



**SOLID WASTE
MANAGEMENT
DIVISION**

November 2004

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RESPONSE TO COMMENTS SUMMARY

***ARKANSAS POLLUTION CONTROL AND
ECOLOGY COMMISSION***

REGULATION NO. 14

Prepared For The Arkansas Pollution Control and Ecology
Commission's Pending Rulemaking



November 2004

Mailing List – Response to Comments Summary

Public Hearing at Springdale, October 4, 2004:

No formal comments made.

Public Hearing at Little Rock, October 6, 2004:

Northstar Engineering Consultants, Inc.

Attn: Shawki Al-Madhoun, P.E.

211 South Main Street

Bentonville, Arkansas 72712

Eaton-Moery Environmental Services, Inc.

Attn: Byron Neal

206 E. Merriman

Wynne, AR 72396

Eaton-Moery Environmental Services, Inc.

Attn: Glen Eaton

206 E. Merriman

Wynne, AR 72396

Written Comments Received, October 20, 2004:

Northstar Engineering Consultants, Inc.

Attn: Shawki Al-Madhoun, P.E.

211 South Main Street

Bentonville, Arkansas 72712

Randall Mathis

Fax: 870-246-3249

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RESPONSE TO COMMENTS SUMMARY

COMMENT ID:	EMS-1	CHANGED	UNCHANGED	X
Comment : <p>The proposed changes in Regulation 14.404(A) deal with Import Fees on waste tires legally imported into the state for legal disposal or processing. This was originally implemented in an effort to control illegal and unpermitted disposal of waste tires in the state of Arkansas from out of state areas. This was part of a larger push to keep out of state solid waste out of Arkansas. The intent of this regulation was not to discourage legitimate Arkansas waste tire haulers, processors, and disposal facilities from engaging in legal, environmentally acceptable, interstate commerce.</p>				
Response: <p>Based upon the law, this is not a new requirement, but a requirement that has been in place since 1993. A.C.A. § 8-9-404 (f)(1) clearly mandates assessment of a \$1.00 import fee on all waste automobile and truck tires that are imported into Arkansas. Therefore, the proposed text must remain in the draft regulation.</p>				
Notes: For additional information, see also Acts 529 and 1254 of 1993 and Arkansas Pollution Control and Ecology Commission Docket No. 04-001-MISC, Order No. 3, In the Matter of Ash Grove Cement Company.				

COMMENT ID:	EMS-2	CHANGED	UNCHANGED	X
Comment : <p>It is obvious that the new Regulation 14 is an effort to incorporate Act 529 of 1993 that states “Subject to authorization by the Pollution Control and Ecology Commission this fee shall not apply if the waste tires are being imported to a permitted waste tire processing facility.” This is going to require a formal hearing as opposed to an administrative paperwork request to get this authorization to import tires.</p>				
Response: <p>The SWMD agrees that the Department is attempting to incorporate enacted legislation into regulation, including Act 529 of 1993. The SWMD further agrees that a waiver of the import fee requires Pollution Control and Ecology Commission approval. This is not a new requirement, but a requirement that has been in place since 1993. Act 529 clearly mandates this requirement. Therefore, the proposed text must remain in the draft regulation.</p>				
Notes: It should be noted that Commission authorization is not required to import tires. Act 529 did not ban out-of-state waste tires from entering Arkansas.				

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Comment ID:	EMS-3	CHANGED	UNCHANGED	X
Comment : All of the major waste tire processors in our area are regional in scale and do business in many states. There is no arbitrary fee imposed upon them by their home states. The home states of our competitors know that there is no reason to penalize a company based in their state that performs safe and legal processing or disposal of waste tires, especially when there is no burden placed on state government by this business. The equipment for waste tire disposal or processing is expensive, and this drives the waste tire business to be a regional, or multi-state business, to achieve appropriate economies of scale.				
Response: The SWMD agrees that waste tire processing equipment is expensive, and many facilities operate as regional or multi-state businesses to achieve economies of scale. The SWMD further acknowledges that many states do not impose an import fee on waste tires that are imported. However, A.C.A. § 8-9-404 (f)(1) clearly mandates assessment of a \$1.00 import fee on all waste automobile and truck tires that are imported into Arkansas. Therefore, the proposed text must remain in the draft regulation.				
Notes: If the Commission determines that legislation is needed to address this issue, the Department would be open to working with the General Assembly on proposed legislation during the upcoming session.				

