

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2432

By: Miller (Doug), Kirby and
Nance of the House

and

Nichols of the Senate

COMMITTEE SUBSTITUTE

[environment and natural resources - amending
10 sections in Title 27A - Oklahoma Waste
Tire Recycling Act - repealing 27A O.S.,
Section 2-11-414 - effective date]

SECTION 1. AMENDATORY 27A O.S. 2001, 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. "End user" means any person authorized by the Department to
process waste tires in accordance with the provisions of the
Oklahoma Waste Tire Recycling Act;

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

~~4.~~ 5. "Tire dealer" means any person engaged in the business of selling new and used tires to final consumers, not for resale;

~~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 at least one-third of the tires collected by weight, for the purpose of facilitating the future extraction of useful materials for recycling, reuse, energy or fuel recovery;~~ and

6. "Waste tire processing" means ~~the preparation of waste tires to facilitate use for recycling, reuse, energy or fuel recovery, including the cleaning, sorting and delivery of whole tires, in a ready-to-use condition, to businesses that utilize processed tires for energy or fuel recovery:~~

- a. the use of whole waste tires for energy or fuel recovery in a manner approved by the Department,
- b. the use of whole waste tires in an erosion control, river bank stabilization, or other conservation project in accordance with the conditions of a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District,
- c. altering the form of waste tires by shredding, chipping, or other method approved by the Department, except baling, and marketing the tire-derived material for recycling, reuse, or energy or fuel recovery in a manner approved by the Department, or
- d. any other use of waste tires in accordance with the purposes of this act and as authorized by the Department.

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-11-405, as amended by Section 1, Chapter 472, O.S.L. 2003 (27A O.S. Supp. 2003, 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 one hundred percent (100%) 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 tons of processed waste tires consumed. Such businesses may apply for compensation monthly to the Tax Commission, and shall supply any information required by the Tax Commission to document compliance with the provisions of the Oklahoma Waste Tire Recycling 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~~ end users 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~~ end users have successfully processed ~~discarded vehicle~~ waste tires pursuant to the Oklahoma Waste Tire Recycling Act.

~~D. Businesses located in Oklahoma that use processed tires for energy or fuel recovery shall be eligible for compensation from the fund at a rate not to exceed Twenty-nine Dollars (\$29.00) per ton of processed tires to be used for energy or fuel recovery. The business shall demonstrate the utilization through the application and submission of required documentation to the Tax Commission.~~

SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-11-406, is amended to read as follows:

Section 2-11-406. A. 1. ~~Waste tire facilities~~ End users meeting the requirements of the Oklahoma Waste Tire Recycling Act shall be eligible for compensation from the Waste Tire Recycling Indemnity Fund to the extent that funds are therein contained for processing waste tires collected from this state at a ~~rate not to exceed Forty-nine Dollars (\$49.00) per ton of processed tire material~~ the following rate:

- a. end users who process waste tires to produce crumb rubber or for energy or fuel recovery: One Dollar (\$1.00) per whole tire,
- b. end users who process waste tires in an erosion control, river bank stabilization, or other conservation projects: One Dollar (\$1.00) per tire,
and

- c. end users who process waste tires by altering the form of waste tires but do not produce crumb rubber: One Hundred Dollars (\$100.00) per ton of product marketed.

2. The ~~waste tire facility~~ end user shall demonstrate the processing or utilization through the application and submission of required documentation to the Oklahoma Tax Commission.

- 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, the end user must demonstrate that at least ~~ten percent (10%)~~ five percent (5%) of the tires processed by the ~~waste tire facility~~ end user were collected from tire dumps or landfills as identified through placement on the priority 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 Forty-eight Dollars (\$48.00) per ton of processed 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 priority cleanup list, and delivering such tires to the waste tire facility.~~

2. a. The collection and transportation of waste tires shall be on a statewide basis and shall be provided by the ~~waste tire facility~~ end user at no additional cost.

~~b.~~ 2. 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 Tax Commission.

~~c.~~ 3. For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the 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.

