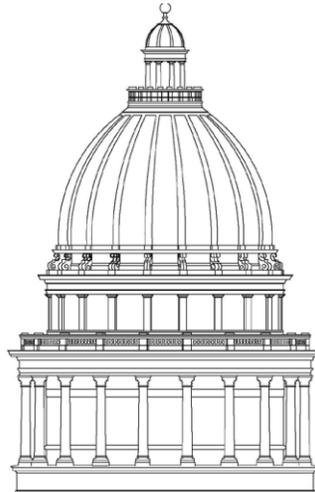


REPORT TO THE
UTAH LEGISLATURE

Number 2019-01



**A Performance Audit of
The Waste Tire Recycling Fund**

January 2019

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah



STATE OF UTAH

Office of the Legislative Auditor General

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KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

January 30, 2019

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Waste Tire Recycling Fund** (Report #2019-01). A digest is found on the blue pages located at the front of the report. The Scope and Objectives of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "Kade minchey".

Kade R. Minchey, CIA, CFE
Auditor General

Digest of A Performance Audit of The Waste Tire Recycling Fund

The Legislature passed the Waste Tire Recycling Act (act) in 1990 in response to health and environmental concerns with waste tires. The Legislature determined that recycling waste tires would help address these problems. *Utah Code* 19-6-802 states the following:

- (1) The disposal of waste tires is a matter of statewide concern and...recycling of waste tires should be promoted in light of the health and environmental benefits.
- (2) The recycling of waste tires will decrease the number of tires which are disposed of in landfills and will reduce the health and safety hazards posed by existing stockpiles of waste tires.
- (3) It is the intent of the Legislature in adopting this part to encourage the development of the recycling industry and the development of markets for recycled products.

This audit focuses on whether the Waste Tire Recycling Fund (fund) and associated program are being administered correctly and whether the program is fulfilling its purpose. While we identified several indicators that suggest the recycling program is fulfilling its intent, we also identified aspects that can be improved. These issues will be addressed in Chapters II, III, and IV of this report. Chapter I focuses on the history of Utah's waste tire program, describes how it is currently operated, and provides detail on parties involved in the administration and operation of the program.

Chapter II The Intent of The Waste Tire Recycling Fund is Not Being Fully Realized

The Waste Tire Recycling Act was passed to fulfill two major purposes: to develop Utah's recycling industry and to promote waste tire cleanup efforts statewide. This chapter reports primarily on the outcomes and limitations of cleanup efforts. Despite the act fostering a strong state waste tire recycling industry, a gap exists where consumers, over the last two years, generated more waste tires than recyclers collected for processing. Although waste tire issues are not as widespread, we believe the legislative intent to promote tire pile cleanup at landfills and in abandoned piles has not been fully realized.

Over five years the fund increased by nearly \$2 million, expanding by 74 percent. In fiscal year 2018, the fund reached a balance of \$4.6 million, its second highest level since 1990. To effectively manage the fund, the Legislature could consider expanding the use of fund money to assist cities and counties unable to afford the cost to properly manage waste tires. This could take the form of higher reimbursement rates as was proposed in recent legislation. Recyclers report that they have the capacity to process additional waste tires and sell the resulting product if more tire piles are cleaned up. Alternatively, the Legislature could consider reducing the fee to reduce the growing fund balance.

Chapter III

The Division Can Improve Waste Tire Program Tracking and Outreach

This chapter addresses how the Division of Waste Management and Radiation Control (division) can better manage waste tires in accordance with the act. Because a gap exists between new waste tires generated and waste tires collected for recycling, the division could more proactively manage the waste tire program by:

- Studying the costs and benefits of a manifest system, or other tracking system, to better control the transportation of waste tires to recyclers
- Improving tracking of waste tire piles statewide
- Better educating landfill operators on how to qualify for and use statutorily authorized funding
- Adopting metrics that better measure program impact and the effectiveness of division oversight activities

We believe that the division's implementation of these recommendations is especially timely since the Legislature will shortly consider whether to renew the program, which is scheduled to sunset in 2020. Although the division already reported that more resources may be required if a manifest system were to be adopted, our recommendation is for them to simply study the costs and benefits of a similar tracking system for waste tires, and then report the findings of their study to the Legislature.

Chapter IV

Division Oversight of Waste Tire Disposal and Cleanup Projects Can Improve

The division should provide greater oversight of the waste tire program consistent with statute. Specifically,

- The division has approved waste tire disposal practices that conflict with statute and negatively affect the environment and landfill operations. Sampled landfill operators reported that, with division knowledge, they buried whole waste tires in other types of solid waste or under dirt cover. The division approved these practices due to an interpretation of statute that conflicts with the legal opinion from the Office of Legislative Research and General Counsel. The difference in legal interpretation, in part, stems from the potentially confusing statutory definition of “disposal,” an issue we believe the Legislature could address.
- The division has not provided adequate oversight on the number of tires landfills can accept at a given time. Our work found that landfills are accepting tires in numbers higher than allowed by statute.
- Finally, the division approved a waste tire cleanup project performed by an unregistered waste tire transporter and an unregistered recycler, inconsistent with statute and rule. In the future, the division should ensure that waste tire transporters and recyclers are registered prior to using their services.

REPORT TO THE UTAH LEGISLATURE

Report No. 2019-01

A Performance Audit of The Waste Tire Recycling Fund

January 2019

Audit Performed By:

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Chapter I

Introduction

The Legislature passed the Waste Tire Recycling Act in 1990 in response to health and environmental concerns with waste tires.¹ The Legislature determined that recycling waste tires would help address these problems. *Utah Code* 19-6-802 states the following:

- (1) The disposal of waste tires is a matter of statewide concern and...**recycling of waste tires should be promoted** in light of the health and environmental benefits.
- (2) The recycling of waste tires will **decrease the number of tires which are disposed of in landfills** and will reduce the health and safety hazards posed by existing stockpiles of waste tires.
- (3) It is the intent of the Legislature in adopting this part to **encourage the development of the recycling industry and the development of markets for recycled products.**²

This audit focuses on whether the Waste Tire Recycling Fund (fund) and associated program are being administered correctly and whether the program is fulfilling its purpose. While we identified several indicators that suggest the recycling program is fulfilling its intent, we also identified aspects that can be improved. These issues will be addressed in Chapters II, III, and IV of this report. This chapter focuses on the history of Utah's waste tire program, describes how it is currently operated, and provides detail on parties involved in the administration and operation of the program.

¹ A "waste tire" is defined in *Utah Code* 19-6-803 as "a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect...or that a tire retailer removes from a vehicle for replacement with a new or used tire."

² Emphasis added.

The Legislature passed the Waste Tire Recycling Act in 1990 in response to concerns with waste tires.

This audit focuses on whether the Waste Tire Recycling Fund and associated program are being administered correctly and whether the program is fulfilling its purpose.

Operation of the Waste Tire Program Involves Many Parties

Many parties are involved in the operation and administration of the waste tire recycling program created by the Waste Tire Recycling Act. The Division of Waste Management and Radiation Control (division) in the Utah Department of Environmental Quality annually registers waste tire transporters and recyclers. The program is paid for by a fee collected by tire retailers that is remitted to the Utah State Tax Commission. Local health departments work with waste tire recyclers and the Utah Division of Finance to provide reimbursements for the sale of waste-tire-derived products. Additionally, cities and counties work with waste tire transporters and recyclers and the division to clean up waste tire piles around the state. Each of these processes will be discussed in more detail in this chapter. The parties involved in the waste tire program include the following:

The Department of Environmental Quality, Division of Waste Management and Radiation Control. The division provides program oversight by annually registering recyclers and transporters. Additionally, the division director reviews bids for tire pile cleanup projects and approves partial or full reimbursement for cleanup costs. Tire piles originating before July 1, 2001 qualify for 100 percent cleanup cost reimbursement.

The Department of Administrative Services, Division of Finance. The Division of Finance reviews reimbursement applications for waste tire recycling submitted by local health departments. After ensuring all information is accurate, the division makes payments to recyclers for recycling tires and producing waste-tire-derived products. They also pay local health departments for their initial review of reimbursement applications.

The Utah State Tax Commission. The Tax Commission collects recycling fees paid to tire retailers when new tires are purchased. After retaining up to 1.5 percent of the collected recycling fee for administering the fee, the Tax Commission deposits the remaining recycling fee revenue to the fund.

Tire Retailers (tire stores and new vehicle dealerships). Retailers collect a \$1 recycling fee for each tire up to 24.5 inches in diameter sold and remit the fees to the Tax Commission. Tire retailers

Many parties are involved in the operation and administration of the waste tire recycling program.

Tire retailers collect a \$1 recycling fee for each tire up to 24.5 inches in diameter sold.

are permitted to retain 2.5 percent of collected recycling fees for administration expenses.

Waste Tire Transporters and Recyclers. Transporters and recyclers collect tires from tire retailers, cleanup projects, landfills, and private citizens for a fee. Recyclers and transporters register with the division annually. Recyclers submit reimbursement applications that include proof of sale and shipment and evidence that the tires originated in Utah. Depending on the type of tire-derived product, recyclers receive \$65, \$50, or \$20 per ton of material sold. Figure 1.1 shows crumb rubber and chipped tire, recycled materials that are reimbursed at \$65 per ton and \$50 per ton respectively. These products are used for track fields, artificial turf, and alternative fuel in cement production.

Waste tire recyclers receive reimbursement money for selling products derived from waste tires.

Figure 1.1 Crumb Rubber and Chipped Tire Production Is Subsidized by Recycling Fees. Recyclers generate these products by grinding waste tires.



Source: Auditor generated at a waste tire recycler in Utah; crumb rubber is on the left and chipped tires are on the right

Local Health Departments. These entities review reimbursement applications from waste tire recyclers and submit applications to the Division of Finance for review and payment. Local health departments receive administration fees for reviewing reimbursement applications. The fund pays \$5 per ton of material on reimbursement applications reviewed by the local health department.

Local health departments review recycling reimbursement applications.

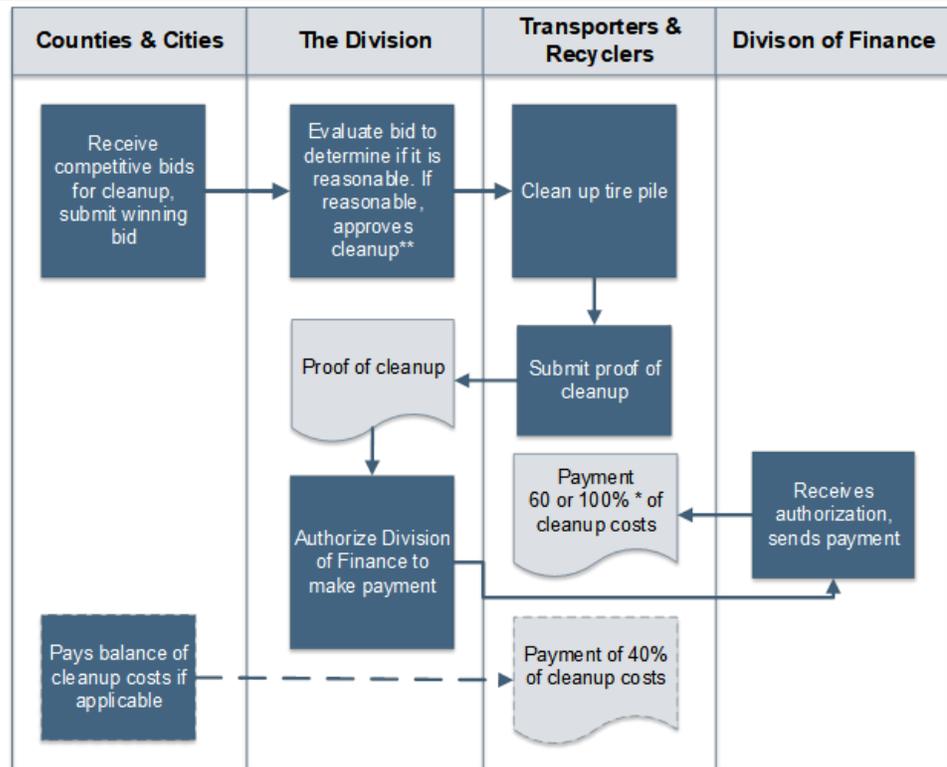
Counties and Cities. Local government entities play a role in resolving waste tire piles in their jurisdiction. Counties and cities engage in competitive bidding processes for tire pile cleanup projects. They submit winning bids to the division for approval. Depending on

the reimbursement amount approved by the division, cities and counties may be responsible for some of the money paid to waste tire transporters and recyclers for cleanup projects.

