

## IDEAS ON MODIFICATIONS TO THE WASTE TIRE ENFORCEMENT PROCESS FOR STAKEHOLDER DISCUSSION AND INPUT

The ideas are organized by degree of control/length of time required to implement. Business practices are listed first, followed by statutory options. The list of statutory options is intended for discussion purposes only. The order the ideas are listed is not necessarily the priority order for the most effective changes/set of changes.

In addition to the ideas listed below, CalRecycle is undertaking a regulations revisions process for tire storage, permitting, tire hauler registration and tire manifesting regulations that is expected to start in late March or April, 2012. The informal rulemaking process documents can be found at the two links below:

<http://www.calrecycle.ca.gov/Laws/Rulemaking/TireEnforce/default.htm>

<http://www.calrecycle.ca.gov/Laws/Rulemaking/TireStorage/default.htm>

### BUSINESS PRACTICES

1. Currently CalRecycle will reject **incomplete** waste tire storage permit applications within 30 days of receipt after working with applicants in an effort to complete the application.

Change in Business Practice: Reject the applications if any elements are missing, including but not limited to local, state and federal permits and approvals within 2 weeks of receipt and do not provide assistance to complete applications once submitted.

Issues:

- May be increased workload for facility operators if they don't submit a complete application the first time.
  - May delay obtaining a permit if the time clock starts over after rejection of an application for missing elements.
  - Increased staff workload to review permit multiple times.
2. Currently some sites request different enforcement treatment for a variety of reasons, related to misunderstandings of the requirements, the need to operate to stay in business, etc. These requests are considered when determining the specific enforcement approach for a noncompliant site.

Change in Business Practice: All sites found in violation will be treated the same, no exceptions for misunderstandings, extenuating circumstances, impact to flow of tires, etc.

Issues:

- If issues arise from abandonment of sites, corrective actions may include clean up. If clean-up costs are not recovered from the operator or property owner, CalRecycle can place a lien on the real property of the responsible party

- May be extenuating circumstances where a distinction is needed, for example port shut downs, natural disasters, etc.
- Statute allows for the placement of a lien on the real property of a responsible party following a clean-up and is current practice.

3. Currently the legal office has working relationships with some District Attorneys (DAs). Legal staff does not typically involve DAs early in CalRecycle's enforcement process

Change in Business Practice: Legal office to establish ongoing relationships with DA's and inform DAs earlier in the enforcement process against a facility or hauler.

Issues:

- Could allow for quicker action by local DAs, if the DA hears of a case as it is building.
- Will require additional legal staff time to develop early consultation with other government attorneys that may prosecute tire related cases CalRecycle refers to them.

4. Currently TEA inspectors provide an initial 30 days to correct violations and CalRecycle receives enforcement referrals from TEAs after a second violation is noted starting the Cleanup and Abatement Order (CAO) process.

Change in Business Practice: Shorten the time between violation determinations and when a CAO issued. CalRecycle staff and TEAs will provide 15 days to correct a notice of violation (NOV) for tire count. TEAs will be asked to refer the enforcement case to CalRecycle after the first NOV.

Issues:

- This will cut the time to commence enforcement by at least 30 days.
- CalRecycle staff will need to review and finalize criteria based upon which TEA's will determine whether or not time should be shortened for a specific facility.
- May need more tire attorneys to handle increased number of enforcement actions.
- May require revision to regulations to fully implement.

5. The compliance period included in CAOs has been a standard 30 days prior to 2012.

Change in Business Practice: CAOs will continue to have a standard 15-day compliance period, with consideration of a 30 day compliance period under certain circumstances.

Issues:

- CalRecycle staff will need to review and finalize criteria upon which would distinguish between a 15-day time period and a 30-day time period

- May need to be included in revised regulations.

6. Currently CalRecycle does not prepare press releases on tire related enforcement actions.

Change in Business Practice: Re-instate practice of press releases on settlements or Office of Administrative Hearing (OAH) decisions on administrative complaints (AC). Send such releases to local media.

Issues:

- Publicizes enforcement activities.
- More work for OPA staff.

7. Currently CalRecycle does not include enforcement settlements on public meeting agendas only on its enforcement website.

