

CR 89-163



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
Box 7921
Madison, Wisconsin 53707
TELEFAX NO. 608-267-3579
TDD NO. 608-267-6897

RECEIVED

MAR 29 1990

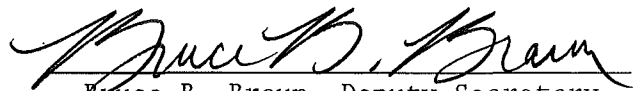
10:40 am
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. SW-70-89 was duly approved and adopted by this Department on January 25, 1990. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 26th
day of March, 1990.


Bruce B. Braun, Deputy Secretary

(SEAL)

6-1-90

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
CREATING RULES

.
. IN THE MATTER of creating ch. NR 555 of the .
. Wisconsin Administrative Code pertaining to the .
. expenditure of funds to implement a waste tire . SW-70-89
. removal and recovery program .
.

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.449, 144.798, and 227.11(2)(a), Stats.
Statutes interpreted: ss. 144.449 and 144.798, Stats.

The rules establish a fee use plan to allow the Department of Natural Resources to use funds set aside in 20.370(2)(dj), Stats., to implement a waste tire removal and recovery program. Pursuant to s. 144.798, Stats., the Department is required to promulgate by rule a statewide plan for the use of funds to address (1) the removal of waste tires from solid waste facilities, (2) the use of waste tires in highway improvements, (3) the providing of grants for development costs and operating cost of recovery activities, and (4) recovery activities conducted by the Department.

To address these four requirements, the rules establish three major goals in the waste tire program. In order to deal with the 20 million waste tires stockpiled in the state and the nearly 5 million generated annually, the goals identified in these rules are as follows:

(a) To clean up existing waste tire stockpiles by reusing them in an environmentally sound manner.

(b) To enhance available and new markets for waste tires in order to divert them from being landfilled so that their value is recovered. In addition, research directed at new ways to recover the value of waste tires must continue.

(c) To eliminate the illegal stockpiling of waste tires by controlling and enhancing the availability of facilities for collection, transportation, and storage.

Approximately \$3.3 million will be collected annually from a \$2 per tire fee imposed on new vehicles registered for the first time as specified by s. 342.14(lm), Stats.. The legislature has set aside \$.2 million to administer the program. The rules establish a plan to expend the remaining funds on an annual basis in the following manner.

(a) Approximately 64% or \$2.1 million dollars will be used to clean up waste tire stockpiles

(b) Approximately 23% or \$.75 million dollars will be used to reimburse end users of waste tires.

(c) Approximately 8% or \$.25 million dollars will be used to provide grants for waste stream management and research to find new uses for waste tires

In addition the rules (1) outline the priorities and procedures the Department will follow to clean up waste tire stockpiles, including guidelines to seek cost recovery, and (2) the eligible uses, eligibility, application procedure, reimbursement rate and the processing and approval of applications to provide grants to end users of waste tires. Rules which define the eligible uses, eligibility, application procedure, grant fund limitations, and processing and approval of applications to obtain grants for waste stream management or recovery grants are not included in these proposed rules.

SECTION 1. NR 555 is created to read:

CHAPTER NR 555
WASTE TIRE REMOVAL AND RECOVERY

Subchapter I - General

- NR 555.01 Purpose
- NR 555.02 Applicability
- NR 555.03 Definitions
- NR 555.04 Expenditure plan

Subchapter II - Waste tire site cleanup funds

- NR 555.05 Applicability
- NR 555.06 Cleanup site priorities
- NR 555.07 Cost recovery

Subchapter III - Waste tire reimbursement grants

- NR 555.08 Reimbursement grants
- NR 555.09 Reimbursement eligibility
- NR 555.10 Eligible uses of waste tires
- NR 555.11 Application for advanced certification
- NR 555.12 Request for reimbursement

Subchapter IV - Waste Tire Management or Recovery Grants (Reserved)

SUBCHAPTER I - GENERAL

NR 555.01 PURPOSE. The purpose of this chapter is to establish the plan for the use of funds to implement a waste tire removal and recovery program required under s. 144.798(2), Stats.

