
Program Audit: Waste Tire Program

*Prepared for the Committee on Legislative Research
by the Oversight Division*

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January, 1997

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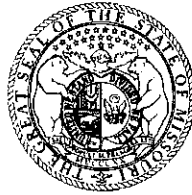
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January, 1997

Members of the General Assembly:

As authorized by Chapter 23, RSMo, the Committee on Legislative Research adopted a resolution in May, 1996 directing the Oversight Division to perform an audit of the Waste Tire Program which included the examination of records and procedures in the Departments of Natural Resources, Revenue, and Transportation to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The accompanying report includes Oversight's comments on internal controls, compliance with legal requirements, management practices, program performance and related areas. We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates.

Respectfully,

A handwritten signature in cursive script, appearing to read "Harry Wiggins".

Senator Harry Wiggins, Chairman

A handwritten signature in cursive script, appearing to read "Larry Thomason".

Representative Larry Thomason, Vice Chairman

EXECUTIVE SUMMARY

The Waste Tire Program in Missouri began January 1, 1991 with the implementation of a fifty-cent tire fee charged by retailers for each new tire sold at retail in the state. The main objective of the program is to reduce the number of waste tires accumulating in the state by developing alternative uses for them. This involves not only tires currently being scrapped but tires which are in tire dumps around the state. The Waste Tire Fee, which is the funding for the program, is set by statute to terminate January 1, 2001. The Department of Revenue collects the waste tire fees, which generate approximately \$1.6 million in revenue annually. State law requires the proceeds to be transferred into a subaccount of the Solid Waste Management Fund, named the Scrap Tire Subaccount. The Department of Natural Resources administers the programs funded by the waste tire fee, which include education, grants and nuisance abatement activities. In 1995, additional legislation was passed which further refined the program.

Has the Department of Natural Resources effectively used resources received from the Waste Tire Fee collections to reduce the number of waste tires accumulating in dumps around the state? The Department of Natural Resources has been slow to implement the program. In the first three years of the program NO expenditures were made for grants or tire dump cleanups. As a result of the slow start-up the fund balance has grown to over \$4 million, nearly 2.5 years worth of fee collections. Prior to fiscal year 1996, only 1% to 16% of fee revenue was spent on program expenditures while 30% to 37% was spent on DNR administrative expenses. Oversight recommends that DNR minimize administrative expenditures and they, along with EIARA, actively promote waste tire utilization by using the \$4 million fund balance and future fee collections on grants and cleanup projects which will have long-term benefits. Otherwise, the fee collection should be discontinued until the fund balance is used for program expenditures. Additionally, the Department of Revenue is funded 7.28 FTE to perform the fee collection function of the program. DOR cannot identify or justify the expenditure of this appropriation and should reduce future General Revenue Fund appropriation requests based on the number of accounts and transactions they actually process.

Is the Waste Tire Program being administered in accordance with state statutes and legislative intent? The Department of Natural Resources violated provisions of state statute in their administration of the program. DNR's administrative expenditures exceeded the limit of 25% of tire fee revenue which is allowed by statute. They have also not promulgated regulations by the statutory deadline of January 1, 1996. Section 260.273 RSMo, designates 5% of the fee collections for educational programs. DNR's use of the

fee for such programs is not specifically related to waste tires. Some examples include worms for demonstration of composting, storm drain stenciling (\$9,092), coloring books (no mention of tires, \$20,000), employee conference expenses (\$2,500), services related to composting video (\$19,204), recycled pencils, frisbees and coffee mugs. They also hired a full-time education employee, whose duties did not relate to waste tires, at an annual salary of \$28,000.

The Departments of Natural Resources, Revenue, Transportation and Corrections have provided official responses to our findings which are incorporated into the report. Also included are recommendations for changes in management practices and procedures. Our audit was performed in accordance with generally accepted government auditing standards as they relate to program and performance audits. We did not examine departmental financial statements and do not express an opinion on them.

We acknowledge the cooperation and assistance of staff of the Department of Natural Resources, Environmental Improvement and Energy Resources Authority, Department of Corrections, University of Missouri - Columbia, Department of Revenue and Department of Transportation during the audit process.

A handwritten signature in black ink, appearing to read "Jeanne A. Jarrett". The signature is stylized and cursive.

Jeanne A. Jarrett, CPA
Director, Oversight Division

Introduction

The Joint Committee on Legislative Research directed the Oversight Division to perform a program audit of the waste tire program within the Department of Natural Resources. The waste tire program was enacted in 1990 with the passage of Senate Bill 530 and amended in 1995 with Senate Bills 60 and 112. The program is funded by a fifty cent fee on each new tire sold at retail. This audit informs the General Assembly of whether the fee is being used efficiently and effectively, administered as authorized or required by law and used as intended by law.

Background

Section 260.273, RSMo 1995, requires a fee of fifty cents to be charged by the retailer for each new tire sold at retail. The fee was effective January 1, 1991, and the statutes terminate the fee January 1, 2001. The Department of Revenue collects the waste tire fees, which generate approximately \$1.6 million in revenue annually. Section 260.273 requires the proceeds to be transferred into the Scrap Tire Subaccount, a subaccount of the Solid Waste Management Fund. The Department of Natural Resources (DNR) administers the programs funded by the waste tire fee.

Under SB 530, which created the waste tire program, the designated expenditure limits were as follows:

- ▶ Tire Retailers 5%
- ▶ Department of Revenue 4%
- ▶ Educational Programs 10%
- ▶ Administration, Grants and Nuisance Abatement Activities 81%

The fee expenditure breakdown under current law, effective with the passage of SBs 60 and 112, is as follows:

▶ Tire Retailers	6%
▶ Department of Revenue	4%
▶ Educational Programs	5%
▶ Administration	25%
▶ Grants	5%
▶ Nuisance Abatement Activities	55%

SB 530 permitted DNR to conduct resource recovery or nuisance abatement activities to reduce the volume of waste tires or alleviate nuisance conditions at sites not in compliance with DNR rules and regulations. SBs 60 and 112 require DNR to conduct these activities with priority given to site owners not responsible for creation of the conditions or the violation of statutes.

Objectives

The objectives of the audit included informing the General Assembly as to whether the waste tire fee revenue was being used efficiently and effectively, administered as authorized or required by law and used as intended in the statutes. The focus of the Oversight Division's audit centered on eight main objectives to determine if:

- ▶ programs funded by the fifty cent tire fee met the requirements of statutes;
- ▶ expenditures of waste tire fee revenue were in accordance with statutes;
- ▶ monitoring efforts of DNR were adequate;
- ▶ statewide plan was adequate;
- ▶ involvement of the Environmental Improvement and Energy Resources Authority was in accordance with statutes;
- ▶ advisory council accomplished its intended purpose;
- ▶ fiscal note estimates were reasonably adequate and
- ▶ personal service expenditures were appropriate.

