

## **Exclusion of “Temporary Increases in Permitted Capacity for Products Derived from Waste Tires” as Part of the Proposed Waste Tire Storage/Permitting Rulemaking**

Draft document prepared for discussion at the Informal Tire Regulations Revisions Workshop scheduled for Tuesday, Feb. 15, 2011.

### Issue:

This document summarizes CalRecycle staff response to industry’s request to allow minor waste tire facilities to obtain temporary increases in permitted capacity for products derived from waste tires.

### Background:

1. CalRecycle staff analyzed industry’s request to allow waste tire facilities to obtain temporary increases in permitted capacity for products derived from waste tires. This request was made to facilitate development of sufficient product stockpiles in excess of permitted capacity on facility sites to accommodate large-scale tire diversion projects (e.g., tire-derived aggregate for roads) Refer to the white paper titled “Proposed Modifications of Existing Waste Tire Storage/Permitting Requirements Aimed at Incorporating New Fire Standards and Allowing for Temporary Increases in Permitted Capacity for Waste Tires and Products Derived from Waste Tires,” released to the public on July 12, 2010, for additional background on this issue. The major topics/queries that were analyzed by staff (e.g., the need for a new definition for products derived from waste tires, the operators’ need to demonstrate adequate financial assurance, how long should a minor waste tire facility be allowed to temporarily store the products, etc.) are described in this white paper.
2. Concurrently with consideration of temporary product storage increases, staff began informal review of proposed changes to existing CalRecycle tire regulations that will incorporate the State Fire Marshal’s fire standards, which became effective Jan. 1, 2011. CalRecycle’s intent is to develop consistent and enforceable state minimum standards, including fire prevention measures, for all waste tire sites subject to its regulatory oversight.
3. It was determined by CalRecycle’s Legal Office that current language in the statute effectively precludes staff from authorizing minor waste tire facilities to allow temporary increases in permitted capacity for products derived from waste tires in order to develop sufficient product for large-scale tire diversion projects; i.e, a regulatory waiver to temporarily increase site capacity cannot be granted if that increase would cause the statutory minor permit level of 4,999 PTE to be exceeded. It is staff’s contention that most proposals for temporary product storage increases by minor permit facilities would be adversely affected by this consideration. Please see additional discussion below.
4. Major waste tire facilities already have flexibility to store both waste tires and products derived from waste tires as long as they are safely stored on-site in accordance with the terms/conditions of their permits, new California Fire Code requirements and State Minimum Standards (SMS). The existing permitting approval process is designed to accommodate requests to increase permitted capacity on a temporary or permanent basis.

Therefore, any proposal for a separate process to temporarily increase storage capacity at major facilities is to a large extent redundant and potentially contravenes the existing permit approval process.

5. The Revised State Fire Code, which became effective Jan. 1, 2011 and established prescriptive storage standards for all new tires, used tires and products derived from waste tires, along with support and recognition for local land use and environmental approval authority in the permit process, effectively precludes CalRecycle from making the unilateral, permit adjustments that were envisioned by some in the regulated community.

The discussion below presents statutory provisions that prevent CalRecycle from authorizing minor waste tire facilities to temporarily store products derived from waste tires without obtaining a Major Waste Tire Facility Permit.

#### Discussion and Analysis:

State Minimum Standards for Solid Waste Handling and Disposal, including waste tires and products derived from waste tires storage requirements, must be consistent with the Public Resources Code (PRC). PRC §42823 specifies that, except for cement manufacturing plants, no person will "...establish a new major waste tire facility or expand an existing minor waste tire facility unless the person has obtained a major waste tire facility permit issued by..." CalRecycle. PRC section 40170 defines "person" as "an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever." Therefore, the revision or development of permit regulations or SMS applicable to temporary capacity expansion authorization for product storage at minor waste tire facilities which would cause the minor permitted capacity of 4,999 to be exceeded, are prohibited within existing waste tire statute. This limitation effectively constrains the applicability and usefulness of any proposed temporary storage increase regulation for most of the permitted waste tire facility community. For those in the regulated community that are already major permitted facilities, there is judged to be sufficient flexibility in the existing permitting regulations to accommodate these requests. Furthermore, obtaining and incorporating in an expedited fashion the applicable rulings and determinations by local land use authority and fire agencies (as is required under current waste tire law) would have been difficult under any plausible temporary product storage regulation criteria.

#### Summary and Conclusion:

Development of regulations to accommodate temporary product storage increases at permitted waste tire facilities cannot be practically implemented given existing waste tire law, State Fire Code provisions, and due consideration of the approval authority of local authorities and environmental review agencies. Revision of state waste tire regulations will occur to reflect and incorporate by reference as applicable State Fire Code revisions relevant to waste tire storage.