

1 AN ACT
2 RELATING TO THE ENVIRONMENT; AMENDING THE RECYCLING AND
3 ILLEGAL DUMPING ACT TO PROMOTE THE STATE'S CIRCULAR ECONOMY;
4 REQUIRING THE ENVIRONMENTAL IMPROVEMENT BOARD TO ADOPT
5 REQUIREMENTS AND PROCEDURES FOR A PERSON TO SUBMIT RULES TO
6 THE BOARD FOR ADOPTION; REQUIRING THE BOARD TO DETERMINE
7 WHETHER TO HOLD A HEARING WITHIN SIXTY DAYS.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 SECTION 1. Section 74-13-1 NMSA 1978 (being Laws 2005,
11 Chapter 171, Section 1) is amended to read:

12 "74-13-1. SHORT TITLE.--Chapter 74, Article 13 NMSA
13 1978 may be cited as the "Recycling, Circular Economy and
14 Illegal Dumping Act".

15 SECTION 2. Section 74-13-2 NMSA 1978 (being Laws 2005,
16 Chapter 171, Section 2) is amended to read:

17 "74-13-2. LEGISLATIVE PURPOSES.--The purposes of the
18 Recycling, Circular Economy and Illegal Dumping Act are to:

19 A. protect the health and welfare of current and
20 future residents of New Mexico by providing for the
21 prevention and abatement of illegal dumpsites;

22 B. promote environmentally sound methods for reuse
23 and recycling and to foster a circular economy;

24 C. create a statewide recycling and circular
25 economy alliance involving the cooperation of cities,

1 counties, state agencies, tribal governments, land grant
2 communities and private business to encourage economic
3 development, community development and collaboration that
4 foster sustainable use of resources and increased recycling
5 and that promote a circular economy and a cleaner and
6 healthier environment; and

7 D. enhance and coordinate existing highway litter
8 control and removal and recycling efforts that include the
9 recycling of tires, glass, plastic, metal, paper products,
10 electronic waste and construction and demolition materials."

11 SECTION 3. Section 74-13-3 NMSA 1978 (being Laws 2005,
12 Chapter 171, Section 3) is amended to read:

13 "74-13-3. DEFINITIONS.--As used in the Recycling,
14 Circular Economy and Illegal Dumping Act:

15 A. "abatement" means to reduce in amount, degree
16 or intensity or to eliminate;

17 B. "agricultural use" means the beneficial use of
18 scrap tires in conjunction with the operations of a farm or
19 ranch that includes construction projects and aids in the
20 storage of feed;

21 C. "alliance" means the recycling, circular
22 economy and illegal dumping alliance;

23 D. "board" means the environmental improvement
24 board;

25 E. "circular economy" means an economy that uses a
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1 systems-focused approach and involves industrial processes
2 and economic activities that:

3 (1) are restorative or regenerative by
4 design;

5 (2) enable resources used in such processes
6 and activities to maintain their highest values for as long
7 as possible; and

8 (3) aim for the elimination of waste through
9 the superior design of materials, products and systems,
10 including business models;

11 F. "civil engineering application" means the use
12 of scrap tires or other recycled material in conjunction with
13 other aggregate materials in engineering applications;

14 G. "composting" means the process by which
15 biological decomposition of organic material is carried out
16 under controlled conditions and the process stabilizes the
17 organic fraction into a material that can be easily and
18 safely stored, handled and used in an environmentally
19 acceptable manner;

20 H. "cooperative association" means a refuse
21 disposal district created pursuant to the Refuse Disposal
22 Act, a sanitation district created pursuant to the Water and
23 Sanitation District Act, a special district created pursuant
24 to the Special District Procedures Act or other associations
25 created pursuant to the Joint Powers Agreements Act or the

1 Solid Waste Authority Act;

2 I. "department" means the department of
3 environment;

4 J. "dispose" means to deposit scrap tires or solid
5 waste into or on any land or water;

6 K. "household" means any single and multiple
7 residence, hotel or motel, bunkhouse, ranger station, crew
8 quarters, campground, picnic ground or day-use recreation
9 area;

