

No. 2002-111

AN ACT

HB 754

Amending the act of December 19, 1996 (P.L.1478, No.190), entitled "An act relating to the recycling and reuse of waste tires; providing for the proper disposal of waste tires and the cleanup of stockpiled tires; authorizing investment tax credits for utilizing waste tires; providing remediation grants for the cleanup of tire piles and for pollution prevention programs for small business and households; establishing the Small Business and Household Pollution Prevention Program and management standards for small business hazardous waste; providing for a household hazardous waste program and for grant programs; making appropriations; and making repeals," adding definitions; further providing for disposal of whole waste tires, for the priority enforcement list and for remediation grants; providing for remediation liens, for an authorization program, for documentation and recordkeeping, for revocation of authorization and for collection programs; authorizing civil penalties; and repealing obsolete provisions relating to tire recycling investment tax credits.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "waste tire" in section 104 of the act of December 19, 1996 (P.L.1478, No.190), entitled, "An act relating to the recycling and reuse of waste tires; providing for the proper disposal of waste tires and the cleanup of stockpiled tires; authorizing investment tax credits for utilizing waste tires; providing remediation grants for the cleanup of tire piles and for pollution prevention programs for small business and households; establishing the Small Business and Household Pollution Prevention Program and management standards for small business hazardous waste; providing for a household hazardous waste program and for grant programs; making appropriations; and making repeals," is amended and the section is amended by adding definitions to read:

Section 104. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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"Energy recovery." *The use of whole or processed waste tires to supplement the combustion of fossil fuels or the combustion of whole or processed waste tires in a resource recovery facility.*

* * *

"Waste tire." *A tire that will no longer be used for the purpose for which it was originally intended. The term includes a tire that has been discarded.*

"Waste tire hauler." *Any person that transports whole used or waste tires in this Commonwealth for business-related purposes. This term does*

not include persons who haul their own waste tires in the course of routine tire replacement.

Section 2. Section 106(a) of the act is amended to read:

Section 106. Disposal of whole waste tires.

(a) Landfill disposal prohibited.—No person shall knowingly mix any whole used or waste tires with solid waste for disposal *in a landfill*. Owners or operators of landfills shall not accept whole used or waste tires for disposal. Nothing in this section shall *be construed*:

(1) *to prohibit the disposal at landfills of occasional whole used or waste tires unknowingly and inadvertently mixed with solid waste[.]; or*

(2) *to preclude the department from such disposal if it determines that such disposal is necessary.*

* * *

Section 3. The act is amended by adding sections to read:

Section 106.1. Authorization program.

(a) *Duty of department.—The department shall establish an authorization program for waste tire haulers.*

(b) *Authorization number to be issued.—The department shall issue an authorization number for each waste tire hauler.*

(c) *Renewal required.—Authorization expiration and renewal shall be determined by the department.*

(d) *Authorization fee.—Each waste tire hauler shall pay an annual authorization fee of \$50. All fees received by the department pursuant to this subsection shall be deposited into the Used Tire Pile Remediation Restricted Account established in section 110 and shall be used by the department for the implementation and management of the authorization program. The department shall evaluate and modify the authorization fee in an amount to cover the actual costs of the department in implementing and managing the authorization program. The department shall publish any such modification as a notice in the Pennsylvania Bulletin.*

(e) *Authorization required.—It shall be unlawful for a waste tire hauler to transport waste tires without obtaining authorization from the department under this section.*

(f) *Nontransferability.—An authorization for a waste tire hauler shall not be transferable.*

(g) *Powers and duties of Environmental Quality Board.—The Environmental Quality Board shall have the power and duty to adopt such regulations of the department as it deems necessary and appropriate to accomplish the purposes and to carry out the provisions of this act.*

Section 106.2. Documentation and recordkeeping.

(a) *Duty of waste tire haulers.—Each waste tire hauler shall maintain records of waste tires transported. The record shall be on a form approved by the department.*

(b) Nature of records to be maintained.—Recordkeeping requirements shall be determined by the department and shall include at least the following:

- (1) The number of waste tires transported.*
- (2) The waste tire hauler authorization number.*
- (3) The location where the waste tires were disposed of or transported to.*

(c) Records retention.—All records shall be retained by the waste tire hauler for a period of five years. The records shall be made available to the department upon request.

Section 106.3. Waste tire registry.

(a) Establishment.—The department shall establish and maintain a registry of authorized waste tire haulers in this Commonwealth. The registry shall include the information required for issuance of an authorization under this section and any other relevant information as the department deems necessary and appropriate. The information in the registry shall be a matter of public record and shall be made readily available to the public.

