

THE HOUSE OF REPRESENTATIVES
Tuesday, April 6, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 441

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 441 - By:
BINGMAN AND IVESTER of the Senate and MCNIEL AND JACKSON of the House.

An Act relating to environment and natural resources; amending 27A O.S. 2001, Sections 2-11-403, as renumbered by Section 9, Chapter 230, O.S.L. 2005, and as last amended by Section 1, Chapter 146, O.S.L. 2007 and 2-11-405, as renumbered by Section 11, Chapter 230, O.S.L. 2005, and as last amended by Section 2, Chapter 146, O.S.L. 2007 (27A O.S. Supp. 2009, Sections 2-11-401.2 and 2-11-401.4), which relate to the Oklahoma Waste Tire Recycling Act; establishing a waste tire recycling fee for certain agricultural tires; specifying a minimum fee; requiring the Department of Environmental Quality to maintain a list of tire weights; prohibiting assessment of a fee on certain retained used tires; allowing a tire dealer to pay the assessed fee on certain tires and include the tires in certain program; exempting certain-sized agricultural tires from collection and transportation requirements; providing an effective date; and declaring an emergency.

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

1 SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-11-403, as renumbered
2 by Section 9, Chapter 230, O.S.L. 2005, and as last amended by Section 1, Chapter 146,
3 O.S.L. 2007 (27A O.S. Supp. 2009, Section 2-11-401.2), is amended to read as follows:

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

6 a. ~~At~~ at the time any tire:

- 1 (1) with a rim diameter of seventeen and one-half (17 1/2) inches
2 rim diameter or less is sold by a tire dealer, there shall be
3 assessed a waste tire recycling fee of One Dollar (\$1.00) per tire,
4 (2) with a rim diameter greater than seventeen and one-half (17
5 1/2) inches but less than or equal to nineteen and one-half (19
6 1/2) inches is sold by a tire dealer, there shall be assessed a
7 waste tire recycling fee of Two Dollars and fifty cents (\$2.50) per
8 tire,
9 (3) with a rim diameter greater than nineteen and one-half (19 1/2)
10 inches is sold by a tire dealer, there shall be assessed a waste
11 tire recycling fee of Three Dollars and fifty cents (\$3.50) per tire,
12 and
13 (4) is sold by a tire dealer for use on a motorcycle, motor-driven
14 cycle or motorized bicycle, there shall be assessed a waste tire
15 recycling fee of One Dollar (\$1.00) per tire,
16 b. ~~At~~ at any time a motor vehicle with a tire rim diameter of seventeen
17 and one-half (17 1/2) inches or less is first registered in this state,
18 there shall be assessed a waste tire recycling fee of One Dollar (\$1.00)
19 per tire,
20 c. ~~At~~ at any time a motor vehicle with a tire rim diameter of greater than
21 seventeen and one-half (17 1/2) inches but less than or equal to
22 nineteen and one-half (19 1/2) inches is first registered in this state,

1 there shall be assessed a waste tire recycling fee of Two Dollars and
2 fifty cents (\$2.50) per tire, except as otherwise provided by
3 subparagraph e of this paragraph.

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

9 e. ~~At~~ at any time a motorcycle, motor-driven cycle or motorized bicycle is
10 first registered in this state, there shall be assessed a waste tire
11 recycling fee of One Dollar (\$1.00) per tire.

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

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

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

19 B. 1. Except as otherwise provided by this section, tires used on implements of
20 husbandry and agricultural equipment that are 18.4 x 38 sized or smaller shall be
21 assessed a waste tire recycling fee of five cents (\$0.05) per pound of the weight of the tire,
22 with a minimum fee of Two Dollars and fifty cents (\$2.50) per tire.

1 2. The Department shall maintain a list of agricultural tire weights for tires subject
2 to the assessment and make that list available to tire dealers upon request.

3 3. No fee shall be assessed by a tire dealer if the customer retains the used
4 agricultural tire for use on a farm or ranch.

5 4. A tire dealer may pay the assessed fee for any waste agricultural tire in current
6 inventory and include that tire in the waste tire recycling program.

