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September 13, 2016

Melissa Treers, P.E.
New York State Department of Environmental Conservation
Division of Materials Management
625 Broadway
Albany, NY 12233-7260

Dear Ms. Treers,

New York Farm Bureau (NYFB), the State's largest general agricultural advocacy organization, appreciates the opportunity to comment on the New York State Department of Environmental Conservation's (DEC or the Department) proposed rules on Solid Waste Management Facilities, 6 NYCRR Part 360. NYFB and its members have serious concerns with the proposed rule and would like to offer the following feedback to DEC.

In Section 360.12(iv), Beneficial Use, the following has been identified as a pre-determined beneficial use, *"Up to 1000 waste tires per bunker or storage area to secure tarpaulins in common weather protection practices such as agricultural storage covers and salt pile production; provided whole tires are cut in half or have holes drilled in them allowing water to drain."*

In essence, this beneficial use would require that farmers either only utilize 1,000 waste tires or less on their feed bunks or apply for a Solid Waste Facility permit in order to have more than 1000 tires on their feed bunks. NYFB believes this limit is not practical for animal feed storage bunks and would be problematic for farms across New York State.

NYFB acknowledges that DEC laws, ECL § 27-1901, and regulations, 6 NYCRR § 360-13.1, state that "no person shall engage in storing 1,000 or more waste tires at a time without first obtaining a permit to do so," and further that ECL § 27-1901 (13) defines a waste tire "as any solid waste which consists of whole tires or portions of tires. Tire casings separated for retreading and tires with sufficient tread for resale are also included under this term."

Tires and sidewalls are an integral part of a farm's feed quality management system by acting as a weight to hold down tarps that are placed overtop feed. It is extremely important that enough tires are placed on the tarps to ensure that the elements and contaminants are kept out and feed is properly fermented. Proper fermentation ensures quality feed for animals, which in turn leads to better animal health. If farmers were limited to just 1,000 tires per bunk, feed quality could suffer, as well as milk production and animal health. Proper tire coverage also ensures that feed is less likely to mold as well as decreasing feed wastage. Molds, like mycotoxins, in

contaminated feed can lead to serious effects in animals, like liver and kidney toxicity, central nervous system effects, and even death.

Based on feedback that NYFB received from farmer-members, farms utilize a wide variety of tire sizes and half or whole tires on their bunks. Below is a summary of responses NYFB received from members with the dimensions of their bunks and the number of tires per bunk:

-7,000 tires on 200- foot by 200-foot bunk (40,000 sq. ft.)
-5,600 tires on a 300-foot by 300-foot bunk (90,000 sq. ft.)
-1,178 tires on a 55-foot by 150-foot bunk (8,250 sq. ft.)
-2057 tires on a 90-foot by 160-foot bunk (14,400 sq. ft.)
-18,000 tires on a 425-foot by 300-foot bunk (127,500 sq. ft.)
- 2,200 tires on an 80- foot by 170- foot bunk (13,600 sq. ft.)
-1,800 tires on a 120- foot by 180-foot bunk (21,600 sq. ft.)
-600 tires on a 50- foot by 100-foot bunk (5,000 sq. ft.)
-6,500 tires on a 120 -foot by 225-foot bunk (27,000 sq. ft.)
-2,500 tires on a 45-foot by 225-foot bunk (10,125 sq. ft.)
-1,500 tires on a 180-foot by 150-foot bunk (27,000 sq. ft.)
-2,000 tires on a 60- foot by 160-foot bunk (9,600 sq. ft.)
-2,500 tires on a 55-foot by 150- foot size bunk (8,250 sq. ft.)
-23,000 tires on a 505- foot by 105-foot bunk (53,025 sq. ft.)
-1,000 tires on a 40-foot by 200-foot bunk (8,000 sq. ft.) and the farm has 5 such bunks
-1,000 tires on a 3 bunk silo on a 260- foot by 100-foot area (26,000 sq. ft.)
-5,000 tires on a 18,000 square foot bunk
-6,000 tires on a 73,000 square foot bunk
-30,000 tires on a 120,000 square foot bunk
-6000 tires on a 3-acre bunk

