STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1939 By: Jackson

COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; amending 27A O.S. 2001, Sections 2-11-401, 2-11-402, as last amended by Section 1, Chapter 230, O.S.L. 2005, and as renumbered by Section 8, Chapter 230, O.S.L. 2005, 2-11-403, as renumbered by Section 9, Chapter 230, O.S.L. 2005, and as last amended by Section 1, Chapter 194, O.S.L. 2010, 2-11-404, as renumbered by Section 10, Chapter 230, O.S.L. 2005, 2-11-405, as renumbered by Section 11, Chapter 230, O.S.L. 2005, and as last amended by Section 2, Chapter 194, O.S.L. 2010, 2-11-405.1, as renumbered by Section 12, Chapter 230, O.S.L. 2005, 2-11-409, as renumbered by Section 13, Chapter 230, O.S.L. 2005, and as last amended by Section 10, Chapter 413, O.S.L. 2010 and 2-11-413, as renumbered by Section 14, Chapter 230, O.S.L. 2005, and as last amended by Section 4, Chapter 146, O.S.L. 2007 (27A O.S. Supp. 2010, Section 2-11-401.1, 2-11-401.2, 2-11-401.3, 2-11-401.4, 2-11-401.5, 2-11-401.6 and 2-11-401.7), which relate to the Oklahoma Waste Tire Recycling Act; changing the name of the act; changing the word waste to the word used throughout the act; changing the name of a waste tire facility to a used tire recycling facility throughout the act; modifying definitions; adding definition; changing the amount of certain used tire recycling fees; deleting certain used tire recycling fees; updating statutory references; modifying allocation of the monies in the Used Tire Recycling Indemnity Fund; providing for allocation of certain percentage to the Department of Environmental Quality Revolving Fund; specifying use of the monies; providing for allocation of the balance; deleting certain sworn affidavit

requirements; requiring documentation of remittance of certain fees; modifying tire dump or landfill collection percentage requirements; authorizing the Department to determine the collection percentages; modifying basis for allocation of remaining monies in the Fund; directing the Department to promulgate certain rules by a certain date; authorizing the Department to solicit bids for remediation of tire dumps under certain conditions; modifying deposit requirements; amending 27A O.S. 2001, Section 2-2-201, as amended by Section 1, Chapter 301, O.S.L. 2010 (27A O.S. Supp. 2010, Section 2-2-201), which relates to advisory councils; amending 27A O.S. 2001, Section 2-10-802, as last amended by Section 2, Chapter 301, O.S.L. 2010 (27A O.S. Supp. 2010, Section 2-10-802), which relates to solid waste scales, fees and expenditures; changing the word waste to the word used; 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 2-11-401, is amended to read as follows:

Section 2-11-401. This part shall be known and may be cited as the "Oklahoma ~~Waste~~ Used Tire Recycling Act".

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-11-402, as last amended by Section 1, Chapter 230, O.S.L. 2005, and as renumbered by Section 8, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2010, Section 2-11-401.1), is amended to read as follows:

Section 2-11-401.1 As used in the Oklahoma ~~Waste~~ Used 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~~ used tires;

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

5. "Erosion control project" means a project involving the utilization of ~~waste~~ used tires for erosion control, bank stabilization or other conservation project;

6. "Fund" means the ~~Waste~~ Used 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 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 2-11-401.6 of this title;

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

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

14. "Tire-derived fuel facility" or "TDF facility" means a facility that uses processed tires or whole ~~waste~~ used tires for energy or fuel recovery;

15. "~~Waste~~ Used tire recycling 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~~ used tires are processed; ~~and~~

16. "~~Waste~~ Used tire processing" means altering the form of whole ~~waste~~ used tires by shredding, chipping, or other method approved by the Department, except baling; and

17. "Used tire" means an unprocessed whole tire or tire part that can no longer be used for its original intended purpose but can be beneficially reused as approved by the Department. Any used tire collected in accordance with the requirements of the Oklahoma Used Tire Recycling Act is not considered to be discarded. A tire that

can be used, reused or legally modified to be reused for its original intended purpose shall not be a used tire.

SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-11-403, as renumbered by Section 9, Chapter 230, O.S.L. 2005, and as last amended by Section 1, Chapter 194, O.S.L. 2010 (27A O.S. Supp. 2010, 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 than or equal to nineteen and one-half (19 1/2)inches is sold by a tire dealer, there shall be assessed a ~~waste~~ used tire recycling fee of ~~One Dollar ($1.00)~~ Two Dollars and fifty cents ($2.50) 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 nineteen and one-half (19 1/2) inches is sold by a tire

dealer, there shall be assessed a ~~waste~~ used tire recycling fee of Three Dollars and fifty cents ($3.50) per tire, and

~~(4)~~ (3) is sold by a tire dealer for use on a motorcycle, motor-driven cycle or motorized bicycle, there shall be assessed a ~~waste~~ used 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 than or equal to nineteen and one-half (19 1/2) inches is first registered in this state, there shall be assessed a ~~waste~~ used tire recycling fee of ~~One Dollar ($1.00)~~ Two Dollars and fifty cents ($2.50) 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 ~~c~~ d of this paragraph,

