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SCRAP TIRE REGULATION

House Bill 5380 as enrolled
Public Act 496 of 2002
Sponsor: Rep. David Mead

Senate Bill 1324 as enrolled
Public Act 497 of 2002
Sponsor: Sen. Beverly Hammerstrom

Third Analysis (8-20-02)
House Committee: Conservation and
Outdoor Recreation
Senate Committee: Natural Resources
and Environmental Affairs

THE APPARENT PROBLEM:

Public Act 133 of 1990 created the Scrap Tire Regulatory Act to impose restrictions on the disposal of scrap tires, and to create a Scrap Tire Regulatory Fund. Companion legislation, Public Act 148, amended the Michigan Vehicle Code to impose a 50 cent "tire disposal" surcharge on each vehicle title, or duplicate title, sold by the state. That fee expired on April 1, 2002, and many believe that the title transfer fee should continue to be collected in order to help operate the regulatory program.

Money generated from the surcharge is deposited into the Scrap Tire Regulatory Fund, and is distributed as follows: up to half of the money is used annually for the administrative costs of running the program, including the salaries of inspectors and support staff; the rest of the money is distributed as grants for the cleanup or collection of abandoned scrap tires on public land (land owned by the state, or by a county, township, city, or village). Later, Public Act 268 of 1995 allowed appropriations from the Scrap Tire Regulatory Fund to be used to clean up tires illegally dumped on private, as well as on public, land. However, the cleanup provisions of Public Act 268 apply only to scrap tires accumulated at collection sites before January 1, 1991, the date that the tire disposal surcharge went into effect.

None of these programs has succeeded in eliminating the piles of scrap tires in overcrowded scrap tire storage facilities. According to the Department of Environmental Quality, there are in excess of 26 million scrap tires stored or dumped at various sites around the state. In addition, Michigan consumers

reportedly generate between 7.5 million and 9 million scrap tires each year.

The stockpiles of scrap tires increase every year, and, reportedly, still contain pre-1991 tires. The problem of overcrowding greatly complicates matters if a fire should occur. In recent years, scrap tire fires have made headlines when they burned for long periods of time, cost local and county agencies tens of thousands of dollars, and caused immense financial hardships for local and county agencies. In addition to the danger and the financial consequences, fires such as these have enormous environmental consequences: melting rubber pollutes the air, and mixes with groundwater. In addition, one can smell the acrid stench of burning rubber many miles from a fire site.

Although legislation was introduced during the last legislative session to change the regulations on scrap tires, the Department of Environmental Quality (DEQ) and the scrap tire industry could not reach agreement on several issues. Reportedly, these differences have now been resolved, and legislation has been reintroduced to address these issues.

THE CONTENT OF THE BILLS:

Senate Bill 1324 and House Bill 5380, which are described in more detail below, would amend the Michigan Vehicle Code (MCL 257.806), and Part 169 (MCL 324.16901 et al.) of the Natural Resources and Environmental Protection Act (NREPA), respectively, concerning scrap tires, to make a number of changes to the current regulation of scrap

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tires, and to increase the current tire disposal surcharge for certificates of title. The bills are tied to each other.

Senate Bill 1324. Currently, the vehicle code requires that the secretary of state collect a tire disposal surcharge of 50 cents for each certificate or duplicate certificate of title and deposit the money into the Scrap Tire Regulatory Fund. The bill would increase the tire disposal surcharge from 50 cents to \$1.50 for each certificate of title or duplicate title. The bill also would extend the program five years, by deleting the April 1, 2002 expiration date on the surcharge, and substituting instead, December 31, 2007. Finally, the bill specifies that these changes would take effect 90 days after the legislation's enactment.

House Bill 5380 would amend the current definitions of "collection site," "end-user," "landfill," "scrap tire," "scrap tire hauler," "scrap tire processed material," "scrap tire processor," "scrap tire recycler," and "solid waste hauler." The bill would also delete current provisions concerning the disposal of scrap tires by a retailer; delete certain products, such as crumb rubber made from scrap tires, from regulation under the act; provide for an exemption from the requirement to obtain a performance bond, under certain circumstances; set fines for certain violations of the act; reduce the number of full-time equivalent employees (FTEs) in the regulatory program; and, delete current requirements that the Department of Environmental Quality (DEQ) request that local health departments provide a list of all known significant tire piles, as follows:

Definitions. The bill would delete the current definition of "crumb rubber," thereby removing crumb rubber from regulation under the act.

