

FEE COLLECTION IN THE
WASTE TIRE MANAGEMENT PROGRAM
DEPARTMENT OF ENVIRONMENTAL QUALITY



PERFORMANCE AUDIT
ISSUED JULY 30, 2014

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

July 30, 2014

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Charles E. "Chuck" Kleckley,
Speaker of the House of Representatives

Dear Senator Alario and Representative Kleckley:

This report provides the results of our performance audit on the collection of fees in the Waste Tire Management Program by the Department of Environmental Quality (DEQ).

The report contains our findings, conclusions, and recommendations. Appendix A contains the department's response to this report. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of DEQ for their assistance during this audit.

Sincerely,

A handwritten signature in blue ink that reads "Daryl G. Purpera".

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

DEQ-WASTE TIRE 2014

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



Fee Collection in the Waste Tire Management Program Department of Environmental Quality

July 2014

Audit Control # 40130005

Introduction

Louisiana's Solid Waste Recycling and Reduction Law¹ created the Waste Tire Management Program (WTMP) in 1989. The program's goal is to reduce or eliminate illegal tire dumps by providing subsidies to waste tire processors that receive and process eligible² waste tires for use in recycling projects approved by the Department of Environmental Quality (DEQ), such as using tire materials for alternative fuel or playground flooring. According to the Environmental Protection Agency, illegal tire dumping pollutes water streams and can ignite fires with toxic fumes that are hard to extinguish.

A waste tire generator ("generator") is a business that generates waste tires as part of its operations, including businesses that sell new or used tires, such as Firestone, Sears, Wal-Mart, and car dealerships. Generators that sell new or used tires or new motor vehicles are required to collect waste tire cleanup and recycling fees ("waste tire fees") from consumers on each tire sold in the state and then submit a report with the collected fees to DEQ each month.³ DEQ deposits these fees into the Waste Tire Management Fund ("waste tire fund") which is used to fund the WTMP's operations, including administrative costs and payments to waste tire processors. As of April 30, 2014, the balance of the fund was \$890,480.

Waste tire processors, facilities that collect waste tires from generators, request reimbursement from DEQ's waste tire fund for tires they have processed and recycled. During fiscal year 2013, DEQ collected approximately \$10.7 million in waste tire fees from the 2,299 generators operating in Louisiana.⁴ DEQ is allowed to spend up to 10% of these fees on administration costs, including salaries for four staff dedicated to the WTMP. Our audit objective was as follows:

Does DEQ effectively manage the Waste Tire Management Program to ensure that the state receives complete, accurate, and timely waste tire fees?

¹ Act 185 of the 1989 Regular Session, Louisiana Revised Statute (R.S.) 30:2411

² Eligible tires are waste tires generated within Louisiana.

³ Louisiana Administrative Code (LAC) 33:VII §10519

⁴This total only includes generators that were registered for all of fiscal year 2013.

Overall, we found that DEQ needs to improve its management of the WTMP and consistently enforce program requirements to ensure that the state receives complete, accurate, and timely waste tire fees. In addition, we found that the Waste Tire Program Task Force created during the 2013 Regular Legislative Session has not met to study program operations and make recommendations for improvement as required by state law. Appendix A contains DEQ's response to this report, Appendix B details our scope and methodology, and Appendix C summarizes relevant background information.

Objective: Does DEQ effectively manage the Waste Tire Management Program to ensure that the state receives complete, accurate, and timely waste tire fees?

Overall, DEQ needs to improve its management of the WTMP and consistently enforce program requirements to ensure that the state receives complete, accurate, and timely waste tire fees. We found that:

- DEQ does not have an effective process to identify and follow up with generators that fail to submit monthly fee reports as required by state law. Without these reports, DEQ cannot ensure that generators are remitting all fees owed to the state.
- DEQ does not monitor generators to ensure they remit monthly reports and fees in a timely manner as required by state law. We found that during fiscal years 2012 and 2013, 1,001 generators submitted \$2.9 million in fees late, with \$1 million of these fees being over 30 days late.
- DEQ's audit coverage and selection criteria do not adequately ensure remitted fees are accurate. During fiscal years 2011 through 2013, DEQ audited an average of 3.0% of waste tire generators and focused on generators that did not submit reports and fees rather than those that potentially underpaid fees.
- DEQ does not penalize generators that fail to remit complete, accurate, and timely waste tire reports and fees to the state. We identified at least 1,045 delinquent generators in fiscal year 2013, but DEQ only penalized one generator.

In addition, we found that the Waste Tire Program Task Force created during the 2013 Regular Legislative Session has not met to study program operations and make recommendations for improvement as required by state law. Our findings are discussed in more detail on the following pages.

DEQ does not have an effective process to identify and follow up with generators that fail to submit monthly fee reports as required by state law. Without these reports, DEQ cannot ensure that generators are remitting all fees owed to state.

Generators are required by state law to remit waste tire fees to the state by the 20th of each month for the previous month’s tire sales.⁵ Generators are also required to submit monthly fee reports that detail the number and type of tires sold to support the amount of fees remitted to DEQ as depicted in Exhibit 1. Generators are required by state law to submit fee reports even if the reports indicate that no tires were sold and no fees were collected (called “zero reports”).⁶ However, DEQ does not have an effective process to identify and follow up with generators that fail to submit monthly reports. Without these reports, DEQ cannot ensure generators are remitting all fees owed to the state.

