



COLORADO
Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

May 6, 2015

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
1525 Sherman St., 7th Floor
Denver, CO 80203

Dear Ms. Ray:

In response to your request, we have prepared an updated status report regarding the implementation of audit recommendations contained in the Colorado Waste Tire Processor and End User Program. The attached report provides a brief explanation of the actions taken by the Colorado Department of Public Health and Environment to implement each recommendation.

If you have any questions, please contact me at 303-692-2012 or by email at larry.wolk@state.co.us.

Sincerely,

Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer



AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME: Waste Tire Processor and End User Program Performance Audit, June 2014

AUDIT NUMBER: 1341P

DEPARTMENT/AGENCY/ENTITY: Department of Public Health and Environment

DATE: May 6, 2015

SUMMARY INFORMATION

Rec. Number	Agency's Response	Original Implementation Date	Implementation Status	Revised Implementation Date
1a	Agree	June 2015	Implemented and Ongoing	
1b	Agree	June 2015	Not Implemented	July 2015
2a	Agree	June 2015	Implemented	
2b	Agree	May 2015	Implemented	
3	Agree	May 2015	Implemented	
4a	Agree	May 2015	Implemented	
4b	Agree	December 2014	Implemented	
4c	Agree	December 2014	Implemented	
4d	Agree	May 2015	Implemented	
5a	Agree	September 2014	Implemented	
5b	Agree	September 2014	Implemented	

DETAIL OF IMPLEMENTATION STATUS

Note: The Department of Public Health and Environment agreed with all audit recommendations.

Recommendation No. 1:

The Department of Public Health and Environment (Department) should improve its efforts to develop sustainable waste tire markets and eliminate the state's stockpile of waste tires by:

A. Developing and implementing strategies to achieve the Waste Tire Processor and End User Program's purposes within statutory timelines and establishing quantifiable goals and performance measures to monitor its performance over time.

B. Reporting the Department's strategies, goals, and performance measures developed in part "a" and an evaluation of its progress toward reaching its goals in its annual reports to the General Assembly.

Agency's Update on Current Implementation Status of Recommendation:

A. Current Implementation Status: Implemented and Ongoing.

Agency's Update: The Department has developed quantifiable goals and performance measures to determine if the rebate program is assisting in the development of end user markets: conduct at least four outreach events to promote the Waste Tire Program and/or market development opportunities each year; conduct ten percent more technical assistance outreaches with both existing and new companies over the 2014 baseline; maintain a recycling rate of over 100% or greater on an annual basis of Colorado generated waste tires and waste tires brought into Colorado from other states and waste tires in storage and stockpiles; and track the numbers of new end uses and tons consumed by the new end uses to ensure we consuming more than 100% or greater on an annual basis of Colorado generated waste tires and waste tires brought into Colorado from other states and waste tires in storage and stockpiles. The Department feels these goals and performance measurements are obtainable based on some recent success in developing end use markets in the state. The Department, along with our consultants, worked with a local cement company to secure a waste tire mobile processor who will be processing a significant amount of waste tires into fuel that will be used at the cement company's manufacturing plant. The Department will also be providing grant funding to a local company to conduct performance testing on several erosion control devices that will increase their ability to sell these products to new markets. The Department will continue to provide ongoing technical assistance to several companies to explore new operations in the state to further diversify the waste tire market.

B. Current Implementation Status: Not Implemented.

Agency's Update: The Department will provide this information and its evaluation in the annual report to the General Assembly which is due by July 1, 2015.

Recommendation No. 2:

The Department of Public Health and Environment (Department) should improve its process for managing the monthly reimbursement rate for the Waste Tire Processor and End User Program (Program) to align with the Program's goals, statutes, and rules by:

A. Collecting information on the costs to produce and use recycled waste tire products and analyzing the information to determine the extent to which key market segments need reimbursements to be economically viable.

B. Based on the information collected in part "a," working with the Solid and Hazardous Waste Commission to set annual reimbursement rates that promote the creation of a self-sustaining market for waste tires and prevent participants from receiving payments that provide more than a reimbursement for the cost of processing or end using waste tire products.

Agency's Update on Current Implementation Status of Recommendation:

A. Current Implementation Status: Implemented.

Agency's Update: The Department contracted with a consulting group to assist with the Waste Tire Program by conducting a survey to determine the fixed and variable costs of several specification sizes of tire-derived products. The group reviewed national statistics and surveyed several processors and end users in the state. Factoring in a 25% return on capital rate, the group concluded all tire-derived products manufacturing costs, except tire bale processing, exceed the \$40 per ton rate approved by the Solid and Hazardous Waste Committee. Survey information can be provided upon request. This survey was completed in November 2014. Although the rebates are needed in the short term to make these tire-derived products economically viable and assist with new market development and diversification, the Department agrees with the current statute's sunset date of January 1, 2018 to discontinue the rebate program in order for the state to transition from a subsidy-based market to a sustainable free market system that does not require rebates. The Department will continue to work to create and expand waste tire end use during this transition period. Further, this is being supported by new startup business ventures whose economic model does not include the rebates for long term viability.

