

November 2, 1995
ILR 95-J

Representative Bill Wright
House of Representatives
318 State Capitol Bldg
Salt Lake City UT 84114

Subject: **Tire Recycling Research**

Representative Wright:

As you requested, we conducted a review of a reported research grant of \$15,000 authorized by the Department of Community and Economic Development (DCED) for use in hiring a consultant relative to the Waste Tire Recycling Industrial Assistance Loan Program.

We found that \$15,000 has been allocated from the Waste Tire Recycling Industrial Assistance Fund for the purpose of hiring a consultant, but as of yet no contract has been awarded. However, we believe that the allocation of funds is not for the purpose of a research grant, but rather to conduct a due diligence study of the waste tire recycling market in the United States. This appears to be an appropriate and responsible action that is in keeping with legislative intent.

Funds Have Been Allocated From the Enterprise Fund

As reported in both the Deseret News and Salt Lake Tribune newspapers in mid August, \$15,000 was allocated from the Waste Tire Recycling Industrial Assistance Loan Fund, also known as the Enterprise Fund. The allocation is for the purpose of hiring a consultant in the waste tire recycling industry. By law, the controlling entity of Enterprise Fund assets is the Board of Business and Economic Development. The 15 member board, appointed by the Governor, unanimously agreed to allocate the money to be used to “fund a due diligence study”. Due diligence is a term that refers to a process of investigation or other steps taken by a loaning agency to ensure that a borrower or venture to which money is being lent is viable and reputable. In this case, the due diligence study is intended to provide information relative to successful tire

recycling programs currently in existence around the country. With that information, the board would then have a baseline of knowledge from which decisions regarding loans from the Enterprise Fund assets might be made.

Prior to allocating money from the Enterprise Fund for the study, a meeting was held between some board members and the DCED legal counselor from the Attorney General's Office. The board members in attendance at this meeting comprise the Industrial Assistance Fund (IAF) Committee, which acts as a screening subcommittee and fact-finding body that makes recommendations to the board. At that meeting, legislative intent for use of the Enterprise Fund was discussed as was a provision in the law that allows the board to authorize use of Enterprise funds to cover administrative costs associated with running the Waste Tire Recycling Industrial Assistance Loan Program. Regarding the issue of legislative intent, the committee members were advised that the Legislature assigned responsibility of the Enterprise Fund to the board because they are business men and women and because they "know how to make business decisions". The board is charged with making sound business loans for enterprises intending to go into the waste tire recycling business in Utah. In that regard, a major concern was raised, that the general knowledge, experience, and expertise in waste tire recycling was lacking among board members. As such, various options to remedy the recognized shortcoming of the board were discussed with the goal of finding a solution which would facilitate gaining an acceptable level of knowledge by which responsible and informed decisions on loan requests may be made. The due diligence study was the course of action decided upon and discussed with the Assistant Attorney General assigned to the DCED.

No Contract has Been let

To date, the DCED has not entered into a contract with any consultant. Shortly after receiving funding authorization from the board in August 1995, the department submitted a sole-source request to hire a nationally recognized consultant for a waste tire recycling study. The sole-source request resulted from a recommendation made by a national industry organization known as the Scrap Tire Management Council (STMC). According to the DCED representative, the STMC advised that relatively few people have knowledge and experience in the waste tire recycling industry and cautioned that the DCED should be cautious in their approach to lending money to "fly-by-night" or "get-rich-quick" schemes. The STMC also made a recommendation that a reputable consultant be contracted with to provide information relative to the waste tire recycling industry in the United States, and offered the names of two consultants. The sole-source request was approved by the Purchasing Agent on September 1, 1995. However, according to a DCED representative, the department has chosen to hold off on entering the contract pending the outcome of this audit.

The scope of the requested study was presented in the purchase request and includes a

requirement for the following information to be provided by the consultant:

1. A report of successful waste tire recycling ventures in the United States is to be provided.
2. The top ten commercially viable waste tire recycling sites in the United States are to be identified as well as information which provides the basis for the listing.
3. The study is to identify what other states provide in grants, loans, or programs to encourage recycling waste tires for commercial applications.
4. Available federal resources, if any, which encourage recycling waste tires are to be identified.

Use of Funds Appears to be Appropriate

The intention of the board to hire a consultant appears to be an appropriate and responsible course of action. In the opinion of the Assistant Attorney General assigned to the DCED, the board is indeed pursuing a due diligence study, not proposing a research grant be offered. In addition, the attorney believes that the decision to conduct this due diligence study is a prudent and responsible course of action for the board to follow and that in so doing, they are “trying faithfully to implement legislative intent” to make sound business loans. We also contacted the Office of Legislative Fiscal Analyst and talked with the representative of that office who works with the DCED. He was familiar with the allocation of the \$15,000 and the concern over the issue of whether it violated legislative intent. He expressed a viewpoint similar to that of the Assistant Attorney General assigned to the DCED. He views the actions of the board as “acting responsibly” in conducting a market study and by so doing, the board can make better and more informed decisions about lending money from the Enterprise Fund. Finally, we discussed this issue and presented our findings to the Associate General Counsel in the Office of Legislative Research and General Counsel, who drafted the legislation creating the Enterprise Fund. She also drafted a legislative amendment to the original bill removing a provision that would have allowed \$200,000 of the fund to be allocated for research. After discussing our findings, she felt the requested study, as its financial and subject scope are described, indicates the board is striving to act responsibly in making loans under the program, and is not establishing a research program such as was deleted from the bill by amendment.

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Based on our review of the actions of the board, the IAF committee, and interviews with the administrator of the fund, we concur with the assessment of both attorney's and the fiscal analyst that the board is acting in accordance with legislative intent. We recognize that the newspaper articles provided incomplete information and that perhaps they led to an interpretation that the board had authorized research. Had such an authorization been made, it would have been a clear violation of legislative intent since provisions for making research grants from the Enterprise Fund were deliberately stricken from the proposed legislation that created the fund. However, in this case, we think the board took reasonable steps to ensure that they understood their role regarding the Waste Tire Recycling Industrial Assistance Loan Program as well as legislative intent. Furthermore, we believe the board is acting in the best interest of the state by building a base of knowledge in the waste tire recycling industry before authorizing any loans from the Enterprise Fund.

We hope this letter has provided you with information you need regarding this matter. If there are still concerns regarding this matter, resolution of those concerns may best be accomplished through direct communication with the IAF Committee. If you have any questions or need additional information, please feel free to contact us.

Sincerely,

Wayne L. Welsh
Auditor General

WLW:SRS/lm