



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
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**Secretary's Order No.: 2016-WH-0030**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1301:  
*Regulations Governing Solid Waste, to wit:  
Scrap Tire Facility Management Provisions***

**Date of Issuance: September 13, 2016**

**Effective Date of the Amendment: October 21, 2016**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006 and 6010, and any other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

**Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation Amendments to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* ("RGSW"), to wit: *Scrap Tire Facility Management Provisions*. The Department's Division of Waste and Hazardous Substances ("WHS"), Solid and Hazardous Waste Management Section ("SHWMS"), commenced this regulatory development process with Start Action Notice 2016-02 dated March 15, 2016. The Department published its initial proposed regulation Amendments in the April 1, 2016 *Delaware Register of Regulations*. The Department then held a

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public hearing on April 25, 2016. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through May 10, 2016.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to Delaware's existing RGSW to enable the Department to (1) address missing operational requirements not in Delaware's existing scrap tire regulations; (2) reduce compliance and financial burdens posed by the current regulations for those storing tires in an enclosed trailer, while still ensuring the environmental risks related to fires and mosquitoes are mitigated; (3) provide an exemption from Section 12 of the existing regulations for farmers utilizing scrap tires for beneficial purposes related to farming; and (4) provide additional clarification of these regulations to the regulated community.

Upon implementing the scrap tire facility provision effective January 1, 2016, the SHWMS identified several improvements necessary for program implementation and flexibility. Specifically, the Department has identified the benefit of allowing a conditional exclusion for those storing scrap tires in an enclosed trailer. The exclusion would allow those storing scrap tires in an enclosed trailer to be subject to less stringent requirements, including eliminating the need to obtain a permit, while still ensuring the environmental risks related to fires and mosquitoes are mitigated. Additionally, the SHWMS is proposing to reorganize Section 12.7 of the existing regulation related to operational standards, in order to help improve clarity for the regulated community and to require monthly inspections of the scrap tire facility. Lastly, the SHWMS is proposing an exemption from Section 12 of the existing regulation for farmers utilizing scrap tires for beneficial purposes related to farming.

Those affected by these proposed Amendments are the same as those currently regulated under Delaware's current RGSW *Scrap Tire Facility Management Provisions*. There will be no increased cost of doing business for scrap tire facilities, and those facilities implementing enclosed trailer storage will financially and operationally benefit from the promulgation of these proposed regulatory amendments.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on April 25, 2016, at which time the SHWMS provided an exhaustive review of the same, addressing (1) the Department's reasoning for promulgation of these proposed Amendments; (2) the persons affected by these proposed Amendments; and (3) the particulars of the proposed Amendments, including a thorough discussion of all definitions and processes set forth therein. Members of the public attended the hearing on April 25, 2016, and comment was received by the Department at that time with regard to this proposed regulatory promulgation. It should be noted that all comment received was fully responded to by the Department at the time of the aforementioned hearing, and that no additional comment was received during the initial post-hearing phase of this promulgation. The hearing record formally closed with regard to public comment at close of business on May 10, 2016.

Upon performing its final review of the proposed regulatory amendments subsequent to the hearing record closing as noted above, the Department realized that certain specific deadlines (with regard to the formal implementation of these regulatory requirements) as set forth in the initial proposed regulatory amendments published in April 2016 had already passed. As a result of this review, the decision was made to change the actual implementation deadlines in Section 12.0 from the "date certain"

deadlines of June 30, 2016 and September 30, 2016 to read “90 days after the effective date of these regulations” for Section 12.3.1.1, and “180 days after the effective date of these regulations” for Section 12.3.1.2, respectively. This substantive change allows for flexibility with regard to the actual implementation date of these regulations, and enhances the Department’s ability to better work with the regulated community to bring affected facilities into compliance with the revised requirements. In the spirit of transparency, the Department deemed these post-hearing edits to be substantive, thus necessitating a re-noticing of the proposed regulation, and a re-publishing of the same for an additional 30 days to allow for public comment. Thus, this proposed regulatory promulgation was re-published in the Register of Regulations on August 1, 2016, and comment was accepted through August 31, 2016.

The comment period closed after the aforementioned re-publication of these proposed *revised* regulatory amendments as noted above, with no additional comment having been received by the Department concerning the same. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated September 9, 2016 (“Report”). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed regulatory Amendments as attached to the Report as Appendix “A”.

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory Amendments to 7 DE Admin. Code 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed *revised* regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware to address missing operational requirements not in existing scrap tire regulations, reduce compliance and financial burdens posed by the current regulations for those storing tires in an enclosed trailer, (while still ensuring the environmental risks related to fires and mosquitoes are mitigated), provide an exemption from Section 12 of the existing regulations for farmers utilizing scrap tires for beneficial purposes related to farming, and provide additional clarification of these regulations to the regulated community.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 DE Admin. Code 1301, pursuant to 7 *Del. C.*, Chapter 60, specifically, at 7 *Del.C.* §6040(b);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Chapter 60, to issue an Order adopting these proposed *revised* regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on April 25, 2016, and held the record open through close of business on May 10, 2016, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. Due to substantive changes made to the proposed regulatory language, the Department caused the *revised* proposed regulatory amendments to be re-published in the State of Delaware Register of Regulation on August 1, 2016, provided the public with an additional 30 days to comment on the same, and held the record open through close of business on August 31, 2016, in order to consider all public comment on these proposed *revised* regulatory amendments before making any final decision;

5. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

6. Promulgation of the proposed *revised* regulatory amendments to 7 DE Admin. Code 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, will enable the Department's SHWMS to (1) address missing operational requirements not in Delaware's existing scrap tire regulations; (2) reduce compliance and financial burdens posed by the current regulations for those storing tires in an enclosed trailer, while still ensuring the environmental risks related to fires and mosquitoes are mitigated; (3) provide an exemption from Section 12 of the existing regulations for farmers utilizing scrap tires for beneficial purposes related to farming; and (4) provide additional clarification of these regulations to the regulated community;

7. The Department has reviewed these proposed *revised* regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all proposed regulations initially submitted to the *Delaware Register of Regulations* on or after January 1, 2016), and believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

8. The Department's proposed *revised* regulatory amendments, as published in the August 1, 2016 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 DE Admin. Code 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



