REQUEST FOR APPROVAL

To:	Caroll Mortensen Director
From:	Mark de Bie Deputy Director, Waste Permitting, Compliance, and Mitigation Division
Request Date:	July 2, 2014
Decision Subject:	Adoption of Proposed Revisions to the Waste Tire Storage, Permit, and Penalty Criteria Regulations
Action By:	July 15, 2014

Summary of Request:
Staff requests adoption of the proposed revisions to the Waste Tire Storage, Permit, and Penalty Criteria Regulations. The proposed revisions are needed to further clarify the existing regulations in a manner consistent with Public Resources Code (PRC) Sections 42800 - 42867 and 42950 - 42967, and to incorporate the applicable updates to the California Fire Code (CFC) that were published in 2010 and 2013. The proposed revisions clarifies portions of the regulations to allow for more effective and efficient implementation and enforcement of the regulations.

The following sections of California Code of Regulations, Title 14, Division 7 are effected:

- Chapter 3—
  - Article 4.1 (sections 17225.717, 17225.821, 17225.822, and 17225.850),
  - Article 5.4 (section 17346),
  - Article 5.5 (sections 17350, 17351, 17352, 17353, 17354, 17355, 17356, 17357, 17358, and 17359), and,
- Chapter 6—
  - Article 1 (sections 18420 and 18420.1),
  - Article 2 (sections 18423 and 18424),
  - Article 3 (sections 18425, 18426, 18427, and 18428),
  - Article 3.5 (section 18429),
  - Article 4 (sections 18431, 18431.1, 18431.2, 18431.3, 18432, and 18433), and,
  - Article 8.5 (sections 18450, 18456.4, 18459, 18460.1.1, 18460.2, 18461, and 18462).

Adoption of the proposed revised regulations is exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines [14 CCR section 15061(b)(3)], as it can be determined with certainty that no potential significant effect will result from such regulations. The regulations include minor administrative or clarifying changes, are procedural in nature and not substantive, and do not trigger or mandate any physical action by the regulated community or others. Staff filed a Notice of Exemption with the State Clearinghouse for the proposed regulation revisions on June 10, 2014.

Recommendation:
Staff recommends adoption of the proposed revisions to Waste Tire Storage, Permit, and Penalty Criteria Regulations and that the package be forwarded to the Office of Administrative Law (OAL) for approval and publishing.

Action:
On the basis of the information, analysis, and findings in this Request for Approval, I hereby adopt the proposed revisions to the Waste Tire Storage, Permit, and Penalty Criteria Regulations and direct staff to forward the regulatory package to the Office of Administrative Law (OAL) for approval and publishing.

Dated: 7/15/2014

Caroll Mortensen
Director

Attachments:
1. Proposed Revisions to the Waste Tire Storage, Permit, and Penalty Criteria Regulations
2. Summary of Staff's Response to Comments Raised During the Public Comment Periods
3. Notice of Exemption

Background Information:

Public Resources Code (PRC) (commencing with Section 42800, Article 1, Chapter 16, Part 3, Division 30) and related regulations authorize the Department to regulate the hauling, storage and disposal of waste tires. Specifically, PRC section 42820 requires the department to adopt regulations which reference fire prevention regulations adopted by the State Marshal.

Waste tire storage and disposal requirements and waste tire hauler registration and manifest requirements are necessary to protect the public health, safety and the environment from the results of improper waste tire management practices.

Pursuant to the PRC, CIWMB adopted its first permitting and storage regulations for waste tire facilities in 1993. These regulations incorporated applicable fire safety requirements from two sources:

- Title 24, California Code of Regulations (24 CCR) - California Building Standards Code. Part 9 of Title 24 is the California Fire Code (CFC), and
- *The Standard for Storage of Rubber Tires*, National Fire Protection Association (NFPA), publication 231D, 1989.

The California Fire Code (CFC) was significantly revised in 2010 and became effective on January 1, 2011. This major change in the CFC is one of the primary reasons the Department needed to revise the Waste Tire Storage, Permit, and Penalty Criteria Regulations. During the formal rulemaking process, the CFC was revised again and published in 2013, becoming effective on January 1, 2014. Accordingly, the Department modified the proposed revised regulations to incorporate the most current applicable CFC standards. Department fire prevention standards are included in 14 CCR section 17350 et seq. and are commonly referred to as State Minimum Standards (SMS). The SMS specify requirements for the storage and handling of waste tires at any waste tire facility and are necessary to protect public health, safety, and the environment.

