



PER REGISTERED MAIL:

Ms Pam Yako
Director General
Department of Environmental Affairs and Tourism
Private Bag X447
PRETORIA
0001

PER FAX: 012-322-4832
PER E-MAIL: zmvusi@deat.gov.za

23 March 2007

Dear Ms Yako

**COMMENTS ON: ENVIRONMENT CONSERVATION ACT, 1989:
WASTE TYRE REGULATIONS**

groundWork, as an interested and affected party, wishes to submit the following comments with regard to the Waste Tyre Regulations:

1. Currently, there is a limited understanding of the waste tyre situation in South Africa. We believe that the Waste Tyre Regulations cannot reasonably be drafted, let alone commented upon and promulgated, while there is such imperfect information. We believe that a situational analysis, including a life cycle analysis, should be made in order to establish exactly what the waste tyre problem encompasses, how many tyres are generated and imported, and of what size and type, what the problems with the various disposal methods are and what the recycling options are.
2. Logically, the Waste Tyre Regulations should be regulations to the Waste Management Act (when it becomes effective) and not to the Environment Conservation Act. It would appear that the Waste Tyre Regulations are being pushed through wherever they will more-or-less fit, rather than being fitted into a logical legislative structure at a logical time. We believe that the only reason there is a perceived necessity to push these regulations through now is an economic one, and that this is not to the general benefit of the population at large. While it is true that tyres littering the veld and being burned in the open does constitute an

P.O.Box 2375
Pietermaritzburg, 3200
191c Burger Street
Pietermaritzburg, 3201
South Africa
Tel: +27 -33-342 5662
Fax: +27-33-342 5665
team@groundwork.org.za
www.groundwork.org.za

Trustees:

Thuli Makama,
Joy Kistnasamy,
Farid Esack,
Patrick Kulati,
Sandile Ndawonde,
Richard Lyster,
Jon White.

Effective environmental justice action in Southern Africa

 **Friends of the Earth International**
Member for South Africa

environmental justice problem, especially where people burn them for whatever reason, this problem has not changed substantially recently and nor is the extended existence of this problem, for the relatively short time that it would take to properly co-ordinate the regulations with the appropriate legislation, likely to make an appreciable increased impact on the environment. Neither are the regulations as currently proposed likely to make any substantial difference. There is therefore no real imperative to publish these regulations right now and it is improper to compromise the logical regulatory and legislative framework because of commercial rather than public considerations. The commercial considerations are discussed in more detail in point 10.

3. If the Waste Tyre Regulations are, in fact, meant to deal with the environmental impact of tyres then they are entirely inadequate as they deal only with the storage and mutilation of waste tyres. Properly, they should also deal with the transport and disposal of waste tyres, and place a proper legal onus on the tyre dealer to dispose of the tyres in an approved manner. As the regulations stand they would not, in fact, deal with the purported need for these regulations to be published now and under the Environment Conservation Act, as the only clear burden that the regulations place on the tyre dealer is to mutilate the tyre which will, at least, stop the problem of tyres being illegally re-bored and re-used, but which does not mean that the tyre will still not land up in the veld or being burned for the steel which it contains.
4. In the introduction to the regulations it is stated that the regulations are made in terms of various sections of 24, including Section 24(j) of the Act. Section 24(j) gives the Minister the power to make regulations with regard to waste management concerning the import and export of waste. As they stand, the Waste Tyre Regulations do not deal directly with either the import or the export of waste tyres, and this reference should either be deleted or the import and export of waste tyres should be dealt with within the regulations in an explicit and detailed manner.
5. Section 3 of the regulations deals with the storage of tyres. As the regulations stand, anyone who is in possession of even one waste tyre becomes subject to those requirements outlined in Section 3. This is clearly ridiculous, and if the law were to be properly upheld every tyre dealer would land up having to have an area of 3600m² just to store a single tyre. The regulations need to make clear at what volume of tyres a place must be designated a storage point and therefore subject to Section 3.
6. Section 4.(1) of the regulations appears to contain an erroneous reference to the Environment Conservation Act. It states “[a] tyre dealer must mutilate all waste tyres in his/her possession or control, or must cause such waste tyres to be mutilated or disposed of in terms of the Act”. The Act is defined as being the Environment Conservation Act, which contains not a single reference to either tyres or mutilation. Section 20 of The Act does, however, speak about disposal facilities. We have been informed, however, that tyres are likely to be ‘outlawed’ from landfill in the near future, and believe that disposal options should be dealt with directly in the regulations, especially in light of the fact that Section 20 of The Act is currently slated for repeal.
7. Section 4.(2) says “[a] tyre dealer may not import, distribute or sell tyres, unless measures have been taken to ensure that those tyres that have become waste tyres are dealt with in accordance with the provisions in these regulations”. The only onus that the regulations place on the dealer is to mutilate the tyres once they become waste tyres. As 4.(1) makes this clear, 4.(2) is redundant. 4.(4) should be adjusted to refer to 4.(1). As 4.(2) currently stands, the comma between tyres and unless in the first line should be removed.

