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BILL ANALYSIS

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Senate Bills 1418 through 1424 (as enrolled)  
House Bills 6474 through 6477 (as enrolled)

**PUBLIC ACTS 520 through 526 of 2006**  
**PUBLIC ACTS 527 through 530 of 2006**

Sponsor: Senator Raymond E. Basham (S.B. 1418)  
Senator Patricia L. Birkholz (S.B. 1419 & 1422)  
Senator Mark H. Schauer (S.B. 1420)  
Senator Ron Jelinek (S.B. 1421)  
Senator Michelle A. McManus (S.B. 1423 & 1424)  
Representative Phillip Pavlov (H.B. 6474)  
Representative Matthew Gillard (H.B. 6475)  
Representative David Palsrok (H.B. 6476)  
Representative Fred Miller (H.B. 6477)

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Natural Resources, Great Lakes, Land Use, and Environment

Date Completed: 1-10-07

**CONTENT**

**Senate Bills 1418 through 1423**  
**amended Part 169 (Scrap Tires) of the**  
**Natural Resources and Environmental**  
**Protection Act (NREPA) to do the**  
**following:**

- Allow the delivery of scrap tires to a location that has legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site.
- Allow a person to arrange for the removal of scrap tires with a person hauling only a commodity or a retreader hauling only tire casings, in addition to a registered scrap tire hauler or a solid waste hauler.
- Require scrap tires to be stored in a tire storage area identified on a scrap tire collection site registration application map.
- Prohibit scrap tires from being placed in open spaces between tire piles or used to construct on-site roads, but create an exception for scrap tires that are a commodity.
- Exempt commodity storage areas, rather than qualifying tire chip storage areas, from the requirement for a performance bond.

- Delete an exemption from the performance bond requirement for a collection site storage area that contains the highest number of scrap tires accumulated during the previous year plus 10% of the number removed during that year.
- Provide that an on-site access road is in violation of maintenance requirements, if a local fire department submits a determination that the road does not ensure access for emergency vehicles.
- Require a lien in favor of the State to be placed on property affected by the removal of tires from a collection site where scrap tires have accumulated after January 1, 1991.
- Revise provisions permitting the Scrap Tire Regulatory Fund to be used for grants supporting the development of markets for scrap tires; and allow grants for equipment purchases or research and development.
- Require the Department of Environmental Quality (DEQ), every three years, to report to the Legislature on the effectiveness of Part 169 in encouraging the reuse of

scrap tires and ensuring their safe storage.

- Require the DEQ Director to appoint a scrap tire advisory committee to advise the Department on the implementation of Part 169.

**Senate Bill 1424** amended the Michigan Vehicle Code to postpone the sunset on the scrap tire disposal surcharge from December 31, 2007, to December 31, 2012.

**House Bills 6474 through 6477** amended Part 169 of NREPA to do the following:

- Require a person who owns a portable shredding operation to register with the DEQ, and revise registration requirements for collection sites.
- Provide for a lien in favor of the State upon a collection site that has been the subject of cleanup activity by the State for tires accumulated after January 1, 1991, and allow the Attorney General to seek additional liens to cover cleanup costs.
- Establish record-keeping requirements for retreaders.
- Allow the DEQ or a peace officer to enter and inspect a tire retail establishment, a vehicle owned or operated by a scrap tire hauler for transporting scrap tires, or a collection site or other place where scrap tires are present.

The bills were tie-barred to each other, and took effect on December 29, 2006. They are described below in further detail.

### **Senate Bill 1418**

#### Definitions

The bill added definitions of terms used in the legislation, including the term "commodity", which means crumb rubber, tire chips, a ring or slab cut from a tire for use as a weight, or a product die-cut or punched from a tire, or any other product that, as determined by the DEQ based on the product's production cost and value, is not likely to result in an accumulation at the site of production or use, that poses a threat to public health or the environment. A product is not a commodity unless it meets

published national standards or specifications that the DEQ determines are relevant to accomplishing the purposes of Part 169.