~~d.~~ c. at any time a motor vehicle with a tire rim diameter of greater than nineteen and one-half (19 1/2) inches is first registered in this state, there shall be

assessed a ~~waste~~ used tire recycling fee of Three Dollars and fifty cents ($3.50) per tire, except as otherwise provided by subparagraph ~~c~~ d of this paragraph, and

~~c.~~ d. at any time a motorcycle, motor-driven cycle or motorized bicycle is first registered in this state, there shall be assessed a ~~waste~~ used 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. Except as otherwise provided by this section, beginning July 1, 2010, tires used on implements of husbandry and agricultural equipment that are not more than fourteen (14) inches wide and forty-four (44) inches in diameter shall be assessed a ~~waste~~ used tire recycling fee of five cents ($0.05) per pound of the weight of the tire, with a minimum fee of Two Dollars and fifty cents ($2.50)

per tire. Beginning July 1, 2013, tires used on implements of husbandry and agricultural equipment that are any size shall be assessed a ~~waste~~ used tire recycling fee of five cents ($0.05) per pound of the weight of the tire, with a minimum fee of Two Dollars and fifty cents ($2.50) per tire.

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

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

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

C. 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.

D. 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.

E. 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.

F. 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 4. AMENDATORY 27A O.S. 2001, Section 2-11-404, as renumbered by Section 10, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2010, Section 2-11-401.3), is amended to read as follows:

Section 2-11-401.3 A. There is hereby created within the Oklahoma Tax Commission the "~~Waste~~ Used Tire Recycling Indemnity Fund". The Indemnity Fund shall be administered by the Oklahoma Tax

Commission pursuant to the provisions of Section ~~195~~ 2-11-401.4 of this ~~act~~ title.

B. The Indemnity Fund shall consist of:

1. All monies received by the Commission as proceeds from the assessment imposed pursuant to Section ~~193~~ 2-11-401.2 of this ~~act~~ title;

2. Interest attributable to investment of money in the Indemnity Fund; and

3. Money received by the Commission in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the provisions of the Oklahoma ~~Waste~~ Used Tire Recycling Act.

SECTION 5. AMENDATORY 27A O.S. 2001, Section 2-11-405, as renumbered by Section 11, Chapter 230, O.S.L. 2005, and as last amended by Section 2, Chapter 194, O.S.L. 2010 (27A O.S. Supp. 2010, Section 2-11-401.4), is amended to read as follows:

Section 2-11-401.4 A. Compensation to ~~waste~~ used tire facilities and tire-derived fuel or TDF facilities pursuant to this section shall be limited to facilities located in Oklahoma. Compensation for ~~waste~~ used tire activities pursuant to this section shall be limited to ~~waste~~ used tires from Oklahoma. A ~~waste~~ used tire recycling facility or tire-derived fuel or TDF facility may transport and deliver ~~waste~~ used tires collected from Oklahoma to an out-of-state ~~waste~~ used tire recycling facility or TDF facility but

shall not be eligible for compensation from the ~~Waste~~ Used Tire Recycling Indemnity Fund for those ~~waste~~ used tires. To be eligible, applicants for compensation shall be in compliance with the Oklahoma ~~Waste~~ Used Tire Recycling Act.

B. The monies accruing annually to the ~~Waste~~ Used Tire Recycling Indemnity Fund shall be allocated first to the ~~following~~ Department of Environmental Quality Revolving Fund, to be used for implementing applicable requirements related to the control of mobile and area sources of air emissions, for monitoring and modeling the impacts on Oklahoma of air pollution from other states, and for implementing and enforcing other applicable air pollution control requirements. The amount of money allocated for this purpose shall be twenty-eight percent (28%) of the funds produced by the two-dollar-and-fifty-cent per tire fee assessed pursuant to division (1) of subparagraph a of paragraph 1 of subsection A of Section 2-11-401.2 of this title and subparagraph b of paragraph 1 of subsection A of Section 2-11-401.2 of this title. After this allocation is deducted, the balance of the monies shall be allocated as follows:

1. Two and one-fourth percent (2.25%) to the Oklahoma Tax Commission and five and three-fourths percent (5.75%) to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma ~~Waste~~ Used 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~~ Used 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~~ used tire facilities and TDF facilities for the purchase of equipment necessary to utilize ~~waste~~ used 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~~ used 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 Department of Environmental Quality, and shall supply any information required by the Department.

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~~ Used Tire Recycling Act as follows:

1. Compensation to ~~waste~~ used tire facilities for ~~waste~~ used 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~~ used tires by altering the form of the ~~waste~~ used tires but do not produce

crumb rubber shall not receive compensation until the facility documents the sale and movement of the processed used tire material off-site to a third party,

b. facilities shall report and certify used tire processing activity in terms of weight. The facility shall by sworn affidavit provide to the Department sufficient information to verify that the facility has processed used tires and sold processed used tires for actual recycling or reuse in accordance with the purposes of the Oklahoma ~~Waste~~ Used 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~~ used tire recycling facilities or TDF facilities at the rate of Fifty-three Dollars ($53.00) per ton of whole ~~waste~~ used tires for the collection and transportation of ~~waste~~ used 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~~ used tire recycling facility or TDF facility. The collection and transportation of ~~waste~~ used tires shall be provided by the ~~waste~~ used tire recycling facility or TDF facility at no additional cost to the tire dealer or automotive dismantler and parts recycler or to the Fund. The ~~waste~~ used tire recycling facility or TDF facility shall collect from any location at which there are at least three hundred ~~waste~~ used tires.