Figure 1.2 shows the relationship between the relevant parties for waste tire cleanup and reimbursement.

Counties and cities may be responsible for part of waste tire cleanup costs.

Figure 1.2 Counties and Cities Work with the Division to Clean Up Tire Piles. Cleanup projects must use registered waste tire transporters and recyclers.

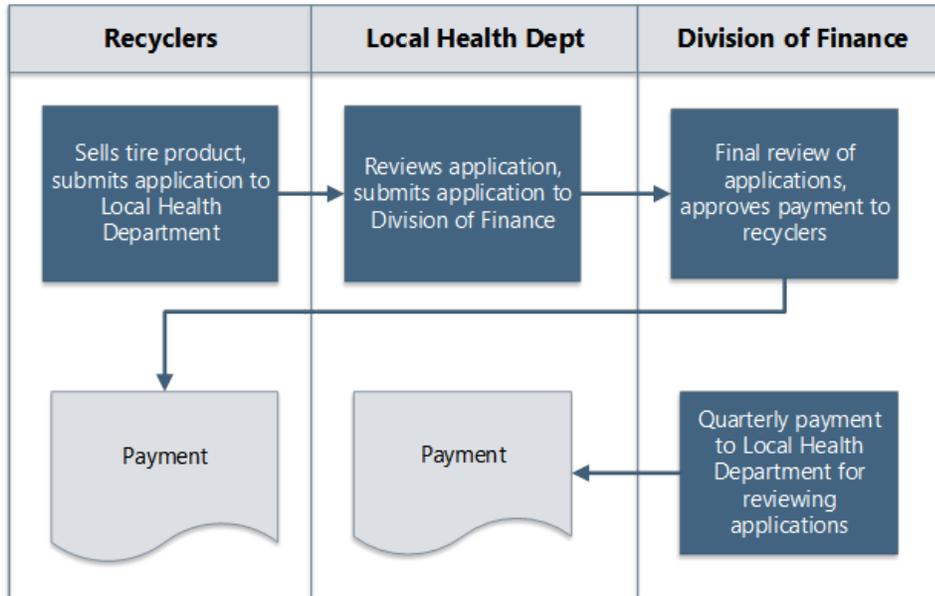


Source: Waste Tire Recycling Act, **Utah Code** 19-6-811
 *If tire piles were created before July 1, 2001, cleanup costs can be reimbursed at 100 percent. If tire piles originated on or after July 1, 2001, the Waste Tire Recycling Fund can pay 60 percent of cleanup costs while the remaining 40 percent is paid by the county or city.
 **The division reported that, while they have the authority to reject a bid, they have never done so.

Counties and cities must submit additional documentation to the division if they are seeking 100 percent cleanup reimbursement.

Counties and cities must submit additional documentation to the division if they are seeking 100 percent cleanup reimbursement for tires piles created before July 1, 2001. Figure 1.3 shows the relationship between these entities as it relates to recycling reimbursements.

Figure 1.3 Local Health Departments and the Division of Finance Review Reimbursement Applications. Recyclers must provide documents as part of the application process.



Source: Waste Tire Recycling Act, **Utah Code** 19-6-809

Besides annually registering recyclers (not shown in Figure 1.3), the division does not play a role in recycling reimbursements.

No Undesirable Monopoly Exists Among Fund Recipients

Finally, we were asked to review whether an undesirable monopoly exists among the registered in-state recyclers receiving fund money. Audit work identified one recycler that has a major presence in the state, processing thousands of tons of tires each year. As a result, this recycler collected 75 percent of the fund distributions made to recyclers in fiscal year 2018 for recycling and cleanup reimbursement, as shown in Figure 1.4. The fund distributed approximately \$3 million to all registered recyclers in that same year.

Besides registering recyclers, the division does not play a role in recycling reimbursements.

One recycler received 75 percent of the fund distributions made to recyclers in fiscal year 2018.

Figure 1.4 One Recycler Received 75 Percent of Fund Incentives Provided to Companies for Cleaning Up and Processing Tires in 2018. The other three recyclers together account for the remaining 25 percent.

Fiscal Year	Percent of Fund Money Received		Companies Receiving Fund Money
	Major Recycler	Other Companies	
2014	75%	25%	5
2015	80	20	5
2016	84	16	5
2017	75	25	8*
2018	75%	25%	4

*Source: Department of Administrative Services—Division of Finance data.
 * Chapter IV explains that, between 2016-17, the division approved unregistered companies to cleanup tires. These unregistered companies are included in the number of companies receiving fund money.*

Figure 1.4 shows that, over five years, one recycler received a large proportion of all reimbursements issued to recyclers from the fund. However, we did not identify state practices that promoted or favored this recycler’s position in the market. We also did not identify negative effects on the industry by having such a dominant player. We reviewed the number of awarded bids for waste tire cleanup projects over the last five years. Over this time period, three bids were awarded to this recycler, while four were awarded to their competitor. None of the recyclers or processors we spoke with were concerned with this recycler’s presence in Utah.

Scope and Objectives

We were asked to review the management of the Waste Tire Recycling Fund. To that end, we reviewed the administration of the waste tire program paid for by the fund, compliance with the Waste Tire Recycling Act, and the effectiveness of recycling and cleanup efforts. The following outlines the issues addressed in this report in each chapter.

- **Chapter II** – Reports on the operation of the Waste Tire Recycling Fund and whether it is satisfying its legislative intent.
- **Chapter III** – Evaluates waste tire program tracking, outreach to landfills, and control issues.

We could not identify state practices that promoted or favored the major recycler’s position in the market.

None of the recyclers or processors we spoke with were concerned with the major recycler’s presence in Utah.

- **Chapter IV** – Documents administration deficiencies in the waste tire recycling program and statutory compliance concerns.

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Chapter II

The Intent of The Waste Tire Recycling Fund is Not Being Fully Realized

The Waste Tire Recycling Act (act) was passed to fulfill two major purposes: to develop Utah's recycling industry and to promote waste tire cleanup efforts statewide. This chapter reports primarily on the outcomes and limitations of cleanup efforts. Despite the act fostering a strong state waste tire recycling industry, a gap exists where consumers, over the last two years, generated more waste tires than recyclers collected for processing. Although waste tire issues are not as widespread, we believe the legislative intent to promote tire pile cleanup at landfills and in abandoned piles has not been fully realized.

Over five years the Waste Tire Recycling Fund (fund) increased by nearly \$2 million, expanding by 74 percent. In fiscal year 2018, the fund reached a balance of \$4.6 million, its second highest level since 1990. To effectively manage the fund, the Legislature could consider expanding the use of fund money to assist cities and counties unable to afford the cost to properly manage waste tires. This could take the form of higher reimbursement rates as was proposed in recent legislation. Recyclers report that they have the capacity to process additional waste tires and sell the resulting product if more tire piles are cleaned up. Alternatively, the Legislature could consider reducing the fee to reduce the growing fund balance.

Fund Has Promoted Recycling Industry But Has Mixed Results with Tire Pile Cleanup

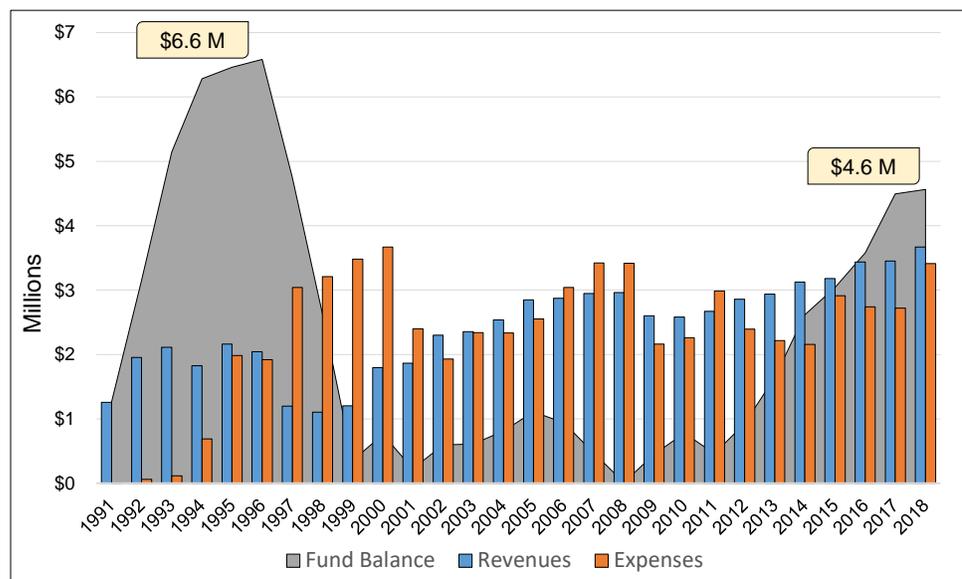
Since the creation of the fund, the Legislature has adjusted the tire recycling fee and reimbursement rates for recycling waste tires. The Legislature passed the act in 1990 to promote both waste tire recycling and waste tire cleanup projects statewide. However, over the last five years fund money has primarily gone to four in-state tire recyclers or processors, producing a strong, stable recycling industry. As more waste tires were generated than were collected for recycling over the last two years, local entities continue to report challenges in their efforts to manage waste tires.

The Waste Tire Recycling Fund was created in 1990 to both develop Utah's waste tire recycling industry and to support cleanup efforts.

Waste Tire Recycling Fund Balance and Underlying Fee Have Varied Over Time

The Legislature has, over the life of the fund, adjusted recycling fees and reimbursement rates to best fulfill the purposes outlined in the act and maintain a reasonable fund balance. The fund provides all the money used for the state's waste tire program. Figure 2.1 shows a history of the fund's revenues, expenses, and overall fund balance.

Figure 2.1 The Waste Tire Recycling Fund Accumulated its Largest Balance of Over \$6 Million in Fiscal Year 1996. The fund currently has a large fund balance of \$4.6 million.



Source: Division of Finance; years in the figure represent fiscal years.

Figure 2.1 shows the relationship between revenues, expenses, and overall fund balance. Note that the fund balance grew 887 percent since 2011, as revenues annually outpaced expenses. This chapter proposes how the Legislature could consider using surplus funds to better support waste tire issues statewide.

Revenues Come From the Point-of-Sale Recycling Fee. The fund is intended to be financed through a recycling fee collected by tire retailers at the point of sale of each new tire and from monetary penalties issued for violations of statute. Historically, the recycling fee has been adjusted depending on the revenue received and the end of year fund balance. The original fee in 1990 was between \$1.00 and \$2.00 depending on the size of the tire. As the fund balance grew, the Legislature reduced the per tire fee to \$0.50 for all tires under 24.5 inches. With reduced annual revenues and greatly increased spending,

The fund has recently reached its second largest balance as revenues continue to outpace expenses.

The \$1.00 point-of-sale recycling fee assessed with the purchase of new tires has remained the same since 2001.

the fund balance dropped sharply. The recycling fee was then increased to \$0.85 per tire in 1999 and then to \$1.00 in 2001. The fee remains at \$1.00 per tire in 2018.

Expenditures Go to Recyclers, Cities and Counties Conducting Cleanup Projects, and for Administrative Purposes.

