STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

SENATE BILL 747 By: Bingman

AS INTRODUCED

An Act relating to waste tires; amending 27A O.S. 2001, Section 2-11-403, as last amended by Section 1, Chapter 295, O.S.L. 2006, and as renumbered by Section 9, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006, Section 2-11-401.2), which relates to tire recycling fees; authorizing fees for certain tires sold and vehicles registered; authorizing Department of Environmental Quality to assess certain penalty for non-payment of certain fees; amending 27A O.S. 2001, Section 2-11-405, as amended by Section 3, Chapter 230, O.S.L. 2005, and as renumbered by Section 11, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006, Section 2-11-401.4), which relates to allocation of Waste Tire Recycling Indemnity Fund; modifying certain amounts of fees for administration for agencies; and amending 27A O.S. 2001, Section 2-11-409, as amended by Section 4, Chapter 230, O.S.L. 2005, and as renumbered by Section 13, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006, Section 2-11-401.6), which relates to rules; modifying duties for the Tax Commission and the Department of Environmental Quality relating to certain inspections and enforcement actions; 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 2-11-403, as last amended by Section 1, Chapter 295, O.S.L. 2006, and as

renumbered by Section 9, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006, Section 2-11-401.2), is amended to read as follows:

Section 2-11-401.2 A. 1. Except as otherwise provided by this section, the following assessments shall be made for tires for use on motor vehicles.

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 but less than or equal to nineteen and one-half (19 1/2) inches is sold by a tire dealer, there shall be assessed a waste tire recycling fee of Two Dollars and fifty cents ($2.50) per tire,

(3) with a rim diameter greater than ~~seventeen and one half (17 1/2)~~ nineteen and one-half (19 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)~~(4) is sold by a tire dealer for use on a motorcycle, motor-driven cycle or motorized

bicycle, 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 but less than or equal to nineteen and one-half (19 1/2) inches is first registered in this state, there shall be assessed a waste tire recycling fee of Two Dollars and fifty cents ($2.50) per tire, except as otherwise provided by subparagraph e of this paragraph.

d. At any time a motor vehicle with a tire rim diameter of greater than ~~seventeen and one half (17 1/2)~~ nineteen and one-half (19 1/2) inches is first registered in this state, there shall be assessed a waste tire recycling fee of Three Dollars and fifty cents ($3.50) per tire, except as otherwise provided by subparagraph ~~d~~ e of this paragraph.

~~d.~~ e. At any time a motorcycle, 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.

4. All-terrain vehicles and off-road motorcycles registered pursuant to the provisions of Section 1132 of Title 47 of the Oklahoma Statutes shall be exempt from the provisions of this section.

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.

2. Except as otherwise provided by this section, the tire dealer shall remit to the Tax Commission 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 Tax Commission.

3. Motor license agents shall remit all but One Dollar ($1.00) of the fee assessed on each vehicle registered.

4. Failure to remit 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 the fee imposed or levied by subsection A of this section, or any part of such amount, is not paid before 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 the fee becomes delinquent, a penalty of ten percent (10%) on the total amount of fee due and delinquent shall be added and paid.

E. <u>If, as a result of a periodic inspection as provided in Section 2-11-401.6 of this title, the Department of Environmental Quality determines that a fee due under subsection A of this section has not been paid and that there is no reasonable cause for the non-payment, the Department may assess a penalty of double the amount that should have been remitted, to be added to the delinquent fee. This penalty is in lieu of the penalty prescribed in subsection D of this section.</u>

<u>F.</u> 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 shall be apportioned the same as the fee on which the penalties or interest are collected.

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-11-405, as amended by Section 3, Chapter 230, O.S.L. 2005, and as renumbered by Section 11, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006, Section 2-11-401.4), is amended to read as follows:

Section 2-11-401.4 A. 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 shall be allocated first to the following:

1. ~~Four and one half percent (4.5%)~~ Two percent (2%) to the Oklahoma Tax Commission and ~~three and one-half percent (3.5%)~~ Six percent (6%) to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act;

2. An amount not to exceed Fifty Thousand Dollars ($50,000.00) per audit to the State Auditor and Inspector for the purpose of conducting audits of the Oklahoma Waste Tire Recycling Program pursuant to Section 2-11-401.6 of this title; and

3. Up to ten percent (10%) 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 3. AMENDATORY 27A O.S. 2001, Section 2-11-409, as amended by Section 4, Chapter 230, O.S.L. 2005, and as renumbered by Section 13, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006, Section 2-11-401.6), is amended to read as follows:

Section 2-11-401.6 A. 1. 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.

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.

5. Upon receipt of any referral from the Department, as set out in paragraph 4 of subsection B of this section, the Commission shall take appropriate action to enforce compliance with Section 2-11-401.2 of this title. The Commission shall report to the Department the results of the enforcement action. The Commission shall revoke the sales tax permit or license of any tire dealer or motor license agent that has demonstrated a flagrant or repeated disregard of the provisions of Section 2-11-401.2 of this title.

B. 1. The Environmental Quality Board shall promulgate rules 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.

4. The Department shall make periodic inspections of tire dealers and motor license agents throughout this state to ensure compliance with the provisions of Section 2-11-401.2 of this title. Upon a finding of any failure to properly remit the appropriate fee to the Commission, the Department shall refer such finding, including the amount of delinquent fee and any associated penalty under Section 2-11-401.2, to the Commission with the recommendation that the Commission take appropriate action. It shall be the duty of the Commission to promptly act upon such referral.

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 4. This act shall become effective July 1, 2007.

SECTION 5. 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.

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