** "Collection site." The act currently defines "collection site" to mean one of several types of property. The bill would extend the definition to include "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." Part 115 of the act regulates solid waste management.

** "End user". Currently, "end user" means (1) a person who possesses a permit to burn tires under

Part 55 (air pollution) of the NREPA; (2) a person who possesses a permit to construct a landfill under Part 115 (solid waste management) of NREPA; or (3) a person who only engineers scrap tires into crumb rubber (rubber material from tires that is less than one-eighth inch by one-eighth inch in size and free of all steel and fiber) that is used to manufacture products that are sold in the market. The bill would redefine "end user" to mean any of the following:

--A person who possesses a permit to burn tires under Part 55.

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

--A person who converts scrap tires into crumb rubber that is used to manufacture products that are sold in the market but does not manufacture the products that are sold in the market.

** "Landfill." Landfill would be redefined to mean a landfill, as that term is defined and as licensed under Part 115 of the NREPA, concerning solid waste management.

** "Scrap Tire Hauler". Currently "scrap tire hauler" means a person in a commercial business who transports scrap tire. The definition specifically excludes a solid waste hauler "as defined under the act, who transports seven or fewer scrap tires along with other solid waste in any truckload. The bill would provide a new definition of "solid waste hauler" so that term would mean "a solid waste hauler as defined in Part 115 who transports less than 25 percent by weight or volume of scrap tires along with other solid waste in any truckload." The bill also would redefine "scrap tire hauler." Under the bill "scrap tire "hauler" is defined to mean "except as otherwise provided . . . a person who transported more than seven scrap tires in any truckload would be considered to be in the commercial business of transporting scrap tires." The bill would exclude any of the following from the definition of "scrap tire hauler":

*A person who is not operating a commercial business who is transporting his or her own tires to a location authorized under the act.

*A member of a nonprofit service organization who participates in a community service project and transports tires to an authorized location.

*A farm owner, as defined the Michigan Right to Farm Act (MCL 286.472), who transports only scrap tires that originate from his or her farm operation.

** “Scrap tire processed material” would be defined to mean rubber material derived from tires that is marketable and no larger than two inches by two inches in size. Scrap tire processed material also includes rubber material derived from tires that is larger than two inches by two 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.

**“Scrap tire processor”. Currently, “scrap tire processor” means “a person engaged in the business of storing, buying, or otherwise acquiring scrap tires, and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires.” The definition specifically includes “a person who, in addition to processing the scrap tires, incinerates the tires or converts the tires into a product or another end use.” The bill would redefine “scrap tire processor” to eliminate the incineration or conversion of scrap tires, instead adding a definition of “scrap tire recycler” that dealt with scrap tire conversion. “Scrap tire processor” would mean a person, authorized by this part of the NREPA to accumulate scrap tires, 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. A “scrap tire recycler” would mean “a person who was authorized by this part [of the NREPA] to accumulate scrap tires,” who acquired scrap tires, and who converted scrap tires into a product that was sold or reused in a manner authorized by this part of the act.

Discarding Scrap Tires. Currently, the NREPA prohibits a person from discarding a tire on any property that is not in compliance with Sections 16903 (which regulates the owners or operators of collection sites) and 16904 (which requires owners of collection sites to register every year with the Department of Environmental Quality). The bill would delete the current language and instead affirmatively allow a person to deliver (“or by contract, agreement, or otherwise cause the delivery of”) scrap tires to registered collection sites, disposal areas licensed under Part 115 (on NREPA), end-users, scrap tire processors, tire retailers, or scrap tire

recyclers that were in compliance with Part 169 of the act.

Currently, the act specifies only that a scrap tire must not be disposed of in any manner other than one authorized under Part 55 (air pollution control), Part 115 (solid waste management), or Part 169 of the act. The bill would replace this provision with one that specified, instead, that a person who -- by contract, agreement, or otherwise -- arranged for the removal of scrap tires would have to do so with a solid waste hauler, as defined in Part 115, or by a registered scrap tire hauler who was registered under the provisions of the act, and who, by contract, agreement, or otherwise, was obligated to deliver the scrap tires to a destination, such as a landfill, end-user, scrap tire processor, tire retailer, or scrap tire recycler that was in compliance with Part 169. In addition, the bill would specify that nothing in the act prohibited a person who wasn’t operating a commercial business or who participated in a nonprofit community service project, or who owned a farm, of a solid waste hauler defined in Part 115, from transporting scrap tires to an authorized site.