David S. Small  
Secretary

## MEMORANDUM

**TO:** The Honorable David S. Small  
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

**FROM:** Lisa A. Vest   
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** **Proposed Revised Regulation Amendments to 7 DE Admin. Code 1301: Regulations Governing Solid Waste, to wit: Scrap Tire Facility Management Provisions**

**DATE:** September 9, 2016

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### **I. Background:**

A public hearing was held on Monday, April 25, 2016, at 6:00 p.m. at the Department of Natural Resources and Environmental Control (“DNREC”, “Department”), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments (“Amendments”) to 7 DE Admin. Code 1301: *Regulations Governing Solid Waste* (hereinafter referred to as “RGSW”), to wit: *Scrap Tire Facility Management Provisions*. The Department’s Division of Waste and Hazardous Substances (“WHS”), Solid and Hazardous Waste Management Section (“SHWMS”) is proposing the aforementioned Amendments to current scrap tire facility regulations in order to (1) address missing operational requirements not in Delaware’s existing scrap tire regulations; (2) reduce compliance and financial burdens posed by the current regulations for those storing tires in an enclosed trailer, while still ensuring the environmental risks related to fires and mosquitoes are mitigated; (3) provide an exemption from Section 12 of the existing regulations for farmers utilizing scrap tires for beneficial purposes related

to farming; and (4) provide additional clarification of these regulations to the regulated community.

Upon implementing the scrap tire facility provision effective January 1, 2016, the SHWMS identified several improvements necessary for program implementation and flexibility. Specifically, the Department has identified the benefit of allowing a conditional exclusion for those storing scrap tires in an enclosed trailer. The exclusion would allow those storing scrap tires in an enclosed trailer to be subject to less stringent requirements, including eliminating the need to obtain a permit, while still ensuring the environmental risks related to fires and mosquitoes are mitigated. Additionally, the SHWMS is proposing to reorganize Section 12.7 of the existing regulation related to operational standards, in order to help improve clarity for the regulated community and to require monthly inspections of the scrap tire facility. Lastly, the SHWMS is proposing an exemption from Section 12 of the existing regulation for farmers utilizing scrap tires for beneficial purposes related to farming.

Those affected by these proposed Amendments are the same as those currently regulated under the current RGSW's *Scrap Tire Facility Management Provisions*. There will be no increased cost of doing business for scrap tire facilities, and those facilities implementing enclosed trailer storage will financially and operationally benefit from these proposed regulatory amendments.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1301, pursuant to 7 *Del. C.*, Chapter 60, specifically, at 7 *Del.C.* §6040(b). Members of the public attended said public hearing, and comment was received by the Department from the public regarding this proposed

regulatory promulgation at that time, which will be discussed in greater detail below. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

## **II. SUMMARY OF THE PUBLIC HEARING RECORD:**

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) five documents introduced by responsible Department staff at the public hearing held on April 25, 2016, and marked by this Hearing Officer accordingly as Department Exhibits 1-5. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Andrew Martin, developed the record with the relevant documents in the Department's files.

As noted above, the purpose of this proposed regulatory promulgation is to adopt the aforementioned proposed Amendments to existing RGSW regulations pertaining to scrap tire facilities in order to address missing operational requirements and to reduce compliance and financial burdens posed by the current regulations. The proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on April 25, 2016. Through the utilization of a detailed Power Point presentation, Mr. Martin provided a comprehensive review of the proposed regulatory amendments, addressing (1) the Department's reasoning for promulgation of these proposed Amendments; (2) the persons affected by these proposed Amendments; and (3) the particulars of the proposed Amendments, including a thorough discussion of all definitions and processes set forth therein.

Members of the public attended the April 25, 2016 hearing, and comment was received by the Department at that time with regard to this proposed regulatory promulgation. At that time, clarifying questions were asked by hearing attendees in order to make sure the intent of the proposed Amendments were understood, and the Department provided such clarification and responded fully to all questions regarding the same. Other questions were asked with respect to enforcement of these proposed Amendments, and once again, the Department responded fully, reminding the public that DNREC's enforcement officers assess potential compliance violations that are investigated on a spectrum of situational factors applicable to each case. Mr. Martin further advised of how the Department is committed to the training of the regulated community concerning these regulations, and the importance of the same, in order to ensure a greater understanding of compliance issues and provide additional clarity regarding the same.

Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. The hearing record formally closed with regard to public comment at close of business on May 10, 2016, however, no additional comment was received by the Department during the post-hearing phase of this matter.

Upon performing its final review of the proposed regulatory amendments subsequent to the hearing record closing as noted above, the Department realized that certain specific deadlines (with regard to the formal implementation of these regulatory requirements) as set forth in the initial proposed regulatory amendments published in April 2016 had already passed. As a result of this review, the decision was made to

change the actual implementation deadlines in Section 12.0 from the originally proposed “date certain” deadlines of June 30, 2016 and September 30, 2016 to “90 days after the effective date of these regulations” for Section 12.3.1.1, and “180 days after the effective date of these regulations” for Section 12.3.1.2, respectively. This substantive change allows for flexibility with regard to the actual implementation date of these regulations, and enhances the Department’s ability to better work with the regulated community to bring affected facilities into compliance with the revised requirements. In the spirit of transparency, the Department deemed these post-hearing edits to be substantive, thus necessitating a re-noticing of the proposed regulation, and a re-publishing of the same for an additional 30 days to allow for public comment. Thus, this proposed regulatory promulgation was re-published in the Register of Regulations on August 1, 2016, and comment was accepted through August 31, 2016.