Scope

The scope of the audit concentrated on expenditures from the fifty cent tire fee enacted through SB 530 in 1990 and SBs 60 and 112 in 1995. The time period focused on the state fiscal years 1994, 1995 and 1996. The main areas considered in the audit included waste tire grants, DNR monitoring of expenditures and personal service expenditures.

Methodology

The Oversight Division conducted the audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States as those standards relate to performance audits. The methodology used by the Oversight Division included analyzing samples of transactions and evaluating management controls to the extent necessary to fulfill our audit objectives. Our efforts centered on the following procedures:

- ▶ examining grant and permit files maintained by DNR;
- ▶ evaluating records supporting personal service expenditures;
- ▶ discussing with DNR personnel their waste tire duties and program objectives;
- ▶ calculating the percentages of waste tire fees expended for administration and programs;
- ▶ examining invoices supporting expenditures;
- ▶ visiting grant recipients and
- ▶ comparing personal services in the fiscal notes for SB 530 and SBs 60 and 112 to budget requests.

Findings

Recommendations

Agency Responses

FINDING #1:

The Department of Natural Resources has not efficiently utilized the fifty cent tire fee for program related expenditures, resulting in a fund balance of approximately \$4 million in the Scrap Tire Subaccount.

During the first fiscal year (1991) of the waste tire program approximately \$260,000 was collected in tire fees. In fiscal years 1992 and 1993 approximately \$1.4 million and \$1.5 million, respectively, were collected in tire fees. In these three fiscal years no expenditures were made for grants or tire dump cleanups.

The Department of Natural Resources (DNR) did not begin awarding grants until fiscal year 1993, over two years after the legislation passed. DNR awarded approximately \$1.2 million in grants, but no grant expenditures were incurred until fiscal year 1994, totalling only \$225,000. Fiscal year 1994 fee collections exceeded \$1.5 million. Similarly, approximately \$1.4 million was awarded in fiscal year 1994, and payments in fiscal year 1995 for the fiscal year 1994 and 1993 grants were only about \$244,000. Additional grants could have been awarded by DNR, if projections had been made regarding the timing for payment (see schedule of revenues and expenditures in finding #2).

As a result, the Scrap Tire Subaccount had a fund balance of over \$4 million as of June 30, 1996. This would represent nearly 2.5 years worth of fee collections.

The waste tire program staff was slow in promoting grants and developing waste tire markets. The waste tire personnel were located in various divisions within DNR. The time period from receipt of the grant application until approval of the financial assistance agreement ranged from three months to ten months. Waste tire personnel did not organize as an individual unit until January, 1996. Therefore, lack of strong leadership and

organization appear to have inhibited the growth of waste tire marketing programs.

Additionally, section 260.274, RSMo 1995, states that DNR and the Environmental Improvement and Energy Resources Authority (EIERA) should administer capital expenditure grants for utilizing waste tires as fuel. EIERA does not appear to be currently involved in providing these incentive grants.

RECOMMENDATION TO FINDING #1

The Oversight Division recommends that DNR and EIERA actively promote waste tire utilization by using the \$4 million fund balance and future fee collections on grants and cleanup projects which will have long-term benefits. Otherwise, the fee collection should be discontinued until the fund balance is used for program expenditures.

Agency Response to Finding #1

Department of Natural Resources:

Initial grant awards were delayed for justifiable reasons. First, prior to any grants being awarded by the agency, the statute required the establishment of the Waste Tire Advisory Board to develop rules, determine the type of grants to fund and set funding priorities. The Board focused first upon rules related to waste tire sites, waste tire haulers and waste tire collection centers. This effort took from November, 1990 until July, 1991. The Board turned to rule development related to waste tire grants in early 1992. The resulting rule was not effective until June, 1993.

Second, awarding grants for the development of markets for waste tires was stymied by lack of technology for converting waste tires into usable products. The few options available required large sums of capital to fund new methods and equipment. These projects were risky ventures and required far larger outlays of capital than was available through the waste tires grant program.

Third, the department recognized that the waste tire grant program created in the 1990 statute had serious problems. This led to ongoing discussions with the legislature over statutory changes needed to correct these problems. It would have been irresponsible for the department to disperse all available

grant funds in light of these concerns.

The passage of SB 60 in 1995 corrected many of the problems with the earlier waste tire program by replacing the emphasis upon grants with an emphasis upon contracts. Consequently, the department expects to use the entire fund balance over the next 12-18 months to fund both illegal waste tire site clean ups and end-use development and will coordinate the grant awards as required with EIERA.

FINDING #2: DNR administrative expenditures were excessive in relation to total program expenditures.

Prior to fiscal year 1996, percentages of fee revenue expended on administration were significantly higher than percentages spent on program related activities. A range of 30% to 37% of fee revenue was spent on administration, while program expenditures ranged from only 1% to 16% of fee revenue.

The intent of SB 530 appeared to focus on developing markets for waste tires. However, program related expenditures began very slowly, taking approximately three years, while significant administrative expenditures were incurred about one year after the bill passed.

A summary of the fee revenues and expenditures follows:

	REVENUES	EXPENDITURES		
	<u>*Fees</u>	<u>Administrative</u>	<u>Grants/Cleanup</u>	<u>Education</u>
FY 91	259,788	0	0	0
FY 92	1,412,651	417,208	0	15,000
FY 93	1,515,876	491,354	0	25,257
FY 94	1,590,872	571,539	225,000	15,092
FY 95	1,600,186	583,498	244,023	11,624
FY 96	1,651,863	443,748	804,373	96,592

*Includes fifty cent tire fees and permit fees

RECOMMENDATION TO FINDING #2

The Oversight Division recommends that the Department of Natural Resources minimize administrative expenditures, while increasing program related expenditures for effective uses of waste tires.

Agency Response to Finding #2

Department of Natural Resources:

Before the passage of Senate Bill 530 in 1990, very little effort was made to ensure proper disposal of waste tires in Missouri. Therefore, the department's initial emphasis after the bill passed was placed on permitting waste tire disposal sites and haulers, identifying illegal waste tire sites and taking enforcement actions to curb illegal disposal. Setting up a new program of this magnitude required significant administrative efforts and associated costs, especially considering that there was no staff available until emergency appropriations were authorized in early 1991.