b. Compensation under this paragraph shall not be payable until the ~~waste~~ used 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~~ used tires shall be eligible for compensation under this paragraph only for those whole ~~waste~~ used 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~~ used tire upon which the ~~waste~~ used tire recycling fee has been remitted to the Tax Commission. For customers who choose not to leave a ~~waste~~ used tire upon which the ~~waste~~ used tire

recycling fee has been remitted to the Tax Commission, the tire dealer shall issue a receipt which entitles the customer to deliver the ~~waste~~ used tire to the dealer at a later date.

d. To be eligible for compensation pursuant to this paragraph, the ~~waste~~ used tire recycling 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~~ used tires to a ~~waste~~ used tire recycling facility or to a TDF facility, on a statewide basis, and from each county of the state,

(2) provide documentation to the Department, 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~~ remittance of appropriate fees to the Oklahoma Tax Commission as a participating tire dealer pursuant to the provisions of the Oklahoma Used Tire Recycling Act, and

(3) annually demonstrate that at least ~~two~~ three to six percent ~~(2%)~~ (3-6%) 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. The Department is authorized to determine periodically the applicable percentage within the specified range set forth in this division based on the number of tires remaining in illegal dumps and available funding.

e. In lieu of proof of remitted tire recycling fees, the ~~waste~~ used tire recycling 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~~ used tires per salvage vehicle purchased on or after January 1, 1996.

f. Beginning July 1, 2010, a ~~waste~~ used tire recycling facility or TDF facility shall be required to collect and transport tires used on implements of husbandry and agricultural equipment that are not more than fourteen (14) inches wide and forty-four (44) inches in diameter. Beginning July 1, 2013, a ~~waste~~ used

tire recycling facility or TDF facility shall be required to collect and transport tires used on implements of husbandry and agricultural equipment that are any size;

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~~ used 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~~ used 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 used 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 Oklahoma Department of Agriculture, Food, and Forestry,

(4) the applicant reports and certifies the number of used tires utilized. The applicant shall by sworn affidavit provide to the Department sufficient information to verify that the applicant has utilized the tires in accordance with the purposes of the Oklahoma ~~Waste~~ Used Tire Recycling Act,

(5) the applicant annually demonstrates that at least ~~two~~ three to six percent ~~(2%)~~ (3-6%) 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. The Department is authorized to determine periodically the applicable percentage within the specified range as set forth in this

division based on the number of tires remaining in illegal dumps and available funding,

(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~~ used 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 Department, 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~~ remittance of appropriate fees to the Oklahoma Tax Commission as a participating tire dealer pursuant to the provisions of the Oklahoma Used Tire Recycling Act.

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~~ used 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~~ Used 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~~ used 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~~ used tires shall not accumulate more than fifty ~~waste~~ used tire bales prior to beginning construction of an approved project.

d. ~~Waste~~ Used 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~~ used tires in an engineering project shall report and certify whole ~~waste~~ used tires by number. The governmental unit shall by sworn affidavit provide sufficient information to the Department to verify that the unit has utilized the tires in accordance with the purposes of the Oklahoma ~~Waste~~ Used Tire Recycling Act; and

5. If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under this subsection, the Department shall determine the apportionment of payments to be made among the qualified applicants under this subsection according to the percentage of ~~waste~~ used 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~~ used tire recycling facilities that produce crumb rubber for compensation at the rate of Twenty-nine Dollars ($29.00) per ton of processed or ~~whole waste~~ used tires ~~used~~ utilized 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~~ used tire processing under subsection C of this section.

3. TDF facilities and ~~waste~~ used tire recycling 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 Department sufficient information to verify that the facility has used the tires in accordance with the purposes of the Oklahoma ~~Waste~~ Used Tire Recycling Act.

5. If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under this subsection, the Department shall determine the apportionment of payments to be made among the qualified applicants according to the percentage of ~~waste~~ used tires ~~used~~ intended 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~~ used tire recycling 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~~ remediation of dumps certified by the Department ~~priority cleanup list,~~ and delivering the tires to a ~~waste~~ used tire recycling facility or a TDF facility. The Department shall determine ~~the apportionment of payments to be~~ additional compensation made to qualified applicants under this subsection ~~among the qualified applicants according to the percentage of waste tires collected and transported~~ based on cleanup feasibility of the dump. By July 1, 2012, the Board shall promulgate rules establishing unit costs for compensation based on the remediation feasibility of the tire dumps. The Department may solicit bids for the remediation of tire dumps if no used tire recycling facilities or TDF facilities agree to remediate a priority tire dump authorized by the Department or if the Department

determines the qualified applicant has not remediated the tires in the tire dump to meet reference conditions of comparable property in the immediate area.

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

SECTION 6. AMENDATORY 27A O.S. 2001, Section 2-11-405.1, as renumbered by Section 12, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2010, Section 2-11-401.5), is amended to read as follows:

Section 2-11-401.5 To the extent that monies accruing to the ~~Waste~~ Used Tire Recycling Indemnity Fund exceed the monies needed for the purposes previously specified in the Oklahoma ~~Waste~~ Used Tire Recycling Act, the Department of Environmental Quality may be reimbursed from the remaining funds for necessary costs associated with remediation of sites at which ~~waste~~ used tires or other wastes incidental to the ~~waste~~ used tires present a threat to human health or the environment. Upon its receipt of documentation from the Department showing expenditures relating to the remediation of such

sites, the Tax Commission shall reimburse the Department for its documented expenditures.

