

STATE OF CALIFORNIA  
STATE AND CONSUMER SERVICES AGENCY  
CALIFORNIA BUILDING STANDARDS COMMISSION  
2525 NATOMAS PARK DR., SUITE 130  
SACRAMENTO, CA 95833  
(916) 263-0916 Phone  
(916) 263-0959 Fax  
Email: BSC@dgs.ca.gov

Office Use Item No. \_\_\_\_\_

**PARTICIPATION COMMENTS FOR THE NOTICE DATED OCTOBER 2, 2009**  
Written comments are to be sent to the above address.

**WRITTEN COMMENT DEADLINE: NOVEMBER 16, 2009**

Date: November 16, 2009

From:

Michael R. Flanigan  
Name (Print or type)

  
(Signature)

Registered Lobbyist, California, on behalf of Les Schwab Tire Centers

Agency, jurisdiction, chapter, company, association, individual, etc.

980 9<sup>th</sup> St., Ste. 2380  
Street

Sacramento  
City

CA  
State

95814  
Zip

I/We do not agree with:

The Agency proposed modifications As Submitted on Section No. 2505.4

and request that this section or reference provision be recommended:

Approved  Disapproved  Held for Further Study  Approved as Amended

**Suggested Revisions to the Text of the Regulations:**

Our disapproval is based upon the regulatory adoption requirements as set forth in Health & Safety Code Section 18930 (a) (4) and (6). It is our sincere opinion that the proposed regulation is not only unreasonable, unfair and arbitrary (Section 18930 (a) (4)), but is also unnecessarily ambiguous and vague (Section 18930 (a) (6)).

At the outset, we strongly encourage the Commission to table the proposal and request the State Fire Marshall (SFM) to meet with the various interested parties for the purpose of developing mutually agreeable recommendations. We are unaware of any such effort to date. We view this as a simple matter of fairness to allow the tire retailers to be given a legitimate opportunity to express their opinions and offer their expertise in formulating such regulations in a cooperative setting. We are optimistic that if given a chance to work with the SFM, the outcome will be positive. The state's safety concerns can be addressed in a manner that is also affordable and workable. Unfortunately, what is being proposed is a bit of a surprise, to say the least.

It is unfair. Les Schwab has been working under the clear belief that their fire safety related property improvements would grandfather them with regard to any future regulations. The costs have been well into seven figures. But, this proposal has a retroactive application. One of Les Schwab's experts believes that if this

regulation were to be adopted, 90 percent of their tire retail properties could be immediately out of compliance to some degree. You can understand why we believe we are being confronted with an inherently unfair situation.

It is unreasonable and arbitrary. How can it be that within an instant a property that was deemed to be in compliance can all of a sudden become non-compliant? Les Schwab has been requested to make improvements and has done so at the behest of the local fire marshals only to find out all has been for naught if this regulation is adopted in its present form. We trust that the Commission will agree with us and also conclude that there is nothing reasonable about this scenario.

The current SFM's tire storage 50-foot setback advisory is unreasonable. At least the current policy allows for "requests for approval to use an alternative" . . . approach subject to authorization by the local fire marshals (FM). The new proposed 50-foot and 20-foot setbacks are even more unreasonable. Is it the Commission's wish that tire retailers may have to purchase neighboring properties in some locations in order to meet this requirement in order to stay in business? We respectfully submit that these two unreasonable and arbitrary aspects of the proposal will likely force tire stores to close in California. (See our discussion below regarding the need for reasonable statewide standards that preempt local discretion.)

The regulation is also unreasonable because it does not appear to consider alternatives that in our view are far less restrictive, such as, but not limited to: tire storage within SFM certified firewalls, tire storage inside certain trailers, or the use of SFM certified fire retardant tarps in specified situations. Within this consideration, the Commission should additionally consider adopting reasonable safe harbor language with regard to tire storage standards. For example, Les Schwab would urge the Commission to consider the following example safe harbor alternative approaches:

1. They would propose that the regulation not apply to any tire storage facility that has tires stored no higher than six feet inside a fenced area with less than 3,000 square feet of floor area. If the exterior of the tire storage facility is at least a 4-hour fire rated wall, the facility should be (perhaps) no longer than 5,000 square feet of floor area.
2. The proposal should not apply to outdoor tire storage comprised of 4-hour fire rated walls where the facility is less than 5,000 square feet in floor size and tires are not stacked higher than six feet. This would allow small, specially constructed tire storage facilities that would protect neighboring properties.

It is unnecessarily vague and ambiguous. Neither does the code nor this proposal define "tire storage pile." The definition is left to the discretion of the local FM. Some FMs interpret it to mean an aggregation of more than one tire, whether stacked on top of one another or placed side by side. Some interpret it to mean occurrences where tires are stored in large piles. Les Schwab, in their outdoor bullpens, tends to store tires in racks. Yes, a collection of racked tires could be and has been interpreted as being a tire storage pile.

In order to bring some degree of predictability and consistency to the various interpretations of "tire storage pile," we would suggest that the Commission consider adoption of something along the lines of the following:

1. Sponsor legislation that will allow the SFM to adopt preemptive, statewide standards. This would bring a stop to the menagerie of local interpretations.
2. Adopt a definitional foundation of "tire storage pile" based upon height and volume of outdoor stacks of tires. For instance, a "tire storage pile" should be defined as an outdoor stack of tires that is taller than six feet, wider than six feet and longer than 50 feet.

Because of the vagueness and ambiguity, local FMs could establish definitions that could require daily pick up of tires. The prospect of daily pick up is absolutely dreaded because of the prohibitive associated costs.

Finally, nowhere is a time element considered. Tire dealers must be given some latitude of time in which to address the storage of drop-offs. The amount of time would be something that the industry should discuss with the SFM if given the opportunity. This is yet another of the many reasons why we strongly encourage the Commission to table this proposal and call for further study.