

The RAIDA and The RIDSTMR

A Regulatory Overview
September 25, 2013

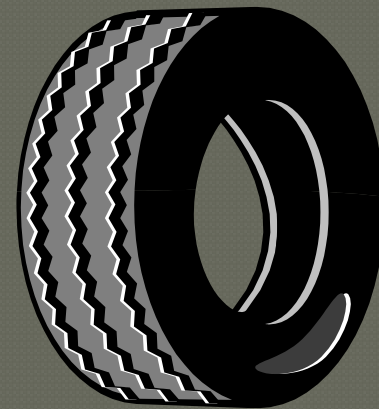
Presented By:



George W. Akeley Jr. (Chuck)
Manager, Enforcement Section
Solid Waste Bureau
New Mexico Environment Department
1190 St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87502-5469
Voice: (505) 827-2924
Fax: (505) 827-2902
Email: chuck.akeley@state.nm.us

Statutory and Regulatory Authority

- ◉ Recycling and Illegal Dumping Act
 - The “RAIDA” [6/17/2005]
 - NMSA 1978, §§ 74-13-1 to 74-13-20
- ◉ Recycling, Illegal Dumping and Scrap Tire Management Rule
 - The “RIDSTMR” [8/2/2007]
 - 20.9.20 NMAC



Why Does It Matter?



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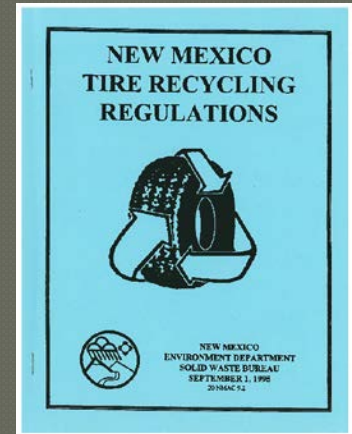
Before the RAIDA

- The New Mexico Tire Recycling Act
 - The “TRA”
 - NMSA 1978, §§ 74-11-1 to 74-11-17
 - Effective 1994
 - Required Promulgation of Regulations by September 1, 1995
 - Specified the Requirement for Scrap Tire Storage and Recycling Facility Permits

Before the RIDSTMR

○ The New Mexico Tire Recycling Regulations

- The “TRR”
- 20 NMAC 9.2
- Effective September 1, 1995
- Promulgated as Required Under the TRA
- Included Provisions for Scrap Tire Facility Permitting and Scrap Tire Hauler Registration
- ***No Requirements for Manifesting or Bonding of Haulers



Statutory Overview – The RAIDA

○ Purposes of the RAIDA

- To Protect the Health and Welfare of New Mexico Residents by Providing for the Prevention and Abatement of Illegal Dumpsites
- Promote Environmentally Sound Methods for Reuse and Recycling
- Create a Statewide Recycling Alliance
- Enhance and Coordinate Litter Control and Recycling of Tires, Glass, Plastic, Metal, Paper Products E-Waste and C&D Materials

Statutory Overview – The RAIDA

○ Definitions

- Scrap Tire
- Scrap Tire Hauler
- Tire Recycling
- Tire Recycling Facility
- Civil Engineering Application (“CEA”)
- Alliance (“Recycling and Illegal Dumping Alliance”)
- Illegal Dumping
- Agricultural Use

Statutory Overview – The RAIDA

○ Prohibited Acts

- CEA, Tire Storage Facility and Tire Recycling Facility Permits
- Scrap Tire Hauler Registration
- Manifesting
- Scrap Tire Burning
- Illegal Dumping

Statutory Overview – The RAIDA

◉ Entry and Records

- NMED Employees (Typically Enforcement Officers) Enter to Inspect or Investigate at Any Reasonable Time
- Sample Waste, Soil, Air or Water
- Inspect Scrap Tire Haulers
- Review and Obtain Copies of Records

Statutory Overview – The RAIDA

○ Administration

- NMED is Responsible for Administration of the RAIDA

○ Recycling and Illegal Dumping Alliance

- NMED Secretary Appoints Members from State and Local Government, Private Industry, Agriculture and the Public at Large to a Two Year Term
- Creates the State Recycling Plan
- Reviews and Recommends the Awarding of Grant Funds