In the first year, 11 FTEs were allocated for waste tire activities; 7 FTEs were employed in the central office and 4 FTEs were spread within the 6 regional offices. The available manpower at the regional offices was determined to be inadequate and, in FY 93, the department requested and received an expansion of 3 FTEs to augment regional office staff dedicated to waste tire activities. At about the same time, some implementation demands had been met (such as permitting all new sites), which allowed the DNR to relocate an additional 3 FTEs to the regional offices. As a result of the expansion and relocation of FTEs, 10 FTEs were located in the regional offices and 4 FTEs were located in the central office. The agency did not exceed the FTE allocation authorized by the legislature. Also, it is important to note that no statutory cap existed on administrative costs during this time period.

In response to SB 60 passed by the General Assembly in 1995, the department shifted staff in FY96 to the central office to handle contracting for cleanup activities. We have successfully worked with OA purchasing to establish contractual procedures to hire private contractors to clean up waste tire sites and to properly dispose of the waste tires. In addition, the department is working with the Department of Corrections to clean up additional sites. With the majority of funding now set aside for cleanup activities and with the contractual procedures in place, we plan to

aggressively initiate cleanups during the current fiscal year. In FY98, we expect that expenditures will use all available funding.

We have reduced staff to the minimum necessary to carry out mandated statutory requirements and, as the audit chart reflects, we are improving our expenditures in the Grants/Cleanup category. Administrative costs have dropped below 27 percent.

FINDING #3:	The Department of Natural Resources exceeded the limit of 25% of tire fee revenue allowed by statute for administrative expenditures.
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Section 260.273.5, RSMo 1995, states that up to twenty-five percent of the tire fees may be used to administer programs. The Department of Natural Resources has exceeded the administrative ceiling of 25% allowed by statute for fiscal year 1996, by utilizing at least 27.35% for administration. This resulted in excess administrative expenditures allowed by statute of over \$29,000 in fiscal year 1996. This percentage was calculated conservatively by the Oversight Division by dividing administrative costs by total fee revenue recorded in the Scrap Tire Subaccount, which includes permit fees as well as the fifty cent tire fee, which is how DNR calculates the percentage. Also, the administrative expenditures used in this calculation did not include a full-time equivalent (FTE) employee who was paid approximately \$28,000 out of the five percent allowed by statute for developing educational programs (see finding #6). Since the financial information was only available quarterly, the Oversight Division's calculation was made for the last three quarters of fiscal year 1996, rather than using data for the entire year, to better reflect the 25% limitation effective August 28, 1995.

Technically, the percentage should be determined based only on the fifty cent tire fee revenue, and administrative expenditures should include the educational FTE. Calculating the percentage using this method resulted in 29.80% of the waste tire fee used for administration.

RECOMMENDATION TO FINDING #3

The Oversight Division recommends that DNR reduce the administrative expenditures paid out of the Scrap Tire Subaccount to 25% or less of the fifty cent waste tire fees. The percentage spent on administration should be monitored monthly to assure compliance with the statutes.

Agency Response to Finding #3

Department of Natural Resources:

In light of the factors discussed below, it is remarkable that the department reduced administrative costs to less than 27 percent so soon after SB 60 was enacted.

The 25 percent cap on administrative costs was established by the passage of SB 60 in 1995. Since the new law was not effective until August 28, 1995, the department's FY96 appropriations and spending plans for personal services and expense/equipment were based on the old law which did not set a cap on administrative costs. The department informed the legislature during debate over the new bill that waste tire staffing levels exceeded the proposed 25 percent cap and that adjustments could not occur overnight.

The department took immediate steps to reduce administrative costs where practical. However, there were activities mandated under the old law that required continued staff support, making it impossible to bring administrative costs immediately below 25 percent without jeopardizing the state's interests. One significant continuation activity involved oversight of more than 100 waste tire grants awarded under the old law. Eliminating this oversight could have led to misuse of state funds.

We agree that the percentage for administrative costs should be determined based only on the fifty cent tire fee revenue. Since permit fees are in essence a reimbursement of administrative costs, permit fees collected for these services should be exclusively available for administrative costs. This reduces the administrative cost percentage for FY96 from 26.86 percent (as per the audit report) to 26.4 percent.

We strongly disagree that the legislature intended for the educational FTE to be included in the administrative cost calculations because the funding for this position is required by statute "...to be used cooperatively with the department of elementary and secondary education for the purposes of developing educational programs and curriculum pursuant to section 260.342." Section 260.342 states "The department of natural resources shall collect and disseminate information and conduct educational and training programs...to enhance district, county and city solid waste management systems and to inform the public of the relationship between an individual's consumption of goods and services, the generation of different types and

quantities of solid waste and the implementation of solid waste management priorities... Educational information shall also address...energy consumption and conservation; air and water pollution; and land use planning...The information and programs shall be prepared for use on a statewide basis...". These activities, set out in statute, are not specifically related to waste tire work. In addition, the statute specifically separates the 5 percent allocation for educational activities from the 25 percent allocation for administrative costs related to grants and nuisance abatement activities. Finally, the department's fiscal note for SB 60 clearly separated the cost of the educational activities from other costs and communicated our intent to the legislature to track these costs separately.

FINDING #4:	The Department of Revenue cannot justify amounts budgeted or expended for administration of the waste tire fee collections.
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The fiscal note for Senate Bill 530 for fiscal year (FY) 1992 included 7.1 FTE for the Department of Revenue (DOR). The Department of Revenue's fiscal note request was based on an estimate of 20,977 accounts. In the budget for FY 1992 the Department of Revenue requested 8.53 FTE from the Solid Waste Management Fund and was appropriated 8.53 FTE from the General Revenue Fund. DOR requested a core reduction in FY 94 of 1.25 FTE in the Information Systems Division, leaving 7.28 FTE in their core budget.

Currently, DOR officials estimate that approximately four FTE perform duties related to waste tires, but actual documentation of FTE functions related to waste tires is not maintained nor has DOR been able to identify specific personnel hired. DOR stated the other 3.28 FTE are performing duties related to other functions, possibly unfunded legislation.

Based on the number of actual active accounts which Oversight estimates to be approximately 2,252, Oversight would anticipate the need for 1 FTE (10.7% of the amount requested based on 20,977 accounts), rather than 7.28 FTE.

The effects of the above conditions include less FTE working on waste tire activities than were intended in the FY 92 budget decision item. Also, the FTE were not reduced proportionately based on less accounts being processed than originally estimated by DOR.

RECOMMENDATION TO FINDING #4

The Oversight Division recommends that the Department of Revenue request a core reduction in the budget for the waste tire FTE to reflect the FTE actually working on waste tire activities. The waste tire FTE in the core budget should be based on the actual number of waste tire accounts processed.

