

ENROLLED HOUSE
BILL NO. 1606

By: Miller (Doug), Cooksey,
Hiett, Smaligo and Askins
of the House

and

Fisher, Brogdon, Easley,
Lawler and Paddock of the
Senate

An Act relating to environment and natural resources; amending 27A O.S. 2001, Sections 2-11-402, as amended by Section 1, Chapter 185, O.S.L. 2004, 2-11-403, as amended by Section 1, Chapter 502, O.S.L. 2002, 2-11-405, as last amended by Section 2, Chapter 185, O.S.L. 2004, 2-11-409 and 2-11-413 (27A O.S. Supp. 2004, Sections 2-11-402, 2-11-403 and 2-11-405), which relate to the Oklahoma Waste Tire Recycling Act; adding definitions; modifying definitions; deleting statutory references; deleting tire used on certain type of motor bike from assessment; clarifying statutory language; limiting compensation to waste tire and tire-derived fuel facilities located in Oklahoma; limiting compensation to waste tires from Oklahoma; requiring compliance with the Oklahoma Waste Tire Recycling Act; modifying allocation of the Waste Tire Recycling Indemnity Fund; changing allocation amount to the Oklahoma Tax Commission; changing allocation to the State Auditor and Inspector; deleting allocation to certain businesses that manufacture products or derive energy benefits from waste tires; deleting certain allocation for persons or entities that process discarded tires; deleting compensation rate for businesses that process tires for fuel; providing for reimbursement to certain facilities for certain capital investments; providing for compensation to waste tire facilities for waste tire processing; establishing compensation rates; requiring certain conditions; providing for compensation to waste tire facilities or TDF facilities for collection and transportation of waste tires; establishing compensation rate; prohibiting additional cost; limiting payment until tires are processed; prohibiting a tire dealer from charging an additional fee; setting criteria for compensation; providing certain proof of purchase in lieu of remittance of recycling fee; providing for compensation to certain persons or entities for erosion control projects; establishing compensation rate; establishing certain conditions; limiting compensation to tires actually collected and utilized; making entity liable for an erosion control project for certain period; providing for compensation to certain governmental entities for

the use of bale waste tires in an engineering project; establishing compensation rate; requiring prior approval; limiting accumulation of waste tires; limiting type of entities from which tires can be obtained; requiring certain reporting; providing for apportionment of payments to qualified applications if funds are insufficient; providing for compensation to TDF and waste tire facilities to produce crumb rubber; establishing compensation rate; making production of crumb rubber a compensable event; requiring reporting of certain information; providing for apportionment of payments; providing for compensation to waste tires and TDF facilities for the collection and transportation of certain waste tires; providing for apportionment of payments; requiring facilities and entities to be in compliance with the Oklahoma Waste Tire Recycling Act to receive reimbursement; requiring the Oklahoma Tax Commission to prescribe certain forms; directing the Commission to evaluate and process applications on a monthly basis; requiring the Commission to make periodic inspections of tire dealers and motor license agents to ensure compliance; modifying criteria for rules promulgated by the Environmental Quality Board; requiring the Department of Environmental Quality to file certain reports; providing for the development of a priority cleanup list by the Department; providing for an audit of the administration of the Waste Tire Recycling Indemnity Fund; providing for cost of audit and submission of copies; adding approval requirement for certain sites or facilities; deleting erosion control or conservation project exception; updating statutory references; repealing Section 1, Chapter 262, O.S.L. 2001, which relates to excess monies accruing to the Waste Tire Recycling Indemnity Fund; repealing 27A O.S. 2001, Sections 2-11-406, as amended by Section 3, Chapter 185, O.S.L. 2004, 2-11-407, 2-11-407.1, as last amended by Section 4, Chapter 185, O.S.L. 2004, 2-11-407.2, as amended by Section 2, Chapter 328, O.S.L. 2002, 2-11-408, as amended by Section 3, Chapter 502, O.S.L. 2002, 2-11-410, 2-11-411, 2-11-412, 2-11-414 and 2-11-415, as amended by Section 4, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2004, Sections 2-11-406, 2-11-407.1, 2-11-407.2, 2-11-408 and 2-11-415), which relate to the Oklahoma Waste Tire Recycling Act; providing for recodification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-11-402, as amended by Section 1, Chapter 185, O.S.L. 2004 (27A O.S. Supp. 2004, Section 2-11-402), is amended to read as follows:

