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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005



ENROLLED

SENATE BILL NO. 42

(By Senator Edge11)



PASSED April 6, 2005

In Effect ninety days from Passage

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Senate Bill No. 42

(BY SENATOR EDGELL)

[Passed April 6, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §17-24-7 of the Code of West Virginia, 1931, as amended, relating to providing a limitation of liability for remediation costs for certain owners of real property where the waste tire accumulation occurred as the result of the activities of others and the current owners were not responsible for the accumulation; authorizing the Division of Highways to recover from prior owners of the property in certain circumstances; and requiring notice of the existence of illegal waste tire piles to be filed by the Division with the county clerk.

Be it enacted by the Legislature of West Virginia:

That §17-24-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-7. Remediation; liability for remediation and court costs.

1 (a) Any person who has, prior or subsequent to the
2 effective date of this act, illegally disposed of waste tires
3 or has waste tires illegally disposed on his or her property
4 shall be liable for:

5 (1) All costs of removal or remedial action incurred by
6 the Division;

7 (2) Any other necessary costs of remediation, including
8 properly disposing of waste tires and damage to adjacent
9 property owners; and

10 (3) All costs incurred in bringing civil actions under this
11 article.

12 (b) The Division shall notify any person who owns real
13 property or rights to property where a waste tire pile is
14 located that remediation of the waste tire pile is necessary.
15 The Division shall make and enter an order directing such
16 person or persons to remove and properly dispose of the
17 waste tires. The Division shall set a time limit for comple-
18 tion of the remediation. The order shall be served by
19 registered or certified mail, return receipt requested, or by
20 a county sheriff or deputy sheriff.

21 (c) If the remediation is not completed within the time
22 limit or the person cannot be located or the person notifies
23 the Division that he or she is unable to comply with the
24 order, the Division may expend funds, as provided herein,
25 to complete the remediation. Any amounts so expended
26 shall be promptly repaid by the person or persons respon-
27 sible for the waste tire pile. Any person owing
28 remediation costs or damages shall be liable at law until
29 such time as all costs or damages are fully paid.

30 (d) Authorized representatives of the Division have the
31 right, upon presentation of proper identification, to enter
32 upon any property for the purpose of conducting studies or
33 exploratory work to determine the existence of adverse
34 effects of a waste tire pile, to determine the feasibility of
35 the remediation or prevention of such adverse effects and

36 to conduct remediation activities provided herein. Such
37 entry is an exercise of the police power of the state and for
38 the protection of public health, safety and general welfare
39 and is not an act of condemnation of property or trespass
40 thereon. Nothing contained in this section eliminates any
41 obligation to follow any process that may be required by
42 law.

43 (e) There is hereby created a statutory lien upon all real
44 property and rights to the property from which a waste
45 tire pile was remediated for all reclamation costs and
46 damages incurred by the Division. The lien created by this
47 section shall arise at the later of the following:

48 (1) The time costs are first incurred by the Division; or

49 (2) The time the person is provided, by certified or
50 registered mail or personal service, written notice as
51 required by this section.

52 The lien shall continue until the liability for the costs or
53 judgment against the property is satisfied.

54 (f) Any person, who is a bona fide purchaser of real
55 property prior to the first day of July, two thousand one,
56 who did not cause, permit or profit from the illegal
57 disposal of waste tires on the property is only liable for the
58 costs of remediation to the extent that the fair market
59 value of the property, when remediation is completed,
60 exceeds the fair market value of the property that existed
61 on the first day of July, two thousand one. The Division
62 shall have a cause of action against any previous owner
63 who caused, permitted, contributed or profited from the
64 illegal disposal of waste tires on the property for the
65 difference in the amount recovered from the purchaser and
66 the cost of remediation.

67 (g) Liens created by this section shall be duly recorded in
68 the office of the clerk of the county commission in the
69 county where the real property is located and be liens of
70 equal dignity, rank and priority with the lien on such

71 premises of state, county, school and municipal taxes for
72 the amount thereof upon the real property served. The
73 Division shall have the power and authority to enforce
74 such liens in a civil action to recover the money due for
75 remediation costs and damages plus court fees and costs
76 and reasonable attorney's fees.

77 (h) The Division may foreclose upon the premises by
78 bringing a civil action, in the circuit court of the county
79 where the property is located, for foreclosure and an order
80 to sell the property to satisfy the lien.

81 (i) Any proceeds from any sale of property obtained as a
82 result of execution of a lien or judgment under this section
83 for remediation costs, excluding costs of obtaining judg-
84 ment and perfecting the lien, shall be deposited into the A.
85 James Manchin fund of the state Treasury.

86 (j) The provisions of this section do not apply and no lien
87 may attach to the right-of-way, easement or other prop-
88 erty interest of a utility, whether electric, gas, water,
89 sewer, telephone, television cable or other public service,
90 unless the utility contributed to the illegal tire pile.

91 (k) Upon determining the existence of a waste tire pile,
92 the Division shall file a notice of the location of the waste
93 tire pile in the office of the county clerk in the county
94 where property containing a waste tire pile is situate. The
95 Division shall immediately file the notice for all property
96 known to have waste tire piles as of the day the Legisla-
97 ture enacted the amendment to this section during the two
98 thousand five legislative session. The notice shall contain
99 the property owner's name, a location and description of
100 the property and the waste tire pile and the potential
101 liability for remediation. The county clerk shall record the
102 notice in the same manner as a lien and index the notice by
103 the name of the property owner.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White
.....
Chairman Senate Committee

H. Ruler B...
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell E. Adams
.....
Clerk of the Senate

George M. Bond
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

Robert Skiss
.....
Speaker House of Delegates

The within *is disapproved* this the *19th*
Day of *April* 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/13/05

Time 10:48a