SECTION 7. AMENDATORY 27A O.S. 2001, Section 2-11-409, as renumbered by Section 13, Chapter 230, O.S.L. 2005, and as last amended by Section 10, Chapter 413, O.S.L. 2010 (27A O.S. Supp. 2010, 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~~ Used Tire Recycling Act which pertain to the remittance of fees and to the payment of monies accruing to the ~~Waste~~ Used Tire Recycling Indemnity Fund.

2. Upon receipt of any referral from the Department of Environmental Quality, as set out in paragraph 7 of subsection B of this section, it shall be the duty of the Tax Commission to promptly undertake proceedings in accordance with the recommendations of the Department. The Tax Commission shall timely report the results of the proceedings to the Department.

3. On a monthly basis, the Tax Commission shall provide to the Department a report of the fees remitted by each tire dealer and motor license agent pursuant to Section 2-11-401.2 of this title.

B. 1. The Department of Environmental Quality shall prescribe forms, containing documentation as required by the Oklahoma ~~Waste~~ Used Tire Recycling Act, to be used by a ~~waste~~ used tire recycling

facility, TDF facility, or person, corporation or other legal entity authorized to receive reimbursement.

2. On at least a monthly basis, the Department shall evaluate and process applications and shall report to the Tax Commission compliance and allocation information necessary for the Tax Commission to issue payment of monies from the fund.

3. The Department shall make periodic inspections of applicants for compensation to ensure compliance with the provisions of Section 2-11-401.4 of this title. The Department shall submit a summary of the results of those inspections in an annual report to the office of the State Auditor and Inspector.

4. The Environmental Quality Board shall promulgate rules for the permitting of ~~waste~~ used tire recycling 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~~ Used Tire Recycling Act.

5. The Department shall file a report with the Legislature and the Governor detailing the administration of the Oklahoma ~~Waste~~ Used Tire Recycling Act and its effectiveness in bringing about the cleanup of existing ~~waste~~ used 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.

6. 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.

7. 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 Tax Commission, the Department shall give written notice to the alleged violator and may commence administrative enforcement proceedings or civil proceedings in conformance with the provisions of Sections 2-3-502 and 2-3-504 of this title. If the Department determines that the fee has not been paid and there is no reasonable cause for the nonpayment, the Department may assess a penalty of double the amount that should have been remitted, to be added to the delinquent fee. If the Department determines any tire dealer or motor license agent has demonstrated a flagrant or repeated disregard of the provisions of Section 2-11-401.2 of this title, it shall refer such determination to the Tax Commission.

C. 1. By August 1, 1994, and every even year thereafter, the State Auditor and Inspector shall perform or shall contract with an

auditor or auditing company to perform an independent audit, as defined in paragraph 4 of subsection B of Section 212 of Title 74 of the Oklahoma Statutes, of the books, records, files and other such documents of the Tax 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 Tax 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 8. AMENDATORY 27A O.S. 2001, Section 2-11-413, as renumbered by Section 14, Chapter 230, O.S.L. 2005, and as last

amended by Section 4, Chapter 146, O.S.L. 2007 (27A O.S. Supp. 2010, Section 2-11-401.7), is amended to read as follows:

Section 2-11-401.7 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~~ used tires except at a site or facility permitted or approved by the Department of Environmental Quality to accept ~~waste~~ used tires. The provisions of this paragraph shall not apply to tire manufacturers, retailers, wholesalers and retreaders who store two thousand five hundred or fewer ~~waste~~ used tires at their place of business or designated off-premises storage site;

2. Dispose of ~~waste~~ used 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~~ used tires under the control or in 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 the possession of the dealer unless the dealer provides a manifest form, approved by the Department, which documents the removal and approved disposition or sale of the tires. Dealers, haulers, and ~~waste~~ used tire recycling 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 the use of ~~waste~~ used tires for agricultural purposes as recognized by the Oklahoma Department of Agriculture, Food, and Forestry.

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

D. The provisions of paragraphs 2 and 3 of subsection A of this section shall not be construed to prevent a ~~waste~~ used tire recycling facility or tire-derived fuel or TDF facility from transporting and delivering ~~waste~~ used tires to an out-of-state ~~waste~~ used tire recycling facility or TDF facility.

E. 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 excess funds recovered through such action into the ~~Waste~~ Used Tire Recycling Indemnity Fund.

SECTION 9. AMENDATORY 27A O.S. 2001, Section 2-2-201, as amended by Section 1, Chapter 301, O.S.L. 2010 (27A O.S. Supp. 2010, Section 2-2-201), is amended to read as follows:

Section 2-2-201. A. There are hereby created:

1. The Water Quality Management Advisory Council;

2. The Hazardous Waste Management Advisory Council;

3. The Solid Waste Management Advisory Council;

4.. The Radiation Management Advisory Council; and

5. The Laboratory Services Advisory Council.

B. 1. Except as provided for in paragraph 2 of this subsection, each Council created pursuant to subsection A of this section shall consist of nine (9) members. Three members shall be appointed by the Governor, three members shall be appointed by the Speaker of the House of Representatives and three members shall be appointed by the President Pro Tempore of the Senate. Appointments shall be for three-year terms. Members of the Advisory Councils shall serve at the pleasure of and may be removed from office by the appointing authority. Members shall continue to serve until their

successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. Five members shall constitute a quorum.