The comment period closed after the aforementioned re-publication of these proposed *revised* regulatory amendments as noted above, with no additional comment having been received by the Department concerning the same. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

**III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed *revised* Amendments to 7 DE Admin. Code 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, as noted above. Accordingly, I recommend

promulgation of these proposed *revised* regulatory amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 DE Admin. Code 1301, pursuant to 7 *Del. C.*, Chapter 60, specifically, at 7 *Del.C.* §6040(b);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Chapter 60, to issue an Order adopting these proposed *revised* regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on April 25, 2016, and held the record open through close of business on May 10, 2016, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. Due to substantive changes made to the proposed regulatory language, the Department caused the *revised* proposed regulatory amendments to be re-published in the State of Delaware Register of Regulation on August 1, 2016, provided the public with an additional 30 days to comment on the same, and held the record open through close of business on August 31, 2016, in order to consider all public comment on these proposed *revised* regulatory amendments before making any final decision;

5. Promulgation of the proposed *revised* regulatory amendments to 7 DE Admin. Code 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, will enable the Department's Division of Waste and Hazardous Substances, SHWMS, to (1) address missing operational requirements not in Delaware's existing scrap tire regulations; (2) reduce compliance and financial burdens posed by the current regulations for those storing tires in an enclosed trailer, while still ensuring the environmental risks related to fires and mosquitoes are mitigated; (3) provide an exemption from Section 12 of the existing regulations for farmers utilizing scrap tires for beneficial purposes related to farming; and (4) provide additional clarification of these regulations to the regulated community;

6. The Department has reviewed these proposed *revised* regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all proposed regulations initially submitted to the *Delaware Register of Regulations* on or after January 1, 2016), and believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed *revised* regulatory amendments, as published in the August 1, 2016 *Delaware Register of Regulations*, and as set forth in Appendix "A", hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit the proposed *revised* regulatory amendments as final regulatory amendments to 7 DE Admin. Code 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



LISA A. VEST  
Public Hearing Officer

\\ahear\ SCRAP TIRE Reg Amendments.2016

Attachments/Appendix:

Appendix A: Proposed *Revised* Reg. Amendments/Reg. Flex. Analysis and Impact Stmt. Form

## **APPENDIX “A”**



**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL****DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)  
7 DE Admin. Code 1301

**1301 Regulations Governing Solid Waste**

**Please Note:** The Proposed Regulation for *1301 Regulations Governing Solid Waste* that was published in the April 1, 2016 issue of the *Delaware Register of Regulations* (19 DE Reg. 905 – 911) has been further amended by the Solid and Hazardous Waste Management Section. Subsection 12.3 is printed below as an Errata. Since the Subsection 12.3 is being further amended, the public comment period regarding this proposed amendment to Section 12.3 will now be re-opened by DNREC for an additional 30 days. Public comment will be accepted by DNREC from August 1, 2016 through close of business on August 31, 2016, at which time the hearing record will once again close regarding public comment. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. No additional hearing will be held.

**1301 Regulation Governing Solid Waste  
(Break in Continuity of Sections)****12.0 Scrap Tire Facilities****(Break in Continuity Within Section)****12.3 Implementation Date**

12.3.1 ~~Each Scrap tire facility is in existence prior to the effective date of these regulations must apply for a permit issued by the Department pursuant to these regulations no later than 90 days for Group 1 and 180 days for Group 2 and comply with these regulations.~~

12.3.1.1 Scrap tire facilities meeting the requirements of Group 1 must apply to the Department for a permit pursuant to these regulations no later than [June 30, 2016 90 days after the effective date of these regulations].

12.3.1.2 Scrap tire facilities meeting the requirements of Group 2 must apply to the Department for a permit pursuant to these regulations no later than [September 30, 2016 180 days after the effective date of these regulations].

**\*Please Note:** The full text of the proposed regulation is not being republished. Please see 19 DE Reg. 905 for the proposed amendments to 1301 Regulations Governing Solid Waste. A copy of the published regulation is available at:

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 905 04-01-16.htm>

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## AMENDMENTS:

### Scrap Tire Facility provisions

Upon implementing the scrap tire facility provision effective January 1, 2016, the SHWMS identified improvements necessary for program implementation and flexibility. Specifically, the SHWMS has identified the benefit of allowing a conditional exclusion for those storing tires in an enclosed trailer. The exclusion would allow those storing scrap tires in an enclosed trailer to be subject to less stringent requirements, including eliminating the need to obtain a permit, while still ensuring the environmental risks related to fires and mosquitos are mitigated.

The SHWMS is proposing to reorganize Section 12.7 related to operational standards to help improve clarity for the regulated community and to require monthly inspections of the scrap tire facility.

Additionally, the SHWMS is proposing an exemption from Section 12 for farmers utilizing scrap tires for beneficial purposed related to farming.

#### 2.0 Scope and Applicability

...

##### 2.3 Exemptions

...

- 2.3.6 Farmers actively using whole scrap tires not exceeding 25 pounds each for beneficial purposes related to farming shall be exempt from Section 12 provided written approval is obtained from the Department and water accumulation within the tires is prevented by boring, punching, or drilling holes in each tire.

...

#### 3.0 Definitions

“Enclosed by a trailer” means an unaltered, prefabricated metal structure, fully enclosed, sound in construction, and designed for use as a shipping container (e.g., a semi-truck trailer).

...

### **12.0 Scrap Tire Facilities**

#### 12.1 Scope and Applicability

This section applies to new and existing areas established for scrap tires that are associated with a qualifying business. A qualifying business is a business that generates and accumulates scrap tires but whose primary purpose is not to accumulate scrap tires. Examples of qualifying businesses may include, but is not limited to: tire retreading businesses; automobile graveyards or junkyards; local and state governmental agencies and/or facilities such as county maintenance, police, and fire; military institutions and/or facilities; farmers; and other automotive businesses. This section does not apply to owner/operators who have

**Amendments to  
Delaware's *Regulations Governing Solid Waste***

**2016 Amendments  
For Publication in the State Register  
Start Action Notice # 2016-02**

Delaware Department of Natural Resources and Environmental Control  
Division of Waste and Hazardous Substances  
Solid and Hazardous Waste Management Section  
89 Kings Highway  
Dover, DE 19901  
Phone: 302-739-9403  
Contact: Andrew Martin

ID #	Description	Page
1	Scrap tire facility provisions	2

Amendments to  
Delaware's *Regulations Governing Solid Waste*  
**(DRGSW)**

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the DRGHW are not affected and are unchanged. Proposed additions are indicated with underlines, and deletions are indicated with ~~strikethroughs~~.

a current and valid resource recovery facility permit (or other approval issued pursuant to these regulations) that addresses scrap tire management. This section also does not apply to persons who are registered with, and actively participating in, the Scrap Tire Management Program, administered by the Department. All transporters of solid waste, including scrap tires, must comply with any applicable provisions in Section 7.0. All scrap tire facilities whose primary purpose is to accumulate scrap tires must comply with all applicable provisions in Sections 9.0 and 10.0, as applicable.