Exhibit 1
Sample Monthly Waste Tire Fee Report

FEE RETURNED FOR WHICH MONTH AND YEAR: (CIRCLE ONE MONTH ONLY)		YEAR: 2012									
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
This report is due no later than the 20th day after the end of the reporting month. (Example: January report is due no later than February 20th)											
NOTE: A SEPARATE REPORT MUST BE FILED FOR EACH MONTH											
TIRES SOLD		AMOUNT (fees)	REMITTED(\$)								
NUMBER OF NEW TIRES SOLD THROUGH RETAIL:											
PASSENGER / LIGHT TRUCK	50	x \$2 =	100.00								
MEDIUM TRUCK		x \$5 =									
OFF ROAD		x \$10 =									
RETREAD TIRES		x \$1.25 =									
NUMBER OF USED TIRES SOLD THROUGH RETAIL:											
PASSENGER / LIGHT TRUCK		x \$2 =									
MEDIUM TRUCK		x \$5 =									
OFF ROAD		x \$10 =									
NUMBER OF TIRES SOLD WITH A NEW MOTOR VEHICLE SALE:											
PASSENGER / LIGHT TRUCK		x \$2 =									
MEDIUM TRUCK		x \$5 =									
OFF ROAD		x \$10 =									
TOTAL CHECK AMOUNT:			\$ 100.00								
NUMBER OF EXEMPTED TIRES⁷: (Fees not Collected)											
PASSENGER / LIGHT TRUCK (tires sold on used motor vehicles)											
OFF ROAD TIRES (includes ATV, Go/Golf Cart, bicycle, lawn mower tires)											
OTHER (includes tires weight over 500lbs)											

Source: DEQ’s Electronic Document Management System (EDMS)

According to DEQ, it does not have the resources to identify and follow up each month with generators that fail to submit their fee reports. Instead, during fiscal years 2007 through 2011, DEQ sent quarterly letters to generators that did not submit monthly reports and fees, and in fiscal year 2013, it began identifying and following up with the previous year’s noncompliant generators on an annual basis. This process involves using waste tire manifest reports⁷ to estimate fees owed from generators that did not submit required reports. DEQ sends these generators letters requesting the missing reports and corresponding fees. However, generators that collect fees but do not have waste tires that need to be recycled (e.g., car dealerships) do not complete manifest reports. As a result, DEQ’s current process will not identify the entire population of generators delinquent in submitting their reports.

Of the 2,165 generators that operated during fiscal year 2012, DEQ identified 138 (6%) that did not submit one or more of the required monthly reports. However, we reviewed DEQ data from fiscal year 2012 and found that 538 (25%) of the 2,165 generators failed to submit their fee reports in one or more months. Exhibit 2 shows the results of our analysis of the monthly reports received from generators during fiscal years 2011 and 2013.

⁵ LAC 33:VII §10519(D)

⁶ LAC 33:VII §10519(D) and §10521(C)

⁷ Manifest reports document the number and type of waste tires disposed of or transported from the generator to the processor.

Exhibit 2 Monthly Waste Tire Reports Submitted by Generators Fiscal Years 2011 through 2013						
Months Submitted	FY 2011		FY 2012		FY 2013	
	Number	Percentage	Number	Percentage	Number	Percentage
All 12	1,777	82.9%	1,627	75.1%	1,383	60.2%
Some of 12	293	13.7%	411	19.0%	667	29.0%
None of 12	72	3.4%	127	5.9%	249	10.8%
Total Generators	2,142	100%	2,165	100%	2,299	100%
Note: This analysis only includes generators that were registered during the entire fiscal year. Source: Prepared by legislative auditor's staff using information provided by DEQ.						

By not having an effective process to identify generators that do not submit required monthly reports, DEQ cannot ensure that generators are submitting all fees that are owed to the state. Since the WTMP is only funded by waste tire fees collected by DEQ, it is important that the department ensures that all generators are remitting their fees so that it has the funds needed to reimburse processors for recycling waste tires.

Recommendation 1: DEQ should improve its current process for identifying non-compliant generators so that it identifies and follows up with all generators who do not submit fee reports each month as required by state law in a timelier manner.

Recommendation 2: DEQ should follow up on the additional generators we identified that did not submit all reports and fees as required during fiscal years 2012 and 2013 and pursue collection.

Recommendation 3: DEQ should develop an electronic report and payment process that alerts both DEQ and generators when reports and fees are not submitted each month.

Summary of Management’s Response: DEQ agrees with these recommendations. However, DEQ disagrees that its current process of identifying and following up with generators that fail to submit monthly fee reports is not effective. According to DEQ, the majority of the data cited in the report pre-dates DEQ improvements. In addition, while DEQ regulations require generators to submit monthly fees reports, DEQ believes that given its limited resources, the annual process it currently uses is a cost effective way of complying with the overall requirement that it collects and administers the fund. However, to improve efficiency and increase the frequency of its current process without adding staff, DEQ is in the process of implementing a new electronic data system that will integrate disjointed databases. See Appendix A for DEQ’s full response.

LLA Additional Comments: Of the three fiscal years included in the scope of our audit, only one (fiscal year 2011) pre-dates DEQ’s current process. In addition, we found DEQ’s current process to be ineffective as it does not identify all generators that fail to submit required reports. As previously stated, we found that 538 (25%) generators in

fiscal year 2012 failed to submit their fee reports in one or more months. DEQ only identified 138. Without identifying and following up with noncompliant generators, DEQ cannot ensure it is receiving all required fees.

DEQ does not monitor generators to ensure they remit monthly reports and fees in a timely manner as required by state law. We found that during fiscal years 2012 and 2013, 1,001 generators submitted \$2.9 million in fees late, with \$1 million of these being over 30 days late.

As stated previously, waste tire generators are required by state law to submit fee reports and all associated waste tire fees to DEQ by the 20th of each month for the previous month's tire sales.⁸ However, DEQ does not monitor whether generators are remitting reports and fees on time each month.

Using DEQ's data, we determined that at least 9,652 (21.1%) of 45,707 reports were submitted late during fiscal years 2012 and 2013.⁹ These late reports represented 1,001 generators that were late in paying approximately \$2.9 million (13.9%) out of the \$20.8 million in fees paid to DEQ by all generators during those two fiscal years. Louisiana's 2013 fee delinquency rate of 15.4% is higher than other states with waste tire programs that monitor timeliness. For example, according to collections staff in Alabama and Colorado, they had average monthly late fee occurrence rates of 5% and 1% in fiscal year 2013, respectively. (See page 8 for more information on other states' collection of waste tire fees.) Exhibit 3 shows a breakdown of report submission timeliness along with associated fees owed to the state.

⁸ LAC 33:VII §10519(D)

⁹ This number does not include "zero reports," which are reports from generators that did not sell tires or collect waste tire fees that month.

Exhibit 3 Timeliness of Waste Tire Fee Submissions Fiscal Years 2012 and 2013					
		Early or On Time	1-29 Days Late	30+ Days Late	Totals
FY 2012	Reports	18,523	2,495	2,513	23,531
		78.7%	10.6%	10.7%	
	Fees	\$9,142,107	\$863,726	\$463,253	\$10,469,086
		87.3%	8.3%	4.4%	
FY 2013	Reports	17,532	2,791	1,853	22,176
		79.1%	12.5%	8.4%	
	Fees	\$8,748,504	\$1,047,088	\$547,317	\$10,342,909*
		84.6%	10.1%	5.3%	
Totals	Reports	36,055	5,286	4,366	45,707
		78.9%	11.6%	9.5%	
	Fees	\$17,890,611	\$1,910,814	\$1,010,570	\$20,811,995
		86.0%	9.2%	4.8%	
*This number does not match the \$10.7 million mentioned in the introduction to this report because of timing differences. Note: Fiscal Year 2011 data is not included in this analysis because DEQ did not track the date it received reports and payments that fiscal year. Source: Prepared by legislative auditor's staff using payment information provided by DEQ.					

It is important that DEQ receive waste tire fees on time so that it can pay processors in a timely manner for recycling waste tires. The WTMP experienced monthly funding shortfalls during fiscal years 2011, 2012, and 2013 and was not able to pay 100% of processor requests each month.¹⁰ In February 2013, DEQ was able to start fully paying processor reimbursement requests and eliminate past due amounts only because one processor's business decreased. While the fund has not had an arrears balance since July 2013, the risk that DEQ will not have adequate funds to pay 100% of processors' requests in the future still exists. As a result, DEQ needs to monitor generators to ensure they are submitting their reports and associated fees in a timely manner.

Recommendation 4: DEQ should begin tracking the date generators submit waste tire reports and related fees so that it can ensure that generators are complying with monthly deadlines as outlined in state law.

Summary of Management's Response: DEQ agrees with this recommendation and states that it is in the process of upgrading its data and reporting systems to better track compliance with its regulations. However, DEQ disagrees that it does not currently monitor generators to ensure they remit fees in a timely manner. While regulations promulgated by DEQ require generators to remit fees on a monthly basis, DEQ believes

¹⁰ See Appendix C for more information regarding the WTMP's funding and shortfalls.

that its annual review of tires processed against the tires reported is an effective way of ensuring that it collects the fees due. DEQ agrees that it takes time to perform these comparisons and monies collected due to invoicing are not received on a monthly basis, but it does believe that it ensures that the fees are collected. See Appendix A for DEQ’s full response.

LLA Additional Comments: DEQ’s process of annually comparing tires processed against tires reported is not an effective way of monitoring whether generators remit monthly reports and fees in a timely manner. We found that during fiscal years 2012 and 2013, 1,001 generators submitted \$2.9 million in fees late, with \$1 million of these being over 30 days late. It is important that DEQ receive waste tires fees on time so that it can pay processors in a timely manner for recycling waste tires.

DEQ’s audit coverage and selection criteria do not adequately ensure remitted fees are accurate. During fiscal years 2011 through 2013, DEQ audited an average of 3.0% of waste tire generators and focused on generators that did not submit reports and fees rather than those that potentially underpaid fees.

According to DEQ staff, it can only determine the accuracy of the fees generators submit by reviewing onsite documentation during its waste tire fee audits. However, out of 6,606 opportunities to audit generators, DEQ audited 195 (3.0%) waste tire fee generators during fiscal years 2011 through 2013. Exhibit 4 shows the number and percentage of waste tire generators audited for the last three fiscal years.

Exhibit 4			
Number and Percentage of Generators Audited			
Fiscal Years 2011 through 2013			
	Total Number of Active Generators	Number of Generators Audited	Percentage of Generators Audited
FY 2011	2,142	80	3.7%
FY 2012	2,165	55	2.5%
FY 2013	2,299	60	2.6%
Total	6,606	195	3.0%
Source: Prepared by legislative auditor's staff using audit tracking information provided by DEQ.			

Of the 195 total waste tire audits conducted during fiscal years 2011 through 2013, DEQ identified unpaid fees in 166 (85.1%) audits. In these 166 audits, DEQ found an average of \$5,898 in unpaid fees per audit for a total of \$979,110 in unpaid fees. Because this audit coverage includes 3.0% of all generators operating during these three fiscal years, the amount of unpaid fees may be significantly higher. Exhibit 5 contains the results of DEQ’s waste tire fee audits for the last three fiscal years.

Exhibit 5 DEQ Internal Audit Waste Tire Fee Audit Results Fiscal Years 2011 through 2013					
	Number of Waste Tire Fees Audits Conducted	Number of Audits with Unpaid Fees Identified	Percentage of Audits with Unpaid Fees Identified	Total Unpaid Fees Identified	Average Unpaid Fees Identified Per Audit*
FY 2011	80	69	86.3%	\$426,211	\$6,177
FY 2012	55	47	85.5%	317,706	6,760
FY 2013	60	50	83.3%	235,193**	4,704
Total	195	166	85.1%	\$979,110	\$5,898
*For audits with findings. **According to DEQ, this total is an estimate and may change. Note: All dollar amounts include interest that DEQ assessed at the state treasury rate. Source: Prepared by legislative auditor's staff using audit tracking information provided by DEQ.					

According to DEQ, its audit coverage is limited because audit staff decreased from seven employees in fiscal year 2011 to five employees in fiscal year 2012. DEQ’s audit section is also responsible for other types of audits, such as motor fuel delivery fee audits and DEQ property audits, with waste tire fee audits making up approximately 36% of DEQ’s planned audit hours. According to data provided by DEQ, approximately half of the waste tire fee audits are initiated by referrals from other DEQ staff and the other half are initiated by audit staff using a risk-based approach.

Because DEQ does not effectively identify and follow up with noncompliant operators in a timely manner, as discussed previously, it primarily audits generators that did not remit reports and fees, rather than generators that potentially underpaid their fees. If DEQ implemented a monthly process for WTMP staff to identify and follow up with all generators that do not submit reports and fees as required each month as previously recommended, audit staff would not have to spend time auditing these generators and could audit more generators that may be remitting fewer fees than owed.

Recommendation 5: DEQ should increase its waste tire fee audit coverage of generators and revise its audit section criteria to include more generators that potentially remit fewer fees than owed to the state.

Summary of Management’s Response: DEQ agrees that its audit standards can be improved upon. DEQ further agrees that it should include in its audit selection criteria a certain number of generators that could potentially be under reporting fees. However, DEQ disagrees that its current audit coverage and selection criteria do not adequately ensure remitted fees are accurate and states that auditors use a “risk” based system to prioritize their limited resources and identify generators to audit and bring in the most unpaid fees. See Appendix A for DEQ’s full response.

LLA Additional Comments: As stated in the report, DEQ primarily audits generators that did not remit some reports and fees, rather than generators that potentially

underpaid their fees. This is because DEQ does not have an effective process to identify and follow-up with noncompliant generators on the front end and in a timely manner. By improving that process as outlined in recommendations 1-3 of this report, audit staff could focus their resources on auditing generators that potentially underpaid fees. Until audit staff can include these generators in its audit selection criteria, DEQ cannot ensure that it is receiving all waste tire fees as required by state law.

DEQ does not penalize generators that fail to remit complete, accurate, and timely waste tire reports and fees to the state. We identified at least 1,045 noncompliant generators in fiscal year 2013, but DEQ only penalized one generator.

When generators fail to adhere to program requirements, DEQ can either issue generators a *formal* penalty or an *expedited* penalty. The formal penalty process allows the generator to appeal whereas with the expedited process, the generator waives its right to appeal and pays \$200 per violation.¹¹ According to state law, DEQ can only issue generators expedited penalties for the same violation once every three years.¹² During fiscal years 2011 through 2013, DEQ penalized 10 generators totaling \$13,864 for waste tire fee violations. Exhibit 6 shows the number of generators penalized during fiscal years 2011 through 2013.

Exhibit 6			
Number of Generators Penalized by DEQ			
Fiscal Year 2011 through Fiscal Year 2013			
	FY 2011	FY 2012	FY 2013
Total Generators	2,142	2,165	2,299
Expedited Penalties	5	0	1
Formal Penalties	3	1	0
Total Number	8	1	1
Total Penalties	\$9,104	\$4,360	\$400
Source: Prepared by legislative auditor's staff using information provided by DEQ.			

As shown in the exhibit, during fiscal year 2013 DEQ only issued one generator \$400 in penalties for fee-related violations.¹³ However, as shown in Exhibit 2, we identified 249 generators that failed to submit any reports during fiscal year 2013. In addition, we identified at least 796 generators that did not submit their fees timely during this timeframe. If DEQ issued an expedited penalty of \$200 on all 1,045 generators, it could have assessed an additional

¹¹ The \$200 penalty is the amount for waste tire fee violations, such as failure to collect and failure to remit fees to the state. Other types of violations have varying penalty amounts.

¹² LAC 33:I §805(E)(1)

¹³ On October 14, 2012, DEQ cited the generator \$200 for failing to submit waste tire reports and fees by the 20th of the month, and \$200 for failing to maintain copies of each monthly report for at least three years and have them available for inspection at the place of business during regular business hours.

\$209,000 in penalties during fiscal year 2013. All four states (Alabama, Arkansas, Colorado and Florida) we surveyed with waste tire programs impose penalties on generators that submit late reports and fees. For example, in Alabama, waste tire reports submitted after the due date are subject to a penalty of 10% of the fees owed or \$50 if there are no fees owed. In addition, any fees received after the due date are subject to a penalty of 10% of the total delinquent fees owed.

According to DEQ, it does not penalize all generators that fail to submit complete, accurate, and timely waste tire reports and fees because its current formal and expedited penalty process takes too long and is not appropriate for the types of violations that occur in this type of program. Formal and expedited penalties cover all DEQ programs (air quality, water quality, hazardous waste, underground storage tanks, etc.) and all violation types, not just fee-related violations. According to DEQ staff, the current penalty process is better suited toward environmental violations that impact human health and/or property and require DEQ to conduct due diligence to determine whether a violation occurred and the appropriate penalty based on the gravity of the violation.

We analyzed DEQ's penalty data for the WTMP and found that it takes DEQ on average 23 months to issue formal penalties and at least 11 months to issue expedited penalties. According to DEQ, staff attempted to collect unpaid fees during fiscal years 2007 through 2011 by sending quarterly letters to generators that did not submit monthly reports and fees. However, DEQ discontinued this process because it was ineffective in increasing compliance without appropriate penalties in place.

In addition, we found that program staff has not developed criteria for determining when to assess penalties for a generator's noncompliance with program requirements. Without an effective enforcement process, DEQ cannot hold generators accountable for adhering to program requirements.

Recommendation 6: DEQ should evaluate the effectiveness and appropriateness of its current penalty process and develop specific criteria for when to assess penalties for a generator's noncompliance with program requirements.

Summary of Management's Response: DEQ partially disagrees with this recommendation. DEQ states that its penalty process is strictly constrained by the Environmental Quality Act, La. R.S. 30:2025. However, it agrees that it does not generally employ its formal penalty process on generators that fail to remit complete, accurate, and timely waste tire reports and fees to the state. According to DEQ, state law does allow for penalties, but is generally cumbersome, time and asset intensive, and was designed for environmental violations not financial reporting ones. DEQ further states that the waste tire statute does not provide for automatic penalties and interest for non-filers or late filers, nor does it provide for an automatic fine or interest provision that would allow DEQ to automatically impose fines for late filers. DEQ does agree that it may be possible, after better data collection and reporting efforts are complete, to adjust its policy to provide for more contemporaneous enforcement. See Appendix A for DEQ's full response.

LLA Additional Comments: Our recommendation is directed toward DEQ evaluating the effectiveness and appropriateness of its current penalty process. If DEQ believes it can only implement the appropriate changes to its penalty process with statutory authorization, then it should pursue legislative authorization.

Recommendation 7: DEQ should notify generators in writing of its penalty criteria and begin issuing penalties to non-compliant generators accordingly.

Summary of Management's Response: DEQ partially disagrees with this recommendation only to the extent that its penalty criteria are a matter of law, DEQ cannot deviate from them, and generators are presumed to know the law. In order to implement a change in penalty criteria, a law change would be necessary. See Appendix A for DEQ's full response.

The Waste Tire Program Task Force has not met to study program operations and make recommendations for improvement as required by state law.

Act 323 of the 2013 Regular Legislative Session created the Waste Tire Program Task Force with the purpose of studying and making recommendations regarding the WTMP's laws, rules, regulations, fee structure, and financial obligations. The legislation was passed and the task force created because, at the time, DEQ was not able to fully pay the processors for the waste tires they recycled. Act 323 designates DEQ's Secretary as the task force chairman and required it to meet by August 31, 2013. In addition, the task force was to submit its findings and recommendations to the House Committee on Natural Resources and the Senate Committee on Environmental Quality on or before February 15, 2014. According to DEQ, however, as of May 2, 2014, the task force has not yet met because of scheduling conflicts.

Recommendation 8: DEQ should ensure that the Waste Tire Program Task Force meets to study and make recommendations regarding WTMP operations as required by state law.

Summary of Management's Response: DEQ agrees with this recommendation. See Appendix A for DEQ's full response.

APPENDIX A: MANAGEMENT'S RESPONSE



State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF MANAGEMENT & FINANCE

July 21, 2014

Mr. Daryl G. Purpera, CPA, CFE
Office of Legislative Auditor
Post Office Box 94397
Baton Rouge, LA 70804-9397

Dear Mr. Purpera:

This document represents the response by the Department of Environmental Quality (the Department) Management to the Audit Report titled "Fee Collection in the Waste Tire Management Program" (WTMP). The Department takes its regulatory and fiduciary responsibility toward the WTMP very seriously and appreciates the opportunity to respond to the findings of the audit report. These findings are addressed below:

- DEQ does not have an effective process to identify and follow up with generators that fail to submit monthly fee reports as required by state law. Without these reports, DEQ cannot ensure that generators are remitting all fees owed to the state.

DEQ disagrees with this finding. The majority of the data cited in the audit report pre-dates DEQ improvements. During the spring of 2013, DEQ began comparing processor payment requests to the reports received from waste tire generators. These annual comparisons have revealed both under reporters and non-reporters that had supplied waste tires to the processors. These generators are sent an invoice for the amounts which were expended by the fund on tires supplied by the generator. R.S. 30:2418(H) grants DEQ authority to administer and enforce the WTMP through the promulgation of rules, regulations and guidelines. DEQ regulations require generators to submit monthly fee reports and processors to submit monthly requests for payment. DEQ believes, given its limited resources, the annual process is a cost effective way of complying with the overall requirement that it collect and administer the fund. Nonetheless, to improve efficiency and increase the frequency of these back-checks without adding staff, DEQ is in the process implementing a new electronic data system that will integrate disjointed databases.

- DEQ does not monitor generators to ensure they remit fees in a timely manner as required by state law. We found that during fiscal years 2012 and 2013, 1,002 generators submitted \$2.9 million in fees late, with \$1 million of these fees being over 30 days late.

DEQ disagrees with this finding for the same reasons as enumerated above. DEQ does monitor generators to ensure they remit fees with its annual comparison of tires manifested to tires reported. While regulations promulgated by the DEQ require generators to remit fees on a monthly basis, DEQ believes

that its annual review of tires processed against the tires reported is an effective way of ensuring that it collects the fees due. If there is no report from the generator for tires reported as processed and recycled, the generator is sent an invoice for the number of tires reported by the processor as coming from the non-reporting or under reporting generator. DEQ agrees that it takes time to perform these comparisons and monies collected due to invoicing are not received on a monthly basis but it does believe that it insures that the fees are collected.

- DEQ's audit coverage and selection criteria do not adequately ensure remitted fees are accurate. During fiscal years 2011 through 2013, DEQ audited an average of 3 percent of waste tire generators and focused on generators that did not submit fees rather than those that potentially underpaid fees.

The Department disagrees with this finding for many of the same reasons enumerated above. DEQ does currently use selection criteria to ensure remitted fees are accurate to the best of its ability. After 2013, DEQ uses two ways of "auditing" tire generators to ensure that remitted fees are accurately remitted by the generators. The first "audit" is the annual comparison of the subsidy requests to the generator reports described above. The second, and more formal, is its audit personnel who perform formal audits of tire generators. Those auditors use a "risk" based system to prioritize their limited resources. There are currently over two thousand waste tire generators that are subject to potential audits. The Department utilizes a risk based system in deciding which generators to audit, the most important criteria being the ability to bring in the most unpaid fees. Reports that generate a significant anomaly in the tires reported by the processors and the tires reported (or not reported) by the generators are targeted for audit. Using this method, DEQ recently audited a non-reporter and recovered approximately \$178,000.00 in fees. Nonetheless, the Department is in the process of revamping its computer tracking systems to better integrate the functions of surveillance, enforcement and tracking of all information required to manage the WTMP. By better integrating its data gathering, all functions, including audit screening, required to continue to run the WTMP will be better managed without the need for the expenditure of additional funds and personnel time.

- DEQ does not penalize generators that fail to remit complete, accurate, and timely waste tire reports and fees to the state. We identified at least 1,045 delinquent generators in fiscal year 2013, but DEQ only penalized one generator.

DEQ agrees with this statement only to the extent that it alleges that DEQ does not generally employ its formal penalty process on generators that fail to remit complete, accurate, and timely waste tire reports and fees to the state. As stated in the report, there were at least 1,045 delinquent generators in fiscal year 2013. To employ the formal penalty process which was designed to penalize *environmental* violators, not financial reporters, would not be cost effective given existing resources. Additionally, the formal penalty process would not result in significant extra funds for the program as many non-reporters have made very few or no fee generating sales during the months for which they do not report. The figure reported above represents all non-reporters and does not differentiate between those who did and did not have a fee generating sale. If the annual audit system employed by DEQ reveals the amount owed is sufficient to warrant the use of the formal enforcement processes, which includes compliance orders, penalties, and cease and desist orders, DEQ will use that process. DEQ recognizes, however, that the enforcement process is time and asset intensive and does not result in positive gains for the WTMP. Any penalties collected by formal processes are statutorily dedicated to the Hazardous Waste Site Clean Up Fund (HWSCF). Only unpaid fees would be deposited into the WTMP. Current statutory authorization for the WTMP does not provide for automatic fines or late fees for generators who either don't report or under report.

The Department continues to believe it manages one of the most effective waste tire programs in the United States. Since the inception of the program, it has successfully cleaned up over seven million waste tires, and has continued to prevent the creation of new waste tire piles by operating an effective subsidy program. It has permitted and subsidized crumb rubber manufacturing sites providing the commodity market with access to the raw material used in a multitude of products. The Department continues to reach out to new markets and new processes for recycling waste tires. In 2014, the Department's waste tire program became the first to provide for the export of waste tire material destined to be used as tire derived fuel. In statistically matching sales of tires to receipt of fees, the Department is collecting the overwhelming majority of fees it is due without placing excessive burden on low-sale small businesses. The Department will continue to look for ways to optimize the program to provide for a better environment for current and future citizens of Louisiana. While the Department disagrees with the Audit Findings enumerated above, the Department will implement portions of the recommendations contained in the Audit report.

Sincerely,



Vince Sagnibene
Undersecretary

Louisiana Legislative Auditor
Performance Audit Services

**Fee Collection in the
Waste Tire Management Program
Department of Environmental Quality
Checklist for Audit Recommendations**

Instructions to Audited Agency: Please check the appropriate box below for each recommendation. A summary of your response for each recommendation will be included in the body of the report. The entire text of your response will be included as an appendix to the audit report.