Agency Response to Finding #4

Department of Revenue:

The Department respectfully disagrees with the Oversight Division's finding. A comparison of the FY 92 and FY 95 budgets for the Division of Taxation already reflects a core reduction in GRF employees of 33.5 FTE. To the extent there may have been any overallocations of FTE attributable to the Program or any other GR funded program for periods prior to FY 95 for any reason, these have been remedied through either past budget adjustments or the Department's Detail Based Budget Reserves (DBBR). Since FY 95, largely as a result of the DBBR, the Department has significantly reduced FTE and created cost saving efficiencies throughout the Department while it continues to ensure that all taxes and fees due to Missouri are collected in a complete and timely manner. Accordingly, the Department respectfully maintains that no further reduction in the Department's allocation of FTE is warranted.

Oversight Division's Comment to Finding #4

According to the Oversight Division's review of DOR's detail based budget, waste tire activities were not separately identifiable. Therefore, Oversight was unable to verify that waste tire staffing levels had ever been adjusted. DOR personnel had stated that personnel initially hired to perform waste tire activities were reassigned to other unfunded legislation.

FINDING #5: Employees performing waste tire duties were not paid out of the Scrap Tire Subaccount consistent with the employees' time accounting.

Of the eight employees whose time accounting records for fiscal year 1996 were examined, the Oversight Division found inconsistencies for three employees between the time accounting records and the funds from which the personal services were paid. The Oversight Division examined seven employees' time accounting records for fiscal year 1995 and found inconsistencies with two employees. Of the two employees' time accounting records which were examined for fiscal year 1994, the Oversight Division found inconsistencies with one employee.

The Oversight Division noted several employees who accounted for their time as not being related to scrap tires, but a portion of their personal services were paid out of the Scrap Tire Subaccount. Table 1 summarizes these examples by fiscal year.

TABLE 1
 Personal Service Time Not Related to Scrap Tires, but Percentage of Personal Services Paid from Scrap Tire Subaccount

EXAMPLE NUMBER	PERIOD	PERCENT OF EMPLOYEE'S TIME NOT RELATED TO SCRAP TIRE WORK BUT PAID FROM SCRAP TIRE SUBACCOUNT	AMOUNT OF PERSONAL SERVICES NOT RELATED TO SCRAP TIRE WORK BUT PAID FROM SCRAP TIRE SUBACCOUNT
1	July 1994	25%	\$638
2	July to Nov. 1995	25%	\$2,660
3	July to Oct. 1995	45%	\$4,880

The Oversight Division also noted several employees who accounted for 100% of their time as being related to scrap tire, but their actual payroll was charged to a fund other than the Scrap Tire Subaccount. Table 2 summarizes these examples by fiscal year.

TABLE 2
 Personal Service Time 100% Related to Scrap Tires, but a Percentage of
 Personal Services Not Paid from Scrap Tire Subaccount

EXAMPLE NUMBER	PERIOD	PERCENT OF EMPLOYEE'S TIME RELATED TO SCRAP TIRE WORK BUT NOT PAID FROM SCRAP TIRE SUBACCOUNT	AMOUNT OF PERSONAL SERVICES RELATED TO SCRAP TIRE WORK BUT NOT PAID FROM SCRAP TIRE SUBACCOUNT
1	Nov. 1993 to June 1994	50%	\$10,908
2	July 1994 to June 1995	50%	\$10,933
3	June 1995	8%	\$2,605
4	July 1995 April 1996 to June 1996	30%	\$9,625
5	1996	40%	\$13,573

One employee's personal services, which were not included in tables 1 and 2, were both over and under paid from the Scrap Tire Subaccount. In July, 1995, she recorded her time to solid waste management, not scrap tire, but was paid 50% from the Scrap Tire Subaccount (\$668). She recorded 100% of her time as waste tires from August to October, 1995, but 50% of her time was paid from the Scrap Tire Subaccount for that time period (\$2,249.80). For the months from November, 1995 to February, 1996, she appeared to be recording an average of 87% of her time to scrap tires, but 50% of her time (\$2,913.41) was paid from the Scrap Tire Subaccount. In April, 1996, her time accounting recorded 94% of her time to scrap tire activities, but she was paid 100% from the Scrap Tire Subaccount (\$1,722). Finally, in June, 1996, 50% of her time was charged to the scrap tire cost center, but was paid 100% from the Scrap Tire Subaccount (\$1,722).

RECOMMENDATION TO FINDING #5

The Oversight Division recommends that DNR only charge personal service hours related to waste tire work to the Scrap Tire Subaccount. Likewise, waste tire work should not be charged to a fund other than the Scrap Tire Subaccount. The employee's time accounting, with supervisor approval, should direct the fund from which the employee's salary is paid.

Agency Response to Finding #5

Department of Natural Resources:

All the employees referenced, with the exception of the Planner II, are regional office personnel. Regional office employees are cross trained to work in several DEQ work functions as specifically recommended by the General Assembly. These duties could include working with waste tires, solid waste, hazardous waste, public drinking water, water pollution, or clean air. Thus, for any given month, these individuals could have numerous funding sources. Cross training improves efficiency of resources because staff can respond to numerous types of situations in the field. The costs that are questioned in this finding are immaterial compared with total waste tire program expenditures. Tracking expenditures at this level of detail would eliminate the benefit gained through cross-training staff.

All payrolls for the periods referenced were anticipatory payrolls and during these times, the DNR's payroll system did not compare anticipatory costs against actual costs as recorded in time accounting. The DNR has since implemented a system referred to as a "Lag" payroll. We use costs based on anticipatory time for July (or, the first month of employment) which is suspended until the following June (or, until the month of separation) at which time journal vouchers are prepared to match actual time for June against the anticipated costs on the books for the previous July. Then, for August, we use July's time accounting costs; for September, we use August time accounting costs; and so forth until the end of the fiscal year.

For one regional office employee referenced, the audit indicates that time recorded for November 1995 through February 1996 does not agree with the funding source. However, the first month applicable to the "Lag" payroll would have been November 1995 (the first month of employment), so the month of November would have been suspended until June 1996, then November's time accounting would have applied for December,

December's time accounting would have applied for January, etc.

Concerning the Planner II, the funding available for waste tires activities is grossly inadequate to fund statutory requirements so, when necessary, we augment the funding from general revenue using monies accumulated from vacancies, normally due to attrition. This is entirely consistent with our general revenue appropriation for solid waste activities.

Oversight Division's Comment to Finding #5

The response to the finding from the Department of Natural Resources did not include information at the same level of detail that the Oversight Division used as the basis for the finding to sufficiently explain the differences between the employees' time accounting and charges to state funds.