NR 555.02 APPLICABILITY. This chapter establishes the structure which the department will follow to implement a waste tire removal and recovery program. Included in this chapter are:

- (1) The amount of monies set aside for waste tire stockpile cleanup, reimbursement grants, and waste tire management or recovery grants.
- (2) The eligible uses, eligibility, application procedure, reimbursement rate and the processing and approval of grant applications to reimburse people who beneficially use waste tires.
- (3) The priorities and procedures the department will follow to use funds to clean up existing waste tire stockpiles including guidelines to seek cost recovery.
- (4) The eligible uses, eligibility, application procedure, grant fund limitations, and processing and approval of applications to obtain grants for waste tire management or recovery activities.

NR 555.03 DEFINITIONS. The following definitions apply to this chapter:

- (1) "Crumb" means tire chips no greater than 1/4 inch in any dimension that have been processed to remove steel or other material existing in waste tires.
- (2) "Department" means the department of natural resources.
- (3) "End user" means the person who utilizes the heat content or other form of energy from the incineration, combustion or pyrolysis of waste tires or the last person who uses the tires, chips, crumb or similar materials to make a product with economic value. If the waste tire is processed by more

than one person in becoming a product, the "end user" is the last person to use the tire as a tire, tire chips, crumb or similar materials. End user does not include a person who produces tire chips or similar materials and gives or sells them to another person to use.

(4) "Nuisance" has the meaning specified in s. 144.449(1)(a), Stats.

(5) "Nuisance abatement activity" means the procedures specified in s. 144.449(2), Stats.

(6) "Pyrolysis" means the subjection of organic compounds to very high temperatures and the resulting decomposition.

(7) "Recovery activity" has the meaning specified in s. 144.798(1)(a), Stats.

(8) "Tire buffings" means small pieces of a tire which have been mechanically removed prior to retreading.

(9) "Tire dump" has the meaning specified in s. 144.449(1)(b), Stats.

(10) "Waste tire" has the meaning specified in s. 84.076, Stats.

(11) "Waste tire management or recovery grant" means a grant paid under subch. IV.

(12) "Waste tire reimbursement grant" means a grant paid under subch. III.

(13) "Waste tire stockpile cleanup" means an activity designed to clean up a nuisance tire dump under the authority specified in s. 144.449, Stats.

NR 555.04 EXPENDITURE PLAN. (1) EXPENDITURE. In order to implement the waste tire removal and recovery program, the department intends to expend funds set aside in s. 20.370(2)(dj), Stats., on an annual basis, in the following manner:

Note: Based upon estimates of new vehicle registration supplied by the department of transportation the annual amount of money collected from the \$2 per tire fee specified in s. 342.14(lm), Stats., is estimated to be approximately \$3.3 million dollars annually. Approximately \$.2 million has

been set aside by the legislature in s. 20.370(2)(dL), Stats., to administer the waste tire program. The remaining funds will be used to clean up existing stockpiles, provide reimbursement grants, and waste tire management or recovery grants.

(a) Waste tire stockpile cleanup. Approximately \$2.1 million shall be used to contract for the cleanup of waste tire stockpiles following those procedures identified in subch. II.

(b) Waste tire reimbursement grants. Approximately \$.75 million shall be used to provide grants to end users of waste tires under subch. III.

(c) Waste tire management or recovery grants. Approximately \$.25 million shall be used to provide grants for waste tire management and innovative waste tire recovery activities under subch. IV.

(2) ALLOCATION OF ANNUAL EXPENDITURES. (a) If annual revenues are less than \$3.1 million, the department shall allocate funds according to the following priority:

1. Waste tire stockpile cleanup;
2. Waste tire reimbursement grants;
3. Waste tire management or recovery grants.

(b) After the effective date of this rule ...[revisor insert date] the department shall allocate any funds which were not encumbered in the previous fiscal year according to the following priorities:

1. Waste tire reimbursement grants.
2. Waste tire stockpile cleanup.
3. Waste tire management or recovery grants.

(c) Should the total amount of eligible reimbursement payable in a year exceed the amount of funds allocated to the reimbursement under pars. (a)2. and (b)1., the department shall prorate the amount paid out. A prorated payment shall be deemed full payment of the grant.

