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Legislative Auditor

**LEGISLATIVE JOINT AUDITING COMMITTEE
ARKANSAS LEGISLATIVE AUDIT**

January 18, 2023

Marty Garrity
Director
Bureau of Legislative Research
State Capitol, Rm. 315
Little Rock, AR 72201

RE: Arkansas Legislative Council's Referral of the Used Tire Recycling and Accountability Program

Dear Director Garrity:

On October 19, 2022, Legislative Audit received a letter from Legislative Council requesting that the final report of the Used Tire Recycling and Accountability Program be submitted to the Joint Budget Committee and to the co-chairs of Legislative Council upon the report's completion in January. The requested report has been completed and is attached. Legislative Audit respectfully asks that you assist in the distribution of this report, as requested.

Please let me know if anything additional is needed in relation to this request.

ARKANSAS LEGISLATIVE AUDIT

A handwritten signature in black ink, appearing to read "Roger A. Norman", written over a faint circular stamp.

Roger A. Norman, JD, CPA, CFE, CFF
Legislative Auditor

Enclosure

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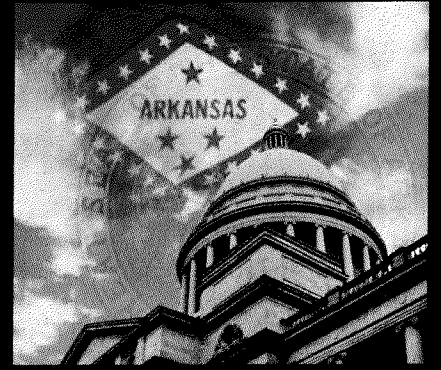
Special Report

Arkansas Legislative Audit

Review of Selected Policies, Procedures, and Transactions Pertaining to Waste Tires

Department of Energy and Environment —
Division of Environmental Quality and
Used Tire Programs

For the Period July 1, 2021 through August 31, 2022



INTRODUCTION

This report is issued pursuant to a request, approved by the Executive Committee of the Legislative Joint Auditing Committee (LJAC), for Arkansas Legislative Audit (ALA) to review the processes used by the Department of Energy and Environment – Division of Environmental Quality (DEQ) for distributing waste tire fees to Used Tire Programs (Programs) and to conduct special procedures for, and review selected transactions of, the Programs in the State.

Specific concerns were whether applicable sections of Arkansas Code were followed by the Department of Finance and Administration (DFA) when collecting and distributing waste tire fees and by DEQ in its expenditure of the fees and distributions to the Programs. Other matters of interest included whether DEQ was reimbursing Programs more than the amounts collected per tire and how Programs were using their funds to operate.

HIGHLIGHTS OF REPORT

- After allowable reductions in the \$3 waste tire fees collected, the Division of Environmental Quality (DEQ) has \$2.31 (break-even point) remaining as a per-tire fee to reimburse the Used Tire Programs (Programs). As of June 30, 2022, 8 of the 10 Programs were reimbursed at a per-tire amount greater than the break-even point. See **Exhibit II on page 5**.
- Act 317 of 2017 established the Used Tire Recycling Fund, from which \$32.98 million (>93%) of waste tire fees collected have been distributed to the Programs, primarily for normal quarterly reimbursements, based on the number of tires processed. See **Exhibits III and IV on pages 6 and 7**, respectively.
- For the quarter ended June 30, 2022, DEQ paid approximately 68% of each Program's request, due to insufficient funds available in the Used Tire Recycling Fund. In October 2022, Arkansas Legislative Council approved a \$1 million transfer from the Restricted Reserve Fund to DEQ to assist with paying the remaining balances for the quarter. See **Exhibit IV on page 7**.
- ALA noted no exceptions regarding waste tire revenue distributions by the Department of Finance and Administration (DFA) to the Used Tire Recycling Fund and the DEQ Fee Trust Fund and issued no findings for DEQ.
- ALA staff issued findings for 7 of the 10 Programs.
- A summary of information for the 10 Programs is provided in **Schedule 1 on page 17**, and **Schedule 2 on pages 18-19** provides information regarding sources and uses of funds for the fiscal year ended June 30, 2022.

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Report ID: SPSR00622

Report Date: January 9, 2022



OBJECTIVES

Objectives of this review pertaining to DEQ were to:

- Determine and review the methods used to reimburse Programs for waste tires collected and processed.
- Analyze activity in the Used Tire Recycling Fund maintained by the State Treasury.
- Gain an understanding of the DEQ Fee Trust Fund.
- Assess reasonableness of the waste tire fees collected by DFA and distributed to DEQ.
- Determine if the number of tires for which the waste tire fee was collected is reasonable when compared to the number of tires submitted for reimbursement by the Programs.
- Obtain and report waste tire reimbursement rates as of June 30, 2022.

Objectives of this review pertaining to the waste tire accounts of the Programs were to:

- Review financial records maintained by the Programs, including bank statements, financial statements, journals/ledgers, and invoices, where applicable.
- Review Program business plans and reimbursement rates.
- Determine Program sources and uses of funds.

SCOPE AND METHODOLOGY

This review was conducted primarily for the period July 1, 2021 through August 31, 2022.

For DEQ, ALA staff reviewed supporting documentation for all reimbursements to the Programs to ensure reimbursements were in accordance with Arkansas Code and at the approved business plan rate. To summarize financial information for the Used Tire Recycling Fund, ALA staff obtained data from the Arkansas Administrative Statewide Information System (AASIS). ALA staff applied Arkansas Code to calculate the amount available to reimburse Programs for waste tire processing.

For the Programs, ALA staff reviewed applicable financial records, Board of Directors (Board) meeting minutes, business plans, contracts, documents filed with DEQ to obtain reimbursements, related party transactions, and audit reports prepared by private certified public accounting (CPA) firms.

BACKGROUND

Prior to Act 317 of 2017

In 1991, the General Assembly passed laws to protect the public health and the State's environmental quality by setting and implementing standards to be followed in the hauling, storage, recycling, and disposal of waste tires. A waste tire fee of \$1.50 for each new tire sold was assessed to the purchaser. In addition, a fee of \$1 was imposed on all waste tires imported into Arkansas. These rates have increased at varying increments due to the passage of subsequent legislation.