#### 12.2 Scrap Tire Facility Categories

All scrap tire facilities must either fall into one of ~~two~~ three groups, as defined below. A property may have only one scrap tire facility. All other scrap tires facilities are prohibited.

12.2.1 Group 1: total volume for scrap tires will be no greater than 450.5 square feet by 10 feet high, with the height being measured from the lowest point on the lowest tire and the square footage measured using the furthest tires.

12.2.2 Group 2: total volume for scrap tires will be no greater than 901 square feet by 10 feet high, with the height being measured from the lowest point on the lowest tire and the square footage measured using the furthest tires.

12.2.3 Group 3: scrap tires enclosed by a trailer, not to exceed the use of two (2) trailers, neither having dimensions greater than 53 feet x 8.5 feet x 10 feet.

#### 12.3 Implementation date

~~12.3.1 Each scrap tire facility in existence prior to the effective date of these regulations must apply for a permit issued by the Department pursuant to these regulations no later than 90 days for Group 1 and 180 days for Group 2 and comply with these regulations.~~

12.3.1 Scrap tire facilities in existence prior to the effective date of these regulations

12.3.1.1 Scrap tire facilities meeting the requirements of Group 1 must apply to the Department for a permit pursuant to these regulations no later than June 30, 2016.

12.3.1.2 Scrap tire facilities meeting the requirements of Group 2 must apply to the Department for a permit pursuant to these regulations no later than September 30, 2016.

12.3.1.3 Scrap tire facilities meeting the requirements of Group 3 may operate without a permit provided that no later than 90 days from the effective date of these regulations, the facility achieves compliance with the requirements of Section 12.3.2.2.

12.3.2 Each scrap tire facility created after the effective date of these regulations must: ~~comply with the subsection 4.1.1.3 of these regulations.~~

12.3.2.1 For Groups 1 and 2, prior to commencing operation, the scrap tire facility must comply with Subsection 4.1.1.3 of these regulations.

12.3.2.2 For Group 3, prior to commencing operation, the scrap tire facility must:

12.3.2.2.1 Obtain a Site Identification Number by completing and submitting a notification to the Department. The form is available from the Department.

- 12.3.2.2.2 Maintain scrap tires in a facility enclosed by a trailer(s).
- 12.3.2.2.3 Maintain compliance with Subsections 12.5, 12.6, 12.7, and 12.10.
- 12.3.2.2.4 Maintain compliance with the requirements of Subsection 12.3.2.2 or within 30 days either:
  - 12.3.2.2.4.1 Comply with Subsection 4.1.1.3 of these regulations; or
  - 12.3.2.2.4.2 Comply with Subsection 12.11.1.1 of these regulations.

#### 12.4 Permit Application Requirements

At least 45 days for Group 1 and 90 days for Group 2 before commencement of any construction or operation of a new scrap tire facility, or for a preexisting scrap tire facility, subject to Subsection 12.3, the applicant owner/operator shall submit to the Department a complete permit application for a scrap tire facility "Scrap Tire Facility Permit Form" and the following documentation:

##### 12.4.1 Description

A description of the proposed scrap tire facility, including volume of proposed or existing tires, whichever is larger, and the type of qualifying business at which the scrap tire facility will occur.

##### 12.4.2 Facility Diagram

An accurate facility diagram of the proposed scrap tire facility showing all siting requirements of Subsection 12.5 and any other features connected to the construction and operation of the scrap tire facility.

##### 12.4.3 GIS Image

A current GIS image of the property where the scrap tire facility is/will be located and the surrounding properties. On the image, delineate the property boundary and the scrap tire facility location. In addition, label the nature of the surrounding properties (e.g. business with type of business specified, residence, etc.).

##### 12.4.4 Floodplain Map

The most recent Federal Emergency Management Agency's 100-year flood data of the area to demonstrate that the proposed facility will not be located in the 100-year floodplain, restrict the flow of a 100-year flood, or reduce the storage capacity of a floodplain.

##### 12.4.5 Operations Manual

An Operations Manual prepared in accordance with Subsection 12.7.12.

##### 12.4.6 Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

##### 12.4.7 Title, Right, or Interest

Evidence of an applicant's title, right, or interest in the property for the proposed facility location.

##### 12.4.8 Certification

A statement signed by the applicant that all siting and design standards and operational requirements of this subsection will be met before commencement of any construction or operation of a scrap tire facility or prior to expiration of the transition provisions of Subsection 12.3.

12.4.9 Financial Assurance (Required only for Group 2)

Evidence of financial assurance in accordance with Subsection 12.8.

12.5 Siting and Design Standards

To qualify for a permit, the siting and design standards of this subsection must be met, with distances being measured using the closest tire to the setback object. In the instance where applicable zoning requirements are more stringent than the requirements in these regulations, then the more stringent requirements must be met.

12.5.1 Setbacks

12.5.1.1 The following setbacks must be maintained for Group 1:

12.5.1.1.1 A minimum 20 foot setback between the scrap tire facility and all public roads and property boundaries.

12.5.1.1.2 A minimum 50 foot setback between the scrap tire facility and residences in existence at the time the application is filed.

12.5.1.1.3 A minimum 100 foot setback between the scrap tire facility and off-site drinking water supply wells and water supply springs in existence at the time the application is filed.

12.5.1.2 The following setbacks must be maintained for Group 2:

12.5.1.2.1 A minimum 100 foot setback between the scrap tire facility and all public roads and property boundaries.

12.5.1.2.2 A minimum 300 foot setback between the scrap tire facility and residences in existence at the time the application is filed.

12.5.1.2.3 A minimum 300 foot setback between the scrap tire facility and off-site drinking water supply wells and water supply springs in existence at the time the application is filed.

12.5.1.3 The following setbacks must be maintained for Group 3:

12.5.1.3.1 Owners/operators of one (1) trailer must comply with the setbacks in Subsection 12.5.1.1.

12.5.1.3.2 Owners/operators of two (2) trailers must comply with the setbacks in Subsection 12.5.1.2.

12.5.2 Floodplain

A new or existing scrap tire facility shall not be located within the 100-year floodplain, based on flood data generated by the Federal Emergency Management Agency, unless Department approved measures are taken to mitigate environmental impacts.

