

ILLINOIS POLLUTION CONTROL BOARD
February 26, 2015

RECEIVED
CLERK'S OFFICE
FEB 26 2015

IN THE MATTER OF:)
)
MANAGEMENT OF USED AND WASTE) R15-19
TIRES: PROPOSED AMENDMENTS TO) (Rulemaking - Land)
35 ILL. ADM. CODE 848)

STATE OF ILLINOIS
Pollution Control Board

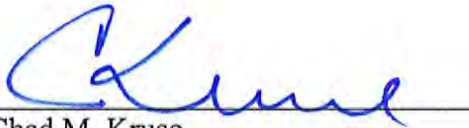
HEARING OFFICER ORDER

On December 22, 2014, the Illinois Environmental Protection Agency (Agency) filed a proposal to amend Part 848 of the Board's rules governing the management of used and waste tires. Accompanying the proposal was a Statement of Reasons (SR). The Agency's proposal was filed pursuant to Sections 27, 28, and 55.2 of the Environmental Protection Act (Act) and Section 102.202 of the Board's procedural regulations. 415 ILCS 5/27, 28, 55.2 (2012); 35 Ill. Adm. Code 102.202. A February 9, 2015 hearing officer order scheduled the first hearing for March 5, 2015 in Springfield. The February 9, 2015 order also set deadlines of Thursday February 19, 2015 for pre-filing testimony in advance of the first hearing and Thursday February 26, 2015 for pre-filing questions in advance of the first hearing.

On Wednesday, February 18, 2015, the Agency prefiled the testimony of Terry Gray, Todd Marvel, and Brian White, all of whom the Agency anticipates will testify at the first hearing.

The Board and its staff have reviewed the Agency's proposal and the Agency's pre-filed testimony. The Board poses questions based on those filings that are filed with this order as Attachment A. The Board directs the Agency to prepare responses to the questions for the first hearing on March 5, 2015. The Board may raise additional or follow-up questions in the course of the first hearing.

IT IS SO ORDERED.


Chad M. Kruse
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601
312-814-3665
chad.kruse@illinois.gov

Attachment A: Pre-filed Questions of the Board

General Questions Regarding the Rulemaking Proposal

1. In the Statement of Reasons, the Agency indicates that this rulemaking proposal was shaped, in part, by feedback from the Indiana/Illinois Tire Dealers Association. SR at 2. The Board asks that the Agency identify any other business or industry groups that provided input on the rulemaking proposal along with the contact information for those groups.
2. The Board requests that the Agency update the record with the approximate number of businesses affected by the rulemaking proposal broken down by business type (e.g. storage facilities, tire transporters, tire retreading facilities, tire stamping and die cutting facilities, etc.) and business size (i.e. more than 10,000 used or waste tires on site, more than 5,000, but fewer than 10,000 used or waste tires on site, etc.).
3. Provide information on whether the facilities subject to the proposed rulemaking have the infrastructure necessary to comply with the rule in place, or if the requirements of the rule (e.g., weighing tires and tire fragments) will demand significant monetary investment.

Section 848.101 Applicability

4. Clarify whether under the proposed change to subsection (a), an accumulation of two-inch-minus chips would be subject to the requirements of Part 848 if the owner or operator of a facility does not have a valid contract for purchase or sale. If a facility has a contract for purchase or sale for a portion of a two-inch-minus chip accumulation, would the exemption apply only to that portion of the accumulation covered by the contract?
5. Provide additional information on whether the Agency has identified any facilities that may accumulate large quantities of two-inch-minus chips without a contract for purchase or sale. If such a facility has been identified, do these accumulations pose the same threat as accumulation of unprocessed used tires?
6. Comment on whether the addition of the phrase "exact specification," in subsection (b), is consistent with the statutory intent of the definition of converted tires at Section 848.104:

"Converted tire" means a used tire which has been manufactured into a usable commodity other than a tire. "Conversion" or "Converting" means action which produces a converted tire. Usable products manufactured from tires, which products themselves are capable of holding accumulations of water, shall be deemed to be "converted" if they are stacked, packaged, boxed, containerized or enclosed in such a manner as to preclude exposure to precipitation prior to sale or conveyance. [415ILCS 5/54.02]

7. The Statement of Reasons indicates that subsection (g) is based on the exemption previously located at Section 848.201(d). While subsection (g) exempts used or waste tires “managed” at municipal waste landfills in accordance with a solid waste permit, the current exemption under Section 848.201(d) applies only to used or waste tires “disposed” in a permitted landfill. Used or waste tires “stored” at a permitted landfill are subject to requirements of Part 848. Explain the rationale for the proposed change.
8. Subsection (i) exempts used or waste tires managed under, and in accordance with, a beneficial use determination issued pursuant to Section 22.54 of the Act. 415 ILCS 5/22.54 (2014). Indicate whether the Agency has issued beneficial use determinations for used or waste tires. If so, provide the types of beneficial uses that have been approved by the Agency.