Act 317 of 2017 – Used Tire Recycling and Accountability Program (TAP)

Effective January 1, 2018, Act 317 of 2017 (Act) amended the previous waste tire law and created the Used Tire Recycling and Accountability Program (TAP). The Act required Arkansas to implement an accountable, effective, and efficient used tire program for recyclable tires, waste tires, and used tires culled for resale. The primary goal of TAP is to recycle or put to beneficial use as many tires as possible.

DEQ was charged with the implementation of TAP and establishment of various rules in accordance with the Act. The Programs are administered by the various regional solid waste management districts around the State.

The Act standardized fees by requiring the collection of a flat waste tire fee on all tires removed from a rim (\$3 for new tires and \$1 for used tires).

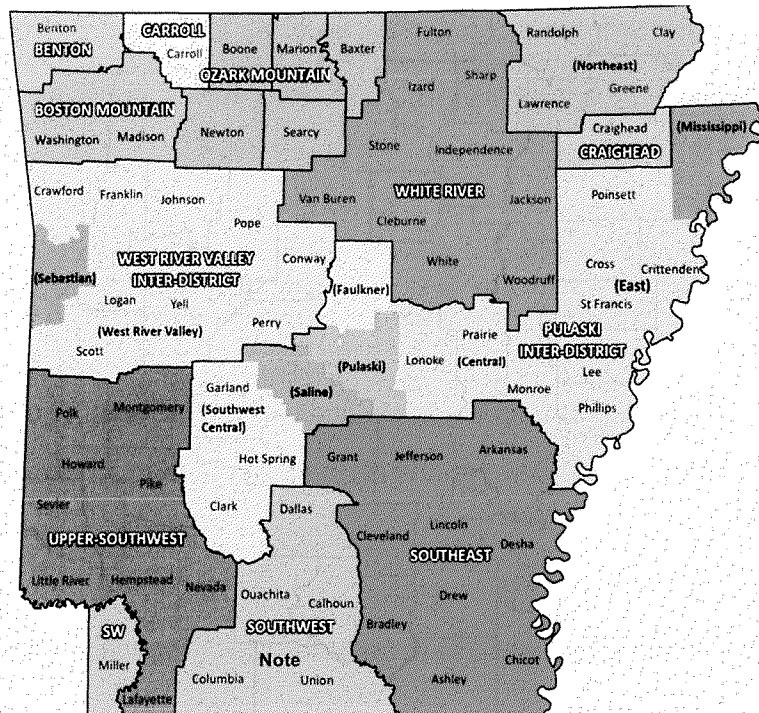
Regional Solid Waste Management Districts

In 1989, the General Assembly created eight “Regional Solid Waste Planning Boards” in the State, with their duties to include preparation of regional solid waste needs assessments and issuance of “certificates of need” to applicants for solid waste disposal facility permits within their jurisdictions. Then, in 1991, a law was passed to rename the Planning Boards as “Regional Solid Waste Management Districts” (Districts) and required that each District be governed by a Board. The powers and duties of the Districts were expanded and allowed the boundaries of the Districts to be modified. Waste tires, composting, recycling, and hauler licensing requirements also were included in the responsibilities added to the Districts.

Currently, the State has 19 Districts, but only 10 operate a Used Tire Program, as shown in **Exhibit I**, and receive quarterly reimbursements from DEQ for processing waste tires, under the Act. The composition, per-tire reimbursement rate, sources and uses of funds, and method of operations for these 10 Programs are summarized in **Schedule 1 on page 17**.

Exhibit I

Arkansas’s Used Tire Programs



Note: The Southwest Used Tire Program was merged into the Upper-Southwest Used Tire Program in 2018.

Source: Arkansas Department of Energy and Environment website: <https://www.adeq.state.ar.us/> (unaudited by Arkansas Legislative Audit)

RESULTS OF REVIEW: DIVISION OF ENVIRONMENTAL QUALITY

Waste Tire Fees Collected and Amount Available for Reimbursements to the Programs

Waste Tire Fee Revenue

The Act requires the collection of a flat waste tire fee on all tires removed from a rim (\$3 for new tires and \$1 for used tires). The majority of collections over the past five years have been obtained by tire retailers on new tires. The tire retailers pay the fees collected to DFA monthly, after retaining 5% for administrative costs. After deducting a special revenue fee of 3%, DFA deposits 93% into the **Used Tire Recycling Fund** (the fund used to account for the activity of TAP) and 7% into the **DEQ Fee Trust Fund** (a fund used for DEQ operations into which DEQ deposits various fees).

Each tire retailer submits a monthly waste tire return form to DFA that shows the number of tires (new or used) on which the retailer collected fees, as well as the total fees remitted to DFA. To test the reasonableness of the total waste tire revenues, ALA staff performed a calculation by multiplying the number of tires (according to the retailer monthly return forms) by the per tire amount remitted (\$2.85 for new tires). The calculated amount was within 0.5% of the amount DFA actually collected.

To test the reasonableness of the waste tire revenue distributions by DFA to both the Used Tire Recycling Fund and the DEQ Fee Trust Fund, ALA staff calculated the amount of fees that should have been distributed by DFA and compared this amount to the actual revenues in each fund. No exceptions were noted.

Waste Tire Fee Available for Reimbursement to Programs (DEQ Break-even Point)

As shown in **Exhibit II on page 5**, after all reductions allowed by Arkansas Code in the \$3 waste tire fees collected, DEQ has \$2.31 (break-even point) remaining as a per-tire fee to reimburse the Programs. As of June 30, 2022, based on approved Program business plans, 2 of the 10 Programs had reimbursement rates that were less than \$2.31, and the remaining 8 Programs' reimbursement rates ranged from \$2.34 to \$3.12. As a result, these 8 Programs are reimbursed at a per-tire amount that is greater than the \$2.31 break-even point. See **Schedule 1 on page 17** for each Program's reimbursement rate.

Used Tire Recycling Fund

The Used Tire Recycling Fund was established in accordance with the Act to account for the activity of the TAP. In addition to the waste tire fees collected over the years, the Act also transferred approximately \$2 million from the waste tire program established in 1991 to the Used Tire Recycling Fund in January 2018.