(b) Toll-free number.—The department shall establish and maintain a toll-free number which any person in this Commonwealth may call to request information contained in the registry established under subsection (a). Any person suspecting a violation of this act may also call this toll-free number to report a suspected violation to the department.

(c) Duty to use authorized hauler.—No person may accept whole used or waste tires from a waste tire hauler that does not have a valid authorization as provided under this act. Failure to comply with this provision shall result in a civil penalty assessment as provided under section 108.1.

Section 106.4. Revocation.

The department may suspend, revoke or deny any authorization issued under this act for a specified length of time to be determined by the department for:

- (1) Failure to maintain a complete and accurate record of waste tires transported.*
- (2) Alteration of recordkeeping documents.*
- (3) Failure to comply with any rule or regulation established by the department under this act or the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.*

Section 4. Section 107 of the act is amended to read:

Section 107. Priority enforcement list.

(a) Development of list of waste tire sites.—Within 90 days of the effective date of this act, the department shall identify and develop a Statewide list of waste tire sites with more than 10,000 waste tires known or estimated to be stockpiled. The department shall rank the waste tire sites according to their potential for creating environmental health and safety

hazards and designate these sites as priority sites to those facilities requesting tax investment credits under section 109.

(b) Maintenance of updated list.—The department shall review and update the priority enforcement list every two years.

(c) Municipal notification.—For the purposes of section 112, the department shall notify in writing the counties and municipalities of the waste tire sites selected to be listed on the priority enforcement list that are located within their borders.

(d) *Additional waste tire sites to be listed.*—*Within one year from the effective date of this subsection, each municipality shall report to the department the existence and location of waste tire sites within its jurisdiction that contain more than 1,500 but less than 10,000 waste tires known or estimated to be stockpiled. Upon receipt of this information, the department shall develop and maintain a Statewide list of waste tire sites containing the amount of waste tires specified in this subsection.*

Section 5. Section 108 heading of the act is amended to read:
Section 108. [Penalties] *Criminal penalties.*

* * *

Section 6. The act is amended by adding a section to read:
Section 108.1. Civil penalties.

(a) *Authority to issue.*—

(1) *In addition to proceeding under any other remedy available at law or in equity for a violation of any provision of this act, any rule or regulation of the department or order of the department or any term or condition of any permit issued by the department, the department may assess a civil penalty upon a person for such violation. Such a penalty may be assessed whether or not the violation was willful or negligent.*

(2) *In determining the amount of the penalty, the department shall consider the willfulness of the violation, damage to air, water, land or other natural resources of the Commonwealth or their uses, cost of restoration and abatement, savings resulting to the person in consequence of such violation and other relevant factors.*

(b) *Notice and appeal.*—

(1) *When the department assesses a civil penalty, it shall inform the person or municipality of the proposed amount of said penalty.*

(2) *The person charged with the penalty shall then have 30 days to pay the penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the person shall within such 30-day period file an appeal of such action with the Environmental Hearing Board.*

(3) *Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.*

(c) *Amount.*—*The maximum civil penalty which may be assessed pursuant to this section is \$25,000 per offense. Each violation for each separate day and each violation of any provision of this act, any rule or*

regulation under this act, any order of the department or any term or condition of a permit shall constitute a separate and distinct offense under this section.

(d) Deposit of penalties collected.—All penalties collected under this section and section 108 shall be deposited into the Used Tire Pile Remediation Restricted Account established in section 110.

Section 7. Sections 109 and 110(c) of the act are repealed.

Section 8. Section 111(e) of the act is amended to read:

Section 111. Remediation grants.

* * *

(e) Limitation.—

(1) Grants under this section shall not be used for the purchase of equipment.

(2) No grant recipient may dispose of whole used or waste tires in landfills if the whole used or waste tires are acceptable for recycling, reuse or energy recovery.

(3) Grant recipients shall make the whole used or waste tires or processed tires available to an appropriate facility for reuse, recycling or energy recovery, including resource recovery.

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Section 9. The act is amended by adding a section to read:

Section 111.1. Remediation liens.

(a) Effect of remediation activity.—The amount of a grant issued under section 111 for remediation that is attributable to or expended on a specific site where the grant recipient conducts remediation activity and the benefits accruing to the land on which the site is located shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the land for any damages by virtue of the remediation activity. This subsection shall not be construed to establish a new right of action or eliminate any existing immunity.