7 C. 1. The tire dealer and motor license agent shall remit such fee to the Oklahoma
8 Tax Commission in the same manner as provided by Section 1365 of Title 68 of the
9 Oklahoma Statutes.

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

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

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

21 ~~C.~~ D. If the fee imposed or levied by subsection A of this section, or any part of such
22 amount, is not paid before the fee becomes delinquent, there shall be collected on the

1 total delinquent fee interest at the rate of one and one-quarter percent (1 1/4%) per
2 month from the date of the delinquency until paid.

3 ~~D.~~ E. If any fee due under subsection A of this section, or any part thereof, is not
4 paid within fifteen (15) days after the fee becomes delinquent, a penalty of ten percent
5 (10%) on the total amount of fee due and delinquent shall be added and paid.

6 ~~E.~~ F. All penalties or interest imposed by this section shall be recoverable by the
7 Tax Commission as a part of the fee imposed and all penalties and interest shall be
8 apportioned the same as the fee on which the penalties or interest are collected.

9 SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-11-405, as renumbered
10 by Section 11, Chapter 230, O.S.L. 2005, and as last amended by Section 2, Chapter 146,
11 O.S.L. 2007 (27A O.S. Supp. 2009, Section 2-11-401.4), is amended to read as follows:

12 Section 2-11-401.4 A. Compensation to waste tire facilities and tire-derived fuel or
13 TDF facilities pursuant to this section shall be limited to facilities located in Oklahoma.
14 Compensation for waste tire activities pursuant to this section shall be limited to waste
15 tires from Oklahoma. A waste tire facility or tire-derived fuel or TDF facility may
16 transport and deliver waste tires collected from Oklahoma to an out-of-state waste tire
17 facility or TDF facility but shall not be eligible for compensation from the Waste Tire
18 Recycling Indemnity Fund for those waste tires. To be eligible, applicants for
19 compensation shall be in compliance with the Oklahoma Waste Tire Recycling Act.

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

1 1. Two and one-fourth percent (2.25%) to the Oklahoma Tax Commission and five
2 and three-fourths percent (5.75%) to the Department of Environmental Quality for the
3 purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act;

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

7 3. Up to ten percent (10%) for capital investment reimbursement to waste tire
8 facilities and TDF facilities for the purchase of equipment necessary to utilize waste
9 tires. Only equipment purchased on or after January 1, 1995, shall be eligible. The
10 facilities are eligible for compensation at a rate of Twenty Dollars (\$20.00) per ton of
11 waste tires used. Total reimbursement shall not exceed one hundred percent (100%) of
12 the capital investment in eligible equipment. The facilities may apply for compensation
13 monthly to the Department of Environmental Quality, and shall supply any information
14 required by the Department.

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

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

- 21 a. facilities that process waste tires by altering the form of the waste tires
22 but do not produce crumb rubber shall not receive compensation until

1 the facility documents the sale and movement of the processed tire
2 material off-site to a third party,
3 b. facilities shall report and certify tire processing activity in terms of
4 weight. The facility shall by sworn affidavit provide to the Department
5 sufficient information to verify that the facility has processed tires and
6 sold processed tires for actual recycling or reuse in accordance with the
7 purposes of the Oklahoma Waste Tire Recycling Act, and
8 c. to be eligible for compensation, a facility shall not have accumulated
9 more processed material than the amount for which the facility has
10 provided financial assurance under its solid waste permit or the
11 amount accumulated from three (3) years of operation, whichever is
12 less;
13 2. a. Compensation to waste tire facilities or TDF facilities at the rate of
14 Fifty-three Dollars (\$53.00) per ton of whole waste tires for the
15 collection and transportation of waste tires from Oklahoma tire
16 dealers, automotive dismantlers and parts recyclers, solid waste
17 landfill sites, and dumps certified by the Department priority cleanup
18 list, and delivering the tires to a waste tire facility or TDF facility. The
19 collection and transportation of waste tires shall be provided by the
20 waste tire facility or TDF facility at no additional cost to the tire dealer
21 or automotive dismantler and parts recycler or to the Fund. The waste

1 tire facility or TDF facility shall collect from any location at which
2 there are at least three hundred waste tires.