2. The Solid Waste Management Advisory Council shall consist of ten (10) members. Four members shall be appointed by the Governor, three members shall be appointed by the Speaker of the House of Representatives and three members shall be appointed by the President Pro Tempore of the Senate. Appointments shall be for three-year terms. Members of the Solid Waste Management Advisory Council shall serve at the pleasure of and may be removed from office by the appointing authority. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. Six members shall constitute a quorum.

3. Each Council shall elect a chair and a vice-chair from among its members. Each Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any three (3) members.

C. 1. All members of the Water Quality Management Advisory Council shall be knowledgeable of water quality and of the environment. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

(1) one member representing the field of engineering,

(2) one member representing a statewide nonprofit environmental organization, and

(3) one member representing the general public,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

(1) one member representing an industry located in this state,

(2) one member representing an oil field-related industry, and

(3) one member representing the field of geology, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

(1) one member representing a political subdivision of the state who shall be a member of the local governmental body of a city or town,

(2) one member representing a rural water district organized pursuant to the laws of this state, and

(3) one member representing the field of agriculture.

2. The jurisdictional areas of the Water Quality Management Advisory Council shall include Article VI of this chapter, water quality and protection and related activities and such other areas as designated by the Board.

D. 1. All members of the Hazardous Waste Management Advisory Council shall be knowledgeable of hazardous waste and of the environment. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

(1) one member representing an industry located in this state,

(2) one member representing a statewide nonprofit environmental organization, and

(3) one member representing a political subdivision of the state who shall be a member of the local governing body of a city or town,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

(1) one member representing a political subdivision of the state who shall be a member of the local governmental body of a city or town,

(2) one member representing the general public, and

(3) one member representing industry generating hazardous waste, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

(1) one member representing the field of engineering,

(2) one member representing the hazardous waste industry, and

(3) one member representing the field of geology.

2. The jurisdictional areas of the Hazardous Waste Management Advisory Council shall include Article VII of this chapter, the Oklahoma Hazardous Waste Reduction Program, and such other areas as designated by the Board.

E. 1. All members of the Solid Waste Management Advisory Council shall be knowledgeable of solid waste and of the environment. The Council shall be composed as follows:

a. the Governor shall appoint four members as follows:

(1) one member representing a statewide nonprofit environmental organization,

(2) one member shall be a county commissioner,

(3) one member representing the general public, and

(4) one member representing the solid waste incineration, waste-to-energy industry in this state,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

(1) one member representing an industry located in this state generating solid waste,

(2) one member representing a political subdivision of this state who shall be a member of the local governmental body of a city or town, and

(3) one member representing the field of geology, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

(1) one member representing the solid waste disposal industry in this state,

(2) one member representing the field of engineering, and

(3) one member representing the transportation industry.

2. The jurisdictional areas of the Solid Waste Management Advisory Council shall include Article X of this chapter, the Oklahoma ~~Waste~~ Used Tire Recycling Act and such other areas as designated by the Board.

F. 1. All members of the Radiation Management Advisory Council shall be knowledgeable of radiation hazards and radiation protection. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

(1) one member representing an industry located in this state which uses sources of radiation in its manufacturing or processing business,

(2) one member representing a statewide nonprofit environmental organization, and

(3) one member representing the engineering profession who shall be a professional engineer

employed and experienced in matters of radiation management and protection,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

(1) one member representing the faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of radiation management and protection,

(2) one member representing the general public, and

(3) one member representing the field of industrial radiography, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

(1) one member representing the transportation industry,

(2) one member representing the petroleum industry who is trained and experienced in radiation management and protection, and

(3) one member representing a medical institution within this state who shall be experienced in matters of radiation management and protection.

2. The jurisdictional areas of the Radiation Management Advisory Council shall include Article IX of this chapter and such other areas as designated by the Board.

G. 1. All members of the Laboratory Services Advisory Council shall be knowledgeable of laboratory services and certification standards. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

(1) one member representing a private laboratory within the state certified by the Department,

(2) one member representing the field of hydro-geology, and

(3) one member representing permit holders required to routinely submit laboratory analyses results to the Department,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

(1) one member representing a private laboratory within the state certified by the Department,

(2) one member representing a public laboratory within the state certified by the Department, and

(3) one member representing the field of microbiology, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

(1) one member representing a private laboratory within the state certified by the Department,

(2) one member representing permit holders required to routinely submit laboratory analyses results to the Department, and

(3) one member representing the field of environmental chemistry.

2. The jurisdictional areas of the Laboratory Services Advisory Council shall include Article IV of this chapter and such other areas designated by the Board.

H. 1. The Air Quality Council created pursuant to Section 6, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1807.1) shall remain in effect as the Air Quality Advisory Council and carry on the powers and duties assigned to it by law. Future appointments to the Council shall be made according to the provisions of this section.

2. The Council shall consist of nine (9) members who shall be residents of this state and appointed by the Governor with the advice and consent of the Senate.