(3) EXPENDITURE PLAN REVIEW. The department shall review the expenditure plan and report every 2 years after the effective date of this rule... [revisor insert date] to the natural resources board. This report may be used to recommend adjustments to the expenditure plan.

SUBCHAPTER II - WASTE TIRE SITE CLEANUP FUNDS

NR 555.05 APPLICABILITY. The department may use funds to contract to:

- (1) Clean up a tire dump which the department determines to be a nuisance.
- (2) Clean up a facility licensed by the department for the storage of waste tires if the licensee fails to meet conditions of its plan of operation approval and the department determines the tire dump to be a nuisance.
- (3) Conduct engineering, environmental or public health investigations of waste tire recovery activities including the suppression of mosquito infestation at cleanup sites.

NR 555.06 CLEANUP SITE PRIORITIES. (1) MANDATORY. As required by s. 144.449(4), Stats., the order of priority for cleanups conducted by the department under s. 144.449(2), Stats., shall be as follows:

- (a) Tire dumps determined by the department to contain more than 1,000,000 tires.
- (b) Tire dumps which constitute a fire hazard or threat to public health.
- (c) Tire dumps in densely populated areas.
- (d) All other tire dumps.

(2) DISCRETIONARY. In the process of carrying out its nuisance abatement activities under the priority mandated in s. 144.449(4), Stats., the department may combine the cleanup of tire dumps of a lesser priority in the general area if in the department's judgment this action would provide for a more cost effective and expeditious cleanup.

(3) EVALUATION CRITERIA. In order to determine the characteristics of a tire dump in terms of the priorities listed in s. NR 555.06(1), and to prioritize tire dumps for the purposes of abatement within each priority category, the following criteria may be used:

(a) The size of the tire pile or the number of waste tires may be determined by the formula $T = AxB$ where T = the total number of tires, A = the cubic yards of the tire pile, and $B = 13$ tires per cubic yard.

(b) Fire hazard may be evaluated by the size or number of waste tires in the pile, the absence of fire lanes, lack of emergency equipment, presence of easily combustible material or activities which could cause the pile to ignite.

(c) Threat to the public may be evaluated by considering the size of the pile with respect to how a fire would impact public health and safety, local air quality, water quality, and soil contamination, susceptibility of the pile to mosquito infestation, and the density and susceptibility of the adjacent population to these environmental and public health and safety threats.

(d) Population density may be evaluated by considering the density of population within 5 miles of the pile, and the location of any especially susceptible populations such as hospital patients.

NR 555.07 COST RECOVERY. (1) RECOVERY EXPENSES. As allowed by s. 144.449(5), Stats., the department may ask the attorney general to initiate a civil action to recover from the person responsible for the nuisance waste tire stockpile the reasonable and necessary costs incurred by the department for its cleanup activities and its administrative and legal expenses related to the cleanup.

Note: In its determination whether to ask the attorney general to initiate a civil action to recover costs associated with cleanup abatement activities the department may consider the following factors:

- (1) The cost or the estimated cost of the cleanup.
- (2) Whether the person responsible for the nuisance received compensation for the collection and transportation or storage of the waste tires.
- (3) Whether the person responsible for the nuisance pays a portion of the estimated costs to be incurred by the department to abate the nuisance.
- (4) Whether the person responsible for the nuisance is financially able to pay a portion of the estimated costs to abate the nuisance. This determination may be based upon the submittal of state and federal tax returns for the past 3 years, statement of net worth, and similar documentation.
- (5) Whether the person responsible for the nuisance is the owner of the property.
- (6) Whether the owner of the property received compensation for the waste tire dump.
- (7) Whether the person responsible for the nuisance knowingly violated rules or statutes relating to waste tires.

(2) OTHER RECOVERY ACTIVITIES BY THE DEPARTMENT. For those waste tire dumps which received less than 95% of its waste tires from Wisconsin retailers or residents, the department will follow those procedures specified in s. 144.798(5), Stats.

