

CHAPTER 218
WASTE TIRE STOCKPILE ABATEMENT PROGRAM

567—218.1(455D) Goal. The goal of this program is to abate waste tire stockpiles that pose a nuisance to the environment or to public health, safety or welfare, through the awarding of contracts by the department.

567—218.2(455D) Purpose. The purpose of this chapter is to establish the process for the use of available funds to implement a waste tire stockpile abatement program. This chapter establishes the criteria which the department will follow for prioritizing waste tire stockpile abatement projects, requirements for owners or operators of nuisance stockpile sites, procedures for awarding stockpile abatement contracts, and guidelines that the department may use to seek cost recovery for stockpile abatement activities.

567—218.3(455D) Definitions. As used in this chapter:

“Abatement” means the processing or removal of waste tires from nuisance stockpiles with delivery to an approved processing site or site of end use.

“Abatement fund” means that portion of the waste tire management fund allocated for stockpile abatement activities pursuant to Iowa Code section 455D.11C.

“Department” means Iowa department of natural resources.

“Nuisance” means an unreasonable danger to public health, safety or welfare, or the environment.

“Operator” means the person responsible for the overall operation of the stockpile site including the care, custody or control of the waste tires located at the site.

“Owner” means a person who owns, in whole or in part, the waste tires located at a stockpile site, or the land on which the stockpile is located. “Owner” includes one who holds an interest in the property on which the stockpile is located, as in the case of a lessee.

“Permittee” means a person who has been issued a waste tire processing or storage permit by the department pursuant to 567—Chapter 117.

“Processing” means producing or manufacturing usable materials from waste tires.

“Processing site” means a site which is used for the processing of waste tires and which is owned or operated by a tire processor.

“Site of end use” means a site where whole or processed waste tires are recycled or reused in a beneficial use as authorized by the department.

“Stockpile” means an accumulation of waste tires at a site which is used for the storage, collection, or processing of waste tires. The stockpile may or may not be a facility currently permitted by the department.

“Tire collector” means a person who owns or operates a site used for the storage, collection or deposit of more than 500 waste tires.

“Tire processor” means a person who reduces waste tires into a processed form suitable for recycling or for manufacturing usable materials from waste tires including producing a fuel product for energy or heat. “Tire processor” does not mean a person who retreads tires or processes and stores tires.

“Waste management assistance division” means the waste management assistance division of the department of natural resources established by Iowa Code section 455B.483.

“Waste tire,” as defined in Iowa Code section 455D.11, means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. “Waste tire” does not include a nonpneumatic tire.

“Waste tire collection site” means a site which is used for the storage, collection, or deposit of waste tires owned or operated by a tire collector.

567—218.4(455D) Role of the department of natural resources. The department is responsible for determining abatement priorities, for initiating and ensuring the completion of abatement actions, for the administration of funds awarded to waste tire processors or contractors under these rules, and for

contractor selection and contract monitoring. The department will ensure that funds disbursed meet guidelines established in Iowa Code section 455D.11C.

567—218.5(455D) Existing authority. This chapter does not change the authority of the department to enforce any existing applicable laws or regulations including waste tire processing or collection requirements stipulated in 567—Chapter 117.

567—218.6(455D) Funding source. The department will use that portion of the waste tire management fund available for stockpile abatement pursuant to Iowa Code section 455D.11C, beginning in fiscal year 1997 through fiscal year 2002, to fund the activities of the program set forth in this chapter.

567—218.7(455D) Applicability. This chapter applies to owners or operators of permitted and unpermitted waste tire stockpile sites located within Iowa containing 500 or more waste tires, either on one property or on numerous properties under their ownership, management or control, which are determined by the department to be a nuisance.

567—218.8(455D) Abatement fund priorities. The department may use the abatement fund to abate any nuisance created by waste tires at a stockpile site. The department shall follow the criteria in rule 218.9(455D) and the priorities set forth in this rule for determining which sites shall be subject to abatement.

