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**HOUSE BILL 269**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Jeannette O. Wallace**

**FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**AN ACT**

**RELATING TO THE ENVIRONMENT; ENACTING THE RECYCLING AND ILLEGAL DUMPING ACT; EXPANDING THE TIRE RECYCLING PROGRAM; PROVIDING PROHIBITIONS; PROVIDING FOR INSPECTIONS OF PREMISES; PROVIDING FOR COMPLIANCE ORDERS AND FIELD CITATIONS; CREATING THE RECYCLING AND ILLEGAL DUMPING ALLIANCE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES; MAKING AN APPROPRIATION.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 20 of this act may be cited as the "Recycling and Illegal Dumping Act".**

**Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS AND PURPOSES. --**

**A. The legislature finds that:**

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1 (1) the amount of waste diverted from  
2 landfills in New Mexico is low compared to the potential for  
3 that waste to be diverted through reuse or recycling;

4 (2) accumulation of illegally disposed trash,  
5 solid waste and litter discarded throughout the state creates  
6 health hazards, constitutes a public nuisance and damages the  
7 economy of the state;

8 (3) there is a need for a comprehensive state-  
9 coordinated plan for education, promoting recycling and  
10 prevention and elimination of illegal dumping; and

11 (4) an illegal dumpsite is a public nuisance  
12 and that if efforts to eliminate an illegal dumpsite through  
13 voluntary action by the owner or operator are unsuccessful,  
14 governmental abatement action is necessary.

15 B. The purposes of the Recycling and Illegal  
16 Dumping Act are to:

17 (1) protect the health and welfare of current  
18 and future residents of New Mexico by providing for the  
19 prevention and abatement of illegal dumpsites;

20 (2) promote environmentally sound methods for  
21 reuse and recycling;

22 (3) create a statewide recycling alliance  
23 involving the cooperation of cities, counties, state agencies,  
24 tribal governments, land grant communities and private business  
25 to encourage economic development, community development and

1 collaboration that foster sustainable use of resources,  
2 increased recycling and a cleaner and healthier environment;  
3 and

4 (4) enhance and coordinate existing highway  
5 litter control and removal and recycling efforts that include  
6 the recycling of tires, glass, plastic, metal, paper products,  
7 electronic waste and construction and demolition materials.

8 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the  
9 Recycling and Illegal Dumping Act:

10 A. "abatement" means to reduce in amount, degree or  
11 intensity or to eliminate;

12 B. "agricultural use" means the beneficial use of  
13 scrap tires in conjunction with the operations of a farm or  
14 ranch that includes construction projects and aids in the  
15 storage of feed and construction projects but does not include  
16 construction projects that impact water courses or wetlands;

17 C. "alliance" means the recycling and illegal  
18 dumping alliance;

19 D. "board" means the environmental improvement  
20 board;

21 E. "civil engineering application" means the use of  
22 scrap tires or other recycled material in conjunction with  
23 other aggregate materials in engineering applications;

24 F. "composting" means the process by which  
25 biological decomposition of organic material is carried out

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1 under controlled conditions and the process stabilizes the  
2 organic fraction into a material that can be easily and safely  
3 stored, handled and used in an environmentally acceptable  
4 manner;

5 G. "cooperative association" means a refuse  
6 disposal district created pursuant to the Refuse Disposal Act,  
7 a sanitation district created pursuant to the Water and  
8 Sanitation District Act, a special district created pursuant to  
9 the Special District Procedures Act or other associations  
10 created pursuant to the Joint Powers Agreements Act or the  
11 Solid Waste Authority Act;

12 H. "department" means the department of  
13 environment;

14 I. "dispose" means to deposit scrap tires or solid  
15 waste into or on any land or water;

16 J. "household" means any single and multiple  
17 residence, hotel or motel, bunkhouse, ranger station, crew  
18 quarters, campground, picnic ground or day-use recreation area;