3. Members of the Council shall have the qualifications as follows:

a. one member shall be selected from the engineering profession, and, as such, shall be a professional engineer and experienced in matters of air pollution

equipment and control, who shall not be an employee of any unit of government,

b. one member shall be selected from industry in general, and, as such, shall be employed as a manufacturing executive carrying on a manufacturing business within this state,

c. one member shall be selected from a faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of air pollution control and evaluation,

d. one member shall be selected from the transportation industry,

e. one member shall be selected from the petroleum industry, and, as such, shall be employed by a petroleum company carrying on a petroleum refining business within the state, and, as such, shall be trained and experienced in matters of scientific knowledge of causes as well as effects of air pollution,

f. one member shall be selected from agriculture, and, as such, shall be engaged in or employed by a basic agricultural business or the processing of agricultural products,

g. one member shall be selected from the political subdivisions of the state, and, as such, shall be a member of the local government body of a city or town,

h. one member, whose first term shall expire on June 15, 1998, shall be selected from the general public, and

i. one member, whose first term shall expire on June 15, 1999, shall be selected from the electric utilities industry, and as such, shall be knowledgeable in matters of air pollution and control.

4. Each member shall be appointed to serve a term of office of seven (7) years.

The terms of all members shall be deemed to have expired on June 15th of the year of expiration, and shall continue until successors have been duly appointed and qualified. If a vacancy occurs, the Governor shall appoint a person for the remaining portion of the unexpired term created by the vacancy. Five members of the Council shall constitute a quorum.

5. The Council shall hold at least two regular meetings each calendar year at a place and time to be fixed by the Council. The Council shall select one of its members to serve as chair and another of its members to serve as vice-chair at the first regular meeting in each calendar year to serve as the chair and vice-chair for the ensuing year. Special meetings may be called, and any

meeting may be canceled, by the chair, or by three members of the Council by delivery of written notice to each member of the Council.

6. The jurisdictional areas of the Air Quality Council shall include Article V of this chapter and such other areas as designated by the Board.

I. In addition to other powers and duties assigned to each Council pursuant to this Code, each Council shall, within its jurisdictional area:

1. Have authority to recommend to the Board rules on behalf of the Department. The Department shall not have standing to recommend to the Board permanent rules or changes to such rules within the jurisdiction of a Council which have not previously been submitted to the appropriate Council for action;

2. Before recommending any permanent rules to the Board, give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act;

3. Have the authority to make written recommendations to the Board which have been concurred upon by at least a majority of the membership of the Council;

4. Have the authority to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction, and to:

a. pass nonbinding resolutions expressing the sense of the Council, and

b. make recommendations to the Board or Department concerning the need and the desirability of conducting meetings, workshops and seminars; and

5. Cooperate with each other Council, the public, the Board and the Executive Director in order to coordinate the rules within their respective jurisdictional areas and to achieve maximum efficiency and effectiveness in furthering the objectives of the Department.

J. The Councils shall not recommend rules for promulgation by the Environmental Quality Board unless all applicable requirements of the Administrative Procedures Act have been followed, including but not limited to notice, rule impact statement and rule-making hearings.

K. Members of the Councils shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties, as provided in the State Travel Reimbursement Act. The Councils are authorized to utilize the conference rooms of the Department of Environmental Quality and obtain administrative assistance from the Department, as required.

SECTION 10. AMENDATORY 27A O.S. 2001, Section 2-10-802, as last amended by Section 2, Chapter 301, O.S.L. 2010 (27A O.S. Supp. 2010, Section 2-10-802), is amended to read as follows:

Section 2-10-802. A. 1. Owners or operators of landfill disposal sites which are not generator-owned and -operated nonhazardous industrial waste monofills and owners or operators of commercial incinerators shall install scales. Such scales shall be installed on or within five (5) miles of the landfill disposal site or incinerator and shall be tested and certified as required by Section 14-35 of Title 2 of the Oklahoma Statutes relating to the authority of the State Board of Agriculture to test the standards of weights and measures within the state and to approve if found to be correct. For purposes of this section, any reference to "incinerator" or "incineration" shall encompass waste-to-energy facilities that produce recoverable energy by high-temperature combustion.

2. The owner or operator shall upon receipt weigh all waste received and record the weight in writing. If scales at a disposal site or incinerator are not operative, tonnage shall be estimated on a volume basis whereby the volume reported shall be no less than the volume capacity of the containers or, if none, of the vehicles delivering the waste, and one cubic yard of solid waste shall be calculated to weigh one-third (1/3) ton. The owner or operator shall place notice in the operating record of the disposal site or incinerator of the time and date at which the scales became inoperable, describe the steps taken to repair them, and note the date use was resumed. If daily use has not resumed within thirty

(30) days after the scales became inoperable, the owner or operator shall give written notice to the Department of Environmental Quality.

3. The owner or operator shall also maintain a written record of the weight or volume of any solid waste received which is productively reused or recovered in materially the same form as when received and sold in accordance with the permit for the landfill disposal site or incinerator.

4. The scale location restriction of this subsection shall not apply to federal or state military installations so long as:

a. the scales are located within the physical boundary of that installation, and

b. the disposal site or incinerator receives waste only from that military installation.

