

Act No. 496
Public Acts of 2002
Approved by the Governor
July 2, 2002
Filed with the Secretary of State
July 3, 2002
EFFECTIVE DATE: July 3, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Rep. Mead

Reps. Anderson, Basham, Birkholz, Bisbee, Bovin, Bob Brown, Cameron Brown, Callahan, Cassis, Caul, Clarke, Daniels, DeRossett, Drolet, Ehardt, Faunce, Garza, George, Gielegem, Gilbert, Hager, Howell, Julian, Koetje, Kooiman, Kowall, Kuipers, Lemmons, Meyer, Middaugh, Mortimer, Murphy, Newell, O'Neil, Pappageorge, Pestka, Phillips, Plakas, Pumford, Richardville, Rocca, Schauer, Shackleton, Shulman, Spade, Stallworth, Stamas, Stewart, Switalski, Tabor, Vander Roest, Vear, Wojno and Zelenko
named co-sponsors

ENROLLED HOUSE BILL No. 5380

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 16901, 16902, 16903, 16904a, 16905, 16906, 16908, and 16909 (MCL 324.16901, 324.16902, 324.16903, 324.16904a, 324.16905, 324.16906, 324.16908, and 324.16909), sections 16901 and 16903 as amended and section 16904a as added by 1997 PA 17 and section 16908 as amended by 1995 PA 268, and by adding sections 16903b and 16903c; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 16901. As used in this part:

(a) "Abandoned scrap tires" means an accumulation of scrap tires on property where the property owner is not, as determined by the department, responsible in whole or in part for the accumulation of the scrap tires. For the purposes of this subdivision, an owner who purchased or willingly took possession of an existing scrap tire collection site shall be considered by the department to be responsible in whole or in part for the accumulation of the scrap tires.

(b) "Bond" means a performance bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, or an irrevocable letter of credit, in favor of the department.

(c) "Collection site" means a site, other than a disposal area licensed under part 115, a racecourse, or a feed storage location, that contains any of the following:

(i) One or more pieces of adjacent real property where 500 or more scrap tires are accumulated and that is not associated with a retail operation as provided in subparagraph (ii), an automotive recycler as provided in subparagraph (iii), or a commercial contractor as provided in subparagraph (iv).

(ii) One or more pieces of adjacent real property where 1,500 or more scrap tires are accumulated if that property is owned or leased by a person who is a retailer and is not associated with an automotive recycler as provided in subparagraph (iii).

(iii) One or more pieces of adjacent real property where 2,500 or more scrap tires are accumulated if that property is owned or leased by a person who is an automotive recycler as defined in section 2a of the Michigan vehicle code, 1949 PA 300, MCL 257.2a.

(iv) One or more pieces of adjacent real property where more than 150 cubic yards of scrap tire processed material is accumulated if that property is owned or leased by a commercial contractor that is 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 is otherwise authorized for such use by the department under part 115.

(d) "Department" means the department of environmental quality.

(e) "End-user" means any of the following:

(i) A person who possesses a permit to burn tires under part 55.

(ii) The owner or operator of a landfill that is authorized under the landfill's operating license to use scrap tires.

(iii) A person who converts scrap tires into scrap tire processed material used to manufacture other products that are sold in the market but does not manufacture the products that are sold in the market.

(f) "Feed storage location" means a location on 1 or more pieces of adjacent real property containing a commercially operated farming operation where not more than 3,000 scrap tires are used for the purpose of securing stored feed.

(g) "Fund" means the scrap tire regulatory fund created in section 16908.

(h) "Landfill" means a landfill as defined in section 11504 that is licensed under part 115.

(i) "Racecourse" means a commercially operated track for go-carts, vehicles, off-road recreational vehicles, or motorcycles that uses not more than 3,000 scrap tires for bumpers along the track for safety purposes.

(j) "Retailer" means a person who sells or offers for sale new, retreaded, or remanufactured tires to consumers in this state.

(k) "Scrap tire" means a tire that is no longer being used for its original intended purpose including, but not limited to, a used tire, a reusable tire casing, or portions of tires. Scrap tire does not include a vehicle support stand.

(l) "Scrap tire hauler" means a person who, as part of a commercial business, transports scrap tires. Except as otherwise provided in this section, a person who transports more than 7 scrap tires in any truckload shall be considered to be in the commercial business of transporting scrap tires. Scrap tire hauler does not include any of the following:

(i) A person who is not operating a commercial business who is transporting his or her own tires to a location authorized in section 16902(1).

