

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §330.602, concerning Municipal Solid Waste Disposal Fees for Landfills and new §330.804, concerning The Use of Tire Shreds in Landfills. These proposed rules will replace similar rules adopted on an emergency basis by the commission on March 20, 1996, (21 TexReg 1303) as necessary to prevent imminent peril to the public health, safety or welfare. The commission has received numerous reports from state, city and county health officials that whole tires are piling up at generator locations. The concerns associated with this problem include 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. While significant regulatory requirements designed to protect human health, safety and the environment are imposed on tire shred storage sites, eliminating the piles through recycling is the best mechanism to protect public health and the environment. Although significant safeguards exist while a facility is operating within its authorized

limits, storage facility health and safety requirements are not designed to afford any protection once a facility exceeds its authorized capacity. The utilization of tire shreds in landfills will enable the continued collection of tires, because storage space will be made available with the movement of the existing shred piles. This will in turn reduce whole tire piles and the hazards these piles represent.

Under the amended section, owners and operators of municipal solid waste landfills who utilize tire shreds in their landfill design could 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 would 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. High transportation costs have made the use of tire shreds cost prohibitive for many landfill owners and operators. This fee reduction is designed to mitigate the cost differential between tire shreds and other more commonly used material. Utilizing tire shreds as part of the landfill design is an approved method for recycling tires. There are currently several landfills throughout the state which utilize tire shreds. With the reduction in the disposal fee, it is anticipated that 950,000 tons of tire shreds could be utilized and thus recycled in landfill drainage layers, protective covers or final covers. This reduction in the Municipal Solid Waste Disposal Fee will serve as an incentive to encourage the recycling of tire shreds stored in waste tire storage facilities throughout the state. 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.

While this rule would not result in a direct use of money from the disposal fee fund since it would be in the form of a reduction on the amount that would otherwise be paid by a landfill into the fund, the authorized uses set forth in §361.014 are consistent with what the solid waste disposal fee reduction rule would promote.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these sections as proposed are in effect there will be fiscal implications as a result of enforcement and administration of the sections. Fiscal implications are anticipated only for calendar year 1996. The effects on state government will be a minor increase in workload associated with the review and approval of proposals for use of tire shreds in landfills. These minor increases in workload are not anticipated to have significant cost implications for the agency and will be satisfied within existing budgeted resources. The implementation of the proposed provisions could also result in the reduction in revenues collected by the commission from fees on the disposal of municipal solid waste. Income to the municipal solid waste disposal fee fund could be reduced up to a maximum of approximately \$600,000 in calendar year 1996. Actual revenue reductions will depend on the extent to which eligible operators of solid waste disposal facilities utilize the opportunities for reducing disposal fees contained in this proposal and could be significantly less than the maximum amount anticipated. Any reduction in revenue within the limits anticipated will reduce the balances in the municipal solid waste disposal fee fund but will have no effect on funds appropriated to the commission or budgeted to commission programs or other agencies under contract to the commission. There are no cost increases or reductions in revenue anticipated for units of local government. Local governments operating municipal solid waste disposal facilities and utilizing these provisions may mitigate the higher costs of

using tire shreds in landfill design and may realize some cost savings as a result of the financial incentives proposed. While the net effects of fee reductions compared to cost differences in the use of tire shreds cannot be determined, it is not anticipated that the proposed rule will have significant fiscal implications for any affected landfill operator.

Mr. Minick has also determined that for each year of the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvement in the end use of waste tires, reductions in the number of processed waste tires in surface storage facilities, enhanced incentives for the collection, transportation and processing of waste tires being generated within the state and reductions in the risk to public health and safety posed by long term storage of processed tire shreds and tire piles, including the risks associated with fire and disease vectors. There are no economic costs anticipated for any person, including any small business, required to comply with the sections as proposed. The proposed rules contain no mandatory requirements and participation under these sections is an election at the discretion of eligible landfill operators. Implementation of these sections may have indirect benefits for waste tire processors, storage facilities, transporters, and generators by reducing the current stock of processed tires in storage and stimulating demand for continued collection and end use of waste tires.

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 now being proposed 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.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96123-330-WS. Comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Jennifer A. Sidnell, Manager, Automotive Waste Management Section, Municipal Solid Waste Division, at (512) 239-6679.

SUBCHAPTER P: FEES AND REPORTING

§330.602

The amendment is proposed 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.

The amendment implements the Health and Safety Code, §§361.013, 361.476 and 361.477.

§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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 12, 1996.

SUBCHAPTER R: MANAGEMENT OF WHOLE USED OR SCRAP TIRES

§330.804

The new section is proposed 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.

The new section implements the Health and Safety Code, §§361.013, 361.476 and 361.477.

§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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 12, 1996.