This is just a short sampling of farms that utilize tires on their bunks. It would also be difficult to determine how many tires on the farm are for a specific bunk if DEC were to ever inspect a farm. As feed is pulled from the bunks, tires are not typically stacked by each bunk in easy to count rows. They are often stored in a central location, which makes it hard to decipher what tires could be connected to a particular bunk. Based on the feedback received from farmers showed that there is a wide range of tires used on similar sized bunks. The size of a farm also increases the size of the bunk on the farm and the number of tires used per bunk.

Based on calculations from farmers, a bunk that is 200 feet by 200 feet (40,000 sq. ft) would use over 4,000 half truck tires based on their size and weight. A bunk the size of an acre would require approximately 9,000 tires touching on all 4 sides.

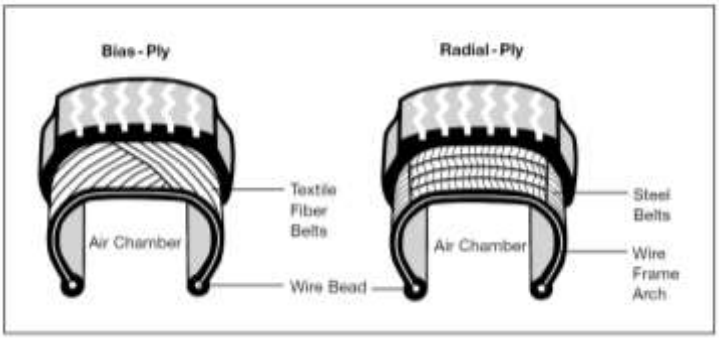
Calculations were completed to determine how many tires may be needed for an “average” 500 cow dairy. Using forage requirements determined for 500 cows and 400 heifers, assuming a pile height of 15 feet, a walled bunk would need to be about 1.4 acres and a drive-over pile about 2 acres including bunk aprons to direct leachate runoff to collection/treatment areas. For each increase in 500 cows and 400 heifers, it would increase the bunk by 1.25 acres. Thirty-inch tires laid out across 1 acre of bunk, like a chain-link fence, requires about 9,000 tires, 1 sidewall thick.

On farms with high winds, upwards of 3 sidewalls would be needed, and a farm would require 27,000 tires per acre.

It is difficult to create a blanket calculation for the number of tires used on a feed bunk due to several factors. The first being that farmers use a wide variety of tires to weigh down the tarps covering the bunks. Some farms may only use small car tires, while others will use truck tires or tractor trailer tires. In addition, some farmers use only side walls or halved tires on their bunks, which allows for easier handling by farm employees, but may require more side walls or halves to equal the weight of a whole tire. In addition, the number of tires used per bunk will vary based on the size of the bunk. It is also unclear from the regulation as to whether sidewalls would count as an individual tire or whether they would count as a half or even a third of a tire. This adds another level of complexity for a farmer to know if they would be exceeding the 1,000 tire limit.

While NYFB understands the Department's desire that the tires either be cut in half or have holes drilled in them to address vector control concerns for mosquitos, especially those that may carry West Nile Virus or Zika, there is a limited number of tires that can be halved or have holes drilled in them. There are two common types of tires, Bias-ply tires and Radial-ply tires, that consumers often use on their vehicles and may ultimately end up being used on a bunk silo. The **Bias-ply tire** is made up of layers of textile cords, generally nylon, which are overlaid at 30 degree angles and wrapped around the bead wires, which anchor the tire to the rim, and then encased in rubber, which forms the air chamber. The **Radial-ply tire** is made up of a single layer of steel wires, encased in rubber, with an arch from one bead to the other to form the casing of the tire. Numerous steel belts are placed on the crown of the casing and encased with rubber to form a strong stabilizing unit.

Figure 3. Construction details of common tires.



http://extension.psu.edu/publications/uc185.