218.8(1) Primary use.

a. First priority for the department's use of the abatement fund shall be to issue contracts for the removal or processing of all waste tires that can be reasonably recovered from stockpile sites determined by the department to be a nuisance. For this purpose the department may use funds for abating stockpile sites including, but not limited to, the following:

- (1) A stockpile site for which the owner or operator has failed to apply for or obtain waste tire processing or storage permit;
- (2) A stockpile site where the owner or operator has failed to remove the waste tires as required by the department;
- (3) A permitted waste tire collection site if the permittee fails to meet the conditions of such permit;
- (4) A permitted waste tire processing site where the owner or operator has ceased processing waste tires.

b. Abatement activities related to this subrule shall require the owner or operator of the site to enter into a letter of agreement or contract with the department, or to comply with an abatement order issued by the department, any of which shall include the stipulation that the site will no longer be used for collecting, storing or processing waste tires.

c. Procedures for using abatement funds for projects referenced in this subrule are described in rule 218.10(455D).

218.8(2) Secondary use. In using the abatement fund, the department may consider issuing a contract for the purpose of abating a nuisance that has caused a permittee of a waste tire processing site to be in noncompliance with the conditions of the facility's permit. In such cases, it is the intention of the permittee to continue processing waste tires at the site, and the extent of the abatement would be only to process or remove a quantity of waste tires sufficient to mitigate the conditions that caused the site to be in noncompliance. The procedure for using the abatement fund for such projects is described in rule 218.11(455D).

567—218.9(455D) Abatement site determination criteria. This rule establishes the criteria that the department shall follow in determining which sites will be subject to abatement, including the criteria for determining the degree of nuisance posed by stockpiles.

218.9(1) Size of stockpile. Stockpile sites will be placed into the following categories based on the number of waste tires present at each site:

- a.* Sites with 50,000 or more waste tires receive first priority;
- b.* Sites with at least 10,000 waste tires but less than 50,000 waste tires receive second priority;

c. Sites with at least 500 waste tires but less than 10,000 waste tires receive third priority.

218.9(2) Nuisance criteria. For the purposes of abatement, sites within each priority category specified in subrule 218.9(1) shall be ranked according to the degree of nuisance posed by each site as determined by the following evaluation criteria.

a. *Susceptibility to fire.* The department's evaluation shall consider characteristics of the stockpile which constitute a fire hazard, such as the absence of fire lanes, lack of emergency control equipment, presence of easily combustible material or activities which could cause the pile to ignite, and lack of site access control.

b. *Risk to the environment or to public health, safety or welfare.* The department's evaluation shall consider characteristics of the stockpile which might constitute a danger to the environment or to public health, safety or welfare. Such characteristics include, but are not limited to, proximity to surface waters or to other environmentally sensitive areas, proximity to population concentrations, especially susceptible populations such as hospital patients, proximity to property owned by a third person, susceptibility to mosquito infestation, proximity to public or private water wells, and visibility from public roadways.

c. *Other special conditions.* After ranking sites in each priority category specified in subrule 218.9(1) in terms of the evaluation criteria specified in paragraphs 218.9(2) "a" and 218.9(2) "b," the department may further prioritize the sites by considering other special conditions. Such conditions may include a local fire district's or a local governmental agency's determination that deems the site to be a danger or nuisance, or an environmental concern justifying prompt abatement action.

218.9(3) Discretionary. In the process of contracting for nuisance abatement activities, the department may combine the cleanup of stockpiles that rank lower than other potential abatement sites if these sites are located in the general area of a site that ranks high as determined by the criteria specified in subrules 218.9(1) and 218.9(2) and if in the department's judgment this action would be a more cost-effective and expeditious use of abatement funds.

218.9(4) Financial considerations. In determining its order of priority for stockpile abatement activities, the department may justify contracting for the cleanup of lesser priority sites if either of the following conditions applies.

a. Moneys available in the abatement fund pursuant to rule 218.6(455D) are not sufficient to address the current highest priority site as ranked by the department. Under these circumstances, the department may conduct abatement activities at a lesser ranked site or sites whose estimated abatement costs coincide with available funding.

b. Under the limited funding circumstances described in paragraph 218.9(4) "a," and where the owner or operator of a nuisance stockpile is willing to provide a cost share for the abatement of the site, the department may conduct abatement activities at a lesser ranked site if the estimated abatement costs coincide with available funding as supplemented by the owner or operator of the site through a negotiated settlement.

567—218.10(455D) Procedures for use of abatement funds through an abatement order or negotiated settlement. This rule defines the procedures for the use of the abatement fund described in subrule 218.8(1).