Section 848.104 Definitions

9. The proposed revision to the definition of “aisle” limits the application of the term to indoor storage only. Clarify whether the term “firebreak” replaces “aisle” for outdoor storage.
10. The proposed definitions of the terms “tire retreading facility” and “tire stamping and die cutting facility” include a production threshold of at least 100 tires per operating day. Explain the rationale for choosing the 100 per day operating threshold.

Section 848.106 Estimating the Weight of Used and Waste Tire Accumulations

11. Regarding the proposed density factors for calculating the weight of used or waste tire accumulations, Mr. Gray states that the proposed density factors are based on extensive experience with estimation and removal of actual stockpiles. Gray Test. at 3. Thus, the Board asks the Agency to clarify whether the density factors have been adopted in regulations of other states or published in any trade publications.
12. Explain the significance of subsection (b) of this section. Why would a storage pile be divided in order to make the necessary calculation?

Section 848.201 Applicability

13. The proposed revisions to the used tire regulations expands the scope of existing exemptions to tire retreading and tire stamping facilities in response to a comment received during the Agency’s regulatory development. SR at 3. In light of this, the Board directs the Agency to:
 - a. update the record with the number of tire retreading and tire stamping facilities affected by the proposed exemptions along with the approximate number of tires managed by each of the facilities; and
 - b. comment on whether the Agency is aware of any environmental, health or fire safety concerns associated with tire retreading and tire stamping facilities.

14. Proposed revisions to the exemptions for tire retreading, and tire stamping facilities with 5,000 or fewer tires at subsections (b) and (c) require such facilities to address the threat of mosquito breeding by requiring compliance with Section 848.202(b)(3). However, these facilities are exempted from fire safety requirements proposed at Section 848.202(b) that apply to tire storage sites with more than 50 used or waste tires. Therefore, the Board requests that the Agency explain this apparent contradiction in the proposal.

Section 848.202 Requirements

15. The Agency's proposal changes the threshold for additional requirements at subsection (c) from sites with more than 500 used or waste tires to more than 60 tons of used or waste tires. The 60 ton threshold corresponds to approximately 5,000 passenger tire equivalents. The Statement of Reasons notes that the threshold change tailors the more demanding requirements to the types of sites that have historically had more significant environmental problems. The Board requests that the Agency:
- a. clarify whether environmental problems, including mosquito breeding and fire safety issues are mostly associated with tire storage or disposal sites with more than 5,000 used or waste tires;
 - b. identify whether the Agency has any record of environmental problems at tire storage sites that supports increasing the applicability threshold for additional requirements from 500 to 5,000 used or waste tires;
 - c. indicate whether any members of the regulated community requested the Agency to change the applicability threshold during the Agency's outreach;
 - d. clarify why a threshold of 60 tons was chosen rather than 55 tons, which is closer to 5,000 passenger tire equivalent; and
 - e. comment on whether it would be appropriate to use a weight-based threshold in other sections of the rules where the applicability threshold is based on number of used or waste tires. (*See*, for example, Sections 848.202(b), (c), 848.301(b), (c)).

Section 848.203 Contingency Planning and Emergency Response

16. The Agency proposes to strike all language requiring the contingency plan to be designed to minimize hazards to human health and the environment caused by mosquitoes because Section 848.202(b)(3) requires all used and waste tires at tire storage and disposal sites at which more than 50 tires are located to be kept dry. Since the contingency plan is supposed to address situations where a facility may be faced with a health and safety issue for any number of reasons, including noncompliance with the applicable requirements, the Board requests that the Agency explain why it is unreasonable to include a measure preventing mosquito breeding in the contingency plan.

Section 848.204 Storage of Used and Waste Tires Within Buildings

17. The Board requests that the Agency provide rationale for increasing the applicability threshold from 500 used or waste tires to 60 tons or approximately 5,000 passenger tire equivalents for this section requiring a tire storage plan, contingency plan, record keeping and reporting.

Section 848.301 Applicability

18. The Board requests that the Agency explain why the proposal exempts tire retreading and tire stamping facilities meeting the threshold requirements specified under subsections (b) and (c) from recordkeeping and reporting requirements of Subpart C.

