

ENV - Environmental Conservation

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§ 27-1901. Definitions.

When used in this title:

1. "Abatement" means the removal of a sufficient number of waste tires from a noncompliant waste tire stockpile and restoration of the site to a condition that is in substantial compliance with the rules and regulations administered by the department for waste tire storage facilities.

2. "Beneficial use" means the use of solid waste material, which would otherwise need to be placed in a landfill or disposed of through alternative means, in such a manner that the nature of the use of the material constitutes a reuse rather than disposal. Beneficial uses include incorporation of a solid waste material, which is a legitimate substitute for a raw material, into a product marketable to an end user. Waste tires which are burned as a fuel for the purposes of recovering useable energy are considered to be beneficially used only at the point at which they are burned.

3. "End use" means that a product requires no further processing or manufacturing and is used by a consumer for the product's intended application.

4. "End user" means the ultimate customer of a finished product.

5. "New tires" means tires that have never been placed on a motor vehicle wheel rim or tires placed on a motor vehicle prior to its original retail sale. It does not include recapped or resold tires.

6. "Noncompliant waste tire stockpile" means a facility, including a waste tire storage facility, parcel of property, or site so designated by the department in accordance with this title, where one thousand or more waste tires or mechanically processed waste tires have been accumulated, stored or buried in a manner that the department or a court of competent jurisdiction has determined violates any judicial administrative order, decree, law, regulation, or permit or stipulation relating to waste tires, waste tire storage facilities or solid waste.

7. "Recycle" means to use recyclables in manufacturing a product for an end use other than burning for recovery of useable energy.

8. "Recyclables" means solid waste materials that exhibit the potential to be used to make marketable products for end users.

9. "Removed from service" means removed within New York state from the service for which the tires were intended to be used when the tires and tire casings were separated for retreading.

10. "Retail sale" means the sale to any person in the state for any purpose other than resale.

11. "Tire service" means any person or business in New York state who sells or installs new tires for use on any vehicle and any person or business who engages in the retail sale of new motor vehicles. A person who is not the end point of sale and any governmental agency or political subdivision are excluded from this term.

12. "Vehicle" or "Motor Vehicle" means any device which by virtue of its design could qualify for registration pursuant to section four hundred one, four hundred ten, two thousand two hundred sixty-one, or two thousand two hundred eighty-two of the vehicle and traffic law.

13. "Waste tire" means any solid waste which consists of whole tires or portions of tires. Tire casings separated for retreading and tires with sufficient tread for resale shall be included under this term, however, crumb rubber shall not be considered a solid waste.

14. "Waste tire storage facility" means a facility at which waste tires are stored and for which a permit or registration has been issued, pursuant to department regulations.

§ 27-1903. Waste tire management priorities.

In the interest of public health, safety and welfare and in order to conserve natural resources and to promote recycling and market development for waste tires, the state of New York establishes a policy on the management of waste tires that states:

1. The waste tire management priorities in this state are:

(a) first, to reduce the number of waste tires generated;

(b) second, to remediate waste tire stockpiles in noncompliance;

(c) third, to recycle waste tires into value-added products;

(d) fourth, to beneficially use waste tires in an environmentally acceptable manner, including the beneficial use in civil engineering applications; and

(e) fifth, to recover, in an environmentally acceptable manner consistent with the purpose of this chapter, energy from waste tires that cannot be economically recycled or otherwise beneficially used.

2. State government must make an essential contribution to the development and implementation of environmentally, economically and technically viable waste tire management programs. The department shall cooperate with other state agencies, including the department of economic development, New York state energy research and development authority, the department of transportation, the New York state thruway authority and the department of health, to ensure that waste tires are effectively managed and used in environmentally acceptable ways consistent with the purposes of this chapter.

§ 27-1905. Mandatory tire acceptance.

Any tire service shall:

1. Until December thirty-first, two thousand thirteen, accept from a customer, waste tires of approximately the same size and in a quantity equal to the number of new tires purchased or installed by the customer; and

2. Until December thirty-first, two thousand thirteen, post written notice in a prominent location, which must be at least eight and one-half inches by fourteen inches in size and contain the following language:

"New York State law requires us to accept and manage waste tires from vehicles in exchange for an equal number of new tires that we sell or install. Tire retailers are required to charge a separate and distinct waste tire management and recycling fee of \$2.50 for each new tire sold.

The retailers in addition are authorized, at their sole discretion, to pass on waste tire management and recycling costs to tire purchasers. Such costs may be included as part of the advertised price of the new tire, or charged as a separate per-tire charge in an amount not to exceed \$2.50 on each new tire sold."

The written notice shall also contain one of the following statements at the end of the aforementioned language and as part of the notice, which shall accurately indicate the manner in which the tire service charges for waste tire management and recycling costs, and the amount of any charges that are separately invoiced for such costs:

"Our waste tire management and recycling costs are included in the advertised price of each new tire.", or

"We charge a separate per-tire charge of \$____ on each new tire sold that will be listed on your invoice to cover our waste tire management and recycling costs."

