

AMENDED IN SENATE JUNE 10, 2004

AMENDED IN ASSEMBLY MAY 24, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2396

**Introduced by Assembly Member Wiggins
(~~Coauthor: Assembly Member Jackson~~)**

February 19, 2004

~~An act to add Section 1021.11 to the Code of Civil Procedure, relating to court costs. An act to amend Section 42889 of, and to add Article 7 (commencing with Section 42860) to Chapter 16 of Part 3 of Division 30 of, the Public Resources Code, relating to solid waste, and by making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as amended, Wiggins. ~~Recovery of costs: securities and commodities enforcement actions~~ *Soil erosion control tires: removal.*

(1) Existing law, the California Integrated Waste Management Act of 1989, establishes an integrated waste management program administered by the California Integrated Waste Management Board. Existing law requires any person who stores, stockpiles, or accumulates waste tires in a specified manner, to clean up those waste tires or abate the effects thereof, or in the case of threatened pollution or nuisance, as defined, take other necessary remedial action, upon the order of the board. Existing law requires the revenues from the California tire fee that is imposed upon the sale of new tires to be deposited in the California Tire Recycling Management Fund, and requires the board to expend the money in that fund, upon appropriation by the Legislature,

for specified purposes, based upon a 5-year plan that the board is required to adopt to establish goals and priorities for the waste tire program, including specified program elements. Existing law also authorizes a local enforcement agency to issue an administrative order requiring the owner or operator of a solid waste facility to take corrective action.

This bill would define the term “soil erosion control tire” as a waste tire that was placed in a gully, steep slope or riparian system, on or before January 1, 1992, as a tool for soil erosion control on agricultural land, as defined.

The bill would exempt, from specified enforcement provisions of the act, a landowner of agricultural land where a soil erosion control tire site is located, if the landowner submits specified documentation to the board on or before December 31, 2010. The bill would provide for the continuation of the exemption, upon the sale of the property, and would provide for related matters. The bill would authorize the board to waive the exemption if the board determines there is an emergency or that public safety and health are at risk.

The bill would require the board, in issuing any order to, or entering into any agreement with, a landowner, concerning soil erosion control tire cleanup, abatement, and site restoration on agricultural land, to coordinate and consult with the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the Department of Fish and Game, the State Water Resources Control Board, and the county in which the agricultural land is located. The bill would require the order or agreement to be issued or entered into in accordance with the California Environmental Quality Act. The bill would authorize a landowner to submit a written request to the Secretary for Environmental Protection and the Secretary of the Resources Agency or their designees, to meet and agree on coordinated tire cleanup, abatement, and site restoration requirements on or before 60 days after the date the request is received from the landowner, upon specified conditions. The bill would prohibit a state agency from imposing any sanction or penalty upon that landowner with regard to a tire cleanup, abatement, and site restoration, until an agreement is reached.

The bill would require the board to provide a grant to a small scale farmer from the California Tire Recycling Management Fund for soil erosion control tire cleanup, abatement, and site restoration costs that exceed \$10,000, thereby making an appropriation by changing the purpose for which funds currently appropriated to the board may be



expended. The bill would also require the moneys in the fund to be expended for financial assistance, including grants, loans, and financial guarantees, to landowners who are not small scale farmers for soil erosion control tire cleanup and abatement and for restoration costs.

The bill would require the board to adopt regulations by January 1, 2006, regarding the issuance of the grants, providing financial assistance, and the auditing of funds. The bill would also require the board to issue recommendations by January 1, 2006, regarding future appropriations from the fund.