The proposed revised Waste Tire Storage, Permit, and Penalty Criteria Regulations include the following changes:

- Incorporates the applicable 2013 California Fire Code standards.
- Simplifies the waste tire facility permit reapplication procedure.
- Requires additional information and clarifies the requirements to apply for an exemption from obtaining a waste tire facility permit for a cement kiln (PRC section 42823.5) and for the use of waste tires in beneficial reuse projects (current 14 CCR section 17346 and proposed 14 CCR section 18431.3).
- Establishes a notification requirement for excluded waste tire facilities.
- Establishes record keeping requirements for persons handling waste tires.
- Specifies requirements for a waste tire collection location.
- Specifies manifesting requirements for delivery of waste tires to a port terminal.
- Clarifies the statutory definition of tire-derived product.
- Expands and clarifies the waste tire facility penalty schedule.
- Removes the requirement that a "Cleanup and Abatement Order" be issued and not complied with before being able to issue a waste tire facility penalty.
- Adds, deletes, and amends definitions, replaces "Board" with "Department," and corrects spelling, punctuation, grammatical, and typographical errors.

Rulemaking Timeline and Process:

In mid-2010, the Department initiated two separate rulemakings:

- Waste Tire Facility Enforcement Regulations—to eliminate the requirement to issue a Cleanup and Abatement Order prior to seeking penalties pursuant to 14 CCR section 18429, thus allowing the Department a more expeditious manner of addressing chronic and or critical situations through penalties, and
- Waste Tire Storage, Disposal, and Permitting Regulations—to incorporate current CFC standards into the waste tire storage and disposal requirements.

From May 2010 through July 2011, the Department conducted six, 30-day informal public comment periods, including public workshops, for both of the proposed rulemakings as described on the following web pages:

- www.calrecycle.ca.gov/Laws/Rulemaking/Archive/2011/TireEnforce/default.htm
- www.calrecycle.ca.gov/Laws/Rulemaking/Archive/2011/TireStorage/default.htm

To more efficiently use Department's resources, and because these two rulemakings were closely related, the Department combined these two informal rulemakings into a single regulations change package in the fall of 2011. In developing the proposed regulations, the Department considered:

- Oral and written comments from industry, government and environmental group representatives, and the public at four informal workshops, and
- Telephone and e-mail contacts with State Fire Marshall and local fire authorities.

From December 2011 through April 2012, the Department conducted the Economic and Fiscal Impact Study. During this period, the Department conducted three surveys to estimate the economic impact of the proposed regulations on waste tire facilities. In July 2013 the Department conducted an additional survey to determine potential impacts to governmental facilities. The Economic and Fiscal Impact Study can be found at

- www.calrecycle.ca.gov/Laws/Rulemaking/WasteTires/default.htm.

Staff received approval of the Economic and Fiscal Impact Study from the California Environmental Protection Agency on July 24, 2013 and the California Department of Finance on August 5, 2013. The complete rulemaking package was submitted and approved by OAL which commenced the formal rulemaking process on August 23, 2013. Staff distributed the Notice of proposed rulemaking by sending direct mail notices to more than 20,000 waste tire industry recipients and electronically mailing notices using CalRecycle's stakeholder e-mail distribution lists and listservs.

A 45-day public comment period for the proposed revisions to the Waste Tire Storage, Permit, and Penalty Criteria Regulations was conducted from August 23 through October 15, 2013 and the public hearing was held on October 16, 2013. The purpose and scope of the proposed revised regulations noticed for a 45-day comment period are the result of input received during the informal public comment periods described above. Based on stakeholder requests and due to the length of time between the informal public comment periods in 2010 and 2011 and the first formal public comment period in 2013, CalRecycle conducted two informational workshops on

November 19 and 20, 2013. The purpose of the workshops was to answer stakeholder questions about the proposed regulations. Stakeholders were directed to submit any formal comments they might have during the next formal comment period that began a month later.

Based on stakeholder comments during the first 45-day comment period and internal review, staff made additional revisions to the proposed revised regulations. CalRecycle subsequently conducted a 30-day public comment period from December 20, 2013 through January 20, 2014. Based on stakeholder comments during the 30-day comment period and staff input, staff made additional revisions to the proposed revised regulations. CalRecycle subsequently conducted a 15-day public comment period from April 3 through April 18, 2014, and then a second 15-day public comment period from April 28, 2014 through May 12, 2014.

After approval of the proposed revised regulations by the Director, staff will finalize the regulatory package and deliver it to OAL by August 22, 2014 for approval and publishing.

Analysis of Public Input:

In general, the changes incorporated into the proposed revised regulations were minor and noncontroversial. Staff has reviewed all stakeholder comments and revised the proposed text to incorporate stakeholder input as appropriate. Many of the comments were due to misinterpretation of the regulation's existing and proposed text. Staff made numerous clarifying changes to the proposed revised regulations in an effort to reduce misinterpretations in the future. Below is a listing of some of the more substantive changes made to the proposed revised regulations during the comment periods. Attachment 2 is a summary of all public comments and staff's responses.