12.5.3 Natural Resources

A scrap tire facility shall not be located:

12.5.3.1 Within or around, at the Department's discretion and determination, important and/or sensitive habitat or habitats that support rare, threatened, or endangered species; or

12.5.3.2 At a minimum, within 50 feet of:

12.5.3.2.1 A state or federally regulated wetland, or

12.5.3.2.2 A pond, river, or stream, except for artificial ponds or impoundments.

#### 12.5.4 Fire Prevention Measures

12.5.4.1 All grasses, weeds, brush, debris, and other combustible material must not be present in or on the scrap tire facility.

12.5.4.2 No activities involving the use of open flames, blow torches, or highly flammable substances shall be conducted within the scrap tire facility or within the required fire break. Smoking is also prohibited within the scrap tire facility and within the required fire break.

12.5.4.3 For Group 1, a 20 foot ~~mineral strip~~ fire break consisting of either a mineral strip free of combustible materials or well maintained, regularly mowed grass must be constructed around the ~~ground surface~~ perimeter of the scrap tire facility. ~~All grasses, weeds, brush, debris, and other combustible material must not be present on the fire break, with the exception of well-maintained and regularly mowed grass.~~

12.5.4.4 For Group 2, a 50 foot ~~mineral strip~~ fire break consisting of either a mineral strip free of combustible materials or well maintained, regularly mowed grass must be constructed around the ~~ground surface~~ perimeter of the scrap tire facility. ~~All grasses, weeds, brush, debris, and other combustible material must not be present on the fire break, with the exception of well-maintained and regularly mowed grass.~~

12.5.4.5 For Group 3, owners/operators of one (1) trailer must maintain a 20 foot fire break around the perimeter of the trailer. Owners/operators of two (2) trailers must maintain a 50 foot fire break around the perimeter of the trailers. The fire break shall consist of either a mineral strip free of combustible materials or well maintained, regularly mowed grass.

12.5.4.6 The owner/operator must attempt to make arrangements with the local fire department to familiarize them with the layout of the facility and places where facility personnel would normally be working.

#### 12.5.5 Stabilization

The area under the scrap tire facility must be adequately stabilized to prevent any scrap tires from sinking below ground level and to prevent any significant unintended movement of the tires on the scrap tire facility.

#### 12.5.6 Department Discretion

The Department has the discretion to modify the Siting and Design Standards for a specific scrap tire facility upon request from an owner/operator.

### 12.6 Mosquito Control

12.6.1 The owner/operator of a scrap tire facility must implement and maintain mosquito control by either:

- 12.6.1.1 Removing any water held in scrap tires immediately ~~upon receipt~~ at prior to placement in the facility via hole punching, boring, or drilling throughout tires or other sufficient means, and storing scrap tires in such a way that water does not accumulate in the scrap tires or containers where scrap tires are held; or
  - 12.6.1.2 If any scrap tires hold water that is not removed within 24 hours of ~~receipt~~ placement in the scrap tire facility or within 24 hours of a precipitation event, a larvicide that is registered for use for mosquito control by the U.S. Environmental Protection Agency must be effectively applied to the water-holding tires within 48 hours of ~~receipt~~ placement in the scrap tire facility. The owner/operator or a private contractual professional pesticide applicator, at the owner/operator's expense, can perform the initial and/or follow-up larvicide applications, provided that the applications are safely done in accordance with all product label instructions and federal or state regulations. If a Restricted Use pesticide is utilized, it must be purchased and applied by a Delaware Certified Pesticide Applicator (who could be the owner/operator if appropriately certified) in accordance with Delaware Department of Agriculture regulations. The Department's Mosquito Control Section, if requested by the owner/operator, can also perform the larvicide applications at the Section's discretion. The owner/operator shall then reimburse the Mosquito Control Section for all costs of any such treatments as determined or assessed by the Department.
    - 12.6.1.2.1 A larvicide must be reapplied as needed to maintain good larval control in accordance with the methods described in Subsection 12.6.1.2.
    - 12.6.1.2.2 Mosquito control records involving larvicide applications must be maintained on the premises for a period of three years and be available to Department personnel upon request. The records, at a minimum, must include name, type, and amount of larvicide applied per tire, the EPA registration number of the larvicide product lot used, the date and time of application, and the name of the person who applied the larvicide along with their Delaware Certified Pesticide Applicator Number, if a Restricted Use pesticide was applied.
- 12.6.2 If the Department finds the existence of excessive numbers of adult mosquitoes or mosquito larvae on the premises, as determined at the sole discretion of the Department, the owner/operator must apply, within 24 hours of notice from the Department, an adulticide or larvicide that is registered for use for mosquito control by the U.S. Environmental Protection Agency, with applications done in accordance with all Delaware Department of

Agriculture regulations, using the methods described in Subsection 12.6.1.2.

#### ~~12.7—Operational Requirements~~

~~12.7.1 The owner/operator must develop and implement an operations manual for the scrap tire facility prepared in accordance with the requirements of Subsection 12.7. A paper copy of the Operations Manual must be readily available on-site. In addition to Subsection 12.7 requirements, this manual must include:~~

~~12.7.1.1—Procedures for clean-up and maintenance of the facility;~~

~~12.7.1.2—Information that would enable supervisory, operating personnel, and persons evaluating the operation of the scrap tire facility to determine what requirements must be followed for a safe, orderly, and environmentally sound operation on a daily and yearly basis; and~~

~~12.7.1.3—Emergency procedures and emergency contacts, including, but not limited to, the Department's emergency number (1-800-662-8802) and 9-1-1.~~

~~12.7.2 The owner/operator shall take whatever measures are necessary to familiarize all personnel responsible for operation of the scrap tire facility with relevant sections of the operations manual, including training on the procedures to be followed in case of an emergency, including, but not limited to, fires. Documentation of personnel training must be maintained on-site for three years.~~

~~12.7.3 The siting and design standards as required by Subsection 12.5 must be met and maintained.~~

~~12.7.4 Only scrap tires may be stored in the designated scrap tire facility.~~

~~12.7.5 Only scrap tires generated by or from the qualifying business may be present on the scrap tire facility of said qualifying business.~~

~~12.7.6 The scrap tire facility is required to be secured at all times except when adding or removing tires. For completely enclosed containers, such as trailers, security can be achieved by locking the trailer. For all other situations, the facility must be enclosed by a locked security fence.~~

