

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2
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
12 Revisions to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part
13 1) – Deletion and Replacement of Existing Section 10 (Waste Tire Facilities and Waste Tire
14 Haulers) with New Section 10 Regulations (Waste Tires), Revision of Section 16 Regulations
15 (Materials Prohibited from Disposal) and the Associated Additions, Deletions and Revisions to
16 Section 1.2 Definitions

17
18 Repeal of the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement
19 Program (6 CCR 1007-2, Part 4), Section 1 Rules for Reimbursements from the Processors and
20 End Users Fund

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23 **Basis and Purpose**

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25 **I. Statutory Authority**

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27 The amendments to 6 CCR 1007-2, Section 10: Waste Tires, Section 16: Materials
28 Prohibited from Disposal and Section 1.2: Definitions, and the deletion of 6 CCR 1007-2,
29 Part 4, the Regulations Pertaining to the Waste Tire Processor and End User
30 Reimbursement Program are made pursuant to the authority granted to the Solid and
31 Hazardous Waste Commission in sections 30-20-109, C.R.S. and 30-20-1401(2), C.R.S.,
32 and section 30-20-1405(3)(c), C.R.S. These regulations are a direct result of, and
33 implementation of, House Bill (HB) 14-1352, passed by the legislature in 2014.

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35 **II. House Bill 14-1352**

37 House Bill 14-1352 repealed and reenacted the State’s waste tires laws, moving them into
38 the Solid Waste Act (“the Act”). The HB 14-1352 also transferred all waste tire program
39 regulatory authority to the Department of Public Health and Environment (the
40 Department). The Department’s existing solid waste enforcement authority applies to
41 waste tires.
42

43 **III. Purpose of revised regulations:**
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45 The purpose of revising Sections 1.2, 10 and 16 is to implement the requirements of HB
46 14-1352 by establishing waste tire rules going forward to replace those in effect as of
47 July 1, 2014. Prior to the proposed revisions, Section 10 of the Solid Waste Regulations
48 applied specifically to Waste Tire Facilities and Waste Tire Haulers. The proposed
49 regulations were drafted using the existing framework and construct of the original
50 regulations and include new standards for mobile waste tire processors, the management
51 of used tires, and the administration of the waste tire fee. Section 10 will also include
52 regulations pertaining to administration of the Waste Tire End Users Fund, which were
53 previously located in the Regulations Pertaining to the Waste Tire Processor and End
54 User Reimbursement Program (6 CCR 1007-2, Part 4).
55

56 **Discussion of Regulatory Proposal**
57

58 I. The Section 10 regulations require the addition, revision and deletion of some existing
59 definitions. These changes, summarized below, will be incorporated into Section 1.2 of
60 the Solid Waste Regulations (6 CCR 1007-2, Part 1).
61

62 The following new definitions are being added to Section 1.2:

- 63 1. Applicant
- 64 2. Authorized signature
- 65 3. Beneficial user
- 66 4. Buffings
- 67 5. Commission
- 68 6. Daily cover
- 69 7. Mobile Processor
- 70 8. Motor vehicle
- 71 9. Public project
- 72 10. Pyrolysis
- 73 11. Recapped or retreaded tire
- 74 12. Retailer (as used in section 10 of the Regulations)
- 75 13. Trailer
- 76 14. Used Tire

- 77 15. Waste Tire Bale
- 78 16. Waste Tire Cleanup Program
- 79 17. Waste Tire Generator
- 80 18. Waste Tire Processor

81

82 The following existing definitions are being modified in Section 1.2:

- 83 1. Collection facility
- 84 2. End User
- 85 3. Residentially generated
- 86 4. Retailer (as used in Section 16 of the Regulations)
- 87 5. Tire
- 88 6. Tire-Derived Product
- 89 7. Waste Tire
- 90 8. Waste Tire Collection Facility
- 91 9. Waste Tire Hauler
- 92 10. Waste Tire Monofill
- 93 11. Wholesaler

94

95 The following existing definitions are being deleted from Section 1.2, as these terms no
96 longer appear or are irrelevant in the new Regulations:

- 97 1. Fleet Service Facility
- 98 2. Passenger tire equivalents
- 99 3. Processor
- 100 4. Tire (as used in Section 16 of the Regulations)
- 101 5. Waste Tire Facility

102

103 II. Section and Subsection Titles

104

105 The title of Section 10 was updated to incorporate all waste tire provisions within one
106 section of the Regulations. A new title for Section 10.4 (Standards for Generators of
107 Motor Vehicle and Trailer Waste Tires) was added to conform to HB 14-1352. New
108 Sections 10.7 (Standards for Mobile Waste Tire Processors), 10.10 (Standards for
109 Management of Used Tires), 10.11 (Waste Tire Fee Administration) and 10.12 (Waste
110 Tire End Users Fund) were added to conform to HB 14-1352.

111

112 All references to waste tires were removed from Section 16 and Section 16 waste tire
113 subsections that conform to HB 14-1352 were incorporated into Section 10.

114

115 III. Scope and Applicability (Section 10.1)

116

117 The updated Section 10.1 describes the applicability of Section 10, and now includes all
118 persons who sell new motor vehicle or trailer tires.
119

120 Updated language was added to the existing subsection 10.1.3 exemptions. Previous
121 exemptions in this subsection that were removed or updated and new exemptions that
122 were added include:

- 123 1. Removed the exemption for the transport of used tires due to the addition of
124 subsection 10.10 (Standards for Management of Used Tires).
- 125 2. Removed the exemption for transportation of waste tires by a private citizen.
- 126 3. Updated household hazardous waste roundup, community cleanup, other one-time
127 waste tire collection event language was added to reflect new waste tire
128 terminology.
- 129 4. Clarified the requirements for the beneficial use of waste tires.
- 130 5. Standardized the waste tire storage limits for owners/operators of solid waste
131 landfills, transfer stations, and recycling facilities who separate waste tires out
132 from the solid waste stream.
- 133 6. Standardized the waste tire storage limits for government entities that store waste
134 tires as part of their road-side cleanup activities.
- 135 7. Added a provision and requirements for the acceptance of unmanifested waste
136 tires from unregistered haulers.