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

1. "Automotive dismantler and parts recycler" means the same as defined in Section 591.2 of Title 47 of the Oklahoma Statutes;
2. "Commission" means the Oklahoma Tax Commission;
3. "Crumb rubber" means fine particles of vulcanized rubber resulting from mechanical or cryogenic size reduction of waste tires;
4. "Department" means the Department of Environmental Quality;
- ~~2.~~ 5. "Erosion control project" means a project involving the utilization of waste tires for erosion control, bank stabilization or other conservation project;
6. "Fund" means the Waste Tire Recycling Indemnity Fund;
7. "Motorcycle" means a motor vehicle of a type defined in Section 1-135 of Title 47 of the Oklahoma Statutes;
8. "Motor-driven cycle" means a motor vehicle of a type defined in Section 1-136 of Title 47 of the Oklahoma Statutes;
9. "Motorized bicycle" means a motor vehicle of a type defined in Section 1-136.1 of Title 47 of the Oklahoma Statutes;
10. "Motor vehicle" means the same as defined in Section 1-134 of Title 47 of the Oklahoma Statutes;
11. "Priority cleanup list" means a list, created and maintained by the Department, of:
 - a. 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~~ 2-11-401.6 of this title;
- ~~3.~~ 12. "Tire" means any solid or air-filled covering for motor vehicle wheels;
- ~~4.~~ 13. "Tire dealer" means any person engaged in the business of selling new and used tires to final consumers, not for resale;
- ~~5.~~ 14. "Tire-derived fuel facility" or "TDF facility" means a facility that uses processed tires or whole waste tires for energy or fuel recovery;
15. "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 five percent (5%) of the~~

~~tires collected by weight, for the purpose of facilitating the future extraction of useful materials for recycling, reuse, energy or fuel recovery processed; and~~

~~6. 16. "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 altering the form of whole waste tires by shredding, chipping, or other method approved by the Department, except baling.~~

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-11-403, as amended by Section 1, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2004, Section 2-11-403), is amended to read as follows:

Section 2-11-403. A. 1. Except as otherwise provided by this section, the following assessments shall be made for tires for use on motor vehicles ~~as such term is defined by Section 1-134 of Title 47 of the Oklahoma Statutes.~~

- a. At the time any tire:
 - (1) with a rim diameter of seventeen and one-half (17 1/2) inches rim diameter or less is sold by a tire dealer, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire,
 - (2) with a rim diameter greater than seventeen and one-half (17 1/2) inches is sold by a tire dealer, there shall be assessed a waste tire recycling fee of Three Dollars and fifty cents (\$3.50) per tire, and
 - (3) is sold by a tire dealer for use on a motorcycle, ~~minibike,~~ motor-driven cycle or motorized bicycle ~~as defined in Sections 1-135, 1-133.1, 1-136 and 1-136.1 of Title 47 of the Oklahoma Statutes,~~ there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire.
- b. At any time a motor vehicle with a tire rim diameter of seventeen and one-half (17 1/2) inches or less is first registered in this state, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire.
- c. At any time a motor vehicle with a tire rim diameter of greater than seventeen and one-half (17 1/2) inches is first registered in this state, there shall be assessed, ~~except as otherwise provided by subparagraph d of this paragraph,~~ a waste tire recycling fee of Three Dollars and fifty cents (\$3.50) per tire, except as otherwise provided by subparagraph d of this paragraph.
- d. At any time a motorcycle, ~~minibike,~~ motor-driven cycle or motorized bicycle is first registered in this state, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire.

2. Motor vehicles registered pursuant to Section 1120 of Title 47 of the Oklahoma Statutes shall be exempt from the provisions of this subsection.

3. No fee shall be assessed by a tire dealer for used tires or retreaded tires for which the tire dealer can document that the recycling fee has been previously paid.