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COMMENT ID:	EMS-4	CHANGED	UNCHANGED	X
<p>Comment :</p> <p>ADEQ has changed the language from “landfilling site” in Regulation 14.1304 to “disposal facilities.” This seems like a minor change, until it is realized that a “disposal facility” is not the same as a “landfilling site” where materials can be recovered in the future. ADEQ cannot predict that in the future waste tires that are monofilled will never have a value worth recovering. The value on waste tires has slowly risen in past years. While Eaton-Moery Environmental Services, Inc. cannot predict the future either, it is ludicrous to assume that monofilled waste tires will never be worth recovering when recent history indicates otherwise. The free market has driven the waste tire recovery market much faster than most people thought was possible.</p>				
<p>Response:</p> <p>The SWMD has determined that the proposed text must remain in the draft regulation.</p> <p>Regulation 14.1304 pertains to annual reporting only. It requires waste tire disposal sites to submit an annual report summarizing information collected regarding their activities. It also points out that monofills are required to continue to meet annual reporting requirements under Regulation 22. This section does not address whether or not tires are recovered. The goal of this change is to require the reporting necessary for the SWMD to receive information for accurate Strategic Planning Performance Indicator Reporting and accurate submittal of tire data for preparation of the annual Governor’s Recycling Report.</p> <p>However, a monofill is permitted as a Class 3 T landfill. Regulation 22 states: “Landfill or landfill unit means a discrete area of land or an excavation that is permitted by the Department under these regulations and receives solid waste for disposal, and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257.2. Therefore, a landfill is a disposal site, and a monofill is a type of Class 3 landfill.</p>				
<p>Notes:</p>				

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COMMENT ID:	NEC/EMS-5	CHANGED	UNCHANGED	X
<p>Comment :</p> <p>Regulation 14.704 as proposed adds the following sentence to the regulation: “Whole <i>baled</i> tires may be disposed of in a waste tire monofill that has been prepared in such a manner that the tires can be recovered at a later date.” This suddenly <u>mandates</u> that we bale waste tires going into our permitted waste tire monofill. This new requirement is both unnecessary and an additional, <u>unexpected financial burden</u>. The supposed reason is to “minimize the collection of explosive gases and liquids.” Waste tires are inert. They will not create any sort of explosive gases.</p>				
<p>Response:</p> <p>Regulation 22.532(e) states: “<u>Processing or Baling Required for Monofills</u> – Only tires that have been processed by cutting or shredding, or whole baled tires shall be permitted for placement in tire monofills after the effective date of this regulation.” The regulation became effective on May 7, 1995. Consequently, this is not a new requirement, but a requirement that has been in place since 1995. Therefore, no additional, unexpected financial burden will be created.</p> <p>In an effort to make Regulation 14 more comprehensive and inclusive of all waste tire requirements and issues, the SWMD is proposing to move the current requirement to bale or process monofilled tires from Regulation 22 and place it into Regulation 14.</p> <p>Whole unbaled tires fill with water and create a breeding ground for mosquitoes and other disease carrying vectors. Processing or baling significantly reduces or eliminates potential health issues involving waste tires prior to placement into the monofill. Therefore, the SWMD has determined that the proposed text must remain in the draft regulation.</p> <p>The comment referencing to “minimize the collection of explosive gases and liquids” has been used out of context. It appears in Regulation 22.523(d) which pertains to tire handling.</p>				
<p>Notes:</p>				

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COMMENT ID:	EMS-6	CHANGED	UNCHANGED	X
Comment : Before regulations are changed in this manner, there is supposed to be an economic impact study to determine how such changes will affect those involved in the changes. Eaton-Moery Environmental Services, Inc. has not been contacted in any way regarding the additional labor and equipment costs that we will incur.				
Response: Act 1264 of 1993 does require an economic impact study to be conducted when changes are being proposed that are more stringent than EPA requirements. However, the economic impact study requirement is not applicable in this instance because there is a preexisting requirement to process or bale monofilled tires. The Department did, however, prepare a financial impact statement pursuant to Act 1104 of 1995, which was submitted to the Commission along with the request to initiate rulemaking. Therefore, the proposed text must remain in the draft regulation.				
Notes:				

COMMENT ID:	EMS-7	CHANGED	UNCHANGED	X
Comment : Additionally, baled tires will be much more dangerous to recover. Recovering baled tires in the future could damage equipment and injure personnel if the bands on a tire bale brake (<i>sic</i>) under pressure during recovery. Also, when the bands rust through in future years, the tires will become impossible to recover with a loader. This is obviously not a problem with waste tires monofilled loosely.				
Response: No evidence has been provided to make the case that baled tires are more dangerous to recover than loose tires. Just as loose tires can be moved with equipment, baled tires can also be moved with equipment. To the knowledge of the SWMD, no monofilled waste tires have ever been recovered in the State of Arkansas. Therefore, the proposed text must remain in the draft regulation.				
Notes:				