The act provides for various entities to receive a portion of funds for their work in the recycling and cleaning up of waste tires. Fund monies are expended in one of four different ways to various qualifying entities.³ These include:

1. Supporting waste tire recycling. Funding goes to state-registered recyclers for using tires in energy recovery or production and the creation of an ultimate product. Recyclers are partially reimbursed on a tiered rate depending on how the tires are used or ultimately processed. The state, in fiscal year 2018, spent approximately \$3 million in fund money to support cleanup efforts and the sale of over 46,000 tons of tire-derived products.
2. Reimbursing local entity waste tire pile cleanup projects approved by the Division of Waste Management and Radiation Control (division). Funds can be used to reimburse a transporter's or recycler's cleanup costs at 100 percent for waste piles accumulated before July 1, 2001 or 60 percent for waste piles accumulated on or after that date. The city or county where the cleanup occurs is responsible for the remaining 40 percent in the latter case (more on this provision will be discussed later in the chapter).
3. Reimbursing local health departments for their cost to review, process, and submit recycling reimbursement applications at \$5 per ton of waste tire products. In total, 3 of the state's 13 local health departments have applied for and received fund money in this role.
4. Paying for the Division of Waste Management and Radiation Control administrative costs for overseeing the waste tire program. Approximately four percent of the fund is used for

By statutory design, fund money is to be used to support waste tire recycling activities, local entity cleanup efforts, and cover administrative expenses to manage the program.

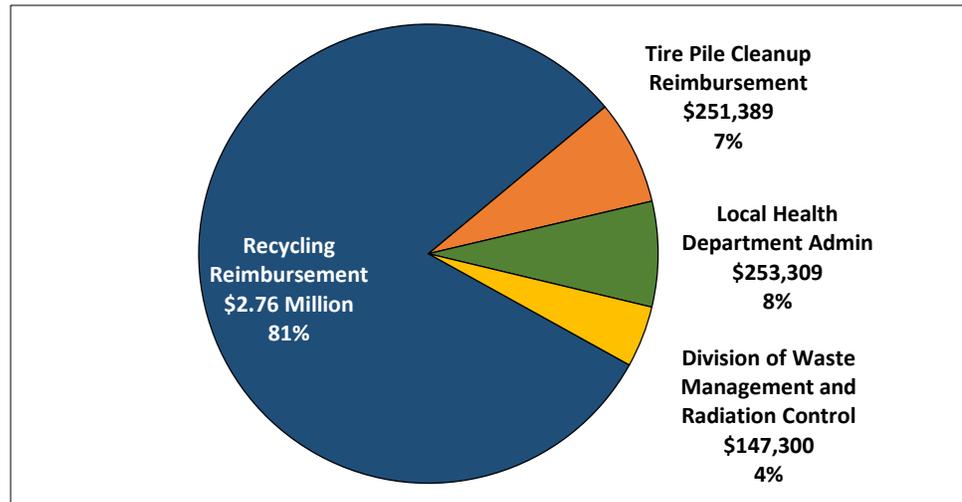
³ Aside from the four main fund expenses, tire retailers are permitted to retain 2.5 percent and the Utah State Tax Commission up to 1.5 percent of the recycling fee prior to the revenues being deposited in the special revenue fund.

this purpose. Though we did not audit this expense in detail, the division uses this money to support nearly one and one-quarter full-time equivalent positions managing the program.

Figure 2.2 shows the percentage of the expended funds for each of the four purposes listed above for fiscal year 2018.

Most fund money has been used to provide partial reimbursements to recycle waste tires.

Figure 2.2 In 2018 Most Fund Money Was Expended on Recycling Reimbursements. The remaining fund expenditures covered administrative costs for local health departments and division staff, and assisted with tire pile cleanup projects.



Source: Division of Finance

As shown in Figure 2.2, most fund expenditures go to recyclers to subsidize production of tire-derived products. Only a small portion is expended for waste tire cleanup costs. The tiered reimbursement rates for products made by recyclers has been in place since 2008.

Fund Created to Encourage Tire Recycling and Cleanup Efforts

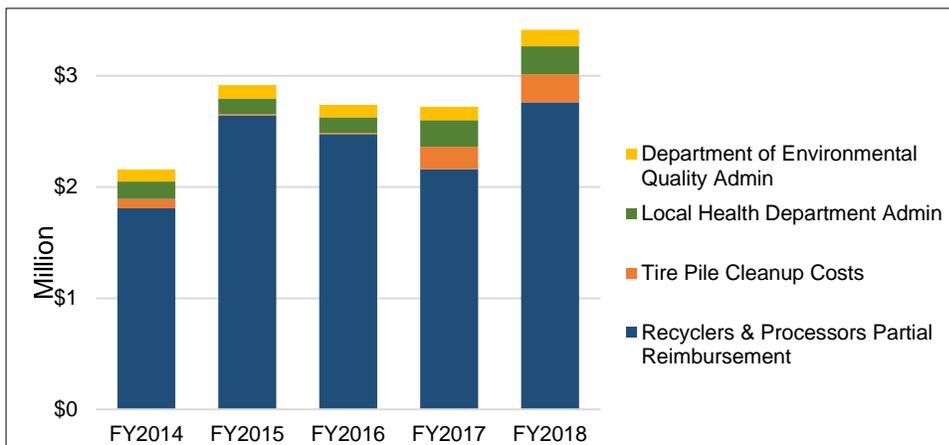
The two legislative purposes of the fund outlined in Chapter I of this report have remained unchanged since the act’s passage in 1990. The act promotes proper waste tire disposal by providing reimbursements 1) to companies which recycle waste tires and 2) to counties or municipalities for cleanup projects of abandoned tire piles and landfill tire piles. The Legislature passed the act at a time when other states⁴ were drafting legislation to address the hazardous effects

⁴ The U.S. Environmental Protection Agency reported that in 1990, “Twelve states passed or finalized scrap tire laws, regulations, or amendments” (this includes

of growing waste tire piles. Waste tires can lead to negative environmental and health outcomes because they are combustible, nonbiodegradable, not easily compacted, and the residue from tire fires contaminate water and soil. Tires also harbor disease-carrying pests such as rodents and mosquitos.

The act’s reimbursement to private recyclers is unique because so few states have a similar provision.⁵ This shows the Legislature’s commitment to developing the waste tire recycling industry. Though the act also supports waste tire cleanup efforts, this has not historically been a major expense-driver of the fund as shown in Figure 2.3.

Figure 2.3 The Majority of Fund Money Continues to be Used to Promote Waste Tire Recycling. The fund also supports cleanup efforts and administrative expenses.



Source: Division of Finance; this represents the same data as Figure 2.2 except that it provides five years of data.

Figure 2.3 illustrates how fund money was used to fulfill statutory purposes over five years. In fiscal year 2018, 81 percent of fund disbursements were made to recyclers. The division also authorized four cleanup projects accounting for seven percent of expenditures.

Reimbursements Are Promoting Recycling and the Development of the Recycling Industry

In an audit performed by our office in 1993, we identified that “Utah’s only waste tire processor has gone out of business and

Utah’s Waste Tire Recycling Act). At the time of their report in 1991, the EPA estimated that all but nine states had regulations to manage their waste tires.

⁵ California, Louisiana, Oklahoma, South Carolina, Utah, and Virginia were the only states we found that provide reimbursements for proper tire disposal. However, we did not review how every state’s waste tire program is structured.

Waste tire piles produce health and environmental hazards in landfills and other areas, including harboring disease carrying pests such as mosquitos and rodents.

In 2018, seven percent of fund money was used to clean up waste tire piles, while the majority of the fund was used to subsidize waste tire recyclers and processors.

speculators have begun to store tires in anticipation of more lucrative state support of recycling.” From the audit, it appears that the program struggled in its early years to promote a recycling industry by facilitating in-state recycling. Compared to the landscape surrounding the passage of the act in 1990, the tire recycling industry has grown significantly and subsequently stabilized.

Today four recyclers operate in the state and receive fund money—including two recyclers with shredding capability and two cement plants which use tires as fuel to manufacture cement.⁶ All four companies reported that the fund has helped them maintain their operations. Though we expect private companies receiving government funding to report this, the two cement plants explained that without the fund they would use coal in their process instead of tires which is similar in combustible properties to tires but is typically less expensive. These two companies reported that only because of the fund’s subsidy were they able to afford to use waste tires in their process.⁷ Because the recyclers rely on these cement plants for business, we believe the fund is not only crucial in supporting, but in driving the recycling industry in the state. By contrast, a report produced for the California Department of Resources Recycling and Recovery found that when two nearby states terminated their tire incentive programs, the recycling industry shifted, and waste tires diverted to recyclers reduced significantly.

During this audit the division reported on its web site that in fiscal year 2017 they reimbursed recyclers for over 2.6 million waste tires processed. While this indicates the fund is at least partially fulfilling its legislative purposes, the outcomes of the program are largely undocumented. This will be discussed in more detail in Chapter III of this report.

⁶ We spoke with two in-state companies which also plan to process tires for recycling in the future. However, we could not verify if this will occur, and no application for registration was submitted by them to the division during this audit. We also spoke with one recycler who, in 2016, specialized in pyrolysis (a different method used for tire recycling) but could not find a market for their products and ultimately sold the business assets.

⁷ The two cement plants, in fiscal year 2018, jointly recycled 23 percent of all waste tire tonnage processed among the registered recyclers.

Two processors stated that without the fund’s support, they would not use waste tires in their processes.

Benefits of Fund Not Reaching Local Entities as Anticipated

The fund has successfully encouraged waste tire recycling and cleanup projects around the state. However, we illustrate in Figure 2.4 that the number of new waste tires generated in fiscal years 2017 and 2018 outpaced the number of waste tires collected for recycling, despite strong statutory support.

Figure 2.4 The Number of New Waste Tires Generated Continues to Outpace Waste Tires Collected for Recycling. It is unclear why this gap persists.



Source: Auditor analysis of the Utah State Tax Commission and the Utah Department of Environmental Quality data
Note: New Waste Tires is based on tire recycling fee data from the Tax Commission. This data includes tire fees collected for tires sold as part of new vehicle purchases. As opposed to tire replacement, this does not generate any new waste tires. To account for this, we estimated the number of tires on new vehicles sold and subtracted this from the fees collected for all tires sold. The division believes the gap between New Waste Tires and Waste Tires Collected for Recycling can partially be explained by used tires sold to customers by tire resellers; however, we could not quantify this with the information available.

The gap between tires generated and tires collected in Figure 2.4 demonstrates that the program has not kept pace with new waste tires over the last two years. Cities and counties struggle to manage waste tires as illicit waste tire disposal continues and as some landfills are unable to afford waste tire cleanup costs.

It should be noted that the division believes, and we agree, that the state has improved how waste tires are being managed. Waste tire issues have largely been addressed over the fund's 28-year history, despite the gap shown in Figure 2.4 and even as retailers sell more tires each year. Where large tire piles accumulated at one time, the frequency and volume of these piles appears to have been reduced significantly. For example, in an excerpt from an audit our office performed on the fund in 1993, Figure 2.5 shows the location and

A gap exists between waste tires generated and waste tires collected for recycling.

Waste tire piles found in our previous legislative audit have largely been addressed.

volume of several large waste tire piles that we believe no longer exist or no longer exist at that same volume.

Figure 2.5 In 1993 We Reported Nearly 4.3 Million Waste Tires Deposited in Seven Piles in Northern Utah. During the current audit, we did not identify any tire pile comparable in amount to the smallest pile on this list, showing improvement.

Location (Nearest Community)	Number of Tires (Estimated)
Magna	2,000,000
Lehi	1,500,000
Elberta	200,000
West Valley	200,000
Salt Lake City	200,000
Grantsville	130,000
North Salt Lake	60,000
Totals	4,290,000

Source: 1993-03 Report of the Utah Office of the Legislative Auditor General

Comparing Figure 2.5 data with today’s recycling landscape, it appears the program has positively influenced waste tire disposal statewide. However, our audit identified that local entities continue to struggle to clean up waste tires for a variety of reasons. We believe that, in light of our findings, the fund’s purpose of encouraging waste tire cleanup statewide has not yet been fully realized.

