

SUBCHAPTER F: MANAGEMENT OF USED OR SCRAP TIRES
§§328.51 - 328.71
Effective July 14, 2011

§328.51. Purpose.

The purpose of the rules in this subchapter is to establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

Adopted August 11, 1999

Effective September 5, 1999

§328.52. Applicability.

(a) This subchapter does not preempt local ordinances regarding the management of used or scrap tires that are as or more stringent than the regulations in this subchapter. All persons or facilities regulated by this subchapter must comply with all applicable local ordinances that are not inconsistent with the regulations in this subchapter. A local ordinance is not inconsistent with this subchapter if a regulated person or facility can simultaneously comply with both the state and local requirements.

(b) This subchapter applies to persons that are involved in the generation, transportation, processing, storage, utilization, and disposal of used or scrap tires or tire pieces that are classified as municipal solid waste, recyclable materials, or inert fill materials. This subchapter does not apply to whole used or scrap tires that are classified as industrial solid waste.

(c) All used or scrap tires or tire pieces, except for tires collected incidentally by municipal solid waste collection vehicles, are subject to manifesting by generators according to the requirements in §328.58 of this title (relating to Manifest System).

(d) Scrap tires that are off-the-road tires intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, or mining equipment are exempt from the time frame requirements to be split, quartered, or shredded when stored at a registered storage site or a permitted landfill. These tires must be shredded, split, or quartered prior to disposal in a manner acceptable to the executive director. The executive director may grant exceptions to this requirement as warranted by the circumstances.

Adopted September 15, 2010

Effective October 7, 2010

§328.53. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

(1) **30-Day supply** - An amount equal to the highest documented monthly consumption of tires consumed for energy recovery or legitimately recycled in the six-month period preceding the month for which the supply is being calculated. A facility in operation for less than six months shall submit an estimate of a 30-day supply for commission review, evaluation and approval.

(2) **Alter** - To modify any record or document kept or received by any entity subject to the requirements of this subchapter.

(3) **Authorized representative** - A facility owner or a person designated in writing by a facility owner to sign documents, make commitments for the entity, and represent the entity in all matters related to the application for registration or permit.

(4) **Authorized scrap tire facility** - A facility authorized to accept scrap tires including, but not limited to, a registered scrap tire storage site, scrap tire facility or permitted landfill.

(5) **Closure** - The cessation of acceptance of used or scrap tires or tire pieces for processing and/or storage which results in taking the facility out of service.

(6) **Facility** - All contiguous land and structures, other appurtenances, and improvements on the land used for the storage or processing of scrap tires.

(7) **Fleet operator** - An entity that owns or operates more than 15 vehicles and generates 30 or more used or scrap tires per calendar quarter.

(8) **Generator** - An entity, except a scrap tire energy recovery facility and a scrap tire recycling facility, that is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper or retreader.

(9) **Good used tire** - A used tire, not including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

(10) **Land reclamation** - The filling, rehabilitating, improving and restoring of excavated and/or deteriorated and/or disturbed land for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use.

(11) **Land reclamation projects using tires (LRPUT)** - A project to fill, rehabilitate, improve and/or restore already excavated, deteriorated or disturbed land, which uses no more than 50% by volume of tire pieces along with inert fill materials, for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use. Projects for the use of used or scrap tires or tire pieces as a component of an On-Site Sewage Facility as defined in §285.50 of this title (relating to General Requirements for Registration and Certification) are not included in this definition.

(12) **Manufacturer reject tire** - A tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase.

(13) **Off-the-road tire** - A tire intended for use on heavy machinery, including, but not limited to, an earth mover/dozer, a grader, agricultural machinery or mining equipment. Truck tires are not off-the-road tires.

(14) **Operator** - The person responsible for the overall operation of the facility.

(15) **Owner** - The person or company who owns the facility or part of a facility.

(16) **Processing** - The extraction of materials from or the transfer, volume reduction, conversion to energy or separation and preparation of solid waste for reuse or disposal.

(17) **Professional engineer** - A person licensed by The Texas Board of Professional Engineers to practice engineering in the State of Texas.

(18) **Scrap tire** - A whole tire that can no longer be used for its original intended purpose. A whole used tire that can be used, reused or legally modified to be reused, for its original intended purpose is not a scrap tire.

(19) **Scrap tire facility** - A facility that processes, conducts energy recovery or recycles used or scrap tires or tire pieces.

(20) **Scrap tire storage site** - A registered facility where more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers. The term does not include a transportation facility or a scrap tire facility that stores on-site no more than a 30 calendar day supply of used or scrap tires or tire pieces.

(21) **Scrap tire transporter** - A registered entity that collects and transports used or scrap tires or tire pieces for storage, processing, recycling or energy recovery.

(22) **Tire monofill** - A below-ground depository, landfill or landfill trench consisting of greater than 50% by volume of tires or tire pieces.

(23) **Tire piece** - A particle of a scrap tire or scrap tire piece that has been split, quartered or shredded to a usable size such as two-inch minus, or other size required by an industry user or recycler.

(24) **Tire processor** - A registered scrap tire facility where used or scrap tires or tire pieces are collected and shredded or baled for delivery to a scrap tire storage site, or to a facility that recycles, reuses or recovers the energy from the tire pieces. Mobile tire processing facilities shall be considered scrap tire facilities and required to comply with all applicable requirements contained in this subchapter relating to scrap tire facilities.

(25) **Tire shredder** - A piece of equipment used to split, shred or quarter tires, whether stationary, or mounted on wheels or skid mounted.

(26) **Trailer** - For the purposes of this chapter only, an enclosed, portable and lockable container for the storage of less than 2,000 used or scrap tires. This may include a trailer, railcar, roll-off container, or dumpster.

(27) **Transportation facility** - A facility such as a marine terminal, rail yard, or trucking facility where scrap tires or tire pieces may be stored for periods longer than 30 consecutive calendar days.

Adopted August 11, 1999

Effective September 5, 1999

§328.54. General Requirements.

(a) An entity that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration or permit.

(b) Before disposal, whole used or scrap tires may not be commingled with any other type of scrap material or solid waste, except for incidental scrap tires picked up in enclosed municipal solid waste collection vehicles.

(c) Any permitted municipal solid waste landfill site may store or process whole tires or tire pieces in an unused portion of the property within its permit boundary dedicated to tires only. Storage shall be above ground in controlled storage piles or in enclosed and lockable containers, pursuant to §328.61 of this title (relating to Design Requirements for Scrap Tire Storage Site). A permitted municipal solid waste landfill site shall not store tires or tire pieces in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers without prior written approval from the executive director or the commission. Approval of storage or processing shall be by authorization for such storage in an approved Site Development Plan, or, as applicable, through a Class I permit modification under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) or an amendment under §305.62 of this title (relating to Amendment). The tire storage and/or processing activity shall not be conducted in a manner that will adversely affect operations of the municipal solid waste disposal site, or otherwise endanger human health or the environment.

(d) All vehicles and equipment used for the collection and transportation of used or scrap tires or tire pieces, except for those vehicles listed in §328.57 of this title (relating to Transporter Requirements), shall be constructed, operated, and maintained to prevent loss of used or scrap tires or tire pieces during transport and to prevent health nuisances and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to prevent odors and insect breeding. Any vehicle or trailer used to transport used or scrap tires or tire pieces shall be identified on both sides and the rear of the vehicle. The identification shall consist of the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall. Trailers or trucks used to transport used or scrap tires shall either be fully enclosed and lockable, or have sidewalls of sufficient height to contain the load. Trailers and trucks transporting used or scrap tires in excess of the sidewall height of the vehicle shall be covered with a tarp during transit. Trailers and trucks transporting any amount of tire pieces shall be covered with a tarp during transit.