(ii) A member of a nonprofit service organization who is participating in a community service project and is transporting scrap tires to a location authorized in section 16902(1).

(iii) The owner of a farm as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472, who transports only scrap tires that originated from his or her farm operation or is intended for use in a feed storage location.

(iv) A solid waste hauler as defined in part 115 that is transporting solid waste to a disposal area licensed under part 115.

(m) "Scrap tire processed material" means rubber material derived from tires that is marketable and no larger than 2 inches by 2 inches in size. Scrap tire processed material also includes rubber material derived from tires that is larger than 2 inches by 2 inches if the rubber material was produced by a scrap tire processor pursuant to a written contract that provides for the quantity and the quality of the material and a time frame in which the volume of material is to be provided, and the contract is made available to the department upon request.

(n) "Scrap tire processor" means a person who is authorized by this part to accumulate scrap tires and is engaged in the business of buying or otherwise acquiring scrap tires and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires.

(o) "Scrap tire recycler" means a person who is authorized by this part to accumulate scrap tires, who acquires scrap tires, and who converts scrap tires into a product that is sold or reused in a manner authorized by this part.

(p) "Solid waste hauler" means a solid waste hauler as defined in part 115 who transports less than 25% by weight or volume of scrap tires along with other solid waste in any truckload.

(q) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a tractor or other farm machinery or of a vehicle.

(r) "Tire storage area" means a location within a collection site where tires are accumulated.

(s) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices exclusively moved by human power or used exclusively upon stationary rails or tracks and excepting a mobile home as defined in section 2 of the mobile home commission act, 1987 PA 96, MCL 125.2302.

(t) "Vehicle support stand" means equipment used to support a stationary vehicle consisting of an inflated tire and wheel that is attached to another wheel.

Sec. 16902. (1) A person shall deliver a scrap tire only to a collection site registered under section 16904, a disposal area licensed under part 115, an end-user, a scrap tire processor, a tire retailer, or a scrap tire recycler, that is in compliance with this part.

(2) A person who by contract, agreement, or otherwise arranges for the removal of scrap tires shall do so with a solid waste hauler or a scrap tire hauler who is registered pursuant to section 16905(1) and who by contract, agreement, or otherwise is obligated to deliver the scrap tires to the destination as identified in section 16905(3)(c).

(3) Subsection (2) does not do any of the following:

(a) Prohibit a person who is not operating a commercial business from transporting his or her scrap tires to a site authorized by subsection (1).

(b) Prohibit a member of a nonprofit service organization who is participating in a community service project from transporting scrap tires to a site authorized by subsection (1).

(c) Prohibit the owner of a farm as defined in section 2 of the Michigan right to farm act, 1982 PA 93, MCL 286.472, from transporting scrap tires that originated from his or her farm operation to a location authorized by subsection (1).

(d) Prohibit a solid waste hauler as defined in part 115 from transporting solid waste to a disposal area licensed under part 115.

Sec. 16903. (1) A person who owns or operates a collection site where less than 2,500 scrap tires have been accumulated that are not stored in a building or stored in a covered vehicle shall comply with all of the following:

(a) Only tires shall be accumulated in a tire storage area.

(b) Except as provided in subdivision (e), the tires shall be accumulated in piles no greater than 15 feet in height with horizontal dimensions no greater than 200 by 40 feet.

(c) Except as provided in subdivision (e), the tires shall not be within 20 feet of the property line or within 60 feet of a building or structure.

(d) Except as provided in subdivision (e), there shall be a minimum separation of 30 feet between tire piles. The open space between tire piles shall at all times be free of rubbish, equipment, and other materials.

(e) Tire piles shall be accessible to fire fighting equipment. If the requirement of this subdivision is met, the local fire department that serves the jurisdiction in which the collection site is located may approve a variance from the requirements of subdivisions (b), (c), and (d). Such an approval, if granted, shall be in writing.

(f) Tires, including shredded tires, shall be isolated from other stored materials that may create hazardous products if there is a fire, including, but not limited to, lead acid batteries, fuel tanks, solvent barrels, and pesticide containers.

(g) The collection site shall be subject to an annual inspection and additional inspections at any reasonable time by the local fire department that serves the jurisdiction in which the collection site is located.

