

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste regulations, LAC 33:VII.10505, 10519, 15025, and 10537 (Log #SW033).

Act 134 of the 2002 Extraordinary Session of the Legislature added language to the Environmental Quality Act, at R.S. 30:2418.M, to require penalties for "fraudulent takings" in the Waste Tire Program. This rule adds definitions and provides descriptions of and penalties for fraudulent takings. Fraudulent takings refers to the value gained from processing waste tires that are not eligible for the Waste Tire Program. Waste tires are coming from out-of-state into the Waste Tire Program. No fees are collected on these tires, but they enter the system and make their way to waste tire processors who are paid for the processing and marketing of these out-of-state tires. This rule will place the new wording from the Act into the Solid Waste Regulations to make it conspicuous to departmental staff and the regulated community, who are accustomed to referring to the department's regulations for waste tire requirements. The basis and rationale for this rule are to protect the Waste Tire Management Fund from fraudulent payments.

This proposed rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on July 25, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by SW033. Such comments must be received no later than August 1, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-0389 or by e-mail to patsyd@deq.state.la.us. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of SW033.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 2. Recycling

Chapter 105. Waste Tires

§10505. Definitions

A. The following words, terms, and phrases, when used in conjunction with the Solid Waste Rules and Regulations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

* * *

Fraudulent Taking—the value gained from acts committed by an offender in violation of LAC 33:VII.10537.E.

* * *

Program Eligible Waste Tires—those waste tires generated within Louisiana.

* * *

Waste Tire Generation—the replacement of an unserviceable tire with a serviceable tire. The sorting, collection, exchange, trade, or transportation of waste tires is not waste tire generation.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2773 (December 2000), LR 27:829 (June 2001), LR 27:2226 (December 2001), LR 28.

§10519. Standards and Responsibilities of Generators of Waste Tires

A. - I.2. ...

3. no more than 150 tires shall be stored at the generator's place of business at one time, unless stored in a transportable collection container.

J. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000), LR 27:830 (June 2001), LR 27:2227 (December 2001), LR 28.

§10525. Standards and Responsibilities of Waste Tire Processors

A. Upon receiving a shipment containing waste tires, the processor shall be responsible ~~to~~ for verifying the number of waste tires in each shipment by actually counting each waste tire or weighing the shipment to determine passenger tire equivalents. The processor shall sign each waste tire manifest upon receiving waste tires.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), LR:22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2779 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 28.

§10537. Enforcement

A. - D. ...

E. Fraudulent Takings

1. No person shall, with the intent to defraud, prepare, submit, tender, sign, make an entry upon, or certify any invoice, report, manifest, request for payment, claim, or other document in connection with the origin, transportation, storage, transfer, assignment, sale, or disposal of waste tires as defined by LAC 33:VII.10505.

2. Penalties for a violation of Paragraph E.1 of this Section shall be based on the value of the fraudulent taking. When the fraudulent taking results from a number of distinct acts by the offender, the aggregate amount of the payments, subsidies, credits, other disbursements, or things of value obtained shall determine the grade of the offense. Penalties shall be as follows.

a. If the fraudulent taking amounts to a value of \$500 or more, the offender shall be imprisoned, with or without hard labor, for not more than 10 years, or may be fined not more than \$3,000, or both.

b. When the fraudulent taking amounts to a value of \$300 or more, but less than \$500, the offender shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than \$2,000, or both.

c. When the fraudulent taking amounts to less than \$300, the offender shall be imprisoned for not more than six months, or may be fined not more than \$500, or both. However, if such a conviction is the offender's third or subsequent conviction for violation of this Subsection, the offender shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than \$2,000, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000), LR 28.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

LOG #:SW033

Person Preparing Statement: Dennis Duszynski Dept.: Environmental Quality
Phone: 765-0230 Office: Environmental Assessment
Return Address: P.O. Box 82231 Rule Title: Fraudulent Takings
Baton Rouge, LA 70884 (LAC 33:VII.10505, 10519,10525, and 10537)
Date Rule Takes Effect: Upon Promulgation

SUMMARY (Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no implementation costs or savings to state or local governmental units. The rule may result in marginal savings to the Waste Tire Management Fund due to the fact that out-of-state tires will not be brought into the Louisiana system.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Violators of the proposed rule are subject to imprisonment and fines.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Signature of Agency Head or Designee
James H. Brent, Ph.D., Assistant Secretary
Typed Name and Title of Agency Head or Designee

LEGISLATIVE FISCAL OFFICER OR DESIGNEE

Date of Signature
LFO 7/1/94

Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Act 134 of the 2002 Extraordinary Session of the Legislature added language to the Environmental Quality Act (the "Act"), at R.S. 30:2418.M, to require penalties for "fraudulent takings" in the Waste Tire Program. "Fraudulent takings" refers to the value gained from processing waste tires that are not eligible for the Waste Tire Program.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This rule will place the new wording from the Act into the Department's Solid Waste Regulations to make it conspicuous to the staff of DEQ and the regulated community, who are accustomed to referring to the Department's regulations for waste tire requirements.

- C. Compliance with Act II of the 1986 First Extraordinary Session
 - (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

There will be no increase in the expenditure of funds.

- 2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) Yes. If yes, attach documentation.
- (b) No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 02-03	FY 03-04	FY 04-05
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	0	0	0
MAJOR REPAIR & CONSTR.			
POSITIONS (#)			

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The rule will produce no costs or savings.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 02-03	FY 03-04	FY 04-05
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	0	0	0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No funds are necessary to implement the rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There will be no costs or savings to local governmental units.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

There will be no effect on local government sources of funding.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 02-03	FY 03-04	FY 04-05
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	0	0	0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The collection of fines associated with the rule will have a negligible impact on revenue collections of state or local governmental units.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The only directly affected persons would be violators of this rule who could be subject to fines and/or imprisonment as described in the rule.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Violators of this rule could be subject to jail time and fines as described in the rule. Current violators who begin observing the rule would stand to lose illegally gained funds.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed rule will have no effect on employment in the public and private sectors. The rule would level competition by restricting illegal activities.