(e) A person who, for eventual recycling, reuse, or energy recovery, temporarily stores used or scrap tires in a designated recycling collection area at a permitted landfill may be granted an exemption from shredding, splitting or quartering the scrap tires by the executive director, upon request.

Adopted August 11, 1999

Effective September 5, 1999

§328.55. Registration Requirements.

Registration requirements for scrap tire storage sites, scrap tire facilities, transportation facilities, and transporters are as follows:

(1) An application for a registration shall be made on a form obtained from the executive director, upon request. The applicant may deliver the completed application to any commission regional office or mail it to the following address: Texas Commission on Environmental Quality, P.O. Box 13087, Mail Code 174, Austin, Texas 78711-3087. The following registration information must be provided to the executive director:

(A) the name, mailing address, county, and telephone and facsimile numbers of the applicant;

(B) the name, mailing address, and telephone number of the property owner where the scrap tire storage site, scrap tire facility, or transportation facility is located;

(C) the street location of the scrap tire storage site, scrap tire facility, or transportation facility, including county;

(D) the approximate number of used or scrap tires or tire pieces (in tons) that will be stored at the scrap tire storage site or the scrap tire facility;

(E) the existing land use surrounding the scrap tire storage site, scrap tire facility, or transportation facility; and

(F) the tax identification number.

(2) The application must be signed by the authorized representative and, if applicable, the professional engineer who assisted in its preparation.

(3) Entities that are registered by the executive director shall maintain a copy of their commission registration notice at their designated place of business.

(4) A registered entity shall provide written notice to the executive director, within 15 days, if:

(A) the mailing address or telephone number of the entity changes;

(B) the office or designated place of business is relocated;

(C) the applicant's registered name is changed; or

(D) the authorized representative has changed. If the authorized representative has changed, a registered entity shall provide a written, signed designation of the new authorized representative, including the representative's name, mailing address, and telephone and facsimile numbers.

(5) Within 10 days of a change in ownership, or if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods, the registered entity shall submit a new registration application to the executive director. Following a determination, the executive director may issue a new registration, cancel the old registration or transfer the old registration to the new registrant. Timeliness of required submittals may be a factor in the executive director's determination.

(6) Annulment, suspension, revocation, or denial of registration, including Land Reclamation Projects Using Tires, procedures are as follows:

(A) The executive director may annul, suspend, or revoke a registration or deny an initial or renewal registration for:

(i) failure to maintain complete and accurate records required under this chapter;

(ii) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;

(iii) failure to maintain equipment in safe working order;

(iv) altering any record maintained or received by the registrant;

(v) delivery of used or scrap tires or tire pieces to a facility not registered to handle the tires, unless the facility receiving the tires is exempt from registration under §328.54 of this title (relating to General Requirements);

(vi) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(vii) failure to submit any applicable annual report;

(viii) failure to maintain financial assurance as required;

(ix) dumping of used or scrap tires or tire pieces illegally;

(x) collection, storage, transportation, or processing of used or scrap tires or tire pieces without registration, as required in this section;

(xi) failure to notify the executive director of any change in registration information as required in paragraph (4) of this section; or

(xii) failure to obtain and maintain necessary approvals or certifications from the Fire Marshal with jurisdiction over the facility location.

(B) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, an entity shall not collect, store, transport, or process used or scrap tires or tire pieces regulated under this subchapter.

(C) The holder of a registration that has been revoked by the executive director may reapply for registration under this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the executive director a second time, the revocation shall be permanent.

(D) Appeal of annulment, suspension, revocation, or denial of initial or renewal registration procedures are as follows:

(i) An opportunity for a formal hearing on the annulment, suspension, or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant, as shown in the records of the agency.

(ii) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the last known address. If the registration is denied, a person shall not collect, store, transport, or process used or scrap tires or tire pieces.

(iii) The formal hearing under this paragraph shall be a contested case in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 et seq. and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 and the rules of the commission.

Adopted September 15, 2010

Effective October 7, 2010

§328.56. Generator Requirements.

(a) Generator registration requirements include the following.

(1) Generators storing more than 500 tires shall obtain a registration number from the executive director. The generator must contact the executive director, identify the business as a generator, provide the business name, tax identification number, mailing address, physical location, and the city and county where the generator is located.

(2) The generator shall notify the executive director within 15 days, in writing, of any changes to the generator information.

(b) Each generator shall be responsible for ensuring that scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility.

(c) Each generator shall use manifests, work orders, invoices or other records to document the removal and management of all scrap tires generated on-site.

(d) The following requirements apply to on-site storage by generators:

(1) Generators may store used or scrap tires or tire pieces at the location where they are generated, provided the total number of used or scrap tires does not exceed 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers.

(2) Generators who store used or scrap tires in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers shall be required to obtain a scrap tire storage registration pursuant to §328.55 of this title (relating to Registration Requirements);

(3) Retailers and wholesalers who sell good used tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer, or has been designated on the manifest as removed for reuse by a registered transporter. Used tires that are to be resold as commodities, but are not sorted, marked, classified, and arranged in an organized manner for sale to the consumer, shall be considered as stockpiled scrap tires and the site shall be subject to registration as a scrap tire storage site; and

(4) Tires stored outside shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(5) Generators who store more than 500 used or scrap tires are exempt from the requirement to shred, split, or quarter the used or scrap tires provided that the tires are awaiting transport.

(e) A generator of used or scrap tires may transport its scrap tires between its own business locations or to an authorized facility without a transporter registration, but must still comply with all manifesting requirements in §328.58 of this title (relating to Manifest System) and record keeping requirements in §328.57 of this title (relating to Transporter Requirements).

Adopted August 11, 1999

Effective September 5, 1999

§328.57. Transporter Requirements.

(a) **Applicability.** This section establishes standards applicable to transporters collecting and hauling used or scrap tires or tire pieces.

(b) **Exemptions.**

(1) Used or defective tires shipped back to the manufacturer or manufacturer's representative for adjustment are not required to be transported by a registered transporter, provided the generator retains, for a period of three years, written records of the shipments, indicating the date of shipment, destination and the number of tires in each shipment. These records shall be made available to the executive director upon request.

(2) Any person who is registered with the executive director as an On-Site Sewage Facility Installer under §285.50 of this title (relating to General Requirements for Registration and Certification) may transport used or scrap tires or tire pieces for construction of an on-site sewage disposal system without a transporter registration, but must still comply with all manifesting requirements under §328.58 of this title (relating to Manifest System) and record keeping requirements in subsection (d) of this section.

(3) Retreaders who haul tires from customers for the purpose of retreading or who return tires to customers after retreading or recapping, do not have to register as transporters; however, they must register as transporters if they haul tires to an authorized facility.

(4) Trucks engaged in municipal solid waste collection or commercial route collection which handle incidental loads of used or scrap tires or tire pieces as part

of their normal household or commercial collection activities, may transport such incidental small quantities of scrap tires to a landfill, transfer station or other collection point for proper handling without a transporter registration.

