

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Clerk's Office of the Illinois Pollution Control Board the Pre-filed Testimony of Terry Gray, the Pre-filed Testimony of Todd Marvel, and the Pre-filed Testimony of Brian White in this proceeding, a true copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Laurence J. Mraz  
Assistant Counsel  
Division of Legal Counsel

DATED: February 18, 2015  
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**THIS FILING IS SUBMITTED ON RECYCLED PAPER.**

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PRE-FILED TESTIMONY OF TERRY GRAY ON THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY'S PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE 848

Qualifications

My name is Terry Gray. I am President of TAG Resource Recovery, a consulting firm specializing in waste tire management issues. I graduated from Princeton University with a Bachelor of Science Degree in Chemical Engineering. I worked for Dow Chemical Company in a series of progressive responsibilities including technical service, product/market development, product management and business management within Dow's Hydrosience environmental engineering subsidy. I also served as Director of Corporate Development for Pakhoed, a billion dollar Dutch corporation, before becoming one of the initial officers (Vice President of Corporate Development) for WRI as it became the first large multi-plant waste tire processing operation in North America. I formed TAG Resource Recovery in 1989 and have served 22 states, 6 Canadian Provinces and 2 foreign countries on waste tire related issues, including development of statutes and regulations, evaluation of technologies, and development of processes and markets for a broad range of tire-derived products. I authored two comprehensive handbooks for the US EPA on a sole-source basis. I have been recognized as a waste tire expert in multiple state and federal courts.

Testimonial Statement

I have worked with Mr. Todd Marvel, Illinois' used tire program manager, and other IEPA technical and legal staff during development of the proposed amendment to 35 Ill. Administrative Code Part 848 (Management of Used and Waste Tires) filed with the Pollution Control Board on December 18, 2014. I am here today to support the proposed amendment and discuss the basis for some of the technical changes and their impact on stakeholders. Details of the proposed amendments are provided in the "Statement of Reasons and Synopsis of Testimony" that has also been submitted to The Illinois Pollution Control Board, so this testimony will focus on the technical basis for specific components of the amendment.

Section 848.104 Definitions

The definitions cited in the regulations are based on those provided in the enabling statutes (415 ILCS 5/54). The proposed amendment makes additions, subtractions and modifications to reflect changes in the industry, as well as minor changes to clarify meaning and provide current citations. The definition of "used tire" was clarified to include processing by-products such as tire fluff, tire wire and other processing byproducts in regulations as used tires, allowing their storage to be controlled due to their potential for auto-ignition and flammability. The objective of these modifications was clarification and consistency, not major change. The definitions in the amended rules that are defined in the Environmental Protection Act (the "Act") still mirror the respective definitions set forth in the Act , even though some of these definitions are unique to Illinois and differ from common definitions used in other states.

Section 848.105 Incorporation by Reference

Several deletions and an addition were made to Section 848.105: Incorporation by Reference. NFPA Standard 231D was deleted because the stockpile dimensions, separations and other storage requirements cited in Section 848.202 of the proposed regulations are based on the International Fire Code (IFC) that is an updated practical balance of storage efficiency and potential fire control. This Code has become the foundation for waste tire storage regulations in other states, including California. The reference to NFPA 51B was added because of a recent major fire initiated by unsafe welding practices that may have been prevented by following NFPA 51B.

Section 848.106 Estimating the Weight of Used and Waste Tire Accumulations

In some cases, the volume of a used tire pile has to be converted into tire quantity or weight using an estimated density. The density of used tire piles depends upon the type of used tire material, depth and other factors. The current regulations cite one density regardless of pile characteristics, potentially causing incorrect stockpile estimates. Section 848.106 was added to provide alternative densities reflecting -major differences in pile characteristics. The cited densities are based on extensive experience with estimation and removal of actual stockpiles.

Section 848.202 Requirements

The changes to Section 848.202 are discussed in detail in the previously cited Statement of Reasons. One objective was to simplify and clarify applicability by stating quantities in tons where allowed by statute, providing a uniform basis independent of used tire sizes or form. Previously cited tire quantities governing applicability remain the same, but were converted to

equivalent tonnages using the average weight of 25 pounds per tire used by Illinois, rounded to the nearest 5 or 10. The extensive changes in outdoor used tire storage requirements were based on the IFC.