137 138 IV. General Provisions (Section 10.2)

139
140 This section states operations that are covered by the multiple parts of Section 10 must
141 comply with all applicable sections. As provided in Section 10.2.2, the Department's
142 intent is to avoid imposing duplicate or overlapping obligations on entities that are
143 covered by multiple parts of Section 10. This section also specifies the limitations on the
144 disposal of waste tires and incorporates waste tire due diligence language that was
145 previously in Section 16.
146

147 Persons registered pursuant to Section 10 historically have not paid annual fees (Annual
148 Fee) as required in Section 1.7.3 because the Waste Tire Program and Waste Tire
149 Administration, Enforcement, and Cleanup Fund, the End Users Fund and the Waste Tire
150 Market Development Fund are funded by the \$1.50 Waste Tire Fee. An exemption from
151 the Annual Fees for persons registered pursuant to sections 10.3, 10.4, 10.6, 10.7, 10.8 or
152 10.9 was added for clarification. Waste Tire Monofills and solid wastes sites and
153 facilities with a Certificate of Designation are not exempt from the Annual Fee
154 requirement.
155

156 Language regarding the enforcement of Section 10 through the Department's
157 enforcement authorities was added.

158
159 V. Standards for Waste Tire Haulers (Section 10.3)

160
161 This section was updated to include a provision allowing Waste Tire Haulers to pick
162 up waste tires from an unregistered person or site exempted from Section 10 if a manifest
163 is generated and the waste tires are delivered to an approved waste tire destination
164 facility. Additionally, the time frame to notify the Solid Waste Program in the event of a
165 fire or other emergency involving waste tires was updated and the waste tire storage
166 limits were updated to reflect new storage limit requirements.

167
168 Waste Tire Hauler registration, decal, and manifest changes include:

- 169 1. Updated Certificate of Registration Form names.
- 170 2. Removed the \$10,000 surety bond requirement.
- 171 3. Language was added regarding when a Waste Tire Hauler is required to notify the
172 Department.
- 173 4. Removed revocation of the Certificate of Registration language.
- 174 5. Added language regarding cancellation of a Certificate of Registration if a person
175 is no longer hauling waste tires.
- 176 6. Revised decal placement requirements.
- 177 7. Added decal requirement for contracted commercial freight carriers.
- 178 8. Updated manifest requirements by removing the requirement for the actual
179 number of waste tires by category, allowing electronic manifests, requiring
180 information about contracted commercial freight carriers, and accounting for
181 waste tires that originated from an illegal waste tire site, private property, or a
182 unregistered waste tire hauler, per the exemption added in subsection 10.1.3 for
183 acceptance of waste tires from unregistered waste tire haulers.
- 184 9. Added a thirty (30) day requirement for Waste Tire Haulers to provide a manifest
185 copy to the generator/source of waste tires from date of delivery of waste tires to
186 the destination facility.

187
188 Waste Tire Hauler annual report requirements were updated by removing the surety bond
189 verification, removing the passenger tire equivalent language and requiring the reporting
190 of the total amount of waste tires accepted from persons exempted from Section 10.

191
192 Self-certification language was added that allows the Department to require Waste Tire
193 Haulers to furnish additional information concerning compliance with the regulatory
194 requirements.

195

196 VI. Standards for Generators of Motor Vehicle and Trailer Waste Tires (Section 10.4)

197
198 The section's title was updated to incorporate the new term for Waste Tire Generators.
199 Persons subject to this section will continue to include tire retailers, wholesaler and fleet
200 service facilities that generate waste motor vehicle or trailer tires. Additionally, the
201 updated applicability provides examples of the types of business that are sources of waste
202 tires.

203
204 This section was updated to include: the updated storage limit of no more than fifteen
205 hundred (1,500) waste tires on site at any one time; the ability for Waste Tire Generators
206 to accept waste tires; and the requirement that a Waste Tire Generator who sells
207 replacement tires must not refuse from a customer waste tires of the same general type
208 and quantity.

- 209 Waste Tire Generator registration, decal, and manifest changes include:
- 210 1. Certificate of Registration application requirements were updated to include the
211 requirement that any person who commercially generates motor vehicle or trailer
212 waste tires must register as a Waste Tire Generator.
 - 213 2. Language was added requiring a Waste Tire Generator to notify the Department if
214 they are selling new tires.
 - 215 3. Removed revocation of the Certificate of Registration language.
 - 216 4. Added language regarding cancellation of a Certificate of Registration if a person
217 no longer generates waste tires at their registered location.
 - 218 5. Removed the three (3) year expiration date for a Certificate of Registration and
219 facility decal.
 - 220 6. Updated manifest requirements to allow Waste Tire Generators to accept more
221 than ten (10) waste tires without a manifest, per the exemption added in
222 subsection 10.1.3 for acceptance of waste tires from unregistered waste tire
223 haulers, and to allow Waste Tire Generators to offer their waste tires for mobile
224 processing. The change to the Waste Tire Hauler manifest requirements may
225 result in a Waste Tire Generator not receiving a properly completed Uniform
226 Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup
227 by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days
228 from delivery of the Waste Tire Generator's waste tires to the destination facility
229 to provide a manifest copy to the Waste Tire Generator.