Berms. The bill would leave in place language which requires that there be a minimum separation of 30 feet between tire piles. The bill would delete the current requirement that an earthen berm be positioned outside the fence in which tires are enclosed, and would specify, instead, that a berm would have to completely enclose the tire storage area, except to allow for necessary ingress and egress.

Performance Bond. Currently, a person who owns a collection site must maintain a performance bond of not less than \$25,000 per quarter acre, or fraction thereof, of outdoor tire storage area, and, notwithstanding other provisions, \$2.00 per square foot of tire storage area in a building, and \$750 for each vehicle used as a tire storage area. The bill would retain the bond provision per quarter acre of an outdoor storage area, and per square foot of a tire storage building, but would delete the amount currently required for vehicles. The bill would also delete the current provision that allows the department to use a bond to bring a site into compliance with the act. However, the bill would specify that a “qualifying tire chip storage area” would mean one or more locations within a collection site where tire chips were stored, provided that all of the following conditions were met:

*The tire chips were marketable and no larger than two inches by two inches in size.

*The tire chips were stored in accordance with the requirements of the act.

*At least 75 percent of the scrap tires, by weight or volume, that were stored at the collection site each calendar year were removed from the site to an approved market during that year, and the collection site owner or operator certified compliance with these provisions on a form approved by the DEQ.

*The areas of the scrap tire collection site that were used for storage of the tire chips were no larger than a total of one acre and those areas were indicated on a survey by a registered professional engineer submitted to the DEQ as part of the collection site registration.

Performance Bond Exemption. The bill specifies that the owner of a collection site that processed tires who had been in compliance with the site requirements for at least one year, would be exempt from the requirement to obtain a performance bond. The bill also specifies that the exemption would apply to tire storage areas at the collection site that contained not more than the sum of the highest number of scrap tires accumulated during the previous one-year period, plus 10 percent of the scrap tires that were removed to an end-user from the collection site during the previous one-year period. However, if the department determined that the owner was not in compliance with the site requirements, the department would deliver a notice of non-compliance, and if within 60 days the owner did not bring the collection site into compliance, then the owner would be required to obtain a performance bond. Under the bill, once an owner obtained the performance bond, it would have to be maintained until the owner brought the collection site into compliance with the site requirements and maintained compliance for a one-year period.

Limit breeding of mosquitoes. Currently under the law the owner or operator of a collection site must ensure that tires at a collection site are maintained in a manner that limits the potential of mosquito breeding by complying with one or more of the following: a) the tires must be covered by plastic sheets or other impermeable barriers to prevent the accumulation of precipitation; b) the tires must be chemically treated to eliminate mosquito breeding; and, c) the tires must be shredded, or chipped into pieces no larger than four inches by six inches and stored in piles that allow complete water drainage. Under the bill, these provisions would be retained, except that provision (c) would also require that the tires be "baled," shredded, or chipped. Further, the

bill specifies that a person who violated this section would be responsible for the payment of a civil fine of not more than \$400. A default in the payment of a civil fine or costs ordered under this section, or an installment of the fine or costs, could be remedied by any means authorized under the Revised Judicature Act.

Registration of Scrap Tire Haulers. Currently, scrap tire haulers are required to keep, for five years, a record of each load of scrap tires they transport. The records, which must be kept on forms approved by the DEQ, must contain the names, addresses, telephone numbers, and authorized signatures of both the scrap tire hauler and the person who contracted for the scrap tires' removal; the scrap tire hauler's registration number; the date the scrap tires were removed, the number of scrap tires, and their intended final destination. The bill would reduce the required retention time from five years to three years, and, in addition to current provisions, the bill would require that records of each load of transported scrap tires include the name, address, telephone number, and authorized signature of the person who contracted to have the tires removed, and, upon delivery, of the owner or operator of the collection site, landfill, end-user, scrap tire processor, tire retailer, or scrap tire recycler, where the tires were to be delivered. Also, in addition to providing a copy of the original record to the registered scrap tire collection site and to the landfill at the time of delivery, under the bill, a copy would have to be provided to the end-user, scrap tire processor, tire retailer, or scrap tire recycler.