~~d.~~ 4. The Department shall not require a ~~waste tire facility~~ an end user to collect less than three hundred discarded vehicle tires at any one location.

~~3.~~ 5. To be eligible for compensation pursuant to this subsection, the ~~waste tire facility~~ end user shall:

a. demonstrate to the satisfaction of the Department that such ~~facility~~ end user is regularly engaged in the collection, transportation and delivery of waste tires ~~to a waste tire facility,~~ on a statewide basis, and from each county of the state, and

b. provide documentation to the 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 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~~ end user shall accept proof of purchase of a salvage vehicle registered in Oklahoma by an automotive dismantler and parts recycler, licensed pursuant to the Automotive Dismantlers and Parts 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 27A O.S. 2001, Section 2-11-407, is amended to read as follows:

Section 2-11-407. A. 1. ~~A waste tire facility or person, corporation or other legal entity~~ An end user authorized to receive reimbursement, pursuant to ~~Section 3~~ of this act, desiring to be compensated from the Waste Tire Recycling Indemnity Fund shall first make application to the Oklahoma Tax Commission on forms prescribed by the Tax Commission containing documentation as required by the Oklahoma Waste Tire Recycling Act and such other information as the Tax Commission determines is needed to comply with the Oklahoma Waste Tire Recycling Act.

2. On at least a monthly basis, the Tax Commission shall evaluate and process applications.

~~B. 1. Waste tire facilities~~

a. End users shall report and certify tire processing activity in terms of weight of marketed material or number of whole tires utilized. The ~~waste tire facility~~ end user shall by sworn affidavit provide

sufficient information to verify that the ~~facility~~ end user has processed waste tires and ~~sold processed tires~~ for actual recycling or reuse in accordance with the purposes of the Waste Tire Recycling Act. To be eligible for compensation, a ~~waste tire facility~~ an end user shall not have accumulated more whole tires or processed material than the amount for which they have provided financial assurance ~~under their solid waste permit or the amount accumulated from three (3) years of operation, whichever is less~~ in an amount as approved by the Department.

- b. End users who process waste tires for energy or fuel recovery shall store no more than two hundred fifty thousand waste tires, or the number of waste tires that can be used for energy or fuel recovery within thirty (30) days, whichever is less. Such storage shall be at the end user's place of business or an off-site storage location approved by the Department.
- c. End users who process waste tires in an erosion control, river bank stabilization, or other conservation project shall store no more than the number of waste tires needed for the project at the site of the project.
- d. End users who process waste tires by altering the form of waste tires shall store no more than two thousand five hundred waste tires or one thousand five hundred (1,500) tons of processed tire material or the amount of processed tire material that can be marketed within ninety (90) days, whichever is less. Such storage shall be at the end user's place of business.
- e. End users who process waste tires in any other manner authorized by the Department shall store no more waste

tires or tire-derived material than approved by the Department.

~~2. Legal entities~~ 3. End users authorized to receive reimbursement pursuant to ~~Section 3~~ of this act shall report and certify tire processing activity by number of whole tires processed or weight of processed material that has been marketed, as appropriate. Such ~~legal entities~~ end users shall by sworn affidavit provide sufficient information to verify that such ~~legal entity has~~ end users have processed the tires in accordance with ~~Section 3~~ the provisions of ~~this act~~ the Oklahoma Waste Tire Recycling Act.

~~C. B.~~ Applicants for compensation shall submit dealer certification when applicable, affidavits specifying the name of the entity from whom collection of the tires was made, and the number of discarded tires collected at each collection point.

SECTION 5. AMENDATORY 27A O.S. 2001, Section 2-11-407.1, as amended by Section 2, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2003, Section 2-11-407.1), is amended to read as follows:

Section 2-11-407.1 A. Any ~~person, corporation or other legal entity~~ end user 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~~ end user collects or provides for the collection, processing and utilization of waste tires 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 plan approved by the United States Army Corps of Engineers or by a local Conservation District;

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

3. The landowner agrees to plant 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~~ end user 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 at a rate not to exceed Two Dollars and eighty cents (\$2.80) 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 eighty cents (\$0.80) per tire from tire dumps or landfills as identified through placement on the priority cleanup list or community-wide cleanup events approved by the Department and 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. 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 at least ~~ten percent (10%)~~ five percent (5%) of the tires processed by the ~~legal entity~~ end user for which compensation is requested were collected from tire dumps or landfills as identified through placement on the priority cleanup list or community-wide cleanup events approved by the Department.