230
231
232 This section also replaced the requirement for fencing of at least six (6) feet with the
233 requirement to implement security measures that preclude public entry.
234

235 Self-certification language was added that allows the Department to require Waste Tire
236 Generators to furnish additional information concerning compliance with the regulatory
237 requirements.
238

239 With the removal of the Waste Tire Generator Certificate of Registration date and
240 corresponding registration renewal requirements, the self-certification will be used to
241 update Waste Tire Generator information and gather additional information concerning
242 compliance with the regulatory requirements. Because the majority of Waste Tire
243 Generators also sell new motor vehicle or new trailer tires, the Waste Tire Generator self-
244 certification will also be used to determine compliance with the Waste Tire Fee
245 requirements of section 1.7.6 (Waste Tire Fee) and 10.11(Waste Tire Fee
246 Administration).
247

248 VII. Standards for Waste Tire Monofills (Section 10.5)

249

250 This section was updated to include Certificate of Designation requirements for a Waste
251 Tire Monofill which include both an Engineering and Design and Operations Plan
252 (EDOP) and a Waste Tire Inventory Reduction Plan. This section also replaced the
253 requirement for fencing of at least six (6) feet with the requirement to implement security
254 measures that preclude public entry.
255

256 The 75%/three year rolling average requirement was replaced with the Waste Tire
257 Inventory Reduction Plan requirement. The Waste Tire Inventory Reduction Plan
258 requires that Waste Tire Monofill owners/operators must on an annual basis, for every
259 one (1) tire received, end use at least two (2) waste tires, or process at least two (2) waste
260 tires into tire-derived product. The owner/operator of a Waste Tire Monofill may claim
261 Confidential Business Information (CBI) or trade secret for any information submitted in
262 the Waste Tire Inventory Reduction Plan. The procedures for asserting CBI claims are
263 established under Colorado law, and the Department does not intend to create any further
264 burden on the owner/operator to show CBI status than that existing under current law.
265

266 The Regulation adopts the change to the statute concerning the dates after which an
267 owner/operator of a Waste Tire Monofill must not place any waste tires into monofill
268 storage (after January 1, 2018) and when Waste Tire Monofills must close (by July 1,
269 2024). Clarification regarding when a Waste Tire Monofill can ship whole waste tires to
270 an end user was added.
271

272 Waste Tire Monofill registration, decal, and manifest changes include:

- 273 1. Updated Certificate of Registration application requirements.

- 274 2. Language was added regarding when an owner/operator of a Waste Tire Monofill
275 is required to notify the Department.
276 3. Removed revocation of the Certificate of Registration language.
277 4. Removed the three (3) year expiration date for a Certificate of Registration and
278 facility decal.
279 5. Added language regarding cancellation of a Certificate of Registration if a person
280 no longer operates a Waste Tire Monofill at their registered location.
281 6. Updated manifest requirements to allow owners/operators of Waste Tire
282 Monofills to accept more than ten (10) waste tires without a manifest, per the
283 exemption added in subsection 10.1.3 for acceptance of waste tires from
284 unregistered waste tire haulers, and to allow Waste Tire Monofills to offer their
285 waste tires for mobile processing. The change to the Waste Tire Hauler manifest
286 requirements may result in an owner/operator of a Waste Tire Monofill not
287 receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire
288 Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire
289 Hauler now has up to thirty (30) days from delivery of the waste tires to the
290 destination facility to provide a manifest copy to the source of the waste tires.

291
292 Waste Tire Monofill annual reporting requirements were updated to allow the reporting
293 of waste tires by actual count or by weight in tons. The owner/operator of the Waste Tire
294 Monofill must report the total amount of waste tires accepted from unregistered waste tire
295 haulers in the required annual report, and the owner/operator of a Waste Tire Monofill
296 must report compliance with his/her Waste Tire Inventory Reduction Plan.

297
298 Self-certification language was added that allows the Department to require Waste Tire
299 Monofills to furnish additional information concerning compliance with the regulatory
300 requirements.

301
302 VIII. Standards for Waste Tire Processors (Section 10.6)

303
304 Unlike in the previous Regulation, this section applies only to Waste Tire Processors;
305 End Users have their own separate requirements in Section 10.9. Waste tire processing is
306 not subject to the Section 8 recycling requirements or annual fee requirements of Section
307 1.7.3. A Waste Tire Processor that recycles materials other than waste tires is subject to
308 the requirements of Section 8 and the Section 1.7.3 Annual Fee for a recycling facility.
309 This section also replaced the requirement for the fencing of at least six (6) feet with the
310 requirement to implement security measures that preclude public entry.

311
312 The 75%/three-year rolling average recycling rate still applies to waste tire processing.
313 Every year, starting after an initial one-year accumulation period, Waste Tire Processors

314 must have, over the past three (3) years, processed 75% of the average of what the Waste
315 Tire Processor had in inventory at the end of years one through two plus the amount of
316 waste tires received in year three. A Waste Tire Processor that is also registered as a
317 Waste Tire Monofill is exempted from this requirement, but the Waste Tire Monofill
318 must comply with its Waste Tire Inventory Reduction Plan. The Waste Tire Inventory
319 Reduction Plan requires that Waste Tire Monofill owners/operators must, on an annual
320 basis, for every one (1) tire received, end use at least two (2) waste tires, or process at
321 least two (2) waste tires into tire-derived product.