Records of Scrap Tire Locations. Currently the act requires that the DEQ request that local health departments provide a list of all known significant tire piles. The bill would replace this requirement with the following provisions.

The bill would require a person, other than a property owner, who removed scrap tires from a property (including an "end-user") to keep, at the site of removal, records of all scrap tires received from a registered scrap tire hauler and all records obtained from an owner, operator, or authorized agent. However, a person who arranged to have scrap tires removed from a property under his or her control would have no affirmative duty to obtain these records and would not be held liable for the failure to receive them. Records would have to be maintained at the site of removal for three years and made available to the DEQ upon request during normal business hours.

Further, a person, other than a solid waste hauler or a scrap tire hauler who received scrap tires, including an end-user, would have to maintain a record of all scrap tires received. The records would have to be maintained for a period of three years, and made available upon request to the department or a peace officer at reasonable hours. The records would also have to contain all of the information required of a scrap tire hauler, as specified above.

Finally, upon delivery of scrap tires by a scrap tire hauler by contract, agreement, or otherwise to an authorized location, the owner, operator, or authorized agent of that location would have to sign the record, indicating acceptance of the scrap tires, and provide a copy to the person delivering the tires, and within 30 days, forward a copy of the signed record to the person who, by contract, agreement, or otherwise, arranged to have the delivered scrap tires removed.

Pre-1991 Scrap Tires. Currently, the act specifies that not more than 50 percent of the money in the Scrap Tire Regulatory Fund be used for the department's annual administrative costs. The bill would delete this provision and would specify, instead, that money could not be expended to employ more than the following:

*For state fiscal year 2002, 13.2 full-time equated (FTE) positions.

*For state fiscal year 2003, 12 FTEs.

*For state fiscal years 2004 and each subsequent state fiscal year, 11 FTEs.

Grants. The act also specifies, currently, that money from the fund is to be spent for the cleanup or collection of abandoned scrap tires, including those accumulated before January 1, 1991. The bill would replace the reference to pre-1991 tires, and would specify, instead, that the DEQ give priority to funding activities under this part of the act at collection sites in which the scrap tires were accumulated before January 1, 1991, and to collection sites that posed an imminent threat to the public health, safety, welfare, or the environment. The DEQ would also have to make every effort to assure that all abandoned tires accumulated before January 1, 1991, were cleaned up or collected by September 31, 2009. Moreover, money expended under these provisions could be spent for both of the following:

*Not more than \$500,000 each year for reimbursement grants to users of scrap tire processed material to support the development of increased market for scrap tire material other than tire-derived fuel usage. Such grants would be for projects demonstrating new uses in manufactured products, such as placing processed material in modified asphalt, molded rubber products, extruded rubber products, and aggregate replacement materials. A grant would also have to reimburse the scrap tire processed material user up to 50 percent of the cost of purchasing the processed material, not to exceed a reimbursed cost of \$50 per ton. Material could only be purchased from Michigan scrap tire processors under a grant issued under provisions of the act.

*For grants to end users who received scrap tires or tire chips. However, as a condition of a grant made under this provision, an end user who received a grant would have to agree to purchase one ton of scrap tires or tire chips for every one ton of scrap tires or tire chips received as a result of the grant. The purchases would have to be made at the minimum rate of the established statewide market price.

Applications for grants would have to be submitted on a form approved by the DEQ and contain the required information. For grants in the first of the two categories, above, the DEQ also would have to publish criteria upon which the grants would be issued and make that information available to grant applicants.

Also, the DEQ would be required to prepare an assessment of the impact of the grants on the reduction in surplus scrap tires and the establishment of new end uses for them not later than four years after the bill's effective date. A copy of this assessment would have to be provided to the standing committees of the Senate and House that had jurisdiction over subject matter pertaining to natural resources and the environment.

Penalties. Currently, a violation of the provisions of Part 169 is a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$10 for each tire that is disposed of or accumulated in violation of Part 169, or both. The bill would specify, instead, that a violation of Part 169 would be considered as follows:

*When fewer than 50 tires were involved, the violation would be a misdemeanor, punishable by imprisonment for up to 90 days, or a fine of not less than \$200 nor more than \$500, or both.