Utah Code 19-6-811 authorizes the fund to financially assist cities and counties for tire cleanup projects at landfills and for abandoned waste tire piles. Despite this, illicit dumping continues. We identified instances where tires were disposed of in gulches, on shorelines, and on occupied and vacant properties. Government entities reported cases, that we did not observe, where waste tires were dumped in large quantities overnight or left behind on leased property. Because our sample did not include all landfills and other government entities, we believe more sites exist statewide. Figure 2.6 shows instances of tire issues at one landfill (top left) and dumping sites in three other locations (top right, bottom left and right).

Local entities continue to struggle to cleanup waste tires.

Illicit dumping continues as waste tires are left on vacant and private properties including gulches and shorelines.

Figure 2.6 Waste Tire Issues Persist at Landfills and in Other Piles. The act has not been able to address all waste tire issues throughout the state.



Source: Top left - auditor generated, top right and bottom left – county representatives, bottom right – Google Earth.

Waste tires continue to accumulate in landfills and on other properties as shown in Figure 2.6. From our conversation with government entities, including 25 landfills⁸ representing the majority of counties in the state, we found:

- Ten landfills bury waste tires with other waste material and dirt, prohibited by law (this will be discussed in Chapter IV of this report)
- Eight landfills cannot afford to properly dispose or transport tires to a recycler (this is discussed in the next section)
- Five landfills did not know about the fund and its resources to aid in some cleanup projects
- One county cleared multiple piles dumped overnight, paying for cleanup with the county’s emergency fund

⁸ Our sample included one landfill or transfer station from every county in the state and included different types of landfill facilities. Note that some landfills we contacted are shared between multiple cities and counties. Also, some of these issues were identified within the same landfill. For example, five landfills that reportedly bury whole waste tires also cannot afford to properly dispose or transport them to recyclers.

Incorrect waste tire disposal is occurring, in part, because landfills cannot afford to properly dispose of tires or did not know statute and the availability of state funding assistance.

- One local health department reported several abandoned tires in a rented facility where the lease was previously terminated

It should be noted that waste tire piles containing fewer than 1,000 tires are statutorily ineligible for fund assistance.

From our sample, we identified several issues surrounding proper management of waste tires and tire pile cleanups. Of primary concern, landfills accept more than four tires in a manner counter to statute (discussed in Chapter IV of this audit), report their inability to afford proper tire disposal, or were unaware of the fund's statutory support. Considering this in the context of the current large fund balance, we believe the Legislature could consider modifying statute to address the affordability of waste tire pile cleanup efforts.

Legislature Could Consider Using Large Fund Balance to Assist Waste Tire Cleanup Efforts

House Bill 76 (HB76) in the 2018 Legislative General Session sought to address the inability of local entities to afford tire pile cleanup costs. Though not passed, similar legislation could use the fund's large fund balance to better assist in cleanup efforts statewide. Two recyclers reported their capacity to process more waste tires and sell tire-derived product if more piles are cleaned up. The Legislature could consider this option, or simply reduce the tire recycling fee, an action they performed in 1996 to address the growing fund balance.

In 1996 the Legislature, wishing to control the growing fund balance (\$6.6 million), reduced the tire recycling fee from \$1.00 to \$0.50. Increasing 74 percent in five years, the fund in fiscal year 2018 has again swelled (reaching \$4.6 million), the second highest level in its 28-year history. With such a large fund balance, the sponsor of HB76 proposed that more funds be used to assist local entities unable to afford tire pile cleanup costs. Having strong support in one chamber, but not passing the other before the 2018 Legislative General Session ended, the bill would have provided full reimbursement for tire cleanup project costs in 23 counties meeting the third, fourth, fifth, and sixth class designations.⁹ The bill also

⁹ None of the 23 counties are projected to change to a first or second class in the next 35 or more years. These classifications are based on current population data, with counties of the first class being the most populous.

With a large, growing fund balance, the Legislature could consider expanding fund disbursements for landfills unable to afford proper waste tire pile cleanup or reduce the waste tire recycling fee.

explicitly provided for a 60 percent reimbursement to six counties of the first and second classes.

Utah Code 19-6-811 already authorizes the division to reimburse 60 percent of all transporter and recycler cleanup costs,¹⁰ requiring cities and counties to cover the remaining 40 percent. However, we found that some counties have not used funding for eligible cleanup projects. For example, we found that some landfills were unaware of, or incorrectly believed themselves ineligible for, the fund's assistance. This will be discussed more in Chapter III.

We also found that tipping fees, or fees charged by landfills to receive tires, varied and, in some cases, were insufficient to cover waste tire transportation and recycling costs. Conversely, it should be noted that some counties, even in rural parts of the state, reported being able to afford proper waste tire management by periodically using tipping fee revenue to pay a transporter to deliver their tires to a recycler. However, we did not identify another way for the fund to equitably address only those landfills unable to afford proper disposal. Additionally, two landfills reported that any fee, even minimal charges, result in illicit tire disposal elsewhere. Expanding the fund's capacity to cover costs may resolve some of these issues.

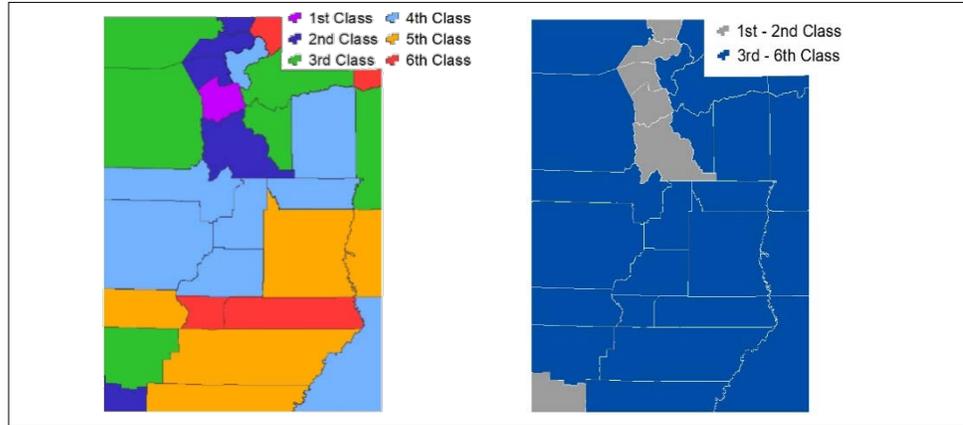
The map on the left in Figure 2.7 illustrates each counties' current classification. The map on the right illustrates which counties would qualify for a full reimbursement of waste tire cleanup costs had HB76 passed in the 2018 Legislative General Session.

Waste tire issues are compounded when the fee landfills charge to accept tires results in illicit tire disposal in areas outside the landfill.

House Bill 76 in the 2018 Legislative General Session proposed that reimbursement rates be increased for cleanup efforts in counties meeting the 3rd through 6th classification.

¹⁰ *Utah Code* 19-6-811 authorizes the division director to reimburse 100 percent of cleanup costs if all waste tires in the pile were added before July 1, 2001.

Figure 2.7 A 2018 Bill Proposed that Rural Counties of the 3rd Through 6th Classes Be Fully Reimbursed for Cleanup Costs (see left). On the right, all counties in blue would qualify for full reimbursement, while those in grey would receive 60 percent.



Source: The Office of Legislative Research and General Counsel

The Division of Waste Management and Radiation Control approved eight cleanup projects costing nearly \$686,000 over a period of five years while the fund balance grew by \$1.9 million.

Considering the fund’s capacity to assist local entities at a greater level, we found that after expenses, the fund’s balance grew by \$1.9 million between fiscal years 2014 and 2018. Over the same time period, the division authorized eight cleanup projects costing \$686,000 (shown in Figure 2.8). Because fund revenue has continually exceeded expenses, the concept of the fund reimbursing cities and counties at a higher level may be viable. Figure 2.8 shows the fund’s disbursements for cleanup projects over five years.

Figure 2.8 The Total Cost of Eight Cleanup Projects Spanning Five Years was About \$686,000. Given that the balance grew by \$1.9 million over five years, it appears the fund could support a greater portion and additional cleanup projects each year.

Fiscal Year	Cleanup Project	Total Cost	Tons	Fund Covered Percentage
2014	Sevier	\$140,228	1,079	60%
2015	No Projects	--	--	--
2016	Vernal	12,203	84	100
2017	Kanab	148,128	890	60
	Snowville	112,216	558	100
2018	San Juan	30,624	162	60
	Sevier	23,555	157	60
	Cannonville	95,431	532	100
	Cannonville	123,451	689	100%
TOTAL	8 Projects	\$685,836	4,150	

Source: The Department of Environmental Quality data. Though some projects were conducted in prior periods, Figure 2.8 reflects the year in which these local governments were reimbursed for cleanup costs.

Under the provisions of HB76, the projects in Figure 2.8 reimbursed at 60 percent would have qualified for 100 percent reimbursement. It is probable that if a bill similar to HB76 were to pass, more landfills would participate and a greater portion of fund money would be used for cleanup projects. It would then be the division's responsibility to determine the number of projects to annually approve to keep the fund solvent for future projects and tire recycling reimbursements. We believe the expansion of the fund's use for cleanup projects could lead to additional tire recycling and strong environmental and health outcomes for the state. Additionally, two in-state recyclers report their capacity to process considerably more waste tires as they become available. They also believe they can sell the resulting tire-derived product. This is important because legislation increasing tire pile cleanup reimbursements may increase the number of tires brought to tire recyclers.

Alternatively, the Legislature could choose to reduce the waste tire fee to curtail the fund's growing balance as was done by the Legislature in the in the 1996 Legislative General Session. This is a policy option for the Legislature to consider moving forward.¹¹

As previously outlined, there are benefits to expanding fund reimbursements to assist in cleanup efforts. This expansion of reimbursements may produce unanticipated consequences and may not be as effective unless the following questions are addressed:

- Should participating counties be required to be in compliance, properly storing or disposing of waste tires, in order to receive fund reimbursements?
- Will the division's authority to monitor and enforce proper tire disposal need to be revised?
- Would the expansion of cleanup reimbursements affect or necessitate regulation of the tipping fees that landfills charge to receive waste tires?

¹¹ Providing the Legislature an additional model, Arizona and South Carolina both manage waste tires to varying degrees at a local level. South Carolina, in particular, diverts some fee revenue to each county to manage waste tires at that level. We did not look deeply into this but reviewing these models may better help the Legislature consider how to structure the fund and its use moving forward.

Were a bill similar to HB76 to pass, it would be the division's responsibility to determine the number of projects to annually approve to keep the fund solvent for future use.

Effectiveness of expanding cleanup project reimbursement may depend on addressing emerging questions.

In summary, because some counties are unable to afford the costs to properly dispose of waste tires, using the growing fund balance may produce positive outcomes but also create unanticipated consequences. We recommend the Legislature consider whether to expand the capacity of the fund to assist rural counties or reduce the waste tire recycling fee to stabilize the growing fund balance.

Recommendation

1. We recommend the Legislature consider addressing the growing fund balance by increasing reimbursement rates for rural tire pile cleanup projects or reducing the waste tire recycling fee.

Chapter III

The Division Can Improve Waste Tire Program Tracking and Outreach

In Chapter II, we reported on several issues identified during this audit, including the continuation of illicit dumping statewide and problems landfill operators encounter in managing waste tires. This chapter addresses how the Division of Waste Management and Radiation Control (division) can better manage waste tires in accordance with the Waste Tire Recycling Act (act). Because a gap exists between new waste tires generated and waste tires collected for recycling, the division could more proactively manage the waste tire program by:

- Studying the costs and benefits of a manifest system, or other tracking system, to better control the transportation of waste tires to recyclers
- Improving tracking of waste tire piles statewide
- Better educating landfill operators on how to qualify for and use statutorily authorized funding
- Adopting metrics that better measure program impact and the effectiveness of division oversight activities

We believe that the division's implementation of these recommendations is especially timely since the Legislature will shortly consider whether to renew the program, which is scheduled to sunset in 2020. Although the division already reported that more resources may be required if a manifest system were to be adopted, our recommendation is for them to simply study the costs and benefits of a similar tracking system for waste tires.