322
323 This section was updated to add a waste tire storage limit for a Waste Tire Processor's
324 facility that is not also registered as a Waste Tire Monofill. The waste tire processing
325 facility must not have at any one time more than the lesser of: a maximum of one
326 hundred thousand (100,000) waste tires; the amount allowed by the local government; or
327 the amount of waste tires anticipated in the Waste Tire Processors financial assurance
328 instrument. Clarification regarding when a Waste Tire Processor can ship whole waste
329 tires to an end user was added.

330
331 Waste Tire Processor registration, decal, and manifest changes include:

- 332 1. Updated Certificate of Registration application requirements.
- 333 2. Language was added regarding when a Waste Tire Processor is required to notify
334 the Department
- 335 3. Removed revocation of the Certificate of Registration language.
- 336 4. Added language regarding cancelling a Certificate of Registration if a person no
337 longer operates as a Waste Tire Processor at their registered location.
- 338 5. Removed the three (3) year expiration date for a Certificate of Registration and
339 facility decal.
- 340 6. Updated manifest requirements to allow Waste Tire Processors to accept more
341 than ten (10) waste tires without a manifest, per the exemption added in
342 subsection 10.1.3 for acceptance of waste tires from unregistered waste tire
343 haulers. The change to the Waste Tire Hauler manifest requirements may result in
344 a Waste Tire Processor not receiving a properly completed Uniform Waste Tire
345 Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste
346 Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery
347 of the waste tire waste tires to the destination facility to provide a manifest copy
348 to the source of the waste tires.

349
350 Waste Tire Processor annual reporting requirements were updated to allow the reporting
351 of waste tires by actual count or by weight in tons. A Waste Tire Processor must report
352 the total amount of waste tires accepted from unregistered waste tire haulers and

353 document compliance with the 75%/three-year rolling average recycling rate in the
354 annual report.

355
356 Self-certification language was added that allows the Department to require Waste Tire
357 Processors to furnish additional information concerning compliance with the regulatory
358 requirements.

359
360 IX. Standards for Mobile Waste Tire Processors (Section 10.7)

361
362 This section sets new standards for Mobile Waste Tire Processors. The general provisions
363 of this section state that mobile waste tire processing is not subject to the Section 8
364 recycling requirements or the Annual Fee requirements of Section 1.7.3. Mobile Waste
365 Tire Processors must meet general standards, including: processing waste tires only on
366 property not leased or owned by the Mobile Waste Tire Processor, only processing waste
367 tires that already exist on the property where waste tire mobile processing is to occur,
368 obtaining permission from the local government prior to beginning waste tire processing,
369 notifying the Department at least fourteen (14) days prior to beginning processing, and
370 not processing waste tires at a location for more than thirty (30) consecutive days unless
371 the location is registered as a Waste Tire Processor or Department approval is granted.
372 The Mobile Waste Tire Processor must also develop and comply with an Engineering and
373 Design and Operations Plan (EDOP).

374
375 Mobile Waste Tire Processor registration, decal, manifest, and annual reporting sections
376 were added and include:

- 377 1. A registration system for Mobile Waste Tire Processors, including obtaining a
378 Certificate of Registration which is valid until March 15th of the following year.
379 The Certificate of Registration may be canceled if mobile waste tire processing no
380 longer occurs.
- 381 2. A requirement to display a Department issued Mobile Waste Tire Processor
382 decals.
- 383 3. A manifest system to ensure that waste tires processed by Mobile Waste Tire
384 Processors are accounted for and that manifests (Form WT-7) are created and
385 provided to the Waste Tire Generator/source within thirty (30) days of completion
386 of mobile processing.
- 387 4. A requirement that all Mobile Waste Tire Processors establish and maintain
388 financial assurance in the amount of \$10,000, unless they maintain financial
389 assurance as a Waste Tire Processor, Waste Tire Collection Facility or a Waste
390 Tire Monofill.
- 391 5. A requirement to submit the Mobile Waste Tire Processor Annual Reporting
392 Form (Form WT-7) by April 1st of each year.

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Self-certification language was added that allows the Department to require a Mobile Waste Tire Processor to furnish additional information concerning compliance with the regulatory requirements.

X. Standards for Waste Tire Collection Facilities (Section 10.8)

This section was updated to replace the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry. Clarification regarding when a Waste Tire Collection Facility is allowed to ship whole waste tires to an end user was added.

Waste Tire Collection Facility registration, decal, and manifest changes include:

1. Updated registration application requirements.
2. Language was added regarding when an owner/operator of a Waste Tire Collection Facility is required to notify the Department.
3. Removed revocation of the Certificate of Registration language.
4. Language was added regarding cancellation of a Certificate of Registration if a person no longer operates as a Waste Tire Collection Facility at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow the owners/operators of Waste Tire Collection Facilities to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and the allowance of Waste Tire Collection Facilities to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Collection Facility not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Collection Facility annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. The owner or operator of a Waste Tire Collection Facility must report the total amount of waste tires accepted from unregistered waste tire haulers in the required annual report.