~~The Corporate Securities Law of 1968 and the California Commodity Law of 1990 provide for regulation of certain securities and commodities transactions by the Commissioner of Corporations.~~

~~Existing law provides that a prevailing party in an action is entitled to recover court costs, which may include attorney’s fees when authorized by contract or law.~~

~~This bill would require that all costs and fees recovered by the Attorney General for the enforcement of the Corporate Securities Law of 1968 and the California Commodity Law of 1990 be paid to the Public Rights Law Enforcement Special Fund, as specified.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1021.11 is added to the Code of Civil~~
2 *SECTION 1. The Legislature hereby finds and declares all of*
3 *the following:*

4 *(a) Beginning in the 1940s, federal and state government*
5 *agencies promoted the placement of used automotive tires in*
6 *gullies, steep slopes, and riparian systems as a best management*
7 *practice for soil erosion control on agricultural land.*

8 *(b) Current law classifies any property holding over 500 tires*
9 *as an illegal waste site and subjects the property to cleanup and*
10 *abatement upon the issuance of an order from the California*
11 *Integrated Waste Management Board (board). The lack of an*
12 *exemption or permit process for tires placed for soil erosion*
13 *control constitutes an unfair retroactive penalty.*

14 *(c) The board, the State Water Resources Control Board, and*
15 *the Department of Fish and Game have imposed conflicting*



1 requirements and sanctions. For some agricultural properties, this
2 has contributed to over 10 years in delays for cleanup and
3 remediation of waste tire sites.

4 (d) When a farmer’s land is classified as an illegal waste site,
5 the farmer cannot borrow against the property for normal farm
6 operations or initiate tire cleanup, abatement, and site restoration.

7 (e) According to the board, agricultural sites, especially sites
8 in Sonoma County, constitute the largest known stockpiles of tires
9 in the state.

10 (f) By statute, no less than six million five hundred thousand
11 dollars (\$6,500,000) from the Tire Recycling Management Fund
12 is required to be spent annually to cleanup, abate, remove, or
13 remediate tire stockpiles throughout the state through 2006. This
14 is the most appropriate mechanism to provide financial assistance
15 to farmers facing cleanup and abatement orders from the board.

16 SEC. 2. Article 7 (commencing with Section 42860) is added
17 to Chapter 16 of Part 3 of Division 30 of the Public Resources
18 Code, to read:

19

20 Article 7. Soil Erosion Control Tires

21

22 42860. For purposes of this article, the following definitions
23 shall apply:

24 (a) “Agricultural land” has the same meaning as “category of
25 agricultural land” in paragraph (3) of subdivision (b) of Section
26 65570 of the Government Code.

27 (b) “Landowner” means a person who owns agricultural land
28 where soil erosion control tires are located.

29 (c) “Soil erosion control tire” means a waste tire that was
30 placed in a gully, steep slope, or riparian system, on or before
31 January 1, 1992, as a tool for soil erosion control on agricultural
32 land.

33 (d) “Soil erosion control tire site” means the location of one or
34 more buried or exposed soil erosion control tires located on
35 agricultural land.

36 (e) “Small scale farmer” means a landowner who employs less
37 than an average of 50 full or part time employees per month in a
38 calendar year.

39 42861. (a) Except as provided in subdivisions (e) and (f),
40 Sections 42808, 42823, 42845, and 45000 do not apply to a



1 landowner of agricultural land where a soil erosion control tire
2 site is located, if the landowner submits all of the following
3 documentation to the board on or before December 31, 2010:

4 (1) A survey of the agricultural land detailing the precise
5 locations of the soil erosion control tire sites, the approximate
6 number of tires in each site, and an indication of whether the tires
7 are buried.

8 (2) A certification that the tires are fulfilling a soil erosion
9 control function by one of the following:

10 (A) An engineering geologist, who is certified by the Board for
11 Geologists and Geophysicists of the Department of Consumer
12 Affairs.

13 (B) A geotechnical engineer, who is registered by the Board of
14 Registration for Professional Engineers and Land Surveyors of the
15 Department of Consumer Affairs.

16 (C) A certified soil erosion and sediment control professional
17 certified by a state agency or a nonprofit professional
18 organization. A nonprofit professional organization may certify a
19 person for the purposes of this subparagraph if the certification
20 process meets all of the following criteria:

21 (1) The person passes a proficiency exam in the principles,
22 practices, and laws of erosion and sediment control.

23 (2) The person possesses a degree in agricultural, civil, or
24 environmental engineering, geology, soil science, or natural
25 resource science or management.