Additional new terms include "automotive recycler", "commodity storage area", "portable shredding operation", and "retreader".

The bill also revised the definitions of several existing terms, including "collection site", "end-user", "scrap tire hauler", and "scrap tire processor". The bill deleted the definitions of "scrap tire processed material" and "scrap tire recycler".

In addition, the bill provides that a reference in Part 169 to a number of scrap tires means either of the following, or an equivalent combination of them:

- That number of whole tires or reusable tire casings.
- A quantity of a commodity or tire shreds equivalent in weight to that number of whole tires.

#### Criminal Penalties

A person who violates Part 169 when fewer than 50 tires are involved is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of at least \$200 but not more than \$500. Under the bill, this penalty applies for each violation.

When 50 or more tires are involved, the offense is a misdemeanor punishable by up to 180 days' imprisonment and/or a fine of at least \$500 but not more than \$10,000 for each violation. The bill refers to "scrap tires", rather than "tires", in both penalty provisions.

These penalties, and the penalty for subsequent violations, do not apply to a person who violates certain provisions that pertain to the owner or operator of a collection site where fewer than 2,500 scrap tires are accumulated, if the person was in compliance with those provisions by September 1, 2002, and maintains compliance. (The provisions include restrictions on the dimensions of piles, their proximity to a property line or building, and the distance between piles, as well as requirements that tire piles be accessible to fire-fighting equipment and be isolated from

other stored materials that may create hazardous products if there is a fire.)

The bill extended this exemption to an owner or operator who complies with a requirement to store scrap tires in the tire storage area identified on the scrap tire collection site registration application map and approved by the DEQ. (This requirement was added by Senate Bill 1420.)

### **Senate Bill 1419**

#### Scrap Tire Delivery

Previously, a person could deliver a scrap tire only to one of the following:

- A collection site registered under Part 169.
- A disposal area licensed under Part 115 (Solid Waste Management).
- An end-user.
- A scrap tire processor.
- A tire retailer.
- A scrap tire recycler.

Under the bill, a person also may deliver to a location that has legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site. The bill deleted reference to a scrap tire recycler.

(Under Senate Bill 1418, "collection site" means a site, other than a disposal area licensed under Part 115, a racecourse, or a feed storage location, consisting of a parcel or adjacent parcels of real property where any of the following are accumulated:

- 500 or more scrap tires, unless the property is owned or leased by and associated with the operations of a retailer or automotive recycler or a commercial contractor as described below.
- 1,500 or more scrap tires if the property is owned or leased by and associated with the operations of a retailer and not an automotive recycler.
- 2,500 or more scrap tires if the property is owned or leased by and associated with the operations of an automotive retailer.
- More than 150 cubic yards of tire chips if the property is owned or leased by and associated with the operations of a commercial contractor that is authorized

to use the tire chips as an aggregate replacement in a manner approved by a designation of inertness for scrap tires or was otherwise authorized for such use by the DEQ under Part 115.

The previous definition was generally the same but referred to "scrap tire processed material" rather than "tire chips" and did not require property to be associated with the operations of a particular type of business.

Senate Bill 1418 defines "tire chips" as a portion of a tire that is any of the following:

- Not more than two inches by two inches in size and that meets requirements for size, metal content, and cleanliness as specified in an executed contract for delivery of the material by the scrap tire processor.
- Not more than three-eighths inch by three-eighths inch and sufficiently free from steel to be used in the construction and modification of sports surfaces such as golf course turf, athletic field turf, athletic tracks, hiking surfaces, livestock show arena surfaces, and playgrounds.
- To be used in a drain field approved under a district or county sanitary code.
- To be used as ground cover or mulch if, in aggregate, 95% of the material is equal to or less than three-fourths inch in size in any dimension and the material contains less than 1% by weight or volume of steel and fiber.
- Approved by the DEQ for use at a landfill as daily cover or a leachate collection system protective layer or for access road construction within a lined cell.