(5) Transport vehicles owned and operated by municipalities, counties, or other governmental entities or agencies which are used to transport used or scrap tires to an authorized facility or to a facility used by local or other governmental entities or agencies to collect used or scrap tires shall be exempt from registration under this section; however, each load of used or scrap tires shall be manifested in accordance with §328.58 of this title (relating to Manifest System).

(c) General requirements.

(1) Transporters shall register their operations with the executive director before conducting business, according to the registration procedures outlined in §328.55 of this title (relating to Registration Requirements).

(2) Transporters shall maintain records using a manifest system, as required in §328.58 of this title.

(3) Each transporter shall be responsible for ensuring that used or scrap tires or tire pieces are transported to an authorized scrap tire facility.

(4) Each transporter shall notify the generator of any changes to the manifest. A written notification must be received by the generator within two weeks of any changes.

(d) Maintenance of records. The transporter shall retain all manifests, work orders and invoices showing the collection and disposition of all used or scrap tires and tire pieces. Records shall be retained by the transporter at the designated place of business for a period of at least three years and made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that the item remains legible and readable. To the side of the mark, the person making the change shall place his/her initials with the date of the change.

(2) Any change made to the face of an original record shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be prepared simultaneously with the change to the original record, attached to the original record, maintained at the designated place of business for a period of at least three years, and made available to the executive director

upon request. The justification shall include the date of the change, and the full name and position of the individual making the change.

(e) Annual report. Transporters shall submit to the executive director an annual report of their activities from January 1 through December 31 of each calendar year showing the number and type of used or scrap tires collected listed by generator name and address, the disposition of the tires, and the number of whole used or scrap tires delivered to each facility. The report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(f) Interstate transportation. Persons who engage in the transportation of used or scrap tires or tire pieces from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport used or scrap tires or tire pieces in Texas but have their place of business in another state or country, shall comply with all of the requirements for transporters contained in this subchapter. If such persons also engage in any activity of managing used or scrap tires or tire pieces in Texas by storage, processing or disposal, they shall follow the applicable requirements for operators of such activities. Persons who engage in the transportation of used or scrap tires or tire pieces which do not originate or terminate in Texas, are exempt from these regulations, except for §328.54 of this title (relating to General Requirements).

Adopted August 11, 1999

Effective September 5, 1999

§328.58. Manifest System.

(a) Generators shall obtain from the transporter collecting tires from their place of business and maintain a record of each individual load of used or scrap tires or tire pieces hauled off from their business location. The record shall be in the form of a five-part manifest or other similar documentation approved by the executive director. The generator shall complete the information pertaining to generator name, address, and telephone number, number of tires removed on the manifest, and registration number, if applicable. The generator shall indicate the destination of all used or scrap tires or tire pieces removed from the business location. A representative of the generator shall sign the manifest acknowledging that the information on the manifest is true and correct.

(b) The transporter shall complete the information on the manifest pertaining to transporter name and registration number and the transporter's driver's license number and the state where the license was issued. The transporter shall record the number and type of scrap tires removed from the generator and delivered and the location of any whole used or scrap tires removed from the load and delivered. Transporters shall maintain a manifest record of each individual collection and delivery. The transporter shall sign the manifest acknowledging that the information on the manifest form is true

and correct. If the transporter removes, for beneficial reuse, all tires from an individually manifested load, the transporter shall return the original manifest to the generator within 60 days of the date of collection.

(c) The authorized facility accepting delivery of the used or scrap tires or tire pieces shall complete the information on the manifest pertaining to the authorized facility identification and number or weight of tires or tire pieces accepted for delivery. A representative of the authorized facility shall sign the manifest acknowledging that the information on the manifest form is true and correct. The authorized facility shall ensure that the top original of the five-part manifest is completely filled out and returned to the generator within 60 days of the date and time of collection as indicated in Section 1 of the manifest.

(d) A generator shall obtain the completed manifest within 60 days after the scrap tires or tire pieces were transported off-site by the transporter.

(e) The generator shall notify the appropriate commission regional office of any transporter or authorized scrap tire facility that fails to complete the manifest, alters the generator portion of the manifest, or fails to return the manifest within three months after the off-site transportation of the used or scrap tires or tire pieces.

(f) Originals of manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces shall be retained by the generator for a period of three years. All such records shall be made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that the item remains legible and readable. To the side of the mark, the person making the change shall place his or her initials with the date of such change.

(2) Any change made to the face of an original record shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be prepared simultaneously with the change to the original record, attached to the original record, maintained at the designated place of business for a period of at least three years, and made available to the executive director upon request. The justification shall include the date of the change, and the full name and position of the individual making the change.

(3) Should the executive director identify discrepancies/errors in records, an opportunity will be given to justify, in writing, any such errors or discrepancies.

§328.59. Storage of Used or Scrap Tires or Tire Pieces.

(a) Applicability. This section establishes standards applicable to persons that store or intend to store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers on any public or privately owned property. Persons that store used or scrap tires or tire pieces shall register in accordance with this subchapter. This subchapter does not apply to the use of tires in the storage, protection, or production of agricultural commodities.

(b) General requirements.

(1) All owners and/or operators shall properly register their property with the executive director if the intended use of the property is for the storage of used or scrap tires or tire pieces, pursuant to §328.55 of this title (relating to Registration Requirements).

(2) When a properly registered storage site begins operations, the owner or operator shall file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility.

(3) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver scrap tires or tire pieces to their registered scrap tire storage site have manifested the used or scrap tires or tire pieces, pursuant to §328.58 of this title (relating to Manifest System).

(4) Owners and/or operators of scrap tire storage facilities shall obtain all required state and local permits, licenses, or registrations and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(5) Owners and/or operators shall maintain a copy of the mechanism for financial assurance on-site as specified in Chapter 37, Subchapter M of this title (relating to Financial Assurance Requirements for Scrap Tire Sites) which shall be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility.

(6) Owners and/or operators shall submit to the executive director an annual summary of their activities from January 1 through December 31 of each calendar year, showing the number and disposition of used or scrap tires or tire pieces received, and the number of used or scrap tires or tire pieces removed from the facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

Adopted August 11, 1999

Effective September 5, 1999

§328.60. Scrap Tire Storage Site Registration.

(a) Registration required. Persons who store more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers at a facility shall be required to obtain a scrap tire storage site registration for that facility from the executive director pursuant to §328.55 of this title (relating to Registration Requirements). Storage activities shall not begin until the executive director approves the registration.

(b) Application requirements.

(1) The application for a scrap tire storage site registration, amended registration, or renewal shall consist of: the application form; site and surrounding area information; engineering information, including a site layout plan and a site operating plan; and evidence of financial assurance as required under this section.

(2) Upon filing a registration application, the applicant shall mail a copy of the application to the appropriate county judge and shall mail notice that an application has been filed to the appropriate regional council of government and the appropriate mayor if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city. Proof of mailing shall be provided in the form of return receipts for registered mail.

(3) Upon filing a registration application, the facility owner or operator shall provide notice to the general public by means of a notice by publication and a notice by mail. Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the application to register the site. The notices shall specify that the registration application has been provided to the county judge and that it is available for review by interested parties. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. Notice shall be published in a newspaper of general circulation. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all owners of property within 500 feet of the boundary of the facility; the health authorities of the city and county in which the facility will be located, if applicable; and the appropriate state senator and representative for the area encompassing the facility.