~~12.7.7 Scrap tires cannot stay on-site indefinitely: each calendar year, the amount of scrap tires removed from the facility must equal at least 75% (by weight, volume, or number) of the amount of scrap tires accumulated on-site on January 1<sup>st</sup> of that calendar year. Documentation demonstrating the percentage of turnover must be kept for a period of at least three years and all documentation must be available for inspection by the Department upon request.~~

~~12.7.8 The owner/operator shall keep copies of all documentation demonstrating lawful management of all scrap tires added to the facility for a period of at least three years and all documentation must be available for inspection by the Department upon request.~~

~~12.7.9 Any scrap tire(s) removed from the facility must be properly transported to an authorized treatment, storage, disposal, or recycling facility (TSDRF). Documentation demonstrating delivery (e.g., tolling agreement, letter of~~

acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF must be kept for a period of at least three years and all documentation must be available for inspection by the Department upon request.

## 12.7 Operational Standards

### 12.7.1 On-Site Operations

- 12.7.1.1 The owner/operator shall take whatever measures are necessary to familiarize all personnel responsible for operation of the scrap tire facility with relevant sections of the operations manual required in Subsection 12.7.2, including training on the procedures to be followed in case of an emergency, including, but not limited to, fires.
- 12.7.1.2 The siting and design standards as required by Subsection 12.5 must be met and maintained.
- 12.7.1.3 Only scrap tires may be stored in the designated scrap tire facility.
- 12.7.1.4 Only scrap tires generated by or from the qualifying business may be present on the scrap tire facility owned/operated by the qualifying business.
- 12.7.1.5 The scrap tire facility is required to be secured at all times during non-business hours. For completely enclosed containers, such as trailers, security can be achieved by locking the trailer. For all other situations, the facility must be enclosed by a locked security fence.
- 12.7.1.6 Scrap tires cannot stay on-site indefinitely: each calendar year, the amount of scrap tires removed from the facility must equal at least 75% (by weight, volume, or number) of the amount of scrap tires accumulated on-site on January 1<sup>st</sup> of that calendar year.
- 12.7.1.7 Any scrap tire(s) removed from the facility must be properly transported to an authorized treatment, storage, disposal, or recycling facility (TSDRF).
- 12.7.1.8 The following inspections must be conducted at least monthly:
  - 12.7.1.8.1 The owner/operator must inspect the scrap tire facility for litter and unauthorized materials. All litter and unauthorized materials must be removed from the scrap tire facility.
  - 12.7.1.8.2 The owner/operator must inspect the fire break constructed around the perimeter of the scrap tire facility to ensure it meets the requirements in Subsection 12.5.4.
  - 12.7.1.8.3 The owner/operator must inspect the scrap tire facility and the surrounding area to ensure emergency equipment identified in its Operations Manual as required by Subsection 12.7.2.3.2 is available and accessible.
  - 12.7.1.8.4 The owner/operator must inspect the scrap tire facility to ensure the perimeter is secure in accordance with Subsection 12.7.1.5.

### 12.7.2 Operations Manual

The owner/operator must develop and implement an operations manual. A paper copy of the operations manual must be readily available on-site. The manual must include:

- 12.7.2.1 Procedures for clean-up and maintenance of the facility;
- 12.7.2.2 Procedures to ensure compliance with the operational requirements of Subsections 12.7.1 and 12.7.3.
- 12.7.2.3 Emergency procedures, including, but not limited to:
  - 12.7.2.3.1 A list of names and telephone numbers of persons to be contacted in an emergency, including, but not limited to, the scrap tire facility's emergency coordinator, the Department's emergency number (1-800-662-8802) and 9-1-1.
  - 12.7.2.3.2 A list of emergency response equipment present at the scrap tire facility or available for use at the facility and the location of the equipment;
  - 12.7.2.3.3 Procedures to be followed by facility personnel from discovery of the emergency until the situation is corrected;
  - 12.7.2.3.4 Location of known water supplies, fire hydrants, dry chemical extinguishers, or other materials that may be used for fire fighting purposes;

#### 12.7.3 Recordkeeping

The following records must be maintained for a period of three (3) years and made available for inspection by the Department upon request.

- 12.7.3.1 Documentation of personnel training required in Subsection 12.7.1.1.
- 12.7.3.2 Documentation demonstrating the percentage of turnover as required in Subsection 12.7.1.6.
- 12.7.3.3 Documentation demonstrating delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF as required by Subsection 12.7.1.7.
- 12.7.3.4 Documentation of arrangements with fire departments, as required in Subsection 12.5.4.6.
- 12.7.3.5 Mosquito control records in accordance with Subsection 12.6.1.2.2.
- 12.7.3.6 Documentation of inspections as required by Subsection 12.7.1.8.

#### 12.7.4 Reporting

- 12.7.4.1 The owner/operator must prepare and submit an annual report to the Department by March 1<sup>st</sup> of each calendar year. The report shall be submitted on a form provided by the Department and is to cover scrap tire facility activities during the previous calendar year.
- 12.7.4.2 In the event of a fire or other emergency related to the scrap tire facility, the owner/operator shall immediately notify emergency services by calling 9-1-1 and the Department by calling 1-800-662-8802. Within seven (7) calendar days of reporting an emergency

situation at the scrap tire facility, the owner/operator shall submit to the Department a written report detailing the emergency. The report must include:

12.7.4.2.1 A description of the type of emergency;

12.7.4.2.2 Date and time of the emergency;

12.7.4.2.3 A description of the origins of the emergency;

12.7.4.2.4 A description of the actions taken to respond to the emergency;

12.7.4.2.5 The results of the actions that were taken to date; and

12.7.4.2.6 An analysis of the success or failure of the actions.

12.8 Financial Assurance (Required only for Group 2)

The owner/operator must obtain and retain a minimum of \$10,000 financial assurance. Financial assurance is not required if the owner/operator can demonstrate a current, valid contract or other legal documentation with an approved TSDRF that requires the owner/operator to pay the cost of removing the scrap tires prior to delivery of a trailer where the scrap tires will be accumulated. Failure to obtain financial assurance will result in denial of issuance of a permit, which will cause the owner/operator to be in violation of these regulations. Failure to maintain financial assurance will result in revocation of the permit, which will cause the owner/operator to be violation of these regulations.