Section 848.203 Contingency Planning and Emergency Response

The proposed amendment to Section 848.203 changes applicability of this section to sites having more than 60 tons (previously 5,000 tires), thereby increasing the threshold from 500 tires. This change focuses Contingency Planning and Emergency Planning on larger sites that will benefit most from this effort.

Subpart C: Recording and Reporting

The proposed changes to Subpart C: Recordkeeping and Reporting are focused on simplifying reporting form and clarifying recordkeeping and reporting requirements to improve accountability for sites containing more than 60 tons of used and waste tires. Tire collection, processing and product sale are increasingly based on weight, not tire count, so using weight for all reporting should reduce historical errors associated with mixing tire count and weight.

Record keeping and reporting requirements are specified, including duration of record maintenance. Good recordkeeping at the storage/processing sites is an important cornerstone for establishing accountability for generators, haulers and processing sites to minimize public liability and public health/environmental risk associated with illegal dumping of waste tires.

Subpart F: Tire Transportation Requirements

The proposed changes to Subpart F are intended to further reduce illegal dumping by requiring generators to use registered haulers and those haulers to provide receipts to generators, maintain records and annually report prescribed information to IEPA. Establishing a system that effectively tracks movement of waste tires from the generator to their final destination is a critical component of an effective state waste tire management program.

Conclusion

The proposed amendments to Part 848: Management of Used and Waste Tires significantly improve the regulatory foundation for Illinois' waste tire management program. I welcome the opportunity to discuss any questions or comments that you may have.

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PRE-FILED TESTIMONY OF TODD MARVEL ON THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE 848

Qualifications

My name is Todd Marvel. I am the Manager of the Used Tire Program in the Field Operations Section of the Bureau of Land at the Illinois Environmental Protection Agency (“Illinois EPA”). I graduated from Eastern Illinois University in 1985 with a B.S. in Environmental Biology and a minor in Chemistry. I have been employed by the Illinois EPA since February of 1987 in the area of waste management and compliance monitoring and enforcement as both a solid and hazardous waste inspector and subsequently, manager of other inspectors. I have managed the Illinois EPA’s Used Tire Program since 1999. I have served on the Resource Conservation Challenge (RCC) Scrap Tire Workgroup, a partnership between USEPA, states, industry and academia to encourage the development and education of key decision makers on legitimate used tire markets in the US. As part of my responsibilities with the RCC, I have served as Chair of the Civil Engineering Committee, which seeks to inform others on legitimate civil engineering applications for tire-derived aggregate in various applications.

Testimonial Statement

The mission of the Used Tire Program is to ensure the proper management of used tires in Illinois to protect human health and the environment and to promote legitimate markets for used tires. Those markets include tire-derived fuel (TDF), civil engineering applications for tire-derived aggregate (TDA), and ground “crumb” rubber for use in molded rubber products, recreational applications, and rubber modified asphalt (RMA). If managed improperly, used tires

pose a threat to human health and the environment by providing a breeding habitat for disease-carrying mosquitoes and by presenting a fire threat that can result in contaminated air, land and water and adversely affect human health through various means of exposure to the contaminants resulting from a fire. To this end, the Illinois EPA regulates the used tire industry to ensure compliance with used tire management standards and conducts or forces used and waste tire removal actions at sites that are determined to pose a threat to human health and the environment. The Illinois EPA strives to ensure environmental and human health protection while encouraging and promoting the development of markets for used tires in Illinois.