431 Self-certification language was added that allows the Department to require Waste Tire
432 Collection Facilities to furnish additional information concerning compliance with the
433 regulatory requirements.
434

435 XI. Standards for End Users (Section 10.9)
436

437 The general provisions of this section apply to End Users who end use more than ten (10)
438 tons of tire-derived product or who end use whole waste tires for energy or fuel in any
439 one State fiscal year. The general provisions require that End Users use a registered
440 Waste Tire Hauler or Mobile Waste Tire Processor for shipment or mobile processing of
441 waste tires. This general provision does not apply to End Users who ship tire-derived
442 product off site.
443

444 End User registration, manifest, and annual reporting sections were added and include:

- 445 1. A system for registering as an End User, including obtaining a Certificate of
446 Registration. The Certificate of Registration may be canceled if end use no longer
447 occurs at their registered location.
- 448 2. Requiring retention of manifests provided by a Waste Tire Hauler for shipment of
449 waste tires. Manifests are not required for tire-derived product.
- 450 3. A requirement to submit the Waste Tire Facility Annual Reporting Form (Form
451 WT-5) by April 1st of each year.
452

453 XII. Standards for the Management of Used Tires (Section 10.10)
454

455 New requirements were added which apply to any person who commercially
456 accumulates, stores, transports, or dispenses used tires. These requirements also apply to
457 Waste Tire Generators who sell used tires and used tire shops that sell new tires but do
458 not generate waste tires. Written criteria that distinguish waste tires from used tires must
459 be developed and maintained at the site where used tires are accumulated, stored, and/or
460 dispensed and in any vehicle used to transport used tires. The written criteria must be
461 provided to the Department upon request. Waste tires and used tires must be clearly
462 identified, per the written criteria, and used tires must be organized in a manner that
463 allows inspection of each individual used tire. The written criteria may be designated as
464 Confidential Business Information (CBI) or trade secret.
465

466 XIII. Waste Tire Fee Administration (Section 10.11)
467

468 A new section was added for the administration of the Waste Tire Fee. Effective July 1,
469 2014, HB 14-1352 transferred all regulatory authority for the Waste Tire Fee from the

470 Department of Revenue (DOR) to the Department. The \$1.50 fee is not a new fee. The
471 fee is used for waste tire administrative functions, end user rebates, and grant funding.
472

473 The \$1.50 fee must be collected on the sale of each new tire and applies to the sale of
474 new motor vehicle tires and new trailer tires. New motor vehicle and new trailer tires
475 include the following, but not limited to: all tires used on passenger cars, trucks and
476 vehicles, low speed electric vehicles (per Section 30-20-1402, C.R.S.), motorcycles and
477 motor scooters licensed to travel on roads, semi trucks and semi trailers, any trailer towed
478 behind a vehicle, motor homes, mini vans, campers, buses, medium-duty trucks, fleet
479 vehicles, new and used cars sold by a car retailer if existing tires are changed out for new
480 tires, and online sales of new tires. The fee does not apply to retreaded tires, used tires,
481 tires used for agricultural equipment (e.g., tractors, bailers, and harvesters), off-the-road
482 (OTR) vehicles, (e.g., golf carts, All Terrain Vehicle (ATV), dirt bikes), Segways,
483 wheelchairs, garden equipment, mining equipment, construction equipment, bicycles,
484 airplanes, or toy vehicles.
485

486 XIV. Waste Tire End Users Fund (Section 10.12)
487

488 A new subsection was added to manage the End Users Fund rebate program and
489 incorporate applicable rules for this program that currently exist in the Waste Tire
490 Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4), Section 1
491 Rules for Reimbursements from the Processors and End Users Fund. Section 1 of 6 CCR
492 1007-2, Part 4 will be repealed as part of this rulemaking because of incorporation of this
493 new subsection into Section 10 of the Regulations.

494 Minor changes regarding application procedures, the appeals process, deadlines for
495 applications, and processing of applications were made.

496 Major changes and additions to this program, as it existed in 6 CCR 1007 Part 4, include:
497

- 498 1. Retailers of tire-derived products are now eligible for a rebate from the End Users
499 Fund.
- 500 2. Processors are only eligible for a rebate from the End Users Fund when they
501 process waste tires into tire-derived products that they sell and move offsite to an
502 out-of-state End User.
- 503 3. The rebate will only be paid one time for the end use, retail sale or processing of
504 the tire-derived product.
- 505 4. An annual per ton rate will be used to determine the rebate for approved tons from
506 the End Users Fund.

- 507 5. Processors, Retailers, and/or End Users are not eligible for a rebate if funding
508 was provided by the Waste Tire Administration, Enforcement, and Cleanup Fund
509 to clean up an illegal waste tire site.
510 6. An eligibility table (Table 10-12.01) was added to clarify eligibility for End
511 Users, Retailers and Processors to participate in the End Users Fund.
512 7. Processing waste tires into tire bales, except when end used in an engineered,
513 permanent structure stamped and sealed by a Colorado Certified Professional
514 Engineer, is no longer eligible for a rebate.
515 8. The minimum amount of tons of waste tires end used to be eligible to participate
516 in the End Users Fund was reduced from fifty (50) tons per fiscal year to ten (10)
517 tons per fiscal year.
518 9. Language was adjusted regarding ineligibility to participate in the End Users
519 Fund for those who knowingly or intentionally submit false information to the
520 Department.
521 10. Language was added that states the Department may deny a rebate if an applicant
522 is out of compliance with any State or Federal environmental law, rule or
523 regulation.
524

525 Tire-derived products or whole waste tires that are being end used should have economic
526 value. The Commission feels that End Users should provide, when requested by the
527 Department, documentation which establishes that tire-derived products or whole waste
528 tires were purchased or provide other proof that demonstrates that the tire-derived
529 products or whole waste tires have economic value.
530

531 **Description of Local Government Involvement in the Stakeholder Process**

532

533 Executive Order D 2011-005 (EO5), “Establishing a Policy to Enhance the Relationship
534 between State and Local Government” requires state rulemaking agencies to consult with
535 and engage local governments prior to the promulgation of any rules containing
536 mandates. The Department completed an EO5 – Internal Communication Form – Internal
537 Conception Phase which was transmitted to local governments. The amended regulations
538 will have little effect on local governments unless the local government generates,
539 accumulates, stores, transports, dispenses, or processes waste tires, used tires or tire-
540 derived product, sells new motor vehicle or trailer tires, or applies for a rebate from the
541 End Users Fund.
542

543 **Issues Encountered During Stakeholder Process:**

- 544 1. Some stakeholders asked why the beneficial use requirements for waste tires are located
545 in the Section 8 Recycling and Beneficial Use regulations instead of in the Section 10

546 Waste Tire regulations. Section 8 regulates recycling, a broad category that includes
547 beneficial use. Waste tire processing is a form of recycling. However, the legislature has
548 determined that because the waste tire stream presents unique challenges, requirements
549 unique to waste tires are necessary. Although the legislature created unique requirements
550 for waste tire generators, haulers, processors, end users, monofills and collection
551 facilities, it did not create unique requirements for beneficial use of waste tires.
552 Therefore, beneficial use of waste tires – an act distinct from the End Use of waste tires
553 or tire-derived product – is still regulated in Section 8.

554 2. A question arose regarding whether warranty tires – that is, tires that a retailer returns to
555 the wholesaler or manufacturer – are waste tires. The Commission feels that warranty
556 tires and tires with a manufacturing defect that are returned to the wholesaler or
557 manufacturer for credit or return do not fall under the definition of a waste tire because
558 the manufacturer or wholesaler, rather than the retailer, ultimately makes the
559 determination if the tire is usable or should be discarded.

560 3. Some stakeholders wanted to add tire retread businesses to the applicability list for Waste
561 Tire Generators in Section 10.4. The Commission did not add tire retread businesses to
562 the list because the Waste Tire Generator definition is not all inclusive. If a retread
563 business makes the determination that a motor vehicle or trailer tire cannot be retreaded,
564 then the tire is a waste tire. The retread business would therefore be a Waste Tire
565 Generator subject to all the requirements of Section 10.4.

566 4. Some stakeholder asked whether it is possible for a corporation, business, or government
567 agency that has registered under their corporation, business, or government agency with
568 multiple Waste Tire Hauler registrations (e.g., corporation A has five (5) stores and each
569 of these five (5) stores are registered as Waste Tire Haulers because they haul more than
570 ten (10) waste tires at a time) to complete only one Commercial Waste Tire Hauler
571 Annual Report Form (Form WT-4) for all of the Waste Tire Haulers registered under
572 their corporation/business instead of completing a separate Form WT-4 for each Waste
573 Tire Hauler location. Rather than addressing this situation in the Regulations, the
574 Department will modify Form WT-4 to allow the completion of one Form WT-4 for
575 corporations, businesses, or government agencies that have multiple Waste Tire Hauler
576 registration locations. Each Waste Tire Hauler registration location must be listed and
577 accounted for on the form.

578 5. Some stakeholders were concerned that under the previous regulations, parties who
579 tracked tire amounts in tons rather than in actual counts could apply a formula to convert
580 tonnage to estimated tire amounts in their annual report. Some stakeholders felt the
581 conversion could lead to errors by the person completing the form. To address this

582 concern, the new regulation allows reporting by actual weight in tons. The Department
583 will convert waste tire amounts reported in tons to an estimated tire count..

584 6. Some stakeholders expressed confusion over whether compliance with Section 10
585 requirements exempted parties from compliance with laws or regulations concerning
586 certificates of designation (CDs). To address this concern Section 10.5 .1(A) makes clear
587 that in addition to the Section 10 requirements, persons owning or operating a Waste Tire
588 Monofill must maintain a CD pursuant to Section 1.3. Additionally Section 1.7.3,
589 Section 1.8, Section 2 and Section 3 clearly state requirements for Solid Waste Disposal
590 Sites and Facilities.

591 7. An issue arose during the stakeholder process concerning Section 30-20-1410, C.R.S.
592 which prohibits the sale of used tires if the used tire would violate Section 42-4-228,
593 C.R.S. tire safety standards. Section 42-4-228, C.R.S. requires tires driven on roads to be
594 in a safe condition. Violation of Section 42-4-228, C.R.S. is a traffic offense and law
595 enforcement officers enforce these requirements. Some stakeholders argued the
596 Commission should adopt a robust used tire management regime, making the Hazardous
597 Materials and Waste Management Division the regulator of tire safety in the State. Other
598 stakeholders argued this section is overly broad because it prohibits common practices
599 such as sales of certain used tires to jurisdictions without the Section 42-4-228, C.R.S.
600 standards as well as the sale of certain used tires to be recycled by beneficial users, Waste
601 Tire Processors and Waste Tire End Users. The Commission determines the purpose of
602 Section 30-20-1410, C.R.S. is to assist the Department in distinguishing waste tires,
603 which it regulates, from used tires, which it does not. As such, Section 10 does not adopt
604 an elaborate used tire management regime. The Department will develop and make
605 available guidance to help the used tire seller distinguish a waste tire from a used tire.

606 8. Some stakeholders expressed concern the Department would not collect the Waste Tire
607 Fee from online retailers of new tires. The Commission believes that the Department has
608 the authority to collect the Waste Tire Fee on online sales of new motor vehicle or new
609 trailer tires from out of state parties that sell new motor vehicle or new trailer tires to
610 persons who live in Colorado.

611 9. Some stakeholders asked why there are two Waste Tire Fee Forms on the Department
612 website for submitting the Waste Tire Fee payment. The Department is accepting
613 payment of the Waste Tire Fee either electronically or by mail. The Waste Tire Fee Form
614 must be included with the payment. Two versions of the Waste Tire Fee Form are
615 available online: one for online payment and one for payment by mail. The forms are
616 identical except for the addition of the mailing address on the payment by mail form and
617 the online form has a submit button for online submittal.

618 10. Stakeholders discussed reducing the minimum of fifty (50) tons per fiscal year to ten (10)
619 tons per fiscal year for applicants to be eligible to apply for a rebate from the End Users
620 Fund. The Commission decided to reduce the minimum number of tons to be eligible to
621 apply for a rebate from fifty (50) tons to ten (10) tons to allow more participation in the
622 End Users Fund. The Department and stakeholders agreed that allowing more low
623 volume processors, retailers and/or end users of tire-derived products would stimulate
624 more market development for these products.

625 An applicant may apply for a rebate once they reach the combination of processing, retail
626 sales or end use of ten (10) tons of tire-derived products or whole waste tires for fuel or
627 energy recovery within the current state fiscal year. For example: an applicant who end
628 uses two (2) tons in July, four (4) tons in August, zero (0) tons in September and four (4)
629 tons in October can apply in November for a rebate for the entire ten (10) tons end used
630 that fiscal year. In this example, the applicant would receive the rebate amount calculated
631 for October. Each applicant must reach this minimum every state fiscal year prior to
632 being eligible to participate in the End Users Fund. Once the minimum amount has been
633 applied for, and approved by the Department, the applicant cannot combine applications
634 going forward for that fiscal year; they must apply each month for any amount that is
635 processed, sold by a retailer, or end used.

636 11. Stakeholders questioned which processing, retail sales, or end uses of tire-derived
637 products and whole waste tires would be eligible for a rebate from the End Users Fund.
638 The Department, working with the stakeholders, developed an eligibility table (Table 10-
639 12.01) showing which processes, retail sales, or end uses of tire-derived products and
640 whole waste tires are eligible for rebates. This table determines which activities are
641 eligible for which category of end use, processor or retailer rebate pursuant to the End
642 User, Processor, and Retailer definitions. The table also lists several scenarios which are
643 not eligible for a rebate from the End Users Fund. This table does not create any new
644 rights; it only specifies processes, retail sales and end uses that are eligible for rebates
645 from the End Users Fund. The Department has the discretion to determine eligibility for
646 any activity not included in the table.

647 12. Some stakeholders wondered what would happen if two or more applications that are
648 deemed eligible for a rebate for the same tire-derived product or whole waste tires that
649 are received at the same time by the Department. The Commission has determined that
650 the Department should notify each applicant that more than one application was received
651 for the same tire-derived product or whole waste tires and that the impacted applicants
652 must notify the Department within two (2) business days of notification which
653 application(s) would be withdrawn. If a notification is not received by the Department
654 within two (2) business days all received applications will be denied.

655 13. Another issue was the change in eligibility for the end use of tire bales. The Department
656 was recently audited by the Colorado Office of the State Auditor for the administration of
657 the Waste Tire Processor and End User Program. One of the conclusions from the
658 “Department of Public Health and Environment: Waste Tire Processor and End User
659 Program June 2014 Performance Audit” was that tire bales should not be eligible for a
660 rebate because they do not meet the following criteria:

- 661 • Waste tires should be recycled or otherwise consumed and should not return to
662 storage in Colorado. Tire bales were determined to be temporary usage of waste tires
663 and do not permanently eliminate the need to manage the waste tires. For example, if
664 the steel bands holding the tire bales together break, the resulting tire pile will have to
665 be cleaned up and either recycled or disposed.
- 666 • The cost to produce and/or purchase reimbursable waste tire products should be
667 higher than the reimbursements offered by the program. The cost to produce and/or
668 purchase a tire bale is typically less than the rebates from the End Users Fund. The
669 auditors found the Department paid an average of \$62 per ton for waste tires end used
670 in Fiscal Year 2013. The audit found several examples in the reviewed applications
671 for Fiscal Year 2013 where the tire bales were sold for between \$10 to \$15 per tire
672 bale. Each tire bale weights approximately one ton.
- 673 • The audit concluded those who process, sell, or end use tire bales do not need a
674 financial incentive from the End Users Fund to make tire bales economically feasible.

675
676 The audit recommended that only tire bales used in a permanent, engineered structural
677 design approved by a professional engineer should qualify for rebate. Examples of these
678 types of structures include houses, dams, or buildings where the tire bales are encased in
679 another material such as concrete or steel.

680 The Commission has determined that only tire bales end used in Colorado in an
681 engineered, permanent structure that has been stamped and sealed by a Colorado
682 Certified Professional Engineer will be eligible for a rebate. Uses such as windbreaks,
683 corrals, or fencing are considered temporary and will not be eligible for a rebate from the
684 End Users Fund.

685 To be eligible for a rebate from the End Users Fund, an applicant will need to submit an
686 End Users Tire Bale Approval Form, available on the Department’s website, along with
687 proof the structure was stamped and sealed by a Colorado Certified Professional
688 Engineer.

689 This determination does not restrict the processing, selling or end use of tire bales, as
690 long as the tire bales continue to be considered a beneficial use by the Department and
691 local laws and ordinances allow for their end use in the location they are installed.

692 14. Stakeholders questioned why there is a requirement for applicants participating in the
693 End Users Fund to provide estimated forecasts of future processing, retail sales or end
694 use of tire-derived products or whole waste tires. Due to changes in HB 14-1352, the
695 Department must set the same per ton rate for a twelve (12) month period. The same per
696 ton rate is intended to provide more market certainty for applicants so they can better
697 forecast their budgeting and use of tire-derived products. For the Department to be able to
698 set a per ton rate, having forecast information from those actively participating the End
699 Users Fund allows the Department a more accurate picture to set a rate that allows market
700 stability. The Commission has determined that this information is needed for the
701 Department to set a per ton rate that meets the requirements of HB 14-1352.

702 15. A few stakeholders expressed concern about the term “applicant” in section 10.12.6
703 which states that applicants who knowingly or intentionally provide false information to
704 the Department are prohibited from receiving future rebates from the End Users Fund.
705 Specifically, some stakeholders were concerned that their companies would be held liable
706 for actions of “rogue employees.” It is the intention of the Commission that only culpable
707 parties be prohibited from receiving rebates under these Rules.

708 16. Some stakeholders questioned why pyrolysis is considered an end use and not a process.

709 Senate Bill 13-252, Section 40-2-124 , C.R.S. defines pyrolysis:

710 “Pyrolysis” means the thermochemical decomposition of material at elevated
711 temperatures without the participation of oxygen.

712 Section 1.2 adopts this definition. For purposes of Section 10, pyrolysis of waste tires or
713 tire-derived product means to convert waste tires or tire-derived product into other
714 components with economic value – typically gas, oil and carbon based products. The
715 Commission has determined that pyrolysis is an end use, and would be eligible from the
716 End Users Fund based on Table 10-12.01.

717 17. Some stakeholders questioned - how materials created by the method of pyrolysis will be
718 treated for the purposes of eligibility for a rebate from the End Users Fund. Pyrolysis is
719 considered an end use, as defined in Section 30-20-1401(4) (c), C.R.S.:

720 Consumes tire-derived product or uses tire-derived product in its final application
721 or in making new materials with a demonstrated sale to a third-party customer.

722 18. The Commission deems those companies who purchase materials from a company who
723 used pyrolysis to create those materials to be not eligible for a rebate from the End Users
724 Fund. Another issue arose regarding how a retailer was going to be defined for the
725 purpose of eligibly for receiving a rebate from the End Users Fund. Per Section 30-20-
726 1405 (2)(b), C.R.S., the Department shall use moneys in the End Users Fund to provide
727 rebates to in-state:

728 Retailers who sell tire-derived product...

729 The Commission has determined that retailers of tire-derived products are retailers who
730 sell small quantities of tire-derived products to customers who will use the tire-derived
731 product for its ultimate use. For example, a retailer selling landscape mulch made of
732 processed waste tires to a residential customer who will install the landscape mulch on
733 their own property is eligible to receive a rebate. Retailers will need to provide proof of
734 retail sales tax being collected from the ultimate customer or provide proof that the
735 ultimate customer is exempt from paying retail sales tax. Retailers of tire-derived
736 products must have a current retail sales tax license to be eligible to participate in the End
737 Users Fund.

738 19. Another issue encountered concerned a rebate for waste tires located at an illegal waste
739 tire site that received funds from the Administration, Enforcement and Cleanup Fund.
740 Specifically, if those tires are processed onsite, should the processing of those same waste
741 tires also be eligible for a rebate from the End Users Fund? The Commission has
742 determined such processing should not be eligible to receive a Processor rebate because
743 the Processor is already receiving state money from another fund to process and remove
744 the waste tires. This would be the same for Retailers who sell the tire-derived product
745 processed from these illegal sites. Conversely, if a person receives money from the
746 Administration, Enforcement and Cleanup Fund to remove waste tires from an illegal
747 waste tire site and subsequently processes those waste tires offsite, they would be eligible
748 for the Processor rebate (if sold to an out-of-state End User) because the Administration,
749 Enforcement and Cleanup Fund would be funding only the removal of those waste tires,
750 not the subsequent processing. End Users would be eligible for a rebate for the end use of
751 those processed waste tires as long as they are not financially benefiting from the cleanup
752 of the waste tires. The Commission feels that the Department should make every effort
753 when awarding a grant to cleanup waste tires from an illegal waste tire site to ensure that
754 the same waste tire is not eligible for both a rebate from the End Users Fund and
755 reimbursement from the Administration, Enforcement and Cleanup Fund and the End
756 Users Fund.

757 20. Factors used to determine the per ton rate of \$42 for the next twelve (12) months
758 beginning January 2015. The Commission considered several factors in determining
759 setting the per ton rate:

- 760 • The audit findings from the Colorado Office of the State Auditor (Department of
761 Public Health and Environment: Waste Tire Processor and End User Program June
762 2014 Performance Audit) stated that the Department should not pay rebates in excess
763 of the cost of processing or end using tire-derived products. House Bill 14-1352
764 prohibits the Commission from setting a tiered per ton rate.

- 765 • The Department and stakeholders used a forecasting spreadsheet that included the
766 following information:
 - 767 ○ Breakdown of approved tons over the last fiscal year by End User, Retailer and
768 Processor. Tons approved that are not eligible under the current statute were
769 removed.
 - 770 ○ Forecast of potential end use of tons from applicants who did not participate or
771 were limited in their participation in the End Users Fund during the last fiscal
772 year.
 - 773 ○ Projections of revenues based on the previous three years' historical rates.

774 Based on these factors, the Commission has determined that the Department will pay a
775 rebate of \$42 per ton for the next twelve (12) months.

776
777 **Regulatory Alternatives**

778
779 No other regulatory alternatives were evaluated.

780
781 **Cost/Benefit Analysis**

782
783 A cost-benefit analysis will be performed if requested by the Colorado Department of
784 Regulatory Services.

785