3 b. Compensation under this paragraph shall not be payable until the
4 waste tires have been actually processed according to the solid waste
5 permit for the facility or actually used for energy or fuel recovery. A
6 TDF facility that collects and transports whole waste tires shall be
7 eligible for compensation under this paragraph only for those whole
8 waste tires consumed by that facility.

9 c. No tire dealer shall charge any customer any additional fee for the
10 management, recycling, or disposal of any waste tire upon which the
11 waste tire recycling fee has been remitted to the Tax Commission. For
12 customers who choose not to leave a waste tire upon which the waste
13 tire recycling fee has been remitted to the Tax Commission, the tire
14 dealer shall issue a receipt which entitles the customer to deliver the
15 waste tire to the dealer at a later date.

16 d. To be eligible for compensation pursuant to this paragraph, the waste
17 tire facility or TDF facility shall:

18 (1) demonstrate to the satisfaction of the Department that the
19 facility is regularly engaged in the collection, transportation and
20 delivery of waste tires to a waste tire facility or to a TDF facility,
21 on a statewide basis, and from each county of the state,

- 1 (2) provide documentation to the Department, signed by a dealer at
2 the time of collection, which certifies by sworn affidavit the total
3 amount of waste tire recycling fees, itemized by month, remitted
4 by the dealer since the date the waste tires of the dealer were
5 last collected, and
- 6 (3) annually demonstrate that at least two percent (2%) of the tires
7 were collected from tire dumps or landfills on the Department
8 priority cleanup list or community-wide cleanup events
9 approved by the Department.
- 10 e. In lieu of proof of remitted tire recycling fees, the waste tire facility or
11 TDF facility shall accept proof of purchase of a salvage vehicle
12 registered in Oklahoma by an automotive dismantler and parts
13 recycler, licensed pursuant to the Automotive Dismantlers and Parts
14 Recycler Act, for the collection and transportation of up to five waste
15 tires per salvage vehicle purchased on or after January 1, 1996.
- 16 f. A waste tire facility or TDF facility shall not be required to collect and
17 transport agricultural equipment tires that are larger than 18.4 x 38 in
18 size;
- 19 3. a. Compensation to a person, corporation or other legal entity who has
20 obtained a permit or other authorization from the United States Army
21 Corps of Engineers or a local Conservation District to provide services
22 for erosion control projects. Compensation shall be at the rate of Two

1 Dollars and eighty cents (\$2.80) per tire for waste tires having a tire
2 rim diameter of greater than seventeen and one-half (17 1/2) inches,
3 and eighty cents (\$0.80) per tire for tires having a rim diameter less
4 than or equal to seventeen and one-half (17 1/2) inches.

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

6 (1) the applicant for reimbursement collects or provides for the
7 collection and utilization of waste tires in an erosion control
8 project in Oklahoma in accordance with a written plan approved
9 by the United States Army Corps of Engineers or by a local
10 Conservation District,

11 (2) the tires are collected and transported to the site of the erosion
12 control project,

13 (3) the site landowner agrees to plant trees or other suitable
14 vegetation in accordance with a planting plan developed in
15 conjunction with the Division of Forestry of the Oklahoma
16 Department of Agriculture, Food, and Forestry,

17 (4) the applicant reports and certifies the number of tires utilized.

18 The applicant shall by sworn affidavit provide to the
19 Department sufficient information to verify that the applicant
20 has utilized the tires in accordance with the purposes of the
21 Oklahoma Waste Tire Recycling Act,

