

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AN ACT

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

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

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

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

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

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

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

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

C. create a statewide recycling and circular  
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  
HGEIC/HB 291/a  
Page 2

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."

1 Chapter 171, Section 10) is amended to read:

2 "74-13-10. SOLID WASTE PERMIT EXEMPTION.--A person  
3 operating a tire recycling facility under a permit issued  
4 pursuant to the Recycling, Circular Economy and Illegal  
5 Dumping Act shall not be required to obtain a permit for that  
6 facility pursuant to the Solid Waste Act."

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

9 "74-13-11. ABATEMENT OF ILLEGAL DUMPSITE.--

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

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

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

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

22 "74-13-13. ENFORCEMENT--COMPLIANCE ORDERS.--

23 A. Whenever the secretary determines that a person  
24 has violated or is violating any requirement or prohibition  
25 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

1 by the secretary of finance and administration pursuant to  
2 vouchers signed by the secretary of environment or the  
3 secretary's designee." \_\_\_\_\_

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25