

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.