I am testifying in support of the proposed amendments to 35 Ill. Adm. Code Part 848 (Management of Used and Waste Tires) filed with the Pollution Control Board ("Board") on December 18, 2014. These proposed amendments have been filed pursuant to Public Act 098-0656, which created Section 55.2.(b-5) of the Environmental Protection Act ("Act"), requiring the Illinois EPA to propose revisions to 35 Ill. Adm. Code Part 848 within six months of the effective date of Public Act 098-0656 (or December 19, 2014). Public Act 098-0656 mandates revisions to the rules adopted under Title XIV of the Act that are necessary to conform those rules to the requirements of Title XIV, including, but not limited to, revisions to those rules that are necessary to implement the changes made to the Act by Public Act 098-0656. This particularly pertains to the tire storage permitting requirements applicable to large and high-volume tire storage sites. The Illinois EPA has proposed other significant changes to 35 Ill. Adm. Code Part 848 to modernize the standards addressing used tire management in Illinois and to clarify a number of ambiguous areas of the existing rules. The objective of the Illinois EPA in developing this rulemaking is to improve the clarity of the rules to facilitate compliance and ease of understanding within the used tire industry and among state regulators, to update the management standards to reflect standards recognized by the International Fire Code, the National Fire Protection Association (NFPA) and the used tire industry, to allow the Agency to provide a more level regulatory playing field within the used tire industry, particularly in the area

of used tire transportation, and to provide for the safe management of used tires without impeding the development and utilization of end use markets for used tire-derived commodities in Illinois.

### Outreach

The Illinois EPA has long recognized that the existing Part 848 rules need to be revised to address outdated management standards and confusing regulatory language. The Illinois EPA first met with the Illinois Tire Dealers and Retreaders Association to propose a general framework from which we would operate to develop a proposal to revise the existing rules and to seek consensus from the industry on a few key changes that we were considering. We established consensus from that meeting and moved forward in developing the proposed amendments over several years. During that process, we have conducted multiple outreach efforts to the used tire industry and government stakeholders. Prior to the submittal of these draft amendments to the Board, we conducted an extensive stakeholder outreach effort to the used tire industry and appropriate government entities to seek their input and receive comments regarding potential contentious issues in the proposed amendments. The organizations we reached out to include the Tire Industry Association (as a surrogate to the now defunct Illinois Tire Dealers and Retreaders Association), the Rubber Manufacturers Association, the Recycling Research Institute (publishers of Scrap Tire News), all of the major used tire processors in Illinois, the Illinois EPA's used tire removal contractors, the state's largest tire retreader, all of the used tire storage/processing facilities that are likely to require a permit under the proposed amendments, the Illinois Environmental Regulatory Group, the Illinois Retail Merchants Association, the Illinois Manufacturers Association, the Sierra Club, the Natural Resources Defense Council, and the Illinois Environmental Council. We did receive a number of comments from representatives of the used tire industry and our response to those comments is addressed in the Statement of Reasons accompanying the Board filing on these proposed amendments. There were no comments received that indicated to us there were any provisions in the proposed amendments that were considered by the industry to be controversial or unresolvable.

The Illinois EPA believes these proposed amendments provide better protection to human health and the environment regarding the management of used and waste tires while facilitating the necessary regulatory flexibility to allow the active marketing and utilization of tire-derived commodities. The Illinois EPA believes these proposed amendments will provide a more level regulatory playing field within the used tire industry and be more protective of human health and the environment for the citizens of Illinois.

### Overview

Highlights of the proposed amendments include the establishment of maximum tire pile dimensions and modification of setback requirements for used tire storage sites at which more than 60 tons of used or waste tires are located, a requirement that owners and operators of used tire storage sites at which tires are stored in buildings to comply with National Fire protection Association standards when conducting any activity in a building that presents a risk of fire, the addition of a surety bond guaranteeing payment as a financial assurance mechanism and the elimination of self-insurance as a financial assurance option, making the financial assurance regulations for used tire storage sites more consistent with the federal hazardous waste financial assurance requirements, and the requirement that owners and operators of certain used tire storage sites and used tire transporters maintain tire tracking receipts and report additional information to the Agency to facilitate the monitoring of proper used tire transportation and recycling and reuse within Illinois.

Specifically, the proposed amendments address the following modifications:

**Subpart A (General):** Modifies the Applicability section to allow for the exemption of tire-derived commodities that are actively marketed and used, modifies definitions to ensure consistency with statutory definitions and ensure that non-commodities are regulated and commodities that are actively marketed are exempt from most regulation; incorporates by reference National Fire Protection Association (NFPA) standards for “hot work” at used tire

facilities; and creates a new section on Estimating the Weight of Used and Waste Tires to allow for a more accurate approximation of the tons of used tires present at used tire storage and processing facilities.