10 L. "illegal dumping" means disposal of trash,
11 scrap tires or any solid waste in a manner that violates the
12 Solid Waste Act or the Recycling, Circular Economy and
13 Illegal Dumping Act;

14 M. "illegal dumpsite" means a place where illegal
15 dumping has occurred, except as stated in Subsection A of
16 Section 74-13-4 NMSA 1978;

17 N. "market development" means activities to expand
18 or create markets for recyclable and reusable materials that
19 foster a circular economy;

20 O. "motor vehicle" means a vehicle or device that
21 is propelled by an internal combustion engine or electric
22 motor power that is used or may be used on the public
23 highways for the purpose of transporting persons or property
24 and includes any connected trailer or semitrailer;

25 P. "processing" means techniques to change

1 physical, chemical or biological character or composition of
2 solid waste but does not include composting, transformation
3 or open burning;

4 Q. "recycling" means any process by which
5 recyclable materials are collected, separated or processed
6 and reused or returned to use in the form of raw materials or
7 products;

8 R. "reuse" means the return of a commodity into
9 the economic stream without a change to its original form;

10 S. "scrap tire" means a tire that is no longer
11 suitable for its originally intended purpose because of wear,
12 damage or defect;

13 T. "scrap tire baling" means the process by which
14 scrap tires are mechanically compressed and bound into block
15 form;

16 U. "scrap tire generator" means a person who
17 generates scrap tires, including retail tire dealers,
18 retreaders, scrap tire processors, automobile dealers,
19 automobile salvage yards, private company vehicle maintenance
20 shops, garages, service stations and city, county and state
21 government but does not include persons who generate scrap
22 tires in a household or in agricultural operations;

23 V. "scrap tire hauler" means a person who
24 transports scrap tires for hire for the purpose of recycling,
25 disposal, transformation or use in a civil engineering

1 application;

2 W. "secretary" means the secretary of environment;

3 X. "tire" means a continuous solid or pneumatic
4 rubber covering that encircles the wheel of a motor
5 vehicle;

6 Y. "tire-derived fuel" means whole or chipped
7 tires that produce a low sulfur, high-heating-value fuel;

8 Z. "tire-derived product" means a usable product
9 produced from the processing of a scrap tire but does not
10 include baled tires;

11 AA. "tire recycling" means a process in which
12 scrap tires are collected, stored, separated or reprocessed
13 for reuse as a different product or shredded into a form
14 suitable for use in rubberized asphalt or as raw material for
15 the manufacture of other products; and

16 BB. "tire recycling facility" means a place
17 operated or maintained for tire recycling but does not
18 include:

19 (1) retail business premises where tires are
20 sold, if no more than five hundred loose scrap tires or two
21 thousand scrap tires, if left in a closed conveyance or
22 enclosure, are kept on the premises at one time;

23 (2) the premises of a tire retreading
24 business, if no more than three thousand scrap tires are kept
25 on the premises at one time;

1 (3) premises where tires are removed from
2 motor vehicles in the ordinary course of business, if no more
3 than five hundred scrap tires are kept on the premises at one
4 time;

5 (4) a solid waste facility having a valid
6 permit or registration issued pursuant to the provisions of
7 the Solid Waste Act or regulations adopted pursuant to that
8 act or registration issued pursuant to the Environmental
9 Improvement Act; or

10 (5) a site where tires are stored or used
11 for agricultural uses."

12 SECTION 4. Section 74-13-6 NMSA 1978 (being Laws 2005,
13 Chapter 171, Section 6) is amended to read:

14 "74-13-6. ADMINISTRATION OF ACT--RECYCLING AND WASTE
15 REDUCTION COORDINATOR--CIRCULAR ECONOMY COORDINATOR.--

16 A. The department is responsible for the
17 administration and enforcement of the provisions of the
18 Recycling, Circular Economy and Illegal Dumping Act and of
19 all rules adopted by the board pursuant to the provisions of
20 that act. The department is delegated all authority
21 necessary and appropriate to carry out its responsibilities.

22 B. The positions of "recycling and waste reduction
23 coordinator" and "circular economy coordinator" are created
24 in the department and shall be funded from the recycling and
25 illegal dumping fund."

