

ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1218

By: Morgan, Capps, Muegge
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An Act relating to waste tires; amending 68 O.S.

1991, Sections 53002, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 191, O.S.L. 1995, 53005, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 170, O.S.L. 1996, 53006, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 6, Chapter 191, O.S.L. 1995, Section 3, Chapter 170, O.S.L. 1996, 53008, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 4, Chapter 170, O.S.L. 1996, and 53010, as amended by Section 200, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Sections 2-11-402, 2-11-405, 2-11-406, 2-11-407.1, 2-11-408 and 2-11-410), which relate to the Oklahoma Waste Tire Recycling Act; * * * declaring an emergency.

AUTHORS: Add the following House Coauthors: Bonny, Sadler and Pope (Clay)

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to waste tires; amending 68 O.S. 1991, Sections 53002, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 191, O.S.L. 1995, 53005, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 170, O.S.L. 1996, 53006, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 6, Chapter 191, O.S.L. 1995, Section 3, Chapter 170, O.S.L. 1996, 53008, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 4, Chapter 170, O.S.L. 1996 and 53010, as amended by Section 200, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, and 63 O.S. 1991, Section 1-2324, as last amended by Section 1, Chapter 191, O.S.L. 1995, and as last renumbered by Section 10, Chapter 191, O.S.L. 1995 (27A O.S. Supp. 1997, Sections 2-11-402, 2-11-405, 2-11-406, 2-11-407.1, 2-11-408, 2-11-410 and 2-11-413), which relate to the Oklahoma Waste Tire Recycling Act; defining term; authorizing compensation for energy recovery processing; modifying amount of certain compensation for processing waste tires; providing for Department of Environmental Quality to create certain priority cleanup list; stating requirements for prioritization; stating procedures for Department to include certain tire dumps on certain cleanup list; modifying amount of compensation for collection and transportation of certain waste tires; deleting certain requirements for compensation for waste tire collection; modifying requirement for waste tire facilities to collect certain amount of discarded tires; modifying requirements for reimbursements for conservation projects; modifying amount of compensation for certain collection, transportation, delivery, and processing of waste tires for certain purposes; deleting requirement for certain final report; authorizing Department to enter upon certain property to clean up waste tires; authorizing certain court actions; providing for deposit of monies; requiring notice and opportunity for hearing; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1991, Section 53002, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 191, O.S.L. 1995 (27A O.S. Supp. 1997, Section 2-11-402), is amended to read as follows:

Section 2-11-402. As used in the Oklahoma Waste Tire Recycling Act:

1. "Department" means the Department of Environmental Quality;

2. "Priority cleanup list" means a list of unpermitted waste dumps which:

- a. did not exist when the owner took possession of the property where the tires are located, and were created without the consent of or benefit to the owner of the property; and
- b. such other tire dumps designated by the Department pursuant to Section 2-11-406 of this title;

3. "Tire" means any solid or air-filled covering for motor vehicle wheels;

~~3.~~ 4. "Tire dealer" means any person engaged in the business of selling new and used tires to final consumers, not for resale; and

~~4.~~ 5. "Waste tire facility" means any place which is permitted as a solid waste disposal site, in accordance with the Oklahoma Solid Waste Management Act, at which waste tires are collected or deposited for processing by shredding or other technology, except baling, which alters the form of the tires, for the purpose of facilitating the future extraction of useful materials for recycling, reuse or energy recovery.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 53005, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 170, O.S.L. 1996 (27A O.S. Supp. 1997, Section 2-11-405), is amended to read as follows:

Section 2-11-405. A. Of the monies accruing annually to the Waste Tire Recycling Indemnity Fund, four percent (4%) thereof shall be available to the Oklahoma Tax Commission and four percent (4%) thereof shall be available to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act. In addition, an amount not to exceed Fifty Thousand Dollars (\$50,000.00) per required audit shall be available to the State Auditor and Inspector for the purpose of

conducting audits of the Oklahoma Waste Tire Recycling Program pursuant to Section 2-11-411 of this title.

B. Of the ninety-two percent (92%) of the remaining monies in the Waste Tire Recycling Indemnity Fund, ten percent (10%) shall be allocated to businesses located in Oklahoma who manufacture new products or derive energy benefits from waste tires which have been processed according to the requirements of the Oklahoma Waste Tire Recycling Act. Such businesses shall be eligible for compensation in a total amount not to exceed fifty percent (50%) of their capital investment in equipment necessary to utilize processed waste tires purchased on or after January 1, 1995, at a rate of Twenty Dollars (\$20.00) per ton of processed waste tires consumed in the manufacturing or energy recovery process. Funds shall be awarded based on a proportionate share of the funds available and based on the relative amount of each capital investment. Such businesses may apply for compensation monthly to the Oklahoma Tax Commission, and shall supply any information required by the Commission to document compliance with the provisions of the Oklahoma Waste Tire Recycling Indemnity Act.