26 (3) The person possesses a minimum of four years of
27 professional level experience in the soil erosion and sediment
28 control profession.

29 (b) The exemption provided by this section applies only to
30 buried or exposed soil erosion control tires that are located on
31 specific soil erosion control tire sites on agricultural land.

32 (c) A person who purchases land from a landowner who is
33 eligible for an exemption pursuant to this section shall also be
34 subject to the exemption at the time of sale. The landowner who
35 sells the property shall disclose to the purchaser the location of all
36 soil erosion control tire sites and the approximate number of soil
37 erosion control tires in each location.

38 (d) If a landowner is not exempt pursuant to this section, the
39 landowner is subject to an order issued by the board pursuant to
40 subdivision (a) of Section 42862.



1 (e) (1) This section does not apply to a landowner who has
2 entered into an agreement of negotiated cost recovery with the
3 board on or before December 31, 2004, or is subject to an order
4 of cleanup and abatement issued by the board on or before
5 December 31, 2004.

6 (2) Notwithstanding paragraph (1), on and after the date when
7 a landowner subject to paragraph (1) completes the tire cleanup,
8 abatement, and site restoration project subject to the agreement or
9 order, the landowner is eligible to seek an exemption pursuant to
10 this section.

11 (f) The board may waive the exemption provided by this section
12 if the board determines there is an emergency or if public safety
13 and health are at risk.

14 42862. (a) The board shall issue an order to, or enter into an
15 agreement with, a landowner, concerning soil erosion control tire
16 cleanup, abatement, and site restoration on agricultural land only
17 in coordination and consultation with the United States Fish and
18 Wildlife Service, the United States Army Corps of Engineers, the
19 Department of Fish and Game, the State Water Resources Control
20 Board, and the county in which the agricultural land is located,
21 and the order or agreement shall be issued or entered into in
22 accordance with Division 13 (commencing with Section 21000).

23 (b) Subdivision (a) does not apply to a landowner that is exempt
24 pursuant to Section 42861, unless the board waives the exemption
25 pursuant to subdivision (f) of Section 42861, in which case the
26 board may take the action specified in subdivision (a) with regard
27 to the tire cleanup, abatement, and site restoration will proceed as
28 specified in paragraph (a).

29 (c) If a state agency issues an order that imposes a requirement
30 upon a landowner with regard to tire cleanup, abatement, and site
31 restoration on agricultural land that conflicts with the
32 requirements of another state agency, the landowner may submit
33 a written request to the Secretary for Environmental Protection
34 and the Secretary of the Resources Agency, or their designees, to
35 meet and agree on coordinated tire cleanup, abatement, and site
36 restoration requirements on or before 60 days after the date the
37 request is received from the landowner.

38 (d) If a landowner submits a request pursuant to subdivision
39 (c), notwithstanding any other provision of law, a state agency
40 shall not impose any sanction or penalty upon that landowner with



1 regard to tire cleanup, abatement, and site restoration, until an
2 agreement is reached pursuant to subdivision (c).

3 (e) The board shall provide a grant to a small scale farmer,
4 pursuant to an order issued by the board or an agreement entered
5 into with the board in accordance with this section, for all tire
6 cleanup, abatement, and restoration costs exceeding ten thousand
7 dollars (\$10,000), in accordance with paragraph (1) of
8 subdivision (l) of Section 42889. The board shall provide the grant
9 in accordance with regulations adopted by the board pursuant to
10 paragraph (1) of subdivision (a) of Section 42863.

11 42863. (a) On or before January 1, 2006, the board shall
12 adopt regulations for both of the following:

13 (1) The issuance of grants to small scale farmers reimburse for
14 tire removal, abatement, and site restoration costs that exceed ten
15 thousand dollars (\$10,000). The regulations shall specify the costs
16 that the grant funds may reimburse, including regulatory technical
17 assistance costs, corrective action costs, and third party
18 compensation costs. The regulations shall also include procedures
19 for the submission of joint claims and the submission of separate
20 claims for each occurrence.

