996.

SUBCHAPTER R: MANAGEMENT OF WHOLE USED OR SCRAP TIRES

§330.804

The new section is adopted under Health and Safety Code §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health & Safety Code, and under Health and Safety Code §361.484 which gives the commission the authority to adopt rules necessary to implement Subchapter P, Chapter 361, Health and Safety Code, relating to the Waste Tire Recycling Program.

§330.804. The Use of Tire Shreds in Landfills.

To provide an incentive for the use of tire shreds in landfills, but still protect the viability of the municipal solid waste fund, the following procedures are established through December 31, 1996, upon which date this section shall expire:

(1) General. Owners and operators of municipal solid waste landfills who, after January 1, 1996, received commission or executive director approval to utilize tire shreds in their landfills as part of the drainage layer, protective cover or final cover, may request a one-time 50% reduction in their solid waste disposal fee of \$1.25 per ton, for every ton of tire shreds utilized. In addition, municipal solid waste landfill owners and operators who begin construction of a landfill in which the use of tire shreds for any of the above-listed uses had been previously authorized but delivery of said tire shreds occurred after January 1, 1996, may request a one-time 50% reduction in their solid waste disposal fee of \$1.25 per ton, for every ton of tire shreds utilized.

(2) Maintenance of the municipal solid waste fund. In order to ensure the continued viability of the Municipal Solid Waste Fund, the executive director may, on a prospective basis, suspend the reduction in solid waste disposal fees, or reduce the percentage of the reduction.

(3) Fee reduction application. To receive the reduction in the fee, owners and operators shall apply to the executive director utilizing the forms provided by the executive director. Applications shall be reviewed in the order in which they are submitted.

(4) Special requirements. The executive director may impose reasonable requirements on landfill owners or operators who apply to the Texas Natural Resource Conservation Commission for a reduction under this section, as necessary, to carry out the objectives of the section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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