<p>FINDING #6: The number of full-time equivalent employees (FTE) and expense and equipment requested in the budget by the Department of Natural Resources for waste tire work exceeded the amounts recommended by the Joint Committee on Legislative Research.</p>
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The Department of Natural Resources requested FTE in their budget inconsistent with the number allowed in the fiscal notes for SB 530 in 1990 and SBs 60 and 112 in 1995.

On March 22, 1990, the Oversight Subcommittee approved a motion to reduce the FTE in HB 949 to five. The waste tire provisions in HB 949 were similar to SB 530. Therefore, the fiscal note for SB 530 only allowed for five FTE for the waste tire program, beginning in fiscal year 1992. Table 3 compares the FTE requested by DNR in their budget to the FTE allowed in the fiscal note.

TABLE 3
 FTE Requested by DNR in Budget Compared to Fiscal Note

FISCAL YEAR	NUMBER OF FTE REQUESTED IN DNR'S BUDGET	DOLLAR AMOUNT OF FTE REQUESTED IN DNR'S BUDGET	NUMBER OF FTE ALLOWED IN FISCAL NOTE	DOLLAR AMOUNT OF FTE ALLOWED IN FISCAL NOTE	DOLLAR AMOUNT OF FTE REQUESTED IN BUDGET IN EXCESS OF FISCAL NOTE
1991	2.5	\$58,000	0	\$0	\$58,000
1992	16	\$364,824	5	\$122,498	\$242,326
1993	11	\$264,000	5	\$128,623	\$135,377

DNR actually received budget authority for 1.65 FTE in fiscal year 1991 and 11 FTE in fiscal year 1992 for the waste tire program. According to DNR's appropriation, they received \$264,000 for personal service in fiscal year 1992. As a result, the waste tire program includes more FTE than recommended by the Committee on Legislative Research.

In the 1995 fiscal note for SBs 60 and 112, DNR stated that the 25% administrative limit would cause a reduction in their staffing levels from 14 FTE down to 11 FTE in fiscal year 1996. However, in the budget request for fiscal year 1996, DNR requested 14 FTE. Currently, DNR has 13 FTE dedicated to the waste tire program.

DNR also requested more expense and equipment (E&E) in their budget than what was allowed in the fiscal note. Table 4 compares the E&E requested in the budget to the E&E allowed in the fiscal note.

TABLE 4
 E&E Requested by DNR in Budget Compared to Fiscal Note

FISCAL YEAR	E&E REQUESTED IN DNR'S BUDGET	E&E ALLOWED IN FISCAL NOTE	AMOUNT OF E&E REQUESTED IN BUDGET IN EXCESS OF FISCAL NOTE
1991	\$34,500	\$0	\$34,500
1992	\$178,707	\$59,988	\$118,719
1993	\$137,954	\$32,022	\$105,932

RECOMMENDATION TO FINDING #6

The Oversight Division recommends that DNR adhere to the recommendations of the Joint Committee on Legislative Research when requesting FTE and E&E in their budget.

Agency Response to Finding #6

Department of Natural Resources:

DNR has consistently requested appropriations for the FTEs necessary to carry out the work required by the state's waste tire law. The numbers requested by the agency are consistent with the fiscal note filed by the agency for SB530 and reflect what the agency feels is necessary to accomplish the tasks mandated by law. Since the department's budget requests have been approved by the legislature, it is apparent that our estimates of the staffing levels needed to implement the waste tire law have significant merit. In addition, the executive branch reserves the right to request whatever resources are deemed necessary to carry out statutory directives.

FINDING #7: Expenditures from the Scrap Tire Subaccount for educational programs were not specifically related to waste tires.

Section 260.273, RSMo 1995, designates 5% of the fifty cent tire fee for educational programs and curriculum pursuant to section 260.342. Section 260.342 states that DNR should collect and disseminate information and conduct educational and training programs that assist in the implementation of solid waste management priorities under sections 260.200 to 260.345, including waste tires, batteries, plastic containers, recycling flexible cellulose casing, and solid waste management districts. The information and programs are required to enhance solid waste management systems and inform the public. A landfill fee can also fund solid waste educational programs per section 260.342, RSMo 1995.

A sample of expenditures examined by the Oversight Division revealed that DNR's use of the fifty cent tire fee for educational programs was not specifically related to waste tires. The fee was used for materials related to composting (videos, teachers' guides, fact sheets, and paper wheels), recycling brochures, conferences, storm drain stenciling project, coloring books which did not relate to waste tires, recycled pencils, frisbees and coffee mugs. One video included a brief segment related to waste tires, but the major focus of the video was recycling in general.

In addition to program expenditures, a full-time equivalent (FTE) employee was paid approximately \$28,000 in fiscal year 1996 out of the five percent allowed by statute for developing educational programs (see finding #3). Based on a conversation with this employee, the job responsibilities did not relate to waste tires.

A summary of the educational expenditures not directly related to waste tires noted by the Oversight Division follows:

Fiscal Year 1994

Worms for demonstration of composting	\$ 158
Copy video related to Christmas tree recycling	12
Employee attendance at conference related to clay liners and covers	1,393
Education employee attendance at environmental education conference	1,270
Storm drain stenciling	<u>9,092</u>
Total Fiscal Year 1994	<u>\$11,925</u>

Fiscal Year 1996

Services related to composting video	\$19,204
Coloring books (no mention of tires)	20,000
Education employee	<u>28,000</u>
Total Fiscal Year 1996	<u>\$67,204</u>

RECOMMENDATION TO FINDING #7

Oversight recommends the educational expenses from the waste tire fee be used solely for educational programs directly related to waste tires.

Agency Response to Finding #7

Department of Natural Resources:

Section 260.342 does not require the agency to utilize funds from the Scrap Tire Subaccount of the Solid Waste Management Fund solely for waste tire education. In fact, it specifically mandates that the agency is to use the funds for a myriad of solid waste education activities to "enhance district, county and city solid waste management systems" and "inform the public of the relationship between an individual's consumption of goods and services, the generation of different types and quantities of solid waste and the implementation of solid waste management priorities..." Additionally, it directs the agency to look at other environmental impacts of solid waste management, including air and water pollution, land use and energy consumption. Since the section does not specifically mention waste tire education, the department believes it is clear that the legislature intended these funds to be used for broader educational efforts.

Consistent with the statute, the monies have been utilized to generate such educational materials as recycling/resource recovery videos that have received national and international recognition for their quality and content, an award-winning storm drain stenciling program, and educational materials for use in elementary and secondary education programs across the state.

FINDING #8: A lack of segregation of duties and supervision exists in the maintenance of the waste tire grants.