6. The promulgation of the Waste Tyre Regulations as they stand will act as a trigger for the draft Memorandum of Agreement (MOA) between DEAT and SATRP Co to come into effect. The MOA is a private agreement between DEAT and SATRP Co, and does not incorporate a public participation process. As SATRP Co will effectively run on public funds, and as it is extremely likely that as a result of this MOA the majority of South Africa's waste tyres will be burned in cement kilns, which is not the most effective way of dealing with waste tyres and is likely to result in dangerous emissions, it is improper that it be sneaked into the legislative structure through the backdoor, and groundWork objects strongly to being presented with what is essentially a *fait accompli*. We believe this to be essentially unconstitutional, in that the effects of imposing the green levy, as contemplated by the agreement, would unavoidably impact on the general public, who are denied participation in the process.

The MOA is particularly concerning because it appears to be very directly facilitating the cement companies' desire to burn tyres under the guise of recycling them. As the Waste Tyre Regulations do not even attempt to deal with the disposal of tyres but clearly do, in some manner, facilitate the ability of SATRP and DEAT to enter into the MOA, it would appear that there is very little that will prohibit the cement companies, especially those which have already been granted positive RODs, from burning waste in their kilns, from taking control of the majority of the waste tyres in South Africa, and sending them up their stacks.

While the public's money is to fund the entire SATRP initiative, the public have not been included in the negotiations around the MOA. In effect, the public are being placed in a position where they will be forced to subsidise the cement industry to the sole benefit of the industry's shareholders and the very possible detriment of the general public, who will be exposed to new emissions for the stacks of the cement kilns. Given the information available to us, we understand the following to be so:

In order to promote the Waste Tyre Industry, "an incentive based approach will be adopted by the SATRP Company to encourage the establishment and sustainability of the Waste Tyre Industry and to this end the Waste Tyre User will:-

- a) be paid a maximum establishment subsidy of R0.38/kg of waste tyres received from a Waste Tyre Transporter for the period of the contract as awarded [through the tender process] to a maximum period of five years, and
- b) be paid a maximum disposal fee of R0.14/kg of waste tyres received from a Waste Tyre Transporter for the period of the contract..."

In the United States it is generally thought that budgeting one used tyre per head of the population per annum is a reasonable way of estimating the potential number of waste tyres. The figure that we've used is 10 million tyres per annum because this is what has been published, but 10 million is probably a conservative estimate. 10 million tyres apparently equates to 75 000 tonnes (or 75 million kilograms) of waste tyres. So, 75 000 tonnes x 38c = R28.5 million per annum is available for the establishment subsidy. 75 000 tonnes x 14 c = R10.5 million per annum is available for the disposal fee, although tenders may be at a lower rate and less may be paid out.

Passenger tyres can weigh between 6 and 10 kilograms. Let us average it at about 7.5kg per passenger tyre. If we assume that new tyres are bought at the same rate as tyres become waste, there will be 10 million tyres purchased each year. The Green Levy being mentioned in the press is R15 (R2 per kg) while the levy mentioned in the draft MOA is R20 (R2.67)

per tyre. Using the lower number, 10 million tyres x R15 = R150 million. Take away the R28.5 million and the R10.5 million for establishment subsidies and disposal fees, and we're left with R111 million for administration and transport.

Let us make the following assumptions:

- a) According to Etienne Human of SATRP Co, only 4% of tyres are currently being recycled, and this through one established and one new tyre crumbing facility. He maintains that the market for crumb is completely saturated (although we have some conflicting stories here) and that it is too expensive to export it. In other words, he does not see this as a growing market. He suggests that there are no other markets for used tyres. So it would appear that the assumption that SATRP Co and their friends the cement industry are working on is that the cement industry will have access to at least 96% of the tyres available. This means that the industry is probably banking on receiving R27.4 million rand in establishment subsidies each year, over five years, which is almost R137 million over this period. This is sufficient to upgrade nine kilns (if we use the figure of R15 million to upgrade a kiln, which was published in Risk Management). In other words, potentially the consumer is going to subsidise the shareholders of PPC, NPC and Holcim to the tune of nine free kiln upgrades and R137 million.
- b) If the cement industry were to receive the maximum disposal fee of 14c, they would receive R50.4 million in disposal fees over five years. This on top of an about equal saving on coal itself. In other words, over a five year period the cement industry's net input costs will be R100 million less or, all other things being equal, their net profits should increase by R100 million, at zero capital cost.

In terms of the MOA, tyre derived fuel users are anticipated, but one has to question whether incineration, even if energy is a by-product, can be equated to recycling. It takes 120MJ (megajoules) to produce one kilogram of rubber. When we burn a tyre as fuel, we recover about 30MJ per kilogram – in other words 90MJ is lost forever. When we make a kilogram of rubber crumb from the tyre, however, this costs us about 2.2MJ which could be regarded as the loss, and the recovery would be about 118 MJ, which is quite a substantial difference.

Yours faithfully

S. (Bobby) Peek
Director