"End-user" previously meant any of the following:

- A person who possessed a permit to burn tires under Part 55 (Air Pollution Control).
- The owner or operator of a landfill authorized under its operating license to use scrap tires.
- A person who converted scrap tires into scrap tire processed material used to manufacture other products sold in the market, but did not manufacture those products.

Under Senate Bill 1418, "end-user" means any of the following:

## **Senate Bill 1420**

- A person who possesses a permit to burn tires under Part 55 (Air Pollution Control).
- The owner or operator of a landfill that is authorized under its operating license to use scrap tires.
- A person who uses a commodity to make a product that is sold in the market.
- A person who is authorized by Part 169 to accumulate scrap tires, who acquires scrap tires, and who converts scrap tires into a product that is sold in the market or reused in a manner authorized by the part (which was the previous meaning of "scrap tire recycler").

Part 169 had defined "scrap tire processed material" as rubber material derived from scrap tires that was marketable and not larger than two inches by two inches. The term included material that contained larger pieces if it was produced by a scrap tire processor under a contract providing for the quantity and quality of the material and a time frame in which the volume of material was to be provided, and the contract was made available to the DEQ upon request.)

### Arrangement for Tire Removal

Under Part 169, a person who by contract, agreement, or otherwise arranges for the removal of scrap tires must do so with a solid waste hauler or a scrap tire hauler who is registered under Part 169 or who by contract, agreement, or otherwise is obligated to deliver the scrap tires to the identified destination. Senate Bill 1419 prohibits a person from arranging for the removal of scrap tires except with such a scrap tire hauler or with one of the following:

- A person hauling only a commodity.
- A retreader hauling only tire casings.
- A solid waste hauler.

Previously, this restriction did not prohibit a person who was not operating a commercial business from transporting his or her scrap tires to an authorized site. Under the bill, this restriction does not prohibit any person from transporting his or her scrap tires to an authorized site.

(Under Senate Bill 1418, "retreader" means a person who retreads, recases, or recaps tire casings for reuse.)

### Scrap Tire Storage

Under Part 169, a person who owns or operates a collection site where scrap tires have been accumulated and are not stored in a building or covered vehicle must comply with certain requirements on the dimensions of piles, their proximity to a property line or building, and the distance between piles, as well as requirements that tire piles be accessible to fire-fighting equipment and be isolated from other stored materials that may create hazardous products if there is a fire. The bill also requires that the scrap tires be stored in the tire storage area identified on the scrap tire collection site registration application map and approved by the DEQ. Also, except for scrap tires that are a commodity used to create a storage pad for, or a roadway for access to, other scrap tires that also are a commodity, scrap tires may not be placed in the open spaces between tire piles or used to construct on-site roads.

### Access Roads

A person who owns or operates a collection site where at least 2,500 scrap tires are accumulated is subject to additional requirements. These include a requirement that the approach road to the tire storage area and on-site access roads to the tire storage area be of all-weather construction and maintained in good condition and free of debris and equipment so that the road is passable at all times for fire-fighting equipment vehicles. Under the bill, the road must be passable at all times for other emergency vehicles, as well. If the local fire department for the jurisdiction where the collection site is located submits to the DEQ a written determination that the on-site access roads do not ensure that the site is accessible to emergency vehicles at all times during the year, the DEQ must consider the roads to be in violation of this requirement.

### Performance Bond

Part 169 requires the owner of a collection site to maintain a performance bond in favor of the DEQ, in an amount specified in the law. Under the bill, a bond is not required for a "commodity storage area" that meets all of the following requirements:

- The commodity is stored in accordance with the requirements described above.
- At least 75% of the commodity that is stored at the site each year is removed to a market during that year, and the site owner or operator certifies compliance with this requirement on a form approved by the DEQ.
- The areas of the site that are used for storing the commodity are not larger than a total of one acre and are indicated on a survey by a registered professional engineer submitted to the DEQ as part of the collection site registration.