The grant project manager evaluates the applications for awarding grants, corresponds with the grantees, reviews the grantees' quarterly reports, approves invoices for payment and maintains grant files. The director of DNR signs all financial assistance agreements; however, the director may not have time to review in detail every potential grant. Grant packets are routed to various department officials; however, they do not appear to be closely involved in the grants. The initials and comments on the routing sheets were not always legible. Adequate segregation of duties should exist between authorization and recording of grant information.

One of the resulting problems included the payment of an invoice in the amount of \$1,070 on a grant prior to any of the match requirements being met. Because the grant project was subsequently terminated, none of the match was ever met.

Another problem resulted when the payment on a grant was not at the same pace as the percentage of completion on the grant project. The grant was for equipment to burn chips in a cement kiln for tire derived fuel. Seventy-five percent of the grant was paid in the amount of \$187,500. However, a requirement of the grant was that 1,500,000 Missouri tires be utilized. At the time the grant payment was made, approximately 150,000 tires had been utilized. The grantee has been extending the grant period in order to allow more time to utilize the remaining required tires. However, payment of seventy-five percent of the grant before all of the conditions had been met reduced the grantee's incentive to meet the conditions in a timely manner.

In another instance, an extension to a financial assistance agreement (FAA) was not signed until after the expiration date of the original financial assistance agreement. The original FAA expired March 15, 1996, and the extension was not signed until May 14, 1996.

For two grantees, invoices were submitted for reimbursement, but the payment approvals were not completed for approximately three months. One invoice from the grantee was dated November 30, 1995, and payment approval was not dated until March 8, 1996. The other grantee's invoice was dated February 23, 1996, and payment approval was dated June 21, 1996.

Finally, some grant files included several copies of invoices, quarterly reports and financial assistance agreements. This results in difficulty in determining which copy is the official copy. Also, individual items in the files were not grouped in date order or by type of document. Orderly files would allow for efficient supervisory review of the status of the grants. This would also enable personnel not closely involved in the grant process to locate information without the assistance of the project manager.

RECOMMENDATION TO FINDING #8

The project manager should not be a primary evaluator in the determination of grant recipients, because the project manager works closely with the grantees after the grants are awarded. Also, someone other than the project manager should be the person authorized to approve invoices for payment, and a supervisor, in addition to the project manager, should review the quarterly reports. Also, the grant files should be maintained in an organized manner so that someone other than the project manager could easily locate and review documentation and track the status of the grants.

Agency Response to Finding #8

Department of Natural Resources:

The project manager has never been the primary evaluator in the determination of grant recipients for competitive grants. There has always been a team of evaluators. The FY 93 grant application evaluation team consisted of four Solid Waste Management Program (SWMP) staff members and two staff members from the Environmental Improvement and Energy Resources Authority. The FY 94 grant application evaluation team included three SWMP staff members. A representative from the Department of Economic Development with expertise in finance reviewed the capital expenditure grants for economic criteria as part of the FY 94 evaluation process. All applicants for the FY 95 playground material grants were

funded unless they voluntarily withdrew or were not eligible to apply. Since these were not competitive, a team evaluation was not needed. Two staff members checked these grant applications prior to awards.

Staff within the waste tire unit of the SWMP have recently been assigned back-up duties to cover waste tire activities when primary staff are absent. This will enhance our ability to segregate duties related to grants by increasing the number of staff trained in grant work. We will take any additional steps necessary to insure that adequate segregation of grant duties exists. We have also changed our filing procedures to resolve the problem of disorderly files.

The following replies to the specific instances listed in this finding:

Audit comment regarding an invoice of \$1,070: This grant was for equipment. Since the equipment was expensive and the product was experimental, the MDNR required that an initial test of the grantee's product be conducted by an accredited testing laboratory prior to purchase of the grantee's equipment. If the test met the MDNR's approval and met the Missouri Highway and Transportation Department's specifications, the grant award for the equipment and the grant's match requirement would go into effect. If the test failed, the MDNR would pay for the test, but the grant for the equipment would be terminated. These conditions were specified in item one of Attachment 5 - Special Conditions which were a part of the agreement. Since the results of the test did not meet MDNR or MHTD specifications, only the \$1,070 test costs were reimbursed and no match was required.

Audit comment regarding payment of 75% of grant funds to a cement kiln. The state grant rule, 10 CSR 80-9.030 7(D)1 allows the department to reimburse the grant recipient up to seventy-five percent of the total amount of the award upon submission of complete payment requests and corresponding quarterly reports. The SWMP then ensures that all match is incurred prior to the release of the remaining funds.

Equipment costs are typically incurred in the initial phases of these types of projects and constitute the dominant share of awarded funding. Therefore, expenses are not evenly incurred over the grant period. Consequently, it is not feasible to match "progress" on the scope of work with cost reimbursements.

Audit comment regarding an amendment to a grant that had ended: This Financial Assurance Agreement (FAA) expired March 15, 1996 and the amendment was not signed until May 14, 1996. The program acknowledges being late in amending this FAA and has implemented procedures to avoid this type of situation in the future. No further extensions will be granted after expiration date unless unusual and unforeseen circumstances beyond the control of the grantee exist.

Invoice comments: Neither of the grant recipients with late invoices provided the program with the information needed when recipients submitted their invoice requests. This led to a delay in processing the invoices. The program has recently implemented measures to improve the timeliness and processing of invoices.

<p>FINDING #9: The Department of Natural Resources does not perform on-site monitoring of the grant recipients.</p>
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The grant files do not include evidence of on-site monitoring of the progress of the grants. The Department of Natural Resources appears to be relying on the quarterly reports submitted by the grantees. According to discussions with regional office waste tire personnel, they do not normally include on-site monitoring of the grants as a part of their field inspections.

On-site monitoring would provide evidence to corroborate the information submitted by the grantees in the quarterly reports and the information included with reimbursement requests.

RECOMMENDATION TO FINDING #9

The central office and regional office personnel should coordinate work efforts to perform inspections of grant recipients, including examining equipment purchased, inspecting tire dump cleanup sites and observing the process of utilizing tire derived fuel. The inspections related to grants should be documented in each grant file.

Agency Response to Finding #9

Department of Natural Resources:

This has been a staffing limitation issue. The highest priority for the regional office waste tire staff is to visit waste tire sites, collection centers and haulers to ensure compliance with statutory and regulatory requirements. There is only limited staff left to perform on-site grant monitoring.

Nonetheless, both central office and regional office staff have in the past performed on-site grant monitoring whenever necessary to protect the state's interests. Documentation of these field visits was often by phone or e-mail, making them difficult to verify. Steps are being taken to insure that documentation of these visits is placed in the official grant files.