Per the Act, DEQ shall use at least 90% of the funds available in the Used Tire Recycling Funds to:

- Reimburse the Programs that have submitted a business plan for operations approved by DEQ.
- Administer the TAP.
- Perform other duties under the Act.

DEQ may use up to 10% of the funds available in the Used Tire Recycling Fund for:

- Waste tire site abatement aid.
- Development, implementation, and maintenance of the electronic uniform used tire manifest system.
- Market and economic stimulus incentives.

Exhibit II

**Department of Energy and Environment – Division of Environmental Quality (DEQ)
Used Tire Recycling and Accountability Program (TAP)
Calculation of Waste Tire Fees Available for Reimbursement to Used Tire Programs
As of June 30, 2022**

Description	Amounts	Ark. Code Ann. Authorization
Waste tire fee (rim removal fee) per tire	\$ 3.00	§ 8-9-404(a)(3)(A)
Tire retailer administrative fee (up to 5%)	(0.15)	§ 8-9-404(a)(5)(B)
Subtotal - after retailer administrative fee	2.85	
DFA service charge (3%)	(0.09)	§ 19-5-1148(b)(3)(B)
Subtotal - after DFA service charge	2.76	
DEQ Fee Trust Fund (7%)	(0.19)	§ 8-9-404(b)(1)(B)
Subtotal - Deposited to Used Tire Recycling Fund (93%)	2.57	§ 8-9-404(b)(1)(A)
DEQ Fees (up to 10%)	(0.26)	§ 19-5-1148(c)(2)
Waste Tire Fee Available for Reimbursement to Programs	\$ 2.31	

DFA: Department of Finance and Administration

Source: Arkansas Code Annotated (unaudited by Arkansas Legislative Audit)

DEQ Fee Trust Fund

According to AASIS, the DEQ Fee Trust Fund had available cash and investments at June 30, 2022, totaling \$13,166,793. As of August 31, 2022, cash and investments totaled \$12,360,932. Along with 7% of waste tire fees, other DEQ fees, such as pollution control and storage water fees, are deposited in the DEQ Fee Trust Fund, which is used for operating expenses of DEQ.

Used Tire Recycling Fund Reimbursements to Programs and Other Financial Activity

Exhibit III on page 6 summarizes the financial activity of the Used Tire Recycling Fund for the period July 1, 2017 through August 31, 2022. The available cash in the Used Tire Recycling Fund was \$1,520,331 and \$1,425,815 as of June 30, 2022, and August 31, 2022, respectively.

For the five fiscal years ended June 30, 2022, gross waste tire fees totaling \$36,470,577 were deposited in the Used Tire Recycling Fund. DFA imposed and retained a 3% special revenue fee totaling \$1,130,588 on these collections. Reimbursements to the Programs totaled \$32,977,825, and DEQ expenditures, mostly comprised of salary expense, totaled \$3,170,151.

Three levels of quarterly funding are available to the Programs, depending on the amount of waste tire fees collected:

- Level 1 funding consists of reimbursement for disposing of used tires at the approved business plan rates.
- Level 2 funding is disbursed to an eligible inter-district used tire program for assistance with funding an illegal dumps control office position (only if funds are available after all Level 1 funding obligations are paid).
- Level 3 funding is disbursed to an eligible used tire program for equipment purchases, repairs, or maintenance scheduled or planned at least six months before and included in the business plan or revised business plan of the used tire program (only if funds are available after all Level 1 and Level 2 funding obligations are paid).

Exhibit III

**Department of Energy and Environment–Division of Environmental Quality (DEQ)
Used Tire Recycling and Accountability Program (TAP)
Used Tire Recycling Fund – Summary of Financial Information
For the Period July 1, 2017 through August 31, 2022**

	Fiscal Year Ended June 30,					Five Fiscal-Year Totals	July 1 - August 31 2022
	2018	2019	2020	2021	2022		
Total Cash on Hand - Beginning	\$ 0	\$ 1,655,905	\$ 1,091,116	\$ 1,577,595	\$ 2,154,068	\$ 0	\$ 1,520,331
Revenues:							
Waste tire fees	5,775,841	7,304,604	7,692,070	7,859,246	7,838,816	36,470,577	1,437,966
Other	3,364	888	10,610	10,000		24,862	
Service charges - DFA	(179,051)	(226,443)	(238,454)	(243,637)	(243,003)	(1,130,588)	(44,577)
Net Revenues Collected	5,600,154	7,079,049	7,464,226	7,625,609	7,595,813	35,364,851	1,393,389
Expenditures:							
Used Tire Programs							
Assistance, grants, & aid	5,404,031	6,985,326	6,626,918	6,374,723	7,586,827	32,977,825	1,364,368
DEQ Expenditures:							
Salary expense	460,001	619,886	612,741	576,526	611,115	2,880,269	123,537
Refunds, taxes, & claims		3,776	12,639	100,835	20,000	137,250	
Capital outlay		54,918				54,918	
Professional services & fees		27,500	11,700	1,257	1,200	41,657	
Other	8,205	6,900	13,749	15,795	11,408	56,057	
Total - DEQ Expenditures	468,206	712,980	650,829	694,413	643,723	3,170,151	123,537
Total Expenditures	5,872,237	7,698,306	7,277,747	7,069,136	8,230,550	36,147,976	1,487,905
Transfers:							
Transfer from Waste Tire Grant Fund	1,983,006					1,983,006	
Transfer from Marketing Recyclables Program Fund			300,000			300,000	
Other transfers - net	(55,018)	54,468		20,000	1,000	20,450	
Total Net Transfers	1,927,988	54,468	300,000	20,000	1,000	2,303,456	
Total Cash on Hand - Ending	\$ 1,655,905	\$ 1,091,116	\$ 1,577,595	\$ 2,154,068	\$ 1,520,331	\$ 1,520,331	\$ 1,425,815

DFA: Department of Finance and Administration

Source: Arkansas Administrative Statewide Information System (AASIS) (unaudited by Arkansas Legislative Audit)

If there are insufficient funds available in a quarter to make reimbursements for all submitted requests under any funding level, then, according to Ark. Code Ann. § 8-9-405(e)(2), DEQ can allocate the reimbursements based on a pro rata share of each Program's reimbursement request compared to the total funds available.