- 1 (5) the applicant annually demonstrates that at least two percent
2 (2%) of the tires utilized by the applicant for which
3 compensation is requested were collected from tire dumps or
4 landfills on the Department priority cleanup list or community-
5 wide cleanup events approved by the Department,
- 6 (6) the applicant demonstrates to the satisfaction of the
7 Department that the applicant is regularly engaged in the
8 collection, transportation and delivery to erosion control projects
9 of waste tires, on a statewide basis, and from each county of the
10 state, at no additional cost to the tire dealer or automotive
11 dismantler and parts recycler or to the Fund, and
- 12 (7) the applicant provides documentation to the Department, signed
13 by a dealer at the time of collection, which certifies by sworn
14 affidavit the total amount of waste tire recycling fees, itemized
15 by month, remitted by the dealer since the date the waste tires
16 of the dealer were last collected.
- 17 c. In lieu of proof of remitted tire recycling fees, the applicant shall accept
18 proof of purchase of a salvage vehicle registered in Oklahoma by an
19 automotive dismantler and parts recycler, licensed pursuant to the
20 Automotive Dismantlers and Parts Recycler Act, for the collection and
21 transportation of up to five waste tires per salvage vehicle purchased
22 on or after January 1, 1996.

- 1 d. Compensation pursuant to this paragraph shall be payable only for the
2 tires collected and utilized in accordance with the purposes of the
3 Oklahoma Waste Tire Recycling Act and as authorized by the
4 Department. During the course of the erosion control project, the
5 Department may determine the amount of and authorize partial
6 compensation, as tires are utilized in accordance with the written plan.
- 7 e. Any entity deemed eligible for reimbursement under the provisions of
8 this paragraph shall be liable for the erosion control project for a
9 period of five (5) years. During the five-year period, if additional
10 cleanup or remediation of an erosion control project is required due to
11 failure or negligence on the part of the original contractor, the original
12 contractor shall be responsible for cleanup costs and shall not be
13 eligible for any additional compensation from the Fund for costs
14 related to that erosion control project;
- 15 4. a. Compensation to a unit of local or county government that submits to
16 the Department for approval a plan for the use of baled waste tires in
17 an engineering project. Compensation shall be at the rate of fifty cents
18 (\$0.50) per tire.
- 19 b. The plan shall be approved by the Department before construction of
20 the project begins.

- 1 c. Any unit of local or county government baling waste tires shall not
2 accumulate more than fifty waste tire bales prior to beginning
3 construction of an approved project.
- 4 d. Waste tires baled pursuant to this paragraph cannot be obtained from
5 tire manufacturers, retailers, wholesalers, retreaders, or automotive
6 dismantlers and parts recyclers.
- 7 e. Any unit of local or county government authorized to receive
8 reimbursement for the use of baled waste tires in an engineering
9 project shall report and certify whole waste tires by number. The
10 governmental unit shall by sworn affidavit provide sufficient
11 information to the Department to verify that the unit has utilized the
12 tires in accordance with the purposes of the Oklahoma Waste Tire
13 Recycling Act; and

14 5. If the Fund contains insufficient funds in any month to satisfy the eligible
15 reimbursements under this subsection, the Department shall determine the
16 apportionment of payments to be made among the qualified applicants under this
17 subsection according to the percentage of waste tires processed, collected and
18 transported, or utilized.

19 D. 1. After the allocations under subsections B and C of this section are made, any
20 remaining monies in the Fund shall be available for TDF facilities and waste tire
21 facilities that produce crumb rubber for compensation at the rate of Twenty-nine Dollars

1 (\$29.00) per ton of processed or whole waste tires used for energy or fuel recovery or the
2 production of crumb rubber.

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

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

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

11 5. If the Fund contains insufficient funds in any month to satisfy the eligible
12 reimbursements under this subsection, the Department shall determine the
13 apportionment of payments to be made among the qualified applicants according to the
14 percentage of waste tires used for energy or fuel recovery or the production of crumb
15 rubber.

16 E. After the allocations under subsections B, C and D of this section are made, any
17 remaining monies in the Fund shall be disbursed as additional compensation to waste
18 tire facilities or TDF facilities for the collection and transportation of waste tires from
19 Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill
20 sites, and dumps certified by the Department priority cleanup list, and delivering the
21 tires to a waste tire facility or a TDF facility. The Department shall determine the

1 apportionment of payments to be made under this subsection among the qualified
2 applicants according to the percentage of waste tires collected and transported.

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

9 SECTION 3. This act shall become effective July 1, 2010.

10 SECTION 4. It being immediately necessary for the preservation of the public
11 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
12 this act shall take effect and be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
14 dated 04-05-10 - DO PASS, As Amended and Coauthored.