1 SECTION 5. Section 74-13-7 NMSA 1978 (being Laws 2005,
2 Chapter 171, Section 7) is amended to read:

3 "74-13-7. RECYCLING, CIRCULAR ECONOMY AND ILLEGAL
4 DUMPING ALLIANCE.--

5 A. The "recycling, circular economy and illegal
6 dumping alliance" is created and is composed of one member
7 from each of the following:

- 8 (1) state government;
- 9 (2) local government;
- 10 (3) a solid waste authority;
- 11 (4) an industry waste generator;
- 12 (5) a tribal government;
- 13 (6) a nonprofit organization;
- 14 (7) a recycling company;
- 15 (8) a retailer;
- 16 (9) an agricultural producer;
- 17 (10) a soil and water conservation district;
- 18 (11) a waste management company; and
- 19 (12) the public at large.

20 B. The secretary shall appoint members of the
21 alliance to serve two-year terms as volunteers with no
22 compensation from the state.

23 C. The alliance shall:

- 24 (1) develop strategies to increase
25 recycling, foster the circular economy and decrease illegal

1 dumping in New Mexico;

2 (2) create a state circular economy plan, as
3 a component of the New Mexico solid waste management plan, to
4 establish programs and goals and update the plans every three
5 years to measure progress and modify strategies; and

6 (3) review and make recommendations for
7 funding grant applications from the recycling and illegal
8 dumping fund."

9 SECTION 6. Section 74-13-8 NMSA 1978 (being Laws 2005,
10 Chapter 171, Section 8) is amended to read:

11 "74-13-8. RULES--AUTHORITY AND CONTENT.--The board
12 shall adopt rules to implement the provisions of the
13 Recycling, Circular Economy and Illegal Dumping Act. The
14 rules shall be adopted pursuant to the provisions of the
15 Environmental Improvement Act and shall include:

16 A. requirements and procedures for the issuance of
17 permits and registrations to tire recycling facilities, civil
18 engineering applications, scrap tire generators and scrap
19 tire haulers;

20 B. standards and requirements for tire recycling
21 and scrap tire storage and processing;

22 C. record-keeping requirements for tire recycling
23 facilities, scrap tire haulers and scrap tire generators;

24 D. financial assurance criteria for tire recycling
25 facilities;

1 E. fire rules for storage of scrap tires and
2 tire-derived products that are consistent with the rules or
3 recommendations adopted by the state fire marshal;

4 F. criteria and procedures for making
5 disbursements pursuant to grant and loan programs authorized
6 from the recycling and illegal dumping fund;

7 G. requirements and procedures for contracting
8 with counties, municipalities, Indian nations, pueblos and
9 tribes, land grant communities and cooperative associations
10 for the abatement of illegal dumpsites and recycling;

11 H. requirements and procedures for a scrap tire
12 manifest system;

13 I. a fee schedule applicable to scrap tire haulers
14 and tire recycling facilities not exceeding the estimated
15 cost of investigating and issuing permits and registrations
16 and conducting regulatory oversight of permitted and
17 registered activities;

18 J. a fee schedule applicable to scrap tire
19 generators not exceeding the estimated cost of conducting
20 regulatory oversight of scrap tire generators; and

21 K. requirements and procedures for a person to
22 submit proposed rules to the board for adoption. The board
23 shall determine whether to hold a hearing within sixty days
24 of submission of a proposed rule."

Chapter 171, Section 10) is amended to read:

"74-13-10. SOLID WASTE PERMIT EXEMPTION.--A person operating a tire recycling facility under a permit issued pursuant to the Recycling, Circular Economy and Illegal Dumping Act shall not be required to obtain a permit for that facility pursuant to the Solid Waste Act."

SECTION 8. Section 74-13-11 NMSA 1978 (being Laws 2005, Chapter 171, Section 11) is amended to read:

"74-13-11. ABATEMENT OF ILLEGAL DUMPSITE.--

A. The department may bring an abatement action pursuant to the provisions of Section 30-8-8 NMSA 1978 to eliminate an illegal dumpsite.