3. Any retail advertisement of promotional material provided by or on behalf of the tire service that lists a tire price which does not include waste tire management and recycling costs shall contain one of the following statements conspicuously located in or on the advertisement and in the same font as the advertised price of the tire: "Additional fees relating to tire management and recycling costs may apply," or, "We charge a separate per-tire charge of \$____ on each new tire sold that will be listed on your invoice to cover our waste tire management and recycling costs where applicable." Where the latter statement is used, it shall list the amount of the separate per-tire charge.

§ 27-1907. Abatement of noncompliant waste tire stockpiles.

1. No later than one year from the effective date of this title, the department shall prepare and submit to the governor and the legislature a comprehensive plan designed to abate all noncompliant waste tire stockpiles by December thirty-first, two thousand ten. This plan shall establish a noncompliant waste tire stockpile abatement priority list and schedule for abatement of each noncompliant waste tire stockpile based on potential adverse impacts upon public health, safety or welfare, the environment, or natural resources. The plan shall also include a census of compliant and non-compliant waste tire stockpiles in the state and the number of waste tires believed to be stored at each site.

2. The owner or operator of a noncompliant waste tire stockpile shall, at the department's request, submit to and/or cooperate with any and all remedial measures necessary for the abatement of noncompliant waste tire stockpiles with funds from the waste management and cleanup fund pursuant to section ninety-two-bb of the state finance law.

3. No later than two years from the effective date of this title, the department shall publish requests for proposals to seek contractors to prepare whole and mechanically processed waste tires situated at noncompliant waste tire stockpiles for arrangement in accordance with fire safety requirements and for removal for appropriate processing, recycling or beneficial use. Disposal will be considered only as a last option. The expenses of remedial and fire safety activities at a noncompliant waste tire stockpile shall be paid by the person or persons who owned, operated or maintained the noncompliant waste tire stockpile, or from the waste management and cleanup fund and shall be a debt recoverable by the state from all persons who owned, operated or maintained the noncompliant waste tire stockpile, and a lien and charge may be placed on the premises upon which the noncompliant waste tire stockpile is maintained and upon any real or personal property, equipment, vehicles, and inventory controlled by such person or persons. Moneys recovered shall be paid to the waste management and cleanup fund established pursuant to section ninety-two-bb of the state finance law.

4. If execution upon a judgment for the recovery of the expenses of any such remedial and fire safety activities at a noncompliant waste tire stockpile is returned wholly or partially unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having preference over all other liens and encumbrances whatever. Notwithstanding the foregoing, such lien shall not have preference over any mortgage or other encumbrance for the benefit of the state of New York or a public benefit corporation thereof.

5. The department shall make all reasonable efforts to recover the full amount of any funds expended from the waste management and cleanup fund for abatement or remediation through litigation or cooperative agreements. Any and all moneys recovered, repaid or reimbursed pursuant to this section shall be deposited with the comptroller and credited to such fund.

6. The department shall have authority to enter all noncompliant waste tire stockpiles for the purpose of investigation and abatement.

§ 27-1909. Market development.

No later than one year after the effective date of this title and continuing annually thereafter, the department of economic development shall:

1. assist private market development with new technologies for waste tire reuse and recycling with an emphasis on higher-value end uses in order to further create and enhance sustainable markets;

2. provide industrial and consumer education on other benefits of recycled waste tire product through the preparation of fact sheets and public workshops; and

3. prepare an annual summary report and analysis of markets and disposition of both New York state stockpiled tires and New York state annually generated waste tires. This report shall be submitted to the department and legislature by the last day of March of each year.

§ 27-1911. Prohibition on land burial.

1. No person shall knowingly dispose of waste tires in a landfill except as provided in subdivision two of this section.

2. No moneys from the waste management and cleanup fund shall be used to dispose of waste tires in a landfill unless the department has determined that it is not feasible to convert the waste tires to a beneficial use. Department-approved beneficial uses of scrap-tire-derived material for leachate collection systems, or gas collection systems in the construction or operation of a landfill are not considered disposal.

§ 27-1913. Waste tire management and recycling fee.

1. Until December thirty-first, two thousand thirteen, a waste tire management and recycling fee of two dollars and fifty cents shall be charged on each new tire sold. The fee shall be paid by the purchaser to the tire service at the time the new tire or new motor vehicle is purchased.

The waste tire management and recycling fee does not apply to:

(a) recapped or resold tires;
(b) mail-order sales; or
(c) the sale of new motor vehicle tires to a person solely for the purpose of resale provided the subsequent retail sale in this state is subject to such fee.