12.9 Right of Entry and Access

The Department retains the right of entry and access upon any private or public property during normal business hours and upon presentation of official identification for any purpose relating to the scrap tire regulations.

12.10 Notification of Closure/Closure

When a scrap tire facility ceases accepting and/or generating scrap tires or ceases meeting the requirements of these regulations, all scrap tires must be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance of the facility. The following conditions apply:

12.10.1 The Department shall be notified in writing a minimum of 90 days prior to the proposed date of cessation of use of a facility.

12.10.2 The notification of closure must include:

12.10.2.1 A description of methods, procedures, and processes that will be used to close the facility, including provisions that will be made for the proper removal of all scrap tires on the facility when operation ceases;

12.10.2.2 A description of restrictions that will be put in place to preclude delivery of additional scrap tires;

12.10.2.3 An estimate of the cost of closing the facility; and

12.10.2.4 A schedule for implementation of closure procedures.

12.10.3 A scrap tire facility must be closed in a manner that minimizes the need for further maintenance, and so that it will not pollute any waters, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.

12.10.4 The owner/operator must remove all scrap tires from the facility. All scrap tires must be properly transported to an authorized TSDRF.

- Documentation demonstrating delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF must be kept for a period of at least three years and all documentation must be available for inspection by the Department upon request.
- 12.10.5 The owner/operator shall begin implementation of the closure within 30 days following written Department approval, with full closure being achieved within 90 days, unless otherwise approved in writing by the Department.
- 12.10.6 The owner/operator must notify the Department within 10 days after closure activities are complete.
- 12.11 All other scrap tire facilities
- 12.11.1 All other scrap tire facilities not complying with the requirements of Group 1, or Group 2, or Group 3 or owner/operators who do not have a current and valid resource recovery facility permit (or other approval issued pursuant to these regulations) that addresses scrap tire management; or persons who are not registered with, and actively participating in, the Scrap Tire Management Program are prohibited. All scrap tires must be removed in accordance with this subsection and the facility shall be closed in a manner that will eliminate the need for further maintenance of the facility. The following conditions apply:
- 22.11.1.1 The owner/operator must submit to the Department within 30 days of non-compliance with these regulations:
- 12.11.1.1.1 A description of methods, procedures, and processes that will be used to close the facility, including provisions that will be made for the proper removal of all scrap tires on the facility when operation ceases;
- 12.11.1.1.2 A sediment and stormwater management plan if required under, and in accordance to, the Sediment and Stormwater regulations in Title 7, Chapter 40 of the Delaware Code.
- 12.11.1.1.3 A description of restrictions that will be put in place to preclude delivery of additional scrap tires;
- 12.11.1.1.4 An estimate of the cost of closing the facility; and
- 12.11.1.1.5 A schedule for implementation of closure procedures.
- 12.11.1.2 A scrap tire facility must be closed in a manner that minimizes the need for further maintenance, and so that it will not pollute any waters, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.
- 12.11.1.3 The owner/operator must remove all scrap tires from the facility. All scrap tires must be properly transported to an authorized treatment, storage, disposal, or recycling facility (TSDRF). Documentation demonstrating delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF must be kept for a

period of at least three years and all documentation must be available for inspection by the Department upon request.

- 12.11.1.4 The owner/operator shall begin implementation of the closure within 30 days following written Department approval, with full closure being achieved within 90 days, unless otherwise approved in writing by the Department.
- 12.11.1.5 The owner/operator must notify the Department within 10 days after closure activities are complete.
- 12.11.2 Failure to promptly and properly close the scrap tire facility may result in an enforcement action.

\* \* \* \* \*



# Regulatory Flexibility Analysis and Impact Statement Form

## For Proposed New and Amended Regulations Affecting Small Businesses or Individuals

### Introduction

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see **29 Del.C. Ch. 104**).

This RFA and RIS form is intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

State agencies proposing new or amended regulations that are substantially likely to impose additional costs or burdens on small businesses<sup>1</sup> or individuals<sup>2</sup> must submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) to the Registrar of Regulations, with the proposed regulation. For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.

### What is a Regulatory Flexibility Analysis (RFA)?

In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation's purpose, while minimizing the impact upon individuals and/or small businesses.

### What is a Regulatory Impact Statement (RIS)?

Among other things, each RIS must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation. In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

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<sup>1</sup>"Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

<sup>2</sup>"Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business"; e.g. the CEO of a large business.

*Agencies, Boards, and Commissions: please fill out this form when proposing new or amended regulations for the purpose of informing the public and business community. All proposed regulations, even if an exemption applies, must have this form attached when submitting to the Registrar of Regulations.*

Date 3.4.2016 Agency DNREC Division/Office WHS/SHWMS

Contact Name Andrew Martin

Contact Email (or mailing address for comments) Andrew.Martin@state.de.us

Regulation # 1301 Title Delaware's Regulations Governing Solid Waste (DRGSW)

### Exemptions

- Exemption A:* This proposed regulation is **not subject to Chapter 104, Title 29 of the Delaware Code**, because it will not apply to small businesses or individuals at all.
- Exemption B:* The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

- B1.* This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:
- B2.* This is an emergency regulation pursuant to **29 Del.C. §10119**.
- B3.* This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, **29 Del.C. §10113(b)**. Choose which reason:
- B3a.* Descriptions of agency organization, operations and procedures for obtaining information
  - B3b.* Rules of practice and procedure used by the agency
  - B3c.* Delegations of authority to subordinates
  - B3d.* Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
  - B3e.* Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations
  - B3f.* Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

- B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

- B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. *(If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL):*

*End of Exemption Section*

# Regulatory Flexibility Analysis

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State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed regulations **on individuals and small businesses**:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1. For 20 of the 63 regulatory amendments adversely impacting individuals and small businesses, it is not lawful, feasible nor desirable to establish less stringent compliance or reporting requirements as the SHWMS has proposed the least stringent requirements to meet the statutory mandates.
2. For 20 of the 63 regulatory amendments adversely impacting individuals and small businesses, it is not lawful, feasible nor desirable to establish less stringent schedules or deadlines for compliance and reporting requirements to achieve and maintain statute required monitoring.
3. For 20 of the 63 regulatory amendments adversely impacting individuals and small businesses, it is not lawful, feasible or desirable to consolidate or simplify the compliance or reporting requirements any further than currently proposed.
4. For 20 of the 63 regulatory amendments adversely impacting individuals and small businesses, it is not lawful, feasible or desirable to establish performance standards to replace operational standards as the SHWMS has proposed the least stringent requirements to meet the statute.
5. For 20 of the 63 regulatory amendments adversely impacting individuals and small businesses, it is not applicable or lawful to exempt certain individuals or small businesses from all or part of the proposed regulatory requirements at the statutory mandates would not be met.
6. For 20 of the 63 regulatory amendments adversely impacting individuals and small businesses, it is not lawful, feasible or desirable to implement alternative regulatory methods as the SHWMS has proposed the least burdensome requirements for businesses while complying with the statute.