RECOMMENDATIONS	AGREE	DISAGREE
<p>Recommendation 1: DEQ should improve its current process for identifying non-compliant generators so that it identifies and follows up with all generators who do not submit fee reports each month as required by state law in a timelier manner. (p. 5 of the report)</p>	X*	
<p>Recommendation 2: DEQ should follow-up on the additional generators we identified that did not submit all reports and fees as required during fiscal years 2012 and 2013 and pursue collection. (p. 5 of the report)</p>	X*	
<p>Recommendation 3: DEQ should develop an electronic report and payment process that alerts both DEQ and generators when reports and fees are not submitted each month. (p. 5 of the report)</p>	X*	
<p>Recommendation 4: DEQ should begin tracking the date generators submit waste tire reports and related fees so that it can ensure that generators are complying with monthly deadlines as outlined in state law. (p. 7 of the report)</p>	X*	

<p>Recommendation 5: DEQ should increase its waste tire fee audit coverage of generators and revise its audit selection criteria to include more generators that potentially remit fewer fees than owed to the state. (p. 8 of the report)</p>	X*	
<p>Recommendation 6: DEQ should evaluate the effectiveness and appropriateness of its current penalty process and develop specific criteria for when to assess penalties for a generator's non-compliance with program requirements. (p. 10 of the report)</p>		X*
<p>Recommendation 7: DEQ should notify generators in writing of its penalty criteria and begin issuing penalties to non-compliant generators accordingly. (p. 10 of the report)</p>	X*	
<p>Recommendation 8: DEQ should ensure that the Waste Tire Program Task Force meets to study and make recommendations regarding WTMP operations, as required by state law. (p. 11 of the report)</p>	X	

* See attached response to checklist for explanations.

Fee Collection in the Waste Tire Management Program
Department of Environmental Quality
Checklist for Audit Recommendations

Recommendation 1: DEQ should improve its current process for identifying non-compliant generators so that it identifies and follows up with all generators that do not submit fee reports each month as required by state law in a timelier manner.

Response: DEQ agrees with this recommendation in as much as it recommends that DEQ implement an improved process for following up with generators who do not submit fee reports each month as required by its regulations. DEQ does currently employ a process that follows up annually, having in the past found that even quarterly follow ups were not cost effective. DEQ is in the process of improving its data collection to better follow up on non-reporters in a timely manner.

Recommendation 2: DEQ should follow-up on the additional generators we identified that did not submit all reports and fees as required during fiscal years 2012 and 2013 and pursue collection.

Response: DEQ agrees with this recommendation and will follow-up on those generators identified that did not submit all reports and fees as required during fiscal years 2012 and 2013.

Recommendation 3: DEQ should develop an electronic report and payment process that alerts both DEQ and generators when reports and fees are not submitted each month.

Response: DEQ agrees with this recommendation and is in the process of improving its data collection and reporting to better alert it to when reports and fees are late.

Recommendation 4: DEQ should begin tracking the date generators submit waste tire reports and related fees so that it can insure that generators are complying with monthly deadlines as outlined in state law.

Response: DEQ agrees with this recommendation and is in the process of upgrading its data and reporting systems to better track compliance with its regulations.

Recommendation 5: DEQ should increase its waste tire fee audit coverage of generators and revise its audit selection criteria to include more generators that potentially remit fewer fees than owed to the state.

Response: DEQ agrees with this statement only to the extent that it asserts that DEQ's audit standards can be improved upon. Currently, all DEQ programs are "self-reporting" and require periodic audits. The WTMP uses a risk based audit program which targets its audits to generators that it believes will result in the greatest recovery of unpaid fees. DEQ agrees that it should include in its audit selection criteria a certain number of generators that could potentially be under reporting fees.

Recommendation 6: DEQ should evaluate the effectiveness and appropriateness of its current penalty process and develop specific criteria for when to assess penalties for a generator's non-compliance with program requirements.

Response: DEQ partially disagrees with this recommendation as its penalty process is strictly constrained by the Environmental Quality Act, La. R.S. 30:2025. Absent specific statutory authorization in the waste tire program, DEQ must use the authority in La. R.S. 30:2025. That provision does allow for penalties, but is generally cumbersome, time and asset intensive. It was designed for environmental violations, not financial reporting ones. As pointed out in the report, the enforcement statute does provide for the Expedited Enforcement Program. That program is limited to one violation in a three year period. Most non-filers and non-payers with a -0- fee event are repeat offenders. While one fine in three years may have a small deterrence affect, it is a poor tool for what is basically a debt collection matter. The waste tire statute does not provide for automatic penalties and interest for non-filers or late filers. It also does not provide for an automatic fine or interest provision that would allow DEQ to automatically impose fines for late filers. DEQ does agree that it may be possible, after better data collection and reporting efforts are complete, to adjust its policy to provide for more contemporaneous enforcement.

Recommendation 7: DEQ should notify generators in writing of its penalty criteria and begin issuing penalties to non-compliant generators accordingly.

Response: DEQ partially disagrees with this recommendation only to the extent that its penalty criteria is a matter of law, and generators are presumed to know the law. Nonetheless, as pointed out in the report, DEQ has in the past attempted to send demand letters to the non-compliant generators on a quarterly basis. As mentioned in the response to Recommendation 6 above, penalty criteria are a matter of law, and DEQ cannot deviate from them. In order to implement a change in penalty criteria, a law change would be necessary.

Recommendation 8: DEQ should insure that the Waste Tire Program Task Force meets to study and make recommendations regarding WTMP operations, as required by state law.

Response: DEQ agrees with this recommendation.

APPENDIX B: SCOPE AND METHODOLOGY

We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statute (R.S.) of 1950, as amended. Our audit covered fiscal years 2011 through 2013 and focused on whether the Department of Environmental Quality (DEQ) ensured that the state received complete, accurate, and timely waste tire disposal fees. The audit objective was as follows:

Does DEQ effectively manage the Waste Tire Management Program to ensure that the state receives complete, accurate, and timely waste tire fees?

We conducted this performance audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective to mitigate the risk of inaccurate data and performed the following audit steps:

- Researched Louisiana laws and administrative regulations to determine what fee requirements are for generators and for DEQ. Interviewed DEQ staff to determine what each section is currently doing to ensure waste tire generators remit fees as required – in full and on time.
- Obtained all DEQ internal policies and/or procedures relevant to fee collection and fee remittance.
- Obtained, reviewed, and analyzed DEQ’s data relevant to waste tire fee collections.
- Performed data reliability testing using PAS sampling methodology and data reliability matrix and source documentation which can be obtained from DEQ’s Electronic Document Management System.
- Conducted site visits of multiple waste tire generators, including new and used tire dealers, to fully understand operations and fee remittance processes.
- Researched laws and regulations of other states as well as general waste tire program information.
- Researched, analyzed, compared, and summarized fee collection practices of states with programs found to be similar to Louisiana’s.
- Obtained, reviewed, and analyzed internal audit documentation relevant to generator audits where there was a finding on delinquent fees.

APPENDIX C: BACKGROUND

Waste Tire Management Program Overview	
Consumer	
<ul style="list-style-type: none"> • Pays waste tire fees to generator for each new tire purchased <ul style="list-style-type: none"> • \$2 per each passenger vehicle/light truck tire • \$5 per each medium-sized truck tire • \$10 per each off-road vehicle tire 	↓
Generator	
<ul style="list-style-type: none"> • Generates waste tires as part of its business operations (e.g., Firestone, Sears, Wal-Mart, car dealerships) • Collects waste tire fees from consumer on each tire sold • Submits monthly fee report and applicable waste tire fees to DEQ by the 20th of the following month, itemized by number/type of tires sold, even if sales were zero for month • Gives waste tires to transporter for shipment to processing and recycling facility (“processor”) • Initiates manifest by documenting number/type of waste tires given to transporter 	↓
Transporter	
<ul style="list-style-type: none"> • Picks up waste tires from generator and delivers to processor • Signs manifest documenting number/type of tires picked up from generator • Secures signature of processor upon delivery of waste tires 	↓
Processor	
<ul style="list-style-type: none"> • Receives waste tires from transporter • Compares number/type of waste tires delivered by transporter to the number/type of tires documented by generator and signs manifest • Processes (cutting, slicing, chipping, or shredding) waste tires for beneficial end use approved by DEQ engineer (e.g., alternative fuel, playground flooring, recycled landfill material) • Submits processed tire weight ticket, manifests, and other documentation to DEQ for reimbursement 	↓
DEQ	
<ul style="list-style-type: none"> • Receives waste tire fees from generators each month • Reviews manifests and reimbursement documentation submitted by processor • Reimburses processor \$1.50 per 20 pounds of processed waste tires 	
<p>Source: Prepared by legislative auditor’s staff using information provided by DEQ.</p>	

Funding and Expenditures. The WTMP’s operations are fully funded by the Waste Tire Management Fund, which consists of waste tire fees and any interest and penalties paid by

delinquent generators. DEQ can use a maximum of 10% of all fees deposited in the fund for program administration.

Waste tire processors request reimbursement from DEQ’s waste tire fund for tires they have processed and recycled. If the fund does not have enough to cover the requests, DEQ can only partially pay the processors and thus accrues arrears for the remainder owed. As the following exhibit shows, the Waste Tire Management Fund experienced annual shortfalls during fiscal years 2011, 2012, and 2013, meaning it paid out in processor fees and administration costs more than it collected in generator fees and interest earned. According to DEQ, the program has been able to pay 100% of processor reimbursement requests since February 2013 and has not had an arrears balance since June 2013. However, since DEQ is dependent on generators to remit waste tire fees collected from consumers, it cannot be sure that it will have sufficient funds in the future to pay processors’ reimbursement requests.

Waste Tire Management Fund Shortfall Fiscal Year 2011 through Fiscal Year 2013				
Fiscal Year	(A) Fees Received*	(B) Total Admin**	(C) Processor Fees Paid	[A-B-C] Shortfall***
2011	\$10,616,280	\$976,278	\$10,521,613	-\$881,601
2012	\$10,681,438	\$915,693	\$9,977,350	-\$211,605
2013	\$10,738,385	\$898,683	\$10,010,294	-\$170,592

*“Fees Received” includes interest earned.
 **DEQ can withhold a maximum of 10% of all fees deposited into the fund for program administration.
 ***According to DEQ, the shortfall has decreased in current years because processor payment requests have decreased from one of the five processors.
Source: Created by legislative auditor's staff using financial data provided by DEQ.

Staffing. DEQ has four staff dedicated to the WTMP who conducts the majority of the program’s administrative functions. These functions include approving end-market uses for processed waste tires; reviewing generator, transporter, and processor applications; and ensuring manifests are submitted timely and properly. Several other sections within DEQ work part-time in varying amounts for the program, including:

- *Other OMF Staff* - processes fee remittances from generators and payments to processors
- *Internal Audit* - conducts regular audits of generators and periodic audits of transporters and processors, follows up to collect delinquent waste tire fees
- *Legal* - recovers delinquent waste tire fees through legal recourse that internal audit is unable to recover
- *Criminal Investigation* - investigates allegations of criminality (i.e., illegal waste tire dumping)
- *Permitting* - processes solid waste permit applications, which processors are required to obtain every five years

- *Inspections* - inspects, at a minimum, waste tire generators once every five years and waste tire processors once every two years
- *Enforcement* - conducts investigations and other work necessary to implement civil penalties on waste tire generators, transporters, and processors such as compliance orders, fines, and cease and desist orders.