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COMMENT ID:	EMS-8	CHANGED	UNCHANGED	X
Comment : Our final point is that all Class 1 landfills in the state of Arkansas have the option to compact their waste with a bulldozer, compactor, or bailer. The operator can determine what level of density that he can afford based upon his cost of operation. Why is a tire monofill operator not given the same options to choose which method that he can afford.				
Response: No changes are being proposed that pertain to this comment.				
Notes:				

COMMENT ID:	NEC/EMS-9	CHANGED	UNCHANGED	X
Comment : Proposed APC&E Regulation, Chapter 7 “Waste Tire Prohibitions” state that following under Reg. 14.705 Tire Monofill Restrictions: “No new monofills shall be permitted unless the applicant demonstrates that there is no feasible recycling alternative”. Arkansas State Law does not prohibit the use or permitting of monofills. Arkansas Code 8-9-403 Item (3)(B) (<i>sic</i>) states: “Whole tires shall not be disposed of in a landfill containing any other type of waste unless the tires are disposed of in a separate area of the landfill and the area has been prepared in such a manner that the tires can be recovered at a later date.”				
Response: This is not a new requirement. The language currently exists in Regulation 22. In an effort to make Regulation 14 more comprehensive and inclusive of all waste tire requirements and issues, the SWMD is attempting to move the current requirement from Regulation 22 and place it into Regulation 14. The SWMD disagrees; A.C.A. § 8-9-403 (c)(2) states: “It is illegal for any person to dispose of used or waste tires or portions of used or waste tires in the state, unless such tires are disposed of for processing, or collected for processing, at a ...” Since 1992, no Arkansas monofill has recovered monofilled tires for recycling or reuse. Without experience or evidence to support that monofilled tires are being collected for processing, the SWMD has determined that the proposed text must remain in the draft regulation.				
Notes: To clarify this issue for all parties, the SWMD would be open to working on proposed legislation, if determined needed by the Commission. Other possible options for consideration: (1) Determine a set time limit for storing monofilled tires for recycling or reuse, establishing that once that time limit has ended, the monofilled tires will be considered disposed rather than stored for recycling or reuse; (2) Make no change at this time; or (3) Require monofills to seek markets and report back annually on recycling efforts with monofilled tires to be considered disposed if tires are not recovered within a certain time frame.				

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COMMENT ID:	NEC/EMS-10	CHANGED		UNCHANGED	X
Comment :					
The proposed changes to Regulation 14 are an apparent attempt by ADEQ to regulate EMS out of the waste tire monofill business.					
Response:					
This comment has no merit.					
Notes:					

COMMENT ID:	NEC/EMS-11	CHANGED	X	UNCHANGED	
Comment :					
Proposed APC&E Regulation 14, Chapter 7 “Waste Tire Prohibitions” states the following under Reg.14.708 Processing or Baling of Monofill Tires: “In accordance with A.C.A. § 8-9-403 et.seq., only tires that have been processed by cutting or shredding or whole baled tires shall be permitted for placement in waste tire monofills.” The language of the proposed regulation is not part of the referenced Arkansas Code. ADEQ is misrepresenting the requirement of Arkansas Code in this instance.					
Response:					
The comment has been accepted, in part, and the text has been modified to recommend as follows: “Only tires which have been processed by cutting or shredding or whole baled tires shall be permitted for placement in waste tire monofills.” Again, this is currently a requirement of Regulation 22. In an effort to make Regulation 14 more comprehensive and inclusive of all waste tire requirements and issues, the SWMD is attempting to move the current requirement from Regulation 22 and place it into Regulation 14.					
Notes:					

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COMMENT ID:	RM-12	CHANGED		UNCHANGED	X
Comment : Has an EIS been prepared? If not, why not? If an EIS has been prepared, why has a copy not been provided to the Commission and the legislative committee? Is it the responsibility of ADEQ or the Commission to prepare an EIS when one is required? Who has the expertise and/or the money necessary to prepare an EIS? Should the preparation of an EIS be contracted to an independent contractor?					
Response: Act 1264 of 1993 requires an economic impact study to be conducted when changes are being proposed that are more stringent than EPA requirements. The EIS requirement is inapplicable in this instance because the import fee and the requirement to process or bale monofilled tires are preexisting requirements. The Department did, however, prepare a financial impact statement pursuant to Act 1104 of 1995, which was submitted to the Commission along with the request to initiate rulemaking. Therefore, the proposed text must remain in the draft regulation.					
Notes:					