B. Current Implementation Status: Implemented.

Agency's Update: The Department, based on forecasting and the information indicated in 2a, recommended a \$40 per ton rate for End Users Fund¹ rebates for calendar year 2015. This rate is lower than all manufacturing costs for tire-derived products except for tire bales. The Solid and Hazardous Waste Commission approved the \$40 per ton rate in November 2014 and it was implemented in January 2015.

Recommendation No. 3:

The Department of Public Health and Environment should work with the Solid and Hazardous Waste Commission to modify rules to exclude tire bales from the list of products eligible for reimbursement under the Waste Tire Processor and End User Program unless applicants can demonstrate that the tire bales are part of a permanent, engineered and structured design and will not become waste tires in the future.

Agency's Update on Current Implementation Status of Recommendation:

Current Implementation Status: Implemented.

Agency's Update: At the Solid and Hazardous Waste Commission in November 2014, the Department recommended that only tire bales that are end used in a permanent engineered structure remain eligible for a rebate. The Solid and Hazardous Waste Commission voted to continue to allow tire bales that are end used on agricultural property to be eligible for a rebate, along with tire bales that are end used in permanent engineered structures. All other tire bales processed, sold, or end used other than on agriculture land or permanent engineer structures are ineligible for a rebate.

Recommendation No. 4:

The Department of Public Health and Environment (Department) should strengthen the Waste Tire Processor and End User Program's (Program) eligibility controls and reviews of Program participants by:

- A. Changing its policy to align with Program rules that disallow applicants who submit false information when applying for reimbursements from receiving any future reimbursement under the Program. If the Department continues to believe that it needs greater flexibility to evaluate the circumstances of each case when false information is submitted, it should work with the Solid and Hazardous Waste Commission to change Program rules, but in any case, should not allow applicants who intentionally submit false information to receive future reimbursements.
- B. Developing and implementing a risk-based approach to scheduling site visits that uses staff time effectively and ensures consistent and adequate monitoring in the future.
- C. Implementing other procedures, in addition to site visits, such as periodic documentation reviews, to verify information provided by applicants.
- D. Implementing written policies and procedures for application processing and documentation verification, including procedures to document the process to determine whether to accept documentation other than weight slips to verify tire weight.

Agency's Update on Current Implementation Status of Recommendation:

A. **Current Implementation Status:** Implemented.

Agency's Update: The Department proposed and the Solid and Hazardous Waste Commission modified the existing regulations to permanently exclude applicants from the End Users Fund who knowingly and intentionally submit false information. This was implemented in January 2015. An

updated policy was reviewed by the Department legal counsel and signed by the Division director on May 11, 2015. The policy is available on the Department's website for public view.

B. Current Implementation Status: Implemented.

Agency's Update: The End Users Fund program has develop a risk based inspection program that includes prioritization factors such as large volume processors, retailers and end users; rebate forms with repeatedly inconsistent information; and type of tire-derived product processed or end used. These criteria will be field verified more frequently by either Departmental staff or local governmental enforcement personnel under provisions of House Bill 14-1352 that allow the Department greater flexibility to contract with local enforcement agencies. Contracts with local health agencies are responding to complaints of illegal tire dumps and haulers in addition to inspecting registered facilities who participate in the End Users Fund.

C. Current Implementation Status: Implemented.

Agency's Update: House Bill 14-1352 includes greater flexibility for the End Users Fund program to contract with local enforcement agencies. These contracts will include the requirements for the local enforcement agencies to collect copies of facility/operator documentation including records such as receipts, invoices, other business records and photographs of final placed/used tire-derived products. This evidence will be used to corroborate the rebate requests. In addition, Departmental staff will inspect facilities/operators and collect the same evidence to corroborate the rebate requests. These grants were made available to all local governmental agencies starting in December 2014.

D. Current Implementation Status: Implemented.

Agency's Update: Standard written operating procedures were finalized in May 2015 for administering the End Users Fund. In addition, local health inspectors will assist in verifying rebate request information.

Recommendation No. 5

The Department of Public Health and Environment should ensure that new tire retailers collect and remit waste tire fees to the State by:

- A. Modifying its registration form to identify waste tire facilities that sell new tires to consumers.
- B. Conducting periodic reviews to confirm that new tire retailers are remitting the fee required by statute.

Agency's Update on Current Implementation Status of Recommendation:

A. Current Implementation Status: Implemented.

Agency's Update: A new online registration form was made available for use in September 2014 and identifies waste tire facilities that sell new tires to consumers.

B. Current Implementation Status: Implemented.

Agency's Update: House Bill 14-1352 includes greater flexibility for the Department to contract with local enforcement agencies to conduct inspections. Contracts include requirements for the local enforcement agencies to verify new tire retailers are collecting the waste tire fee by reviewing documentation including records such as receipts, invoices, other business records. In addition departmental staff is inspecting new tire retailers to collect evidence to document the collection and remittance of the waste tire fee. We worked with the Department of Revenue to obtain copies of their database to ensure prior retailers are on the Department's retailers list. The Department also has searched for additional retailers via SIC codes, the Sales Genie business listings, the online yellow pages, Google searches and Craigslist.

ⁱ Name of the Processor and End Users Program was changed to the End Users Fund due to House Bill 14-1352.