~~b.~~ 2. The collection and transportation of waste tires having a rim diameter of greater than seventeen and one-half (17 1/2) inches shall be on a statewide basis and shall be provided by the ~~legal entity~~ end user at no additional cost.

~~e.~~ 3. The Department shall not require a ~~legal entity~~ an end user to collect less than three hundred discarded tires at any one location.

~~d.~~ 4. ~~Entities~~ End users receiving funds pursuant to this section may only collect tires with a rim diameter of less than seventeen and one-half (17 1/2) inches from tire dumps or landfills as identified through placement on the priority cleanup list or community-wide cleanup events approved by the Department.

C. 1. 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.

2. The Department may determine the amount of and authorize partial compensation, during the course of the project, as tires are processed in accordance with the written plan.

SECTION 6. AMENDATORY 27A O.S. 2001, Section 2-11-408, as amended by Section 3, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2003, Section 2-11-408), is amended to read as follows:

Section 2-11-408. A. ~~Upon reviewing 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 Sections 2-11-405, 2-11-406 and 2-11-407.1 of this title as applicable for:~~

~~1. Processing the number of tires documented in the application at the rate of Forty-nine Dollars (\$49.00) per ton of tire material processed by shredding or processed by cleaning, sorting and~~

~~delivery to businesses that utilize processed tires for energy or fuel recovery;~~

~~2. The collection and transportation of waste tires to a waste tire facility documented in the application at the rate of Forty-eight Dollars (\$48.00) per ton of 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;~~

~~3. Collecting, processing and utilizing tires for erosion control, bank stabilization or other conservation projects pursuant to Section 2-11-407.1 of this title documented in the application at the rate of Two Dollars and eighty cents (\$2.80) each for tires having a tire rim diameter greater than seventeen and one-half (17 1/2) inches or at a rate of eighty cents (\$0.80) 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 by utilization in the erosion control, bank stabilization or other conservation project, and the legal entity has otherwise complied with the provisions of Section 2-11-407.1 of this title; and~~

~~4. Utilization of processed tires for energy or fuel recovery pursuant to Section 2-11-405 of this title documented in the application at the rate of Twenty-nine Dollars (\$29.00) per ton of processed tires utilized for energy or fuel recovery.~~

~~B. If the Waste Tire Recycling 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. B. The Department shall evaluate each waste tire facility and legal entity end user authorized to receive reimbursement pursuant to Section 2-11-407.1 of this title the Oklahoma Waste Tire~~

Recycling Act 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~~ end users which have provided the required documentation for recycling, reuse or energy recovery from waste tires processing waste tires in accordance with the provisions of the Oklahoma Waste Tire Recycling Act.

SECTION 7. AMENDATORY 27A O.S. 2001, Section 2-11-409, is amended to read as follows:

Section 2-11-409. A. The Oklahoma Tax Commission shall promulgate rules to carry out the provisions of the Oklahoma Waste Tire Recycling Act which pertain to the remittance of fees and to the allocation of monies accruing to the Waste Tire Recycling Indemnity Fund.

B. The Board of Environmental Quality shall promulgate rules to carry out the provisions of the Oklahoma Waste Tire Recycling Act which pertain to the ~~permitting and certifying of waste tire facilities~~ end users.

SECTION 8. AMENDATORY 27A O.S. 2001, Section 2-11-412, is amended to read as follows:

Section 2-11-412. The Board shall promulgate rules for the ~~permitting of waste tire facilities under the Solid Waste Management Act~~ certification of end users and for the administration of the ~~certification of waste tire facilities for compensation under the~~ provisions of the Oklahoma Waste Tire Recycling Act. The rules shall be drawn to effectuate such provisions of the Oklahoma Waste Tire Recycling Act and the Oklahoma Solid Waste Management Act.