Part 169 previously made an exception to the bond requirement for a "qualifying tire chip storage area", which was subject to the same conditions, except that the chips had to be marketable and not larger than two inches by two inches. Also, at least 75% of the scrap tires had to be removed each year to an "approved" market.

#### **Senate Bill 1421**

Previously, the owner of a collection site that processed tires was exempt from the requirement to obtain a performance bond if the owner had been in compliance with the site requirements for at least one year. This applied to tire storage areas at the site containing not more than the sum of the highest number of scrap tires accumulated there during the previous one-year period plus 10% of the amount of scrap tires that were removed to an end-user from the site during that period.

The bill, instead, makes an exception for the owner of a collection site that is a scrap tire processor if at least 75% of the scrap tires, by weight or volume, that are stored at the collection site each calendar year are recycled or used for resource recovery during the year; and the site has been in compliance with the site requirements for at least one year. Each year, the owner must certify compliance with these requirements on a form approved by the DEQ.

#### **Senate Bill 1422**

Part 169 provides for the Scrap Tire Regulatory Fund and allows it to be used for administrative costs and for the cleanup or collection of abandoned scrap tires and scrap tires at collection sites. The DEQ must give priority to funding activities at sites

where the scrap tires were accumulated before January 1, 1991, and to sites that pose an imminent threat to public health, safety, welfare, or the environment. The DEQ also must make every effort to assure that all abandoned scrap tires accumulated at collection sites before 1991 are cleaned up or collected by September 31, 2009.

Under the bill, for collection sites that have accumulated tires after January 1, 1991, a lien in favor of the State, up to the value of the cleanup grant amount and any increase in the value of the property as a result of the cleanup of the property with grant funds, must be placed on the property that is affected by the removal of the tires, as provided in Section 16908b. (That section, which was added by House Bill 6475, governs the lien.) Before making a grant, the DEQ must consider the extent to which the making of the grant would contribute to the achievement of a balanced distribution of grants throughout the State.

Previously, of the Fund money spent for cleanup or collection, not more than \$500,000 each year could be used 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 had to be used for projects that demonstrated new uses for scrap tire processed material, and could reimburse the user up to 50% of the cost of purchasing scrap tire processed material, not to exceed a reimbursed cost of \$50 per ton. The material had to be purchased from Michigan scrap tire processors that produced scrap tire processed material under a grant from the Fund. Fund money spent for cleanup or collection also could be used for grants to end-users who received scrap tires or tire chips, but an end-user had to agree to purchase one ton of scrap tires or tire chips for every ton of tires or chips received as a result of the grant.

Under the bill, instead, the Fund money spent for cleanup or collection may be used for either or both of the following:

- Not more than \$500,000 each year for grants to reimburse the cost of purchasing scrap tires to support the development of increased markets for scrap tires. Only the cost of purchasing scrap tires from scrap tire processors in

this State or other generators of scrap tires in Michigan are eligible for reimbursement.

- For grants of up to 50% of the cost of purchasing equipment, or research and development, to provide for a new or increased use of scrap tires.

### **Senate Bill 1423**

Part 169 requires the DEQ annually to report to the legislative standing committees with responsibility for natural resources and environmental issues, on the use of Scrap Tire Regulatory Fund revenue. The bill also requires the DEQ to prepare a report on the effectiveness of Part 169 in encouraging the reuse of scrap tires and ensuring their safe storage. The DEQ must prepare this report within three years after the bill's effective date and then every third year.

The report must include recommendations for such changes to Part 169, including any further description on the use of the money for cleanup and collection and for grants, as the DEQ finds necessary and appropriate. The Department must submit the report to the standing committees of the Senate and House of Representatives with primary responsibility for issues pertaining to natural resources and the environment.

The bill also requires the DEQ Director to appoint a scrap tire advisory committee of individuals interested in the management of scrap tires, to advise the Department on the implementation of Part 169. In addition to other issues the DEQ requests the committee to consider, it must advise the Department on the report required above and the relevance of a national standard or specification for a commodity.