B. The secretary may act administratively to eliminate illegal dumpsites pursuant to the provisions of the Recycling, Circular Economy and Illegal Dumping Act.

C. Nothing in this section shall prohibit a municipality, county, Indian nation, pueblo or tribe, land grant community or cooperative association from contracting for services to complete an abatement action."

SECTION 9. Section 74-13-13 NMSA 1978 (being Laws 2005, Chapter 171, Section 13) is amended to read:

"74-13-13. ENFORCEMENT--COMPLIANCE ORDERS.--

A. Whenever the secretary determines that a person has violated or is violating any requirement or prohibition of the Recycling, Circular Economy and Illegal Dumping Act, a

1 rule adopted pursuant to that act or a condition of a permit
2 issued pursuant to that act, the secretary may:

3 (1) issue a compliance order stating with
4 reasonable specificity the nature of the violation and
5 requiring compliance immediately or within a specified time
6 period or assessing a civil penalty for any past or current
7 violation or both; and

8 (2) commence a civil action in district
9 court for appropriate relief, including a temporary or
10 permanent injunction.

11 B. A compliance order issued pursuant to this
12 section may include a suspension or revocation of a permit or
13 portion of the permit issued by the secretary. A penalty
14 assessed in the compliance order shall not exceed five
15 thousand dollars (\$5,000) per day of noncompliance for each
16 violation.

17 C. A compliance order issued pursuant to this
18 section shall state with reasonable specificity the nature of
19 the required corrective action or other response measure and
20 shall specify a time for compliance.

21 D. A compliance order issued pursuant to this
22 section shall become final unless, no later than thirty days
23 after the order is served, the person named in the order
24 submits a written request to the secretary for a public
25 hearing. Upon a request, the secretary promptly shall

1 conduct a public hearing. The secretary shall appoint an
2 independent hearing officer to preside over the public
3 hearing. The hearing officer shall make and preserve a
4 complete record of the proceedings and forward a
5 recommendation to the secretary, who shall make the final
6 decision.

7 E. The secretary may seek enforcement of the order
8 by filing an action for enforcement in the district court.

9 F. Upon request of a party, the secretary may
10 issue subpoenas for the attendance and testimony of witnesses
11 at the hearing and for the production of relevant documents.
12 The secretary shall adopt procedural rules for the conduct of
13 the hearing, including provisions for discovery.

14 G. In determining the amount of a penalty
15 authorized to be assessed pursuant to this section, the
16 secretary shall take into account the seriousness of the
17 violation, good-faith efforts of the violator to comply with
18 applicable requirements of the Recycling, Circular Economy
19 and Illegal Dumping Act or rules issued pursuant to its
20 provisions and other relevant factors."

21 **SECTION 10.** Section 74-13-14 NMSA 1978 (being Laws
22 2005, Chapter 171, Section 14) is amended to read:

23 "74-13-14. ENFORCEMENT--FIELD CITATIONS.--

24 A. The board shall implement a field citation
25 program by adopting rules establishing appropriate minor

1 violations for which field citations assessing civil
2 penalties not to exceed one thousand dollars (\$1,000) per day
3 of violation may be issued by local government authorities or
4 employees of the department as designated by the
5 secretary.

6 B. A field citation issued pursuant to this
7 section shall be final unless the person named in the
8 citation files a written request for a public hearing with
9 the secretary no later than fifteen days after the date on
10 which the field citation is served on the person, in which
11 case the enforcement of the field citation shall be suspended
12 pending the issuance of a final order of the secretary after
13 a public hearing. The procedures for scheduling and
14 conducting a hearing on and for final disposition of a field
15 citation shall be the same as those provided for a compliance
16 order pursuant to the Recycling, Circular Economy and Illegal
17 Dumping Act.

18 C. Payment of a civil penalty required by a field
19 citation issued pursuant to this section shall not be a
20 defense to further enforcement by the department to correct a
21 continuing violation or to assess the maximum statutory
22 penalty pursuant to the provisions of the Recycling, Circular
23 Economy and Illegal Dumping Act if the violation
24 continues.