(4) Applications shall be submitted in triplicate either in writing or through an electronic reporting system as allowed by the executive director.

5) Preparation of the application shall be in accordance with the requirements of the Texas Engineering Practice Act, Texas Occupations Code, Chapter 1001. Each sheet of engineering plans, drawings, maps, calculations, computer models, cost estimates, and the title or contents page of the application shall be signed and sealed by a professional engineer in accordance with the Rules of the Texas Board of Professional Engineers.

(6) Drawings shall be legible and include a dated title block, scale, and responsible engineer's seal, if required. If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines. Drawings shall be submitted using a standard engineering scale.

(7) Each map or plan drawing shall have a north arrow, a legend and a reference to the base map source and date if the map is based upon another map. The latest revision of all maps shall be used. Maps shall show the following:

(A) all structures and inhabitable buildings within 500 feet of proposed site;

(B) location of all roads within one mile of the site that will normally be used to access the site;

(C) latitudes and longitudes;

(D) area streams;

(E) the property boundary of the site; and

(F) drainage, pipeline, and utility easements within or adjacent to the site.

(8) The applicant or an authorized representative shall provide a signed statement representing that he or she: is familiar with the application and all supporting data; is aware of all commitments represented in the application; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the scrap tire storage site in compliance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(9) Site and surrounding area information includes the following:

(A) Maps.

(i) Location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation. At least one general location map shall be at a scale of one-half inch equals one mile. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division, P.O. Box 5020, Austin, Texas, 78726-5020.

(ii) Topographic maps. These maps shall be United States Geological Survey 7-1/2-minute quadrangle sheets or equivalent, marked to show the storage site boundaries and roadway access. These maps may be obtained at a nominal cost from any United States Geological Survey, Federal Center.

(iii) Land ownership map and list. This map shall locate the property owned by potentially affected landowners. The map shall show all property ownership within 500 feet of the site. A list shall be provided that gives each property owner's and easement holder's name and mailing address. The list shall be keyed to the Land Ownership Map.

(iv) Floodplain maps. These maps shall be the appropriate Federal Emergency Management Agency maps or other demonstration acceptable to the executive director indicating the location of any 100-year flood plain which may exist within the property boundary or surrounding area.

(B) Legal description. A legal description of the storage facility and the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application.

(C) Property owner affidavit. A statement from the property owner shall be submitted on a form provided by the executive director; and shall be witnessed and notarized. The form shall include:

(i) the legal description of the site;

(ii) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the site;

(iii) acknowledgment that the owner has a responsibility to file in the county deed records an affidavit to the public advising that the land has been used for a tire storage facility, at the time as the site actually begins operating; and

(iv) acknowledgment that the site owner or operator and the State of Texas shall have access to the property during the active life and for a period of not less than five years after closure for the purpose of inspection and maintenance.

(D) Fire marshal approval. The fire marshal with jurisdiction over the facility location shall approve the fire protection system. A letter from the fire marshal shall be included in the application stating that the fire marshal has reviewed and approved the fire protection aspects of the application as well as the design of the all-weather roads to accommodate fire fighting vehicles. The fire marshal shall sign and date the Site Layout Plan.

(10) Engineering information includes the following:

(A) Site layout plan. The site layout plan shall include:

- (i) location of storage areas;
- (ii) location of fire lanes and fire control facilities;
- (iii) security fencing, gates and gatehouse, site entrance, and access roads and fire lanes in accordance with §328.61 of this title (relating to Design Requirements for Scrap Tire Storage Site);
- (iv) location of buildings; and
- (v) location and description of processing equipment.

(B) Drainage plan. A drainage plan showing drainage flow throughout the scrap tire storage site area, locations of streams, and any other important drainage feature of the facility. Calculations shall be presented to show that normal drainage patterns will not be significantly altered. If the executive director determines that significant alteration will occur, the owner/operator shall design and provide additional surface drainage controls which shall be designed and provided to mitigate the effects of the altered watershed, as required by the executive director.

(C) Fire plan. The fire plan and all revisions shall be maintained at the site, with copies provided to all local fire departments and other emergency response teams, and shall include guidance or instruction on the following:

- (i) roles to be assumed by on-site personnel (example: fire-fighting coordinator, equipment custodian, hose operator, etc.) in the event of a fire, duty stations, and procedures to be followed by these persons;

(ii) arrangements agreed to by local fire departments, police departments, hospitals, contractors, nearby businesses and industries that can be called for assistance, and state and local emergency response teams. In this regard, a letter from each of these entities shall be included in the fire plan, which letters shall acknowledge receipt of a copy of the fire plan, and agreement to participate as stated in the fire plan.

(iii) names, addresses, and telephone numbers of these emergency response teams (fire, police, medical, etc.) that are to be included in the plan. The fire plan must include a map of the general area of the site that shows the site location, the location of the emergency response teams included in the plan (fire stations, police stations, hospitals, etc.). The plan shall also include the best route for these emergency response teams to take from their location to the site location;

(iv) names, addresses, and telephone numbers of all site employees that are qualified to act as emergency coordinator(s) (this list must be kept up to date, and where more than one person is listed one must be designated as primary coordinator and the others as alternates);

(v) a list of all emergency equipment at the facility (fire extinguishers, protective clothing items, hoses, pumps, axes, shovels, detention ponds, water storage tanks, fire hydrants, signal and alarm system equipment, decontamination equipment, etc.), a copy of the Site Layout Plan (to be posted at several prominent locations on the site as well as included in the fire plan) drawing that clearly marks the location of these items as well as personnel assembly points and evacuation routes from the site and from buildings on the site, and a narrative description of where these items are kept or located on site as well as a description of how the items are used (if applicable) and their capabilities;

(vi) an evacuation procedure for facility personnel where there is a possibility that evacuation could be necessary, evacuation routes, alternate routes, and signals to be used by the emergency coordinator(s) for the various necessary procedures; and

(vii) information about any insurance held by the company that would cover fire damage, loss, and cleanup.

(D) Cost estimate for closure. The applicant shall submit a cost estimate for closure costs in accordance with §328.71 of this title (relating to Closure Cost Estimate for Financial Assurance).

(E) Site operating plan. The Site Operating Plan shall include information to provide specific guidance and instructions for the management and operation of a scrap tire storage site and should include:

(i) information on security, facility access control, the hours and days during which tire-hauling vehicles will be admitted, traffic control and safety;

(ii) sequence of the development of the scrap tire storage site such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(iii) information on control of loading and unloading of used or scrap tires or tire pieces within designated areas, so as to minimize operational problems at the storage facility;

(iv) fire prevention and control plans, and special training requirements for fire-fighting personnel that may be called for assistance;

(v) vector control procedures for any type of vector that may be found at the scrap tire storage site;

(vi) a procedure for removal of any waste material that is not a used or scrap tire or tire piece to a disposal facility permitted by the commission. This procedure must include the means to remove this illegally deposited waste material. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins, or shall be returned to the transporter's vehicle and removed from the scrap tire storage site. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(vii) the name of the facility employee who is designated by the owner or operator to inspect each load of used or scrap tires or tire pieces that is delivered to the scrap tire storage site. The employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads. The employee shall also be authorized to have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel;

(viii) a procedure whereby the required transporter manifest, the daily log and other required documents shall be maintained at the scrap tire storage site for a period of three years and be made available for inspection by the executive

director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility;

(ix) dust and mud control measures for access roads, fire lanes, and storage areas within the scrap tire storage site;

(x) posting of signs and enforcement of scrap tire storage site rules;

(xi) procedures for wet-weather operations;

(xii) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the scrap tire storage site in use during the active operating period of the scrap tire storage site. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist; and

(xiii) incorporation of other instructions as necessary to ensure that the scrap tire storage site personnel comply with all of the operational standards for the facility.