B. 1. The tire dealer and motor license agent shall remit such fee to the Oklahoma Tax Commission in the same manner as provided by Section 1365 of Title 68 of the Oklahoma Statutes. ~~At the time of filing any report as required by the Oklahoma Tax Commission, the~~

~~2. Except as otherwise provided by this section, the tire dealer shall remit therewith to the Tax Commission, except as otherwise provided by this section, ninety-seven and three-quarters percent (97.75%) of the fee due pursuant to this section at the time of filing any report as required by the Commission.~~

~~2-3.~~ 3. Motor license agents shall remit all but One Dollar (\$1.00) of the fee assessed on each vehicle registered. The fees authorized to be retained by motor license agents pursuant to this paragraph shall not be considered compensation but may be retained in addition to the maximum sum of compensation authorized by Section 1143 of Title 47 of the Oklahoma Statutes.

~~3-4.~~ 4. Failure to remit ~~such~~ the fee at the time of filing the returns shall cause the fee to become delinquent. If the fee becomes delinquent the tire dealer or motor license agent forfeits any claim to the discount authorized by this section and shall remit to the Tax Commission one hundred percent (100%) of the amount of the fee due plus any penalty due.

C. If ~~any amount of the~~ the fee imposed or levied by subsection A of this section, or any part of such amount, is not paid before ~~such~~ the fee becomes delinquent, there shall be collected on the total delinquent fee interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

D. If any fee due under subsection A of this section, or any part thereof, is not paid within fifteen (15) days after ~~such~~ the fee becomes delinquent, a penalty of ten percent (10%) on the total amount of fee due and delinquent shall be added ~~thereto, collected~~ and paid.

E. All penalties or interest imposed by this section shall be recoverable by the Tax Commission as a part of the fee imposed and all penalties and interest ~~will~~ shall be apportioned ~~as provided for the apportionment of same as~~ the fee on which ~~such~~ the penalties or interest are collected.

SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-11-405, as last amended by Section 2, Chapter 185, O.S.L. 2004 (27A O.S. Supp. 2004, Section 2-11-405), is amended to read as follows:

Section 2-11-405. A. ~~1. Of the Compensation to waste tire facilities and tire-derived fuel or TDF facilities pursuant to this section shall be limited to facilities located in Oklahoma.~~ Compensation for waste tire activities pursuant to this section

shall be limited to waste tires from Oklahoma. To be eligible, applicants for compensation shall be in compliance with the Oklahoma Waste Tire Recycling Act.

B. The monies accruing annually to the Waste Tire Recycling Indemnity Fund, three shall be allocated first to the following:

1. Four and one-half percent (3.5%) thereof shall be available (4.5%) to the Oklahoma Tax Commission and three and one-half percent (3.5%) thereof shall be available to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act.;

2. In addition, an An amount not to exceed:

a. 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 2-11-401.6 of this title, and

b. until July 1, 2006, one percent (1%) shall be available to the State Auditor and Inspector for a pilot program for random compliance audits of the Oklahoma Waste Tire Recycling Program.

B. Of the ninety-two percent (92%) of the remaining monies in the Waste Tire Recycling Indemnity Fund,; and

3. Up to 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 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.

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 for capital investment reimbursement to waste tire facilities and TDF facilities for the purchase of equipment necessary to utilize waste tires. Only equipment purchased on or after January 1, 1995, shall be eligible. The facilities are eligible for compensation at a rate of Twenty Dollars (\$20.00) per ton of waste tires used. Total reimbursement shall not exceed one hundred percent (100%) of the capital investment in eligible equipment. The facilities may apply for compensation monthly to the Commission, and shall supply any information required by the Commission.