The Division Could Consider Tire Manifest Systems Found in Other States

The gap between the number of new waste tires generated and waste tires collected highlights a possible tracking deficiency in Utah's waste tire program. Similar programs in other states have manifest

This chapter identifies ways the Division of Waste Management and Radiation Control can more proactively address waste tire management issues statewide.

Five states, in addition to Utah, provide incentives for proper waste tire disposal, including for recycling; however, Utah is the only state without a manifesting system.

systems to track the flow of waste tires from their origin at tire retailers to their destination at recycling or processing facilities. Presently, the division is unable to fully explain the gap shown in Figure 2.4 in Chapter II of this report or verify how tires accumulate in large waste piles and at landfills.

We identified five states that, like Utah, have an incentive program encouraging proper disposal of waste tires. Each of these states has a manifest system. Though there may not be a strong correlation between incentives and manifesting, Utah was the only program we identified that provides incentives without tracking waste tires through a functioning manifest system, as shown in Figure 3.1.

Figure 3.1 Other States with Incentive Programs Have Manifest Systems for Waste Tires. Manifesting could help mitigate the illegal disposal of waste tires.

State	Incentive Program	Manifest	Fee Per Tire (Passenger Tires)*
California	Yes	Yes	\$1.75
Louisiana	Yes	Yes	2.00
Oklahoma	Yes	Yes	2.50
South Carolina	Yes	Yes	2.00
Utah	Yes	No	1.00
Virginia	Yes	Yes	\$0.50

Source: Waste tire information from each state.

** Some states have different point-of-sale fees for non-passenger tires.*

Manifesting is a process commonly used to track the movement of waste, particularly hazardous waste, and could be a method to better control waste tires by ensuring they are brought to state recyclers. Program managers from two states listed in Figure 3.1 reported the following benefits of their tire manifest system:

[Our] manifesting system is the only way we can get a real handle on numbers of tires and waste tire material changing hands.... It is ostensibly a chain of custody that tracks a tire from the time it becomes a...waste tire to its deposition....

Our manifesting system is pretty all-inclusive. [...] I would say we see most, if not every, tire [in the state].

Other states track their waste tires to ensure they are diverted for proper disposal or end use. In Utah, some waste materials already have a form of manifesting, including required tracking for the movement

A manifest system, or other tracking system, could provide a more proactive approach to managing waste tires.

of motor oil and asbestos to processing facilities or landfills. Because waste tires continue to be disposed of in a manner inconsistent with statute (discussed later and in Chapter IV of this report), and because there is gap in waste tires recycled as demonstrated in Figure 2.4, Utah's waste tire program could benefit from a tracking system.

Although we did not study the resources required to implement a manifest system similar to those in other states, staffing counts in all but one of the states listed in Figure 3.1 were greater than those found in Utah. The division already reported that more resources may be required if a manifest system were to be adopted. However, we recommend the division simply study the costs and benefits of a manifest system, or other tracking system, and then report the findings of their study to the Legislature.

The Division Does Not Currently Track Tire Piles

As Chapter II demonstrated, waste tires continue to accumulate in abandoned piles and at landfills statewide. However, the division was unable to provide a list of existing waste tire piles and is unaware of all tire issues statewide for two reasons. First, the division does not track existing tire piles as do other states we found that also have incentive programs (Figure 3.1), and second, the reimbursement model, as set forth in statute is not proactive but reactive regarding waste tire issues. We believe the division can do more to monitor the environmental impact of waste tires throughout Utah.

The division does not track existing tire piles to better manage their proper disposal. Though there is no requirement for the division to track the location of waste tire piles, we identified some beneficial practices in our review of other states. For example, Colorado and Oklahoma catalogue their tire piles. Colorado's program specifically lists all active piles, their relative volume, and an assessment of the hazards each poses. They then rank and prioritize which piles to clear first. We found that both states use this information to better assist in tire cleanup projects and to report cleanup activities to their legislatures.

The second reason the division is unaware of all tire piles stems from the reactive nature of the reimbursement model. Because waste tires are managed at the local level, the division relies on local entities

The division could do more to track each waste tire pile, the hazards each poses, and rank them according to cleanup priority.

to contact them when there is an issue and when financial assistance is needed. Despite this, we believe the division, as the state regulator, should be aware of and promote the mitigation of tire piles that can negatively impact the health of Utah citizens and the environment. We further believe the division could benefit from greater awareness of waste tires throughout the state and therefore recommend that the division proactively maintain an up-to-date list of all waste tire piles, then work within their authority to mitigate them.

Survey of Landfill Practices Demonstrates More Training Is Needed

Chapter IV of this audit reports that improper disposal practices of waste tires at landfills occurred in part because some landfill operators misunderstood statutory requirements. Other landfill operators reportedly were unaware of funds available to assist in waste tire cleanup projects. In fact, three of the five landfills that reported being unaware of the Waste Tire Recycling Fund (fund) were burying their whole tires with other solid waste contrary to statute. Further, landfill representatives reported that they manage waste tires in the following ways:

More training is needed, as some landfill operators were unaware of funds available to assist in tire cleanup projects and others incorrectly believed they were ineligible for that funding.

- Landfill Operator #1 incorrectly believes they are ineligible for state funding, while their tipping fee does not cover the costs to transport tires to a recycler
- Landfill Operator #2 buries waste tires with other waste, inconsistent with statute, and expressed their desire to learn more about how his landfill could qualify for fund money
- Landfill Operator #3 accepts more than four waste tires at a time, inconsistent with statute, and reported not knowing enough about the waste tire program to use it

As the entity that oversees fund disbursements for tire pile cleanups and landfill inspections, we believe the division should better manage tire cleanup efforts by providing continuous training to landfill employees. Though the division provides some training, the need for continuous guidance is reinforced by the results of our survey which identified a notable amount of turnover in landfill staffing. As we looked at other states' waste tire programs, we found that Colorado's program set a goal to increase technical assistance outreach by 10

percent and provided 31 outreach events in 2017. Oklahoma also reports on technical assistance activities performed, though they did not conduct any as reported in their 2016 annual report. We recommend that the division improve oversight by conducting training for cities and counties (including landfills) regarding the fund's benefits and proper waste tire management practices.

More Metrics Are Needed to Measure Program Performance

Finally, the division could improve the program by adopting better performance metrics to track oversight activities and successful outcomes. The fund is, by statutory designation, an expendable special revenue fund. This classification means that the Legislature delegates some spending authority to the program to expend the fund's assets.¹² The Legislature made efforts to infuse greater accountability into the fund by requiring that revenues, beginning balances, and ending balances be reported annually beginning in fiscal year 2015.¹³ However, we believe the fund needs stronger metrics to better evaluate program performance.

In the 2018 Legislative General Session, the Legislature passed House Bill 5, which requires the division to track and report by October 15, 2019 the number of waste tires cleared, with a targeted goal of 40,000 tires. As the only required metric, set with the input of the division, we believe the metric is insufficient to fully account for the division's oversight efforts. Figure 3.2 shows this metric is also frequently met and exceeded.

The division lacks performance metrics to adequately evaluate their oversight activities and program outcomes.

¹² The Legislature approves annual administrative costs paid to the division.

¹³ The Office of the Legislative Fiscal Analyst annually reports this information in their Compendium of Budget Information publication.

The one metric the Legislature requires the division to track is regularly met and does not reflect the full scope of the division's oversight efforts.

Figure 3.2 The Division Already Regularly Meets the Goal Set by the Legislature. Except for two years when reimbursements for cleanup projects were either low or not present, the division vastly exceeded the goal to clear more than 40,000 tires.

	2014	2015	2016	2017	2018
Number of Tires Cleaned-up (est.)	86,294	--*	6,733*	115,813	123,174

*Source: Department of Environmental Quality records. Note that because waste tires collected is calculated by weight (in tons), these numbers were estimated using the statutory rate of 25 pounds per passenger-tire-equivalent (2,000-pound ton / 25 weight per tire = 80 tires per ton). *The division believes that local entities' priorities and financial capabilities were likely reasons why cleanups were nonexistent or low in 2015 and 2016 respectively.*

The division's metric in Figure 3.2 does not strongly reflect their oversight because, for cleanup projects, the division primarily approves contractor bids and authorizes local entity reimbursements. These activities do not directly influence the number of waste tires that are annually cleaned up. The division's web site goes a bit further by reporting on waste tires recycled and reimbursements made. However, these metrics again provide little insight into the overall effectiveness of the program or the quality of the division's oversight activities. Because of this, we believe the impact of the fund and the division's oversight activities are largely undocumented, resulting in reduced accountability and transparency. This is concerning as the Waste Tire Recycling Act is scheduled to sunset in 2020 if no legislative action is taken. Without better division metrics, the Legislature may not have enough data to effectively review the program.

The division should better demonstrate program outcomes by adopting strong performance measures.

We observed other state practices that establish greater accountability and transparency, practices that Utah has not fully adopted. Among other metrics, states track the following measures which the division should consider adopting:

- The number of documented violations to determine whether they are increasing or decreasing over time
- The number of illegal waste tire sites investigated, cleaned up, brought into compliance, and tires removed
- The dollar value of imposed fines and recovered amounts
- Local government participation in the enforcement process

Further, some states produce reports that are regularly submitted to their legislatures and other entities, while Utah has no reporting requirements. Better metrics are needed to determine the impact of

the fund, especially as it is scheduled to sunset. We recommend the division track and report performance metrics that measure oversight activities and fund impact.

Recommendations

1. We recommend that the Division of Waste Management and Radiation Control study the costs and benefits of a waste tire manifest system, or other tracking system, and then report the findings of their study to the Legislature.
2. We recommend that the Division of Waste Management and Radiation Control maintain an up-to-date list to track the presence of waste tire piles statewide, then work within their authority to mitigate them.
3. We recommend that the Division of Waste Management and Radiation Control provide continuous training to landfill employees on the eligibility and benefits of the Waste Tire Recycling Fund.
4. We recommend that the Division of Waste Management and Radiation Control track and report performance metrics that measure their oversight activities and the program's impact.

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Chapter IV

Division Oversight of Waste Tire Disposal and Cleanup Projects Can Improve

The Division of Waste Management and Radiation Control (division) of the Utah Department of Environmental Quality should provide greater oversight of the waste tire program consistent with statute. Specifically,

- The division has approved waste tire disposal practices that conflict with statute and negatively affect the environment and landfill operations. Sampled landfill operators reported that, with division knowledge, they buried whole waste tires in other types of solid waste or under dirt cover. The division approved these practices due to an interpretation of statute that conflicts with the legal opinion from the Office of Legislative Research and General Counsel (OLRGC). The difference in legal interpretation, in part, stems from the potentially confusing statutory definition of “disposal,” an issue we believe the Legislature could address.
- The division has not provided adequate oversight on the number of tires landfills can accept at a given time. Our work found that landfills are accepting tires in numbers higher than allowed by statute.
- Finally, the division approved a waste tire cleanup project performed by an unregistered waste tire transporter and an unregistered recycler, inconsistent with statute and rule. In the future, the division should ensure that waste tire transporters and recyclers are registered prior to using their services.

The Division Has Allowed Landfills to Bury Whole Waste Tires Contrary to Statute

Utah Code specifies how landfills must handle waste tires for proper disposal. The division has approved landfill practices that contradict these requirements, contributing to landfills improperly disposing of tires. Landfills are burying whole waste tires with other types of waste and burying them in dirt, undermining the intent of the

Landfills are burying whole waste tires, contrary to statute. However, confusion exists on the statutory definition of “disposal.”

The division interpreted statute differently than the Office of Legislative Research and General Counsel, resulting in disposal practices that are inconsistent with statute.

Waste Tire Recycling Act by diverting waste tires from being recycled. The division approved these practices because they interpreted statute differently than the legal opinion provided by OLRGC. The division should use landfill inspections, a process already in place, to monitor future compliance. However, landfilling of de minimis amounts of waste tires may be unavoidable or cost prohibitive to prevent.

Waste Tires Must Be Disposed in a Manner That Facilitates Retrieval

Utah Code explains how landfills must handle the disposal of whole waste tires. *Utah Code* 19-6-804 (2) explains:

The operator of the landfill or other authorized location shall direct that the waste tires be disposed in a designated area to facilitate retrieval if a market becomes available for the disposed waste tires or material derived from waste tires.

A key term used in this section of statute is the word “disposal,” which statute defines as “the deposit, dumping, or permanent placement of any waste tire....” The disposal requirements apply if the tires are 24.5 inches or smaller in diameter and are not from vehicles moved by human power. *Administrative Rule* does not address proper disposal of whole waste tires beyond what is set forth in statute.

This section of *Utah Code* requires that whole waste tires be disposed in a manner that facilitates retrieval. Waste tire recyclers in the state reported to us that dirty tires and buried tires are more difficult to retrieve and costlier to recycle. Therefore, we conclude that intermingling whole waste tires with other solid waste and the burial of tires in dirt impede future retrieval and are not in line with *Utah Code* 19-6-804 (2). This is consistent with the legal opinion provided by OLRGC contained in the Appendix of this report. The requirement that waste tires be disposed in a designated area to facilitate retrieval provides context for what “disposal” means for landfills. This issue will be discussed later in this chapter.

Burying whole tires with other forms of solid waste or in dirt has real and negative impacts on the operation of landfills. Whole tires tend to float to the top of landfills, which can disrupt the landfill’s daily cover that is applied to the top layer of solid waste to prevent windblown debris, disease transmission, and escape of waste gasses.

Landfills can accept waste tires for disposal but must place them in a designated area that facilitates retrieval.

Statutory tire disposal requirements apply if tires are 24.5 inches in diameter or smaller.

Intermingling tires in other waste or under dirt are inconsistent with statute because these practices do not facilitate retrieval.

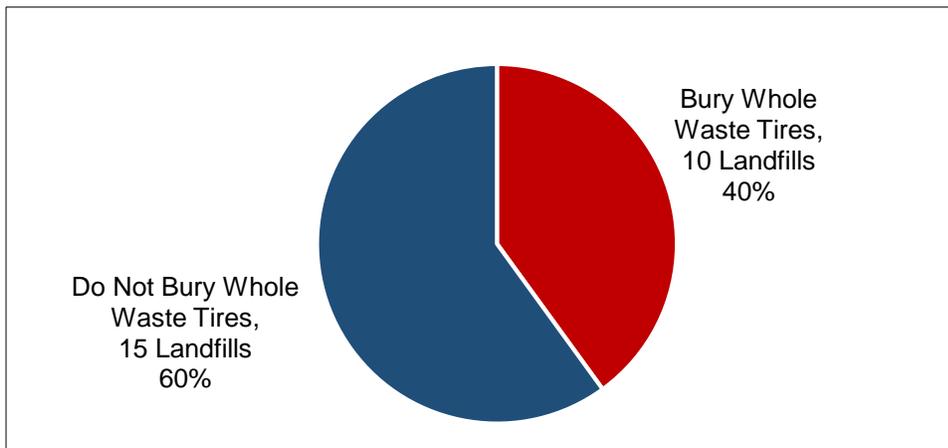
Whole waste tires cannot be effectively compacted, causing them to take up space in landfills. Burying tires and impeding future retrieval also may decrease the number of tires recycled.

Surveyed Landfills Bury Whole Tires with Other Waste and Dirt

Landfills are not following legal requirements regarding the disposal of whole waste tires. Multiple surveyed landfills reported burying whole waste tires with other forms of solid waste or in dirt. Because landfilled tires are buried, we were unable to observe tires at landfills that reported burying them.

Our sample included one landfill or transfer station from every county in the state and included different types of landfill facilities. We spoke with operators at 25 landfills that accept tires¹⁴, 10 of whom indicated that they buried their waste tires with other types of waste or under dirt. Figure 4.1 shows the percent of surveyed landfills burying whole waste tires compared to landfills that set aside their whole waste tires for recycling.

Figure 4.1 Our Sample Shows Many Landfills Around the State Bury Whole Waste Tires. This practice impedes retrieval and makes recycling costlier.



Source: Conversations with landfills in audit sample

¹⁴ One county transports their tires to a neighboring county for disposal, reducing the number of counties represented in the sample. Landfills may also choose not to accept waste tires. We were unable to contact one landfill selected for the sample. For one transfer station, we also looked at documents for the landfill where they brought waste.

Buried whole waste tires negatively impact landfill operations.

Forty percent of surveyed landfills that accept tires bury their tires in other forms of waste or dirt.

Of our sample, 40 percent of landfills reported burying whole waste tires with other forms of solid waste or in dirt. This practice harms landfill operations and impedes future recycling of tires.

The Division Has Allowed Landfilling of Whole Tires

Landfills are burying whole waste tires, in part, because the division, charged with regulating landfills and ensuring their compliance with statute and rule, allowed these improper practices. Through official landfill permits¹⁵ and information on its web site, the division has approved disposing of whole waste tires with other waste and under dirt. The division did this because they interpreted statute differently than the legal opinion provided by OLRGC found in the Appendix of this report. The division already has an inspection process in place that can be used to enforce waste tire disposal statute and rule going forward.

Landfill Permits Issued by the Division Officially Allowed Whole Waste Tire Landfilling. Statute and rule require landfills to obtain approval by permit before the landfill can operate and accept waste. Landfills must operate according to the permit approved by the division. The division issued official permits to landfills that included official approval for burying whole waste tires with other forms of waste or under a dirt cover, impeding retrieval of these tires.

As mentioned previously, our sample of 25 landfills that accepted waste tires included 10 that buried whole waste tires with other types of waste or in dirt. These landfills report the buried tires are generally from passenger vehicles, a tire size that must be disposed according to statutory requirements. The division approved permits for two landfills in our sample burying whole waste tires in a manner incompatible with statute. Figure 4.2 contains images of excerpts taken directly from these permits.

¹⁵ Statute uses the term “operation plan” instead of “permit,” which is used in rule. An approved permit appears to be the same thing as an approved operation plan.

The division approved landfill permits that allowed waste tire disposal practices that are inconsistent with statute.

According to statute and rule, landfills must obtain a permit before accepting waste and must operate according to the allowed practices in the permit.

Figure 4.2 The Division Approved Burying Whole Waste Tires.

Two official permits for two separate landfills allow this practice; operators of the landfills in question confirm they are burying tires. Division management approved the permits.

Permit #1

2.3.8 Waste Tires
Automobile tires will be accepted four (4) at a time in accordance with UAC R315-320-3. The tires shall be placed at the bottom of the working face of the Class II or Class IV cell. Commercial tire haulers and individuals wishing to dispose of more than four tires shall be excluded.

Permit #2

The following are acceptable for disposal in the Construction Waste cells:

1. Construction/demolition waste, as defined in UAC R315-301-2(17);
2. Yard waste, as defined in UAC R315-301-2(87);
3. Inert waste, as defined in UAC R315-301-2(37);
4. Waste tires, when the requirements of UAC R315-320 are met; and
5. Petroleum contaminated soils as allowed in UAC R315-315-8(3)

The Permittees shall cover the waste disposed in Construction Waste cells as necessary to prevent fires and to control vectors, blowing litter, odor, scavenging, and fugitive dust. Wastes that are capable of attracting or providing food for vectors, materials that may become windblown litter, or fine materials that may become fugitive dust shall be covered with a minimum of six inches of earth at the end of the working day in which they are received. An alternative cover material may be used when the material meets the requirements of UAC R315-303-4(4)(b) through (d) or when the alternative daily cover meets the requirement of UAC R315-303-4(4)(e).

Source: Division of Waste Management and Radiation Control; red boxes added for emphasis

Permit #1 mentions the working face at a landfill, which is where active waste dumping occurs.¹⁶ The Class II cell is intended for municipal solid waste. Permit #2 indicates that waste tires should be disposed in construction waste cells and covered with dirt at the end of each working day tires are received. These permits also make it clear that tire disposal needs to be consistent with *Administrative Rule 315-320*. However, this rule does not provide guidance on proper whole waste tire disposal beyond what is already stated in statute. The practices permitted at these two landfills impede waste tire retrieval

¹⁶ Cells are specific areas where waste is dumped and compacted. Class II cells accept municipal solid waste and other nonhazardous waste while Class IV cells can accept construction and demolition waste, yard waste, inert waste, dead animals, waste tires, and petroleum-contaminated soil.

Two approved landfill permits allow tire disposal practices that are inconsistent with statute.

Administrative Rule does not provide guidance on proper whole waste tire disposal beyond what is already in statute.

Burying tires in dirt impedes retrieval for future recycling and is inconsistent with statute.

and are inconsistent with statute. These permits show the division was aware of the landfills' intent to bury whole waste tires with other waste or under dirt and allowed the practice.

To be fair, burying whole waste tires with a dirt cover may partially address problems related to waste tire piles. One reason the Waste Tire Recycling Act gives for promoting recycling is to achieve "...health and environmental benefits." Uncovered waste tires can harbor mosquitos and vermin and can lead to tire fires. However, burying tires in dirt impedes retrieval for future recycling and is not in line with the previously mentioned section of statute.

The Division Web Site Implies that Burying Whole Waste Tires Is A Legal Disposal Option. The division web site for the waste tire program indicates landfills can dispose of their whole tires with other waste. The web site states:

By its nature, landfilling of whole tires is the least preferred option.... Waste tires present unique problems in handling and disposal. Whole tires cannot be landfilled satisfactorily because they cannot be compacted and therefore use significant amounts of landfill capacity.

The first sentence indicates landfilling whole waste tires is an option for landfills, despite the statutory prohibition. This statement contradicts the requirement (and only legal option) that whole tires be "disposed in a designated area to facilitate retrieval." Landfilling whole tires, whether with other waste or segregated with a dirt cover, would impede retrieval.

The Division Interpreted Statute Differently Than OLRGC's Legal Opinion. The division interpreted statute regarding whole waste tire disposal and concluded it permitted landfilling or burying waste tires. This interpretation, which is contrary to that of OLRGC, may have, in turn, led them to approve landfill permits that sanctioned practices inconsistent with statute. The division's alternate understanding of statute appears to stem, at least partially, from the definition of "disposal" in the context of whole waste tires. During the audit, the division reported to us that waste tires can be disposed with other waste and that there is no prohibition in statute against covering tires in dirt. Disposal of whole tires is permitted in certain circumstances. However, disposing them in a manner that impedes retrieval is inconsistent with statute. The term "disposal" is generally

Legal opinion from the Office of Legislative Research and General Counsel states that landfills cannot dispose of waste tires alongside other types of solid waste or bury the waste tires in dirt.

understood to mean throwing something away. However, statute defines whole tire “disposal” more broadly. We recommend the Legislature consider clarifying the meaning of waste tire disposal, consistent with the requirement that whole tires be disposed in a manner that facilitates retrieval.

Insufficient Funds May Also Contribute to the Landfilling of Whole Waste Tires. Landfill operators around the state, including those that admitted to burying whole tires, indicated they cannot afford to recycle waste tires with the waste tire recyclers in the state. Five of the ten landfills that intermingle their whole waste tires with other waste or in dirt stated that they cannot afford tire pile cleanup projects. Overall, 32 percent of all surveyed landfills that accept tires, or 8 landfills, expressed this concern. Landfilling tires eliminates the need to designate an area to stockpile tires and the cost of transporting them to a recycler. Recent proposed legislation in the Legislature sought to make waste tire retrieval and recycling more financially feasible for rural landfills. This could provide additional incentive to comply with waste tire disposal statute, instead of landfilling whole tires. This bill is discussed in more detail in Chapter II of this report.