(11) The applicant seeking registration or amended registration for a scrap tire storage site shall submit evidence of financial responsibility in conformance with §328.71 of this title.

(c) Application processing. If an application for registration or amended registration of a scrap tire storage site is received that is not administratively or technically complete, the executive director shall notify the applicant of the deficiencies within 30 working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant. The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant within 60 days of the receipt of the deficiency note that an adequate response cannot be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application or sufficient proof of inability within the time frames indicated, the application may be considered withdrawn without prejudice.

(d) Registration expiration. A scrap tire storage site registration shall expire 60 months from the date of issuance. A scrap tire storage site registration is transferable contingent upon executive director approval. A change in the federal tax identification number will constitute a change of ownership. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to

the expiration date of the scrap tire storage site registration. Failure to timely file an application for renewal shall result in automatic expiration of the registration.

Adopted September 15, 2010

Effective October 7, 2010

§328.61. Design Requirements for Scrap Tire Storage Site.

(a) A scrap tire storage site shall be designed so that the health, welfare and safety of operators, transporters, and others who may utilize the site are maintained.

(b) A registered scrap tire storage site may store scrap tires or tire pieces using outdoor or indoor tire piles or enclosed and lockable containers, or a combination of any of the aforementioned methods. Registered scrap tire storage sites shall be limited to a maximum of three piles of whole used or scrap tires on the ground.

(1) Tire piles consisting of scrap tires or tire pieces shall be no greater than 15 feet in height, nor shall the pile cover an area greater than 8,000 square feet. Existing storage sites with variances to the 8,000 square foot pile size limit may maintain the approved pile size if approved in writing by the local fire marshal in the fire plan under the current registration. Approval from the executive director and the local fire marshal will be required to maintain existing pile sizes greater than 8,000 square feet with renewal or amended application requests.

(2) Scrap tires or tire pieces may be stored in any enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Indoor storage piles or bins shall not exceed 12,000 cubic feet with a 10-foot aisle space between piles or bins.

(3) Scrap tires or tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable.

(c) There shall be a minimum separation of 40 feet between outdoor piles consisting of scrap tires or tire pieces. This 40-foot space shall be designated as a fire lane that totally encircles the tire piles and shall be an all-weather road. Provisions shall be made for all-weather access from publicly-owned roadways to the scrap tire storage site, and from the entrance of the site to unloading and storage areas used during wet weather. The design (a cross-section), location, maintenance, and all-weather serviceability of interior access roads/fire lanes shall be addressed in the overall facility design and in the Site Operating Plan, and shall be indicated on the Site Layout Plan with appropriate design notes. At a minimum, these roadways shall have minimum 25-foot turning radii, shall be capable of accommodating firefighting vehicles during wet weather, and shall meet applicable local requirements and specifications. An estimate shall be provided of the number, size, and maximum weight of vehicles expected to use

the site daily. The open space between buildings and outdoor tire piles consisting of scrap tires or tire pieces shall be a minimum of 40 feet; kept open at all times and maintained free of rubbish, equipment, tires, or other materials. In the event that a variance for supersize piles is approved by the executive director, the minimum fire lane separation shall be at least 40 feet. Upon coordination with the local fire marshal, the distance may be increased, as necessary, to protect human health and safety. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet under the current registration if approved in writing by the local fire marshal in the fire plan.

(d) Outdoor piles consisting of scrap tires or tire pieces and entire buildings used to store scrap tires or tire pieces shall not be within 40 feet of the property line or easements of the scrap tire storage site. This setback line shall be kept open at all times and maintained free of rubbish, equipment, tires, or other materials. The executive director may grant a variance to the 40-foot property line or easement if the setback line meets the other applicable requirements of this subchapter and the applicant provides a written statement to the executive director from the local fire marshal that the distance that is the subject of the variance is adequate for fire fighting purposes. In the event that a variance for supersize piles is approved by the executive director, the minimum setback from property lines or easements will be 40 feet. Storage sites registered before January 1, 1998 may maintain setbacks less than 40 feet under the current registration if approved in writing by the local fire marshal in the fire plan.

(e) Scrap tires shall be split, quartered, or shredded within 90 days from the date of delivery to the scrap tire storage site. The executive director may grant a variance from this requirement if the executive director finds that circumstances warrant the exception. Off-the-road tires that are used on heavy machinery, including earthmovers, loader/dozers, graders, agricultural machinery and mining equipment are exempt from this requirement. Truck tires shall not be classified as off-the-road tires and thus are not exempt from this requirement. Appropriate vector controls shall be used at a frequency based upon type and size of piles, weather conditions and other applicable local ordinances.

(f) Access to the facility shall be controlled to prevent unauthorized activities. The facility shall be completely fenced with a gate that is locked when the facility is closed. A scrap tire storage site shall be enclosed by a chain-link type security fence at least six feet in height.

(g) The scrap tire storage site shall have an adequate fire protection system using fire hydrants or a firewater storage pond or tank at the facility. The capacity of a firewater storage pond or tank shall be of sufficient size for firefighting purposes and shall be in conformance with all local and state fire code requirements.

(h) The scrap tire storage site shall have large capacity dry chemical fire extinguishers located in strategically-placed enclosures throughout the entire site, equally spaced within the facility to provide quick access from any location within the facility. The minimum number of fire extinguishers or fire hydrants for each scrap tire storage site shall be one per acre.

(i) If necessary, suitable drainage structures or features shall be provided to divert the flow of rainfall runoff or other uncontaminated surface water within the scrap tire storage site to a location off-site.

(j) Each site shall conspicuously display at the entrance a sign at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters stating the name of the scrap tire storage site using the words "scrap tire site," the commission registration number, and operating hours.

(k) A scrap tire storage site located within a designated 100-year floodplain area shall be designed with adequate environmental protection. The owner/operator shall demonstrate that the tire storage area will not restrict the flow of the 100-year flood, reduce temporary water storage capacity of the floodplain, or result in a washout of tires, tire pieces or other material so as to pose a hazard to human health and the environment.

(l) The scrap tire storage site shall be designed in accordance with all local building codes, fire codes, and other applicable local codes.

Adopted August 11, 1999

Effective September 5, 1999

§328.62. Scrap Tire Storage Site Record Keeping.

(a) General requirements.

(1) The owner/operator shall maintain on site at all times: a copy of the registration application with all supporting data, including the approved scrap tire storage site layout plan; the approved scrap tire storage site engineering information; a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism, as filed with the commission; and a copy of the commission's current rules. The facility supervisor shall be knowledgeable of current commission rules; the contents of the approved scrap tire storage site application; and the approved scrap tire storage site in relation to the operational requirements.

