

Assessing Scrap Tire Legislation in the U.S.-Mexico Border States

Phase I Report to the Council of State Governments-WEST/ Border Legislative Conference, November 2009

Executive Summary

Scrap Tires: A Continuing Challenge for Border States

Discarded tires along the U.S.-Mexico border threaten the environment and have an adverse impact on human health. Scrap tire piles become breeding grounds for mosquitoes and other disease vectors. Scrap tires piles also pose a severe fire hazard, which in turn can cause serious air quality problems and generate large amounts of liquid waste that contaminate the soil as well as ground and surface waters. There are a total of 46 known tire piles in the U.S.-Mexico border region, though precise quantification remains a challenge.

The Border States' Response

United States. U.S. border states have addressed the scrap tire issue through both the binational Border 2012 program and state-level efforts. Each state approaches the problem in a unique manner through both specific legislation and agency rules. California and New Mexico focus on providing market incentives for alternative scrap tire uses. Arizona uses scrap tires in rubberized-asphalt paving. Texas uses many of the states' scrap tires to produce tire-derived fuel, primarily for cement plants and paper mills. However, challenges remain for the U.S. border states with respect to abatement and the southbound flow to Mexico of scrap tires.

Mexico. Federal law permits the importation of *used* tires into under an annual quota granted to the states of Baja California/Sonora and Chihuahua (defined as tires with more than 15/32" tread), though the law prohibits the importation of *scrap* tires into Mexico. The 2004 federal General Law for the Prevention and Integral Management of Waste specified tires as a special management waste rather than municipal solid waste. Under the law, every major generator of waste (including municipalities) had to specify scrap tires as a special management waste under new, integrated waste management plans.

Special challenges for Mexican states. Though Mexican states have also participated actively with the binational Border 2012 programs on scrap tire abatement, the scrap tire problem is much more severe in Mexico. The border states in particular face both significant domestic scrap tire generation as well as large southbound flows of used tires, which arrive via a number of ways from the United States.

The short term length of legislators, mayors, and city councilmen (3 years) presents an additional daunting challenge for tire program implementation. While there are legal instruments available to state governments to deal with

scrap tires, further definition of state governments' roles and responsibilities is needed. *Most* state-level statutes in Mexico's border states address general pollution matters and delegate the specific issue of scrap tire management (including fee collection and program management) to the individual municipalities.

While municipalities work to manage the problem through local programs and fees, overly local attention to the scrap tire issue can fragment attention to the problem; inhibit broader, state-level control and enforcement; and reduce public awareness of even basic information about the problem and regulations addressing it. State legislatures are thus faced with the task of creating a legal framework that more clearly defines scrap tires as a special management waste and crafting more homogeneous and complementary laws that regulate municipalities' responsibilities in this area. Such a legal framework would in many cases include state laws of environment, fiscal reform, public works, and state-municipal interaction, among others.

Key Elements of Legislation

The ten U.S.-Mexico border states can more effectively address the scrap tire problem with more robust and even complementary legislation. Recommendations on scrap tires developed by the Border Legislative Conference in 2003 encourage member states to "initiate or assertively promote the development of harmonized set of management or regulatory frameworks on the quantification, collection, proper hauling, importation/exportation, disposal, and possible end uses of used and waste tires in all ten border states between the U.S. and Mexico." The recommendations emphasize that "The frameworks do not have to be identical in every state, but the systems should be compatible."

In terms of developing a set of more harmonized regulatory frameworks, states should consider **six** general approaches/objectives found in current legislation:

Approach 1. Increase recycling and market development.

State programs can be vital to incentivize abatement efforts, particularly in the form of grants or loans to support scrap tire reuse markets. U.S. border states have had considerable success with recycling and market development programs operated by the state environmental agencies, particularly in the areas of rubberized asphalt and tire-derived fuels.

Approach 2. Increase revenue. State-mandated tire management and recycling fees have proven to be a viable method to establish scrap tire management funds. These funds can be used to abate noncompliant scrap tire piles and increase recycling and market incentives. Fees can be collected in numerous ways and overseen by an independent board.

Approach 3. Enhance enforcement. A percentage of tire fees can be used to fund enforcement efforts. State law enforcement can be mandated to enforce state prohibitions on illegal dumping and stockpiling. Civil and criminal penalties imposed may deter illegal acts and when collected can create a source of funds for the state's scrap tire management fund.

Approach 4. Prevent land contamination. By prohibiting scrap tires from being landfilled, border states can help reduce the need for scrap tire abatement and can help to incentivize users to undertake more sustainable scrap tire end-uses.

Approach 5. Create abatement programs or enhance existing programs. Legislation can seek abatement of waste tire piles, first through voluntary efforts, where feasible, and second by direct action where voluntary efforts are not feasible or are unsuccessful.

Approach 6. Clarify and define the shared responsibility for managing tires as special management waste in the Mexican legal framework.

Toward Common and Complementary Approaches

U.S.-Mexico border states are urged to incorporate these key approaches into more specific legislation as part of their scrap tire management programs. Legislation that is more robust, enhances state-municipal partnerships and specifically enhances cross-border collaboration is a challenge to craft and to implement but can ultimately create better outcomes for human health and the environment. Legislative efforts in this direction include:

- Tamaulipas Decree No. LX-675. The bill, passed in February 2009, includes amendments specifying scrap tires as special management waste.
- California Senate Bill 167, sponsored by Sen. Denise Ducheny, requires a 5-year plan for waste tire programs to specifically address the border region with education, research, infrastruc-

ture, mitigation, cleanup, prevention, enforcement, and market developments for reuse and recycling projects

- Texas Senate Bill 617 by Senator Eliot Shapleigh, which would render tires not meeting inspection criteria unusable (passed by the Texas Senate; did not pass the Texas House).

Recommendations

To enhance its work on scrap tire legislation, the BLC will need to accomplish the following process and substantive work:

1. Continue and expand its partnerships and exchange of ideas with Border 2012, EPA, SEMARNAT, Border Governors Conference, and private sector entities, perhaps through the creation of a permanent legislative review committee within the BLC.
2. Conduct strategic outreach to border legislatures and specific committees to promote and develop customized strategies to meet needs for individual states pursuant to the findings of this report.
3. Continue to track legislative developments and post "best legislative practices" in both English and Spanish on scrap tire management legislation on the Border Legislative Conference website.
4. **For U.S. border states, legislators should strongly consider the following:**

- a. Direct state environmental agencies to allocate resources toward border-related scrap tire projects in a number of key areas, specifically directing funding toward projects in Mexico when warranted and to the benefit of the U.S. state.
- b. Require tire sellers to render waste tires unusable and therefore not marketable in Mexico.

5. Mexican state legislators should strongly consider the following:

- a. Clarify the classification of scrap tires as special management waste and work with municipalities to update regulations on local integrated waste management program implementation.
- b. Legislate the special handling and final deposition of waste tires in suitable sites.
- c. Legislate locally customized approaches to stimulate the development of markets for waste tire recycling and reuse.

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