Statutory Overview – The RAIDA

○ Rules: Authority and Content

- Adopt Requirements and Procedures for:
 - Permitting
 - Registration of Haulers
 - Record-Keeping
 - Financial Assurance
 - Grants
 - Scrap Tire Manifesting
 - Fee Schedules (Not Currently Used)

Statutory Overview – The RAIDA

- ◉ Manifesting
- ◉ Exemption for Tire Recycling Facilities from Solid Waste Facility Permitting Requirements
- ◉ Illegal Dumpsite Abatement
- ◉ Authorization for Abatement Contracts (NMED in Conjunction with Counties, Municipalities, Indian Nations, Pueblos or Tribes for Reimbursement of Abatement Costs)

Statutory Overview – The RAIDA

○ Enforcement; Compliance Orders

- NMED Secretary has Authority to Issue Administrative Compliance Orders (“ACOs”) that Compel Regulatory Compliance and Assess Civil Penalties of Up to \$5,000 Per Day, Per Violation
- ACO May Include Suspension or Revocation of Permit or Registration
- ACO is Final in 30 Days, Unless Public Hearing is Requested

Statutory Overview – The RAIDA

⦿ Enforcement; Field Citations

- Not Currently Implemented

⦿ Judicial Review

- ACO Respondents Have the Right to Appeal

⦿ Penalty; Criminal (Non-NMED Entities)

- Requires “Knowing” Violation of Prohibited Acts
- Charge May be a Misdemeanor or Felony, with $\geq 5,000$ Pounds a 4th Degree Felony and $< 5,000$ Pounds a Misdemeanor
- Willful Omission of Information, a False Statement or a False Representation Regarding RAIDA or RIDSTMR Requirements is a 4th Degree Felony

Statutory Overview – The RAIDA

○ Grants

- At Least 2/3 of Budgeted Grant Money Must Be Allocated to Tire Abatement and Recycling Programs
- Remaining 1/3 Allocated for Illegal Dump Abatement and Recycling of Other Solid Wastes

○ Rubberized Asphalt Program

○ Recycling and Illegal Dumping Fund

- RAIDA Fees Collected are Deposited in This Fund

○ Rubberized Asphalt Fund Created

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Regulatory Overview – The RIDSTMR

*****You May Follow Along With the Provided
Hard Copy of the RIDSTMR*****

● Scope

- Applies to the Transport, Processing, Storage, Recycling, Use, Abatement and Generation of Scrap Tires
- Does Not Apply to Registered or Permitted Solid Waste Facilities, Except for Scrap Tire Manifesting, Enforcement (Under Solid Waste Act and the RAIDA), Variances and Agricultural Exemptions
- Registered Recycling and Composting Facilities, and Collection Centers That Store $\geq 20,000$ or Process $\geq 200,000$ Scrap Tires Per Year Must Comply with Financial Assurance Requirements [20.9.20.57-59 NMAC]

Regulatory Overview – The RIDSTMR

- ◉ Statutory Authority – Adopted Pursuant to the RAIDA
- ◉ Duration – Permanent
- ◉ Effective Date – August 2, 2007
- ◉ Objective – Implement the provisions of the RAIDA
- ◉ Definitions
- ◉ Prohibited Acts
- ◉ Tire Recycling Facilities – Entry by the NMED

Regulatory Overview – The RIDSTMR

- Permits for Scrap Tire Storage, Recycling Facilities, CEAs and Registrations for Scrap Tire Haulers
 - Necessary if more than 100 scrap tires involved
- Application Requirements for Tire Recycling Facility or Storage Permits
- Additional Permit Application Requirements for Facilities That Store $\geq 20,000$ at One Time or Process $\geq 200,000$ Scrap Tires Per Year
 - O&M Manual and Financial Assurance
- Application Requirements for CEA Permits