SECTION 9. AMENDATORY 27A O.S. 2001, 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 as approved~~ 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~~ location which has not been approved by the Department;

3. Knowingly transport or knowingly allow waste tires under ~~his~~ their control or in ~~his~~ their possession to be transported to ~~an unpermitted site or facility~~ any location which has not been approved by the Department; 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~~ end users shall keep copies of manifests available for inspection for five (5) years.

B. The provisions of paragraphs 1 through 3 of subsection A of this section shall not apply to:

1. The use of waste tires for agricultural purposes as recognized by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry; or

2. The use of waste tires for erosion control, bank stabilization and other conservation projects if practiced in accordance with a written 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 10. AMENDATORY 27A O.S. 2001, Section 2-11-415, as amended by Section 4, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2003, Section 2-11-415), is amended to read as follows:

Section 2-11-415. A. The Oklahoma Tax Commission is authorized to award matching grants, pursuant to the provisions of this act, to public schools or institutions, state parks and recreation areas for the purpose of reimbursing such entities for purchasing and installing, according to the specifications outlined in the American Standards for Testing and Materials 1292 (ASTM), playground surfacing material made from crumb rubber or other waste tire material processed by a facility located in this state.

~~B. Beginning July 1, 2001, when the total amount of funds accruing to the Waste Tire Recycling Indemnity Fund, created pursuant to the provisions of Section 2-11-404 of Title 27A of the~~

~~Oklahoma Statutes, reaches Three Million Dollars (\$3,000,000.00), an amount not exceeding One Million Dollars (\$1,000,000.00) may be expended from the fund within that state fiscal year for the reimbursement through matching grants of playground resurfacing material purchased pursuant to this section.~~

~~C.~~ For the purposes of this act:

1. The term "public school or institution" means any public educational institution or other public institution located in this state and accredited for the purpose of educating or caring for children; and

2. The term "state park or recreation area" means any public recreation area owned and operated by the State of Oklahoma that contains a playground area for public use.

~~D.~~ C. Any public school or institution, state park or recreation area shall be eligible to receive a matching grant of up to Twenty Thousand Dollars (\$20,000.00) as reimbursement or payment for purchasing and installing eligible playground surfacing material. A public school or institution may apply for any number of matching grants from the fund, but the total amount awarded shall not exceed Twenty Thousand Dollars (\$20,000.00) per school or institution. The application for reimbursement or payment may be submitted to the Tax Commission at the time a contract for sale and installation of the playground surfacing material has been executed. Reimbursement or payment shall be made only for playground surfacing material produced from waste tires discarded in this state. If approved, funds shall be obligated for the applicant and a notice of funds approval shall be sent by the Tax Commission to the applicant. Actual reimbursement or payment shall not be made by the Tax Commission until a notice of installation, signed by the contractor, has been received from the applicant. Nothing herein shall prevent any eligible entity from assigning payment, which has been approved by the Tax Commission, to a contractor.

~~E.~~ D. Grants from the fund for public schools or institutions and state parks or recreation areas shall be awarded on a first-come, ~~first-serve~~ first-served basis but shall not exceed One Million Dollars (\$1,000,000.00), including administrative costs as provided by subsection ~~F~~ E of this section, in any fiscal year. Any entity applying for a matching grant that is rejected due to limited funds shall remain eligible until funds become available.

~~F.~~ E. The Tax Commission may retain one percent (1%) of the grant monies awarded from the fund for administrative costs to implement the provisions of this act.

~~G.~~ F. The Tax Commission is directed to promulgate rules to implement the provisions of this act.

SECTION 11. REPEALER 27A O.S. 2001, Section 2-11-414, is hereby repealed.

SECTION 12. This act shall become effective November 1, 2004.

49-2-3104 MJM 6/12/2015 1:57:24 PM