C. The balance of the monies remaining in the Waste Tire Recycling Indemnity Fund shall be allocated pursuant to the provisions of the Oklahoma Waste Tire Recycling Act to waste tire facilities or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Waste Tire Recycling Act to receive reimbursement which, through the filing of appropriate applications, reports, and other documentation that may be required by the Department of Environmental Quality pursuant to the Oklahoma Waste Tire Recycling Act, demonstrate that such facilities or legal entities have successfully processed discarded vehicle tires pursuant to the Oklahoma Waste Tire Recycling Act.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 53006, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last

amended by Section 6, Chapter 191, O.S.L. 1995 (27A O.S. Supp. 1997, Section 2-11-406), is amended to read as follows:

Section 2-11-406. A. 1. Waste tire facilities meeting the requirements of the Oklahoma Waste Tire Recycling Act shall be eligible for compensation from the Waste Tire Recycling Indemnity Fund, for processing tires discarded in this state to the extent that funds are therein contained, at a rate not to exceed ~~fifty cents (\$0.50) for each eighteen and seven-tenths (18.7) pounds~~ Fifty-three Dollars and forty-eight cents (\$53.48) per ton of ~~tires~~ processed tire material in any calendar year by the facility as demonstrated through the application and submission of documentation to the Tax Commission.

2. a. In addition to other requirements of the Oklahoma Waste Tire Recycling Act, in order to qualify for such compensation, the applicant shall demonstrate that over the life of the facility prior to each request for compensation, at least ten percent (10%) of the tires processed by the waste tire facility were collected from tire dumps or landfills as identified through placement on ~~a~~ the priority enforcement cleanup list by the Department of Environmental Quality or community-wide cleanup events approved by the Department.

b. In developing the priority cleanup list required by this section and Section 2-11-407.1 of this title, the Department shall prioritize those dumps where the landowner was a victim of illegal dumping. Any other tire dump may be placed on the priority cleanup list in cases where the administrative enforcement process has been exhausted.

c. For those illegal tire dumps placed on the list where administrative enforcement has been exhausted, the

Department may provide for the cleanup of such dumps pursuant to Section 2-11-413 of this title.

B. 1. In addition to the compensation authorized by subsection A of this section, any waste tire facility that is in good standing with the Department shall be eligible for compensation at the rate of ~~thirty-five cents (\$0.35)~~ Thirty-seven Dollars and forty-three cents (\$37.43) per ~~eighteen and seven-tenths (18.7) pounds~~ ton of processed ~~tires~~ tire material for the collection and transportation of waste tires obtained from dealers, automotive dismantlers, parts recyclers, solid waste landfill sites, and dumps certified by the Department's ~~enforcement~~ priority cleanup list, and delivering such tires to the waste tire facility. ~~The number of collected waste tires on which initial compensation may be sought by any waste tire facility shall not exceed the number of tires for which each dealer, from whom the facility has collected tires, remitted waste tire recycling fees to the Oklahoma Tax Commission. Beginning November 1, 1995, and for each month thereafter for those waste tires collected from automotive dismantlers and parts recyclers, the number of collected waste tires on which initial compensation may be sought by any waste tire facility shall not exceed the number of tires for which each automotive dismantler and parts recycler, licensed pursuant to the Automotive Dismantler and Parts Recyclers Act, from whom the facility has collected tires, has provided the information specified pursuant to subsection C of this section.~~

2. The collection and transportation of waste tires shall be on a statewide basis and shall be provided by the waste tire facility at no additional cost. No tire dealer shall charge any customer any additional fee for the management, recycling, or disposal of any waste tire upon which the waste tire recycling fee has been remitted to the Oklahoma Tax Commission. For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the Oklahoma Tax Commission, the tire dealer shall issue

a receipt which will entitle the customer to deliver the waste tire to the dealer at a later date. The Department shall not require a waste tire facility to collect less than one thousand discarded vehicle tires at any one location.

3. To be eligible for compensation pursuant to this subsection, the waste tire facility shall:

- a. demonstrate to the satisfaction of the Department that such facility is regularly engaged in the collection, transportation and delivery of waste tires, on a statewide basis, and from each county of the state, and
- b. provide documentation to the Oklahoma Tax Commission, signed by a participating dealer at the time of collection, which certifies the total amount of waste tire recycling fees, itemized by month, remitted by the dealer since the date ~~his~~ the dealer's waste tires were last collected.