Radial-ply tires are not conducive to being cut in half or having holes drilled in them because they contain metal wires that can injure farm employees, rip the plastic tarps that cover the bunks, or the metal pieces can break off and end up in the feed, which can make its way into a cow's stomach and cause serious health issues or even result in death of an animal. It would not be advisable to recommend drilling holes in or cutting these tires.

The farms that do currently use side walls or halved tires rely on bias-ply tires because they do not have metal parts. There is a limited number of bias-ply tires that are currently available for farmers to use. Farmers often have to purchase side walls or cut tires for approximately $2.00 per

side wall. This can be a costly investment for farms and by requiring all tires to be holed or cut in half would drive that price up as demand increased for bias-ply tires. This would also result in the radial-ply tires that farms currently use no longer being capable of being used and would add to the tires that are entering the waste stream. *Please see Images 1 and 2 in the appendix for an example of tires that have been cut and holed.*

Drilling holes is a way to reduce water in whole tires, but it is a cumbersome job that takes a significant amount of time just to drill one tire. While radial-ply tires can be drilled, this increases the risk that the metal will injure someone drilling the holes, injure workers subsequently using and stacking the tires on bunks, or increasing the likelihood that metal shards will be dispersed.

While cutting tires is another viable option to reduce water in tires, cutting tires is also time consuming and the majority of farmers purchase tires already cut due to the special machinery that is often used to cut the tires. Again, farmers only want to cut bias-ply tires that do not contain metal. At least one County Soil and Water District in New York has a tire cutter that it makes available to farmers to cut tires. The local Department of Health funded the tire cutter to reduce water in tires. The Soil and Water District works with farmers that utilize the tire cutter throughout the year, but the cutter is only capable of cutting small car tires and these halved tires do not weigh enough so farmers require additional tires to hold the bunk plastic down. To learn more about the Tioga County Soil and Water District "Tire Cutter Program," visit this page: http://tiogaswcd.org/tioga/programs.htm.

If farmers were required to get a permit to have more than 1,000 tires per bunk on their farm, it would create an unnecessary hardship. Farmers don't consider the tires they use on their bunks to be waste tires because the tires are being repurposed and given another use that is essential to the farm operation. In essence, farmers are recycling a material and saving it from entering the waste stream. Farms don't fit into the regulatory framework the way other facilities do when it comes to regulating waste storage facilities. Therefore, NYFB requests that the Department not place a cap on the number of tires that a farm operation may place on their bunks.

If the Department is unable to totally remove a limit on the number of tires a bunk, NYFB requests that DEC increase the limit of tires per bunk to 50,000 tires for the beneficial use determination and then anyone over that threshold would need to simply notify the Department that they exceed this limit and no permit would be needed.

The Department could also list farms utilizing tires on a bunk as an "Exempt Facility" under Section 360.14 and exempt them from the 1,000 waste tire facility regulations, as long as the waste tires were being used on a feed bunk. In addition, NYFB proposes that cut sidewalls not be considered a tire as long as they are used and stored to cover bunk silos. This incentivizes cut side walls, which have little to no water collection. The Department could add language that stated, "Waste tires that are utilized on feed bunks are exempt from regulation, but once the waste tire has reached the end of its useful life as a bunk tire, it needs to be disposed of properly at a permitted waste tire facility."

Farms store their bunk tires using many different methods. Some tires are piled outside, those that utilize side walls may stack their sidewalls on pallets so they can be easily picked up and transported to the bunk. (See Image 3.)

Some farms have tried to utilize other forms of weights, like sand bags, to weigh down the plastic on top of the bunk, but they haven't been successful is creating an element-proof seal and tires are easier to handle.

Currently there is no best management practice (BMP) guidance for the storage and use of tires on bunks in New York State. Pennsylvania State University Extension has developed a BMP entitled, *"Reducing Mosquito Breeding Sites When Using Waste Tires as Anchors for Bunk Silo Covers"* that could serve as a reference for DEC to possibly develop guidance on how farmers could store and cut tires to reduce the risk of mosquito-borne illnesses. The document can be found at the following site: http://extension.psu.edu/publications/uc185.