19 K. "illegal dumping" means disposal of trash, scrap  
20 tires or any solid waste in a manner that violates the Solid  
21 Waste Act or the Recycling and Illegal Dumping Act;

22 L. "market development" means activities to expand  
23 or create markets for recyclable and reusable materials;

24 M "motor vehicle" means a vehicle or device that  
25 is propelled by an internal combustion engine or electric motor

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1 power that is used or may be used on the public highways for  
2 the purpose of transporting persons or property and includes  
3 any connected trailer or semitrailer;

4 N. "processing" means techniques to change  
5 physical, chemical or biological character or composition of  
6 solid waste but does not include composting, transformation or  
7 open burning;

8 O. "recycling" means any process by which  
9 recyclable materials are collected, separated or processed and  
10 reused or returned to use in the form of raw materials or  
11 products;

12 P. "reuse" means the return of a commodity into the  
13 economic stream without a change to its original form;

14 Q. "scrap tire" means a tire that is no longer  
15 suitable for its originally intended purpose because of wear,  
16 damage or defect;

17 R. "scrap tire baling" means the process by which  
18 scrap tires are mechanically compressed and bound into block  
19 form;

20 S. "scrap tire generator" means a person who  
21 generates scrap tires, including retail tire dealers,  
22 retreaders, scrap tire processors, automobile dealers,  
23 automobile salvage yards, private company vehicle maintenance  
24 shops, garages, service stations and city, county and state  
25 government, but does not include persons who generate scrap

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1 tires in a household;

2 T. "scrap tire hauler" means a person who  
3 transports scrap tires for hire for the purpose of recycling,  
4 disposal, transformation or use in a civil engineering  
5 application;

6 U. "secretary" means the secretary of environment;

7 V. "tire" means a continuous solid or pneumatic  
8 rubber covering that encircles the wheel of a motor vehicle;

9 W. "tire-derived fuel" means whole or chipped tires  
10 that produce a low sulfur, high-heating-value fuel;

11 X. "tire-derived product" means a usable product  
12 produced from the processing of a scrap tire but does not  
13 include baled tires;

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

19 Z. "tire recycling facility" means a place operated  
20 or maintained for tire recycling but does not include:

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

25 (2) the premises of a tire retreading

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1 business, if no more than three thousand scrap tires are kept  
2 on the premises at one time;

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

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

12 (5) a site where tires are stored or used for  
13 agricultural uses.

14 Section 4. [NEW MATERIAL] PROHIBITED ACTS. --

15 A. A person shall not store or use in a civil  
16 engineering application, except for agricultural use, more than  
17 one hundred scrap tires anywhere in this state, unless the  
18 person has a valid permit or registration from the department.

19 B. A person shall not operate or maintain a tire  
20 recycling facility unless the facility has a valid permit  
21 issued pursuant to the provisions of the Recycling and Illegal  
22 Dumping Act or is a facility where tires are stored and used  
23 for agricultural uses and complies with rules enacted pursuant  
24 to the Recycling and Illegal Dumping Act.

25 C. A person shall not transport scrap tires for

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1 hire to a place other than a tire recycling facility unless the  
2 place is specifically excluded from the definition of a "tire  
3 recycling facility".

4 D. A person shall not transport scrap tires for  
5 hire either for disposal or recycling purposes without being  
6 registered as a scrap tire hauler by the department pursuant to  
7 rules adopted in accordance with the Recycling and Illegal  
8 Dumping Act.

9 E. A scrap tire generator shall not release scrap  
10 tires to a person other than a registered scrap tire hauler  
11 pursuant to the Recycling and Illegal Dumping Act or a  
12 registered commercial waste hauler pursuant to the Solid Waste  
13 Act.

14 F. A person shall not engage in the open burning of  
15 scrap tires.

16 G. A person shall not store or dispose of scrap  
17 tires or tire-derived products in a manner that creates a  
18 public nuisance, promotes the breeding or harboring of disease  
19 vectors or creates a potential for fire or other health or  
20 environmental hazards.