Section 848.303 Daily Tire Record

19. Subsection (a) requires the Daily Tire Record to be maintained in a form and format prescribed by the Agency. The Board, therefore, requests that the Agency submit a draft Daily Tire Record form to the Board for the record. [There are many sections of the proposed rulemaking that call for forms prescribed by the Agency, and in the instance that the Board fails to point out any one of those sections in these pre-filed questions, the Board requests that the Agency supply the form in the record of this rulemaking.]

Section 848.304 Annual Tire Summary

20. Subsection (a) requires an Annual Tire Summary to be maintained in a form and format prescribed by the Agency. The Board, therefore, requests that the Agency submit a draft Annual Tire Summary form to the Board for the record.

Section 848.305 Tire Tracking Receipts

21. Subsection (d) requires Tire Tracking Receipts in a form and format prescribed by the Agency. This same form is required by Section 848.607(d) of the proposed rulemaking. The Board, therefore, requests that the Agency submit a draft Tire Tracking Receipt form to the Board for the record.

Section 848.400 Scope and Applicability

22. Explain why tire retreading and tire stamping facilities with more than 5,000 used or waste tires are exempted from the financial assurance requirements.
23. Explain whether the exemption under subsection (c)(4) covers tire retreading and tire stamping facilities with 5,000 or fewer used or waste tires.

Section 848.407 Use of Multiple Financial Mechanisms

24. Please comment on adding a reference to Section 848.406 in the first sentence of this section as follows:

An owner or operator may satisfy the requirements of this Subpart by establishing more than one financial mechanism, listed in Section 848.406, per site. These mechanisms

~~include are limited to~~ trust funds, surety bonds guaranteeing payment, and letters of credit.

Section 848.410 Trust Fund

25. Subsection (c) requires that the required trust agreement along with a formal certification of acknowledgement be on forms prescribed by the Agency. The Board, therefore, requests that the Agency provide drafts of these forms in the record of this proposed rulemaking and either include them as appendices to the rule or direct owners and operators as to where the forms may be found.
26. Comment on revising subsection (d)(4) as follows:
- ~~The owner or operator must~~ shall make the first annual payment, ~~prior to beginning of the pay in period. The owner or operator shall also, prior to the beginning of the pay in period,~~ and submit to the Agency a receipt from the trustee for the first annual payment before used or waste tires are received at a site covered by the trust agreement.
27. Explain the rationale for removing the 60-day limit on the Agency to instruct the trustee to release funds to the owner or operator in subsection (g)(2). A similar change is proposed at subsection (h)(2). Explain whether the proposed requirements that require the Agency to take action “as soon as practicable” extend beyond 60 days.

Section 848.411 Surety Bond Guaranteeing Payment

28. Subsection (b) provides “[t]he surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.”
- a. Explain whether Circular 570 is a Department of Treasury publication or a listing on the Department of the Treasury’s website. If it is publication, explain whether Circular should be incorporated by reference.
 - b. Explain whether the surety company must be licensed to transact business of insurance by the Illinois Department of Insurance.
29. Subsection (c) requires the surety bond be on standardized forms prescribed by the Agency. The Board, therefore, requests that the Agency submit a draft surety bond form to the Board for the record.
30. Explain the rationale for allowing the surety to cancel the bond anytime instead of requiring a minimum period of at least one year, as required for a letter of credit.

Section 848.413 Letter of Credit

31. Subsection (b) provides, “[t]he issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.”
- a. Clarify which federal and state agencies regulate institutions that issue letters of credit.
 - b. Explain whether the proposed regulations specify the name of the state agency that regulates institutions issuing the letter of credit.
 - c. Explain whether the issuing institution’s deposits must be insured by the Federal Deposit Insurance Corporation.
 - d. Provide draft forms the Agency intends to use for letters of credit. If such forms are not available at this time, please submit the draft forms into the record before the April 15, 2015 hearing.

Section 848.602 Tire Transportation registration

32. Submit draft forms the Agency intends to use for tire registration into the record before the April 15, 2015 hearing.

Section 848.603 Agency Approval of Registrations

33. Subsection (a) requires completion of Tire Transporter Registrations on a form prescribed by the Agency. The Board, therefore, requests that the Agency submit a draft Tire Transporter Registration form to the Board for the record.

Section 848.608 Tire Transportation Report

34. Subsection (a) requires submission of a Tire Transportation Report on a form prescribed by the Agency. The Board, therefore, requests that the Agency submit a draft Tire Transportation Report form to the Board for the record.

Section 848.702 Application for Tire Storage Permits

35. Subsection (b) sets forth that the Agency “may” prescribe the form and format for tire storage permit application. Discuss why the Agency is not affirmatively requiring information to be submitted on a form prescribed by the Agency. If the Agency decides to do so, please submit the draft forms to the Board for the record before the April 15, 2015 hearing.