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above:

A large, empty rectangular box with a thin black border, intended for the user to provide an explanation if the RFA section above is not completed. The box is currently blank.

*End of Regulatory Flexibility Analysis Section*

# Regulatory Impact Statement

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Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below Regulatory Impact Statement (RIS).

- Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.

- Statutory Citation: 7 Del. C. Section 6040(b)
- URL: <http://delcode.delaware.gov/title7/c060/sc02/index.shtml>
- Subject Matter Statutory Citation: 7 Del. C. Section 6040(b)
- URL: <http://delcode.delaware.gov/title7/c060/sc02/index.shtml>

- Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

The purpose of the proposed regulatory amendments of Delaware's Regulations Governing Solid Waste (DRGSW) as applicable to Scrap Tire Facilities is to provide clarification and explicitly state what is required to achieve and maintain compliance with already existing regulations. The proposed regulatory amendments also reduce the regulatory requirements and financial burdens for facilities operating under specific conditions (e.g., storing scrap tires in enclosed trailers) while maintaining the intent of the statute and current regulations.

- What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

The benefits of the proposed regulatory amendments of Delaware's Regulations Governing Solid Waste (DRGSW) as applicable to Scrap Tire Facilities are:  
scrap tire facility operators/owner will have clearly stated requirements for achieving and maintaining compliance with the current regulations,  
a reduction of theft and vandalism at scrap tire facilities and proper reporting if incidents occur,  
increase in public safety as fire departments are notified of scrap tire facilities,  
DNREC SHWMS will be able to ensure the statute's intent is met by requiring annual reporting.

- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

The types of individuals and/or small businesses that would be subject to the proposed regulatory amendments of Delaware's Regulations Governing Solid Waste (DRGSW) are the same as those who are subject to compliance under the current regulations -- owners/operators of scrap tire facilities. As the Scrap Tire Facility Management program has only been in effect since January 2016, SHWMS is not aware of the total number of individuals and/or small businesses will be affected.

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. Use the below space for a free-text response (*Cost Estimate Option 1*) or, use the questionnaire below to guide the response (*Cost Estimate Option 2*):

**Cost Estimate Option 1:**

The potential cost of compliance associated with the proposed regulatory amendments of Delaware's Regulations Governing Solid Waste (DRGSW) as applicable to Scrap Tire Facilities is intended to be minimal. Costs incurred will be associated with record-keeping associated with inspections, a one-time notification to the fire department, and once a year annual reporting.

For reference as to which 20 of the 63 regulatory amendments have a potential cost of compliance associated with them, here is a list as found Section 12.0 of DRGSW:

12.5.4.2, 12.5.4.6, 12.7.1.8, 12.7.1.8.1, 12.7.1.8.2, 12.7.1.8.3, 12.7.1.8.4, 12.7.2.3.2, 12.7.2.3.4, 12.7.3.4, 12.7.3.6, 12.7.4, 12.7.4.1, 12.7.4.2, 12.7.4.2.1, 12.7.4.2.2, 12.7.4.2.3, 12.7.4.2.4, 12.7.4.2.5, 12.7.4.2.6

The Solid and Hazardous Waste Management Section (SHWMS), Scrap Tire Management Program has created inspection log templates and annual reporting documents for scrap tire facilities to decrease their cost and administrative burdens.

The remaining 40 of the 63 proposed regulatory amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small business. This is due to their nature as being a non-substantive change to existing regulations to alter style/form or the proposed amendment's intent is to reduce or eliminate potential costs (e.g., permit fee, public notice fee) for facilities operating under specific conditions.

Please see the "Cost Estimate Option 2" section below for more information.

	<b>Cost Estimate Option 2</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>
1	Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
2	If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
3	Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
4	Does this regulation follow industry standards and best practices?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
5	Are there potential costs in not establishing these standards?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
6	Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
7	Does the regulation require additional recurring costs on small businesses or individuals?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
8	Does the regulation impose additional administrative burden for a small business or individual?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
8a	If answering yes to #8, is it ongoing reporting or one time? (Choose answer) <input checked="" type="radio"/> Ongoing <input type="radio"/> One Time <input type="radio"/> Unknown			
8b	If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation? <input type="radio"/> Large Amount <input checked="" type="radio"/> Small Amount <input type="radio"/> Unknown			
9	Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

<i>Cost Estimate Option 2 (continued)</i>		Yes	No	Unknown
10	Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
10a	If answering yes to #10, estimate how many hours an outside professional may be needed to assist			
10b	If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11	Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
12	Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
13	Will small businesses have to hire additional employees in order to comply with the proposed regulation?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
14	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
15	Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
16	Does the regulation require small businesses to obtain additional education to keep up to date with regulatory requirements?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
17	<p>Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation.</p> <p>Costs incurred will be associated with record-keeping associated with monthly inspections, a one-time notification to the fire department, and once a year annual reporting related to yearly scrap tire management.</p> <p>The Solid and Hazardous Waste Management Section (SHWMS), Scrap Tire Management Program has created inspection log templates and annual reporting documents for scrap tire facilities to decrease their cost and administrative burdens.</p>			

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation:

The SHWMS Scrap Tire Management Program can determine no less intrusive or less costly alternative to achieve the intent of the statutory and regulatory requirements.

- *(Optional)* Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

The SHWMS estimates that it took 9 hours of DNREC time and 1 hour of DOJ time to prepare, review and complete this RFA/RIS statement.

- *(Optional)* Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion:

*End of Regulatory Impact Statement Section*