B. 1. Except as otherwise provided by this subsection:

a. owners and operators of landfill disposal sites or commercial incinerators which receive an average of less than one hundred (100) tons of solid waste per operating day shall assess a fee of One Dollar and fifty cents ($1.50) per ton of solid waste received for disposal or incineration. A total of fifty cents ($.50) per ton of such fee shall be retained by the owner or operator and used exclusively for capital improvement to their facilities and for the projects

required pursuant to the Oklahoma Solid Waste Management Act or the permit for the disposal site or incinerator for such period of time necessary to recoup a capital investment, plus the interest costs expended in purchasing the scales, of a total of Forty Thousand Dollars ($40,000.00),

b. when the owner or operators have recouped a capital investment of the total specified in subparagraph a of this paragraph, the fee to be assessed shall be One Dollar and twenty-five cents ($1.25) per ton of solid waste received for disposal or incineration. At such time, for a return with remittance filed on or before the due date, the owner or operator may deduct and retain ten percent (10%) of the fees collected, and

c. records documenting the projects and use of the funds shall be included with each return.

2. a. Owners and operators of landfill disposal sites or commercial incinerators which receive an average of more than one hundred (100) tons of solid waste per operating day shall assess a fee of One Dollar and fifty cents ($1.50) per ton of solid waste received for disposal or incineration, retaining twenty-five cents ($0.25) per ton for a period of time necessary to recoup a capital investment, plus the interest

costs expended in purchasing the scales, of Forty Thousand Dollars ($40,000.00). At the end of such period the fee shall revert to One Dollar and twenty-five cents ($1.25) per ton. For a return with remittance filed on or before the due date, the owner or operator may deduct and retain ten percent (10%) of the fees collected.

b. Records documenting the capital investment and the use of the funds shall be included with each return.

3. a. Owners and operators of landfill disposal sites or commercial incinerators may be reimbursed for capital investment costs that have been or will be expended for the purchase and installation of a wheel wash system for use at the landfill disposal site or commercial incinerator facility. To be eligible to claim this reimbursement, the owner or operator must notify the Department no later than January 1, 2011, of the intent to claim the reimbursement, and the wheel wash system must be in place and operational no later than January 1, 2012. Reimbursement shall be paid only after the wheel wash system is installed and operational and each landfill disposal site or commercial incinerator shall be eligible for reimbursement for only one wheel wash system.

b. The owner or operator shall provide records documenting the capital investment costs of the wheel wash system to the Department.

c. At such time as the wheel wash system is in place and operational and the capital investment costs have been approved by the Department, the Department shall reimburse the owner or operator the approved costs, subject to the limitations in subparagraph d of this paragraph. The Department shall reimburse eligible applicants in the order of approval until that limitation has been reached. If there are multiple eligible applicants awaiting reimbursement, the Department shall apportion the reimbursement amount among the eligible applicants according to the capital investment costs approved by the Department.

d. If the total amount reimbursed to all eligible owners and operators reaches Fifty Thousand Dollars ($50,000.00) within any state fiscal year, the Department shall notify the owners and operators, and thereafter the owners and operators shall not receive any reimbursement until the next state fiscal year.

e. The Environmental Quality Board is authorized to promulgate rules as necessary to implement the provisions of the Solid Waste Management Act,

including rules specifying minimum standards or other criteria for wheel wash systems necessary to qualify for the reimbursement.

4. The fee shall not be imposed on:

a. the solid waste received which is productively reused or recovered in materially the same form as when received in accordance with the permit for the landfill disposal site or incinerator. The owner or operator shall include records pertaining to this fee exemption in the quarterly return of fees to the Department,

b. generator-owned and -operated nonhazardous waste land disposal monofills and waste subject to a fee pursuant to Section 2-10-803 of this title. For emergencies and other special events, the Department and the owner or operator of a site subject to this section may enter into a formal agreement to waive the fee, and

c. ash produced as a result of the combustion in a commercial incinerator of waste on which the fee imposed by this section has been paid.

5. Large industrial waste generators who generate over ten thousand (10,000) tons of nonhazardous industrial solid waste in the state in a calendar year may annually apply to the Department for a certificate exempting the disposal or incineration of such generated

waste in excess of ten thousand (10,000) tons from the disposal and incineration fee authorized by this section. An applicant must have implemented a pollution prevention plan for such waste and filed it with the Department, provided operational documentation regarding such plan and paid the disposal and incineration fee on ten thousand (10,000) tons of the waste during the calendar year of application. The Department-issued exemption certificates shall be valid for the remainder of the calendar year of application, may contain conditions, and, upon presentation by authorized persons, shall be recognized by owners or operators of landfill disposal sites and incinerators subject to this section. If a generator operates a landfill or incinerator solely for waste from that generator, and if that generator chooses to seek the exemption authorized by this paragraph, the generator shall not be required to install scales or keep records relative to quantity of waste received for the landfill or incinerator.

6. The fee assessed by this subsection is to be a charge to waste producers in addition to any charges specified in any contract or elsewhere. The fee shall be imposed upon and passed through to disposers of waste using the facility.

7. The owner or operator of a solid waste disposal site or incinerator shall collect the fee levied pursuant to this subsection as trustee for the state and shall prepare and file with the Department quarterly returns indicating:

a. the total tonnage of solid wastes received for disposal or incineration at the gate of the site, and

b. the total amount of the fees collected pursuant to this section.

8. Not later than thirty (30) days after the end of the quarter to which such a return applies, the owner or operator shall mail to the Department the return for that quarter together with the fees collected during that quarter as indicated on the return.

9. The owner or operator may receive an extension of not more than thirty (30) days for filing the return and remitting the fees, provided that:

a. the owner or operator has submitted a request for an extension in writing to the Department together with a detailed description of why the extension is requested,

b. the Department has received the request not later than the day on which the return is required to be filed, and

c. the Department has approved the request.

10. For any quarterly return filed more than thirty (30) days after the last day of the quarter or extension date, the owner or operator shall remit an additional five percent (5%) of the fees collected during the month to which the return applies. If the fees are not remitted within sixty (60) days of the last day of the

quarter during which they were collected, the owner or operator shall pay an additional fifteen percent (15%) of the amount of the fees for each month that they are late.

11. If the owner or operator misrepresents, or fails to properly measure or record, the amount of waste received or fails to remit fees within sixty (60) days after the last day of the quarter during which they were collected, the permit for the landfill disposal site or incinerator shall be summarily suspended by order and the Department shall initiate the process of revoking the permit and may require closure of the landfill or incinerator.

C. 1. The Department shall expend funds collected pursuant to the provisions of this section solely for the administration and enforcement of the provisions of the Oklahoma Solid Waste Management Act and for the development of solid waste technical assistance programs, solid waste public environmental education programs and educational curricula, solid waste studies, development of a statewide solid waste plan, solid waste recycling and litter prevention programs, and other environmental improvements.

2. In order to assist the Department of Environmental Quality regarding its responsibilities relating to the promotion of recycling of solid waste, each fiscal year the Department shall contract with units of local government, political subdivisions of this state, components of The Oklahoma State System of Higher Education, local and statewide organizations representing

municipalities or counties, or substate planning districts recognized by the Oklahoma Department of Commerce, for up to a total of One Hundred Thousand Dollars ($100,000.00) and to the extent such monies are available for projects promoting the recycling of solid waste. Local governments, political subdivisions of this state, components of The Oklahoma State System of Higher Education, local and statewide organizations representing municipalities and counties and substate planning districts recognized by the Oklahoma Department of Commerce desiring to contract with the Department for such projects shall meet the application requirements of rules promulgated by the Environmental Quality Board and the criteria established by a recycling priorities plan prepared annually by the Department after review and comment by the Solid Waste Management Advisory Council. Except as otherwise provided by this section, contracts for such projects shall not be granted to state agencies.

3. Any litter prevention program shall be developed by the Department in conjunction with the Department of Transportation.

4. a. To the extent that funds are available, the Department may also reimburse any governmental entity for equipment other than motor vehicles or buildings to separate, process, modify, convert or treat solid waste or recovered materials so that the resulting product is being used in a productive manner.

b. The reimbursements shall be from solid waste fee funds and shall not exceed twenty-five percent (25%) of the person's total project costs. No reimbursement may be larger than Twenty Thousand Dollars ($20,000.00).

c. Reimbursements must be expended in accordance with rules promulgated by the Environmental Quality Board and criteria established through the Department's annual recycling priorities plan. The Department shall not expend more than Two Hundred Thousand Dollars ($200,000.00) in each fiscal year for such reimbursements, nor shall the Department reimburse ~~waste~~ used tire recycling facilities that may be eligible for compensation from the ~~Waste~~ Used Tire Recycling Indemnity Fund.

5. a. The Department, in conjunction with the Corporation Commission, the Oklahoma Energy Resources Board and the Oklahoma Conservation Commission, may develop a plan to use suitable portions of the solid waste stream to reclaim Oklahoma lands damaged by oil and gas exploration and production or by mining activities.

b. To the extent that funds are available, the Department may use up to ten percent (10%) of the annual income from the fees received pursuant to the provisions of

this section to implement the plan. The Department may use its discretion in administering the funds for the purpose of this paragraph, but shall keep records subject to audit by the State Auditor and Inspector for good business practices.

6. a. To the extent that funds are available, after having reasonably met other specified uses of the solid waste fund, the Department is authorized to expend up to five percent (5%) of the total annual solid waste fee income for the purpose of making incentive payments to any person, firm or corporation located in this state generating energy by utilizing solid waste landfill methane or steam produced by a commercial incinerator.

b. The Environmental Quality Board shall promulgate rules to administer the provisions of this paragraph.

c. No person, firm or corporation shall be eligible to receive incentive payments as provided in subparagraph a of this paragraph for more than three (3) years. The amount of such payments shall be determined by the Department based on the amount of energy generated and the cost of production.

D. The provisions of this section shall not apply to landfill disposal sites that receive only ash generated by the burning of coal.

E. On or before September 1 of each year, the Department of Environmental Quality shall prepare a report of income and expenditures for the period of each fiscal year in which solid waste fee monies authorized by this section were received and such report shall be distributed to members of the Solid Waste Management Advisory Council for review. By November 1 of each year, the Council shall submit to the Executive Director, Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate its written comments on the comparison of income with program expenditures.

SECTION 11. This act shall become effective July 1, 2011.

SECTION 12. 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.

53-1-7086 CJB 03/03/11