

California Integrated Waste Management Board

Board Meeting

January 21, 2009

AGENDA ITEM 7

ITEM

Status Report And Request For Direction On The Streamlined Process For Stipulated Waste Tire Hauler And Waste Tire Facility Administrative Penalty Cases

I. ISSUE/PROBLEM STATEMENT

At the April 2008 Board meeting, Legal and Program staff presented the Consideration Of Streamlined Process For Stipulated Waste Tire Hauler And Waste Tire Facility Administrative Penalty Cases (see Item 9, April 2008 Board Meeting, Attachment 1). In this presentation, staff proposed a Streamlined Penalty Letter and Stipulated Decision and Order that would, by providing for pre-set negotiated penalties for enforcement cases that meet specific criteria, settle non-controversial penalty cases promptly to reduce time spent preparing for Administrative Procedure Act hearings. This Streamlined Penalty Process would only be used for tire hauler enforcement cases that were non-controversial, involved less than 2,000 waste tires, and the administrative complaint penalties would be less than \$5,000.

The Board approved a 6-month pilot program. Staff implemented this pilot program starting in July 2008 and has provided the Permitting and Compliance Committee with monthly updates by the Program Director. Staff requests to continue this streamlined penalty process on a permanent basis and expand it to include violations of specified waste tire storage laws, such as operating an unpermitted site and/or violating regulations governing waste tire facility state minimum standards.

II. ITEM HISTORY

At the April 22, 2008 Board meeting, the *Streamlined Process of Stipulated Waste Tire Hauler and Waste Tire Facility Administrative Penalty Cases* was presented to the Board and approved. Staff was requested to develop procedures and penalty schedules to implement this Streamlined Process for Board consideration which was presented at the June 2008 closed session Board Meeting. The Board approved this Streamlined Enforcement Process and directed staff to initiate a 6-month pilot program to determine its effectiveness, provide monthly updates to the Board on the penalty actions taken by Program staff, and prepare a final report of this pilot program.

III. OPTIONS FOR THE BOARD

1. Approve the current Streamlined Penalty Process for waste tire haulers and expand it to include violations of specified waste tire storage laws, such as operating an unpermitted site and/or violating regulations governing waste tire facility state minimum standard violations, for penalties of less than \$5,000 that involve less than 2,000 waste tires and are non-controversial; and direct staff to implement this program for those cases that are within the parameters specified and to provide regular updates at the Permitting and Compliance Committee Meetings.
2. Disapprove Option 1.
3. Approve Option 1 with specific revisions.
4. Take no action

IV. STAFF RECOMMENDATION

Staff recommends Option 1; and adopt Resolution Number 2009-14

V. ANALYSIS

A. Key Issues and Findings

Background:

At the April 2008 Board meeting, Staff presented an agenda item, "Discussion and Consideration of Procedures and Penalties for the Streamlined Process of Stipulated Waste Tire Hauler and Waste Tire Facility Administrative Penalty Cases". The Streamlined Process was an effort to save time and resources by settling cases prior to the issuance of an Administrative Complaint, which initiates the Administrative Procedures Act, including the requirement to provide an Administrative Hearing if requested. At a June 2008 closed session Board meeting, the Board established a streamlined, settlement penalty schedule and directed staff to implement a six month pilot program for hauler and manifest cases that met Board specified criteria. These criteria included the following:

- Standard (Stipulated Agreement) penalties for cases less than \$5,000;
- The case involved less than 2,000 tires; and
- The case was relatively non-controversial.

Staff developed a uniform process and began issuing streamlined penalties in July 2008. At the end of the six month period, staff was directed to update the Board on the results of the pilot program and make recommendations for future action.

Results to Date:

Staff have prepared streamlined penalty packets for violations such as late submittal of annual tire registration and unacceptably high error rates on submitted tire manifests. Staff has received confirmation that 89 proposed streamlined penalty packets have been received. Of this number, 80 (approximately 89%) of the streamlined penalty offers have been accepted. Over 87% of those who have accepted streamlined penalties have paid in full and the remaining 13% are on a staff approved payment plan.

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| 1. Total streamlined penalty offers sent (receipt confirmed) | 89 |
| 2. Accepted streamlined penalties and paid in full | 70 |
| 3. Accepted streamlined penalties with payment plan | 10 |
| 4. Rejected streamlined penalty and chose standard AC process | 2 |
| 5. Pending streamlined penalty offers | 7 |

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| Total monies collected | \$33,150 |
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Analysis of Results:

Staff believe that the program has been an unqualified success. Time spent on each case has been significantly reduced and the Legal Office staff have been able to shift work to more complex cases. By utilizing the Streamlined Penalty process, an estimated cost avoidance of \$445,000 in legal costs (89 potential Administrative Complaints multiplied by \$5,000 per Administrative Complaint) has been realized (note: Administrative Complaints can cost approximately \$5,000 to prepare and issue.