21 H. Except for agricultural uses, a person shall not  
22 store scrap tires or tire-derived products for a period  
23 exceeding twelve months unless specifically authorized by the  
24 secretary.

25 I. A scrap tire hauler shall not transport scrap

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1 tires without possessing a New Mexico scrap tire manifest  
2 approved by the department.

3 J. A person shall not engage in, maintain or allow  
4 illegal dumping.

5 Section 5. [NEW MATERIAL] FACILITIES--ENTRY BY  
6 DEPARTMENT--AVAILABILITY OF RECORDS TO DEPARTMENT AND OTHERS.--

7 A. The secretary or any authorized representative,  
8 employee or agent of the department may:

9 (1) enter a facility of a scrap tire  
10 generator, scrap tire hauler or tire recycling facility at any  
11 reasonable time for the purpose of making an inspection or  
12 investigation of solid waste management practices;

13 (2) take and analyze samples of the facility's  
14 waste, soil, air or water in order to detect the nature and  
15 concentration of contaminants, including those produced by  
16 leaching, natural decomposition, gas production or hazardous  
17 products in the facility, and the owner or operator shall have  
18 the right to split the sample and conduct the owner or  
19 operator's own analysis;

20 (3) for the purposes of developing or  
21 assisting in the development of rules, conducting a study,  
22 taking corrective action or enforcing the provisions of the  
23 Recycling and Illegal Dumping Act, conduct monitoring or  
24 testing of the equipment, contents or surrounding soil, air,  
25 surface water or ground water at the facility of a scrap tire

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1 generator, scrap tire hauler or tire recycling facility; and  
2 (4) in coordination with the secretary of  
3 transportation, conduct at weigh stations or any other adequate  
4 site or facility inspections of scrap tire haulers.

5 B. Records, reports or information obtained by the  
6 department pursuant to this section shall be available to the  
7 public, except that information shall be treated confidentially  
8 upon a showing, satisfactory to the department, that records,  
9 reports or information or a particular part of the records,  
10 reports or information, if made public, would divulge  
11 information entitled to protection under the provisions of 18  
12 USCA Section 1905. That record, report or information may be  
13 disclosed to officers, employees or authorized representatives  
14 of the United States concerned with carrying out the  
15 federal Resource Conservation and Recovery Act of 1976 or to  
16 officers, employees or authorized representatives of the state  
17 when relevant in any proceedings pursuant to the Solid Waste  
18 Act.

19 C. A person not subject to the provisions of 18  
20 USCA Section 1905 who knowingly and willfully divulges or  
21 discloses information entitled to protection pursuant to this  
22 section shall, upon conviction, be subject to a fine of not  
23 more than five thousand dollars (\$5,000) or to imprisonment not  
24 to exceed one year or both.

25 D. In submitting data pursuant to the Recycling and

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1 Illegal Dumping Act, a person required to provide such data  
2 may:

3 (1) designate, in writing and in such manner  
4 as the secretary may prescribe, the data the person believes is  
5 entitled to protection pursuant to this section; and

6 (2) submit the designated data separately from  
7 other data submitted pursuant to the Recycling and Illegal  
8 Dumping Act.

9 Section 6. [NEW MATERIAL] ADMINISTRATION OF ACT. -- The  
10 department is responsible for the administration and  
11 enforcement of the provisions of the Recycling and Illegal  
12 Dumping Act and of all rules adopted by the board pursuant to  
13 the provisions of that act. The department is delegated all  
14 authority necessary and appropriate to carry out its  
15 responsibilities.

16 Section 7. [NEW MATERIAL] RECYCLING AND ILLEGAL DUMPING  
17 ALLIANCE. --

18 A. The "recycling and illegal dumping alliance" is  
19 created and is comprised of representatives from state and  
20 local government, solid waste authorities, industry waste  
21 generators, tribal governments, nonprofit organizations,  
22 recycling companies, retailers and waste management companies.