C. Compensation pursuant to this section shall be payable only for the tires collected and processed in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department pursuant thereto. In lieu of proof of remitted tire recycling fees, the waste tire facility shall accept proof of purchase of a salvage vehicle registered in Oklahoma by an automotive dismantler and parts recycler, licensed pursuant to the Automotive ~~Dismantler~~ Dismantlers and Parts ~~Recyclers~~ Recycler Act, for the collection and transportation of up to five waste tires per salvage vehicle purchased on or after January 1, 1996. The Environmental Quality Board shall promulgate rules to ensure proper verification and proof of purchase information.

SECTION 4. AMENDATORY Section 3, Chapter 170, O.S.L. 1996 (27A O.S. Supp. 1997, Section 2-11-407.1), is amended to read as follows:

Section 2-11-407.1 A. Any person, corporation or other legal entity who has obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District to provide services for erosion control, bank stabilization or other conservation projects shall be eligible for reimbursement from the Waste Tire Recycling Indemnity Fund if:

1. The legal entity collects or provides for the collection, processing and utilization of waste tires ~~having a tire rim diameter of greater than seventeen and one-half (17 1/2) inches~~ pursuant to the provisions of the Oklahoma Waste Tire Recycling Act in an erosion control, bank stabilization or other conservation project in accordance with a written ~~conservation~~ plan approved by the United States Army Corps of Engineers or by a local Conservation District;

2. The tires are processed on the site of the erosion control, bank stabilization or other conservation project; ~~and~~

3. The project includes the planting of trees or other suitable vegetation in accordance with a planting plan developed in conjunction with the Division of Forestry of the State Department of Agriculture; and

4. The legal entity completes and maintains the proper information and records as required by the Oklahoma Tax Commission and the Department of Environmental Quality pursuant to the Oklahoma Waste Tire Recycling Act and in all other manner complies with any storage, transportation and disposal requirements promulgated by the Department of Environmental Quality pursuant to the Oklahoma Environmental Quality Code.

B. 1. Any person, corporation or other legal entity meeting the requirements specified by this section shall be eligible for compensation from the Waste Tire Recycling Indemnity Fund, to the extent that funds are therein contained for processing of waste tires discarded in this state having a tire rim diameter of greater than seventeen and one-half (17 1/2) inches ~~discarded in this state~~

~~to the extent that funds are therein contained,~~ at a rate not to exceed ~~One Dollar and fifty cents (\$1.50)~~ Two Dollars and twenty-five cents (\$2.25) per tire and for tires having a rim diameter less than or equal to seventeen and one-half (17 1/2) inches at a rate not to exceed forty-five cents (\$0.45) per tire processed in any calendar year by the legal entity as demonstrated through the proper application and submission of proper documentation to the Oklahoma Tax Commission.

2. In addition to other requirements of the Oklahoma Waste Tire Recycling Act, in order to qualify for such compensation, the applicant shall demonstrate that ~~over the life of the facility,~~ ~~prior to each request for compensation,~~ all of the tires processed by the legal entity for which compensation is requested were collected from tire dumps or landfills as identified through placement on a the priority enforcement cleanup list ~~by the Department~~ or community-wide cleanup events approved by the Department.

C. Compensation pursuant to this section shall be payable only for the tires collected and processed in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department pursuant thereto.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 53008, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 4, Chapter 170, O.S.L. 1996 (27A O.S. Supp. 1997, Section 2-11-408), is amended to read as follows:

Section 2-11-408. A. Upon receiving completed applications and upon determining that there are sufficient monies in the Waste Tire Recycling Indemnity Fund, the Oklahoma Tax Commission shall compensate waste tire facilities and any person, corporation or other legal entity authorized to receive reimbursement pursuant to Section ~~3~~ 2-11-407.1 of this ~~act~~ title as applicable for:

1. Processing the number of tires documented in the application at the rate of ~~one-half dollar (\$0.50)~~ Fifty-three Dollars and forty-eight cents (\$53.48) per ~~eighteen and seven-tenths (18.7)~~ pounds ton of tires processed tire material;

2. The collection, transportation and delivery of waste tires documented in the application at the rate of ~~thirty-five cents (\$0.35)~~ Thirty-seven Dollars and forty-three cents (\$37.43) per ~~eighteen and seven-tenths (18.7)~~ pounds ton of tires processed tire material. This amount shall not be payable, however, unless and until such tires have been actually processed according to the facility's solid waste permit; and