Grant agreements also require recipients to document equipment purchases, weights of tires removed, etc. The Solid Waste Management Program staff has always reviewed this written information to identify potential mismanagement or misuse of funds.

The department has included regional office site visits of all contract clean ups in the FY 97 work plan between regional offices and the program. These visits are scheduled to take place prior to, during and after each cleanup to document the proper process of removing the tires.

There are also provisions in the work plan to visit waste tire grantees for verification purposes. The department has included regional office site visits of all playground material grants. Forms for initiating the site visits and documenting the findings of the visits are attached.

We agree that this is a valuable function but site visits have to be coordinated with other field duties. These inspections will increase work loads which increase expenditures to the waste tire fund. This negatively impacts our ability to keep administrative costs at or below the 25 percent level specified in the statute as revised by the General Assembly in 1995.

FINDING #10: The Missouri Department of Transportation has not aggressively pursued the placing of asphalt rubber on the roadways.

The Intermodal Surface Transportation Efficiency Act (ISTEA) was enacted by the United States Congress in 1991. Section 1038 of the Act mandated the use of recycled ground scrap tire rubber in prescribed percentages of highways funded with federal aid. The National Highway Designation Act of 1995 removed the mandate for the use of crumb rubber in asphalt. Therefore, the Missouri Department of Transportation (MoDOT) has stated they have no plans to place any more asphalt rubber on the roadways. MoDOT officials believe more economical uses exist for utilizing scrap tires than in asphalt pavements.

According to a report from the United States Department of Transportation, three states satisfied the ISTEA mandate, including Arizona, California and Florida. These states primarily use the wet process for incorporating crumb rubber modifier (CRM) into highway pavements. The states have several years of experience with crumb rubber modifier materials. Arizona and California began with CRM overlays in the late 1970s, and Florida began in 1989.

Section 260.270.8 states "The Department of Highways and Transportation shall, beginning July 1, 1991, undertake as part of its currently scheduled highway improvement projects, demonstration projects using recovered rubber from waste tires as surfacing material, structural material, subbase material and fill, consistent with standard engineering practices. The department shall evaluate the efficacy of using recovered rubber in highway improvements, and shall encourage the modification of road construction specifications, when possible, for the use of recovered rubber in highway improvement projects."

In the six demonstration projects where MoDOT used rubberized asphalt, approximately 124,000 waste tires were utilized. The potential large scale use of waste tires in rubberized asphalt is inhibited by MoDOT's discontinuation of these demonstration projects. MoDOT does not appear to be encouraging the modification of road construction specifications for the use of waste tire rubber in highway improvements. It appears as though sufficient research has not been conducted in order to determine the feasibility of this process.

Only one DNR grant was related to the use of rubberized asphalt, and the grant project was not even completed. DNR paid out \$1,070 on the grant before it was discontinued (see finding #7).

RECOMMENDATION TO FINDING #10

The Oversight Division recommends that DNR and MoDOT work together to research the durability of rubberized asphalt to determine the costs and benefits. DNR could consider providing a demonstration grant to MoDOT to utilize tires extracted from illegal tire dumps for rubberized asphalt.

Agency Responses to Finding #10

Department of Transportation:

We feel that we have aggressively pursued the use of waste tires in asphalt pavements. Prior to the 1991 ISTEA bill coming out, MoDOT started investigating asphalt rubber and placed 6 projects totaling 30 miles using various versions of rubber in asphalt between 1990 and 1994.

After substantial investigation, it was apparent to us that the cost of asphalt rubber mixtures were very high (\$40 - 80/ton) compared to conventional mixtures (\$22 - 25/ton), i.e. 2-3 times that of normal asphalt mixture. And although we generally obtained satisfactory performance, there was not at that time, nor are we aware of any since, evidence indicating a comparable (to the cost) increase in the life span. Thus for every mile of asphalt rubber mixture placed, the citizens of Missouri would be deprived of an additional 1-2 miles that they could have had with conventional material.

In addition to the cost with no apparent corresponding increase in effectiveness, there have continued to be questions of long term durability and performance, recyclability (can it be milled and reused in a heating process similar to conventional asphalt without air quality/hazardous concerns), health effects on workers involving rubber fumes, and other issues.

Our conclusions were that, yes, asphalt rubber could be used, but: 1) it is not cost effective nor generally beneficial, 2) there are probably more effective ways of permanently disposing of tire rubber such as energy for power plants, rather than burying the waste in the road for later liabilities, and 3) with the repeal of the national mandate to use rubber in asphalt, we could not afford to burden the taxpayers with less product for their tax dollars. We are still open on the subject, should the price become advantageous to use, provided the other issues can be resolved.

Department of Natural Resources:

The Department of Natural Resources has been as aggressive as possible in promoting the use of rubberized asphalt in roadway construction. Widespread use of rubberized asphalt would significantly reduce the waste tire disposal problem facing Missouri.

However, the success of our efforts depends upon state and federal transportation agency willingness to support rubberized asphalt. As noted in the audit report, Congress rescinded the federal mandate to use rubberized asphalt in response to state and federal transportation agency pressure. Further, the Missouri Department of Transportation (MDOT) has been reluctant to use rubberized asphalt due to its cost. To address MDOT's cost issues, we awarded a 1993 grant to develop a less expensive method of producing rubberized asphalt. Unfortunately, the asphalt produced with this method failed to meet MDOT's specifications, and consequently the grant was terminated.

We note that the Missouri Constitution directs fuel tax revenues to support roadway improvements. Certainly, MDOT could use these funds to promote rubberized asphalt in roadway construction. Their funding source is far greater than the grant funds available under the revised waste tire statute passed in 1995.

FINDING #II:	The Department of Natural Resources has not effectively utilized the Department of Corrections' available labor.
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The Department of Corrections, Missouri Correctional Enterprises (MCE), owns equipment which processes waste tires for use as tire derived fuel, consistent with the specifications necessary for the University of Missouri

Columbia (UMC) power plant to mix with coal for campus power. MCE has cleaned up approximately five illegal tire dumps with prison labor. UMC has the capabilities to burn 1-3 million whole tires annually, and MCE is their only tire supplier. MCE completed their last tire dump cleanup in October, 1995, and has not been assigned an illegal tire site since then by DNR. Assignment of a tire site to MCE would provide them with waste tire inventory to process for UMC to burn. DNR has identified over 130 illegal tire dumps. The average cost for a tire dump cleanup is \$100 per ton, and MCE charges DNR \$70 per ton.

Sections 260.273 and 260.276, RSMo 1995, require DNR to spend tire fee revenues not used for administration, education, or grants for nuisance abatement activities (approximately 55% of tire fees), which include the cleanup of illegal tire dumps. Assigning additional waste tire dumps to MCE results in an end use of tires by UMC. DNR should maintain a better working relationship with these state agencies, which would enable DNR to closely monitor the waste tire processing activities.