2. Until December thirty-first, two thousand thirteen, the tire service shall collect the waste tire management and recycling fee from the purchaser at the time of the sale and shall remit such fee to the department of taxation and finance with the quarterly report filed pursuant to subdivision three of this section.

(a) The fee imposed shall be stated as an invoice item separate and distinct from the selling price of the tire.

(b) The tire service shall be entitled to retain an allowance of twenty-five cents per tire from fees collected.

3. Until March thirty-first, two thousand fourteen, each tire service maintaining a place of business in this state shall make a return to the department of taxation and finance on a quarterly basis, with the return for December, January, and February being due on or before the immediately following March thirty-first; the return for March, April, and May being due on or before the immediately following June thirtieth; the return for June, July, and August being due on or before the immediately following September thirtieth; and the return for September, October, and November being due on or before the immediately following December thirty-first.

(a) Each return shall include:

(i) the name of the tire service;
(ii) the address of the tire service's principal place of business and the address of the principal place of business (if that is a different address) from which the tire service engages in the business of making retail sales of tires;

(iii) the name and signature of the person preparing the return;

(iv) the total number of new tires sold at retail for the preceding quarter and the total number of new tires placed on motor vehicles prior to original retail sale;

(v) the amount of waste tire management and recycling fees due; and

(vi) such other reasonable information as the department of taxation and finance may require.

(b) Copies of each report shall be retained by the tire service for three years.

If a tire service ceases business, it shall file a final return and remit all fees due under this title with the department of taxation and finance not more than one month after discontinuing that business.

4. All waste tire management and recycling fees collected by the department of taxation and finance shall be transferred to the waste management and cleanup fund pursuant to section ninety-two-bb of the state finance law.

5. The provisions of article twenty-seven of the tax law shall apply to the provisions of this section in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section and had expressly referred to the fee under this section, except to the extent that any provision of such

article is either inconsistent with a provision of this section or is not relevant to this section.

6. (a) Until December thirty-first, two thousand thirteen, any additional waste tire management and recycling costs of the tire service in excess of the amount authorized to be retained pursuant to paragraph (b) of subdivision two of this section may be included in the published selling price of the new tire, or charged as a separate per-tire charge on each new tire sold. When such costs are charged as a separate per-tire charge: (i) such charge shall be stated as an invoice item separate and distinct from the selling price of the tire; (ii) the invoice shall state that the charge is imposed at the sole discretion of the tire service; and (iii) the amount of such charge shall reflect the actual cost to the tire service for the management and recycling of waste tires accepted by the tire service pursuant to section 27-1905 of this title, provided however, that in no event shall such charge exceed two dollars and fifty cents on each new tire sold.

(b) Every tire service shall maintain accurate records of the actual costs of waste tire management and recycling incurred by such tire service, and accurate accounts of any charges or costs included in or on the sale of new tires for the purpose of waste tire management and recycling. Any tire service imposing a charge or costs for its waste tire management and recycling shall submit an annual statement of such charges or costs to the comptroller of the state of New York by the end of each calendar year. The comptroller is hereby authorized and empowered from time to time to examine the accounts and records of any tire service that imposes any costs or charges for the costs of the tire service for waste tire management and recycling as authorized by this subdivision.

§ 27-1915. Use of waste tire management and recycling fee funds.

Waste tire management and recycling fees shall be deposited in the waste management and cleanup fund established in section ninety-two-bb of the state finance law, and shall be made available for the following purposes:

1. costs of the department for the following:
 - (a) first-year costs:
 - (i) enumeration and assessment of noncompliant waste tire stockpiles; and
 - (ii) aerial reconnaissance to locate, survey and characterize sites environmentally, for remote sensing, special analysis and scanning;
 - (b) abatement of noncompliant waste tire stockpiles; and
 - (c) administration and enforcement of the requirements of this article, exclusive of titles thirteen and fourteen.
 2. costs of the department of economic development for the following:
 - (a) conducting an updated market analysis of outlets for waste tire utilization including recycling and energy recovery opportunities;
 - (b) establishment of a program to provide funds to businesses to develop technology that leads to increased markets for waste tires;
 - (c) funding of demonstration projects; and
 - (d) administration of requirements of this section.
 3. costs of the department of transportation for the following:
 - (a) funding of demonstration and other projects for road base, paving and other civil engineering uses; and
 - (b) administration of requirements of this section.
 4. costs of the New York state thruway authority for the following:
 - (a) funding of demonstration and other projects for road base, paving and other civil engineering uses; and
 - (b) administration of requirements of this section.
 5. costs of the New York state energy research and development authority for the following:
 - (a) funding research projects which will enhance sustainable waste tire recycling activities; and
 - (b) administration of requirements of this section.
 6. costs of the department of health for the following:
 - (a) recommendations to protect public health; and
 - (b) administration of requirements of this section.
- Any funds not used for a given year shall be returned to the fund and be added to the total funds available for disbursement in the succeeding year.