C. After the allocations under subsection B of this section are made, the balance of monies in the Fund shall be available for compensation pursuant to the provisions of the Oklahoma Waste Tire Recycling Act as follows:

1. Compensation to waste tire facilities for waste tire processing, at the rate of Fifty-four Dollars (\$54.00) per ton of processed tire material. For compensation the following conditions shall apply:

- a. facilities that process waste tires by altering the form of the waste tires but do not produce crumb rubber shall not receive compensation until the facility documents the sale and movement of the processed tire material off-site to a third party,
- b. facilities shall report and certify tire processing activity in terms of weight. The facility shall by sworn affidavit provide to the Commission sufficient information to verify that the facility has processed tires and sold processed tires for actual recycling or reuse in accordance with the purposes of the Oklahoma Waste Tire Recycling Act, and
- c. to be eligible for compensation, a facility shall not have accumulated more processed material than the amount for which the facility has provided financial assurance under its solid waste permit or the amount accumulated from three (3) years of operation, whichever is less;

2. a. Compensation to waste tire facilities or TDF facilities at the rate of Fifty-three Dollars (\$53.00) per ton of whole waste tires for the collection and transportation of waste tires from Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill sites, and dumps certified by the Department priority cleanup list, and delivering the tires to a waste tire facility or TDF facility. The collection and transportation of waste tires shall be provided by the waste tire facility or TDF facility at no additional cost to the tire dealer or automotive dismantler and parts recycler or to the Fund. The waste tire facility or TDF facility shall collect from any location at which there are at least three hundred waste tires.

- b. Compensation under this paragraph shall not be payable until the waste tires have been actually processed according to the solid waste permit for the facility or actually used for energy or fuel recovery. A TDF facility that collects and transports whole waste tires shall be eligible for compensation under this paragraph only for those whole waste tires consumed by that facility.
- c. 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 Commission. For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the Commission, the tire dealer shall issue a receipt which entitles the customer to deliver the waste tire to the dealer at a later date.
- d. To be eligible for compensation pursuant to this paragraph, the waste tire facility or TDF facility shall:
- (1) demonstrate to the satisfaction of the Department that the facility is regularly engaged in the collection, transportation and delivery of waste tires to a waste tire facility or to a TDF facility, on a statewide basis, and from each county of the state,
 - (2) provide documentation to the Commission, signed by a dealer at the time of collection, which certifies by sworn affidavit the total amount of waste tire recycling fees, itemized by month, remitted by the dealer since the date the waste tires of the dealer were last collected, and
 - (3) annually demonstrate that at least five percent (5%) of the tires were collected from tire dumps or landfills on the Department priority cleanup list or community-wide cleanup events approved by the Department.
- e. In lieu of proof of remitted tire recycling fees, the waste tire facility or TDF 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 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;
3. a. Compensation to a 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 projects. Compensation shall be at the rate of Two Dollars and eighty cents (\$2.80) per tire for waste tires having a tire rim diameter of greater than seventeen and one-half (17

1/2) inches, and eighty cents (\$0.80) per tire for tires having a rim diameter less than or equal to seventeen and one-half (17 1/2) inches.

b. Reimbursement under this paragraph shall be subject to the following:

- (1) the applicant for reimbursement collects or provides for the collection and utilization of waste tires in an erosion control project in Oklahoma 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 the site of the erosion control project,
- (3) the site 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, Food, and Forestry,
- (4) the applicant reports and certifies the number of tires utilized. The applicant shall by sworn affidavit provide to the Commission sufficient information to verify that the applicant has utilized the tires in accordance with the purposes of the Oklahoma Waste Tire Recycling Act,
- (5) the applicant annually demonstrates that at least five percent (5%) of the tires utilized by the applicant for which compensation is requested were collected from tire dumps or landfills on the Department priority cleanup list or community-wide cleanup events approved by the Department,
- (6) the applicant demonstrates to the satisfaction of the Department that the applicant is regularly engaged in the collection, transportation and delivery to erosion control projects of waste tires, on a statewide basis, and from each county of the state, at no additional cost to the tire dealer or automotive dismantler and parts recycler or to the Fund, and
- (7) the applicant provides documentation to the Commission, signed by a dealer at the time of collection, which certifies by sworn affidavit the total amount of waste tire recycling fees, itemized by month, remitted by the dealer since the date the waste tires of the dealer were last collected.

c. In lieu of proof of remitted tire recycling fees, the applicant 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.