NYFB does have some concerns regarding the ability of the Department, at its sole discretion, to rescind any pre-determined beneficial use determinations, BUD, like the 1,000 waste tires per bunk. NYFB asks that if the Department were to ever consider rescinding this designation, it provide a period for farmers to provide comments on the possible loss of a BUD.

For these reasons, NYFB urges the Department of Environmental Protection to remove the proposed language from the Part 360 regulations and allow farms to have more than 1,000 waste tires per bunk.

In addition, NYFB would like to recognize the beneficial use determination for "bread and other similar grain products (spent brewery grains, etc) used for animal feed, provided all packaging is removed prior to use." This is a positive for farmers because these grain products would otherwise end up in a landfill and can instead be utilized on the farm as animal feed. NYFB would like to make the recommendation that products like fruit, vegetables, bakery items, and by-products like beet pulp also be given a beneficial use determination so that farmers can continue to utilize these products in their feed ration.

NYFB has concerns regarding the definition of a Concentrated Animal Feeding Operation (CAFO) at defined in 360.2. *"Concentrated Animal Feeding Operation or CAFO means an animal feeding operation that is a point source defined pursuant to ECL section 17-0105(16)."* Under the Department's draft ECL permit, farms, of CAFO size, would not be considered a point source if they are in compliance with the ECL permit. NYFB's requests that the Department review the definition of a CAFO in the Part 360 regulation and make adjustments so it more accurately reflects the true definition of a Concentrated Animal Feeding Operation.

In Section 361-2.2, Exempt facilities, DEC does exempt the land application of animal manure and associated animal bedding as well as animal manure storage facilities from the regulations. NYFB acknowledges and appreciates this exemption since these practices are normal farming practices and should not be treated as solid waste management facilities.

NYFB appreciates the Department's regulations on the application of biosolids. We support the education of both farmers and the public on the benefits and concerns about using biosolids as a source of fertilizer, and using information provided by the Departments of Agriculture and Markets and Environmental Conservation. New York has a system in place with the Department of Agriculture and Markets having jurisdiction over agricultural beneficial use of wastes/waste derived products such as biosolids. NYFB recommends that DEC and the Department of Agriculture and Markets rules clearly state this relationship and authority over local entities efforts to restrict biosolids use. NYFB would strongly oppose any efforts to restrict the application of biosolids in New York State.

NYFB also recognizes and appreciates the continued exemption for composting facilities that compost less than 3,000 cubic yards of yard waste per year, as well as facilities processing animal manure and bedding, as well as crop residues.

NYFB would also like to echo the comments made by the Northeast Dairy Foods Association regarding the clarification on food processing and manufacturing facilities and what is classified as "contaminated food waste." NYFB has been a proponent of the Secure Milk Supply Plan and is concerned that food waste, like milk, will be subject to medical waste requirements, thereby increasing the cost of New York's milk processors to do business.

NYFB would also like to echo concerns raised by towns and municipalities regarding the burden placed on local solid waste planning units and on local planning units in general. Our local municipalities are already strapped for resources and by putting more requirements on them could potentially increase the burden on residents of the municipality. Any ability for DEC to abate any of the mandates or provide additional resources would be greatly appreciated.

NYFB thanks the Department of Environmental Conservation for the opportunity to submit these comments on the proposed Part 360 Solid Waste Management regulations. If you have any questions regarding the use of tires on bunks, please feel free to contact us.

Sincerely,

Dean E. Norton
President,

Appendix

Image 1: Side walls on a dairy farm in New York.

Image 2: Side walls that have been halved and holes drilled in them. The farmer paid approximately $2.00 per side wall.

Image 3: Some farms use both full tires and side walls on their bunks. Some farms store their tires on piles, while others may stack them or put the tires on pallets for easy transport.