(2) All drawings or other sheets prepared for revisions to a scrap tire storage site layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(b) Daily log. Persons that store used or scrap tires or tire pieces under this subchapter shall maintain a record of each individual delivery and removal. The record shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum, the:

- (1) name and commission registration number of the scrap tire storage site;
- (2) physical address of the scrap tire storage site;
- (3) number of used or scrap tires or tire pieces received at the scrap tire storage site;
- (4) number of used or scrap tires or tire pieces, removed from the scrap tire storage site (for disposal, resale, recycling, reuse or energy recovery);
- (5) specific location in the scrap tire storage site (i.e., tire pile number, bin number, building number, etc.) where used or scrap tires or tire pieces are delivered or removed (for disposal, resale, recycling, reuse or energy recovery);
- (6) description of specific events or occurrences at the scrap tire storage site relating to routine maintenance, spraying for vectors, observations of vectors, evidence of vectors, and fire or theft or other similar events or occurrences;
- (7) number of used or scrap tires being held for resale, adjustments or other purposes;
- (8) name and signature of facility representative acknowledging truth and accuracy of the daily log; and
- (9) the name, address, telephone number, and date of the individual or company delivering or removing the used or scrap tires or tire pieces to or from the scrap tire storage site.

(c) Manifests. The scrap tire storage site operator shall retain all manifests received from a scrap tire facility or scrap tire transporter for used or scrap tires or tire pieces delivered to or removed from the scrap tire storage site. The scrap tire storage site shall ensure that the top original of the five-part manifest is returned to the generator completely filled out within 60 days of the date and time of collection as indicated in Section 1 of the manifest form. The scrap tire storage site shall follow the requirements in §328.58 of this title (relating to Manifest System).

(d) Annual report. Scrap tire storage site owners or operators shall report their recycling, reuse, and energy recovery activities to the executive director. The annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the scrap tire storage site;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a list of facilities where the scrap tire storage site owners or operators currently deliver used or scrap tires or tire pieces. Each scrap tire recycling or energy recovery facility listed shall include the following information:

(A) phone number of company and responsible person;

(B) physical address and mailing address of the scrap tire facility;

(C) detailed description of process to recycle, reuse or recover the energy from the used or scrap tires or tire pieces;

(D) exact quantities, by month, (in number of tires or weight of scrap tires or tire pieces) that the scrap tire storage site owner or operator delivered to the scrap tire facility.

(e) Local ordinances. Where local ordinances require controls or records more stringent than the requirements of this subchapter, the scrap tire storage site owner or operator shall use those criteria to satisfy the agency's requirements.

Adopted August 11, 1999

Effective September 5, 1999

§328.63. Scrap Tire Facility Requirements.

(a) Applicability. This section applies to owners or operators of facilities that process, conduct energy recovery or recycle used or scrap tires or tire pieces.

(b) Storage site registration requirement. The applicant shall obtain a scrap tire storage site registration in accordance with §328.60 of this title (relating to Scrap Tire Storage Site Registration) if the applicant seeking registration for a scrap tire facility:

(1) intends to have more than a 30 calendar day supply of tires at the facility site; or

(2) is solely a scrap tire processing facility with no recycling or energy recovery conducted on-site and intends to store in excess of 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers.

(c) Scrap tire facility registration requirements. Scrap tire facilities shall register their operation with the executive director in accordance with §328.55 of this title (relating to Registration Requirements) before starting operations. An application for registration shall be made on a form provided by the executive director upon request. In addition to the General Registration requirements, the following registration information must be provided to the executive director.

(1) Persons that process, conduct energy recovery or recycle used or scrap tires or tire pieces shall submit an application for a registration number from the executive director for the operation of the scrap tire facility.

(2) The application for registration shall be prepared and signed by the applicant. The application shall identify the use of the tires (e.g., the product to be made and the end use market), and shall include information necessary for the executive director to make an evaluation of the proposed operation.

(3) The application for registration of a scrap tire facility shall be submitted in triplicate either in writing or through an electronic reporting system as allowed by the executive director.

(4) Data presented in support of an initial or renewal application for a scrap tire facility shall consist of the following information:

(A) an application form provided by the executive director and location map(s) pursuant to §328.60 of this title;

(B) the maximum amount of tires (in pounds) that will be on the scrap tire facility at any given time;

(C) the amount of tires necessary to provide a 30 calendar day raw material supply for the proposed recycling process;

(D) the storage method (piles on the ground, piles inside a building or enclosure, or totally enclosed and lockable containers that are locked during non-operational hours);

(E) the product to be manufactured and the end use market;

(F) a property owner affidavit on a form provided by the executive director pursuant to §328.60 of this title; and

(G) a list of all other applicable federal, state, and local permits and/or registrations with the associated numbers;

(5) Persons that conduct energy recovery shall obtain all other applicable authorizations (i.e., permits and/or registrations) necessary for conducting tire related activities before submitting an application for registration as a scrap tire facility.

(d) General requirements.

(1) The owner or operator shall mail a copy of the notification documents and attachments to the appropriate mayor and county judge if the proposed project is to be located within the corporate limits or extraterritorial jurisdiction of a city; or the appropriate county judge if the proposed project is to be located within an unincorporated area of a county; to the appropriate regional council of government; and, to the appropriate local fire authority. Proof of mailing shall be provided in the form of return receipts for registered mail.

(2) Where local ordinances require controls and records more stringent than the requirements of this subchapter, scrap tire facility operators shall use those criteria to satisfy commission requirements under this section. Prior to authorizing a scrap tire facility, the executive director shall consider any timely written notification by a local government with jurisdiction over a proposed facility that is provided to the executive director that the proposed facility does not comply with local requirements related to managing scrap tires and protecting public health and the environment. Such notice shall include adequate documentation of noncompliance at the proposed facility. The executive director shall determine whether any documentation of noncompliance submitted is adequate. The executive director shall disregard a notice of noncompliance if a court with jurisdiction over a local government's decision determines that an application complies with local requirements. Local governments shall be allowed 45 days after an applicant mails notice to mail its reply to the executive director.

(3) Stockpiles of used or scrap tires or tire pieces at the processing location that are awaiting splitting, quartering, shredding, processing, or recycling shall be monitored for vector control and appropriate vector control measures shall be applied when needed, but in no event less than once every two weeks.

(4) If a scrap tire facility does not intend to provide its own fire fighting personnel or system, the facility shall make arrangements with public or private emergency response personnel that are capable of complying with applicable fire and

building codes. Prior to authorizing a scrap tire facility, the executive director shall consider any timely written notification by a local fire authority with jurisdiction over a proposed facility that is provided to the executive director that the proposed facility does not comply with local requirements relating to fire protection. Such notice shall include adequate documentation of the noncompliance at the proposed facility. The executive director shall determine whether any documentation of noncompliance submitted is adequate. The executive director shall disregard such notice if a court with jurisdiction over a local fire authority's decision determines that an application complies with local requirements. Local fire authority officials shall be allowed 45 days after an applicant mails notice to mail its reply to the executive director.

(5) The owner or operator of the scrap tire facility shall operate the vehicles and equipment to prevent nuisances or disturbances to adjacent landowners.

(6) A scrap tire facility operator shall submit to the executive director an annual summary of facility activities from January 1 through December 31 of each calendar year, showing the number and type of scrap tires received, amount by weight of tires shredded, processed, burned for energy recovery or recycled, and the amount by weight of tire pieces removed from the facility. If the tire pieces were delivered to an end user, the annual report shall include the name of the end user, type of end user and the date of delivery to the end user. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(7) The term "local government" as used in this section is defined in Texas Health and Safety Code, §361.003(17).