23 B. The secretary shall appoint members of the  
24 alliance.

25 C. The alliance shall:

1 (1) develop strategies to increase recycling  
2 and decrease illegal dumping in New Mexico;

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

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

10 Section 8. [NEW MATERIAL] RULES-- AUTHORITY AND CONTENT. --

11 The board shall adopt rules to implement the provisions of the  
12 Recycling and Illegal Dumping Act. The rules shall be adopted  
13 pursuant to the provisions of the Environmental Improvement Act  
14 and shall include:

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

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

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

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

25 E. fire rules for storage of scrap tires and tire-

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1 derived products that are consistent with the rules or  
2 recommendations adopted by the state fire marshal;

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

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

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

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

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

20 Section 9. [NEW MATERIAL] SCRAP TIRE MANIFEST SYSTEM -- A  
21 scrap tire generator who transports or offers for  
22 transportation, scrap tires for offsite handling, altering,  
23 storage, disposal or for any combination thereof shall complete  
24 a scrap tire manifest pursuant to rules adopted by the board.  
25 Upon demand, the manifest for every generator whose scrap tire

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1 load is transported shall be shown to an officer of the motor  
2 transportation division of the department of public safety.  
3 The New Mexico state police, a local law enforcement officer or  
4 the secretary or the secretary's designee.

5 Section 10. [NEW MATERIAL] SOLID WASTE PERMIT  
6 EXEMPTION. --A person operating a tire recycling facility  
7 pursuant to a permit issued pursuant to the Recycling and  
8 Illegal Dumping Act shall not be required to obtain a permit  
9 pursuant to the Solid Waste Act for that facility.

10 Section 11. [NEW MATERIAL] ABATEMENT OF ILLEGAL  
11 DUMPSITE. --

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

15 B. The secretary may act administratively to  
16 eliminate illegal dumpsites pursuant to the provisions of the  
17 Recycling and Illegal Dumping Act.

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

22 Section 12. [NEW MATERIAL] AUTHORIZATION FOR ABATEMENT  
23 CONTRACTS. --The secretary may contract with the governing body  
24 of a county, municipality, Indian nation, pueblo or tribe, land  
25 grant community or cooperative association for the abatement of

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1 illegal dumpsites located within the boundaries of the county,  
2 municipality, Indian nation, pueblo or tribe, land grant  
3 community or cooperative association. The contract shall  
4 provide for the reimbursement of the county, municipality,  
5 Indian nation, pueblo or tribe, land grant community or  
6 cooperative association for expenses incurred in bringing an  
7 abatement action, including court costs, reasonable attorney  
8 fees and the actual expense of elimination of the illegal  
9 dumpsite if that expense is not recovered from and paid by the  
10 owner or operator of the illegal dumpsite as a result of the  
11 abatement action.

12 Section 13. [NEW MATERIAL] ENFORCEMENT-- COMPLIANCE  
13 ORDERS. --

14 A. Whenever the secretary determines that a person  
15 has violated or is violating any requirement or prohibition of  
16 the Recycling and Illegal Dumping Act, a rule adopted pursuant  
17 to that act or a condition of a permit issued pursuant to that  
18 act, the secretary may:

19 (1) issue a compliance order stating with  
20 reasonable specificity the nature of the violation and  
21 requiring compliance immediately or within a specified time  
22 period or assessing a civil penalty for any past or current  
23 violation or both; and

24 (2) commence a civil action in district court  
25 for appropriate relief, including a temporary or permanent

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1 injunction.

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

7 C. A compliance order issued pursuant to this  
8 section shall state with reasonable specificity the nature of  
9 the required corrective action or other response measure and  
10 shall specify a time for compliance.