It should be noted that payments for the quarter ended June 30, 2022 (paid in August 2022), were not paid in full. DEQ paid approximately 68% of each Program's request, due to insufficient funds available in the Used Tire Recycling Fund. On October 21, 2022, Arkansas Legislative Council approved a \$1 million transfer from the Restricted Reserve Fund to DEQ to assist with paying the remaining balances for the quarter ended June 30, 2022, which were paid as of November 21, 2022.

Exhibit IV provides reimbursements to the Programs for the period July 1, 2017 through November 21, 2022. Of the funds collected, more than 93% have been distributed to the various Programs, primarily for normal quarterly reimbursements, at approved business plan rates, based on the number of tires processed. Minimal reimbursements to the Programs have occurred for Level 2 and 3 funding, extra-large tires, and abatements (approximately \$450,000 for FY2022). The remaining expenditures are DEQ administrative expenses.

For all TAP reimbursements paid to Programs for the period July 1, 2021 through November 21, 2022, ALA staff reviewed supporting documentation for the number of tires processed and the approved business plan rates and noted no exceptions.

ALA staff also compared the number of tires processed (according to the Programs' TAP quarterly progress reports) to the number of tires on which fees were collected (according to the monthly return forms submitted to DFA by tire retailers). A difference of less than 6% was noted, which could be due to the timing of when tires are sold and when they are processed by the Programs. Also, tires awaiting processing could have accumulated at the tire retailers or at the Programs.

Exhibit IV

Department of Energy and Environment – Division of Environmental Quality (DEQ) Used Tire Recycling and Accountability Program (TAP) Used Tire Recycling Fund – Reimbursements to Used Tire Programs For the Period July 1, 2017 through November 21, 2022

Name of Used Tire Program	For Fiscal Year Ended June 30,					Five Fiscal-Year Totals	Quarter Ended June 30, 2022		
	2018	2019	2020	2021	2022		Requested (Note 1)	Amounts Paid in 2022 August (Note 2)	November (Note 3)
Benton County	\$ 251,723	\$ 358,154	\$ 404,667	\$ 395,004	\$ 524,834	\$ 1,934,382	\$ 166,785	\$ 113,467	\$ 53,318
Boston Mountain	414,693	607,806	617,020	584,131	658,108	2,881,758	186,825	127,100	59,725
Carroll County				31,655	59,445	91,100	14,732	10,022	4,710
Craighead County	210,378	261,925	229,792	234,435	284,233	1,220,763	63,713	43,345	20,368
Ozark Mountain	304,858	445,278	455,596	263,777	343,322	1,812,831	66,834	45,468	21,366
Pulaski County Inter-District	1,222,160	1,817,724	1,820,779	1,950,173	2,819,049	9,629,885	808,520	550,049	258,471
Southeast	360,316	514,789	376,406	417,065	606,802	2,275,378	119,184	81,083	38,101
Upper-Southwest Inter-District	424,281	787,797	655,478	673,782	826,382	3,367,720	200,728	136,559	64,169
West River Valley Inter-District	897,711	893,212	816,147	731,926	864,176	4,203,172	212,241	144,391	67,850
White River	698,226	664,832	581,822	573,728	600,476	3,119,084	165,929	112,884	53,045
East (Note 4)	390,100	633,809	669,211	519,047		2,212,167			
Southwest (Note 5)	229,585					229,585			
Grand Totals	\$ 5,404,031	\$ 6,985,326	\$ 6,626,918	\$ 6,374,723	\$ 7,586,827	\$ 32,977,825	\$ 2,005,491	\$ 1,364,368	\$ 641,123

Note 1: Amounts Programs requested for reimbursement from DEQ for processed tires for the quarter ended June 30, 2022.

Note 2: Amounts DEQ paid to Programs for reimbursement for processed tires for the quarter ended June, 30, 2022. These amounts are each Program's pro rata share of the waste tire fees available for reimbursement for this quarter. Programs received approximately 68% of amounts requested.

Note 3: Balance of the amounts Programs requested for reimbursement from DEQ for processed tires for the quarter ended June 30, 2022.

Note 4: The East Program became part of the Pulaski County Inter-District in 2022.

Note 5: The Southwest Program became part of the Upper-Southwest Inter-District in 2018.

Source: Arkansas Administrative Statewide Information System (AASIS) and DEQ financial records (unaudited by Arkansas Legislative Audit)

RESULTS OF REVIEW: USED TIRE PROGRAMS

The sections below provide brief background information for each of the 10 Programs that process waste tires, as well as reportable findings for 7 Programs. As required by Ark. Code Ann. § 10-4-419, Findings 1, 2, and 3 for the Pulaski Inter-District Used Tire Program and the finding for the White River Used Tire Program will be referred to the Sixth and Seventeenth Judicial District Prosecuting Attorneys, respectively, for further review.

A summary of information for the 10 Used Tire Programs is provided in **Schedule 1 on page 17**, and **Schedule 2 on pages 18-19** provides information regarding sources and uses of funds for the Programs for the fiscal year ended June 30, 2022.

PROGRAMS WITH FINDINGS

Pulaski County Inter-District Used Tire Program

The Pulaski County Inter-District (PID) Used Tire Program was originally comprised of five regional solid waste management districts, including Pulaski County, Southwest Central, Saline County, Faulkner County, and Central Arkansas.

On January 15, 2021, the PID Program entered into a Tire Management Program Agreement with the East Arkansas Inter-District (EAID) Used Tire Program, which was comprised of three regional solid waste management districts, including East Arkansas, Northeast Arkansas, and Mississippi County. Under this agreement, the PID Program became responsible for administering the Used Tire Program for both PID and EAID.

The PID Program was comprised of nine counties and the cities within each county: Clark, Faulkner, Garland, Hot Spring, Lonoke, Monroe, Prairie, Pulaski, and Saline. When the EAID Program joined the PID Program, it was comprised of 11 counties and the cities within each county: Clay, Crittenden, Cross, Greene, Lawrence, Lee, Mississippi, Phillips, Poinsett, Randolph, and St. Francis. Currently, the PID Program is comprised of all 20 counties.

Until the two Programs combined in April 2022, the PID Program and the EAID Program received Used Tire Recycling Funds from DEQ at rates of \$2.09 and \$2.89 per tire, respectively. For the quarter ending June 30, 2022, TAP reporting for the combined Programs indicated a DEQ-approved rate of \$2.66 per tire.