SUBCHAPTER III - WASTE TIRE REIMBURSEMENT GRANTS

NR 555.08 REIMBURSEMENT GRANT. (1) PURPOSE. In order to enhance available and new markets for the reuse of waste tires so that their value is recovered, an economically attractive alternative to landfilling shall be in

place. To create these markets, financial assistance is necessary to develop and operate waste tire recovery activities. Financial assistance may be provided in the form of a reimbursement grant to end users of waste tires or processed waste tires for the cost of developing or operating these waste tire recovery activities. Development and operating costs are those costs required to expand existing or new markets designed to reduce the number or volume of waste tires, recycle waste or recover energy from waste tires and to sustain that market.

(2) AMOUNT OF REIMBURSEMENT. The amount of the reimbursement shall be based on a \$.01 per pound of waste tires used. The amount of reimbursement for waste tires used shall be based on sales of the product containing the waste tires or, if the applicant is an end user who consumes and does not see the product again, the reimbursement shall be based on the amount of material purchased or used.

NR 555.09 REIMBURSEMENT GRANT ELIGIBILITY. (1) ELIGIBLE APPLICANTS. A municipality, governmental body as defined in s. 19.82, Stats., private business or nonprofit organization which is an end user of waste tires may apply to the department for a waste tire reimbursement grant if:

(a) At least 95% of the waste tires used are generated in Wisconsin.

(b) The waste tires are used for those eligible uses identified under s. NR 555.10(1).

(c) The waste tires are used after the effective date of this rule...
[revisor insert date].

(d) The applicant has received advance certification from the department under s. NR 555.11.

NR 555.10 ELIGIBLE USES OF WASTE TIRES. (1) ELIGIBLE USES. Uses of waste tires which are eligible for waste tire reimbursement grant funding include:

(a) Energy recovery, including combustion of whole tires, shredded tires or the combustible by-products of pyrolysis which are used to produce electricity, steam or heat.

(b) Pyrolysis of tires, including the production of combustible by-products or other salable products.

(c) Highway improvements, including the use of tire chips or waste tires as a road base, physically blending tire chips with another material such as asphalt, or other permanent highway improvement project.

(d) Recycling of waste tire strips, shreds or crumb to manufacture a new product. The new product may be produced by physical or chemical processes such as:

1. Weaving from strips of waste tires.
2. Stamping out products from the tire casing.
3. Physically or chemically bonding tire chips or crumb with another material to form a new product such as a mat.

(e) Other uses of waste tires which the department determines to have a market impact and which do not threaten the environment, public health or safety.

(2) NONELIGIBLE USES. Uses of waste tires which are not eligible for waste tire reimbursement grants include:

- (a) Land disposal, including use as a daily cover at landfills.
- (b) Reuse as a vehicle tire.
- (c) Retreading.
- (d) Use of waste tires for erosion control or as a riprap material.
- (e) Use of tire buffings generated during retreading operations.
- (f) Use of whole or split tires for tire fences, barriers, dock and racetrack bumpers, ornamental planters, agricultural uses such as raised beds,

playground equipment or such uses for which the user incurs little or no cost and does not take place within a market.

(g) Other uses of waste tires which in the department's opinion may threaten the environment, public health or safety.

NR 555.11 APPLICATION FOR ADVANCE CERTIFICATION. (1) GENERAL

REQUIREMENTS. (a) An applicant for a waste tire reimbursement grant shall apply annually to the department for advance certification that the proposed use of waste tires in that year is eligible for reimbursement.

(b) An application for advance certification shall be submitted to the department by March 1 of the calendar year for which advance certification is sought, or within 60 days of the effective date of this rule... [revisor insert date].

Note: Application forms may be obtained, at no charge, from the Bureau of Solid and Hazardous Waste Management, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707.

(c) An advance certification issued by the department does not guarantee that the applicant shall receive any reimbursement funds for waste tires used in a calendar year. At the time the applicant requests reimbursement under s. NR 555.12, the burden of proof shall be on the applicant to document that the use for the reimbursement requested actually took place, and corresponds to the use described in the advance certification.

(2) APPLICATION CONTENTS. An application for advance certification shall be made on forms provided by the department and shall include the following:

(a) Documentation that the applicant is an eligible end user of waste tires.

(b) A description of the proposed use of the waste tires.

(c) A description of the proposed source of the waste tires, including the procedures that the applicant will use to insure that at least 95% of the waste tires will have been generated in Wisconsin.

(d) An estimate of the total number of pounds of waste tires to be used in the calendar year, including the procedures that the applicant will use to document the total number of pounds used.

