

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

Addition to Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) – Addition of Section 15, Waste Motor Vehicle Tire Haulers, and Associated Additions to Section 1.2, Definitions

(Adopted by the State Board of Health on November 15, 2006)

Basis and Purpose.

Pursuant to 25-17-204, C.R.S., the State Board of Health is required to promulgate rules concerning the regulation of the transportation for commercial purposes of waste motor vehicle tires. The Waste Motor Vehicle Tire Haulers regulations are being promulgated under, and are consistent with, that authority.

The purpose of the regulations is to set forth requirements for persons who transport waste motor vehicle tires for storage or disposal. The requirements for said persons includes the following: (1) the creation and maintenance of records pertaining to the transportation of such tires for storage or disposal, which are summarized by each tire hauler and provided to the Department of Public Health and Environment (Department); (2) the registration of such activity by each tire hauler with the Department; and (3) the posting of a bond in the amount of ten thousand dollars by each tire hauler. Additionally, the purpose of the regulations is to set forth measures required for the Department to enforce the abovementioned requirements.

Specific Statutory Authority.

The specific authority for these rules is provided in Section 25-17-204, C.R.S. (“The State Board of Health shall promulgate rules to implement this section...”).

Major Factual and Policy Issues Encountered.

The HMWMD initiated a stakeholder process in March 2006 to help develop the regulations. Based on stakeholder feedback, the following is a listing of major factual and policy issues encountered.

1. Concerns were raised that the proposed regulations required a bond that could not be readily underwritten because it contained a “forfeiture clause” that allowed the Department to draw on the bond if an illegal disposal violation was discovered. Resolution was achieved on this issue by changing the proposed regulatory bond language to allow the Department to instead file a claim on the bond in the case where an illegal disposal violation is discovered.

2. Concerns were raised that the generators of waste motor vehicle tires should also be held accountable. The statute does not, however, provide authority to regulate the generators of waste motor vehicle tires. Thus, a proposal was made and consensus reached that the Waste Motor Vehicle Tire Haulers would create a manifest that includes (among other things) the name, signature, and date of signature of the generator. In accordance with the proposed regulations, the manifests will be available to the Department for review.
3. It was requested that the term “beneficial use” be defined. At this time, the Department did not include a specific definition for “beneficial use” in the proposed regulations because the term also applies to other areas of solid waste management and goes well beyond waste tire management. The Division will continue to work on a definition and will propose said definition for inclusion in the solid waste regulations when it is complete.
4. Concerns were raised that the equipment marking requirements in the proposed regulations could unfairly preclude the Waste Motor Vehicle Tire Haulers from using rental equipment or using commercial freight carriers to do business. Resolution was attained by exempting commercial freight carriers under contract with a registered Waste Motor Vehicle Tire Hauler from the proposed regulations and by applying the marking requirements exclusively to equipment owned by the haulers. Subsequently, the Division learned that Section 4306 of the United Carrier Registration Act of 2005 prohibits the State from enacting a regulation that requires a motor carrier to display any form of identification on or in a commercial motor vehicle. Consequently, the Division omitted Section 15.3.8 from the September 5, 2006 Proposed Waste Motor Vehicle Tire Hauler Regulations because it required, with exception, the external marking of hauling vehicles. However, the proposed regulations do require that a manifest of each load be carried in the vehicle used for hauling (i.e., whether it is owned, contracted or rented by the hauler).
5. Concerns were raised that non-licensed persons engaged in hauling waste motor vehicle tires would have an economic advantage over registered Waste Motor Vehicle Tire Haulers and that the Department would not have the resources to enforce the regulations. It was generally agreed that the aid of the local governing bodies and the registered Waste Motor Vehicle Tire Haulers would be crucial to the Department in its efforts to enforce the proposed regulations.

Alternative Rules Considered and Why Rejected.

For the newly proposed Section 15, no alternative rules were considered. Section 15 is the result of a statutory requirement found at 25-17-204, C.R.S.