The PID Program has two contracts with Davis Rubber Company, Inc. (Vendor), to haul and process waste tires at the Vendor's facility. Due to the distance to counties in the EAID, the PID Program pays the Vendor at two different rates for these services. During the fiscal year ended June 30, 2022, the PID transferred \$502,322 to its operating account; these transfers consisted of 20% of administrative expenses (\$161,380) and reimbursements for EAID waste tire processing contract expenses paid from the PID Program operating account (\$340,942).

Statewide Interim XL Tire Program

The PID Program is solely responsible for managing the Statewide Interim XL Tire Program, including, but not limited to, the following:

- Providing and verifying manifests.
- Coordinating extra-large tire scheduling and pick-up with other Programs and tire retailers and wholesalers.
- Submitting required documentation and invoicing to DEQ and the TAP Senior Manager for reimbursement of costs.

- Ensuring compliance with state and federal licensing and permitting requirements, as well as other relevant DEQ rules and laws governing used and waste tires in the State.
- Retaining all records and permits necessary for implementing this program.

The PID Program contracted with the Vendor for the transportation and processing of extra-large tires. The Vendor submitted invoices monthly to the PID Program showing tons processed with and without transportation. The rate paid to the Vendor was \$140 per ton without transportation and \$200 per ton with transportation for a total of \$215,461. The PID Program then submitted invoices to DEQ, which reimbursed the PID Program \$165 per ton without transportation and \$236 per ton with transportation, which included administrative costs of operating the program; reimbursements totaled \$304,085. DEQ terminated the XL Tire Program on May 24, 2022, due to lack of funding.

Findings

Finding 1: The PID Program did not properly complete TAP quarterly progress reports, as discussed below:

- Revenues reported were based on tires processed per report, not amounts actually received from DEQ.
- The PID Program plugged an amount into an expense line item titled "Maintenance and Repair (Capital Fund)" to make revenues and expenses agree on the TAP reports. As a result of this improper completion of TAP reports, the PID Program transferred \$357,032 of excess Used Tire Recycling Funds to the capital maintenance fund for the period September 20, 2021 to August 31, 2022. These excess funds should have been available in the waste tire account to operate the PID Program.

According to a contract between the PID Program and the Vendor, the Vendor is responsible for the repair and maintenance of PID Program-owned equipment located at the Vendor's facility and used by the Vendor. However, the PID Program reimbursed the Vendor for \$211,226 (\$181,084 for the fiscal year ended June 30, 2022, and \$32,142 for the two-month period ended August 31, 2022) in maintenance and repair expenses for both PID Program-owned equipment as well as equipment owned by the Vendor, in conflict with Ark. Const. art. 12, § 5.

Management response: *The quarterly Tire Accountability Program (TAP) report produced by the District and used by DEQ for reimbursement of program costs to the District originally included revenues received in the quarter by DEQ, and not on prospective revenue from the number of tires processed. This practice was recommended by DEQ to be changed some three years ago. The District complied with the DEQ recommendation. (From an accounting and accountability standpoint, this practice made no sense to the District. Consequently, the District continued to attach the quarterly District financial statements, which no longer matched the TAP report.)*

The TAP report includes a Maintenance and Repair line item. The District's practice was to allocate any reserve funds to that line item to cover necessary maintenance costs of the transport and processing equipment operated by Davis through our public-private partnership. In addition to maintenance and repair of program equipment, the District also used these reserve funds to pay Davis's transport and processing costs on a monthly basis, although the District was and is reimbursed by DEQ on a quarterly basis. The practice was simply an exercise in cash-flow management, as well as providing program funds for program expenses to keep Davis running and picking up and processing tires, until such time as the District receives reimbursement funds (in arrears) and during a period of rapidly increasing

inflation. While it is noted in the findings that these funds should "have been available in the waste tire account to operate, the PID program," these funds were used only to operate the program, however, were allocated to the wrong line items on the TAP report. The District, will immediately take steps to ensure that reserve funds, if any, will be allocated to the appropriate line items on the TAP report, and continue to be managed to operate the program, as well as report revenues received from DEQ in the quarter.

As stated above, the District assisted Davis in the maintenance of specific transport and processing equipment in order to keep the program running. It is our understanding that this use of Maintenance and Repair funds, as reported on the TAP report, is in error. The District will immediately discontinue this practice (Capital Fund) and continue to work with Davis to further streamline operations, allowing Davis to better fund their own maintenance and repair.

Finding 2: The PID Program entered into agreements with the Vendor, a privately owned business, that appear to conflict with Ark. Const. art. 12, § 5:

- The Program's business plan notes equipment items located at the Vendor's facilities that were purchased entirely or partially with Program funds, including four tire shredders, a forklift, a magnetic separator, a screener, and an infeed system with conveyors. The original cost of the equipment totaled \$1,298,791, of which \$1,110,235 (85%) was paid from Program funds. According to a contract between certain Programs and the Vendor, the Vendor is allowed to process tires not collected through TAP with the Program's equipment, sell the tire-derived aggregate, and keep the proceeds.
- The Program transferred use of 46 trailers to the Vendor to haul waste tires. The Program's business plan stipulates that the Vendor will be responsible for repair and maintenance of the trailers; however, it appears that the Program is reimbursing the Vendor for at least a portion of these expenditures from the Program's capital maintenance fund.

Management response: *Prior to the 2017 revisions to Arkansas's waste tire program through Act 317 and Regulation 36, the District received grant funds from DEQ and, as approved, used the funds to provide equipment grants to Davis. While the granted equipment was used primarily for District-related waste tire processing for recycling, the equipment most likely was used for processing tires not associated with District-managed operations. While the District will receive a portion of the sales price of the granted equipment if and when it is sold, we nevertheless understand the need to strictly adhere to Constitutional provisions regarding private use of public funds. To that end, and as stated above, the District will immediately discontinue this practice (Capital Fund) and continue to work with Davis to further streamline operations, allowing Davis to better fund their own maintenance and repair.*

During the development of the new waste tire program informed by Act 317 and Regulation 36, the District made the decision to get out of the waste tire trailer business and the associated costs and transfer the operation and maintenance of the 46 District-owned trailers to Davis. While we have not reimbursed Davis for the maintenance of the trailers, we understand that a portion of the Capital Fund maintenance grants to Davis could possibly be partially used for that purpose. To correct this action, and as stated above, the District will immediately discontinue this practice (Capital Fund) and continue to work with Davis to further streamline operations, allowing Davis to better fund their own maintenance and repair.