Adopted September 15, 2010

Effective October 7, 2010

§328.64. Requirements for a Scrap Tire Transportation Facility.

Any person storing tires for periods longer than 30 calendar days at transportation facilities such as marine terminals, rail yards or trucking facilities, shall register the facility with the executive director on a form provided by the executive director and comply with all applicable requirements in §328.55 of this title (relating to Registration Requirements).

Adopted August 11, 1999

Effective September 5, 1999

§328.65. Tire Monofill Permit Required.

(a) In accordance with §330.4(a) of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the underground disposal or placement of

tires or tire pieces into a tire monofill unless that activity is authorized by a permit from the commission. No person may begin physical construction of a tire monofill without first having submitted a permit application in accordance with §§330.50 - 330.65 of this title (relating to Permit Procedures) and received a permit from the commission.

(b) A separate permit is not required for the underground disposal or placement of tires or tire pieces into a tire monofill if the underground disposal or placement occurs within the permit boundary at a permitted municipal solid waste landfill site. Such disposal or placement shall be conducted only as authorized by the approved site development plan, or by a permit modification or amendment, as appropriate.

Adopted August 11, 1999

Effective September 5, 1999

§328.66. Land Reclamation Projects Using Tires (LRPUT).

(a) Any person or entity intending to initiate a Land Reclamation Projects Using Tires (LRPUT) shall notify the executive director in writing of the intent to fill land by means of a LRPUT. The application shall be submitted in triplicate either in writing or through an electronic reporting system as allowed by the executive director. Owners/operators of LRPUTs are required to provide information to the executive director as part of the notification document as described in this subsection. Approval in writing by the executive director (authorization to proceed) is required before the reclamation project may be initiated. The executive director may withhold authorization to proceed if the information submitted is not deemed to be complete. The executive director shall have 60 days to review the notification documents for completeness. The executive director may request additional information if the executive director determines that the notification submittal does not address all applicable requirements of this subchapter or any potential risks to public health or the environment. The following information shall be submitted in the notification document or attachments thereto.

(1) The owner/operator of the LRPUT shall disclose in the notification the location of the project on a state highway map, United States Geological Survey map or similar, and provide a legal description of the property. The general location on the site where fill activities will take place shall be shown on one or more of these maps;

(2) A property owner's affidavit shall be submitted at the time of notification of intent to initiate a LRPUT and shall include the following:

(A) legal description of the property on which the LRPUT will occur; and

(B) acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that a reclamation project utilizing tire pieces exists on the site, and providing details about the location of the filled area within the property boundaries, areal extent of the fill project, coordinates or survey data, and the approximate volume or weight of tires which were used as fill, at such time as the fill project has been completed;

(3) The approximate volume of tire pieces proposed to be placed below ground, or the equivalent number of whole tires, and the approximate size and depth of the depression or borrow area to be filled shall be disclosed in the notification document;

(4) The approximate period of time during which the project will be conducted shall be disclosed, with estimated start and finish dates;

(5) The method of placement and commingling of the tire shreds to achieve a mix of tire pieces with the inert fill material in a proportion no greater than 50% of tire material by volume.

(6) A demonstration of the seasonal high groundwater level in the area. The executive director may require that an additional demonstration be provided for the seasonal high groundwater level at the proposed site based on the demonstration provided for the area. If the executive director requires an additional demonstration of the seasonal high groundwater level at the proposed site, the applicant shall provide the requested information within the time frame specified by the executive director.

(7) A statement signed and sealed by a professional engineer licensed to practice in Texas shall be submitted in the notification to the executive director to certify that the LRPOT is designed in a manner that will comply with the following standards.

(A) The LRPOT shall not cause a discharge of solid waste or pollutants adjacent to or into the waters of the state, including ground water, that is in violation of the requirements of the Texas Water Code, §26.121;

(B) The LRPOT shall not adversely affect human health, public safety or the environment, either during fill operations or after the reclamation project is complete; and

(C) Tire or tire pieces shall not be placed below ground in a manner that constitutes disposal as defined in Texas Health and Safety Code §361.003(7);

(8) An affidavit signed by the property owner shall be submitted certifying that:

(A) the borrow area, hole or disturbed land area existed before the project; was excavated for another purpose; and was not excavated for the burial of tire pieces;

(B) the LRPOT will be completed in a manner that will comply with all regulations set forth in this subchapter and any other rules of the commission or any other local, state or federal agency which apply; and

(C) the local fire marshal has been notified of the tire placement or fill activity.

(9) An affidavit signed by the operator shall be submitted certifying that he or she is familiar with the application and all supporting data; is aware of all commitments represented in the notification; is familiar with all pertinent requirements in these regulations; and agrees to develop and operate the project in accordance with the application, applicable local and state regulations, and any special provisions that may be imposed by the executive director.

(10) The owner or operator shall mail a copy of the notification documents and attachments to the appropriate mayor and county judge if the proposed project is to be located within the corporate limits or extraterritorial jurisdiction of a city; or the appropriate county judge if the proposed project is to be located within an unincorporated area of a county; to the appropriate groundwater district; and to the appropriate regional council of government. Proof of mailing shall be provided in the form of return receipts for registered mail. Prior to authorizing a LRPOT, the executive director shall consider any timely written notice by a local government with jurisdiction over a proposed facility that is provided to the executive director that the proposed facility does not comply with local requirements related to managing scrap tires and protecting public health and the environment. Local governments' notice of noncompliance shall include adequate documentation of noncompliance at the proposed facility. The executive director shall determine whether any documentation of noncompliance submitted is adequate. The executive director shall disregard such notice if a court with jurisdiction over a local government's decision determines that an application complies with local requirements. Local governments shall be allowed 45 days after an applicant mails notice to mail its reply to the executive director.

(11) Upon the filing of the notification documents, the facility owner or operator shall provide notice to the general public by means of a notice by publication and a notice by mail. Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the LRPOT project. The notices shall specify that the notification documents have been provided to the county judge and that they

are available for review by interested parties. The applicant shall publish notice in the county in which the facility is located. The notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice by certified mail, return receipt requested, shall be sent to all adjacent landowners and all owners of property within 500 feet of the boundary of the project; the health authorities of the city and county in which the project will be located, if applicable; and the appropriate state senator and representative for the area encompassing the project.

(b) Undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of tires and debris or soil. Any borrow area, hole or other disturbed land area to be used for a LRPUT must have existed before the project, and it must have been excavated or soil removed for a purpose other than for the burial of tire pieces.

(c) The LRPUT shall not result in a public nuisance.

(d) An applicant for a LRPUT shall notify the local fire authority serving the area of the proposed tire placement or fill activity. If an owner or operator of a LRPUT does not intend to provide its own fire fighting personnel or system, the owner or operator shall make arrangements with public or private emergency response personnel that are capable of complying with applicable fire and building codes. Prior to authorizing a LRPUT, the executive director shall consider any timely written notification by a local fire authority with jurisdiction over a proposed facility that is provided to the executive director that the proposed facility does not comply with local requirements relating to fire protection. Such notice shall include adequate documentation of the noncompliance at the proposed facility. The executive director shall determine whether any documentation of noncompliance submitted is adequate. The executive director shall disregard such notice if a court with jurisdiction over a local fire authority's decision determines that an application complies with local requirements. Local fire authority officials shall be allowed 45 days after an applicant mails notice to mail its reply to the executive director. Applicants must provide proof that the mailed notice was received by the fire authority.

