

The Texas Natural Resource Conservation Commission (commission) adopts new §330.860 concerning the Special Authorization Priority Enforcement List. The new section is adopted without changes to the proposed text as published in the September 24, 1996, issue of the *Texas Register* (21 TexReg 9135) and will not be republished. A similar rule was adopted on an emergency basis by the commission on June 26, 1996, and was published in the July 12, 1996, issue of the *Texas Register* (21 TexReg 6299) as necessary to prevent imminent peril to the public health, safety, or welfare. The emergency rule was originally scheduled to expire on October 24, 1996, but was extended on September 11, 1996, by the commission to expire on December 23, 1996, as published in the September 24, 1996, issue of the *Texas Register* (21 TexReg 9131).

Explanation of Adopted Rule

The commission has received numerous complaints from state, city, and county health officials regarding the problems associated with whole tires piling up at generator locations primarily in the West Texas area. The concerns include fire, the creation of breeding grounds for mosquitoes, snakes, and rodents, human health problems, as well as traffic safety due to tires piling up alongside roadways. Because generator locations are usually located in large population centers, the threat of fire is of particular concern since whole tire piles are easily ignited. An uncontrolled burning tire pile releases toxic chemicals into the air and may also result in contamination to groundwater.

Specifically, the new section establishes the Special Authorization Priority Enforcement List (SAPEL) which will consist of waste tires generated in specially-designated counties or regions which are not receiving adequate collection service and which, as set forth in the Texas Health & Safety Code,

§361.476, pose a threat to public health and safety, or the environment. Additionally, the rule establishes the framework for a contracting mechanism whereby the agency may contract with collection entities designated by the executive director for the collection and transportation of SAPEL tires.

Commenters

The comment period closed on October 24, 1996. The commission did not receive any comments concerning the new rule.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule 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 a framework that will allow the commission to prevent imminent peril to the public health, safety, and welfare by contracting with waste tire collection entities for the collection and transportation of scrap tires and tire pieces that are accumulating in certain West Texas counties and regions. The commission has received numerous complaints from state, city, and county health officials regarding the problems associated with whole tires piling up at generator locations. Tire shreds have piled up at storage sites and scrap tires are not being collected from generator locations, raising the threat of fires, 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. The rule will substantially advance this specific purpose by establishing procedures for designating scrap tires and tire pieces as SAPEL in counties or regions not receiving adequate tire collection and which pose a threat to human health, safety, and welfare. Under statutory authority, the commission may contract for collection of the tires.

Promulgation and enforcement of this rule will not affect, nor create a burden on, private real property because the rule pertains only to new procedures to facilitate the collection of accumulated scrap tires and tire pieces so as to eliminate the threat to public health, safety, and welfare, as well as the environment. The rule may be considered less stringent than the existing rules to the extent that the agency will be reducing the burden on the regulated community by supplementing its efforts in carrying out a currently-uneconomical task. Except for the exemptions which are specified in Senate Bill 14 and addressed above, there are no other identifiable exemptions that would apply to this rulemaking.

Statutory Authority

The new section is adopted under the authority of the Health & Safety Code §361.011 which charges the commission with the responsibility of managing solid waste, coordinating municipal solid waste activities, controlling all aspects of the management of municipal solid waste, and which grants the commission with the powers necessary or convenient to carry out those responsibilities; §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health & Safety Code; §5.229, Texas Water Code, which gives the executive director the authority to enter into contracts on behalf of the commission; and Health & Safety Code §§361.475, 361.476, 361.477 and 361.484 which give the commission the authority to adopt rules necessary to implement Subchapter P, Chapter 361, Health & Safety Code, relating to the Waste Tire Recycling Program.

SUBCHAPTER R : MANAGEMENT OF WHOLE USED OR SCRAP TIRES

§330.860

§330.860. Special Authorization Priority Enforcement List.

(a) Special Authorization Priority Enforcement List

(1) General. The Special Authorization Priority Enforcement List (SAPEL) consists of waste tires generated in specially designated counties or regions which are identified by the executive director as areas which are not receiving adequate collection service and which pose a threat to public health and safety or the environment.

(A) The executive director may designate collection entities as necessary to ensure continuous and adequate collection of SAPEL tires.

(B) The executive director may impose certain conditions on the SAPEL tire collection activities of designated collection entities as necessary to minimize disruption of activities at the generator locations and any other actions consistent with this subsection that are necessary to carry out the purposes of this section.

(C) Implementation of this section is not intended to impair or reduce existing generator collection in areas of the state containing SAPEL tires if adequate collection service is currently provided.

(D) The requirements of §330.878 of this title (relating to Special Authorization Tires) do not apply to SAPEL tires.

(2) Relationship to Priority Enforcement List (PEL). The SAPEL shall be a component of the PEL and the number of tires on sites listed on the SAPEL shall be included in determining whether the total number of tires at sites contained on the PEL exceeds 2.5 million. Unless otherwise provided by the executive director, the requirements in §§330.861- 330.870 of this title (relating to Priority Enforcement List; Potentially Responsible Party; Priority Enforcement List; Ranking of Illegal Waste Tire Sites; Assignment of PEL Sites; Pre PEL Clean-up Responsibilities; Site Clean-up Agreement; Approval to Collect and Process Tires from PEL Sites; Post PEL Clean-up Responsibilities; and Authority of Commission Personnel) do not apply to the SAPEL or SAPEL process.

(3) Generator responsibility. A generator desiring to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions. A generator shall make his site available for access by designated collection entities for SAPEL tire collection. Failure to comply may result in tires at that site being ineligible for listing on the SAPEL.

(b) SAPEL Contract.

(1) General.

(A) The executive director may contract with designated collection entities as necessary to ensure adequate collection of SAPEL tires.

(B) SAPEL tires and tire pieces are eligible for reimbursement as long as all applicable requirements relating to reimbursement and end use set forth in this subchapter are satisfied. Any available reimbursement shall be reduced by the amount of transportation costs paid on a tire under a contract issued under this section.

(2) As part of the SAPEL contract, a designated collection entity may be required to comply with the following:

(A) for entities currently providing scrap tire collection, proof that their participation in the SAPEL contract process shall not impair or reduce their existing generator collection routes;

(B) attempt to the maximum extent possible to deliver SAPEL tires to an end user;

(C) special manifesting and reporting requirements;

(D) provide proof of ability to ensure adequate collection service for sites containing SAPEL tires; and

(E) any other requirements as necessary which are consistent with this section, and which will facilitate cleanup of SAPEL tires and protect human health, safety and the environment.

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

Issued in Austin, Texas, on November 20, 1996.