RECOMMENDATION TO FINDING #II

The Oversight Division recommends that DNR assign MCE additional illegal tire dump cleanup activities, sufficient to utilize available labor.

Agency Response to Finding #II

Department of Natural Resources:

There is a factual error in this finding. The department utilized the DOC for four illegal waste tire clean ups in 1996, all of which were successful. These clean ups resulted in the removal of 23,354 tires, at a total cost of \$60,425.50. The tires were used as tire-derived fuel for the University of Missouri power plant.

In 1994, the Environmental Improvement and Energy Resources Authority (EIARA) awarded a \$98,800 grant to the DOC to purchase a tire shredder. This equipment enabled DOC to conduct numerous clean ups.

An Invitation for BID (IFB) to clean up an additional 29 waste tire sites was also sent to DOC. The bids have been received and are currently being reviewed.

Section 1.3.1 of the IFB states:

"The contractor shall understand that pursuant to RSMo 217.575, the Missouri Department of Corrections, Vocational Enterprise program shall be given the first option to perform waste tire cleanup services at each site, even for those specific sites awarded to the contractor.

The MDNR is optimistic that DOC can successfully compete for one or more of these additional clean ups.

In October, 1996, the MDNR entered into a Memorandum of Agreement with DOC to purchase additional tire shredding equipment which will allow DOC to conduct larger clean ups more efficiently.

Oversight Division's Comment to Finding #11

The information in the finding was based on the last grant project for a tire dump cleanup between DNR and MCE. DNR has supplied the Oversight Division with copies of four Memorandums of Agreement, dated December, 1995; January, 1996; and two agreements dated April, 1996. According to information from MCE, three to eleven days were spent cleaning up each of these tire sites, resulting in a total of twenty four days by MCE to clean up all four of the sites. These cleanups were completed April 25, 1996. Therefore, additional tire sites could have been cleaned up from October, 1995, through October, 1996, by MCE labor.

<p>FINDING #12: The Department of Natural Resources has not promulgated rules and regulations by the statutory deadline of January 1, 1996.</p>
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Section 260.270.3.(2), RSMo 1995, required the department to promulgate rules and regulations by January 1, 1996, for "permitting of waste tire processing facilities and registration of waste tire end-user facilities."

DNR did not meet the 1-1-96 deadline. DNR officials stated that the new regulations will not be effective until August, 1997. This results in the inability of DNR to enforce regulations related to permitting approximately 33 potential waste tire processing facilities and registering end-user facilities.

RECOMMENDATION TO FINDING #12

The Oversight Division recommends that DNR complete the rules and regulations immediately in order to fulfill statutory requirements and enforce regulations related to permitting of processing facilities and registering end-user facilities.

Agency Response to Finding #12

Department of Natural Resources:

Under state laws passed by the General Assembly and administered by the Secretary of State, the rulemaking process takes at least nine to twelve months, start to finish. Since SB 60 was not effective until August 20, 1995, the General Assembly's January 1, 1996 deadline for adopting waste tire rules was impossible to meet.

The department strongly encourages the use of public/private advisory groups in rule development in order to improve the likelihood that regulated industry will be able to comply with our rules. While this further protracts the rule development process, we view it as well worth the additional time. In the case of the waste tire rules, an advisory group has been appointed and meetings convened. Draft waste tire rules have been prepared, shared with the group and revised in response to group comments. The department plans to file the proposed rules with the Secretary of State early in 1997.

SB 60 mandated many rule revisions in addition to those related to waste tires. Since the Solid Waste Management Program has limited staff available to write rules, they focused initially upon the rules needed to implement the new solid waste facility permitting requirements. This was done at the behest of members of the General Assembly as well as affected industries. This rulemaking is now nearing completion, allowing the program to divert staff resources to the waste tire rules.

FINDING #13: The Department of Natural Resources issued a waste tire site permit to a business even though the business has been in violation of environmental laws and regulations.

DNR issued a waste tire site permit to a tire business even though the business has been in violation of environmental laws and regulations since September, 1988, by:

- ▶ openly burning tires;
- ▶ not storing tires in compliance with the National Fire Protection Association standards; and
- ▶ not operating in compliance with the financial assurance instrument approved by DNR.

In October, 1995, a Consent Decree was signed by the business owner, the Department of Natural Resources, and the Attorney General. The decree sets a three year time frame for removal of tires from the site to bring the business in compliance with the closure plan approved by DNR. The decree also gives the business forty-five days to come into compliance with National Fire Protection Association standards.

RECOMMENDATION TO FINDING #13

The Oversight Division recommends that DNR not issue permits to waste tire sites in violation of DNR laws and regulations related to legal maintenance of a site.

Agency Response to Finding #13

Department of Natural Resources:

This finding is based upon erroneous conclusions. It states that the site in question should not have been issued a permit since it had, since 1988, been in noncompliance with various regulations, including the open burning of tires, not storing tires in compliance with the National Fire Protection Association standards, and not having an adequate Financial Assurance Instrument (FAI). The regulations requiring waste tire sites to comply with the latter two requirements were not in effect until June 28, 1991; it would therefore have been impossible for a facility to have violated those standards

since September 1988. In addition, the facility in question met the storage requirements at the time the waste tire site permit was issued on December 31, 1992; an adequate FAI was also posted prior to issuance of that permit.

The facility subsequently violated the storage requirements and exceeded the number of tires allowed at the site under the existing FAI. The violations noted resulted in the initiation of enforcement action against the site on September 9, 1994. The facility is currently operating under a compliance agreement which should return the site to compliance with all applicable statutes and regulations.

The first violation noted, the open burning of tires, refers to a September 30, 1988 incident at the site. The Missouri Air Conservation Commission and the department filed a lawsuit against the owners and operators for the resulting air violations. The case was settled via order of the court. Since this was the only relevant environmental violation that the operators had up until the time of their request for a permit, pursuant to the habitual violator rules found under 10 CSR 80-2.070, we did not have a legal basis to deny their waste tire site permit. Denying the permit without adequate legal grounds would have unnecessarily exposed the agency to legal liability.

Oversight Division's Comment to Finding #13

According to DNR reports on the inspection of the waste tire site dated July 14, 1992 and July 30, 1992, the site was not in compliance with National Fire Protection standards. A subsequent inspection report dated August 3, 1993, also indicated the site was not in compliance with these standards. A DNR report of inspection dated December 20, 1993, stated, "The site appeared to have not changed since a previous inspection in June of 1992 with the exception that brush, trees and other vegetation has grown in and around the tire piles."