### **Senate Bill 1424**

Under the Michigan Vehicle Code, each person applying for a certificate of title, a salvage vehicle certificate of title, or a scrap certificate of title must pay a tire disposal surcharge of \$1.50 for each certificate of title or duplicate certificate of title the person receives. The Secretary of State must deposit the money into the Scrap Tire Regulatory Fund.

Previously, the requirement to pay the surcharge applied until December 31, 2007.

The bill extended the requirement until December 31, 2012.

### **House Bill 6474**

#### **Collection Site/Portable Shredding Operation**

Under Part 169, a person who owns a collection site must register with the DEQ by January 31 of each year. The registration must be on a form provided by the Department and contain the information required by the Department. Each annual registration must be accompanied by a \$200 application fee, which the DEQ must deposit into the State Treasury to be credited to the Scrap Tire Regulatory Fund. The bill extends these requirements to the owner of a portable shredding operation.

The bill prohibits the DEQ from registering a collection site unless it is in compliance with the storage requirements of Section 16903 (which Senate Bill 1420 amended). The bill deleted a provision under which the DEQ could not register a collection site until the owner submitted documentation that the collection site was bonded in accordance with the requirements of Part 169 for the registration period.

#### **Scrap Tire Hauler**

Part 169 requires a scrap tire hauler to register with the DEQ by January 31 of each year on a form provided by, and containing information required by, the Department. The bill deleted a provision under which a scrap tire hauler who did not provide all of the required information was not considered registered.

A scrap tire hauler must maintain for three years a record of each load of scrap tires he or she transports, and make it available, upon request, to the DEQ or to a peace officer at reasonable hours. Under the bill, this provision also applies to a consolidated load of scrap tires.

Under the bill, the record must include the name, address, telephone number, and, upon delivery, the authorized signature of the owner or operator of the location described in Section 16902(1) where the tires are to be delivered. (That section was amended by Senate Bill 1419.) A copy of the record must be provided to that location. Part 169 previously contained these

requirements but referred to the collection site, landfill, end-user, scrap tire processor, tire retailer, or scrap tire recycler where the tires were to be delivered, rather than the location described in Section 16902(1).

### **House Bill 6475**

Under the bill, all unpaid cleanup costs for scrap tires accumulated after January 1, 1991, that are incurred under Section 16908(2)(c) (which Senate Bill 1422 amended), including any staff costs, costs of surveillance and enforcement, and attorney costs or fees, constitute a lien in favor of the State upon a collection site that has been the subject of cleanup activity by the State. The lien has priority over all other liens and encumbrances except those recorded before the date the lien under the bill is recorded. The lien arises when the State first incurs cleanup costs at the collection site.

If the Attorney General determines that the lien is insufficient to protect the State's interest in recovering the cleanup costs, the Attorney General may file a petition in the circuit court for the county in which the property is located, seeking either or both of the following:

- A lien upon the collection site subject to the scrap tire cleanup activity that takes priority over all other liens and encumbrances that are or have been recorded on the collection site.
- A lien upon real or personal property or rights to real or personal property other than the collection site, owned by the site owner, having priority over all other liens and encumbrances recorded before the date the lien under the bill is recorded.

The following are not subject to a lien upon other property owned by the site owner:

- Assets of a qualified pension plan or individual retirement account under the Internal Revenue Code.
- Assets held expressly for the purpose of financing a dependent's college education.
- Up to \$500,000 in nonbusiness real or personal property or rights to real or personal property, except that not more than \$25,000 of that amount may be cash or securities.

A petition submitted under the bill must set forth with as much specificity as possible the type of lien sought, the property that will be affected, and the reasons the Attorney General believes the lien is necessary. Upon receiving a petition, the court promptly must schedule a hearing to determine whether it should be granted. Notice of the hearing must be given to the Attorney General, the property owner, and any person holding liens or perfected security interests in the real property subject to the cleanup activity.