(b) Statement to be filed with prothonotary.—Within six months after the completion of remediation activity by a grant recipient on a site, the department shall itemize the amount of grant moneys expended on remediation of the site and may file a statement thereof in the office of the prothonotary of the county in which the land is situated. The department shall affix to the statement a notarized appraisal by an independent appraiser of the value of the land before and after the remediation if the moneys so expended shall result in a significant increase in property value. The statement shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed on the land.

(c) Amount of lien.—The amount of the lien shall not exceed the amount determined by the appraisal to be the increase in the market

value of the land as a result of the remediation immediately after the grant recipient has completed its work, and the lien shall extend only to that portion of the land directly involved in the remediation activity.

(d) Rights of landowner.—The landowner may proceed as provided in the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code, to petition for a board of view within 60 days of the filing of the lien to determine the increase in the market value of that portion of the land directly involved in the remediation activity. The amount reported by the board of viewers to be the increase in value of the land shall constitute the amount of the lien and shall be recorded with the statement required by subsection (b).

(e) Right of appeal.—Any party aggrieved by the decision of the board of viewers may appeal as provided in the Eminent Domain Code.

(f) Entry and enforcement of lien.—The lien authorized by this section shall be entered in the judgment index and shall be given the effect of a judgment against the land. The lien shall be enforced by the direct issuance of a writ of execution without prosecution to judgment of a writ of scire facias in the manner provided by law for enforcement, collection and enforcement of Commonwealth liens.

(g) Construction.—Entry by a grant recipient upon lands for the purpose of remediation under this act shall not be construed as an act of condemnation of property or of trespass thereon.

Section 10. Section 113 of the act is amended to read:

Section 113. Commonwealth recycling and use of waste tires.

(a) Use of waste tires by Commonwealth agencies.—[Within two years after the effective date of this act] By July 30, 2004, the Department of Conservation and Natural Resources, the Department of Corrections, the Department of Education, the Department of Environmental Protection [and], the Department of General Services, the Department of Transportation, the State System of Higher Education and the State-related universities shall, to the maximum extent practicable and feasible, give due consideration to the use of waste tires in all appropriate construction and engineering activities which are paid with public funds.

(b) Reports.—[Within three years after the effective date of this act, the Department of Conservation and Natural Resources, the Department of Environmental Protection and the Department of Transportation] By July 30, 2004, the Department of Environmental Protection shall submit a report to the Environmental Resources and Energy Committee of the Senate and the Environmental Resources and Energy Committee of the House of Representatives concerning the implementation of this section. The report shall include a description of what actions the agencies have taken in the previous two years to implement this section.

Section 11. The act is amended by adding sections to read:

Section 114. Waste tire collection programs.

(a) *General rule.*—An individual, local government, business, corporation or other organization shall operate waste tire collection programs only in accordance with requirements established by the department.

(b) *Department approval.*—No person, local government, business, corporation or other organization shall establish a program for the collection of whole used or waste tires without approval from the department.

(c) *Qualifications.*—No individual, local government, business, corporation or other organization may be selected to operate a waste tire collection program unless the ability to properly collect, transport and process waste tires is demonstrated to the satisfaction of the department.

(d) *Program recordkeeping.*—Each approved program shall maintain records regarding the collection, transportation and processing of whole used or waste tires. Recordkeeping requirements shall be determined by the department and shall include at least the following:

- (1) *The number of whole used or waste tires collected.*
- (2) *The number of tires transported.*
- (3) *The waste tire hauler authorization number.*

(e) *Availability of records.*—All records shall be made available to the department upon request.

Section 115. Grants for waste tire collection programs.

(a) *General rule.*—The department may provide grants to individuals, local governments, businesses, corporations or other organizations for reimbursement of eligible costs for waste tire collection programs approved by the department.

(b) *Grant disbursement.*—The department shall establish a grant ceiling for each proposed collection program based on the number of tires to be collected and the estimated processing costs.

(c) *Restrictions.*—Grants awarded under this section shall be subject to the following:

(1) *Grant recipients shall apply the funds received from the department only to those purposes and activities authorized by the department or otherwise approved by the department.*

(2) *The department may not award the grants to any individual, local government, business, corporation or other organization that has contributed in any manner to the creation of a waste tire pile.*

(3) *Any additional restrictions which the Environmental Quality Board, by regulation, may designate so long as the restriction is promulgated in regulation.*

(d) *Funding limitation.*—Commencing with the fiscal year beginning July 1, 2002, and continuing through the fiscal year beginning July 1, 2006, the department may not expend more than \$250,000 each fiscal year from the Recycling Fund created by section 706 of the act of July 28,

1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act, for awarding grants under this section.

Section 12. This act shall take effect in 60 days.

APPROVED—The 10th day of July, A.D. 2002.

MARK S. SCHWEIKER