**Subpart B (Management Standards):** Modifies and greatly simplifies the storage exemption for retreaders and die-cutting facilities; implements standards adopted by the International Fire Code (IFC) for the storage of used and waste tire sites; addresses the acceptance of used tires from unplacarded vehicles; and clarifies and modernizes the contingency plan and tire storage plan requirements addressing the storage of used tires inside buildings;

**Subpart C (Recordkeeping and Reporting):** Adds the requirement of tire tracking receipts to help ensure the proper transportation and disposition of used and waste tires; and requires the daily tire record and annual tire summary be maintained in weight (tons) instead of volume to reflect standard industry practice.

**Subpart D (Financial Assurance):** Clarifies the used tire storage limit where the financial assurance requirements apply; clarifies the written removal cost estimate requirements; eliminates self-insurance as an acceptable financial assurance option and adds a surety bond guaranteeing payment as a replacement option for obtaining and maintaining financial assurance; clarifies and modernizes the financial assurance regulations to be more consistent with the well-established federal requirements for hazardous waste facilities; and eliminates the standardized financial assurance forms in the existing regulations to allow more flexible standardized forms to be maintained on the Agency's web site.

**Subpart E (Tire Removal Agreements):** Clarifies the tire removal agreement requirements to ensure consistency with the Environmental Protection Act.

**Subpart F (Tire Transportation Requirements):** Requires that used tires be transported in a portion of the vehicle separate from the driver's compartment; requires additional information (proof of insurance, documentation of safety inspection, etc.) on the tire transportation

registration application to increase the likelihood of proper and safe used tire transportation; requires the Agency reject applications from persons known to have previously violated key provisions of the Environmental Protection Act; requires transporters document the transportation of all used tires by utilizing tire tracking receipts on forms provided by the Agency; and requires all registered used tire transporters to submit Annual Tire Transportation Reports to the Agency to facilitate better monitoring of used tire transportation and more efficient enforcement of improper used tire transporters in Illinois.

**Subpart G (Tire Storage Permits):** Implements requirements for large or high-volume tire storage sites to obtain a permit issued by the Agency (similar to the existing Part 807 solid waste permit requirements for transfer stations and compost facilities), as mandated by the Environmental Protection Act.

Conclusion

Mr. Gray, Mr. White and I will be happy to address any questions from the Board or the public regarding these proposed amendments.

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PRE-FILED TESTIMONY OF BRIAN WHITE ON THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE 848

Qualifications

My name is Brian S. White. I am the Manager of the Compliance Unit in the Waste Reduction and Compliance Section of the Bureau of Land at the Illinois Environmental Protection Agency (“Illinois EPA”). The Compliance Unit is generally responsible for compliance tracking activities in the Bureau of Land and for reviewing and evaluating compliance with the financial assurance requirements of the Environmental Protection Act and the Board adopted rules.

I graduated from Illinois State University in 1983 with a B.S. in Environmental Health. I also completed 44 hours of postgraduate work for a Master’s in Public Administration from University of Illinois Springfield. I worked jointly for the Menard and Cass County Health Departments from 1985 through 1987 as a Sanitarian and Environmental Health Director. In 1987, I worked for the Illinois Department of Public Health in the Asbestos Program. In 1988, I began working at the Illinois EPA in the Compliance Unit of the Bureau of Land and became the Compliance Unit Manager in January of 1991. In the fall of 2002, the financial assurance program was added to my responsibilities.

In May of 2010, I served on an expert review team in Dallas, Texas that reviewed and revised USEPA's draft guidance on financial responsibility for geological sequestration (i.e., capture and storage) of carbon dioxide in Class VI underground injection control (UIC) wells. The five member review team consisted of state regulators from Mississippi, Texas and Illinois and two members from the Energy and Electric Utilities Sectors of Industry. The review team members were selected by USEPA and its contractor, The Cadmus Group, and were asked to evaluate and revise the draft guidance developed by USEPA in response to new rules.