11 D. A compliance order issued pursuant to this  
12 section, an enforcement proceeding initiated pursuant to this  
13 section or a claim for personal or property injury arising from  
14 conduct for which financial responsibility must be provided may  
15 be issued to or taken against the insurer or guarantor of an  
16 owner or operator of a tire recycling facility if:

17 (1) the owner or operator is in bankruptcy,  
18 reorganization or arrangement pursuant to federal bankruptcy  
19 law; or

20 (2) the jurisdiction in a state or federal  
21 court cannot with reasonable diligence be obtained over an  
22 owner or operator likely to be solvent at the time of  
23 judgment.

24 E. A compliance order issued pursuant to this  
25 section shall become final unless, no later than thirty days



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1 after the order is served, the person named in the order  
2 submits a written request to the secretary for a public  
3 hearing. Upon a request, the secretary promptly shall conduct  
4 a public hearing. The secretary shall appoint an independent  
5 hearing officer to preside over the public hearing. The  
6 hearing officer shall make and preserve a complete record of  
7 the proceedings and forward a recommendation to the secretary,  
8 who shall make the final decision.

9 F. The secretary may seek enforcement of the order  
10 by filing an action for enforcement in the district court.

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

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

23 Section 14. [NEW MATERIAL] ENFORCEMENT-- FIELD  
24 CITATIONS. --

25 A. The board shall implement a field citation

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

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

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

23 D. In determining the amount of a penalty to be  
24 assessed pursuant to this section, the secretary or the person  
25 issuing a field citation shall take into account the

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1 seriousness of the violation, good-faith efforts of the  
2 violator to comply with the applicable requirements of the  
3 Recycling and Illegal Dumping Act or rules issued pursuant to  
4 its provisions and other relevant factors.

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

10 Section 15. [NEW MATERIAL] JUDICIAL REVIEW OF  
11 ADMINISTRATIVE ACTIONS. --

12 A. A person adversely affected by an administrative  
13 action taken by the secretary pursuant to the provisions of the  
14 Recycling and Illegal Dumping Act may appeal the action to the  
15 court of appeals. The appeal shall be on the record made at  
16 the hearing. To support the appeal, the appellant shall make  
17 arrangements with the department for a sufficient number of  
18 transcripts of the record of the hearing on which the appeal is  
19 based. The appellant shall pay for the preparation of the  
20 transcripts.

21 B. On appeal, the court of appeals shall set aside  
22 the administrative action only if it is found to be:

23 (1) arbitrary, capricious or an abuse of  
24 discretion;

25 (2) not supported by substantial evidence in

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1 the record; or

2 (3) otherwise not in accordance with law.

3 Section 16. [NEW MATERIAL] PENALTY--CRIMINAL. --

4 A. A person who knowingly violates Section 4 of the  
5 Recycling and Illegal Dumping Act:

6 (1) if the violation involves a quantity of  
7 scrap tires or tire-derived products that is less than five  
8 thousand pounds, is guilty of a misdemeanor and shall be  
9 sentenced pursuant to the provisions of Section 31-19-1 NMSA  
10 1978; or

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

16 B. A person who is convicted of a second or  
17 subsequent violation of Section 4 of the Recycling and Illegal  
18 Dumping Act is guilty of a third degree felony and shall be  
19 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
20 1978.

21 C. A person who knowingly omits any substantive  
22 information or knowingly makes a false substantive statement or  
23 representation required pursuant to the Recycling and Illegal  
24 Dumping Act or rule adopted pursuant to the provisions of that  
25 act is guilty of a fourth degree felony and shall be sentenced

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1 in accordance with the provisions of Section 31-18-15 NMSA  
2 1978.

3 Section 17. [NEW MATERIAL] GRANTS-- ELIGIBILITY--  
4 APPLICATIONS. --

5 A. A municipality, county, Indian nation, pueblo or  
6 tribe, land grant community or cooperative association that  
7 meets eligibility requirements established by the board may  
8 apply for a grant or submit a competitive bid for a loan or  
9 contract for development costs or operating costs to establish  
10 a recycling facility, purchase equipment, perform marketing,  
11 purchase products produced by a recycling facility, provide  
12 educational outreach, develop recycling infrastructure, abate  
13 illegal dumpsites or contract with vendors to promote recycling  
14 and to abate illegal dumpsites consistent with provisions of  
15 the Recycling and Illegal Dumping Act.

