

No. 2006-7

AN ACT

HB 1114

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," further providing for the definition of "waste tire"; defining "recycled tire product" and "waste tire recycling facility"; and further providing for the disposal of whole waste tires, for Environmental Quality Board regulations, for waste tire registry and for remediation liens.

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," amended July 10, 2002 (P.L.781, No.111), 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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"Recycled tire product." *Rubber material derived from waste tires produced at a permitted waste tire recycling facility and intended for beneficial use.*

* * *

"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 by any owner or user even though the tire may have some remaining useful life. A tire becomes a waste tire when it is discarded by any owner or user.*

* * *

“Waste tire recycling facility.” A facility whose purpose is the systemic collection, sorting, storage, recapping or cleaning of waste tires to return them to commerce for use as commodities. The term includes a facility that may use waste reduction, reuse or recycling equipment to process or convert waste tires into a beneficial product or productive use.

Section 2. Section 106 of the act is amended by adding a subsection to read:

Section 106. Disposal of whole waste tires.

* * *

(e) Permit.—No person shall construct, alter, operate or utilize a waste tire recycling facility without a processing permit from the department as required by the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, or in violation of the regulations promulgated thereunder that relate to the storage of waste tires.

Section 3. Sections 106.1(g), 106.3(c) and 111.1 of the act, added July 10, 2002 (P.L.781, No.111), are amended to read:

Section 106.1. Authorization program.

* * *

(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[.], including regulations that:

(1) Encourage the processing of waste tires and beneficial use of waste tires and recycled tire products when the department determines that the processing and use does not harm or present a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(2) Allow the department to determine that waste tires, after processing or when beneficially used, no longer constitute a waste.

(3) Encourage the beneficial use of recycled tire products.

Section 106.3. Waste tire registry.

* * *

(c) Duty to use authorized hauler.—No person may provide whole used or waste tires to a waste tire hauler that does not have a valid authorization as provided under this act. 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 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.]

(b.1) Escrow.—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 inform any person or municipality that has contributed in any manner to the creation of the waste tire pile or that owns the site of the amount of grant moneys that have been expended. The person or municipality charged with the amount

shall then have 30 days to pay the amount in full or, if the person or municipality wishes to contest the amount, its contribution to the waste tire pile or its ownership of the site, either to forward the amount to the department for placement in an escrow account with the State Treasurer or with a bank in this Commonwealth or to post an appeal bond in the amount. The bond must be executed by a surety licensed to do business in this Commonwealth or contain collateral and must be satisfactory to the department. If, through administrative or judicial review of the amount, it is determined that the person or municipality did not contribute to the creation of the waste tire pile or did not own the site or that the amount shall be reduced, the department shall, within 30 days, remit the appropriate amount to the person or municipality. Failure to forward the money or the appeal bond to the department within 30 days shall result in a waiver of all legal rights to contest the contribution of the person or municipality to the creation of the waste tire pile, the ownership of the site or the amount charged against the person or municipality.

(c.1) Lien.—If the person or municipality liable to pay the amount of grant moneys expended on remediation of a site neglects or refuses to pay the same after demand, the amount, together with interest, shall be a judgment in favor of the Commonwealth upon the property of such person or municipality, but only after the same has been entered and docketed of record by the prothonotary where such property is situated. The Commonwealth may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket the same of record in the prothonotary's office, and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof. Any lien on real estate shall have priority second only to the lien of real estate taxes imposed on the land.

(d.1) Limitation on action.—Notwithstanding any other provision of law to the contrary, actions for the recovery of grant moneys expended under this section may be commenced at any time within a period of 20 years from the date it is discovered that the person or municipality contributed, in any manner, to the creation of the waste tire pile.

(e.1) Deposit of amounts collected.—All grant moneys collected under this section shall be deposited into the fund or account from which the grant was issued.

Section 4. The act is amended by adding a section to read:

Section 116. Construction.

The definition of "waste tire recycling facility" in section 104 and the provisions of section 106(e) shall be construed in pari materia with the permitting requirements of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

Section 5. This act shall take effect in 60 days.

APPROVED—The 14th day of February, A.D. 2006.

EDWARD G. RENDELL