*When 50 or more tires were involved, the violation would be a misdemeanor, punishable by imprisonment for not more than 180 days, or a fine of not less than \$500 nor more than \$10,000, or both, for each violation.

*A second or subsequent violation of this part would be a misdemeanor, punishable by imprisonment for not more than one year, or a fine of not less than \$1,000 nor more than \$25,000, or both, for each violation.

Currently, the act specifies that the court may order a person who violates Part 169 to perform up to 100 hours of community service in addition to, or as an alternative to, the penalties provided. The bill would retain these provisions. The act also specifies currently that a law enforcement officer or a conservation officer may issue an appearance ticket. The bill would specify, instead, that the ticket could be issued by a peace officer, as described under the Code of Criminal Procedure (MCL 764.9c et al.)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 5380 would have no fiscal impact on state or local government. (8-20-02)

The House Fiscal Agency also notes that Senate Bill 1324 would result in an increase of approximately \$3.4 million to the Scrap Tire Regulatory Fund. (6-3-02)

ARGUMENTS:

For:

The legislation strengthens the state's scrap tire regulatory efforts at the Department of Environmental Quality. First, Senate Bill 1324 increases the surcharge on each vehicle title from 50 cents to \$1.50, raising new revenue for the cleanup fund. Second, the final version of the House Bill 5380 does not downsize the regulatory staff from 13 to six as was originally proposed, but rather decreases the staff from 13 to 11 over three years. Third, House Bill 5380 retains the performance bond for scrap tire operators. When scrap tire companies file for bankruptcy, taxpayers are left to shoulder the cleanup cost for abandoned collection sites. Consequently, it has been required, under the act, that the owner of a scrap tire collection site maintain a performance bond in the amount of \$25,000 per quarter acre, or \$100,000 per acre. Earlier versions of this bill would have lowered the bond amount (to

\$25,000 an acre), and weakened the state's ability to clean up abandoned scrap tire sites. The final bill retained the requirement for a \$25,000 per quarter acre performance bond.

For:

According to the Department of Environmental Quality, about 26 million scrap tires remain stockpiled in collection sites across Michigan. These sites present a serious threat to the environment and to the public health of citizens. However, the owners of the collection sites often lack sufficient funds to properly remove the tires. House Bill 5380 provides for scrap tire cleanup grants, by establishing a cleanup grant program that could expend up to \$500,000 each year. If grants are available to end-users, they may be able to create new markets or products, demonstrating, for example, new uses for scrap tire processed material in modified asphalt, molded rubber products, extruded rubber products, and aggregate replacement materials. If new markets can be created with incentive grants, then the growth in the number of stockpiles could be limited, which could reduce the attendant health risks, fire danger, and environmental contamination.

Response:

The grant program is a good idea, but House Bill 5380 would reduce the amount of money currently available in the DEQ budget for grants by \$100,000--from \$600,000 in the current fiscal year (fiscal year 2001-2002) to \$500,000 annually in the future.

Against:

Although generally supportive of the bills, some members of the scrap tire industry have expressed areas of concern: Specifically, the concerns evolve around "tire chips" (scrap tires that are converted or manufactured into other, marketable products). It is argued that, since it has been agreed that tire chips of less than two inches by two inches in size fall under the definition of "scrap tire processed material" rather than scrap tires, and consequently are excluded from the bonding requirements of the act, neither should they be regulated under the act. If tire chips were excluded from regulation under the act, they could then be handled and stored like other products.

Against:

These bills do not do enough to rid the state of scrap tire sites. For example, some people maintain that one of the most effective ways to discourage the collection of whole scrap tires is to ensure that collection sites are fully bonded to cover potential cleanup costs (rather than limiting the bond to \$100,000 per acre as the law requires). Others

maintain that whole scrap tires should never be stockpiled under any condition, and that instead only those tires whose volume has been reduced by shredding, or some other method that is conducive to recycling, should be allowed at collection sites. A prohibition on stockpiling whole tires would eliminate health and safety risks for citizens, since piles of whole tires collect water in which deadly disease-producing mosquitoes breed. Further, the air pockets in piles of whole scrap tires can result in toxic, long-smoldering fires, causing air pollution soot that lingers for weeks and months, as well as serious groundwater contamination.

Analysts: R. Young/J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.