d. Compensation pursuant to this paragraph shall be payable only for the tires collected and utilized in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department. During the course of the erosion control project, the Department may determine the amount of and authorize partial compensation, as tires are utilized in accordance with the written plan.

e. Any entity deemed eligible for reimbursement under the provisions of this paragraph shall be liable for the erosion control project for a period of five (5) years. During the five-year period, if additional cleanup or remediation of an erosion control project is required due to failure or negligence on the part of the original contractor, the original contractor shall be responsible for cleanup costs and shall not be eligible for any additional compensation from the Fund for costs related to that erosion control project;

4. a. Compensation to a unit of local or county government that submits to the Department for approval a plan for the use of baled waste tires in an engineering project. Compensation shall be at the rate of fifty cents (\$0.50) per tire.

b. The plan shall be approved by the Department before construction of the project begins.

c. Any unit of local or county government baling waste tires shall not accumulate more than fifty waste tire bales prior to beginning construction of an approved project.

d. Waste tires baled pursuant to this paragraph cannot be obtained from tire manufacturers, retailers, wholesalers, retreaders, or automotive dismantlers and parts recyclers.

e. Any unit of local or county government authorized to receive reimbursement for the use of baled waste tires in an engineering project shall report and certify whole waste tires by number. The governmental unit shall by sworn affidavit provide sufficient information to the Commission to verify that the unit has utilized the tires in accordance with the purposes of the Oklahoma Waste Tire Recycling Act; and

5. If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under this subsection, the Commission shall apportion the payments among the qualified applicants under this subsection according to the percentage of waste tires processed, collected and transported, or utilized.

D. 1. After the allocations under subsections B and C of this section are made, any remaining monies in the Fund shall be available for TDF facilities and waste tire facilities that produce crumb rubber for compensation at the rate of Twenty-nine Dollars (\$29.00) per ton of processed or whole waste tires used for energy or fuel recovery or the production of crumb rubber.

2. The production of crumb rubber shall be considered a compensable event separate from and in addition to any compensation for waste tire processing under subsection C of this section.

3. TDF facilities and waste tire facilities authorized to receive reimbursement under this subsection shall report and certify tire material used by weight.

4. The facilities shall by sworn affidavit provide to the Commission sufficient information to verify that the facility has used the tires in accordance with the purposes of the Oklahoma Waste Tire Recycling Act.

5. If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under this subsection, the Commission shall apportion the payments among the qualified applicants according to the percentage of waste tires used for energy or fuel recovery or the production of crumb rubber.

E. After the allocations under subsections B, C and D of this section are made, any remaining monies in the Fund shall be disbursed as additional compensation to waste tire facilities or TDF facilities for the collection and transportation of waste tires from Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill sites, and dumps certified by the Department priority cleanup list, and delivering the tires to a waste tire facility or a TDF facility. The Commission shall apportion the payments under this subsection among the qualified applicants according to the percentage of waste tires collected and transported.

F. Waste tire facilities, TDF facilities, or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Waste Tire Recycling Act to receive reimbursement shall demonstrate that the facilities or legal entities have successfully complied with the requirements of the Oklahoma Waste Tire Recycling Act through the filing of appropriate applications, reports, and other documentation that may be required by the Commission and the Department.

SECTION 4. AMENDATORY 27A O.S. 2001, Section 2-11-409, is amended to read as follows:

Section 2-11-409. A. 1. The Oklahoma Tax Commission shall promulgate rules to carry out the provisions of the 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.

2. The Commission shall prescribe forms, containing documentation as required by the Oklahoma Waste Tire Recycling Act, to be used by a waste tire facility, TDF facility, or person,

corporation or other legal entity authorized to receive reimbursement.

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

4. The Commission shall make periodic inspections of tire dealers and motor license agents to ensure compliance with the provisions of Section 2-11-401.2 of this title, and shall make periodic inspections of applicants for compensation to ensure compliance with the provisions of Section 2-11-401.4 of this title. The Commission shall submit a summary of the results of those inspections in an annual report to the office of the State Auditor and Inspector.