Regulatory Overview – The RIDSTMR

- Additional Permit Application Requirements for CEAs Using 1,000 to 99,999 Scrap Tires and No More Than Two Bales High
 - Temporary Storage Plat Map and Emergency Contingency Plan
- Permit Application Requirements for CEAs using $\geq 100,000$ Scrap Tires or That is More Than Two Bales High
 - P.E. Stamped Plans/Drawings Required

Regulatory Overview – The RIDSTMR

- **Permit Application Requirements for CEAs Using Scrap Tires for Land Reclamation**
 - County/Municipal Approval
 - Sworn, Notarized Affidavit Signed by the Property Owner
 - Permit Holder Certifies All Information is True and Correct
 - Final Cover Plan
 - Emergency Contingency Plan

Regulatory Overview – The RIDSTMR

- Additional Permit Application Requirements for CEAs using $\geq 100,000$ Scrap Tires/Year for Land Reclamation
- Permit Application Review
 - Applicant Has 60 Days to Respond to Request for Additional Information, or Application May Be Denied, Without Prejudice
- Public Notices, Hearings and Meetings
- Permit Issuance
 - Secretary Issues Within 60 Days of Application Being Deemed Complete (by the NMED) or Within 120 Days Following the Public Hearing – as Applicable

Regulatory Overview – The RIDSTMR

○ Permit Denial, Suspension or Revocation

- Secretary May Deny, Suspend or Revoke a Permit or Registration for:
 - Violation of Permit or Registration Terms or Conditions
 - Misrepresentation(s) of Relevant Facts
 - Endangerment of Human Health or Environment
 - Inability to Demonstrate Knowledge and Ability to Properly Operate the Facility
 - History of Non-Compliance
 - Revocation of Permit for Cause Under Environmental Laws of the United States
 - Modification of a Facility Without NMED approval
 - Failure to Respond to RAI Within 60 Days

Regulatory Overview – The RIDSTMR

- Effect of Permit or Registration
 - *NOTE: Any Terms or Conditions of the Permit or Registration are Enforceable to the Same Extent as a Regulation of the Environmental Improvement Board*
- Permit Modification
- Transfer of Permits and Change in Permit Applicant
- Permit Expiration
 - *NOTE: If a Permitted Facility Begins Operations but Subsequently Ceases Operations for at Least One Year, Authorization to Accept Scrap Tires is Suspended and Closure Activities Shall Begin Immediately*

Regulatory Overview – The RIDSTMR

- Application Requirements for Scrap Tire Haulers
 - Submit Registration Application 30 Days In Advance of Anticipated Operations
 - Must Provide Evidence of a \$10,000 Surety Bond for Illegal Dumping Clean Up Before Registration Will Be Issued
- Scrap Tire Hauler Bond Requirements
- Scrap Tire Hauler Registration Procedures

Regulatory Overview – The RIDSTMR

- Scrap Tire Hauler Registration Denial, Revocation or Suspension
 - Secretary May Deny, Revoke or Suspend a Scrap Tire Hauler Registration for:
 - Knowing Misrepresentation of a Material Fact
 - Refusal to Disclose Required Information
 - History of Non-Compliance Involving Environmental Laws
 - Violation of a Term or Condition of the Registration, the RIDSTMR or the RAIDA, or Otherwise Endangered the Public Health or Welfare
 - Failure to Comply with the Parental Responsibility Act

Regulatory Overview – The RIDSTMR

○ Registration Issuance

- Issued Within 30 Days After Application is Deemed Complete (by the NMED)
- May Be Denied, or Issued with Terms and Conditions

○ Scrap Tire Hauler Registration Renewal

- Required Every Five Years

○ Scrap Tire Hauler Registration Expiration

- Expires Every Five Years
- *NOTE: A Scrap Tire Hauler Registration Terminates Upon Any Change of Owners or Operators; the New Owner/Operator Must Obtain a New Registration Prior to Operation*

