

Waste Tire Program/Transportation: Louisiana Supreme Court Addresses Fee Assessment Issue



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The Louisiana Supreme Court (“Court”) addressed in a January 28th Opinion an issue arising out of the Louisiana Waste Tire Program (“Program”). See *Winmill Tire, LLC, et al. v. Colt, Inc., et al.*, 2022 WL 263004.

The question considered was whether waste tire processors are prohibited from assessing transportation charges to waste tire generators in addition to the fees they are provided by the tire Program.

The objective of the Program is to remove waste tires from the solid waste stream. It is governed by the Louisiana Solid Waste Recycling Reduction Law (“SWRRL”). See R.S. 30:2411, et seq.

The Program encompasses regulations that outline the requirements applicable to the disposal and recycling of waste tires. It is administered by the Louisiana Department of Environmental Quality (“LDEQ”).

Waste tires are defined as:

. . . whole tires that are no longer suitable for their original purpose because of wear, damage, or defect and/or have been discarded by the consumer.

The Program provides definitions for key participants including:

- Generator (a person whose activities result in the production of waste tires)
- Transporter (transports the waste tires)
- Processor (processes waste tires by using a method that alters old waste tires so that they are no longer whole. . .)

The processors are stated to have begun charging in 2015 generators a transportation fee to transport waste tires from the generator facilities to the processor facilities.

Generators filed suit seeking to have the fee declared unlawful. They argued that any fee charged by the processors exceeding the fee provided by the Program was prohibited.

The generators argued:

- LDEQ fee and subsidy provided to the processors covers both transportation and processing cost
- 2016 revisions to the Program regulations did not shift responsibility of who pays transporters and are not relevant to the lawfulness of the fee
- Allowing processors to charge generators a fee thwarts the purpose of paying transporters after delivery

The processors responded that none of the relevant statutes or Program regulations:

- Prohibit charging this type of fee
- Establish that the subsidy the processors may apply for is the sole compensation they are provided
- Require that the subsidy be used by the processor to pay for transportation costs

The Louisiana Court of Appeals decision disallowed the fee. In reversing the Louisiana Court of Appeals the Court stated:

While our learned colleagues of the lower courts correctly noted that the LDEQ is the proper authority for setting fees and administering the Waste Tire Program, the statutes and regulations have been silent as to how waste tire transporters receive any compensation since the 2016 revisions. Because the plain language of the relevant statutory and regulatory provisions do not prohibit a processor from charging a transportation fee, we find such fees permissible.

The Court undertook a review of the development of the waste tire statutory provisions and regulations. It held that none of the relevant statutes and regulations grant the Secretary of LDEQ sole authority to set any and all fees related to waste tires. Further, there was deemed to be no prohibition of fees being assessed from the private sector. It further noted that:

. . . although the handling of waste tires is regulated to a certain extent, the LDEQ has not so broadly regulated the area such that the fee at issue herein would be prohibited.

A copy of the Opinion can be downloaded [here](#).