(h) All persons employed to work at the collection site shall be trained in emergency response operations. The owner or operator of the collection site shall maintain training records and shall make these records available to the local fire department that serves the jurisdiction in which the collection site is located.

(i) Except as provided in section 16903b, the person who owns a collection site shall maintain a performance bond in favor of the department. The amount of the bond shall be not less than the sum of \$25,000.00 per quarter acre, or fraction thereof, of outdoor tire storage area, and notwithstanding the limitation provided in subsection (1), \$2.00 per square foot of tire storage area in a building. However, for collection sites with fewer than 2,500 tires, the bond shall not exceed \$2,500.00. A bond is not required under this subdivision for a qualifying tire chip storage area. A person who elects to use a certificate of deposit as bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department. A person who elects to post cash as bond shall accrue interest on that bond at the annual rate of 6%, to be accrued quarterly, except that the interest rate payable to an applicant shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the applicant upon release of the bond by the department. Any interest greater than 6% shall be deposited into the fund. The department may utilize a bond required under this part for removing scrap tires from a collection site, for other costs of cleanup at the collection site, and for costs of fire suppression and costs associated with responding to a fire or an emergency at a collection site, in case of an emergency at the collection site, insolvency of the collection site owner, or if the owner or operator of the collection site fails to comply with the requirements of this section and does not cause the removal of the tires at the direction of a court of competent jurisdiction. As used in this subdivision, "qualifying tire chip storage area" means 1 or more locations within a collection site where tire chips are stored if all of the following conditions are met:

(i) The tire chips are marketable and no larger than 2 inches by 2 inches in size.

(ii) The tire chips are stored in accordance with the requirements of section 16903.

(iii) Not less than 75% of the scrap tires, by weight or volume, that are stored at the collection site each calendar year are removed from the collection site to an approved market during that year, and the collection site owner or operator certifies compliance with this subparagraph on a form approved by the department.

(iv) The areas of the scrap tire collection site that are used for storage of the tire chips are not larger than a total of 1 acre and those areas are indicated on a survey by a registered professional engineer submitted to the department as part of the collection site registration.

(2) A person who owns or operates a collection site where at least 2,500 but less than 100,000 scrap tires have been accumulated that are not stored in a building shall comply with all of the following:

(a) All of the requirements of subsection (1).

(b) The tire storage area shall be completely enclosed with a fence that is at least 6 feet tall with lockable gates and that is designed to prevent easy access.

(c) An earthen berm not less than 5 feet in height shall completely enclose the tire storage area except to allow for necessary ingress and egress from roadways and buildings.

(d) The collection site shall contain sufficient drainage so that water does not pool or collect on the property.

(e) The approach road to the tire storage area and on-site access roads to the tire storage area shall be of all-weather construction and maintained in good condition and free of debris and equipment so that it is passable at all times for fire fighting equipment vehicles.

(f) Tire storage areas shall be mowed regularly or otherwise kept free of weeds, vegetation, and other growth at all times.

(g) An emergency procedures plan shall be prepared and displayed at the collection site. The plan shall include telephone numbers of the local fire and police departments. The plan shall be reviewed by the local fire department prior to being posted.

(h) Scrap tires shall not be accumulated in excess of 10,000 cubic yards of scrap tires per acre.

(3) A person who owns or operates a collection site where 100,000 or more scrap tires have been accumulated that are not stored in a building shall comply with all of the requirements of subsections (1) and (2) and that person shall operate as a scrap tire processor.

Sec. 16903b. (1) Subject to subsections (2) and (3), the owner of a collection site that processes tires who has been in compliance with the site requirements for at least 1 year is exempt from the requirement to obtain a performance bond under section 16903(1)(i).

(2) The exemption provided for in subsection (1) applies to tire storage areas at the collection site containing not more than the sum of the highest number of scrap tires accumulated at the collection site during the previous 1-year period plus 10% of the amount of the scrap tires that were removed to an end-user from the collection site during the previous 1-year period.

(3) If the department determines that the owner of a collection site is not in compliance with the site requirements, the department shall deliver to the owner of the collection site a notice of noncompliance. If within 60 days after receipt of that notice the owner does not bring the collection site into compliance with the site requirements, the owner shall comply with section 16903(1)(i). Once an owner is required to obtain a performance bond in compliance with section 16903(1)(i), the performance bond shall be maintained unless the owner brings the collection site into compliance with the site requirements and maintains compliance with the site requirements for a 1-year period.

(4) As used in this section, "site requirements" means the requirements of section 16903(1)(a), (b), (c), (d), (e), and (f).

Sec. 16903c. (1) The owner or operator of a collection site shall ensure that tires at a collection site are maintained in a manner that limits the potential of mosquito breeding by complying with 1 or more of the following:

(a) The tires shall be covered by plastic sheets or other impermeable barriers to prevent the accumulation of precipitation.

(b) The tires shall be chemically treated to eliminate mosquito breeding.

(c) The tires shall be baled, shredded, or chipped into pieces no larger than 4 inches by 6 inches and stored in piles that allow complete water drainage.

(2) A person who violates this section is responsible for the payment of a civil fine of not more than \$400.00.

(3) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

Sec. 16904a. (1) Except as provided in subsection (2), an end-user is exempt from this part for scrap tires stored on the site of the end-user if not less than 75% of the scrap tires, by weight or volume, that are stored on site each calendar

year are recycled or used for resource recovery during that year, and the end-user annually certifies his or her compliance with this section on a form approved by the department.

(2) All end-users shall comply with the requirements of section 16906.

Sec. 16905. (1) By January 31 of each year, a scrap tire hauler shall annually register with the department on a form provided by, and containing the information required by, the department. A scrap tire hauler who does not provide all of the information required by the department shall not be considered registered under this part.

(2) A scrap tire hauler when transporting scrap tires shall have in his or her possession a copy of the current unexpired scrap tire hauler registration and shall present it upon demand of a peace officer. The scrap tire hauler registration number issued by the department shall be visibly displayed on a vehicle transporting scrap tires.

(3) A scrap tire hauler shall maintain a record of each load of scrap tires he or she transports on forms approved by the department. These records shall be maintained for a period of 3 years and shall be made available, upon request, to the department or to a peace officer at reasonable hours. These records shall contain at least the following information:

(a) The name, address, telephone number, authorized signature, and registration number of the scrap tire hauler.

(b) The name, address, telephone number, and authorized signature of the person who contracts for the removal of the scrap tires.

(c) 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 are to be delivered.

(d) The date of removal and the number of scrap tires being transported.

(4) A scrap tire hauler shall not dispose of scrap tires at a location other than the location identified on the record required by subsection (3)(c).

(5) The original record as required by subsection (3) shall be in the possession of the scrap tire hauler during the actual transportation of the scrap tires. A copy of the record provided for in subsection (3) shall be provided to the person who contracts for the removal of scrap tires at the time of removal of the tires from the originating location. A copy shall also be provided to the registered scrap tire collection site, the landfill, end-user, scrap tire processor, tire retailer, or scrap tire recycler to which the scrap tires are delivered at the time of delivery.

Sec. 16906. (1) A person, other than a property owner removing 7 or fewer scrap tires from his or her property, who by contract, agreement, or otherwise arranges for the removal of scrap tires from a property under his or her control, including an end-user, shall maintain at the site of removal all records obtained from a registered scrap tire hauler pursuant to section 16905(5) and all records received from an owner, operator, or authorized agent of a location pursuant to subsection (3). A person who by contract, agreement, or otherwise arranges for the removal of scrap tires from a property under his or her control has no affirmative duty to obtain these records and shall not be held liable for the failure to receive such records. These records shall be maintained at the site of removal for a period of 3 years and shall be made available to the department upon request during normal business hours.

(2) A person, other than a solid waste hauler or a scrap tire hauler who receives scrap tires, including an end-user, shall maintain a record of all scrap tires received from a scrap tire hauler by contract, agreement, or otherwise. These records shall be maintained for a period of 3 years and shall be made available upon request to the department or a peace officer at reasonable hours. These records shall contain all of the information required of a scrap tire hauler in section 16905(3).

(3) Upon delivery of scrap tires by a scrap tire hauler by contract, agreement, or otherwise to a location authorized under section 16902, the owner, operator, or authorized agent of that location shall sign the record, indicating acceptance of the scrap tires, and provide a copy of the signed record to the person delivering the scrap tires and shall within 30 days forward a copy of the signed record to the person who by contract, agreement, or otherwise arranged for the removal of the scrap tires being delivered.