Regulatory Overview – The RIDSTMR

- Current Holders of Tire Recycling Facility Registrations and Permits...
- Confidentiality of Information
- Fee Schedule – There Are No Fees At This Time
- General Siting Criteria...
- Requirements for Storage of Scrap Tires and Tire Derived Product...
 - ***These Storage Dimension, Location and Set Back Requirements Are Based Upon the International Fire Code and Are Applicable to All Persons Storing Scrap Tires Outside

Regulatory Overview – The RIDSTMR

- **General Operating and Construction Requirements**
 - No Nuisances, Public Health or Fire Hazards, and Operation in Compliance with the Registration or Permit
- **Additional Operating Requirements for All Permitted Tire Recycling Facilities**
 - Contingency Plans, Employee Training, Maintaining of Written Operating Record and Manifests, and 24-Hour Oral and Written Emergency Notifications to the NMED After an Incident

Regulatory Overview – The RIDSTMR

- Additional Operating Requirements for Permitted Facilities That Store $\geq 20,000$ at any One Time or Process $\geq 200,000$ Scrap Tires/Year
- CEA Construction and Maintenance Requirements
- Additional CEA Construction and Maintenance Requirements for CEAs Using $\geq 100,000$ or is More Than Two Bales High

Regulatory Overview – The RIDSTMR

- Operating Requirements for CEAs using Scrap Tires for Land Reclamation
- Additional Operating Requirements for CEAs That Use $\geq 10,000$ Scrap Tires/Year for Land Reclamation
 - No More Than 10 Acres Shall Be Reclaimed Using Scrap Tires at Any One Location
- Operating Requirements for Scrap Tire Haulers
 - Must Comply With All Manifesting Requirements
 - No More Than 99 Scrap Tires at Any One Time at Hauler's Temporary Storage Facility, with Storage No Longer than 72 Hours

Regulatory Overview – The RIDSTMR

○ Scrap Tire Generator Operating Requirements

- Must Use Scrap Tire Manifests
- Must Control Vectors
- Generator May Transport Its Own Scrap Tires, But Must Adhere to Manifesting Requirements and Take Tires to Authorized Location (e.g., Tire Recycling Facility, Solid Waste Facility, Bone Fide Agricultural Use Operation)

Regulatory Overview – The RIDSTMR

- Contingency Plan for Emergencies
- Record Keeping
- Annual Reports and Final Reports
- Scrap Tire Manifest System
- Closure Requirements for Tire Recycling Facilities and CEAs
- Closure Requirements for Tire Recycling Facilities
- Completion Requirements for CEAs
- Additional Closure and Completion Requirements for CEAs That Use Scrap Tires for Land Reclamation

Regulatory Overview – The RIDSTMR

- Enforcement – Shall Be Done In Compliance with the RAIDA/RIDSTMR and/or the Solid Waste Act and New Mexico Solid Waste Rules
- Recycling and Illegal Dumping Fund Criteria and Procedures for Awarding Grants and Loans
 - Allows Counties, Municipalities, Cooperative Associations, Indian Nations, Pueblos, Tribes or Land Grant Communities to Apply for a Grant or Loan Under the RAIDA

Regulatory Overview – The RIDSTMR

- Financial Assurance Applicability and Effective Date
- Financial Assurance for Closures
- Allowable Financial Assurance Mechanisms – See Solid Waste Rules [20.9.10.13 NMAC]
- Variances – Per 20.1.4 NMAC (Adjudicatory Procedures)
- Recycling and Illegal Dumping Alliance

Regulatory Overview – The RIDSTMR

○ Exemptions

- Beneficial Agricultural Exemptions Have Two-Prong Test:
 - Land Must Qualify as Primarily Used for Agricultural Purposes (3.6.5.27 NMAC)
 - Upon NMED Request, Land Must Be Granted an Agricultural Exemption by the County Assessor
- Any Person Claiming an Agricultural Exemption Must Show, Upon Request, That the Scrap Tires Are Being Put to a Beneficial Agricultural Use

Regulatory Overview – The RIDSTMR

○ Reusable Tires

- Kept for Resale No Longer Than 12 Months, or They Become Scrap Tires

○ Compliance with Other Regulations

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The RAIDA and The RIDSTMR

Questions?