<http://www.calrecycle.ca.gov/Enforcement/Orders/>

Change in Business Practice: Include settlements or OAH decisions on ACs as informational agenda items on public meeting agendas.

Issues:

- Publicizes enforcement settlements. Not new information as they are already posted on the web per Government Code Section 6253.8.

8. Currently CalRecycle does not post tire CAOs or ACs on its web site.

Change in Business Practice: Post CAOs or ACs issued by CalRecycle on the web site.

Issues:

- Early publicity about enforcement actions.
- Might result in more work for staff if stakeholders want their CAOs removed from the website once they have complied.
- Given the length of time required for OAH hearings, CalRecycle could receive complaints that it is difficult to determine whether a matter has been resolved.

9. Currently tire hauler registration does not include questions on tire hauler requirements as part of the process.

Change in Business Practice: The registration process would include a series of questions designed to determine the level of understanding of the tire hauler requirements. Responses to the questions would be voluntary. If benefits are noted, then answering questions correctly could be made mandatory through revision to the regulations.

Issues:

- Addresses recent increase in tire haulers and the number that claim they were unaware of requirements.
- An additional increase in the number of haulers is expected if tire export continues.
- Increases workload for tire hauler registration.

10. Until early 2012 CAOs only ordered a business to reduce tire count, but did not prohibit them from taking additional waste tires if they stayed below the tire count at any given time.

Change in Business Practice: Add a provision to CAOs that haulers cannot deliver tires to a facility that is on a CAO if the facility has either not reduced its tire count to required levels, or the load delivered by the hauler would put the facility over the required levels.

Issues:

- Haulers are currently profiting from hauling to sites under a CAO and there are few appropriate types of violations/penalties that can be applied quickly.
- Will apply to all types of tire businesses that receive a CAO with the new specific provisions.
- Would be monitored through reviews and audits of CTLs to confirm
- Staff may not become aware of violation until all CTLs are submitted 90 days later.
- May require revision to regulations to fully implement.

11. Currently stipulated settlement agreements for ACs do not allow for more frequent inspections during the monitoring period with the ability to charge for additional inspections.

Change in Business practice: If a facility is issued an AC for tire count, CalRecycle will request that the facility be inspected more frequently during the monitoring period and the operator will be charged for the additional inspections as a condition of any settlement.

Issues:

- Unpermitted facilities are currently with few consequences.
- Haulers often continue hauling to illegal sites even when they are on CAOs or there is an Administrative Complaint in process.
- Would increase the number of inspections greatly and increase staff work accordingly.

12. Currently streamlined hauler penalties are limited to non-controversial cases that involve less than 2,000 waste tires, and have proposed penalties less than \$5,000.

Change in Business Practice: Modify the streamlined penalty process to include sites with more than 2,000 waste tires and with penalty amounts higher than \$5,000.

Issues:

- Streamlined penalties can be administered much more rapidly than going through an Administrative Complaint Process. This would allow enforcement actions against larger tire hauler cases more rapidly than currently allowed.

13. In the past CalRecycle had contracts with CHP and ARB to assist in enforcement activities. Currently there are no contracts due to various restrictions because of budget shortfalls

Change: Continue to work with the California Highway Patrol (CHP) and Air Resources Board (ARB) to establish contracts and discuss the potential for contracting with Department of Justice (DOJ) for enforcement assistance.

Issues:

- Time and expense to get the contracts in place and to manage.

## **STATUTORY OPTIONS**

**(This list of statutory options is intended for discussion purposes only)**

14. Statute allows 499 waste tires, or 1500 tires if a used tire dealer, to be on site without a permit, more than these levels requires a permit. Currently statute allows CalRecycle to **deny a permit** and an operator cannot resubmit an application for up to 3 years. Denial allows for a formal OAH hearing process and OAH hearings are now scheduled about 6 months after requested.

Change: If more than 499 tires are found to be on site, or 1500 tires if a used tire dealer, at the time an application is submitted, the **application will be rejected** and the applicant will not be able to resubmit an application for 1 year after the rejection date. This would allow CalRecycle to reject an application without having to go through a formal OAH hearing process.

Issues:

- Permit denial requires an OAH hearing and increases staff and legal workload to prepare for and participate in a Hearing.
- Hearings are now scheduled about 6 months after requested.
- Rejection of a permit may have a similar hearing requirement unless the hearing requirements in statute are also changed (see 12 below).