Sec. 16908. (1) The scrap tire regulatory fund is created in the state treasury. The fund shall receive money as provided by law and any gifts or contributions to the fund. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used, upon appropriation, for all of the following purposes:

(a) For administrative costs of the department associated with this part including the implementation and enforcement of this part. However, money shall not be expended under this subdivision for the employment of more than the following:

(i) For state fiscal year 2002, 13.5 full-time equated positions.

(ii) For state fiscal year 2003, 12 full-time equated positions.

(iii) For state fiscal year 2004 and each subsequent state fiscal year, 11 full-time equated positions.

(b) For the administrative costs of the secretary of state associated with the collection of the tire disposal surcharge pursuant to section 806 of the Michigan vehicle code, 1949 PA 300, MCL 257.806.

(c) For the cleanup or collection of abandoned scrap tires and scrap tires at collection sites. The department shall give priority to funding activities under this subdivision at collection sites in which the scrap tires were accumulated prior to January 1, 1991 and to collection sites that pose an imminent threat to public health, safety, welfare, or the environment. The department shall make every effort to assure that all abandoned scrap tires accumulated at collection sites prior to January 1, 1991 are cleaned up or collected by September 31, 2009.

(3) Money expended under subsection (2)(c) may be expended for both of the following:

(a) Not more than \$500,000.00 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 subsection shall be for projects that demonstrate 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 under this subdivision shall reimburse the scrap tire processed material user up to 50% of the cost of purchasing scrap tire processed material, but shall not exceed a reimbursed cost of \$50.00 per ton. However, the scrap tire processed material purchased shall be purchased from Michigan scrap tire processors that produce scrap tire processed material under a grant issued under subsection (2)(c).

(b) For grants to end-users who receive scrap tires or tire chips. However, as a condition of a grant under this subdivision, an end-user who receives a grant under this subdivision shall agree to purchase 1 ton of scrap tires or tire chips for every 1 ton of scrap tires or tire chips received as a result of the grant. The purchases shall be at the minimum rate of the established statewide market price.

(4) Applications for grants under subsection (3) shall be submitted on a form approved by the department and containing the information required by the department. For grants under subsection (3)(a), the department shall publish criteria upon which the grants will be issued and shall make that information available to grant applicants.

(5) Not later than 4 years after the effective date of the amendatory act that added this subsection, the department shall prepare an assessment of the impact that the grants under subsection (3)(a) have 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 this assessment shall be provided to the standing committees of the senate and the house of representatives with jurisdiction over subject matter pertaining to natural resources and the environment.

(6) The department shall annually report to the standing committees of the senate and house of representatives with jurisdiction over subject matter pertaining to natural resources and the environment on the utilization of revenues of the fund.

Sec. 16909. (1) A person who violates this part when fewer than 50 tires are involved is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$200.00 or more than \$500.00, or both.

(2) A person who violates this part when 50 or more tires are involved is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not less than \$500.00 or more than \$10,000.00, or both, for each violation.

(3) A person convicted of a second or subsequent violation of this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not less than \$1,000.00 or more than \$25,000.00, or both, for each violation.

(4) In addition to any other penalty provided for in this section, the court may order a person who violates this part to perform not more than 100 hours of community service.

(5) For any violation of this part, each day that a violation continues may constitute a separate violation.

(6) A peace officer may issue an appearance ticket as described and authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g, to a person who is in violation of this part.

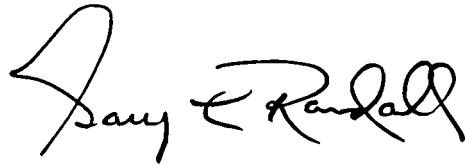
(7) This section does not apply to a violation of section 16903c.

(8) The penalties provided for in this section shall not be applied against a person in violation of section 16903(1)(a), (b), (c), (d), (f), or (i) if the person is in compliance with these provisions within 60 days after the effective date of the amendatory act that added this subsection and the person maintains compliance with those provisions. This subsection does not apply to a person who, prior to the effective date of the amendatory act that added this subsection, was convicted under this section.

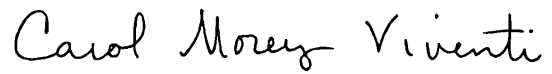
Enacting section 1. Section 16902a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16902a, is repealed.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1324 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.