The Division Should Use Landfill Inspections to Enforce Statute

Statute allows the division to inspect landfills to ensure compliance with legal requirements. Statute further requires the division to inspect every landfill at least once every five years.¹⁷ Landfill inspections can be used to ensure future compliance with statute and rule and curtail the current practice of burying whole waste tires. Moving forward, landfill inspections should evaluate compliance by determining whether a landfill accepts tires, and if it does, inspect the designated area where whole waste tires are disposed. To be consistent with statute, the Waste Management and Radiation Control Board, the rulemaking body for the waste tire program, should make rule to clarify that whole waste tires cannot be landfilled or buried with other types of waste or under dirt, consistent with statute that requires disposal in a manner that facilitates retrieval. Furthermore, the Waste Management and Radiation Control Board should make rules that describe

¹⁷ *Utah Code* 19-6-109 requires inspections every three to five years if a landfill does not elect to perform self-inspections.

“Disposal” is defined broadly in statute and may be confusing in the context of whole waste tire disposal.

Some landfill operators’ inability to afford waste tire recycling may contribute to landfills burying whole tires.

Landfill inspections can be used to ensure future compliance with statute.

Preventing de minimis amounts of waste tire burying may be impossible or cost prohibitive.

allowable waste tire disposal practices at landfills that both facilitate future retrieval and address health and environmental concerns.

Landfills report receiving waste tires in a form that makes it difficult to prevent landfilling and burial. Waste tires are, at times, disposed in a dumpster or garbage can with other forms of waste, making it costly for landfills to remove these waste tires and place them in a designated area. The Waste Management and Radiation Control Board should make rule allowing de minimis burial of waste tires, as some burial may be unpreventable or cost prohibitive for landfills to prevent. This rule could be similar in nature to an existing allowance in Title 19 of the *Utah Code* (the Environmental Quality Code) for disposing of items or substances that contain de minimis amounts of oil, a waste product generally prohibited from disposal in landfills.

Oversight of Waste Tire Acceptance Practices at Landfills Needs Review

Related to the issue of whole waste tire disposal is the number of waste tires landfills can accept. Statute limits the number of whole waste tires that landfills can accept at one time from an individual. Landfills in the state are accepting whole waste tires in quantities that exceed this limit, including two landfills that accept tires in quantities measured in tons. The division chose to allow this practice based on enforcement discretion not afforded them by statute. However, the legal opinion in the Appendix of this report makes it clear that statute firmly limits quantities of tires that can be accepted. Landfills accepting tires in large quantities effectively shifts the responsibilities and costs for disposal, transportation, and recycling from tire retailers to landfills and the state.

Statute specifies the quantity of tires landfills can accept. *Utah Code* 19-6-804 (1)(a) states:

An individual, including a waste tire transporter, may not dispose of more than four whole tires at one time in a landfill or any other location in the state authorized by the director [of the division] to receive waste tires, except for purposes authorized by board rule.

Some landfills are accepting waste tires in quantities not allowed by statute.

Administrative Rule R315-320 reiterates this limit and does not authorize any additional exceptions. As previously mentioned, “dispose” and “disposal” are defined broadly in statute. *Utah Code 19-6-804(1)(c)* further states

No person, including a waste tire transporter, may dispose of waste tires or store waste tires in any manner not allowed under this part or rules made under this part.

This effectively prohibits the division from allowing practices not previously sanctioned in statute or rule. The legal opinion provided by OLRGC in the Appendix of this report affirms our finding that four waste tires is the legal limit landfills can accept from one source at a given time, as long as exceptions are not met. The hard limit of four tires applies if the tires are 24.5 inches or smaller in diameter and are not from vehicles moved by human power. The tires discussed in this section, and the previous section, are passenger tires that are generally 24.5 inches or smaller.

Of the 25 surveyed landfills that accept tires, operators at 13 sites reported to us that they accept more than four whole waste tires at a time from a single source, contrary to statute.¹⁸ Several of these landfills report having official pricing, or tipping fees, for more than four tires or for quantities of tires measured in tons. Surveyed landfill operators reported that tire retailers and property owners who recently purchased land with waste tires on the premises account for some waste tires accepted in large quantities. Tire retailers can only transfer ownership of a waste tire to a person who purchases it for personal use or a waste tire transporter that brings the tire to a tire recycler or a used tire store. We are concerned about reports that tire retailers were disposing of waste tires at landfills, a practice not allowed in statute. By accepting whole waste tires from tire retailers, landfills, and by extension the state,¹⁹ are taking on the financial responsibility to dispose of the tires in a designated area or to recycle them. This is especially relevant in the context of recent proposed legislation that is discussed in Chapter II of this report.

¹⁸ Of the 13 sites accepting too many tires, 3 also buried their tires.

¹⁹ As will be discussed later in this chapter, the division uses recycling fee revenues to reimburse tire pile cleanup costs at landfills, up to 100 percent of total cleanup costs. By accepting more tires than is legally allowed, cleanup costs for the state could be higher than they otherwise would be.

Landfills may only accept four or fewer tires at a time from an individual.

More than half of all surveyed landfills that accept tires do so in quantities that are not permitted in statute.

Landfills report accepting tires from tire retailers, a practice not permitted in statute.

Landfill inspection reports indicate that the division has not found problems at surveyed landfills that accept more than four whole tires at a time.

Landfill inspection reports indicate that the division did not find problems at surveyed landfills that accept more than four whole waste tires at a time, a practice contrary to statute. Figure 4.3 shows an excerpt from an inspection checklist for one landfill that accepts more than four whole waste tires at a time from a single source.

Figure 4.3 Division Landfill Inspection Did Not Identify Disposal Violations. This image comes from an inspection form for a landfill whose manager told auditors the landfill accepts full truckloads of tires, amounts that exceed the four-tire limit.

7. PROPER STORAGE / ISOLATION / DISPOSAL

<input type="checkbox"/>	7.1 Special Waste
<input type="checkbox"/>	7.2 Batteries
<input checked="" type="checkbox"/>	7.3 Hazardous Waste
NA	
<input type="checkbox"/>	7.4 Infectious Waste
<input checked="" type="checkbox"/>	7.5 Tires
In compliance	

Source: Division of Waste Management and Radiation Control; red box added for emphasis

The division should use landfill inspections to enforce statutory limits on the number of tires landfills can accept.

This inspection did not find or did not note the landfill’s practice of accepting too many waste tires at a time. Inspection reports for other landfills that reported accepting too many tires at a time also did not note any violations. The division likely did not record these violations on the inspection reports because they believed they had enforcement discretion to allow landfills to accept more than four tires at a time. It appears the division allowed landfills to accept more than four tires to discourage illegal dumping of waste tires outside of landfills, especially in rural parts of the state. As noted earlier, *Utah Code* 19-6-804(1)(c) states waste tires can only be disposed according to the specific provisions in statute and rule. Therefore, we recommend the division use landfill inspections to enforce existing statutory limits on number of whole waste tires that can be accepted at landfills at one time from one source. Likewise, we recommend the division educate landfill operators on their responsibilities to limit the number of waste tires they accept.

The Division Approved a Tire Pile Cleanup Using Unregistered Companies

As mentioned in Chapter I of this report, one purpose of the Waste Tire Recycling Act is to subsidize the cleanup of waste tire piles in landfills and other locations. Local government entities can contract with registered waste tire transporters and recyclers to clean up waste tire piles and receive partial reimbursement for cleanup costs. However, the division did not strictly follow statutory requirements for a cleanup project. Unregistered companies were used for a cleanup in September 2016, despite legal requirements to use state-registered companies. The division appears to have made this decision because of the specialized nature of the cleanup project. This cleanup appears to be the only time the division used unregistered companies for cleanup projects in the last five fiscal years. In the future, the division should ensure that waste tire transporters and recyclers are registered prior to using their services.

Cities and counties in Utah that identify waste tire piles in their jurisdiction can petition the division for partial reimbursement of cleanup costs. With approval and completion of the project, the division approves payment for 60 percent of total cleanup costs.²⁰ Waste tire transporters²¹ and recyclers²² used for waste tire cleanups must have previously registered with the division. This requirement for waste tire transporters and recyclers is found in *Utah Code* and *Administrative Rule*.

The Bear River Health Department contracted with three companies to work together²³ to clean up abandoned waste tires in Snowville, near the Idaho border. The three companies included two waste tire transporters, one registered and one unregistered, and one

²⁰ Tire piles that have existed prior to July 1, 2001 qualify for 100 percent reimbursement of cleanup costs by the division. However, most of the recent cleanup projects contained newer tires and thus qualified at a lower, 60 percent reimbursement rate.

²¹ Waste tire transporters are defined as businesses engaged in hauling more than 10 whole waste tires at any given time (or equivalent in derived materials).

²² *Utah Code* defines a recycler as a person that takes waste tires and uses them to create products for which consumers are willing to pay money. Examples of this include crumb rubber used in artificial turf and running tracks as well as materials used in paving roads.

²³ One waste tire transporter loaded the tires into trucks and the other transporter moved the tires in trucks to the recycler for processing and disposal.

Though not permitted in statute, the division approved unregistered companies for a waste tire pile cleanup in September 2016.

Waste tire transporters and recyclers used for cleanup projects must have previously registered with the division.

The cleanup project in Snowville involved cleaning up 1.12 million pounds of tires.

unregistered recycler. All three companies should have been registered before the division approved the project. Despite this requirement, the division approved the project for cleanup and reimbursement.

The cleanup project in Snowville involved cleaning up a fence made of waste tires that contained approximately 1,468 big tires and 1,800 small tires. These tires totaled 558 tons or 1.12 million pounds. Figure 4.4 shows pictures of the tire fence before and after the cleanup.

Figure 4.4 The Snowville Tire Pile Project Cleaned Up a Fence Made of Thousands of Tires. The specialized task of cleaning up large tires necessitated specialized transporters and recyclers.



Source: Division of Waste Management and Radiation Control; the lower right picture shows the area after the cleanup project and the other three pictures show tires prior to cleanup.

The division may have used unregistered companies because of the unique nature of the cleanup project.

The division approved payment of \$112,216 total to the three companies that worked on the cleanup. Of the \$112,216 in payments, \$88,216 or 79 percent went to the unregistered waste tire transporter and recycler. However, this project may be unique compared to other waste tire cleanup projects because of the number of large tires. The division may have approved these unregistered companies because of their specialized equipment and experience with large tires. However, the division could have registered these companies prior to the start of the project. The division and the local health department conducted

preliminary work on the Snowville cleanup project three months prior to actual cleanup, likely allowing enough time for registration of companies not yet registered. Indeed, the one registered transporter used for the project appears to have registered with the division just prior to the cleanup.

Besides being inconsistent with registration requirements, using unregistered companies could create problems if accidents arise. Statute and rule require registered waste tire transporters and recyclers to have \$300,000 in liability insurance to cover accidents and other damage. Registering these companies at the state level also ensures the division knows who is collecting tires and how the waste tires are being processed. The Waste Management and Radiation Control Board should encourage future compliance with statute and existing rule by making *Administrative Rule* requiring future waste tire pile cleanup projects to use waste tire transporters and recyclers registered by the division.

Statute and rule require waste tire transporters and recyclers to have \$300,000 in liability insurance to cover accidents and other damage.

