

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2
3 Solid and Hazardous Waste Commission/Hazardous Materials and
4 Waste Management Division

5
6 6 CCR 1007-2

7 PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES
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9 Amendments to the Section 10 Waste Tire Regulations

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12 1) Paragraph (J) of Section 10.4.2 (General Standards for Generators of Motor Vehicle an
13 Trailer Waste Tires) is revised to read as follows:

14 10.4.2 GENERAL STANDARDS FOR GENERATORS OF MOTOR VEHICLE AND TRAILER WASTE
15 TIRES

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19 (J) Waste Tire Generators must maintain records for three (3) years showing how many waste tires they
20 generated and documenting to whom they transferred the waste tires. For loads of 10 or more waste
21 tires, the waste tire manifesting provisions of this Section 10 satisfy this requirement. For loads of 9 or
22 less waste tires, Waste Tire Generators may use Form WT-10, available on the Department's website.

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27 2) Paragraph 10.11.6 of Section 10.11 (Waste Tire Fee Administration) is revised to read
28 as follows:

29 10.11 WASTE TIRE FEE ADMINISTRATION

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33 10.11.6 Any person who aggregates monthly fees ~~during a twelve (12) month period~~ from multiple stores
34 must ~~annually~~ submit monthly to the Department the Annual Monthly New Tire Self Certification Form
35 (Form WT-9) available on the Department's website. ~~At a minimum, the person who sells new motor~~
36 ~~vehicle or new trailer tires will have fourteen (14) days from the date of receipt to return the checklist.~~ Form
37 WT-9 must be delivered to the Department electronically or by hard copy and must be postmarked or
38 submitted electronically by the 20th of each month for new tires sold the previous month.

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42 **3) Paragraph (B) of Section 10.12.5 (Rebate Amount) is revised to read as follows:**

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44 **10.12.5 REBATE AMOUNT**

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46 A. The Department will pay the rebate amount on a per-ton basis.

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48 | B. Beginning January 1, ~~2016~~2017, the amount of the rebate is eighty seventy dollars (~~\$8070~~) per ton.

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50 C. If the tons approved for the rebate in any one month multiplied by the amount of the rebate in section
51 10.12.5(B) exceeds the balance of the Fund, then the Department shall reduce the per ton amount of the
52 rebate that month to a rate that will not cause a deficit in the Fund.

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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3 **Solid and Hazardous Waste Commission**

4 **Hazardous Materials and Waste Management Division**

5 **6 CCR 1007-2**

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8 **STATEMENT OF BASIS AND PURPOSE**
9 **AND SPECIFIC STATUTORY AUTHORITY FOR**

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11 Revisions to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR
12 1007-2, Part 1) – Sections 10.4.2 (J), 10.11.6, and 10.12.5 (B)

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15 **Basis and Purpose**

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17 I. Statutory Authority – House Bill 14-1352

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19 Section 30-20-1409, C.R.S. requires waste tire generators to maintain records related to the
20 generation of waste tires, as pursuant to the authority granted to the Solid and Hazardous Waste
21 Commission in section 30-20-1403, C.R.S.

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23 The amendment to the waste tire fee requirement is made pursuant to the authority granted to the
24 Solid and Hazardous Waste Commission in section 30-20-1403, C.R.S.

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26 Section 30-20-1405, C.R.S. requires the Commission to annually set the amount of the per-ton
27 monthly rebate paid to end users of waste tires.

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29 II. Purpose of the proposed regulations:

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31 The purpose of revising section 10.4.2 (J) of the solid waste regulations (6 CCR 1007-2, Part 1) is
32 to require that waste tire generators keep documentation/records for three (3) years for all waste
33 tires generated, including waste tires that are generated at a waste tire generator location and
34 self-hauled by the waste tire generator in quantities of nine (9) waste tires or less to a waste tire
35 destination facility (e.g., another waste tire generator, waste tire processor, waste tire collection
36 facility, waste tire monofill, and/or approved beneficial user of whole waste tires).