218.10(1) Initial notification. If the department determines that a stockpile is a nuisance and ranks relatively high as determined by the criteria in rule 218.9(455D), it shall give notice to the owner or operator deemed responsible for the nuisance of the department's intent to proceed with abatement action at the site. The department's proposed abatement action plan shall be specified in the notice. The person notified shall be required to respond to the notice within a specified period.

a. If the person notified fails to respond within the specified time period or the response does not affirm agreement and willingness to cooperate with the department's proposed abatement action plan, and such person is not the owner of the property on which the stockpile is located, the department will send the abatement notice to the property owner.

b. If the person or persons notified including the owner of the property fail to respond to the notice or the response does not affirm agreement and willingness to cooperate with the department's proposed

abatement action plan, the department shall issue an abatement order. The abatement order procedure is described in subrule 218.10(2).

c. If the person or persons notified respond to the initial notice within the specified time period and affirm agreement and willingness to cooperate with the department's proposed abatement action plan, the department may enter into a negotiated settlement with any or all of the applicable parties. The procedure for using abatement funds by negotiated settlement is described in subrule 218.10(3).

218.10(2) Abatement order. Pursuant to paragraph 218.10(1)“b,” the department may issue an abatement order requiring the owner or operator of the stockpile site to comply with the department's abatement action plan.

a. The department may take any action necessary under its authority to abate the nuisance including entering the property where the stockpile is located, confiscating the waste tires into public custody, and providing for their removal and processing.

b. To carry out a nuisance abatement order, the department may refer a nuisance owner or operator to the attorney general for further enforcement action.

c. Through the abatement order, the department may bring an action or proceeding to recover any reasonable and necessary expenses incurred by the department in conducting the abatement action as provided in rule 218.12(455D).

d. The abatement order shall include conditions which place limitations on the use of the site for waste tire storage, collection or processing activities during or following completion of the abatement action. Violation of these conditions shall be cause for the department to seek recovery of expenses, as provided in rule 218.12(455D), and to pursue other appropriate legal actions as stipulated in the abatement order.

218.10(3) Negotiated settlement. Pursuant to paragraph 218.10(1)“c,” the department may enter into a negotiated settlement with any or all of the applicable parties through a letter of agreement. The letter of agreement stipulates the terms of the negotiated settlement which may include, but are not limited to, the following:

a. Consent to allow the department and its employees, agents, and contractors to enter the property and remove, or to process and remove, all waste tires which can be reasonably recovered from the site as determined by the department. This consent applies to all areas of the property and structures therein associated with the stockpiled waste tires.

b. Consent to allow open access to the stockpile property shall extend to such time as is necessary for the investigation, preparation, and completion of the nuisance abatement.

c. If so determined by the department or if part of the negotiated settlement, the applicable parties' share of the total abatement cost and terms of payment shall be specified. In determining if a cost share is appropriate and ascertaining the amount of a cost share, the department shall consider the cost recovery factors described in subrule 218.12(3). The letter of agreement's description of the cost share that the applicable parties agree to pay to the department may be based on either a specified sum of money or a percentage of the department's final costs incurred in the abatement action.

d. A statement that the applicable parties will henceforth not use the site for temporary or permanent waste tire collection, storage, or processing. Any subsequent collection or dumping of waste tires on the stockpile property site, regardless of source, shall be the sole liability of the applicable parties as long as they continue to have ownership or an interest in the property as determined by the department. The applicable parties shall be responsible for immediate abatement and removal of such waste tires.

e. A provision that any violation of the conditions stipulated in the letter of agreement shall be cause for the department to seek recovery of expenses, as provided in rule 218.12(455D), and to pursue other appropriate legal actions as stipulated in the letter of agreement.

567—218.11(455D) Procedure for use of abatement fund at a permitted waste tire processing site. This rule defines the procedure for the use of the abatement fund described in subrule 218.8(2). The department may determine that abatement funds should be made available to abate a nuisance that has caused a permittee of a waste tire processing site to be in noncompliance with the conditions of

the facility's permit. In such cases the extent of the abatement would be only to process or remove a quantity of waste tires sufficient to mitigate the conditions that caused the site to be in noncompliance.

218.11(1) A contract providing financial assistance for abating a nuisance at a permitted waste tire processing site may be entered into between the department and the permittee if the following conditions are met:

- a. The site ranks relatively high in the nuisance criteria described in subrule 218.9(2).
- b. The permittee submits to the department a compliance plan that shall include:
 - (1) A detailed description of the specific issues and circumstances that have caused the permittee to be in noncompliance;
 - (2) A detailed description of the permittee's proposed actions, including how the tires will be processed and removed to a site or sites of end use;
 - (3) A description of the site or sites of end use that will be used;
 - (4) A time schedule for processing and removing the waste tires which includes specific milestones;
 - (5) An estimate of the net cost of processing and removing waste tires to a site or sites of end use, by utilizing the most cost-effective alternative. This estimate must be documented. The department may require the permittee to include three bids competitively obtained from responsible contractors for the proposed abatement action.
- c. The plan receives approval from the department.