Finding 3: Waste tire funds were used to pay \$700 in charitable contributions to two nonprofit entities, in conflict with Ark. Const. art. 12, § 5. This amount represented 20% of the PID Program's total contributions to the nonprofit entities.

All three findings will be referred to the Sixth Judicial District Prosecuting Attorney.

Management response: *The District maintains agreements with certain Arkansas non-profit entities engaged in the support of recycling programs throughout the State. From time to time we contribute, when fiscally appropriate and possible, to these non-profits. It appears that one or more donations were partially funded out of the waste tire program account. This was a mistake. The District will ensure that no further contributions to non-profit entities engaged in the support of recycling programs in Arkansas are funded from the tire program account.*

Southeast Used Tire Program

The Southeast Used Tire Program is managed by the Southeast Arkansas Economic Development District (SEAEDD) and is comprised of Arkansas, Ashley, Bradley, Chicot, Cleveland, Desha, Drew, Grant, Jefferson, and Lincoln Counties and the cities within these counties. The Program receives Used Tire Recycling Funds from DEQ at a rate of \$2.40 per tire and fees on fee-waived paid¹ tires. The Program contracts with a hauler to transport waste tires to the processing center operated at the Jefferson County Landfill. The Program owns the processing equipment and pays for its replacement, repair, and maintenance. The Program also pays Jefferson County a per-ton fee to process, recycle, reuse, or dispose of all tires and by-products of processing. During the fiscal year ended June 30, 2022, the Program transferred 10% of Used Tire Recycling Funds received, totaling \$60,680, to SEAEDD for management services.

Finding 1: The Program did not report reserve transfers of 10% of Used Tire Recycling Funds to the solid waste general account, along with any subsequent waste tire expenditures from the reserve amount, on the TAP quarterly progress reports, resulting in an understatement of average per-tire costs.

Management response: *We completed the TAP report according to the guidance received by the TAP Program at the Department of Environmental Quality. Corrective action will be conducted on TAP Program Guidance.*

Finding 2: A copy of the annual financial audit report for 2020 and 2021 was not filed with DEQ and ALA, as required by Ark. Code Ann. § 8-6-704.

Management response: *This has been the responsibility of our Auditing Firm. We have contacted them to make sure that they flag our account TO SEND for future audits.*

Carroll County Used Tire Program

The Carroll County Used Tire Program is comprised of Carroll County and the cities within it. The Program receives Used Tire Recycling Funds from DEQ at a rate of \$2.22 per tire and fees on fee-waived paid tires. Waste tires brought to Program facilities are placed in trailers leased from the West River Valley Inter-District Program, which picks up the trailers and hauls the tires to its processing facility. In the event the West River Valley Inter-District Program cannot fulfill the contract, waste tires are picked up by a contractor and delivered to its facility in Kansas.

¹ "Fee-waived paid tires" are used tires for which no rim removal fee, commercial generator fee, or import fee has been collected, reported, and paid.

Finding: The Program did not solicit competitive bids for waste tire disposal fees totaling \$47,387, in noncompliance with Ark. Code Ann. §§ 8-6-704, 14-22-104. Furthermore, a contract documenting this service to be performed by the contractor was not provided.

Management response: *Carroll County Regional Solid Waste District is in the process of contracting with a vendor for the year 2023 to fulfill our tire disposal needs. We are working towards compliance with Ark. Code Ann. §§ 8-6-704 and 14-22-104.*

Ozark Mountain Used Tire Program

The Ozark Mountain Used Tire Program is comprised of Baxter, Boone, Marion, Newton, and Searcy counties and the cities within these counties. The Program receives Used Tire Recycling Funds from DEQ at a rate of \$2.71 per tire and fees on fee-waived paid tires. The Program contracts with a contractor to collect waste tires from five collection centers and haul the tires to the contractor's facilities for processing. During the fiscal year ended June 30, 2022, the Program transferred \$11,720 to its general fund from its waste tire fund for administrative expenses at a rate of \$0.10 per tire processed.

Finding: An annual financial audit covering the Program has not been obtained since 2019, in noncompliance with Ark. Code Ann. § 8-6-704.

Management response: *The District engaged the accounting services of a CPA firm. The firm is working hard to complete both the 2020 and the 2021 financial audits. The firm has not given the District a firm deadline for completion, but we anticipate them both to be finished in the next month.*

Upper-Southwest Inter-District Used Tire Program

The Upper-Southwest Inter-District Used Tire Program is comprised of Calhoun, Columbia, Dallas, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Ouachita, Pike, Polk, Sevier, and Union Counties and the cities within these counties.² The Program receives Used Tire Recycling Funds from DEQ at a rate of \$3.12 per tire, fees on fee-waived paid tires, trailer rental, and sale of processed tires. The Program per-tire rate includes expenditures for debt service to build the processing facilities, purchase of equipment, and depreciation expense. The Program provides for the transportation of all used tires from the designated collection centers except for tires collected in Miller County, which are transported by a contractor. The Program owns and operates the tire processing facility and contracts for marketing and sale of tires processed into tire derived fuel, with the unmarketable portion being disposed of in the Upper-Southwest Regional Landfill.

Finding: The 2020 and 2021 audit reports and findings were not reviewed by the Board, as required by Ark. Code Ann. § 8-6-704.

Management response: *In the past our Executive Committee has always met with the auditor to receive explanation and instructions about that year's audit and to approve the audit. At the next regular board meeting, the audit is presented to the board and each member receives a copy. In the future, we will ensure that a vote is taken to accept and approve each annual audit.*

² This list includes the counties of the Southwest Program, which joined the Upper-Southwest Inter-District Used Tire Program in 2018.