16 B. A grant, loan or contract for processing shall  
17 not be awarded pursuant to the Recycling and Illegal Dumping  
18 Act to a person who receives less than ninety-five percent of  
19 recyclable materials from sources in New Mexico.

20 C. Nothing in this section prohibits a  
21 municipality, county, Indian nation, pueblo or tribe, land  
22 grant community or cooperative association from contracting for  
23 services to complete an abatement action.

24 D. At least two-thirds of budgeted grant money in  
25 each fiscal year shall be allocated to tire abatement and

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1 recycling programs, and one-third of budgeted grant money in  
2 each fiscal year shall be allocated to abatement of illegal  
3 dumping and recycling of other solid wastes.

4 Section 18. [NEW MATERIAL] RUBBERIZED ASPHALT PROGRAM --

5 The department of transportation may use rubberized asphalt in  
6 paving mixtures for state and local highway projects and to pay  
7 added expenses that may result from using rubberized asphalt.

8 The department of transportation shall adopt rules for the  
9 administration of the rubberized asphalt program, including the  
10 development of procedures for disbursement of money to  
11 municipalities and counties for the use of rubberized asphalt  
12 in paving mixtures and shall develop paving specifications for  
13 the use of rubberized asphalt.

14 Section 19. [NEW MATERIAL] RECYCLING AND ILLEGAL DUMPING

15 FUND CREATED.--The "recycling and illegal dumping fund" is  
16 created in the state treasury. Fees and penalties collected  
17 pursuant to the Recycling and Illegal Dumping Act shall be  
18 deposited into the fund. Money in the fund is appropriated to  
19 the department for abatement of illegal dumpsites, for  
20 processing, transportation or recycling of all recyclable  
21 materials and scrap tires and for carrying out the provisions  
22 of the Recycling and Illegal Dumping Act. Any unexpended or  
23 unencumbered balance or income earned from the money in the  
24 recycling and illegal dumping fund remaining at the end of a  
25 fiscal year shall not revert to the general fund.

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1 Disbursements from the fund shall be by warrant drawn by the  
2 secretary of finance and administration pursuant to vouchers  
3 signed by the secretary of environment or the secretary's  
4 designee.

5 Section 20. [NEW MATERIAL] RUBBERIZED ASPHALT FUND

6 CREATED. --The "rubberized asphalt fund" is created in the state  
7 treasury. Money in the fund is appropriated to the department  
8 of transportation to pay additional expenses that might result  
9 from using rubberized asphalt paving mixes, to allocate at  
10 least fifty percent of the fund to local governments for that  
11 purpose and to carry out the provisions of the rubberized  
12 asphalt program, including hiring a term employee to administer  
13 the program. Disbursements from the fund shall be by warrant  
14 drawn by the secretary of finance and administration pursuant  
15 to vouchers signed by the secretary of transportation or the  
16 secretary's designee. Any unexpended or unencumbered balance  
17 remaining in the rubberized asphalt fund at the end of a fiscal  
18 year shall not revert to the general fund.

19 Section 21. Section 66-6-23 NMSA 1978 (being Laws 1978,  
20 Chapter 35, Section 358, as amended) is amended to read:

21 "66-6-23. DISPOSITION OF FEES. --

22 A. After the necessary disbursements for refunds  
23 and other purposes have been made, the money remaining in the  
24 motor vehicle suspense fund, except for remittances received  
25 within the previous two months that are unidentified as to

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1 source or disposition, shall be distributed as follows:

2 (1) to each municipality, county or fee agent  
3 operating a motor vehicle field office:

4 (a) an amount equal to six dollars  
5 (\$6.00) per driver's license and three dollars (\$3.00) per  
6 identification card or motor vehicle or motorboat registration  
7 or title transaction performed; and

