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SFA**BILL ANALYSIS**

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House Bill 5380 (Substitute S-1)

Sponsor: Representative David Mead

House Committee: Conservation and Outdoor Recreation

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 3-13-02

CONTENT

The bill would amend Part 169 (Scrap Tires) of the Natural Resources and Environmental Protection Act to do the following:

- **Specify that a person could discard scrap tires only at a registered collection site, a disposal area, an end-user, a scrap-tire processor, a tire retailer, or a scrap tire recycler.**
- **Require a person who arranged for the removal of scrap tires to do so through a registered scrap tire hauler.**
- **Expand record-keeping requirements for scrap tire haulers; require other persons involved in the removal or receipt of scrap tires to keep records; and require records to be maintained for three years.**
- **Reduce the number of full-time equated positions funded by the Scrap Tire Regulatory Fund.**
- **Provide for grants from the Fund to users of scrap tire processed material and to scrap tire end-users.**
- **Require the Michigan Department of Environmental Quality (DEQ) to give priority to funding activities at collection sites with pre-1991 scrap tires and sites posing an imminent health, safety, or environmental threat.**
- **Require the DEQ to prepare an assessment of the impact of the grants on reducing scrap tires.**
- **Increase the criminal penalties for violations of Part 169.**

Following is a detailed description of the bill.

Scrap Tire Disposal & Removal

Currently, a person must not discard a tire on any property that is not in compliance with Sections 16903 and 16904, which regulate collection sites. The bill, instead, would require a person to deliver a scrap tire only to a collection site registered under the Act, a disposal area, an end-user, a scrap tire processor, a tire retailer, or a scrap tire recycler, that complied with Part 169.

Currently, a person must not dispose of a scrap tire in any manner other than as authorized by Part 169, Part 55 (Air Pollution Control), or Part 115 (Solid Waste Management). The bill would delete this provision.

The Act also provides that a person who contracts for the removal of scrap tires must contract with a registered scrap tire hauler. The bill would delete this provision, as well as repeal Section 16902a of the Act, which requires a retailer who receives scrap tires to dispose of them at a registered scrap tire collection site, at a licensed landfill, or by contracting with a registered scrap tire hauler.

Under the bill, a person who by contract, agreement, or otherwise arranged for the removal of scrap tires, would have to do so with a scrap tire hauler who was registered under the Act and who by contract, agreement, or otherwise was obligated to deliver the scrap tires to the destination as identified on the record required by the Act. The bill specifies that this provision would not do the following:

- Prohibit a person who was not operating a commercial business from transporting his or her scrap tires to a site authorized by the bill.
- Prohibit a member of a nonprofit service organization who was participating in a community service project from transporting scrap tires to an authorized site.
- Prohibit the owner of a farm (as defined in the Michigan Right to Farm Act) from transporting scrap tires that originated from his or her farm operation to an authorized location.
- Prohibit a solid waste hauler from transporting solid waste to a disposal area.

(These people and entities also would be excluded from the definition of "scrap tire hauler".)

Currently, "end user" means a person who possesses a permit to burn tires under Part 55; a person who possesses a permit to construct a landfill under Part 115; or a person who only engineers scrap tires into crumb rubber that is used to manufacture products that are sold in the market. "Crumb rubber" means rubber material derived from tires that is less than 1/8 inch by 1/8 inch and is free of all steel and all fiber. The bill would delete the definition of "crumb rubber". The bill would redefine "end-user" as a person who possessed a permit to burn tires under Part 55; the owner or operator of a landfill authorized under its operating license to use scrap tires; or a person who converted scrap tires into scrap tire processed material used to manufacture other products that were sold in the market but did not manufacture those products.

The bill also would amend the definition of "collection site" to include a site that contained one or more pieces of adjacent real property where more than 150 cubic yards of scrap tire processed material were accumulated if the property were owned or leased by a commercial contractor that was authorized to use the scrap tire processed material as an aggregate replacement in a manner approved by a designation of inertness for scrap tires or otherwise approved for such use by the DEQ under Part 115.

The Act defines "scrap tire processor" as a person engaged in the business of storing,

buying, or otherwise acquiring scrap tires, and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires. The bill would refer to a person who was authorized by Part 169 to accumulate scrap tires and who engaged in the business of buying or otherwise acquiring scrap tires and reducing their volume, as currently provided. The Act also states that "scrap tire processor" includes a person who, in addition to processing the scrap tires, incinerates the tires or converts them into a product or another end-use. The bill would delete that provision.

The bill would define "scrap tire recycler" as a person who was authorized by Part 169 to accumulate scrap tires, who acquired scrap tires, and who converted scrap tires into a product that was sold or reused in a manner authorized by Part 169.

Performance Bond

Currently, the person who owns a collection site must maintain a performance bond of at least \$25,000 per quarter acre of outdoor tire storage area, \$2 per square foot of tire storage area in a building, and \$750 for each vehicle used as a tire storage area. The bill would delete the \$750 required for vehicles. The bill specifies that the bond would be required for an end-user who converted scrap tires into processed material used to manufacture other products, but would not be required for a qualifying tire chip storage area.

The Act specifies the purposes for which the DEQ may use a bond, including bringing a collection site into compliance with Part 169. The bill would delete that purpose.

("Qualifying tire chip storage area" would mean one or more locations within a collection site where tire chips were stored if all of the following conditions were met:

- The tire chips were marketable and no larger than two inches by two inches.
- The tire chips were stored pursuant to the Act's requirements for collection sites.
- At least 75% of the scrap tires, by weight or volume, that were stored at the collection site each calendar year were removed from the site to an approved market during that year, and the collection site owner or operator certified compliance

with these provisions on a form approved by the DEQ.

- The areas of the scrap tire collection site that were used for storage of the tire chips were not larger than a total of one acre and those areas were indicated on a survey by a registered professional engineer submitted to the DEQ as part of the collection site registration.)

Scrap Tire Records

The Act requires a scrap tire hauler to maintain a record of each load of scrap tires he or she transports on forms approved by the DEQ. Under the bill, these records would have to be maintained for a period of three years, instead of five years as presently required.

The Act requires these records to contain at least the name, address, telephone number, authorized signature, and registration number of the scrap tire hauler; and the name, address, telephone number, and authorized signature of the person who contracts for the removal of scrap tires. The bill also would require the records to contain the name, address, telephone number, and upon delivery, the authorized signature of the owner or operator of the collection site, landfill, end-user, scrap tire processor, tire retailer, or scrap tire recycler, where the tires were to be delivered.

Under the bill, a person, other than a property owner removing seven or fewer scrap tires from his or her property, who by contract, agreement, or otherwise arranged for the removal of scrap tires from a property under his or her control, including an end-user, would have to maintain at the site of removal all records obtained from a registered scrap tire hauler and all records received from an owner, operator, or authorized agent of an authorized location. That person, however, would have no affirmative duty to obtain these records and could not be held liable for the failure to receive them. These records would have to be maintained at the site of removal for three years and be made available to the DEQ upon request during normal business hours.

A person, other than a solid waste hauler or a scrap tire hauler who received scrap tires, including an end-user, would have to maintain a record of all scrap tires voluntarily received

by contract or agreement. These records would have to be maintained for three years and be made available to the DEQ or a peace officer at reasonable hours. These records would have to contain all of the information required of a scrap tire hauler.

(Under Section 16902a, which the bill would repeal, a retailer who receives scrap tires must maintain records indicating the number of tires and their final disposition. The retailer must keep the records for five years and make them available, upon request, to the DEQ or a law enforcement officer at reasonable hours.)

Upon delivery of scrap tires by a registered scrap tire hauler to an authorized location, the owner, operator, or authorized agent of that location would have to sign the record, indicating acceptance of the scrap tires, and provide a copy to the person delivering the scrap tires. Within 30 days, the owner, operator, or agent would have to forward a copy of the signed record to the person who arranged for the removal of the scrap tires being delivered.

Scrap Tire Regulatory Fund

Employment Costs. Currently, the Act specifies that not more than 50% of the money in the Scrap Tire Regulatory Fund may be used annually for the DEQ's costs of administering Part 169, or for the employment of not more than 13.5 full-time equated positions (FTEs). The bill would delete the 50% limit and specify that money could not be spent for the employment of more than the following:

- For fiscal years 2001-02 to 2004-05, 13.5 FTEs.
- For fiscal year 2005-06, 12.5 FTEs.
- When accumulations of scrap tires at all scrap tire sites were below 2 million tires, 10.5 FTEs.
- When accumulations of scrap tires at all sites were eliminated, 8.5 FTEs.