West River Valley Inter-District Used Tire Program

The West River Valley Inter-District Used Tire Program is comprised of Conway, Crawford, Franklin, Johnson, Logan, Perry, Pope, Scott, Sebastian, and Yell Counties and the cities within these counties. The Program receives Used Tire Recycling Funds from DEQ at a rate of \$2.34 per tire, fees on fee-waived paid tires, trailer rental, and sale of processed tires. The Program per-tire rate includes expenditures for debt service to build facilities and purchase equipment. The Program contracts for tires to be hauled to a processing facility that it owns and operates. The Program contracts for marketing and sale of tires processed into rubber mulch, tire-derived fuel, and steel wire and disposes of shredded large truck tires in a landfill located in Yell County.

Finding 1: The Program did not solicit competitive bids for the purchase of mulch colorants totaling \$224,532, in noncompliance with Ark. Code Ann. §§ 8-6-704, 14-22-104.

Management response: *The Program will solicit bids for providers of mulch paint colorant; the Board of Directors of the West River Valley Regional Solid Waste Management District will approve and award bid in the first quarter of 2023, before further purchases of paint colorant will be made.*

Finding 2: The Board did not approve the contract for hauling services, as required by Ark. Code Ann. §§ 8-6-704, 14-22-112.

Management response: *The Board will review and either approve the current contract for hauling services or request the Director readvertise for bids to provide hauling services. This will take place at the next meeting of the Board of Directors, January of 2023.*

White River Used Tire Program

The White River Used Tire Program is comprised of Cleburne, Fulton, Independence, Izard, Jackson, Sharp, Stone, Van Buren, White, and Woodruff Counties and the cities within these counties. The Program receives Used Tire Recycling Funds from DEQ at a rate of \$2.38 per tire, fees on fee-waived paid tires, and trailer rental. The Program transports tires to a processing facility that it owns, operates, and maintains; shreds the tires into monofil; and disposes of the monofil in the Bald Knob Landfill.

Finding: The Program purchased a trailer from a Board member for \$3,000, in noncompliance with Ark. Code Ann. § 21-8-1001.

This finding will be forwarded to the Seventeenth Judicial District Prosecuting Attorney.

Management response: *The White River Regional Solid Waste Management District staff was not aware that purchasing a used trailer from a Board member was an ethics violation. An opportunity to purchase a good, used mobile office trailer for \$3,000 to be used as an office space at the tire monofill came up in a conversation. We did not have any intent to not comply with Ark. Code Ann. § 21-8-1001.*

The proposed corrective action will be to educate the employees of the White River Regional Solid Waste Management District and the staff of the Program Administrator the requirements of Ark. Code Ann. § 21-8-1001. Additionally, the White River Regional Solid Waste Management District Board will approve all purchasing from Board members and other related parties, with the approval being documented in the Board meeting minutes.

USED TIRE PROGRAMS WITH NO FINDINGS

Benton County Used Tire Program

The Benton County Used Tire Program is comprised of Benton County and the cities within it. The Program receives Used Tire Recycling Funds from DEQ at rate of \$2.48 per tire and fees on fee-waived paid tires. Waste tires are accepted at various collection centers throughout the County and placed in trailers. When full, these trailers are taken to the Program's sorting facility and prepared for shipment and delivery to the tire disposal contractor's facilities in Kansas for processing.

Boston Mountain Used Tire Program

The Boston Mountain Used Tire Program is comprised of Madison and Washington Counties and the cities within those counties. The Program receives Used Tire Recycling Funds from DEQ at a rate of \$2.38 per tire, fees on fee-waived paid tires, and trailer rental. Waste tires are accepted at various collection centers and placed in trailers. When full, these trailers are taken to the Program's sorting facility and prepared for shipment to or pick up by three tire disposal contractors with facilities in Kansas and Oklahoma for processing.

Craighead County Used Tire Program

The Craighead County Used Tire Program is comprised of Craighead County and the cities within it. The Program receives Used Tire Recycling Funds from DEQ at a rate of \$2.23 per tire and fees on fee-waived paid tires. Waste tires are brought to Program facilities and loaded in trailers belonging to a contractor, which hauls the trailers to its facilities in Mississippi.

RECOMMENDATIONS

ALA staff recommend that DEQ and the General Assembly evaluate the economic feasibility and long-term sustainability of approving per-tire reimbursement rates in excess of the per-tire break-even point.

ALA staff further recommend that the PID Program and Southeast Program complete TAP quarterly progress reports properly. Additionally, the PID Program should ensure that transactions with contractors and nonprofit entities comply with Ark. Const. art. 12, § 5. Programs should also adhere to applicable Arkansas Code regarding obtaining and filing annual financial audits, soliciting competitive bids, obtaining Board approval for contracts, and engaging in related party transactions. Program Boards should review annual financial audit reports and findings, as required by Arkansas Code.

SUMMARY

Act 317 of 2017 created the Used Tire Recycling and Accountability Program (TAP), which standardized collection of a flat waste tire fee on all tires removed from a rim (\$3 for new tires and \$1 for used tires). ALA staff reviewed the processes used by DFA when collecting and distributing waste tire fees and by DEQ for expending waste tire fees and distributing these fees to the State's 10 Used Tire Programs (Programs) and issued no findings. For the five fiscal years ended June 30, 2022, \$32.98 million (>93%) of waste tire fees collected have been distributed to the Programs by DEQ from the Used Tire Recycling Fund, primarily for normal quarterly reimbursements, based on the number of tires processed.

ALA staff determined that, after allowable reductions in the \$3 fees collected per waste tire, DEQ has \$2.31 (break-even point) remaining as a per-tire fee to reimburse the Used Tire Programs (Programs). As of June 30, 2022, 8 of the 10 Programs were reimbursed at a per-tire amount greater than the break-even point. For the quarter ended June 30, 2022, DEQ paid approximately 68% of each Program's request, due to insufficient funds available in the Used Tire Recycling Fund. In October 2022, Arkansas Legislative Council approved a \$1 million transfer from the Restricted Reserve Fund to DEQ to assist paying the remaining balances for the quarter ended June 30, 2022.

ALA issued findings for 7 of the 10 Programs. The PID and Southeast Programs did not complete TAP quarterly progress reports properly, and the PID Program entered into agreements with a Vendor and made charitable donations that appear to conflict with Ark. Const. art. 12, § 5. Additional Programs did not file (Southeast) or obtain (Ozark Mountain) annual financial audits or have the audit reports reviewed by the Board (Upper-Southwest Inter-District); did not solicit competitive bids (Carroll County and West River Valley Inter-District); did not obtain Board approval for contracts (West River Valley Inter-District); and engaged in related party transactions (White River).