8 (b) for each such agent determined by  
9 the secretary pursuant to Section 66-2-16 NMSA 1978 to have  
10 performed ten thousand or more transactions in the preceding  
11 fiscal year, other than a class A county with a population  
12 exceeding three hundred thousand or a municipality with a  
13 population exceeding three hundred thousand that has been  
14 designated as an agent pursuant to Section 66-2-14.1 NMSA 1978,  
15 an amount equal to one dollar (\$1.00) in addition to the amount  
16 distributed pursuant to Subparagraph (a) of this paragraph for  
17 each driver's license, identification card, motor vehicle  
18 registration, motorboat registration or title transaction  
19 performed;

20 (2) to each municipality or county, other than  
21 a class A county with a population exceeding three hundred  
22 thousand or a municipality with a population exceeding three  
23 hundred thousand that has been designated as an agent pursuant  
24 to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field  
25 office, an amount equal to fifty cents (\$.50) for each

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1 administrative service fee remitted by that county or  
2 municipality to the department pursuant to the provisions of  
3 Subsection A of Section 66-2-16 NMSA 1978;

4 (3) to the state road fund:

5 (a) an amount equal to the fees  
6 collected pursuant to Section 66-7-413.4 NMSA 1978;

7 (b) an amount equal to the fee collected  
8 pursuant to Section 66-3-417 NMSA 1978;

9 (c) the remainder of each driver's  
10 license fee collected by the department employees from an  
11 applicant to whom a license is granted after deducting from the  
12 driver's license fee the amount of the distribution authorized  
13 in Paragraph (1) of this subsection with respect to that  
14 collected driver's license fee; and

15 (d) an amount equal to fifty percent of  
16 the fees collected pursuant to Section 66-6-19 NMSA 1978;

17 (4) to the local governments road fund, the  
18 amount of the fees collected pursuant to Subsection B of  
19 Section 66-5-33.1 NMSA 1978 and the remainder of the fees  
20 collected pursuant to Subsection A of Section 66-5-408 NMSA  
21 1978;

22 (5) to the department:

23 (a) any amounts reimbursed to the  
24 department pursuant to Subsection C of Section 66-2-14.1 NMSA  
25 1978;

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1 (b) an amount equal to two dollars  
2 (\$2.00) of each motorcycle registration fee collected pursuant  
3 to Section 66-6-1 NMSA 1978;

4 (c) an amount equal to the fees provided  
5 for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E  
6 of Section 66-2-16 NMSA 1978, Subsections J and K of Section  
7 66-3-6 NMSA 1978 other than the administrative fee, Subsection  
8 C of Section 66-5-44 NMSA 1978 and Subsection B of Section  
9 66-5-408 NMSA 1978;

10 (d) the amounts due to the department  
11 for the manufacture and issuance of a special registration  
12 plate collected pursuant to the section of law authorizing the  
13 issuance of the specialty plate; and

14 (e) an amount equal to the registration  
15 fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the  
16 purposes of enforcing the provisions of the Mandatory Financial  
17 Responsibility Act and for creating and maintaining a  
18 multilanguage noncommercial driver's license testing program;

19 (6) to each New Mexico institution of higher  
20 education, an amount equal to that part of the fees distributed  
21 pursuant to Paragraph (2) of Subsection D of Section 66-3-416  
22 NMSA 1978 proportionate to the number of special registration  
23 plates issued in the name of the institution to all such  
24 special registration plates issued in the name of all  
25 institutions;

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1 (7) to the armed forces veterans license fund,  
2 the amount to be distributed pursuant to Paragraph (2) of  
3 Subsection E of Section 66-3-419 NMSA 1978;

4 (8) to the children's trust fund, the amount  
5 to be distributed pursuant to Paragraph (2) of Subsection D of  
6 Section 66-3-420 NMSA 1978;

7 (9) to the department of transportation, an  
8 amount equal to the fees collected pursuant to Section 66-5-35  
9 NMSA 1978;