Grants. Currently, money in the Fund may be spent for the cleanup or collection of abandoned scrap tires accumulated before January 1, 1991, at collection sites. The bill would delete the reference to tires accumulated before 1991, but would require the DEQ to give priority to funding these activities at collection sites in which the scrap

tires were accumulated before January 1, 1991, and to collection sites that posed an imminent threat to public health, safety, welfare, or the environment. The DEQ would have to make every effort to assure that all abandoned scrap tires accumulated before 1991 were cleaned up or collected by September 30, 2009.

Of this money, up to \$500,000 could be spent each year for reimbursement grants to users of scrap tire processed material to support the development of increased markets for scrap tire material other than tire-derived fuel usage. A grant issued under this provision would have to be for projects that demonstrated new uses for scrap tire processed material in manufactured products, such as placement of scrap tire processed material in modified asphalt, molded rubber products, extruded rubber products, and aggregate replacement materials. A grant also would have to reimburse the scrap tire processed material user up to 50% of the cost of purchasing scrap tire processed material, but could not exceed a reimbursed cost of \$50 per ton. The material, however, would have to be purchased from Michigan scrap tire processors that produced the material under a grant issued under these provisions. A grant could not be issued for the use of scrap tire processed material as a soil amendment.

("Scrap tire processed material" would mean rubber material derived from tires that was marketable and no larger than two inches by two inches. It also would include larger material if the rubber material were produced by a scrap tire processor pursuant to a written contract that provided for the quantity and quality of the material and a timeframe in which the volume of the material was to be provided, and if the contract were made available to the DEQ upon request.)

In addition, this Fund money could be spent for grants to end-users who received scrap tires or tire chips. As a condition of such a grant, however, the end-user would have to agree to purchase one ton of scrap tires or tire chips for every ton of scrap tires or tire chips received as a result of the grant. The purchase would have to be at the minimum rate of the established statewide market price.

Grant applications would have to be submitted on a form approved by the DEQ and contain

the information required by the Department. For grants to users of scrap tire processed material, the DEQ would have to publish criteria upon which the grants would be issued and make that information available to applicants.

Department Assessment. Within four years after the bill's effective date, the DEQ would have to prepare an assessment of the impact that the grants had on the reduction in the surplus of scrap tires in the State and on the establishment of new end uses for scrap tires. A copy of the assessment would have to be provided to the standing committees of the Senate and House with jurisdiction over subject matter pertaining to natural resources and the environment.

Penalties

Currently, a person who violates Part 169 is guilty of a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$10 for each tire that is disposed of or accumulated in violation of Part 169, or both. The bill, instead, provides that a person who violated Part 169 when fewer than 50 tires were involved would be subject to imprisonment for up to 90 days, a fine of at least \$200 but not more than \$500, or both. If 50 or more tires were involved, the offense would be punishable by up to 180 days' imprisonment, a maximum fine of at least \$500 but not more than \$10,000, or both, for each violation. A person convicted of a second or subsequent violation would be guilty of a misdemeanor punishable by up to one year's imprisonment, a fine of at least \$1,000 but not more than \$25,000, or both, for each violation.

Currently, the Act specifies that the court may order a person who violates Part 169 to perform up to 100 hours of community service in addition to, or as an alternative to, the penalties described above. The bill would delete the language allowing community service to be ordered as an alternative.

Other Provisions

The Act's collection site regulations require an earthen berm at least five feet high to be positioned outside of the fence in which the tires are enclosed. The bill would require that an earthen berm at least five feet high

completely enclose the tire storage area except to allow for necessary ingress and egress from roadways and buildings.

The bill would repeal Section 16907, which required the DEQ to submit a report to the Legislature regarding scrap tires by January 1996.

MCL 324.16901 et al.

Legislative Analyst: Nobuko Nagata

FISCAL IMPACT

The bill would have no impact on State revenues or expenditures. The existing level of Department of Environmental Quality expenditures and revenues for the Scrap Tire Program would not be affected by the bill. Fiscal year 2001-02 appropriations for the Scrap Tire Program from the Scrap Tire Regulatory Fund are approximately \$1.8 million, from which \$600,000 is appropriated for grants to reduce scrap tire accumulations. The Program currently operates with 12.0 to 13.0 FTE positions. This number would be expected to fall as scrap tire accumulations decreased.

The bill would have an indeterminate impact on local governments. There are no data available to indicate how many people are convicted of misdemeanors for illegally disposing of scrap tires. Local units incur the cost of probation and incarceration, which varies by county from \$27 to \$65 per day. Libraries would receive any additional penal fine revenue raised under this bill.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.