(e) All tires used to fill land shall be split, quartered, or shredded. Whole tires shall not be placed below ground.

(f) The owner and operator of the LRPUT shall comply with all applicable local ordinances, including any public safety, or zoning and land use laws.

(g) Shredded, split or quartered tires placed below ground shall be mixed in a proportion no greater than approximately 50% by volume with inert material acceptable for filling land. If greater than 50% of tire pieces by volume are placed below ground, the

site is considered a tire monofill and is subject to §328.65 of this title (relating to Tire Monofill Permit Required).

(h) Tire pieces shall be placed no closer than 18 inches to the final grade or ground surface. A soil cover unadulterated with tire pieces shall make up at least the upper 18 inches of the reclamation project.

(i) The owner or operator of the LRPOT shall register as a scrap tire facility if a shredding operation is conducted on site for processing tires.

(j) The owner or operator of the LRPOT shall register as a scrap tire storage site under §328.60 of this title (relating to Scrap Tire Storage Site Registration) if:

(1) operations requiring storage of more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers would qualify the site as a registered tire storage site under §328.60 of this title; and

(2) the construction of the LRPOT extends beyond 90 days from the date of delivery of tires or tire pieces to the site.

(k) The executive director shall issue an identifying number at the time the approval letter for the LRPOT is issued. This identifying number shall be referenced in any correspondence relating to a particular LRPOT for which such a number is issued.

(l) A person may provide the commission with written comments on any notification of a LRPOT project. The executive director shall review any written comments when they are received within 30 days of mailing the notice. The written information received will be utilized by the executive director in determining what action to take on the application for a LRPOT.

(m) Following completion of all fill activities for the LRPOT, the owner or operator shall submit to the executive director, for review and approval, a documented certification signed by a licensed professional engineer verifying that the project has been completed in accordance with this subchapter, the notification documents, and all attachments. Once approved, this certification shall be placed in the file.

(n) The term "local government" as used in this section is defined in Texas Health and Safety Code, §361.003(17).

§328.69. Public Notice of Intent to Operate.

(a) Scrap tire storage sites that are registered with the executive director shall publish notice in the county where they intend to store used or scrap tires or tire pieces before beginning operation. Notice shall be published in a newspaper of general circulation. Subject to executive director approval, a variance to the public notice requirement may be requested provided that similar notice has been published within the previous 12-month period and that the notice was associated with activities under the jurisdiction of this subchapter.

(b) Scrap tire facilities that are registered with the executive director and have submitted an application amendment to request a variance from the 8,000 square foot pile size shall publish notice of intent to increase the pile size in accordance with this section.

(c) The notice of intent published by the scrap tire storage site owner shall contain at a minimum the following information:

- (1) the facility registration number;
- (2) the name under which the facility registration number was issued;
- (3) the permanent street address and telephone number of the facility;
- (4) a brief statement explaining the utilization activities the facility intends to perform at the location;
- (5) where the tires intended for utilization or already utilized will be stored, if different from the actual facility site; and
- (6) the number of tire piles planned for the storage facility and the square footage of the largest pile planned.

(d) The public notice of intent to operate shall identify the Texas Commission on Environmental Quality as the state agency regulating this activity.

(e) The public notice of intent shall be published at least 30 days before beginning activities. The public notice of intent shall be published for a period of 10 days continuously. In counties where no daily newspaper is published, the notice shall be published at least once each week for three consecutive weeks.

§328.70. Motion to Overturn.

A person affected by a registration or Land Reclamation Projects Using Tires under this chapter may file a Motion to Overturn pursuant to §50.139 of this title (relating to Motion to Overturn Executive Director's Decision), notwithstanding §50.131 of this title (relating to Purpose and Applicability).

Adopted September 15, 2010

Effective October 7, 2010

§328.71. Closure Cost Estimate for Financial Assurance.

(a) As part of a facility's registration application, an owner or operator of a scrap tire storage site must prepare a written estimate, certified by a professional engineer, in current dollars, of the cost of hiring a third party to close the facility(ies). The closure cost for scrap tire storage sites is determined by the sum of paragraphs (1) and (2) of this subsection:

(1) The estimated cost for a third party to transport and dispose of the maximum site capacity of used or scrap tires and tire pieces as depicted by the site layout plan. The estimate shall include equipment and operator time for loading tires and disposal costs.

(2) The estimated cost for a third party to complete cleanup of the site of any and all debris, as well as dismantling any equipment used in the processing of whole tires into shreds or used to recycle whole tires or shredded tires into manufactured products, securing the site, and preventing access to the equipment or removing it from the site to a location acceptable to the executive director; or the amount of \$3,000, whichever is greater.

(b) The closure cost estimate must equal the cost of closing the facility based on the maximum number of whole tires stored at the facility, the maximum volume of tire pieces, and disabling any equipment as disclosed in the facility's registration application. The executive director shall evaluate and determine the amount for which evidence of financial assurance is required. The closure cost estimate provided by the owner or operator may be amended by the executive director. In some cases, the closure cost estimate may not be sufficient which means that the owner or operator remains responsible for the entire costs to close the site.

(c) Any amendment application shall include a recalculation of the closure cost estimate based on any requested volume increases. Facilities shall not increase the volume of whole tires or tire pieces generated from out of state and stored at the facility until the registration amendment has been approved by the executive director. Only

upon approval of the executive director will the amended registration closure cost estimate be the basis for determining the amount of financial assurance required.

(d) The quantities of scrap tires reported on the registration application form and used in the calculation of financial assurance shall be obtained from the site layout plan volumes by using the following conversion factors:

(1) a typical whole tire shall be considered to occupy four cubic feet unless an exact count of all whole tires is to be maintained by an operator and shall be considered to weigh 20 pounds; and

(2) a cubic yard of tire shreds or pieces shall be considered to weigh no more than 950 pounds; however, other verifiable data may be used if accepted and approved by the executive director.

(e) The calculated capacity of a site as calculated for closure may not be exceeded without the submission and approval of an amended registration application specifically including, but not limited to, new site layout plans to substantiate the revised capacity and new closure calculations based upon the depicted volumetric capacity converted to weights, posting of the revised financial assurance and written approval for the amended registration. The owner or operator is also responsible for submitting a registration amendment to revise the closure cost estimate whenever requested to do so by the executive director. Registration amendments with revised closure cost estimates shall be submitted to the executive director within 15 days of the executive director's written request to revise the closure cost estimate.

(f) The owner or operator must keep at the facility during the operating life of the facility a copy of the latest approved closure cost estimate and a copy of the current financial assurance mechanism.

(g) Financial assurance required under this section shall be provided in accordance with Chapter 37, Subchapter M of this title (relating to Financial Assurance Requirements for Scrap Tire Sites).

(h) Closure will begin when:

(1) the executive director deems the facility abandoned; or

(2) the registration expires, is terminated, or revoked or a new or renewal registration is denied; or

(3) closure is ordered by the Texas Commission on Environmental Quality or a United States District Court or other court of competent jurisdiction.

(i) Following a determination that the owner or operator has failed to perform closure in accordance with the registration requirements when required to do so or when closure begins under the circumstances outlined in subsection (h) of this section, the executive director may terminate or revoke the registration and draw on the financial assurance funds.

Adopted September 15, 2010

Effective October 7, 2010