218.11(2) Financial assistance provided through the contract may be in the form of a grant equal to a percentage of the total funding needed to complete the project, a zero interest loan for total or partial funding of the project, or a combination of the two. Terms of payment or repayment shall be specified in the contract. Final payment to the permittee shall be withheld until the department's final inspection and confirmation that the nuisance abatement has been completed in accordance with the approved compliance plan and, if appropriate, until the department receives written documentation satisfactory to the department that the permittee's share of the costs has been paid. In determining the type and amount of financial assistance to provide to the permittee, the department shall consider the cost recovery factors described in subrule 218.12(3).

218.11(3) A permittee may receive financial assistance through the waste tire stockpile abatement program for no more than one project.

567—218.12(455D) Abatement cost recovery. The abatement fund may be reimbursed through the recovery of expenses and cost-share mechanisms described in this rule.

218.12(1) *Recovery of expenses.* Pursuant to rules 218.10(455D) and 218.11(455D), the department may bring an action or proceeding to recover any reasonable and necessary expenses incurred by the department for stockpile abatement activities. The department may ask the attorney general to initiate a civil action to recover such expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary. In general, the department will consider that the person or persons who were the subject of an abatement action conducted by the department under this chapter to be responsible for repaying the department for the full costs of the abatement.

218.12(2) *Owner or operator cost share for abatement activities.* Pursuant to rules 218.10(455D) and 218.11(455D), the department may include cost-share or repayment provisions in letters of agreement, contracts, or other legal instruments associated with the department's stockpile abatement actions.

218.12(3) *Cost recovery determination factors.* In its determination whether to initiate actions or proceedings for recovery of expenses, and in determining the extent of expenses subject to recovery or cost sharing by the applicable parties, the department may consider the following factors:

- a. The total actual cost or estimated cost of the abatement action.
- b. Whether the owner or operator responsible for the nuisance received compensation for the collection, transportation or storage of the waste tires.
- c. Whether the owner or operator responsible for the nuisance has paid or is paying a portion of the costs to abate the nuisance.

d. Whether the owner or operator responsible for the nuisance is financially able to pay a portion of the costs to abate the nuisance. This determination may be based upon the submittal of state and federal tax returns for the past three years, statement of net worth, and similar documentation.

e. Whether the person responsible for the nuisance is the owner of the property where the stockpile is located.

f. Whether the owner of the property received compensation for the waste tires received at the stockpile site.

g. Whether the owner or operator responsible for the nuisance knowingly violated rules or statutes relating to waste tires.

218.12(4) *Abatement fund reimbursement.* Any money from the abatement fund expended by the department for costs related to stockpile abatement activities and later recovered by the department through the mechanisms described in this rule shall be credited to the abatement fund.

567—218.13(455D) Abatement contracts.

218.13(1) With the exception of a permitted waste tire processor who receives abatement funds for mitigating a nuisance at the permittee's site, as described in rule 218.11(455D), all contracts for abatement projects shall be awarded to eligible firms through a competitive bidding process. Firms placed on a qualified bidders list will receive a request for proposals for abatement projects at sites determined by the department. In selecting contractors the department shall use criteria that include, but are not limited to, the following:

- a.* Professional, financial and technical qualifications;
- b.* Stockpile abatement experience;
- c.* End markets for the waste tires removed and processed under the abatement action;
- d.* Capability to perform defined scope of work within specified time frame; and
- e.* Cost of service.

218.13(2) In order for consideration of any stockpile abatement contract awards, a prospective contractor must be in compliance with all applicable provisions of local, state, and federal regulations, including the department's waste tire storage, collection, and processing requirements as set forth in 567—Chapter 117. There also must not be any current or pending enforcement actions against the prospective contractor. If such actions exist, the firm is ineligible to receive contract awards under this program.

218.13(3) Under this rule, any contractor found to be providing unsatisfactory service during a contract period, as determined by the department, may be ineligible for award of a subsequent contract.

These rules are intended to implement Iowa Code section 455D.11F.

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