25 D. In determining the amount of a penalty to be

1 assessed pursuant to this section, the secretary or the
2 person issuing a field citation shall take into account the
3 seriousness of the violation, good-faith efforts of the
4 violator to comply with the applicable requirements of the
5 Recycling, Circular Economy and Illegal Dumping Act or rules
6 issued pursuant to its provisions and other relevant
7 factors.

8 E. In connection with a proceeding pursuant to
9 this section, the secretary may issue subpoenas for the
10 attendance and testimony of witnesses and the production of
11 relevant papers, books and documents and may adopt rules for
12 discovery."

13 SECTION 11. Section 74-13-15 NMSA 1978 (being Laws
14 2005, Chapter 171, Section 15) is amended to read:

15 "74-13-15. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS.--
16 A person adversely affected by an administrative action taken
17 by the secretary pursuant to the provisions of the Recycling,
18 Circular Economy and Illegal Dumping Act may appeal the
19 action pursuant to Section 39-3-1.1 NMSA 1978."

20 SECTION 12. Section 74-13-16 NMSA 1978 (being Laws
21 2005, Chapter 171, Section 16) is amended to read:

22 "74-13-16. PENALTY--CRIMINAL.--

23 A. A person who knowingly violates Section 74-13-4
24 NMSA 1978:

25 (1) is guilty of a misdemeanor if the

1 violation involves a quantity of scrap tires or tire-derived
2 products that is less than five thousand pounds and shall be
3 sentenced pursuant to the provisions of Section 31-19-1 NMSA
4 1978; or

5 (2) is guilty of a fourth degree felony if
6 the violation involves a quantity of scrap tires or
7 tire-derived products that is five thousand pounds or greater
8 and shall be sentenced pursuant to the provisions of Section
9 31-18-15 NMSA 1978.

10 B. A person who knowingly omits any substantive
11 information or knowingly makes a false substantive statement
12 or representation required pursuant to the Recycling,
13 Circular Economy and Illegal Dumping Act or rule adopted
14 pursuant to the provisions of that act is guilty of a fourth
15 degree felony and shall be sentenced in accordance with the
16 provisions of Section 31-18-15 NMSA 1978."

17 SECTION 13. Section 74-13-17 NMSA 1978 (being Laws
18 2005, Chapter 171, Section 17) is amended to read:

19 "74-13-17. GRANTS--ELIGIBILITY--APPLICATIONS.--

20 A. A municipality, county, Indian nation, pueblo
21 or tribe, land grant community, cooperative association or
22 solid waste authority that meets eligibility requirements
23 established by the board may apply for a grant for providing
24 funds to public landfills to offset the cost of collecting or
25 recycling of tires, purchase equipment, perform marketing,

1 purchase products produced by a recycling facility, provide
2 educational outreach, develop recycling infrastructure, abate
3 illegal dumpsites or contract with vendors to promote
4 recycling and to abate illegal dumpsites consistent with
5 provisions of the Recycling, Circular Economy and Illegal
6 Dumping Act. The first priority for funding shall be
7 abatement of illegal scrap tire dumpsites and the recycling
8 of scrap tires.

9 B. Nothing in this section prohibits a
10 municipality, county, Indian nation, pueblo or tribe, land
11 grant community or cooperative association from contracting
12 for services to complete an abatement action."

13 SECTION 14. Section 74-13-19 NMSA 1978 (being Laws
14 2005, Chapter 171, Section 19) is amended to read:

15 "74-13-19. RECYCLING AND ILLEGAL DUMPING FUND
16 CREATED.--The "recycling and illegal dumping fund" is created
17 in the state treasury. Fees and penalties collected pursuant
18 to the Recycling, Circular Economy and Illegal Dumping Act
19 shall be deposited into the fund. Money in the fund is
20 appropriated to the department for carrying out the provisions
21 of the Recycling, Circular Economy and Illegal Dumping Act.
22 Any unexpended or unencumbered balance or income earned from
23 the money in the recycling and illegal dumping fund remaining
24 at the end of a fiscal year shall not revert to the general
25 fund. Disbursements from the fund shall be by warrant drawn

by the secretary of finance and administration pursuant to
vouchers signed by the secretary of environment or the
secretary's designee."

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