As required by Ark. Code Ann. § 10-4-419, the three findings for the PID Program and the finding for the White River Program will be referred to the Sixth and Seventeenth Judicial District Prosecuting Attorneys, respectively, for further review.

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Schedule 1

Used Tire Programs (Programs)
Summary of Selected Information for the 10 Programs
As of June 30, 2022

Name of Used Tire Program	Number of Counties in Program	Approved Business Plan Rates	Sources of Funds <i>a</i>	Uses of Funds <i>b</i>	Surplus/ (Deficit) <i>c = a - b</i>	Method of Operations
Benton County	1	\$2.48	\$ 625,384	\$ 683,580	\$ (58,196)	Uses a tire contractor and rents trailers; tires are picked up by contractors and delivered to contractor's facilities, located in Kansas, for processing.
Boston Mountain	2	\$2.38	\$ 736,728	\$ 780,342	\$ (43,614)	Uses a tire contractor and rents trailers; tires are picked up by contractors and delivered to contractors' facilities, located in Kansas or Oklahoma, for processing.
Carroll County	1	\$2.22	\$ 61,406	\$ 80,526	\$ (19,120)	Uses a contractor for tire pick up and processing; some tires sent to West River Valley Program for processing; occasionally another contractor hauls tires to its facility, located in Kansas, for processing.
Craighead County	1	\$2.23	\$ 341,420	\$ 300,601	\$ 40,819	Uses a contractor to pick up tires and transport them to a processing facility, located in Mississippi, for processing.
Ozark Mountain	5	\$2.71	\$ 350,889	\$ 316,701	\$ 34,188	Uses a contractor to pick up and process tires.
Pulaski County Inter-District	20	\$2.66	\$2,819,690	\$3,004,202	\$ (184,512)	Uses a contractor to pick up tires and deliver them to contractor's facility for processing.
Southeast	10	\$2.40	\$ 607,743	\$ 426,606	\$ 181,137	Uses a contractor to haul off extra-large tires; maintains a tire processing facility at the Jefferson County Landfill to chip and dispose of tires. Jefferson County Landfill is responsible for the aggregate of chipped tires.
Upper-Southwest Inter-District	15	\$3.12	\$ 907,759	\$ 696,001	\$ 211,758	Maintains a tire processing facility; processes tires; sells processed product; moves remaining product to a landfill in the District.
West River Valley Inter-District	10	\$2.34	\$1,770,495	\$1,529,126	\$ 241,369	Maintains a tire processing facility; processes tires; sells processed product.
White River	10	\$2.38	\$ 710,438	\$ 740,365	\$ (29,927)	Has its own facility to process tires and moves product to a landfill in the City of Bald Knob.

Source: Used Tire Programs' records (unaudited by Arkansas Legislative Audit)

Schedule 2

Used Tire Programs (Programs)
Sources and Uses of Funds
For the Fiscal Year Ended June 30, 2022

	Benton County	Boston Mountain	Carroll County	Craighead County	Ozark Mountain
Sources of Funds					
Tire disposal grants/fees (Note 1)	\$ 585,618	\$ 720,567	\$ 61,406	\$ 300,740	\$ 350,889
Sale of processed tires					
Trailer rental fees		16,000			
Other (Note 2)	39,766	161		40,680	
Total Sources of Funds	625,384	736,728	61,406	341,420	350,889
Uses of Funds					
Tire disposal contracts	457,222	315,195	58,877	289,433	299,781
Salaries/wages/benefits (Note 3)	142,468	231,410	21,649	6,586	
Maintenance/repairs/parts/ supplies	23,888				
Transfers to general fund (Note 4)					11,720
Rent/insurance/phone/utilities	4,353	38,102		2,082	
Fuel/mileage	35,457	194,211			
Other (Note 5)	20,192	1,424		2,500	5,200
Repairs and maintenance of equipment (Note 6)					
Total Uses of Funds	683,580	780,342	80,526	300,601	316,701
Excess Sources of Funds Over (Under) Uses of Funds	\$ (58,196)	\$ (43,614)	\$ (19,120)	\$ 40,819	\$ 34,188

Note 1: Includes Division of Environmental Quality (DEQ) reimbursements of \$7.6 million.

Note 2: Includes interest, reimbursements, sale of equipment, insurance proceeds, and transfers from the general funds of the Programs.

Note 3: Includes bonuses of approximately \$27,000.

Note 4: Represents amounts that Programs transferred to their general funds for tire program administrative expenses.

Note 5: Includes dirt for landfills, insurance, depreciation, debt service payments, professional services, office supply expenses, etc.

Note 6: Represents amounts that the Program paid for expense obligations of Davis Rubber Company, Inc.

Source: Used Tire Programs' financial records (unaudited by Arkansas Legislative Audit)

Pulaski County Inter- District	Southeast	Upper- Southwest Inter- District	West River Valley Inter- District	White River	Grand Totals
\$ 2,819,049	\$ 607,624	\$ 834,006	\$ 948,591	\$ 593,905	\$7,822,395
		26,379	579,504		605,883
		47,374	52,185	102,145	217,704
641	119		190,215	14,388	285,970
<u>2,819,690</u>	<u>607,743</u>	<u>907,759</u>	<u>1,770,495</u>	<u>710,438</u>	<u>8,931,952</u>
2,306,291	303,050	28,874	161,580	20,175	4,240,478
		298,396	416,814	331,009	1,448,332
	60,832	122,931	708,364	76,166	992,181
502,322	60,680				574,722
		32,117	141,419	180,313	398,386
		64,919	22,165	62,779	379,531
14,505	2,044	148,764	78,784	69,923	343,336
181,084					181,084
<u>3,004,202</u>	<u>426,606</u>	<u>696,001</u>	<u>1,529,126</u>	<u>740,365</u>	<u>8,558,050</u>
<u>\$ (184,512)</u>	<u>\$ 181,137</u>	<u>\$ 211,758</u>	<u>\$ 241,369</u>	<u>\$ (29,927)</u>	<u>\$ 373,902</u>