3. Collecting, processing and utilizing tires ~~having a tire rim diameter of greater than seventeen and one-half (17 1/2) inches~~ for erosion control, bank stabilization or other conservation projects pursuant to Section ~~3~~ 2-11-407.1 of this ~~act~~ title documented in the application at the rate of ~~One Dollar and fifty cents (\$1.50)~~ per ~~tire~~ Two Dollars and twenty-five cents (\$2.25) each for tires having a tire rim diameter greater than seventeen and one-half (17 1/2) inches or at a rate of forty-five cents (\$0.45) each for tires having a rim diameter equal to or less than seventeen and one-half (17 1/2) inches. This amount shall not be payable unless and until such tires have been actually processed and utilized for the erosion control, bank stabilization or other conservation project, and the legal entity has otherwise complied with the provisions of Section ~~3~~ 2-11-407.1 of this ~~act~~ title.

B. If the Indemnity Fund contains insufficient funds in any month, then the Oklahoma Tax Commission shall apportion the payments among all the qualifying applicants according to the percentage of tires collected, transported, delivered or processed.

C. The Department shall evaluate each waste tire facility and legal entity authorized to receive reimbursement pursuant to Section ~~3~~ 2-11-407.1 of this ~~act~~ title every three (3) years. Upon

completion of the evaluation, the Department of Environmental Quality shall recertify for compensation only those waste tire facilities or other legal entities which have provided for recycling, reuse or energy recovery from waste tires.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 53010, as amended by Section 200, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Section 2-11-410), is amended to read as follows:

Section 2-11-410. The Department of Environmental Quality shall file a report with the Legislature and the Governor detailing the administration of the Oklahoma Waste Tire Recycling Act and its effectiveness in bringing about the ~~clean-up~~ cleanup of existing waste tire dumps and in preventing the development of new dumps. The first report shall be filed by no later than December 31, 1992. Subsequent reports shall be filed every three (3) years thereafter. ~~A final report shall be filed no later than March 31, 2000, unless the provisions of Section 193 of this act are extended by law beyond December 31, 1999.~~

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-2324, as last amended by Section 1, Chapter 191, O.S.L. 1995, and as last renumbered by Section 10, Chapter 191, O.S.L. 1995 (27A O.S. Supp. 1997, Section 2-11-413), is amended to read as follows:

Section 2-11-413. A. Except as otherwise provided by this section, it shall be unlawful for any person to:

1. Own or operate a site used for the storage, collection or disposal of more than fifty waste tires except at a site or facility permitted by the Department of Environmental Quality to accept waste tires; however, the provisions of this paragraph shall not apply to tire manufacturers, retailers, wholesalers and retreaders who store two thousand five hundred or fewer waste tires at their place of business or designated off-premises storage site;

2. Dispose of waste tires at any site or facility other than a site or facility for which a permit has been issued by the Department;

3. Knowingly transport or knowingly allow waste tires under his control or in his possession to be transported to an unpermitted site or facility; or

4. Remove more than ten used tires from a tire dealer's possession unless a manifest form, approved by the Department, which documents the removal and approve disposition or sale of the tires is provided by the dealer. Dealers, haulers, and waste tire facilities shall keep copies of manifests available for inspection for five (5) years.

B. The provisions of subsection A of this section shall not apply to:

1. The use of waste tires for agricultural purposes as recognized by the State Department of Agriculture; or

2. The use of waste tires for erosion control, bank stabilization and other conservation projects if practiced in accordance with a written ~~conservation~~ plan approved by the U.S. Army Corps of Engineers or the local Conservation District in accordance with designated best management practices established for such uses by the Oklahoma Conservation Commission.

C. The provisions of paragraphs 2 and 3 of subsection A of this section shall not be construed so as to prevent an individual from disposing of waste tires previously used by the individual as vehicle or equipment tires; provided such disposal is upon property owned by such individual and such disposal does not create a nuisance or pose a hazard to the public health or environment.

D. 1. Except as otherwise ordered by the court, if the administrative enforcement process for a violation of an order issued by the Department for remediation, corrective action or cleanup of an illegal tire dump has been exhausted, the Department

or a representative of the Department, upon notice to the landowner and an opportunity to be heard on the issue, may enter the property to clean up the tire dump.

2. The Department may initiate a court action to recover the actual cost of cleanup, attorney fees, court costs, and all other monies expended in connection with the cleanup.

3. The Department shall deposit any funds recovered through such action into the Waste Tire Recycling Indemnity Fund.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 25th day of March, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate