

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 441

By: Bingman and Ivester of the
Senate

6 and

7 McNiel of the House

8 COMMITTEE SUBSTITUTE

9
10 An Act relating to environment and natural resources;
11 amending 27A O.S. 2001, Sections 2-11-403, as
12 renumbered by Section 9, Chapter 230, O.S.L. 2005,
13 and as last amended by Section 1, Chapter 146, O.S.L.
14 2007 and 2-11-405, as renumbered by Section 11,
15 Chapter 230, O.S.L. 2005, and as last amended by
16 Section 2, Chapter 146, O.S.L. 2007 (27A O.S. Supp.
17 2009, Sections 2-11-401.2 and 2-11-401.4), which
18 relate to the Oklahoma Waste Tire Recycling Act;
19 establishing a waste tire recycling fee for certain
20 agricultural tires; specifying a minimum fee;
21 requiring the Department of Environmental Quality to
22 maintain a list of tire weights; prohibiting
23 assessment of a fee on certain retained used tires;
24 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.

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

23 SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-11-403,
24 as renumbered by Section 9, Chapter 230, O.S.L. 2005, and as last

1 amended by Section 1, Chapter 146, O.S.L. 2007 (27A O.S. Supp. 2009,
2 Section 2-11-401.2), is amended to read as follows:

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

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

- 7 (1) with a rim diameter of seventeen and one-half (17
8 1/2) inches rim diameter or less is sold by a
9 tire dealer, there shall be assessed a waste tire
10 recycling fee of One Dollar (\$1.00) per tire,
11 (2) with a rim diameter greater than seventeen and
12 one-half (17 1/2) inches but less than or equal
13 to nineteen and one-half (19 1/2) inches is sold
14 by a tire dealer, there shall be assessed a waste
15 tire recycling fee of Two Dollars and fifty cents
16 (\$2.50) per tire,
17 (3) with a rim diameter greater than nineteen and
18 one-half (19 1/2) inches is sold by a tire
19 dealer, there shall be assessed a waste tire
20 recycling fee of Three Dollars and fifty cents
21 (\$3.50) per tire, and
22 (4) is sold by a tire dealer for use on a motorcycle,
23 motor-driven cycle or motorized bicycle, there
24

1 shall be assessed a waste tire recycling fee of
2 One Dollar (\$1.00) per tire~~-,~~

3 b. ~~At~~ at any time a motor vehicle with a tire rim
4 diameter of seventeen and one-half (17 1/2) inches or
5 less is first registered in this state, there shall be
6 assessed a waste tire recycling fee of One Dollar
7 (\$1.00) per tire~~-,~~

8 c. ~~At~~ at any time a motor vehicle with a tire rim
9 diameter of greater than seventeen and one-half (17
10 1/2) inches but less than or equal to nineteen and
11 one-half (19 1/2) inches is first registered in this
12 state, there shall be assessed a waste tire recycling
13 fee of Two Dollars and fifty cents (\$2.50) per tire,
14 except as otherwise provided by subparagraph e of this
15 paragraph~~-,~~

16 d. ~~At~~ at any time a motor vehicle with a tire rim
17 diameter of greater than nineteen and one-half (19
18 1/2) inches is first registered in this state, there
19 shall be assessed a waste tire recycling fee of Three
20 Dollars and fifty cents (\$3.50) per tire, except as
21 otherwise provided by subparagraph e of this
22 paragraph~~-,~~ and

23 e. ~~At~~ at any time a motorcycle, motor-driven cycle or
24 motorized bicycle is first registered in this state,

1 there shall be assessed a waste tire recycling fee of
2 One Dollar (\$1.00) per tire.

3 2. Motor vehicles registered pursuant to Section 1120 of Title
4 47 of the Oklahoma Statutes shall be exempt from the provisions of
5 this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 3. Up to ten percent (10%) for capital investment reimbursement
12 to waste tire facilities and TDF facilities for the purchase of
13 equipment necessary to utilize waste tires. Only equipment
14 purchased on or after January 1, 1995, shall be eligible. The
15 facilities are eligible for compensation at a rate of Twenty Dollars
16 (\$20.00) per ton of waste tires used. Total reimbursement shall not
17 exceed one hundred percent (100%) of the capital investment in
18 eligible equipment. The facilities may apply for compensation
19 monthly to the Department of Environmental Quality, and shall supply
20 any information required by the Department.

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

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

5 a. facilities that process waste tires by altering the
6 form of the waste tires but do not produce crumb
7 rubber shall not receive compensation until the
8 facility documents the sale and movement of the
9 processed tire material off-site to a third party,

10 b. facilities shall report and certify tire processing
11 activity in terms of weight. The facility shall by
12 sworn affidavit provide to the Department sufficient
13 information to verify that the facility has processed
14 tires and sold processed tires for actual recycling or
15 reuse in accordance with the purposes of the Oklahoma
16 Waste Tire Recycling Act, and

17 c. to be eligible for compensation, a facility shall not
18 have accumulated more processed material than the
19 amount for which the facility has provided financial
20 assurance under its solid waste permit or the amount
21 accumulated from three (3) years of operation,
22 whichever is less;

23 2. a. Compensation to waste tire facilities or TDF
24 facilities at the rate of Fifty-three Dollars (\$53.00)

1 per ton of whole waste tires for the collection and
2 transportation of waste tires from Oklahoma tire
3 dealers, automotive dismantlers and parts recyclers,
4 solid waste landfill sites, and dumps certified by the
5 Department priority cleanup list, and delivering the
6 tires to a waste tire facility or TDF facility. The
7 collection and transportation of waste tires shall be
8 provided by the waste tire facility or TDF facility at
9 no additional cost to the tire dealer or automotive
10 dismantler and parts recycler or to the Fund. The
11 waste tire facility or TDF facility shall collect from
12 any location at which there are at least three hundred
13 waste tires.

14 b. Compensation under this paragraph shall not be payable
15 until the waste tires have been actually processed
16 according to the solid waste permit for the facility
17 or actually used for energy or fuel recovery. A TDF
18 facility that collects and transports whole waste
19 tires shall be eligible for compensation under this
20 paragraph only for those whole waste tires consumed by
21 that facility.

22 c. No tire dealer shall charge any customer any
23 additional fee for the management, recycling, or
24 disposal of any waste tire upon which the waste tire

1 recycling fee has been remitted to the Tax Commission.
2 For customers who choose not to leave a waste tire
3 upon which the waste tire recycling fee has been
4 remitted to the Tax Commission, the tire dealer shall
5 issue a receipt which entitles the customer to deliver
6 the waste tire to the dealer at a later date.

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

- 10 (1) demonstrate to the satisfaction of the Department
11 that the facility is regularly engaged in the
12 collection, transportation and delivery of waste
13 tires to a waste tire facility or to a TDF
14 facility, on a statewide basis, and from each
15 county of the state,
- 16 (2) provide documentation to the Department, signed
17 by a dealer at the time of collection, which
18 certifies by sworn affidavit the total amount of
19 waste tire recycling fees, itemized by month,
20 remitted by the dealer since the date the waste
21 tires of the dealer were last collected, and
- 22 (3) annually demonstrate that at least two percent
23 (2%) of the tires were collected from tire dumps
24 or landfills on the Department priority cleanup

list or community-wide cleanup events approved by
the Department.

e. In lieu of proof of remitted tire recycling fees, the waste tire facility or TDF facility shall accept proof of purchase of a salvage vehicle registered in Oklahoma by an automotive dismantler and parts recycler, licensed pursuant to the Automotive Dismantlers and Parts Recycler Act, for the collection and transportation of up to five waste tires per salvage vehicle purchased on or after January 1, 1996.

f. A waste tire facility or TDF facility shall not be required to collect and transport agricultural equipment tires that are larger than 18.4 x 38 in 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 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

1 tires having a rim diameter less than or equal to
2 seventeen and one-half (17 1/2) inches.

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

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

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

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

18 (4) the applicant reports and certifies the number of
19 tires utilized. The applicant shall by sworn
20 affidavit provide to the Department sufficient
21 information to verify that the applicant has
22 utilized the tires in accordance with the
23 purposes of the Oklahoma Waste Tire Recycling
24 Act,

1 (5) the applicant annually demonstrates that at least
2 two percent (2%) of the tires utilized by the
3 applicant for which compensation is requested
4 were collected from tire dumps or landfills on
5 the Department priority cleanup list or
6 community-wide cleanup events approved by the
7 Department,

8 (6) the applicant demonstrates to the satisfaction of
9 the Department that the applicant is regularly
10 engaged in the collection, transportation and
11 delivery to erosion control projects of waste
12 tires, on a statewide basis, and from each county
13 of the state, at no additional cost to the tire
14 dealer or automotive dismantler and parts
15 recycler or to the Fund, and

16 (7) the applicant provides documentation to the
17 Department, signed by a dealer at the time of
18 collection, which certifies by sworn affidavit
19 the total amount of waste tire recycling fees,
20 itemized by month, remitted by the dealer since
21 the date the waste tires of the dealer were last
22 collected.

23 c. In lieu of proof of remitted tire recycling fees, the
24 applicant shall accept proof of purchase of a salvage

1 vehicle registered in Oklahoma by an automotive
2 dismantler and parts recycler, licensed pursuant to
3 the Automotive Dismantlers and Parts Recycler Act, for
4 the collection and transportation of up to five waste
5 tires per salvage vehicle purchased on or after
6 January 1, 1996.

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

15 e. Any entity deemed eligible for reimbursement under the
16 provisions of this paragraph shall be liable for the
17 erosion control project for a period of five (5)
18 years. During the five-year period, if additional
19 cleanup or remediation of an erosion control project
20 is required due to failure or negligence on the part
21 of the original contractor, the original contractor
22 shall be responsible for cleanup costs and shall not
23 be eligible for any additional compensation from the
24

1 Fund for costs related to that erosion control
2 project;

- 3 4. a. Compensation to a unit of local or county government
4 that submits to the Department for approval a plan for
5 the use of baled waste tires in an engineering
6 project. Compensation shall be at the rate of fifty
7 cents (\$0.50) per tire.
- 8 b. The plan shall be approved by the Department before
9 construction of the project begins.
- 10 c. Any unit of local or county government baling waste
11 tires shall not accumulate more than fifty waste tire
12 bales prior to beginning construction of an approved
13 project.
- 14 d. Waste tires baled pursuant to this paragraph cannot be
15 obtained from tire manufacturers, retailers,
16 wholesalers, retreaders, or automotive dismantlers and
17 parts recyclers.
- 18 e. Any unit of local or county government authorized to
19 receive reimbursement for the use of baled waste tires
20 in an engineering project shall report and certify
21 whole waste tires by number. The governmental unit
22 shall by sworn affidavit provide sufficient
23 information to the Department to verify that the unit
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1 has utilized the tires in accordance with the purposes
2 of the Oklahoma Waste Tire Recycling Act; and

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

9 D. 1. After the allocations under subsections B and C of this
10 section are made, any remaining monies in the Fund shall be
11 available for TDF facilities and waste tire facilities that produce
12 crumb rubber for compensation at the rate of Twenty-nine Dollars
13 (\$29.00) per ton of processed or whole waste tires used for energy
14 or fuel recovery or the production of crumb rubber.

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

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

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

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

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

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

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

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

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