15. Currently when CalRecycle suspends, revokes or denies a permit or hauler registration, the Respondent has a right to a hearing in front of an administrative law judge (ALJ) at an OAH.

Change: Replace the Government Code Office of Administrative Hearing requirements when suspending, revoking or denying a permit or hauler registration with an internal CalRecycle informal hearing process. If a Respondent were displeased with CalRecycle's decision, the Respondent would need to file a writ to be heard in Superior Court.

Issues:

- An informal hearing process would allow CalRecycle to schedule and move more quickly on permit related enforcement issues.
- The Respondent's only course of action after the informal hearing would be to file a writ to be heard in Superior Court. The Attorney General's (AG) office would represent the Department in Superior Court. The writ and subsequent hearing process can be lengthy.

16. Currently statute requires noncompliance with the CAO before CalRecycle can request the AG issue an injunction.

Change: Eliminate the requirement of noncompliance with CAO before requesting the AG issue an injunction.

Issues:

- Would speed up enforcement.
- CalRecycle would still need to provide due process or could be subject to legal action.

17. Currently statute does not set forth specific requirements that can be included in CAOs, so CalRecycle only requires limits consistent with the statues for when a permit is required (499 waste tires, or 1500 for used tire dealers).

Change: If CalRecycle issues a CAO, the facility would be required to reduce the number of tires on site to zero.

Issues:

- Our current enforcement authority starts at 500 tires on site. It is extremely difficult to enforce the 499 or less tires requirement. This has allowed many operators to process and bale large numbers of tires even when on a CAO.
- Would also impact ability of other types of tire businesses to conduct business while on a CAO.
- This change, limited to when a CAO is in place, would make enforcement much easier.

18. Currently statute authorizes misdemeanor criminal penalties for waste tire facilities and no criminal penalties for tire haulers.

Change: Allow the DA's Office to file either misdemeanor or felony counts for violations at major and minor tire facilities and misdemeanors for tire haulers and hauling to unauthorized locations.

Issues:

- By allowing either felonies or misdemeanors, more Law Enforcement Agencies will want to investigate these types of crimes.
- Hazardous waste laws have this type of language.
- Proposal rejected several times before due to industry opposition.

19. Currently statute requires submittal of CTLs quarterly and allows for, but does not require electronic submittals.

Change: Mandatory statewide electronic Comprehensive Trip Log (CTL) submittals within 30 days.

Issues:

- Would impact medium and small businesses more than larger businesses that already use electronic filing.
- Able to compile data and act more quickly than current requirement to submit CTL's within 90 days.

20. Currently statute does not set forth parameters to be included in CAOs. Currently CAOs do not contain more frequent inspections and a charge to the facility operator for the additional inspections.

Change: If a facility is issued a CAO by CalRecycle or penalties by and ALJ for tire count, a condition of the CAO or a finding by an ALJ after a hearing, will be that the facility be re-inspected more frequently during a monitoring period and the operator will be charged for the additional inspections.

Issues:

- Unpermitted facilities are currently profiting from operating illegal sites and there are few consequences.
- Haulers often continue hauling to illegal sites even when they are on CAOs or there is an Administrative Complaint in process.
- Would increase the number of inspections greatly and increase staff work accordingly.

21. Statute gives CalRecycle authority to regulate every person who engages in the transportation of used or waste tires. However, to obtain a waste and used tire hauler registration an applicant must list vehicles used and refers to hauler operations. This makes it difficult to regulate persons involved in the movement of tires throughout the state who are not specifically tire haulers.

Change: Require tire brokers to obtain a registration, as they arrange to transport tires in or through the state.

Issues:

- Helps to “close the loop” on information on where tires are going.
- May pull in businesses from other states that are moving tires through California to ports.

22. Currently statute requires financial assurances only for major waste tire facilities and bonds for tire haulers.

Change: Require financial assurances/bonds for all businesses with more than 500 passenger tire equivalents. Evaluate level of bonds for tire haulers.

Issues:

- Bonds/financial assurances have been an effective way of collecting from out-of-compliance haulers and major tire facilities for cleanup of sites and penalties.
- Expanding financial assurance/bonds would provide CalRecycle an additional enforcement mechanism.