(e) Other information requested by the department to establish eligibility.

(3) APPROVAL PROCEDURES. (a) Within 30 days of the receipt of an application for advance certification the department may request any additional information needed to complete the application. An application is not complete until the additional information requested by the department has been received.

(b) Before an advance certification is issued the applicant shall establish to the department's satisfaction that:

1. The applicant is an eligible end user as defined in s. NR 555.02.
2. The use being proposed is an eligible use under s. NR 555.10.
3. The applicant will be able to document that at least 95% of the waste tires used were generated in Wisconsin.
4. The applicant will be able to document the number of pounds of waste tires to be used.

(c) If the department determines that the applicant for advance certification is eligible, it shall issue an advance certification within 60 days of receipt of a complete application.

(d) To ensure that a use continues to be eligible for reimbursement, the department may require an applicant who has received advance certification to resubmit an application for advance certification during the calendar year.

NR 555.12 REQUEST FOR REIMBURSEMENT. (1) GENERAL REQUIREMENTS. No

request for reimbursement may be approved unless the applicant has received an advance certification from the department under s. NR 555.11. A request for reimbursement shall be submitted to the department by March 1 of the calendar year following the calendar year in which the tires were used.

(2) CONTENTS. A request for reimbursement shall be made on forms provided by the department and shall contain the following:

Note: Forms to request reimbursement may be obtained at no charge from the Bureau of Solid and Hazardous Waste Management, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707.

(a) Documentation acceptable to the department of the net pounds of waste tires used in the quantity of product sold, purchased or used.

1. For tire-derived fuel, receipts showing tons of tire-derived fuel purchased or used.

2. For incineration of whole tires producing process heat, steam or electricity, records showing net tons of waste tires combusted.

3. For pyrolysis plants producing electricity or process heat or steam, billings showing sales of kilowatt hours or tons of steam produced by the tire pyrolysis, calculations certified by a professional engineer showing how many net pounds of waste tires were required to generate that amount of energy, and receipts or bills of lading for the number of waste tires actually used to produce the energy.

4. For pyrolysis technologies producing combustible hydrocarbons and other salable products, billings to customers showing amounts of pyrolysis derived products sold in gallons, pounds, or other appropriate units with calculations certified by a professional engineer showing the number of net pounds of waste tires including embedded energy, used to produce those products.

5. For end users of tire strips, chunks, rubber chips, crumb and the like in the manufacture of another product, billings to purchasers for the product sold, showing net pounds of waste tires used to manufacture the amount of product sold.

6. For end users of tire chips in rubberized asphalt, or as road bed material, driveway cover and other highway improvements, billings or receipts showing the net pounds of waste tires used.

(c) Provide any other information required by the department necessary to determine whether the proposed use is in accordance with departmental rules.

(2) PROCESSING AND APPROVAL. (a) Within 30 days of the receipt of a request for reimbursement the department may require that additional information be supplied by the applicant to complete the request. The request for reimbursement is not complete until the additional information has been received by the department.

(b) By July 1 each year the department shall calculate the total dollar amount of eligible reimbursement requested at \$.01 per pound and shall make payment in that amount to the applicant to the extent that funds are available for that purpose as specified in s. NR 555.04(3)(c).

(c) Audit. An applicant for a reimbursement for use of waste tires, tire chips or similar materials is subject to audit by the department and shall allow the department access to all records during normal business hours for the purpose of determining compliance with these rules for a period of 3 years following final payment.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on January 25, 1990.

The rules shall take effect upon publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro), Stats.

Dated at Madison, Wisconsin March 26, 1990.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
Box 7921
Madison, Wisconsin 53707
TELEFAX NO. 608-267-3579
TDD NO. 608-267-6897

RECEIVED

MAR 29 1990

March 27, 1990

Revisor of Statutes
Bureau

In reply refer to 1020

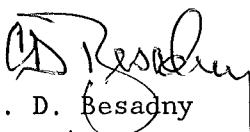
Mr. Gary L. Poulson
Assistant Revisor of Statutes
Suite 702
30 W. Mifflin Street

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. SW-70-89. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Urban Affairs, Environmental Resources, Utilities and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.