

OFFICIAL
FILE COPY
DO NOT SEND USE
(Xerox necessary)
copies from this
copy and PLACE
BACK IN FILE

STATE OF LOUISIANA LEGISLATIVE AUDITOR

Department of Environmental Quality -
Waste Tire Management Program
Baton Rouge, Louisiana

April 4, 1996



Investigative Audit

***Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor***

OFFICIAL
FILE COPY
~~DO NOT SEND~~
Distok necessary
copies from this
copy and REPROD
BYOK M. STAN

LEGISLATIVE AUDIT ADVISORY COUNCIL

Representative Francis C. Thompson, Chairman
Senator Ronald C. Bean, Vice Chairman

Senator Robert J. Barham
Senator Wilson E. Fields
Senator Thomas A. Greene
Senator Craig F. Romero
Representative F. Charles McMains
Representative Edwin R. Murray
Representative Warren J. Triche, Jr.
Representative David Vitter

LEGISLATIVE AUDITOR

Daniel G. Kyle, Ph.D., CPA, CFE

DIRECTOR OF INVESTIGATIVE AUDIT

Allen F. Brown, CPA, CFE

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Legislative Auditor.

Table of Contents

Legislative Auditor's Transmittal Letter	v
Executive Summary	vii
Background and Methodology	xv
Findings and Recommendations:	Page
Inadequate Efforts Made in Cleaning Up Tire Piles	1
Prioritization Policy Ruled Improper by Court	3
Improper Reimbursement of Administrative Costs	4
DEQ Did Not Follow Prioritized Listing	4
Payments to Processors Are Not Properly Supported	6
Deficiencies Noted in DEQ's Handling of Prior Processors and Collectors	9
DEQ Has Not Addressed the Used Tire Issue	12
DEQ Exceeded Authority by Giving a Loan to a Processor	12
DEQ Does Not Ensure That All Revenues Are Collected	13
DEQ Paid Marketing Incentives But Did Not Ensure the Waste Tire Material Was Recycled	14
DEQ Paid Transportation Costs Not Provided by the Program Regulations	15
Attachment I	Management's Responses



DANIEL G. KYLE, PH.D., CPA, CFE
LEGISLATIVE AUDITOR

OFFICE OF
LEGISLATIVE AUDITOR
STATE OF LOUISIANA
BATON ROUGE, LOUISIANA 70804-9397

1600 NORTH THIRD STREET
POST OFFICE BOX 94397
TELEPHONE: (504) 339-3800
FACSIMILE: (504) 339-3870

April 4, 1996

THE HONORABLE LOUIS J. LAMBERT, JR.,
CHAIRMAN, AND MEMBERS OF THE
SENATE ENVIRONMENTAL QUALITY COMMITTEE
Baton Rouge, Louisiana

Transmitted herewith is our investigative report on the Department of Environmental Quality - Waste Tire Management Program. Our examination was conducted in accordance with Title 24 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

This report represents our findings and recommendations, as well as management's responses. Copies of this report have been delivered to the Department of Environmental Quality and others as required by state law.

Respectfully submitted,

A handwritten signature in cursive script that reads "Daniel G. Kyle".

Daniel G. Kyle, CPA, CFE
Legislative Auditor

AFB:ka

Executive Summary

Investigative Audit Report Department of Environmental Quality Waste Tire Management Program

The following summarizes the findings and recommendations that resulted from this investigation. Detailed information relating to the findings and recommendations may be found at the page number indicated.

Inadequate Efforts Made in Cleaning Up Tire Piles

(Page 1)

- Finding:** Although DEQ began collecting fees in September 1992 to clean up promiscuous tire piles, DEQ officials did not actually begin to use the money to clean up any sites until June 1995. Furthermore, as of December 1995, DEQ had collected \$13,612,391 through the program but had spent only \$377,881 cleaning up promiscuous tire piles.
- Recommendation:** We recommend that DEQ continue in its efforts to clean up the state's tire piles with cooperation from local governmental entities. DEQ should designate a portion of the fund's current balance and all future receipts for the cleanup of tire piles and use these funds in a timely efficient and effective manner.
- Management's Response:** The department is committed to work closer with local government entities in its continuing efforts to clean up the state's promiscuous and unauthorized waste tire piles. The department has begun contracting with local government entities in coordinating these cleanups, and will speed up the process of giving contracts to local governments to clean up these tire piles. We have identified funds in the Waste Tire Management Fund specifically for this purpose.
-

Prioritization Policy Ruled Improper by Court**(Page 3)**

- Finding:** DEQ instructed local government entities to give certain processors priority when selecting processors to clean up promiscuous tire piles. According to the Fourth Circuit Court of Appeals, this prioritization policy has no basis in law.
- Recommendation:** We recommend that DEQ follow the regulations relating to the Waste Tire Program. We additionally recommend that DEQ's Office of Legal Affairs and Enforcement review all information set forth as policy to ensure that the department is following state laws and the regulations governing the Waste Tire Program.
- Management's Response:** *The Solid Waste Division is presently working with its Legal Services Division, who has assigned an attorney to work with them in reviewing current regulations and policies to ensure that we follow the state laws and regulations governing the Waste Tire Program.*

Improper Reimbursement of Administrative Costs**(Page 4)**

- Finding:** DEQ officials violated the rules and regulations by reimbursing a local government \$8,937 for the administrative services of an employee.
- Recommendation:** We recommend that DEQ follow the regulations relating to the Waste Tire Program regarding reimbursement for cleanup of tire piles.
- Management's Response:** *The department recognizes this oversight, and has set up procedures to ensure we reimburse only allowable cost from the Waste Tire Management Fund.*
-

DEQ Did Not Follow Prioritized Listing**(Page 4)**

Finding: DEQ is not following the waste tire regulations related to the cleanup of promiscuous or unauthorized tire piles.

Recommendation: We recommend that DEQ make further efforts to identify all tire piles located in Louisiana and to estimate the number of tires in each pile. This will provide a benchmark to measure the progress of the program and also assist in identifying those sites that are currently being created. These piles should then be identified as either promiscuous or unauthorized as required by the regulations.

DEQ should prioritize the listing giving priority to promiscuous sites and make efforts to ensure that each of the promiscuous sites are cleaned up in a timely manner. If local governmental entities are unwilling or otherwise unable to participate, DEQ should consider amending the regulation in order to contract directly with permitted processors to clean up the tire sites.

Regarding unauthorized sites, DEQ should use every legal means available to force the landowner or other responsible party to clean up the tire piles. In cases where these efforts are unsuccessful, DEQ should clean up the unauthorized sites and take legal action to recover all costs incurred. In addition, DEQ should develop procedures to ensure adherence with the program's rules and regulations.

Management's Response: The department has instructed its Solid Waste inspectors to work with local governments to identify all tire piles in the state. As they identify these piles, they make an estimate of the number of tires on each site, and are identified as either promiscuous or unauthorized.

The department is currently changing the prioritization of waste tire piles to ensure that waste tire piles are prioritized according to danger, hazard, or nuisance, equally. The department is pursuing new avenues in helping local government in cleanups of these sites.

DEQ Did Not Follow Prioritized Listing**(Page 4)**

Finding: DEQ is not following the waste tire regulations related to the cleanup of promiscuous or unauthorized tire piles.

Recommendation: We recommend that DEQ make further efforts to identify all tire piles located in Louisiana and to estimate the number of tires in each pile. This will provide a benchmark to measure the progress of the program and also assist in identifying those sites that are currently being created. These piles should then be identified as either promiscuous or unauthorized as required by the regulations.

DEQ should prioritize the listing giving priority to promiscuous sites and make efforts to ensure that each of the promiscuous sites are cleaned up in a timely manner. If local governmental entities are unwilling or otherwise unable to participate, DEQ should consider amending the regulation in order to contract directly with permitted processors to clean up the tire sites.

Regarding unauthorized sites, DEQ should use every legal means available to force the landowner or other responsible party to clean up the tire piles. In cases where these efforts are unsuccessful, DEQ should clean up the unauthorized sites and take legal action to recover all costs incurred. In addition, DEQ should develop procedures to ensure adherence with the program's rules and regulations.

Management's Response: The department has instructed its Solid Waste inspectors to work with local governments to identify all tire piles in the state. As they identify these piles, they make an estimate of the number of tires on each site, and are identified as either promiscuous or unauthorized.

The department is currently changing the prioritization of waste tire piles to ensure that waste tire piles are prioritized according to danger, hazard, or nuisance, equally. The department is pursuing new avenues in helping local government in cleanups of these sites.

Regarding unauthorized sites, DEQ will develop and carry out procedures to use every legal means available in pursuing identified landowners and other responsible parties to bear the cost of the cleanup of identified unauthorized sites.

Payments to Processors Are Not Properly Supported**(Page 6)**

Finding: DEQ is not obtaining adequate information to support payments made to permitted waste tire processors from the Waste Tire Management Fund.

Recommendation: We recommend that DEQ modify the current computer system to prevent the acceptance of duplicate manifests. This will provide more reliable information to those whose responsibility it is to make payments to the processors.

DEQ pays waste tire processors based on estimated weight from the number and size of tires processed submitted on the application for payment. If payment is to be made based on weight, it would be more logical to require that processors report actual weight supported by weight tickets. We recommend that DEQ promulgate regulations requiring that waste tire processors submit weight tickets to support their processed weight for payment purposes. DEQ should also conduct periodic, on-site audits of processor records and require that processor scales be periodically calibrated.

Management's Response: The department has established procedures to properly monitor the payments to processors. Procedures will be established to require weight tickets for waste tire materials, either from public scales or the certified scales of the waste tire processors. When scales are not available, as determined by DEQ, then the average weight stated in the regulations will be used. We will modify the computer system to help prevent discrepancies discovered during this audit process.

Deficiencies Noted in DEQ's Handling of**Prior Processors and Collectors****(Page 9)**

Finding: Several companies and individuals who were allowed by DEQ to accumulate and store large quantities of waste tires went out of business before shredding and disposing of the tires. DEQ may incur the cost of cleaning up these tire piles.

Recommendation: We recommend that DEQ pursue all legal means available to recover expenses incurred in the cleanup of unauthorized waste tire sites. We additionally recommend that DEQ perform procedures to determine that the operator is financially stable before issuing a permit.

Management's Response: The department recognized the deficiencies identified by the audit, and will continue to pursue recovering all cost incurred in the cleanup of unauthorized sites. The department also will continue to review all financial requirements to decide that the operator is financially stable before issuing a permit.

DEQ Has Not Addressed the Used Tire Issue **(Page 12)**

Finding: DEQ has not adequately addressed the problem of waste tires generated by used tire dealers and salvage yards.

Recommendation: We recommend that DEQ carefully consider the disposal of used tires. If it is determined that the disposal of used tires is compounding the state's problem with illegal dumping of waste tires, we recommend that DEQ develop a system to ensure their proper disposal.

Management's Response: The department concurs with this finding, and is currently considering how to handle used tire dealers' waste tires, and the illegal dumping of waste tires. A system to ensure proper disposal may require a legislative change to current statutes. This would then allow the program the authority to include collection of fees from used tire dealers, and a rule to enforce regulations on used tire dealers.

**DEQ Exceeded Authority by Giving
a Loan to a Processor** **(Page 12)**

Finding: DEQ exceeded its authority and violated provisions of Article 7, Section 14 of the Louisiana Constitution when it gave a \$500,000 loan to Cottonport Monofill, one of the state's waste tire processors.

Recommendation: We recommend that DEQ discontinue this loan program.

Management's Response: The loan in question was repaid, and we have ended the process of making loans from the Waste Tire Management Fund.

DEQ Does Not Ensure That All Revenues Are Collected**(Page 13)**

Finding: Louisiana tire dealers are required to collect a \$2 fee from their customers for each new tire sold and remit this money to DEQ; however, the agency has not developed procedures to ensure that the dealers are remitting all fees collected.

Recommendation: We recommend that DEQ maintain a system which provides for periodic audits of the dealers' sales records. In addition, either field inspectors should be provided proper training to perform these audits or qualified personnel should be employed.

Management's Response: We will establish an audit function in the department that will be available to do random audits of waste tire dealers. This function will review records of tire dealers on a random basis to ensure that all revenues are being collected.

**DEQ Paid Marketing Incentives But Did Not Ensure
the Waste Tire Material Was Recycled****(Page 14)**

Finding: Although DEQ has paid out over \$40,000 as marketing incentives, the agency has not ensured that the waste tire material was properly recycled.

Recommendation: We recommend that DEQ:

1. Develop written regulations that provide instructions and requirements for processors to follow when requesting marketing incentives;
2. Require that processors submit adequate proof that the waste tire material is being used as a raw material, product, or fuel source;
3. Perform field inspections to verify the end use of the recycled material;
4. Require weight tickets to support the processor's application for payment; and
5. Clearly establish criteria for qualification as a recycler.

Management's Response: The department concurs with this finding to the extent that department employees have not physically inspected the facilities to ensure the waste tire material was recycled. However, we do review all written documentation and certification by manifest. We will develop guidelines to ensure that we carry out these recommendations.

**DEQ Paid Transportation Costs Not
Provided by the Program Regulations**

(Page 15)

Finding: DEQ paid \$550,376 to waste tire processors for transportation costs without first amending the department's regulations and seeking the review and approval of legislative oversight committees as required by state law.

DEQ failed to establish an adequate review procedure of the processors' reimbursement requests and, as a result, paid \$3,073 in error.

DEQ paid Cottonport Monofill \$588 for transportation costs while DOTD had already compensated Cottonport Monofill.

DEQ declared an emergency and adopted an emergency rule extending the payment of transportation costs without following the proper procedures.

Recommendation: We recommend that DEQ:

1. Comply with Louisiana law by publishing any amendments to its regulations in the *Louisiana Register* and affording the legislative oversight committees the opportunity for review and approval before implementation;
2. Implement procedures that ensure a proper review of all transportation reimbursement is made before payment. These procedures should be designed to reveal duplicate as well as erroneous charges; and
3. Research the issue of whether incentives are necessary to ensure that tires not located near a permitted processor are properly processed and, if needed, establish incentives in accordance with Louisiana law.

Management's Response: This administration recognized the problems with this activity, and ended this reimbursement by Emergency Rule. This administration is committed to compliance with Louisiana law regarding any changes to any of its regulations. The Waste Tire Program will review the need for any incentives necessary for the proper disposal of waste tires in Louisiana.

Background and Methodology

The Louisiana Senate, by Senate Resolution No. 73 of the 1995 Regular Session, directed the Legislative Auditor to investigate the Department of Environmental Quality's handling of the waste tire remediation program and the issuance of environmentally related contracts and to report any findings to the Senate Committee on Environmental Quality. We performed our investigative audit in response to this directive.

The Waste Tire Management Program was established by Act 185 of the Regular Session of the 1989 Louisiana Legislature. The Act specifically banned whole tires from landfills and required the Department of Environmental Quality (DEQ) to promulgate regulations to promote recycling and reuse of waste tires. The Act also gave DEQ the authority to charge a fee to be used for the purposes established in those regulations.

On January 20, 1992, DEQ promulgated regulations that imposed a \$2 fee on the retail sale of motor vehicle tires. Under these regulations, tire dealers retained \$1 of the fee to defray their waste tire disposal costs. The remaining \$1 was remitted to DEQ and was dedicated for administration of the regulations, development of markets for processed waste tire material, and cleanup of promiscuous waste tire piles.

Act 664 of the 1992 Louisiana Legislature created the Waste Tire Management Fund within the treasury. This Act also mandated regulations covering administration and enforcement of the Waste Tire Program. On September 20, 1994, DEQ promulgated new rules and regulations. The new rules provided that the entire \$2 fee be remitted to DEQ and the department use this fee to pay costs of processing, administration, research, and cleanup of promiscuous tire piles.

The intent of the program was to clean up tire piles located throughout the state and provide a means to properly process those waste tires currently generated. To accomplish this, DEQ entered into agreements to reimburse local governments for their cost related to the cleanup of promiscuous tire piles. In addition, DEQ entered into agreements with permitted processors for the collection and processing of waste tires that are currently generated by tire dealers and individuals.

As of December 31, 1995, DEQ collected \$13,612,391 through the program and has spent \$3,933,012 of these funds as follows:

Processing costs	\$1,953,202
Cleanup of tire piles	377,881
Marketing costs	40,208
Transportation costs	550,376
Administrative costs	<u>1,011,345</u>
Total	<u>\$3,933,012</u>

As of December 31, 1995, the balance of the Waste Tire Management Fund, including interest earnings, was \$9,679,379.

Our procedures consisted of (1) interviewing selected DEQ officials and employees, processors, and other individuals as necessary; (2) examining selected documents related to the waste tire program; (3) making inquiries and performing tests to the extent we considered necessary to achieve our purpose; and (4) reviewing Louisiana laws, DEQ rules and regulations, and other information relevant to the program.

The result of our examination is the findings and recommendations presented herein.

Findings and Recommendations

INADEQUATE EFFORTS MADE IN CLEANING UP TIRE PILES

Although DEQ began collecting fees in September 1992 to clean up promiscuous tire piles, DEQ officials did not actually begin to use the money to clean up any sites until June 1995. Furthermore, as of December 1995, DEQ had collected \$13,612,391 through the program but had spent only \$377,881 cleaning up promiscuous tire piles.

During January 1992, DEQ promulgated regulations which provided for the collection of a \$2 fee on the sale of new tires. This was to be used for waste tire disposal. One dollar of this fee was retained by the tire dealer to pay the cost of waste tire disposal and the remaining dollar was remitted to DEQ to pay for the cost of administering the program and to clean up promiscuous tire piles. Promiscuous tire piles are those piles that were not authorized by DEQ and resulted from activities by someone other than the landowner and without the landowner's knowledge. DEQ collected the first of these fees in September 1992.

On April 14, 1994, DEQ issued an emergency rule providing \$2 million in funding to local governments for the cleanup of promiscuous tire piles. This plan was not well received throughout the state because it required the local governmental entities to also contribute towards the costs.

During September 1994, DEQ amended its regulations to require that the entire \$2 fee on new tire sales be remitted to the department. The new regulations required that, effective January 1, 1995, DEQ use \$1 of the fee to pay waste tire processors for currently generated waste tires, a maximum of \$.20 for program administration, \$.10 for research and market development, and a minimum of \$.70 for the cleanup of promiscuous tire piles. The effective date of the new regulations was delayed until February 1, 1995.

Although DEQ was collecting the fee and building a substantial fund, none of the funds were used to clean up promiscuous tire piles until 1995. In fact, between September 1992 and December 1995, DEQ collected \$13,612,391 but spent only \$377,881 for the cleanup of promiscuous tire piles. The first of these sites was not completed and reimbursed from the Waste Tire Management Fund until June 1995, some 42 months after the establishment of the program.

DEQ's efforts to clean up promiscuous tire piles are facilitated through local governmental entities such as parish police juries and city governments. Under the current regulations, local governments may qualify for funding to clean up abandoned tire piles. To obtain the funding, the local governments must identify abandoned tire piles located within their boundaries and submit that information to DEQ. If approved for funding, the local governments submit a proposal which describes the method and manner in which the processors, together with the governmental entities, intend to dispose of the waste tires. Upon approval of the plan, the local governments enter into contracts with permitted processors to have the waste tires removed and properly processed. Thereafter, DEQ performs inspections of the sites, verifying that the sites have been satisfactorily cleaned up, and reimburses the local governmental entities for their costs. As stated previously, the first of these projects began during 1995. From June through December 1995, DEQ provided \$377,881 to four local governments to clean up and process 403,078 tires located in tire piles.

<u>Entity</u>	<u>Amount</u>
St. Bernard Port & Harbor	\$263,134
Jefferson Parish	84,000
East Baton Rouge City/Parish	15,555
Avoyelles Parish	15,192
	<u> </u>
Total	<u><u>\$377,881</u></u>

Between September 29, 1995, and January 8, 1996, DEQ has increased its efforts by reviewing or approving agreements with eight local governments to clean up 385 waste tire piles.

<u>Entity</u>	<u>Piles</u>
St. Charles Parish	5
Acadia Parish	1
Assumption Parish	2
Calcasieu Parish	1
Ouachita Parish	13
City of Port Allen	1
Orleans Parish	327
Jefferson Parish	35
	<u> </u>
Total	<u><u>385</u></u>

We recommend that DEQ continue in its efforts to clean up the state's tire piles with cooperation from local governmental entities. DEQ should designate a portion of the fund's current balance and all future receipts for the cleanup of tire piles and use these funds in a timely efficient and effective manner.

PRIORITIZATION POLICY RULED IMPROPER BY COURT

DEQ instructed local governmental entities to give certain processors priority when selecting processors to clean up promiscuous tire piles. According to the Fourth Circuit Court of Appeals, this prioritization policy has no basis in law.

In an internal memorandum dated December 23, 1994, Secretary William Kucharski set forth a prioritized ranking of processors as follows:

1. processor/recycler
2. processor/monofill
3. processor/beneficial reuse
4. processor/landfill

The memorandum additionally stated that the local governments would be advised of the priority ranking and it must be considered even if it is more costly. According to personnel in DEQ's Office of Legal Affairs and Enforcement, this priority ranking was not submitted to DEQ's Legal Division for review before its implementation. Subsequently, this memorandum was sent to several local governmental entities and was relied upon by at least one of them--the City of New Orleans.

In April 1995, the City of New Orleans (City) issued a proposal seeking bids to clean up waste tires located at 327 sites in the New Orleans area. The City's proposal included the priority ranking and provided that bidders would be chosen giving consideration according to their priority. There were two qualified bidders, both processors permitted by DEQ. River/Road Construction Company, Inc., (River/Road) submitted the lower of the two bids at \$1.0989 per waste tire and Merrick Construction Company d.b.a. Cottonport Monofill (Cottonport Monofill) submitted a higher bid of \$1.38. According to River/Road, the difference in price was about \$200,000. The City chose the higher of the two bidders, Cottonport Monofill, because of the four-level priority criteria. On July 27, 1995, a contract was executed between the City and DEQ in which DEQ agreed to pay the City up to \$1.4 million from the Waste Tire Management Fund for the project.

River/Road filed a petition in district court seeking to prohibit the City from awarding the contract to anyone other than the lowest bidder. River/Road's petition was denied. Subsequently, River/Road appealed to the Fourth Circuit Court of Appeals. The Fourth Circuit Court of Appeals, in a decision rendered January 11, 1996, found that the letting of the contract by the City was improper and illegal, and cited that the City's reliance on the prioritization policy implemented by DEQ was without basis in law because this policy was not within regulations promulgated by DEQ. The court further found that not only the specifications in the City's request for proposal circumvented the Public Bid Law, which

requires the contract to be awarded to the lowest bidder, but also was in conflict with the state statute and departmental regulations authorizing the contract. The appellate court remanded the case to the trial court for another hearing.

The contract was completed by Cottonport Monofill and, therefore, cost the City more than that required. In addition, the City may incur additional costs for River/Road damages.

We recommend that DEQ follow the regulations relating to the Waste Tire Program. We additionally recommend that DEQ's Office of Legal Affairs and Enforcement review all information set forth as policy to ensure that the department is following state laws and the regulations governing the Waste Tire Program.

IMPROPER REIMBURSEMENT OF ADMINISTRATIVE COSTS

DEQ officials violated the rules and regulations by reimbursing a local government \$8,937 for the administrative services of an employee.

The St. Bernard Port, Harbor and Terminal District hired an employee who performed liaison activities between the Port and DEQ, supervised the processor's operations, and independently estimated the number of tires that were shredded. The Port paid this employee \$8,937 for these services and was reimbursed by DEQ from the Waste Tire Management Fund.

As provided by Legislative Administrative Code (LAC) 33:VII.10536(A), monies paid to local governments for waste tire cleanup shall not be applied to indirect costs and other unallowable costs which include administrative costs, consulting fees, or legal fees. The regulations further provide that these funds shall be applied to direct costs such as labor, transportation, and disposal costs of the waste tires.

We recommend that DEQ follow the regulations relating to the Waste Tire Program regarding reimbursement for cleanup of tire piles.

DEQ DID NOT FOLLOW PRIORITIZED LISTING

DEQ is not following the waste tire regulations related to the cleanup of promiscuous or unauthorized tire piles.

According to DEQ regulations, LAC 33:VII.10505, tire piles are categorized as either unauthorized or promiscuous. Unauthorized tire piles are those that contain 50 or more waste tires and have not been authorized by DEQ. Promiscuous tire piles are unauthorized piles that have resulted from storage or disposal activities by anyone other than the landowner without the landowner's knowledge.

The regulations give priority to promiscuous tire piles and provide that unauthorized piles may be cleaned up based on their placement on the waste tire priority list. The regulations further provide that the number of tire piles cleaned up each year is based on the availability of funds in the Waste Tire Management Fund designated for promiscuous tire pile cleanup. This is undoubtedly to ensure that promiscuous tire piles are cleaned up first because there are no other persons or entities legally responsible to clean up or pay for cleanup costs.

During our examination, we found that DEQ has not followed its prioritized listing of promiscuous tire piles. In 1995, DEQ reimbursed public entities for cleanup of waste tire piles in East Baton Rouge and Avoyelles Parishes that were not listed in the department's prioritized listing. Neither of these sites were listed on the April 1994 prioritized listing of waste tire sites for potential funding.

To develop its list of tire piles, DEQ sent letters to various local governmental entities requesting information regarding tire piles located within their boundaries. Also, DEQ representatives made personal visits to local governmental entities explaining the program in an effort to generate participation. DEQ did not receive information from all local governments; therefore, DEQ does not have a complete listing of the tire piles located in the state. This hampers DEQ's efforts to determine those tire piles which require the greatest attention and to evaluate the progress of the program.

Furthermore, DEQ has not been consistent when determining those sites that qualify for funding. For example, one waste tire processor, Tire Tech, Inc., operated two facilities: one in Jennings at the site of SBA Shipyards, Inc., and the other in Chalmette at the St. Bernard Port, Harbor and Terminal District. Both of these sites were rented to Tire Tech with the owners' knowledge that these sites were being used for storage and processing of tires. Subsequently, Tire Tech went out of business but not before abandoning thousands of tires at both sites. Both sites were considered to be unauthorized rather than promiscuous sites. DEQ approved the cleanup of the Chalmette site but will not allow funds to be used to clean up the Jennings site. DEQ officials informed us that the Chalmette tire site was cleaned up because of its proximity to schools and populated areas; however, no documentation was provided to demonstrate the rise in its priority.

We recommend that DEQ make further efforts to identify all tire piles located in Louisiana and to estimate the number of tires in each pile. This will provide a benchmark to measure the progress of the program and also assist in identifying those sites that are currently being created. These piles should then be identified as either promiscuous or unauthorized as required by the regulations.

DEQ should prioritize the listing giving priority to promiscuous sites and make efforts to ensure that each of the promiscuous sites are cleaned up in a timely manner. If local governmental entities are unwilling or otherwise unable to participate, DEQ should consider amending the regulations in order to contract directly with permitted processors to clean up the tire sites.

Regarding unauthorized sites, DEQ should use every legal means available to force the landowner or other responsible party to clean up the tire piles. In cases where these efforts are unsuccessful, DEQ should clean up the unauthorized sites and take legal action to recover all costs incurred. In addition, DEQ should develop procedures to ensure adherence with the program's rules and regulations.

PAYMENTS TO PROCESSORS ARE NOT PROPERLY SUPPORTED

DEQ is not obtaining adequate information to support payments made to permitted waste tire processors from the Waste Tire Management Fund.

As of December 1995, DEQ has issued permits to six processors; however, only three of the six have received funds for processing waste tires. These three processors are Merrick Construction Company, d.b.a. Cottonport Monofill; Advanced Recycling, Inc., (ARI); and Environmental Industries Recycling, Inc., (EIR). Between May and December 1995, DEQ paid \$1,953,202 to these three companies for processing a reported 1,833,597 tires.

DEQ established a manifest and monthly reporting system to ensure that payments are made only for the actual tires processed. Manifests are the primary documents used to account for the number of waste tires that are received by processors from tire dealers, collection centers, and from promiscuous or unauthorized tire piles. Each manifest lists the tire dealer or site from where the tires were obtained, the number of tires, the name of the transporters, and the name of the processor to whom the tires were delivered. A manifest also indicates the number of eligible tires transported to the processor. Eligible tires are those that come from new tire dealers that have paid fees to DEQ and tires from authorized parish collection sites. Ineligible tires include tires that the tire dealer paid the processor to dispose of and any off-road tires for which fees are not collected.

DEQ records the information obtained from each manifest into its computer system. The system verifies that the tire generator is registered with DEQ and whether the generator, if a dealer, has remitted fees to DEQ. The system calculates the total number of tires received by the processor. DEQ compares this total, which is obtained directly from the manifests, to the information reported on the processors' monthly reports.

DEQ Pays Processors Based on Estimated Weights

LAC 33:VII.10535(D) provides for compensation from the Waste Tire Management Fund. To receive compensation, the processors send DEQ a monthly report called the "Waste Tire Processing Facility Monthly Report and Application for Payment." The monthly report includes both the number and the weight of the waste tires processed. The weight of the tires processed is multiplied by \$.85 per 20 pounds to arrive at the processor's payment. While the number of tires processed is supported by the manifest, DEQ does not require that processors submit weight tickets to support the processed weight on which the payment is actually computed. Furthermore, DEQ allows the processors to estimate the weight of their processed material based on the number of tires reported processed rather than actual weight of material processed. The processors' estimate is computed by allowing 20 pounds per passenger or light truck tire and 100 pounds for large truck tires. DEQ also uses estimates of this processed weight when reviewing the processors' reports and manifests to determine the reasonableness of the application for payment. The tire weights assigned may not be truly representative of the wide range of tires that exist. In some situations, DEQ has allowed the processors to use up to 130 pounds per truck tire when computing their estimate of processed material. DEQ has never conducted a study to determine the actual weights to assign passenger, light truck, and heavy truck tires. Therefore, these assigned weights appear to be arbitrary and may not be accurate.

DEQ records reflect that two of the three processors have requested payments based on weights greater than DEQ's estimates. The third processor has reported weights less, or exactly equal to, DEQ's estimates. Only one of the three processors sends in weight tickets.

DEQ Procedures Are Not Detecting Errors

DEQ reviews the monthly reports and supporting manifests and other documentation submitted by processors before making payment. However, DEQ's procedures are not identifying all of the errors or discrepancies contained in the reports. During our review, we noted errors in the various processors' reports that were not detected and/or corrected by DEQ. These included the following:

- The computer system printouts indicate that some manifests are included twice. Employees were having to review computer printouts for such duplication. We were informed by DEQ personnel that most of the errors were programming errors.
- In ARI's June 1995 billing, ARI listed certain tires as ineligible because the tire generator paid ARI directly for disposal. DEQ adjusted the billing and paid ARI an additional \$432 for these tires.
- DEQ did not detect a math error of 3,000 pounds in Cottonport Monofill's waste tire inventory reported for June 1995.

- Although ARI's August transportation payment was reduced because of ineligible tires received, ARI's corresponding processing payment for these same tires was not reduced.
- The manifests sent with Cottonport Monofill's May report indicated that Cottonport Monofill shipped 489 used tires to used tire dealers. The used tire dealers, on the same manifests, indicate that they received 506 used tires from Cottonport Monofill.
- DEQ requested that ARI deduct waste tires from its August report that should have been reflected in its September monthly report. ARI did not make the correction and DEQ did not follow up to ensure that the corrections were made.

Examination of Cottonport Monofill's Records

Because Cottonport Monofill received approximately 81 percent of the total payments to processors, we examined this company's records in greater detail. Cottonport Monofill maintains receiving reports and other documentation in addition to that sent to DEQ. This documentation includes weight tickets, tire counts, and invoices of the tires sold as used tires. We examined a sample of Cottonport Monofill's receiving reports and supporting documentation for the period of February through June 1995. We found the following:

- Differences were noted between the number of tires reported on the manifests by the dealers as sent to the processor and the numbers of tires received by the processor on the same manifests. Since the purpose of the manifest is to track the tires from the dealers to the processors, this should always be the same.
- Of the 448 manifests examined, 107 did not include the number of tires received by the processor. Each manifest requires signatures of the generator, transportor, and processor who certifies that the information on the manifest is true, accurate, and complete. These manifests were submitted during the time Cottonport Monofill was paid based on actual processed weight rather than the number of tires processed.
- In some cases, the number of tires reported on the manifests as being received by the processor was different than the number of tires reported to DEQ on the processor's monthly report.
- Mathematical errors were made when computing the number of tires processed.
- Individual weights for ineligible tires varied from 16 pounds to 262 pounds. The weight for ineligible tires is deducted from the total weight processed to determine the appropriate payment to the processor. There were no weight tickets to support the amounts deducted as ineligible weight. An employee with Cottonport Monofill stated that ineligible tire weights were estimated, with 35 pounds being the average.

DEQ has a legal obligation to pay waste tire processors based on the processed weight of waste tires. DEQ also has a responsibility to ensure that it only pays for the actual amount of material processed. Therefore, DEQ should establish a system of controls and procedures to verify the accuracy of the information submitted by the waste tire processors. DEQ's current system does not sufficiently satisfy this responsibility.

We recommend that DEQ modify the current computer system to prevent the acceptance of duplicate manifests. This will provide more reliable information to those whose responsibility it is to make payments to the processors.

DEQ pays waste tire processors based on estimated weight from the number and size of tires processed submitted on the application for payment. If payment is to be made based on weight, it would be more logical to require that processors report actual weight supported by weight tickets. We recommend that DEQ promulgate regulations requiring that waste tire processors submit weight tickets to support their processed weight for payment purposes. DEQ should also conduct periodic, on-site audits of processor records and require that processor scales be periodically calibrated.

DEFICIENCIES NOTED IN DEQ'S HANDLING OF PRIOR PROCESSORS AND COLLECTORS

Several companies and individuals who were allowed by DEQ to accumulate and store large quantities of waste tires went out of business before shredding and disposing of the tires. DEQ may incur the cost of cleaning up these tire piles.

This situation was caused by the following deficiencies in DEQ's efforts:

- Before September 1994, DEQ issued temporary permits without requiring that the operator submit a bond, bank letter of credit, or money security made payable to the department to ensure the operator's sites were properly closed and cleaned up if abandoned.
- DEQ has not been aggressive in pursuing civil litigation against processors that have violated rules, regulations, and closure plans, or that have abandoned waste tires and caused hazardous conditions.

During our examination, we became aware of four companies or individuals who collected large quantities of waste tires, stockpiled these tires awaiting processing, and later abandoned the sites.

Tire Tech Environmental Services, Inc.

On April 24, 1992, DEQ issued a temporary permit allowing Tire Tech Environmental Services, Inc., (Tire Tech) to collect and process waste tires at two Louisiana sites. Tire Tech stated that its intentions were to prepare and market the processed tire material as tire-derived fuel. However, after collecting approximately 900,000 waste tires, Tire Tech went out of business, abandoning these tires at sites in Chalmette and Jennings, Louisiana.

ShredTech, Inc.

ShredTech submitted an application for a permit during September 1992. Although ShredTech did not submit the required information necessary to complete its permit application, it was allowed to operate as a processor until DEQ ordered ShredTech to close in December 1993. As directed, ShredTech submitted a closure plan to DEQ in September 1994, but this plan was judged to be insufficient by DEQ administrators. In November 1994, a fire burned approximately one-half of the estimated 50,000 to 60,000 tires that had accumulated at this site. The remaining tires were abandoned. In February 1995, DEQ issued a compliance order against ShredTech for either burning or allowing the open burning of waste tires. Other than administrative hearings, no further action was taken against the company by DEQ, although the City of New Orleans levied fines against the operator and owners of the property. Currently, this particular site is listed as one of the sites to be cleaned up by the City of New Orleans, which will be reimbursed by DEQ.

Tire Recycling Unlimited, Inc.

On January 30, 1992, Tire Recycling Unlimited, Inc., (TRU) applied for a permit to collect and process waste tires in Calcasieu Parish. Although TRU did not submit the required information to complete the application process, TRU collected and stockpiled waste tires. On December 14, 1993, DEQ issued an order to close and required that TRU submit a closure plan. TRU later abandoned the site. DEQ is in the process of contracting with Calcasieu Parish Police Jury to clean up the site. The estimated cost is \$300,000 to \$450,000.

Johnny Segona Sites

Mr. Johnny Segona collected approximately 1,000,000 waste tires which he stockpiled on ten sites that he leased from various property owners located in four parishes. Mr. Segona went out of business and currently the property owners are requesting that DEQ clean up their property. Mr. Segona submitted a closure plan three years ago in

which he would be responsible for the removal of the waste tires. This plan is to be completed by the summer of 1996. To date, no work has been initiated regarding this plan, and Mr. Segona has indicated that he is on the verge of bankruptcy and will be unable to fulfill the terms of the closure plan. DEQ has informed Mr. Segona that if the tires are not cleaned up "appropriate action" will be taken. According to DEQ's legal staff, it appears that DEQ may have no recourse in the matter as Mr. Segona purportedly has no funds to clean up the sites.

Before September 1994, DEQ issued permits to allow processors to begin their operations while a standard permit application was being processed. The regulations in effect before September 1994 required that processors obtain financial security in the form of a bond, bank letter of credit, or money security made payable upon default to the department. The security amount was equal to the amount of \$1 per whole tire and/or \$1 per cubic yard of processed tire material on the site at the license renewal date. This allowed permit holders to collect as many tires as possible for a year before having to acquire the financial security. Unfortunately, some processors went out of business but not before collecting large quantities of tires and abandoning them at their facilities. Because DEQ had not required that the financial security was in place before the processors began operations, DEQ has paid \$263,134 to clean up Tire Tech's Chalmette site. In addition, DEQ estimates that it will spend \$300,000 to \$450,000 cleaning up the Tire Recycling Unlimited sites and may be required to clean up the other sites previously mentioned.

DEQ granted ShredTech a mobile processor permit on June 6, 1995, without the processor having fulfilled the requirement of submitting proof of \$1,000,000 of liability insurance. DEQ officials agreed that the insurance coverage was a necessary requirement to be met before issuance of a mobile processor permit but could not explain how this discrepancy occurred. As stated above, ShredTech was already under compliance and closure orders when granted this permit.

LSA-R.S. 30:2025 provides that DEQ may bring a civil action in the name of the state to recover any damages or penalties resulting from a violation of DEQ regulations. Although the four processors described previously collected and stockpiled waste tires and did not dispose of them in a proper manner, DEQ has not pursued civil action to force the operators to clean up their sites or to recover the cost that DEQ will incur. Instead, DEQ has issued numerous administrative compliance and closure orders. The waste tire piles remain a hazard to the local communities.

Many of these deficiencies were corrected with the promulgation of the DEQ rules and regulations which became effective September 1994. These regulations require that processors clearly explain and document their planned use or disposal method for the waste tires. In addition, these regulations require that DEQ receive adequate financial security before a processor is given a permit.

However, in order to further improve its efforts, we recommend that DEQ pursue all legal means available to recover expenses incurred in the cleanup of unauthorized waste tire sites. We additionally recommend that DEQ perform procedures to determine that the operator is financially stable before issuing a permit.

**DEQ HAS NOT ADDRESSED
THE USED TIRE ISSUE**

DEQ has not adequately addressed the problem of waste tires generated by used tire dealers and salvage yards.

Currently, waste tire regulations require used tire dealers to be registered with DEQ. The regulations further require that all waste tires removed for disposal be recorded on manifests. Salvage yards do not have to be registered nor do they have to prepare and submit manifests. Also, the regulations do not require that fees be collected and remitted to DEQ for waste tires that have been acquired by used tire dealers or salvage yards. The burden of disposal of these tires is on the used tire dealer or salvage yard. These companies must pay an authorized transporter and/or processor to pick up and dispose of their waste tires. According to DEQ personnel, the agency has no plans at this time to address waste tires generated by used tire dealers and salvage yards.

We recommend that DEQ carefully consider the disposal of used tires. If it is determined that the disposal of used tires is compounding the state's problem with illegal dumping of waste tires, we recommend that DEQ develop a system to ensure their proper disposal.

**DEQ EXCEEDED AUTHORITY
BY GIVING A LOAN TO A
PROCESSOR**

DEQ exceeded its authority and violated provisions of Article 7, Section 14 of the Louisiana Constitution when it gave a \$500,000 loan to Cottonport Monofill, one of the state's waste tire processors.

On January 25, 1995, DEQ announced in a press release that a \$2 million loan program was available to qualified processors with the funding derived from the Waste Tire Management Fund. Stipulations of the loan program included that a permitted waste tire processor could obtain a loan up to 25 percent of the value of the waste tire facility, not to exceed \$600,000.

The terms additionally provided that all loans were repayable monthly at the rate of \$.15 per tire processed. On February 27, 1995, DEQ issued a \$500,000 loan to Merrick Construction Company d.b.a. Cottonport Monofill. The terms differed slightly from the press release in that repayment was to be made at a rate of \$.10 per tire.

On July 10, 1995, the Louisiana Inspector General issued a report stating that the \$500,000 loan was in violation of the law that created the waste tire disposal program. This report further stated that the loan program possibly violated Article 7, Section 14 of the Louisiana Constitution and that DEQ did not ensure that the loan application was properly evaluated. The Inspector General recommended that DEQ promulgate rules establishing the loan program, which would include legislative review, and also requested that the agency obtain the opinion of the Attorney General as to the legality of the loan. DEQ responded to the report stating that the loan was properly established, permitted by law, and made through the Louisiana Economic Development Corporation.

On October 12, 1995, the attorney general opined that DEQ was not authorized to implement or establish a waste tire processors' loan program without publishing notice and rules in the *Louisiana Register*, submitting the program to the designated legislative oversight committees, and complying with the requirements of the Administrative Procedures Act. The opinion further stated that the waste tire processors' loan program was in violation of Article 7, Section 14 of the Louisiana Constitution. On October 20, 1995, Merrick Construction Company repaid the balance of the loan. This loan has been the only loan granted under this program.

We recommend that DEQ discontinue this loan program.

DEQ DOES NOT ENSURE THAT ALL REVENUES ARE COLLECTED

Louisiana tire dealers are required to collect a \$2 fee from their customers for each new tire sold and remit this money to DEQ; however, the agency has not developed procedures to ensure that the dealers are remitting all fees collected.

To ensure that all fees collected by the dealers are properly remitted, DEQ must register dealers, require compulsory reports of sales, and audit the dealers' sales records. Currently, DEQ has procedures in place to register new tire dealers and provide for monthly reports of new tires sold. However, DEQ does not perform periodic audits of dealer sales to ensure the accuracy of the fees remitted. Without periodic audits of dealer sales, DEQ has no assurance that all fees are being remitted. Although DEQ employs inspectors, these inspectors only verify that the dealers charged the fees. They do not verify that all fees collected were

remitted to DEQ. As a result, DEQ may not be receiving all of the fees collected by the dealers. DEQ officials indicated that they have plans to monitor revenues in the future; however, we found that no action had been taken.

We recommend that DEQ maintain a system which provides for periodic audits of the dealers' sales records. In addition, either field inspectors should be provided proper training to perform these audits or qualified personnel should be employed.

DEQ PAID MARKETING INCENTIVES BUT DID NOT ENSURE THE WASTE TIRE MATERIAL WAS RECYCLED

Although DEQ has paid out over \$40,000 as marketing incentives, the agency has not ensured that the waste tire material was properly recycled.

LAC 33:VII.10535 provides payments for marketing waste tire material. DEQ may pay \$.15 per 20 pounds of waste tire material that is marketed or recycled. The regulations further provide that such payments shall only be made when the processor shows proof that the waste tire material was marketed to a qualified recycler as a raw material, product, or fuel source. DEQ has not specified what end uses are considered to be a raw material, product, or fuel source. In addition, DEQ has not established written procedures or guidelines specifying documentation that processors must submit as proof that waste tire material was marketed in a manner that qualifies for the payment.

As of December 1, 1995, one processor, Advanced Recycling, Inc. (ARI), had received \$40,208 for marketing waste tire material to various entities for the months of June 1995 through October 1995. As proof that it marketed the tires to recyclers, ARI submitted letters from its buyers indicating that the material was to be used for roadway embankments and mixed with dirt for cover in parish landfills. While DEQ encourages the use of waste tire material in landfills, it is questionable whether this is actually recycling as the law intended. In addition, according to DEQ officials, DEQ did not visit the "recycler" or otherwise verify the end use of the material.

Since the payment is based on the weight of the recycled material, ARI submitted weight tickets to support some of its requests for payment. However, some marketing requests were not supported and DEQ did not require that ARI submit the weight tickets. As a result, DEQ was forced to estimate the accuracy of the ARI payment request. Since August 1995, ARI has sent certified scale weights to DEQ.

We recommend that DEQ:

1. Develop written regulations that provide instructions and requirements for processors to follow when requesting marketing incentives;
2. Require that processors submit adequate proof that the waste tire material is being used as a raw material, product, or fuel source;
3. Perform field inspections to verify the end use of the recycled material;
4. Require weight tickets to support the processor's application for payment; and
5. Clearly establish criteria for qualification as a recycler.

DEQ PAID TRANSPORTATION COSTS NOT PROVIDED BY THE PROGRAM REGULATIONS

DEQ paid \$550,376 to waste tire processors for transportation costs without first amending the department's regulations and seeking the review and approval of legislative oversight committees as required by state law.

DEQ entered into agreements with permitted processors to provide reimbursement for payments made to transporters that deliver waste tires to their facilities. The agreements provide a rate of \$.00333 per tire, per mile up to a maximum of \$.50 per tire. This subsidized funding was originally made effective February 1, 1995, through December 31, 1995. As of December 14, 1995, DEQ had paid \$550,376 under these agreements; \$499,771 to Cottonport Monofill, \$42,199 to Advanced Recycling Inc., and \$8,406 to Environmental Industries Recycling, Inc.

The agreements specify that they are made under the authority of the secretary to provide incentives and assistance for collection and transportation of waste tires pursuant to LSA-R.S. 30:2418(H) and LAC 33:VII. 10515. LSA-R.S. 30:2418(H) provides that the secretary shall promulgate regulations and guidelines for the administration and enforcement of the waste tire program which shall be subject to legislative review and approval by the Senate Committee on Environmental Quality and the House Committee on Natural Resources. LSA-R.S. 30:2418(H)(7) provides that the secretary shall provide incentives and assistance to waste tire facilities, but only if such facilities use, consume, or process the tires so that they may be reused as a raw material, product, or fuel source.

In DEQ's officially promulgated regulations, LAC 33:VII.10515 provides the maximum payments that are allowable to be paid to the processors who may apply for subsidized funding to assist the processors with waste tire processing and disposal costs. These regulations also provide that it is the processor's responsibility to make payments to authorized waste tire transporters who provide them with waste tires. The regulations provide that DEQ pay the

processors a fee for each tire processed and an additional amount for tires actually recycled. There is no mention in these regulations that processors may receive reimbursements for their transportation costs.

Although DEQ's intent may have been to improve its efforts in the cleanup of hazardous tire piles, DEQ must first revise the program regulations giving the legislative oversight committees an opportunity to review and approve this additional funding. A similar issue was previously addressed by the attorney general. In Opinion 95-374, the attorney general opined that DEQ was not authorized to implement or establish a waste tire processor's loan program *or any other waste tire remediation program* without publishing notice as well as rules in the *Louisiana Register*, without submitting the program to the designated legislative oversight committees, and without otherwise complying with the requirements of LSA-R.S. 30:2418(H) and the Administrative Procedure Act. The attorney general further opined that the loan program was in conflict with Article 7, Section 14 of the Louisiana Constitution, which prohibits the loan or donation of public funds. Based on this opinion, it appears that DEQ was not authorized to reimburse processors for their transportation cost without first properly amending the regulations.

Inadequate Review of Processors' Reimbursement

DEQ failed to establish an adequate review procedure of the processors' reimbursement requests and, as a result, paid \$3,073 in error.

The processors bill DEQ for transportation costs on a monthly basis. We reviewed these billings for the months of February through August 1995 and found duplicate charges and incorrect reporting of the quantity of tires delivered. These errors resulted in DEQ paying Cottonport Monofill \$3,073 that should not have been paid. DEQ has not required that Cottonport Monofill repay this amount.

We reviewed these errors with both DEQ personnel and the facility manager for Cottonport Monofill. DEQ personnel stated that mileage rates had been reviewed, but they had not examined the billings for duplicate charges or incorrect quantities. After the errors were pointed out, both entities have made improvements to ensure the accuracy of the transportation reimbursements.

Duplicate Transportation Costs Paid

DEQ paid Cottonport Monofill \$588 for transportation costs while DOTD had already compensated Cottonport Monofill.

On March 31, 1995, Cottonport Monofill was awarded a Department of Transportation and Development (DOTD) contract for the disposal of DOTD's scrap tires. The contract's prices are based on the quantity and type of tires received from DOTD and include a provision for

transportation charges. As of August 16, 1995, Cottonport Monofill had disposed of 12,022 tires at a cost to DOTD of \$26,453.

Cottonport Monofill also submitted billings to DEQ for reimbursement of transportation costs associated with DOTD's tires. During our examination, we found that DEQ paid Cottonport Monofill \$588 for transportation cost while DOTD had already compensated Cottonport Monofill. DEQ has not required Cottonport Monofill to repay this amount.

Emergency Rule Related to Transportation

DEQ declared an emergency and adopted an emergency rule extending the payment of transportation costs without following the proper procedures.

On December 12, 1995, DEQ issued a notice extending the allowance of transportation cost reimbursements until June 30, 1996. On December 19, 1995, former Secretary William A. Kucharski declared and adopted an emergency rule lasting 120 days. The emergency rule provided that the intent of the rule was to continue funding transportation costs because there was no economic incentive to process waste tires not located near a permitted waste tire processor. In addition, those tires not being processed created environmental and health-related problems and posed a significant threat to the safety of the community. However, as with the agreements, DEQ did not properly amend the official regulations and seek the approval of the oversight committees.

The attorney general opined [A.G. Opinion No. 90-226(A)] that for an emergency rule to have legal effect, the notice must state facts which, if presumed true, would establish the nature and existence of imminent peril to public health, safety, and welfare, and there must be an emergency. It is questionable whether these criteria were met in this case.

On February 19, 1996, the current secretary of DEQ, Mr. J. Dale Givens, repealed the provisions of this emergency rule.

We recommend that DEQ:

1. Comply with Louisiana law by publishing any amendments to its regulations in the *Louisiana Register* and affording the legislative oversight committees the opportunity for review and approval before implementation;
2. Implement procedures that ensure a proper review of all transportation reimbursements is made before payment. These procedures should be designed to reveal duplicate as well as erroneous charges; and
3. Research the issue of whether incentives are necessary to ensure that tires not located near a permitted processor are properly processed and, if needed, establish incentives in accordance with Louisiana law.

Attachment I
Management's Responses



State of Louisiana

Department of Environmental Quality

RECEIVED
LEGISLATIVE AUDIT
26 PM 1:38



M.J. "MIKE" FOSTER, JR.
GOVERNOR

J. DALE GIVENS
SECRETARY

March 26, 1996


Dr. Daniel G. Kyle, PhD., CPA, CFE
Legislative Auditor's Office
P.O. Box 94397
Baton Rouge, LA 70804-9397

Dear Dr. Kyle,

One of the first issues I faced upon accepting the appointment of Secretary of the Department of Environmental Quality was the Waste Tire Program. I immediately began working with the department staff to identify and address pending issues. We met with both the Senate and House Environmental Committees of the Louisiana Legislature, answering concerns, and outlining possible solutions to the waste tire program issues. I appreciate the opportunity to respond to this audit report. The recommendations outlined will be considered in drafting the updated regulations being prepared for this program.

The following is the Department of Environmental Quality's formal response resulting from the Investigative Audit Report issued by the Louisiana Legislative Auditor's Office.

Respectfully Submitted,


J. Dale Givens
Department Secretary



Finding: **CLEAN UP OF PROMISCUOUS TIRE PILES**

Response: The department is committed to work closer with local government entities in its continuing efforts to clean up the state's promiscuous and unauthorized waste tire piles. The department has begun contracting with local government entities in coordinating these cleanups, and will speed up the process of giving contracts to local governments to clean up these tire piles. We have identified funds in the Waste Tire Management Fund specifically for this purpose.

Finding: **PRIORITIZATION POLICY RULED IMPROPER BY COURT**

Response: The Solid Waste Division is presently working with its Legal Services Division, who has assigned an attorney to work with them in reviewing current regulations and policies to ensure that we follow the state laws and regulations governing the Waste Tire Program.

Finding: **IMPROPER REIMBURSEMENT OF ADMINISTRATIVE COST**

Response: The department recognizes this oversight, and has set up procedures to ensure we reimburse only allowable cost from the Waste Tire Management Fund.

Finding: **DEQ DID NOT FOLLOW PRIORITIZED LISTING**

Response: The department has instructed its Solid Waste inspectors to work with local governments to identify all tire piles in the state. As they identify these piles, they make an estimate of the number of tires on each site, and are identified as either promiscuous or unauthorized.

The department is currently changing the prioritization of waste tire piles to ensure that waste tire piles are prioritized according to danger, hazard, or nuisance, equally. The department is pursuing new avenues in helping local government in cleanups of these sites.

Regarding unauthorized sites, DEQ will develop and carry out procedures to use every legal means available in pursuing identified landowners and other responsible parties to bear the cost of the cleanup of identified unauthorized sites.

Finding: **PAYMENTS TO PROCESSOR ARE NOT PROPERLY SUPPORTED**

Response: The department has established procedures to properly monitor the payments to processors. Procedures will be established to require weight tickets for waste tire materials, either from public scales or the certified scales of the waste tire processors. When scales are not available, as determined by DEQ, then the average weight stated in the regulations will be used. We will modify the computer system to help prevent discrepancies discovered during this audit process.

Finding: **DEFICIENCIES NOTED IN DEQ'S HANDLING OF PRIOR PROCESSORS AND COLLECTORS**

Response: The department recognized the deficiencies identified by the audit, and will continue to pursue recovering all cost incurred in the cleanup of unauthorized sites. The department also will continue to review all financial requirements to decide that the operator is financially stable before issuing a permit.

Finding: **DEQ HAS NOT ADDRESSED THE USED TIRE ISSUE**

Response: The department concurs with this finding, and is currently considering how to handle used tire dealers' waste tires, and the illegal dumping of waste tires. A system to ensure proper disposal may require a legislative change to current statutes. This would then allow the program the authority to include collection of fees from used tire dealers, and a rule to enforce regulations on used tire dealers.

Finding: **DEQ EXCEEDED AUTHORITY BY GIVING A LOAN TO A PROCESSOR**

Response: The loan in question was repaid, and we have ended the process of making loans from the Waste Tire Management Fund.

Finding: **DEQ DOES NOT ENSURE THAT ALL REVENUES ARE COLLECTED**

Response: We will establish an audit function in the department that will be available to do random audits of waste tire dealers. This function will review records of tire dealers on a random basis to ensure that all revenues are being collected.

Finding: **DEQ PAID MARKETING INCENTIVES BUT DID NOT ENSURE THE WASTE TIRE MATERIAL WAS RECYCLED**

Response: The department concurs with this finding to the extent that department employees have not physically inspected the facilities to ensure the waste tire material was recycled. However, we do review all written documentation and certification by manifest. We will develop guidelines to ensure that we carry out these recommendations.

Finding: **DEQ PAID TRANSPORTATION COST NOT PROVIDED BY THE PROGRAM REGULATIONS**

Response: This administration recognized the problems with this activity, and ended this reimbursement by Emergency Rule. This administration is committed to compliance with Louisiana law regarding any changes to any of its regulations. The Waste Tire program will review the need for any incentives necessary for the proper disposal of waste tires in Louisiana.