In addition to the lien described above, if the State incurs costs for cleanup activity that increase the market value of the real property, the increase in value, to the extent the State incurs cleanup costs, constitutes a lien in favor of the State upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

A lien provided for in the bill is perfected against real property when the DEQ files a notice of lien with the register of deeds in the county in which the property is located. Additionally, the DEQ must provide a copy of the notice of lien to the property owner by certified mail at the time of filing the notice of lien.

A lien under the bill continues until the liability for the cleanup costs is satisfied. Upon satisfaction of the liability, the DEQ must file a notice of release of lien in the same manner as provided for the filing of the notice of lien.

### **House Bill 6476**

The bill requires a retreader to maintain for three years, and make available upon request to the DEQ or a peace officer at reasonable hours, all records required to be carried or maintained with the retreader's tire casings, including all of the following:

- A retread work order that includes the customer's name, date of transaction, retreader DOT identification number pursuant to Federal regulations, order number, and details of casing information for the casing intended for processing.
- A work order sales report that specifies the work process detail for the customer work order.

-- An invoice stating the sales transaction of the retread process that is completed for the customer.

A work order must reflect the number of tires that are being transported and retreaded. A work order sales report must be returned to the customer with the work order number and invoice.

### **House Bill 6477**

The bill allows the DEQ to enter at reasonable hours a tire retail establishment, vehicle owned or operated by a scrap tire hauler for the transport of scrap tires, or collection site or other place where scrap tires are or have been present, and to inspect the location or other place for the purposes of enforcing or administering Part 169. An investigation or inspection under Part 169 must comply with the U.S. Constitution and the State Constitution.

MCL 324.16901 & 324.16909 (S.B. 1418)  
324.16902 (S.B. 1419)  
324.16903 (S.B. 1420)  
324.16903b (S.B. 1421)  
324.16908 (S.B. 1422)  
324.16911 (S.B. 1423)  
257.806 (S.B. 1424)  
324.16904 & 324.16905 (H.B. 6474)  
324.16908b (H.B. 6475)  
324.16909 (H.B. 6476)  
324.16909a (H.B. 6477)

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

#### **Senate Bills 1418 through 1424**

The bills make a number of changes to the Scrap Tire Regulatory program for an increase in revenue to the State, primarily from extending the scrap tire disposal surcharge. Senate Bill 1418 revises and adds definitions. One of these creates a new category of scrap tire material called a "commodity", which is exempt from a number of regulatory requirements that apply to usual scrap tires.

Senate Bill 1422 revises the purposes for which grants from the Scrap Tire Regulatory Fund may be awarded. The bill will not result in additional grant revenue or awards. Senate Bill 1422 and House Bill 6474 allow the DEQ to issue a lien upon a collection site

for recovery of cleanup costs. Revenue to the State from liens will depend on the amounts recovered.

Senate Bill 1423 imposes a few additional administrative duties on the DEQ for reporting requirements and staff support for a new scrap tire advisory committee. Funding for these activities will come from existing resources.

Senate Bill 1424 extends the sunset on the \$1.50 scrap tire disposal surcharge from December 31, 2007, to December 31, 2012. The surcharge generates approximately \$4.7 million annually for deposit into the Scrap Tire Regulatory Fund. The bill does not change the surcharge rate.

### **House Bills 6474 through 6477**

House Bill 6474 may result in additional revenue to the Scrap Tire Regulatory Fund from a requirement for portable shredding operations to register with the State. The operations are required to pay the same \$200 registration fee that collection sites pay.

House Bill 6475 allows the State to impose a lien upon a scrap tire collection site in order to recover unpaid cleanup costs incurred by the State. Revenue from the liens will depend on the number of liens issued, the amount claimed as State expense, and the owner's ability to pay.

House Bills 6476 and 6477 will have no fiscal impact on State or local government.

Fiscal Analyst: Jessica Runnels

#### **S0506\S1418es**

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.