Comment ID:	RM-13	CHANGED		UNCHANGED	X
Comment : In regard to regulation number 14 changes, the requirement that tires placed in a monofill must be baled is most certainly going to have an economic impact. The fact that EPA is silent on this, state law is silent on this, current regulation is silent on requiring the baling of tires prior disposal in a monofill, does not mean that baling can now be required without preparing an EIS.					
Response: Current regulations provide for several methods of processing prior to disposal. A requirement to process or bale tires prior to placement in a monofill is not a new requirement, but a requirement that has been in place since 1995. The Department is simply performing “housekeeping” by moving the current requirement from Regulation 22 to Regulation 14. For additional information, see previous responses to comments.					
Notes					

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Comment ID:	RM-14	CHANGED		UNCHANGED	X
<p>Comment :</p> <p>The intent behind allowing monofilling waste tires was to allow them to be placed in a single purpose landfill in a manner that would allow them to be recovered and recycled if and when the market warrants doing so. To bale or not to bale should be decided by the operator. Monofills were to be allowed to continue in operation until viable markets become available. In view of the fact that a viable market has not as yet been developed, it may be necessary to include, in an EIS, the financial impact of disallowing further monofilling of tires 12 months after the adoption of the regulation 14 proposed changes.</p>					
<p>Response:</p> <p>Under the proposed change and the current Regulation 22, tires do not have to be baled prior to monofilling—they must be either processed or baled. The SWMD disagrees that a viable market has not yet been developed for waste tires. Indeed, Arkansas has excellent market potential. We currently have one cement plant burning tire derived fuel, two paper mills have recently performed trial burns, one paper mill is gearing up to burn tire derived fuel, and one steel mill is currently installing the needed equipment and has stated that they will begin initiating shredded waste tires into their steel making operations. The market potential exists that Arkansas may not be able to generate enough tires to meet the demand. Thus, the old reasoning behind monofilling no longer exists. However, while the SWMD is not proposing a ban on monofilling, the Department looks to the Commission for direction in this area.</p>					
<p>Notes</p>					

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COMMENT ID:	RM-15	CHANGED	X	UNCHANGED	
<p>Comment :</p> <p>...The wording “within 12 months of the effective date of this regulation” to be added following the language contained in Regulation 14.803...</p>					
<p>Response:</p> <p>At the August 2004 Commission meeting, commenter stated that regarding the closure of waste tire dump sites, individuals should be allowed 12 months from the effective date of the regulation to meet closure requirements. The Commission concurred, and additional language was added to the Regulation 14, August 2004 Draft. After a review of the language contained in the statute and current Regulation 14, the Department respectfully disagrees for the following reason:</p> <p>A.C.A. § 8-9-403 Operation of waste tire sites – Requirements and prohibited activities (a)(1) and (2) state that within six (6) months after July 15, 1991, the owner or operator of any waste tire site shall provide ADEQ and the applicable solid waste management district with information regarding the site, a written plan and time schedule for the removal, disposal, or recycling of the tires, and specify that the plan be implemented according to its schedule. Under the current Regulation 14, Section 3, Waste Tire Permit and License Requirements, No. 5, applicable waste tire sites were given until July 1, 1992, to complete closure. The Department believes that an additional “grace period” is not merited and would serve to deter current efforts to closeout illegal waste tire dump sites. Consequently, the Department recommends to the Commission that Regulation 14.803 be changed to read as follows: “Waste tire sites that are not an integral part of a permitted waste tire processing facility, or collection center, shall close in compliance with the closure requirements specified in this regulation.”</p>					
<p>Notes:</p>					

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COMMENT ID:	LD-16	CHANGED	X	UNCHANGED	
Comment : Regarding Regulation 14.704, the following wording should be placed into the regulation: “Reg.14.704 Land Restriction Tires shall not be deposited in any permitted landfill as a method of ultimate disposal unless shredded or split into sufficiently small parts to assure their proper disposal. For purposes of disposal, a sufficiently small part means that the tire has been cut into four substantially equal pieces or into two pieces around the circumference of the tread. A waste tire monofill shall by January 31, 2008, only place in the monofill, for recovery, shredded, split, or cut tires or whole tires that have been baled as defined in Regulation 14.201. Whole baled tires may be disposed of in a waste tire monofill that has been prepared in such a manner that the tires can be recovered at a later date. Whole baled tires shall be deposited in a waste tire monofill in such a way that avoids or minimizes the collection of explosive gases and liquids as required by the Department.”					
Response: After a meeting with Representative Leroy Dangeau, this draft regulation was passed on by the Arkansas Legislative Council (Sen. Capps, Rep. Dangeau, Co-Chairs) on December 17, 2004.					
Notes:					