B. 1. The ~~Board of~~ Environmental Quality Board shall promulgate rules to carry out the provisions of the Waste Tire Recycling Act which pertain to the permitting and certifying of waste tire facilities for the permitting of waste tire facilities under the Oklahoma Solid Waste Management Act and for the certification of any entity to receive compensation under the provisions of the Oklahoma Waste Tire Recycling Act.

2. 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 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.

3. In developing the priority cleanup list, 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, and in such case, the Department may provide for the cleanup of the dump pursuant to Section 2-11-401.7 of this title.

C. 1. By August 1, 1994, and every even year thereafter, the State Auditor and Inspector shall conduct or shall contract with an auditor or auditing company to conduct an independent audit of the books, records, files and other such documents of the Commission and the Department pertaining to the administration of the Fund. The audit shall include, but shall not be limited to, a review of agency and claimant compliance with state statutes regarding the Fund, internal control procedures, adequacy of claim process expenditures from and debits of the Fund regarding reimbursements, administration, personnel, operating and other expenses charged by the Commission and Department, and the duties performed in detail by agency personnel and Fund personnel for which payment is made from the Fund. In addition the audit shall include recommendations for improving claim processing, equipment needed for claim processing, internal control or structure for administering the Fund, and such other areas deemed necessary by the State Auditor and Inspector.

2. The cost of the audit shall be borne by the Fund, pursuant to the limits and provisions of Section 2-11-401.4 of this title.

3. Copies of the audit shall be submitted to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Chairs of the Appropriations Committee of both the Oklahoma House of Representatives and the Oklahoma State Senate.

SECTION 5. 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 or approved by the Department of Environmental Quality to accept waste tires; ~~however, the.~~ 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, or which has been otherwise authorized by the Department;

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

4. Remove more than ten used tires from ~~a tire dealer's~~ the possession of the dealer unless the dealer provides a manifest form, approved by the Department, which documents the removal and ~~approve~~ approved 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~~ 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 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, Food, and Forestry.~~

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~~ if the disposal is upon property owned by ~~such~~ the individual and ~~such~~ the 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 for the landowner 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 6. REPEALER Section 1, Chapter 262, O.S.L. 2001, is hereby repealed.

SECTION 7. REPEALER 27A O.S. 2001, Sections 2-11-406, as amended by Section 3, Chapter 185, O.S.L. 2004, 2-11-407, 2-11-407.1, as last amended by Section 4, Chapter 185, O.S.L. 2004, 2-11-407.2, as amended by Section 2, Chapter 328, O.S.L. 2002, 2-11-408, as amended by Section 3, Chapter 502, O.S.L. 2002, 2-11-410, 2-11-411, 2-11-412, 2-11-414 and 2-11-415, as amended by Section 4, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2004, Sections 2-11-406, 2-11-407.1, 2-11-407.2, 2-11-408 and 2-11-415), are hereby repealed.

SECTION 8. RECODIFICATION 27A O.S. 2001, Section 2-11-402, as last amended by Section 1 of this act, shall be recodified as Section 2-11-401.1 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 9. RECODIFICATION 27A O.S. 2001, Section 2-11-403, as last amended by Section 2 of this act, shall be recodified as Section 2-11-401.2 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 10. RECODIFICATION 27A O.S. 2001, Section 2-11-404, shall be recodified as Section 2-11-401.3 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 11. RECODIFICATION 27A O.S. 2001, Section 2-11-405, as last amended by Section 3 of this act, shall be recodified as Section 2-11-401.4 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 12. RECODIFICATION Section 3, Chapter 388, O.S.L. 2001, shall be recodified as Section 2-11-401.5 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 13. RECODIFICATION 27A O.S. 2001, Section 2-11-409, as amended by Section 4 of this act, shall be recodified as Section 2-11-401.6 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 14. RECODIFICATION 27A O.S. 2001, Section 2-11-413, as amended by Section 5 of this act, shall be recodified as Section 2-11-401.7 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 15. This act shall become effective July 1, 2005.

SECTION 16. 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 18th day of May, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the 19th day of May, 2005.

Presiding Officer of the Senate