Recommendations

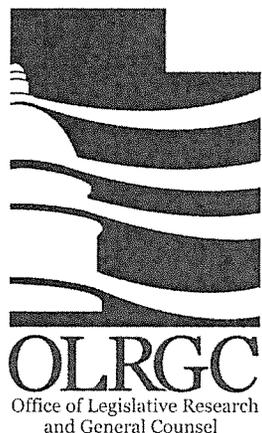
1. We recommend the Waste Management and Radiation Control Board make *Administrative Rule* to clarify that whole waste tires cannot be landfilled or buried and must be disposed in a designated area to facilitate retrieval, consistent with statute.
2. We recommend the Waste Management and Radiation Control Board make *Administrative Rule* to clarify waste tire disposal practices that satisfy statutory requirements and address health and environmental concerns.
3. We recommend the Legislature consider clarifying the meaning of waste tire disposal, consistent with the requirement that whole tires be disposed in a manner that facilitates retrieval.
4. We recommend the Division of Waste Management and Radiation Control use landfill inspections to enforce statutory requirements for waste tire disposal by evaluating how waste tires are stored at landfills, in a designated area that facilitates retrieval.
5. We recommend the Waste Management and Radiation Control Board make *Administrative Rule* allowing de minimis burial of

waste tires when burial may be unpreventable or overly costly for landfills to prevent.

6. We recommend the Division of Waste Management and Radiation Control use landfill inspections to ensure landfills only accept four or fewer whole waste tires at a time from a single source and to educate landfills on statutory requirements.
7. We recommend the Waste Management and Radiation Control Board make *Administrative Rule* requiring waste tire transporters and recyclers to be registered by the Division of Waste Management and Radiation Control prior to conducting a waste tire pile cleanup project.

Appendix

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December 11, 2018

Darin Underwood
Deputy Auditor General
Office of the Legislative Auditor General
W315 State Capitol Complex
Salt Lake City, Utah 84114

John Q. Cannon
Director

John L. Fellows
General Counsel

Dear Darin Underwood:

As part of the audit of the Waste Tire Recycling Fund and the related provisions of the Waste Tire Recycling Act, your office has requested that we analyze statutes addressing two specific questions. After discussing key terminology, the following provides our response to the specific questions asked by your office.

Terminology: What is meant by disposal or storage?

A term common to both questions is what is meant by "disposal" which is defined in statute to mean "the deposit, dumping, or permanent placement of any waste tire in or on any land or in any water in the state." Utah Code §19-6-803. This is a broad definition and includes deposit or dumping of waste tires regardless of the anticipated timeframe for the disposal of the waste tires. Disposal generally means throwing something away.

The definition statute defines "storage" to mean "the placement of waste tires in a manner that does not constitute disposal of the waste tires." Similarly, "store" means to place waste tires in a manner that does not constitute disposal of the waste tires. Storage generally means to keep or accumulate something for future use. However, the difference between storage and disposal could create ambiguity. The restrictions discussed below apply to disposal, and not storage, of waste tires.

Question 1: May a landfill dispose of waste tires alongside other types of solid waste or bury the waste tires in dirt?

The answer is generally no. The core provision related to where waste tires may be disposed of in a landfill is Utah Code §19-6-804(2), which provides that "[t]he operator of the landfill or other authorized location [at which waste tires are disposed of] shall direct that the waste tires be disposed in a designated area to facilitate retrieval if a market becomes available for the disposed waste tires or material derived from waste tires." The code creates two specific requirements -- designating an area for disposal of waste tires, and having that designated area facilitate retrieval of the waste tires in the future. Unless it can be shown that the waste tires are being disposed of in a designated area and that disposal of the waste tires in this area alongside other types of solid waste or burying the tires in dirt does not hinder the retrieval of the waste tires, disposing of the tires with other solid waste or burying the tires in dirt violates statute. These requirements are bolstered by Utah Code §19-6-812, which provides that "[a] waste tire may be disposed of in a landfill if:

- (a) the land fill is operated in compliance with the requirements of Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;

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- (b) the waste tire is shredded; and
- (c) the waste tire is stored in a segregated cell or other landfill facility that ensures that the disposed shredded waste tire is in a clean and accessible condition so that the waste tire may be reasonably retrieved and recycled at a future time.”

Administrative rule is consistent with this requirement and provides in at least one rule that “except for the beneficial use of material from waste tires at a landfill, material derived from waste tires shall be disposed in a separate landfill cell that is designed and constructed, as approved by the Director, to keep the material in a clean and accessible condition so that it can reasonably be retrieved from the cell for future recycling.” Admin. Code R315-320-3(3)(b).

Question 2: May a landfill permit the disposal of more than four whole tires at a time?

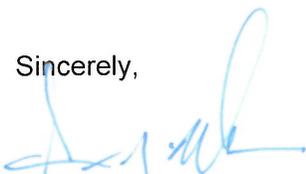
The answer is it depends on whether the statutory exceptions apply. Utah Code §19-6-804(1) provides that “[a]n individual, including a waste tire transporter, may not dispose of more than four whole tires at one time in a landfill or any other location in the state authorized by the director to receive waste tires, except for purposes authorized by board rule.” However, the statute provides exceptions to the general rule. The first exception is if a greater amount is allowed “for purposes authorized by board rule.” Utah Code §19-6-804(1)(a). We found at least one rule that addressed landfilling of whole tires, but it also included the four-whole tire limit with similar exemptions found in code. See Admin. Code R315-320-3(2). However, other rules addressing landfills in general may apply. The second exception is tires where the original tire has a rim diameter greater than 24.5 inches. See Utah Code §19-6-804(1)(b). Finally, tires from a device moved by human power is exempted from the entire chapter. Utah Code §19-6-823.

Worth noting, Utah Code §19-6-803 defines “waste tire transporter” as “a person or entity engaged in picking up or transporting at one time more than 10 whole waste tires, or the equivalent amount of material derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal.” However, this definition does not appear to supersede the four-whole tire requirement.

Conclusion

The statute provides further that “[n]o person, including a waste tire transporter, may dispose of waste tires or store waste tires in any manner not allowed under this part or rules made under this part.” Utah Code §19-6-804(1)(c). This letter assumes that the Legislature intentionally used the term “disposal” to mean the throwing away of waste tires. Under this assumption, waste tires must be disposed of in a method that facilitates retrieval of the waste tires in the future. Also, a person may not dispose more than four whole tires at a time in a landfill unless certain exemptions apply.

Sincerely,



Eric Weeks
Deputy General Counsel
OLRGC



Patricia Owen
Associate General Counsel
OLRGC

Agency Response

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State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Rusty Lundberg
Acting Director

January 22, 2019

Kade R. Minchey, CIA, CFE
Auditor General
Office of the Legislature Auditor General
Rebecca Lockhart House Building, Suite W315
Salt Lake City, Utah 84114-5315

RE: Response to the Performance Audit of the Waste Tire Recycling Fund
Report No. 2019-01

Dear Mr. Minchey:

Thank you for the opportunity to provide our agency's response to the audit report entitled "A Performance Audit of The Waste Tire Recycling Fund." We express our thanks to the auditors for the professional manner in which they conducted the audit and especially for the courtesy extended to our agency staff throughout the audit.

We also express appreciation for the opportunity to work with the auditors in identifying and evaluating the Division of Waste Management and Radiation Control's oversight responsibilities of the Waste Tire Act and associated fund. The audit report provided an outside evaluation of the division's responsibilities and provided helpful recommendations for improvement. Such improvements will further our commitment and support our efforts to achieve the Department of Environmental Quality's mission to safeguard and improve Utah's air, land, and water through balanced regulation.

The following responses address recommendations made in chapters 2 and 3.

1. *We would recommend the Legislature consider addressing the growing fund balance by increasing reimbursement rate for rural tire pile cleanups or reducing the waste recycling fee.*

The division will work with the Legislature during the 2019 General Session to address increasing the reimbursement rate for rural tire pile cleanups.

2. *We recommend that the Division of Waste Management and Radiation Control study the costs and benefits of a waste tire manifest system.*

The division will study the costs and benefits of a manifest system to track waste tires to ensure proper recycling.

DSHW-2019-000681

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3. *We recommend that the Division of Waste Management and Radiation Control maintain an up-to-date document to track the presence of waste tire piles statewide, then work within their authority to mitigate them.*

The division concurs with this recommendation and will enhance current tracking practices by developing a more comprehensive tracking document to monitor the location of waste tire piles and estimated quantity of tires in each pile in order to track and help mitigate waste tire piles statewide.

4. *We recommend that the Division of Waste Management and Radiation Control provide training to landfill employees on the eligibility and benefits of the Waste Tire Recycling Fund.*

The division has conducted training for landfill managers and operators during landfill inspections. However, additional information will be developed to enhance the training and outreach information for landfill managers and administrative staff regarding the eligibility and benefits of the Waste Tire Recycling Fund.

5. *We recommend that the Division of Waste Management and Radiation Control track and report performance metrics that reflect their oversight activities and the program's impact.*

The division will work to develop performance metrics that better reflect our oversight responsibilities.

The following responses address recommendations made in chapter 4.

1. *We recommend the Waste Management and Radiation Control Board make Administrative Rule to clarify that whole waste tires cannot be landfilled or buried and must be disposed in a designated area to facilitate retrieval, consistent with statute.*
2. *We recommend the Waste Management and Radiation Control Board make Administrative Rule to clarify waste tire disposal practices that satisfy statutory requirements and address health and environmental concerns.*

Recommendations 1 and 2 address making changes to Administrative Rules to clarify the management of waste tires at landfills. The division will work with the Waste Management and Radiation Control Board to make rules that clarify that the management of whole waste tires does not include burial and that waste tires are to be managed in a manner to facilitate retrieval. The division will also work with the Board to establish rules that are applicable to both management and disposal practices of waste tires that address public health, safety and environmental concerns. Any changes made to the Administrative Rules addressing management practices will be consistent with both the Solid and Hazardous Waste Act and the Waste Tire Recycling Act as envisioned by the Legislature.

3. *We recommend the Legislature consider clarifying the meaning of waste tire disposal, consistent with the requirement that whole tires be disposed in a manner that facilitates retrieval.*

Should the Legislature move forward with this recommendation, the division is willing to work with the Legislature in clarifying the definition of disposal with respect to waste tires to further enhance waste tire recycling.

4. *We recommend the Division of Waste Management and Radiation Control use landfill inspections to enforce statutory requirements for waste tire disposal by evaluating how waste tires are stored at landfills, in a designated area that facilitates retrieval.*

The division will adapt inspection checklists to ensure that landfill inspections address the proper management of waste tires at landfills that are consistent with statute and rule.

5. *We recommend the Waste Management and Radiation Control Board make Administrative Rule allowing de minimis burial of waste tires when burial may be unpreventable or overly costly for landfills to prevent.*

The Disposal of whole waste tires has served the intent of the Legislature to protect public health, safety and the environment by eliminating waste tire piles that otherwise will have the potential to harbor vectors, create a fire safety hazard and raise other environmental issues. The division will evaluate changes to Administrative Rule that provide for de minimis burial of waste tires.

6. *We recommend the Division of Waste Management and Radiation Control use landfill inspections to ensure landfills only accept four or fewer whole waste tires at a time from a single source and to educate landfills on statutory requirements.*

The division will provide more thorough training for landfill managers and operators regarding the requirements for acceptance and management of waste tires.

7. *We recommend the Waste Management and Radiation Control Board make Administrative Rule requiring waste tire transporters and recyclers to be registered by the Division of Waste Management and Radiation Control prior to conducting a waste tire pile cleanup project.*

The division will work with the Waste Management and Radiation Control Board to make rule changes addressing the requirement for a waste tire transporter or recycler to be registered prior to conducting waste tire cleanups.

The division appreciates the audit report and the recommendations provided. The division will evaluate the above recommendations and implement applicable changes to ensure that the waste tire program addresses the practical considerations necessary for proper waste tire management that will help limit waste tire piles and the mismanagement of waste tires throughout the state.

If you have any questions, please call Allan Moore at (801) 536-0211.

Sincerely,



Rusty Lundberg, Acting Director
Division of Waste Management and Radiation Control

RL/TAM/al