10 (10) to the state equalization guarantee  
11 distribution made annually pursuant to the general  
12 appropriation act, an amount equal to one hundred percent of  
13 the driver safety fee collected pursuant to Subsection D of  
14 Section 66-5-44 NMSA 1978;

15 (11) to the motorcycle training fund, two  
16 dollars (\$2.00) of each motorcycle registration fee collected  
17 pursuant to Section 66-6-1 NMSA 1978;

18 (12) to the ~~[tire recycling fund]~~ recycling  
19 and illegal dumping fund:

20 (a) fifty cents (\$.50) of the tire  
21 recycling fee collected pursuant to the provisions of Section  
22 66-6-1 NMSA 1978;

23 (b) fifty cents (\$.50) of each of the  
24 tire recycling fees collected pursuant to the provisions of  
25 Sections 66-6-2 and 66-6-4 NMSA 1978; and

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1 (c) twenty-five cents (\$.25) of each of  
2 the tire recycling fees collected pursuant to Sections 66-6-5  
3 and 66-6-8 NMSA 1978;

4 (13) to the highway infrastructure fund:

5 (a) fifty cents (\$.50) of the tire  
6 recycling fee collected pursuant to the provisions of Section  
7 66-6-1 NMSA 1978;

8 (b) one dollar (\$1.00) of each of the  
9 tire recycling fees collected pursuant to the provisions of  
10 Sections 66-6-2 and 66-6-4 NMSA 1978; and

11 (c) twenty-five cents (\$.25) of each of  
12 the tire recycling fees collected pursuant to Sections 66-6-5  
13 and 66-6-8 NMSA 1978;

14 (14) to each county, an amount equal to fifty  
15 percent of the fees collected pursuant to Section 66-6-19 NMSA  
16 1978 multiplied by a fraction, the numerator of which is the  
17 total mileage of public roads maintained by the county and the  
18 denominator of which is the total mileage of public roads  
19 maintained by all counties in the state;

20 (15) to the litter control and beautification  
21 fund, an amount equal to the fees collected pursuant to Section  
22 66-6-6.2 NMSA 1978; and

23 (16) to the local government division of the  
24 department of finance and administration, an amount equal to  
25 the fees collected pursuant to Section 66-3-424.3 NMSA 1978 for

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1 distribution to each county to support animal control spaying  
2 and neutering programs in an amount proportionate to the number  
3 of residents of that county who have purchased pet care special  
4 registration plates pursuant to Section 66-3-424.3 NMSA 1978.

5 B. The balance, exclusive of unidentified  
6 remittances, shall be distributed in accordance with Section  
7 66-6-23.1 NMSA 1978.

8 C. If any of the paragraphs, subsections or  
9 sections referred to in Subsection A of this section are  
10 recompiled or otherwise redesignated without a corresponding  
11 change to Subsection A of this section, the reference in  
12 Subsection A of this section shall be construed to be the  
13 recompiled or redesignated paragraph, subsection or section. "

14 Section 22. SAVING CLAUSE--CONTINUING EFFECT OF PRIOR  
15 ACTIONS.--Repeal of the Tire Recycling Act does not affect the  
16 validity of regulations enacted pursuant to the Tire Recycling  
17 Act, which shall continue in force and effect until amended or  
18 repealed. Repeal of the Tire Recycling Act does not affect  
19 prior violations of the Tire Recycling Act or regulations  
20 enacted pursuant to the Tire Recycling Act. All permits and  
21 registrations issued pursuant to the Tire Recycling Act shall  
22 remain in effect until they expire or they are suspended,  
23 revoked or otherwise modified.

24 Section 23. REPEAL.--Sections 74-11-1 through 74-11-17  
25 NMSA 1978 (being Laws 1994, Chapter 117, Sections 1 through 17  
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1 and Laws 1994, Chapter 126, Sections 1 through 17, as amended)  
2 are repealed.

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