This cost does not include legal costs if the parties decide to contest the allegations and a hearing is held).

In addition, staff is more motivated to pursue violations knowing that enforcement can be imposed swiftly. Staff have been able to prosecute significantly more cases than would have been possible utilizing the Administrative Hearing process. For example, in the six month

period prior to the implementation of the Streamlined Penalty process, the Legal Office issued 6 hauler related Administrative Complaints as opposed to 89 Streamlined Penalty cases issued by program staff during the pilot program. Most haulers appreciate that they had the opportunity to resolve their violations in significantly less time and with much less expense than would otherwise be the case. The high percentage of cases which have been satisfactorily resolved is testimony to this fact. And the regulated community as a whole has strongly supported the premise that a strong enforcement program is essential in maintaining a “level playing field” and making sure that waste tires are properly disposed of or recycled.

Staff believes the results are compelling arguments for making the pilot program “permanent”. Staff would report back to the Board on a regular basis on program issues and developments. In particular, staff will perform follow-up investigations on those violators that have received penalty letters to check on the “recidivism” rate; that is, the rate at which these violators continue to violate waste tire regulations. The streamlined penalty criteria approved by the Board allows for increasing levels of penalties to be imposed for 2nd and 3rd offenses. The Board also has discretion to impose larger penalties through the use of the Administrative Hearing process or the use of other enforcement tools, such as the denial, suspension, or revocation of the waste tire hauler registration.

Potential Expansion of the Streamlined Penalty Program:

Based on the results of the program to date, in addition to making the current program “permanent,” staff proposes an expansion of the program to include prosecution of select violations of Cleanup and Abatement Orders/Cease & Desist Orders related to waste tire storage requirements such as failure to comply with storage, fire or vector requirements, or operating without a waste tire facility permit* where there are fewer than 2000 waste tires involved. Some of these types of violations are chronic in nature and by allowing staff the ability to levy streamlined fines upon the operator, it may promote a higher compliance rate by facility operators.

* There are significant differences in regulation for tire haulers as opposed to facility requirements; non-compliance with a CAO is a necessary precursor to obtaining penalties (Administrative Complaint or otherwise) for a facility violation but is not necessary for a hauler or manifest related violation.

Summary of Recommendation:

Staff requests the Board to approve the Streamlined Penalty Process for tire hauler and manifest violations on a permanent basis for those enforcement cases which meet the following criteria:

- Standard (Stipulated Agreement) penalties for cases of less than \$5,000;
- The case involves less than 2,000 tires;
- The case is relatively non-controversial.

Staff also requests the expansion of the Streamlined Penalty Process to include prosecution of select violations of Cleanup and Abatement Order/Cease & Desist Order provisions regarding waste tire facility permits and/or storage standards.

Upon the Board’s approval, staff will propose penalty procedures and amounts for the program expansion to be presented to the Board in closed session.

B. Environmental Issues

Based on available information, staff is not aware of any environmental issues related to this item.

C. Program/Long Term Impacts

The Streamlined Penalty process offers the ability to prosecute a significant number of waste tire hauler and facility violations in an expeditious and cost effective manner. The workload on both Legal and Program staff will be positively impacted by allowing the continuance of the Streamlined Penalty Process. The Streamlined Penalty Process will help staff comply with the Board's Strategic Directive SD 8.3, which is to ensure that 100 percent of all active solid waste and tire facilities meet State minimum standards and permit terms and conditions, and that they are in compliance with federal and state waste management laws.

D. Stakeholder Impacts

Based on available information, staff is not aware of any stakeholder impacts related to this item.

E. Fiscal Impacts

No fiscal impact to the Board results from this item.

F. Legal Issues

See: **Key Issues and Findings** (above) for legal issues.

G. Environmental Justice

Based on available information, staff is not aware of any environmental justice issues related to this item.

VI. FUNDING INFORMATION

This item does not require any Board fiscal action.

VII. ATTACHMENTS

1. Board Agenda Item 9, April 2008
2. Resolution 2009-14

VIII. STAFF RESPONSIBLE FOR ITEM PREPARATION

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| A. Program Staff: | Jim Lee | Phone: (916) 341-6455 |
| B. Legal Staff: | Wendy Breckon | Phone: (916) 341-6068 |
| C. Administration Staff: | Stephen Petty | Phone: (916) 341-6691 |

IX. WRITTEN SUPPORT AND/OR OPPOSITION

A. Support

Staff had not received any written support at the time this Item was submitted for publication.

B. Opposition

Staff had not received any written opposition at the time this Item was submitted for publication.