In September of 2011, I was selected to serve on an expert panel as the representative for state regulators at a "USEPA Workshop on Geologic Sequestration Financial Responsibility Implementation" in Atlanta, Georgia. The workshop provided a discussion of new rules associated with geologic sequestration financial responsibility, the revised financial responsibility guidance document, and the availability and affordability of the various geologic sequestration financial assurance mechanisms. Approximately 60 people attended the workshop, either in person or by webinar. Participants included representatives from energy companies, oil and gas companies, financial services companies, law firms, academia, state government, and federal government agencies. Other members of the expert panel included a civil engineer from industry that works as a climate product officer, a regional staff member from USEPA who is a recognized national expert on UIC wells, a research fellow at the University of Minnesota specializing in low carbon energy policy, and a Vice President and Senior Financial Advisor with Old National Bank.



Subpart D: Financial Assurance

I will testify in support of some of the proposed changes in the financial assurance rules in 35 Ill. Adm. Code 848 (“Management of Used and Waste Tires”), Subpart D (“Financial Assurance”).

The primary changes proposed to Subpart D of Part 848 shorten the pay-in period for a Trust Fund [848.410(d)] from five years to three years; allow for the use of a surety bond guaranteeing payment as a financial assurance mechanism [Section 848.411]; repeal the Section of the regulations that allow for the use of self-insurance for non-commercial sites [Section 848.415]; and eliminate the standardized financial assurance forms found in Section 848.Appendix A and replace these forms with standardized forms prescribed by the Agency that are maintained on the Agency’s website. Additionally, the proposed changes to the financial assurance mechanisms (i.e., Trust [Fund] Agreement and Letter of Credit) and the proposed addition of the Surety Bond Guaranteeing Payment are modeled after the financial assurance requirements for hazardous waste sites (RCRA, Subtitle C) found in the Code of Federal Regulations (CFR) – 40 CFR, Part 264, Subpart H.

The Trust is used to provide for the payment of costs associated with removal of used and waste tires at the direction of the Agency. The pay-in period for the Trust was shortened from five years to three years to make sure adequate funds are available to complete removal but still provide the regulated site some flexibility in funding the Trust. The pay-in period begins on the date the regulated site first receives used or waste tires.

The Surety Bond Guaranteeing Payment was added under Section 848.411 to provide owners or operators of the tire disposal or storage sites an alternate means of providing financial

assurance. By use of the Surety Bond, the Surety guarantees to the Agency that it will meet the Principal's (i.e., owners or operators of the site) removal obligations – up to the bond's limits – if the Principal is unable to do so. The cost of a Surety Bond is a function of credit worthiness of the Principal.

The use of self-insurance as a financial assurance mechanism poses the highest risk to the taxpayers in part because the tire storage or disposal site is not required to arrange with a third party to guarantee payment for removal costs. In addition to the risk posed by the use of self-insurance, no tire disposal or storage site uses self-insurance as a financial assurance mechanism; therefore, no sites will be affected by this change.

Finally, the Agency has proposed the repeal of the illustrations in Section 848. Appendix A because some of the information contained in the standardized forms in Appendix A is out of date and, even if updated in this rulemaking, is likely to be out of date before Part 848 is next amended. Part 848 has been amended infrequently, and it is not likely that the Agency or other proponents will undertake a rulemaking just to update standardized forms as they become out of date. Consequently, the Agency would appreciate having the flexibility to update the forms when necessary, and the Illinois Administrative Procedure Act exempts the prescription of standardized forms from its definition of a "Rule" (5 ILCS 100/1 – 70). This flexibility will enable the Agency to update its financial assurance forms to reflect changes that are custom in the industry and/or necessitated by changes in the law without the need for lengthy rule making proceedings. This will benefit the Board and the taxpayers by avoiding unnecessary and costly rulemakings every time the Agency needs to update one or more of its financial assurance forms.

Conclusion

Mr. Gray, Mr. Marvel, and I will be happy to address any questions from the Board or the public regarding these proposed amendments.

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served the attached Notice of Filing and Pre-filed Testimony of Terry Gray, Pre-filed Testimony of Todd Marvel, and the Pre-filed Testimony of Brian White, upon the persons listed on the attached Service List by mailing a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on February 18, 2015.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Laurence J. Mraz  
Assistant Counsel  
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