21 (2) Providing financial assistance, including any combination
22 of grants, loans, and financial guarantees, to a land owner that is
23 not a small scale farmer, pursuant to paragraph (2) of subdivision
24 (l) of Section 42899, for the costs of soil erosion control tire
25 removal and abatement and for site restoration. The board shall
26 include in the regulations adopted pursuant to this paragraph the
27 need for financial assistance for the following categories of
28 landowners:

29 (A) A landowner who is a monthly average of more than 50, but
30 less than 101, full-time and part-time employees in the most recent
31 calendar year farmer.

32 (B) A landowner with a monthly average of more than 100, but
33 less than 501, full-time and part-time employees in the most recent
34 calendar year.

35 (C) A landowner with a monthly average of over 500, but less
36 than 1001, full-time and part-time employees in the most recent
37 calendar year.

38 (D) A landowner with a monthly average of over 1000 full-time
39 and part-time employees in the most recent calendar year.



1 (3) *The establishment of a system to rank soil erosion control*
2 *tire sites for providing financial assistance pursuant to paragraph*
3 *(2) of subdivision (1) of Section 42889, according to the following*
4 *criteria:*

5 (A) *The degree of likelihood that the response action would not*
6 *be completed if financial assistance is not provided.*

7 (B) *The ability of the landowner to obtain private financing*
8 *absent state intervention.*

9 (C) *The degree of community support for the project, including,*
10 *but not limited to, letters of support from local governmental*
11 *entities, state or local elected officials, community leaders, and the*
12 *general public.*

13 (D) *The potential for the cleanup, abatement, and site*
14 *restoration to provide additional protection of the public health*
15 *and safety.*

16 (E) *The economic viability of the project including, but not*
17 *limited to, an analysis of the current value of the property as*
18 *compared to its projected value after all necessary tire cleanup,*
19 *abatement, and site restoration activities are completed.*

20 (F) *The ability of the landowner to successfully undertake tire*
21 *cleanup, abatement, and site restoration and repay any state loans*
22 *or private loans backed by the state.*

23 (4) *A procedure to audit the amount of funds appropriated for*
24 *tire removal and abatement to determine whether the amount of*
25 *those funds matches the demand for those funds and procedures for*
26 *adjusting those amounts.*

27 (b) *On or before January 1, 2006, the board shall issue*
28 *recommendations regarding both of the following:*

29 (1) *Future appropriations from the Tire Recycling*
30 *Management Fund, commencing with the 2006–07 fiscal year and*
31 *the five subsequent fiscal years for tire removal, abatement, and*
32 *site restoration on agricultural land.*

33 (2) *The recovery of costs from federal funds.*

34 SEC. 3. *Section 42889 of the Public Resources Code is*
35 *amended to read:*

36 42889. *Funding for the waste tire program shall be*
37 *appropriated to the board in the annual Budget Act in a manner*
38 *consistent with the five-year plan adopted and updated by the*
39 *board. The moneys in the fund shall be expended for the payment*
40 *of refunds under this chapter and for the following purposes:*



1 (a) To pay the administrative overhead cost of this chapter, not
2 to exceed 5 percent of the total revenue deposited in the fund
3 annually, or an amount otherwise specified in the annual Budget
4 Act.

5 (b) To pay the costs of administration associated with
6 collection, making refunds, and auditing revenues in the fund, not
7 to exceed 3 percent of the total revenue deposited in the fund, as
8 provided in subdivision (b) of Section 42885.

9 (c) To pay the costs associated with operating the tire recycling
10 program specified in Article 3 (commencing with Section 42870).