37
38 The modification of Section 10.11.6 of the solid waste regulations (6 CCR 1007-2, Part 1) would
39 change the reporting frequency to the Department of Public Health and Environment (the

40 Department) for those who aggregate monthly waste tire fees for multiple stores from annually to
41 monthly.

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43 Section 10.12.5 (B) of the solid waste regulations (6 CCR 1007-2, Part 1) sets the Waste Tire
44 End Users Fund (the Fund) per-ton rebate rate at \$70.
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46 **Discussion of Regulatory Proposal**

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48 Clarifying language that requires waste tire generators to keep documentation/records for all
49 waste tires generated and the disposition of all waste tires, including waste tires that are self-
50 hauled by waste tire generators in quantities of nine or less waste tires at a time, was added to
51 section 10.4.2 (J) for the following reasons: 1) to minimize the illegal disposal of waste tires in
52 Colorado by ensuring that all newly generated waste tires are accounted for and are properly
53 recycled or dispositioned; 2) to achieve more accurate tracking of waste tire generation; 3) to
54 identify discrepancies between the number of new tires sold and the number of waste tires
55 generated; and 4) to reconcile waste tire fee accounts with actual waste tire generation. Waste
56 tire generators that self-haul loads of nine (9) or less waste tires at a time can use Form WT-10
57 (Waste Tire Generator – Transporting of 9 or Less Waste Tires at a Time Form) or use an
58 alternate method of documentation that documents where the waste tires were delivered.
59

60 Changing the reporting frequency to the Department in section 10.11.6 for those who aggregate
61 monthly waste tire fees for multiple stores from annually to monthly would: 1) ensure that the
62 proper waste tire fee has been collected each month for each store; 2) allow for quicker
63 identification of overpayment and applying credit faster; 3) achieve more accurate tracking of new
64 tire sales; and 4) reconcile waste tire fee accounts with actual waste tire generation.
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66 The proposed section 10.12.5 (B) requires the Department to payout a per-ton rebate rate of \$70
67 for approved applications submitted by End Users, Retailers, and certain Processors of tire-
68 derived products and waste tires. If the amount of rebates exceeds the amount available in the
69 Fund, the Department will pay the rebate at a reduced per-ton basis that will not cause a deficit in
70 the Fund.
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72 73 **Description of Local Government Involvement in the Stakeholder Process**

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75 Executive Order D 2011-005 (EO-5), “Establishing a Policy to Enhance the Relationship between
76 State and Local Government” requires state rulemaking agencies to consult with and engage
77 local governments prior to the promulgation of any rules containing mandates. The Department
78 completed an EO-5 Internal Communication Form – Conception Phase that was transmitted to
79 local governments. The new regulation will only impact local governments who generate waste
80 tires or apply for a rebate from the Fund for the end use of tire-derived products or waste tires.

81 **Issues Encountered During Stakeholder Process:**

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83 The Department held two stakeholder meetings via teleconference on July 26, 2016 for the
84 changes to sections 10.4.2 (J) and 10.11.6. The Department also contacted by email ~1,640
85 waste tire generators and ~75 individuals who aggregate monthly waste tire fees for multiple
86 stores. The Department responded to the following questions:

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88 1. If a waste tire generator already uses a registered waste tire hauler and keeps the
89 uniform waste tire manifest (Form WT-2) provided by the hauler, would additional
90 documentation in addition to Form WT-2 be required? Answer: No, additional
91 documentation would not be required.
92 2. Would customers who elect to not leave their waste tires at the tire shop and instead
93 take their own waste tires be required to document where their waste tires would go?
94 Answer: No, this regulation would not impact customers who choose to keep their own
95 waste tires.
96 3. Would waste tire generators who self-haul nine or less waste tires to a waste tires
97 destination facility be required to undergo an application process to do this? Answer: No,
98 a waste tire generator would be required to be registered with the Department as a waste
99 tire generator and use Form WT-10 (Waste Tire Generator – Transporting of 9 or Less
100 Waste Tires at a Time Form) or use an alternated method of documentation that
101 documents where the waste tires were delivered.
102 4. Can records of where the waste tire generator self-hauled nine or less waste tires at a
103 time be kept electronically? Answer: Yes.
104 5. What evidence is there that improvement/protection to the public's health and the
105 environment will be increased/augmented by the administrative burden of generating
106 more paperwork and tracking the hauling of nine or less waste tires by waste tire
107 generators? Answer: The proposed regulation requires documentation that indicates
108 where the nine or less waste tires that are self-hauled by waste tire generators were
109 delivered. The present regulations do not have a documentation requirement for waste
110 tire generators who self-haul nine or less waste tires at a time which makes it difficult for
111 the Department and Department contractors who conduct waste tire generator
112 inspections on the Department's behalf to determine if these waste tires were actually
113 delivered to a waste tire destination facility or if they were disposed of illegally.
114 6. When would the monthly reporting requirement for those who aggregate monthly waste
115 tire fees take effect? Answer: It would not take effect until the regulations are passed and
116 on the effective date of the regulation. Those who aggregate monthly waste
117 tire fees will be notified by the Department on the new regulation change and the starting
118 date that Form WT-9 would be required to be submitted monthly.
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120 The per-ton rebate rate of \$70 was vetted during an August 24, 2016 stakeholder process. The
121 Department provided a forecasting spreadsheet that contained the following information:

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123 1. Forecasting on a per ton basis tire-derived products and/or waste tires to be end used,
124 sold, or processed in calendar year 2017. This information was collected from End Users,
125 Retailers, and Processors who participated in the Fund in calendar 2015 and with new
126 applicants who were not participating in the program in 2015.
127 2. Projected funds available in calendar year 2017 base on remaining funds from calendar
128 year 2016 and waste tire fees collected during fiscal year 2016.

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3. Projected rebate payouts based on forecasted tons and a per-ton rate of \$70.
 4. Projected monthly fund balances based on projected revenues and rebate payouts.
 5. Projected Fund spending authority throughout calendar year 2017.
 6. Historical data breakdown of end used tons approved by the Fund over the last three calendar years.

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The Department wants the rebate amount set at the highest per-ton amount that will not exceed the forecasted Fund balance. The current year spending authority for FY 2017 may need to be adjusted to continue the per-ton rate of \$70 uninterrupted. Based on the projected fund balance and forecast provided by those are currently participating in the program, the Fund can support a per-ton rate of \$70.

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Many stakeholders disagreed with setting the per-ton rate at \$70. The stakeholders feel it should be set at a per-ton rate of \$80, which is the per ton rate limit set in statute.

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Some of the reasons stakeholders wanted the per-ton rate at \$80 were:

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1. Forecasts provided by the Department in the past were not accurate, which has caused a large balance in the Fund.
 2. Since the Fund is set to repeal on January 1, 2018, stakeholders wanted to ensure that all funds would be distributed to stakeholders prior to the program ending.
 3. Many of the processors indicated there was not the working capacity in the state to generate the forecasted tons calculated by the Department.
 4. Some argued that with the Fund ending, there would be a slowdown in usage in the state, meaning there would be less tons applied for, thus allowing for a bigger per ton rate.
 5. Although a per-ton rate of \$80 may potentially exhaust funds faster, the stakeholders were not concern that the per-ton rate could fluctuate starting mid-calendar year 2017.

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The Department, after consideration of the stakeholders comments, feel that a per-ton rate of \$70 would be the most conservative rate that would equalize, but not exceed, funds available to generate consistent rebates during calendar year 2017.

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The stakeholders understand that if the forecast of tons end used, sold, or processed exceeds projections, the spending authority is not adjusted, or if the Fund balance or waste tire fees collected are lower than expected, the per-ton rate of \$70 may be reduced or may be unavailable.

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Regulatory Alternatives

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No other regulatory alternatives were evaluated.

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Cost/Benefit Analysis

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A cost-benefit analysis will be performed if requested by the Colorado Department of Regulatory Services.