1) Several of the 45-day comments were in regards to how the proposed revised regulations would potentially impact the permitting and operation of solid waste facilities (SWF). The proposed revised regulations do not require new permitting requirements for permitted solid waste disposal facilities nor solid waste transfer stations. Additionally, all solid waste facilities storing more than 500 waste tires have always been required to meet State Minimum Standards for storage of waste tires, and these standards have only been changed in the proposed revised regulations to reflect changes made to the CFC in 2010 and 2013. The proposed revised regulations further clarify these requirements, including the statutory requirement that if a solid waste transfer station accepts more than 150 waste tires per day averaged over a year (now defined as 365 days) and is storing more than 500 waste tires, it is required to obtain a waste tire facility permit. However, solid waste *operations* will have additional reporting requirements under the revised proposed regulations.

2) The proposed revised regulations that were published for review during the initial 45-day comment period required that all facility types listed in 14 CCR sections 18420(a) or 18420.1 shall notify the Department of their exclusion status per proposed section 18431.2. Commenters asserted that two categories of facilities listed in section 18420(a) should not be required to notify the Department, stating that:

    a. The inclusion of Section 18420(a)(1) was redundant for solid waste *facilities* and *operations* since the Department concurs on SWF permits.

In response, staff removed 18420(a)(1) from the list of facility types in proposed section 18431.2 to clarify that permitted solid waste facilities do not need to notify the Department,; and

b. Facilities that store less than 500 waste tires are not considered "excluded" facilities by statute or regulations and should not be required to notify the Department.

   In response, staff removed 18420(a)(3) from the list of facility types in proposed section 18431.2. Furthermore, staff provided minor clarifying language that a facility storing less than 500 waste tires is not required to obtain a waste tire facility permit.

c. Furthermore, staff provided additional minor clarifying language, including that a permitted solid waste disposal facility or a solid waste transfer station storing 500 or more waste tires are required to describe their waste tire storage activities in their operating documents and that all waste tires must be stored within the permitted facility boundary

3) During the 45-day comment period, staff found that the waste tire facility permit application forms reflecting the new SMS requirements had not been included as part of the initial package that was published. In the next public comment period, staff included the revised application forms along with clarifying language regarding the completion of the forms.

4) During the 30-day comment period staff received a written comment that the CFC was revised and chapter numbers had changed. This caused the staff to reevaluate the manner in which the CFC requirements were referred to in the proposed text. Staff made revisions to the text to incorporate by reference the relevant sections of the 2013 CFC. Also, based on comments received, the proposed text includes language that specifically states some of the standards set forth in the 2013 CFC for ease of use by the regulated community and authorized representatives of the Department.

   Additionally, communications between staff and the Office of Administrative Law during this rulemaking process indicated that by incorporating the CFC by reference and by also stating specific fire code requirements in the proposed text, the Department will be able to make future changes to these regulations as the CFC changes in the future through a Section 100 rulemaking change process. Additionally, the State Fire Marshall was consulted throughout the rulemaking process.

5) During the comment periods several comments were received regarding specific requirements of the California Fire Code. Staff were unable to respond to these comments because the Office of the State Fire Marshal is responsible for the CFC and statute requires that the Department promulgate and enforce waste tire regulations that contain fire prevention measures as adopted by the State Fire Marshall.

6) Lastly, some format and grammatical errors were found during the review process which resulted in some section renumbering and minor rewording.

The attached detailed table lists all comments received during all comments periods and staff's responses.

California Environmental Quality Act (CEQA)

The adoption of the proposed regulations is exempt from CEQA pursuant to CEQA Guidelines pursuant to 14 CCR section 15061(b)(3), as it can be determined with certainty that no potential significant effect will result from such regulations. The regulations are procedural in nature and not substantive, and do not trigger or mandate any physical action by the regulated community or others. Underlying statute already requires an exempt, excluded, or permitted waste tire facility to comply with specific Department requirements and CFC standards.

Economic and Financial Impact Analysis

Staff conducted an economic impact assessment, pursuant to Government Code section 11346.3(b). Based on the telephone surveys of various types of industry representatives, the proposed revised regulations will not:

- Create or eliminate jobs within the State of California.
- Create new businesses or eliminate existing businesses within the State of California.
- Impact the ability of California businesses to compete with businesses in other states to produce goods or services.

The proposed regulations revisions are to provide clarity to the regulated community which results a more equitable waste tire business competition within California.

Findings:

All comments received throughout the rulemaking process have been given complete and careful consideration.

No reasonable alternative considered or brought to the Department's attention will be as effective in carrying out the statutory requirements of the California waste tire program, or would be as effective and less burdensome to affected stakeholders, than the proposed action.

The adoption of the regulations are exempt for the requirement of the California Environmental Quality Act and a Notice of Exemption will be filed with the State Clearinghouse.

Recommendation:

Staff recommends adoption of the proposed revised regulations and that the package be forwarded to the Office of Administrative Law (OAL) for approval and publishing.