11 (d) To pay the costs associated with the development and
12 enforcement of regulations relating to the storage of waste tires
13 and used tires. The board shall consider designating a city, county,
14 or city and county as the enforcement authority of regulations
15 relating to the storage of waste tires and used tires, as provided in
16 subdivision (c) of Section 42850. If the board designates a local
17 entity for that purpose, the board shall provide sufficient, stable,
18 and noncompetitive funding to that entity for that purpose, based
19 on available resources, as provided in the five-year plan adopted
20 and updated as provided in subdivision (a) of Section ~~42855.5~~
21 42885.5. The board may consider and create, as appropriate,
22 financial incentives for citizens who report the illegal hauling or
23 disposal of waste tires as a means of enhancing local and statewide
24 waste tire and used tire enforcement programs.

25 (e) To pay the costs of cleanup, abatement, removal, or other
26 remedial action related to waste tire stockpiles throughout the
27 state, including all approved costs incurred by other public
28 agencies involved in these activities by contract with the board.
29 Not less than six million five hundred thousand dollars
30 (\$6,500,000) shall be expended by the board during each of the
31 following fiscal years for this purpose: 2001–02 to 2006–07,
32 inclusive.

33 (f) To make studies and conduct research directed at promoting
34 and developing alternatives to the landfill disposal of waste tires.

35 (g) To assist in developing markets and new technologies for
36 used tires and waste tires. The board’s expenditure of funds for
37 purposes of this subdivision shall reflect the priorities for waste
38 management practices specified in subdivision (a) of Section
39 40051.



1 (h) To pay the costs associated with implementing and
 2 operating a waste tire and used tire hauler program and manifest
 3 system pursuant to Chapter 19 (commencing with Section 42950).

4 (i) To pay the costs to create and maintain an emergency
 5 reserve, which shall not exceed one million dollars (\$1,000,000).

6 (j) To pay the costs of cleanup, abatement, or other remedial
 7 action related to the disposal of waste tires in implementing and
 8 operating the Farm and Ranch Solid Waste Cleanup and
 9 Abatement Grant Program established pursuant to Chapter 2.5
 10 (commencing with Section 48100) of Part 7.

11 (k) To pay the costs associated with the preparation of a report
 12 by the Office of Environmental Health Hazard Assessment, in
 13 consultation with the State Air Resources Board, the Integrated
 14 Waste Management Board, and the State Department of Health
 15 Services, that includes, at a minimum, the major chemical
 16 constituents of smoke from burning tires, the toxicity of those
 17 chemicals, and the potential effects on human health from
 18 exposure to smoke from the tire fires. The report shall be submitted
 19 to the Governor, the Legislature, and the board by December 21,
 20 2001. The cost of preparing this report shall not exceed one
 21 hundred fifty thousand dollars (\$150,000).

22 *(1) (1) To make a grant to a landowner that is a small scale*
 23 *farmer, as defined in subdivision (e) of Section 42860, for costs*
 24 *incurred for soil erosion control tire cleanup, abatement, and site*
 25 *restoration on agricultural land that exceeds ten thousand dollars*
 26 *(\$10,000), in accordance with an order issued pursuant to, or an*
 27 *agreement made in accordance with, Section 42862.*

28 *(2) To provide financial assistance, including any combination*
 29 *of grants, loans, and financial guarantees, to a landowner, as*
 30 *defined in subdivision (b) of Section 42860, that is not a small scale*
 31 *farmer, for soil erosion control tire cleanup, abatement and site*
 32 *restoration on agricultural land.*

33 ~~Procedure, to read:~~

34 ~~1021.11. (a) Whenever the Attorney General is or represents~~
 35 ~~the prevailing party, as defined in Section 1032, in a civil action~~
 36 ~~to enforce the Corporate Securities Law of 1968 (Division 4~~
 37 ~~(commencing with Section 25000) of Title 4 of the Corporations~~
 38 ~~Code) or the California Commodity Law of 1990 (Division 4.5~~
 39 ~~(commencing with Section 29500) of Title 4 of the Corporations~~
 40 ~~Code), all costs and fees recoverable under existing law shall be~~



1 ~~paid to the Public Rights Law Enforcement Special Fund~~
2 ~~established by Section 12530 of the Government Code.~~
3 ~~(b) This section shall apply to any action pending on January~~
4 ~~1, 2005, and to any actions filed thereafter.~~

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