WASTE TIRE ADVISORY COMMITTEE (WTAC) MEETING

January 10, 2013 Meeting Minutes

CDPHE Denver, Colorado

I. Call to Order and Introductions

a. Chairman Reid called the meeting to order.

b. Waste Tire Advisory Committee (WTAC) members, Hazardous Materials and Waste Management Division (HMWMD), Division of Environmental Health and Sustainability (DEHS), and Attorney General Office (AGO) staff, and other attendees' introductions.

   i. WTAC members in attendance: Joel Bolduc, Nick Boudreau (acting as CDPHE alternate representative due to Charles Johnson's absence), Chris Houtchens, Rusty Hardy, Trent Peterson, Jim Reid, Scott Skorka, and Rick Welle.

   ii. CDPHE Waste Tires Staff: Shana Baker, Brian Gaboriau, Patrick Hamel

   iii. Other CDPHE Staff: Karin McGowan and Warren Smith

   iv. AGO staff: Patrick Pfaltzgraff and Scott Schultz

   v. Other Attendees: Jason Chan (Waste Management), Alan Greer (Geocycle), Patti Fredrick (Attorney for CTR/AT&T), Teresa Immel (CTR/AT&T), David Migoya (Denver Post, via phone)

II. General Business

a. Approval of December 13, 2012 meeting minutes

   i. Motion for approval of the December 13, 2012 minutes

      1. WTAC motion to approve the December 13, 2012 meeting minutes passed unanimously.

   ii. Approved minutes will be posted at the Hazardous Materials and Waste Management Division Waste Tire Advisory Committee website: http://www.colorado.gov/cs/Satellite/CDPHE-HM/CBON/1251617146350

b. Chairman and Vice-Chariman Elections

   i. Jim Reid will run again for Chairman.

   ii. Chris Houtchens and Joel Bolduc are both running for Vice-Chairman.

   iii. Ballots were collected and tallied by Shana Baker.

      1. See VII Legal update for results.

c. 2013 WTAC meeting dates

   i. At the request of the WTAC, additional meetings were added.

      1. Meeting dates were added for February 14, 2013 and April 11, 2013.

         a. Meetings will be held the second Thursday of each month through May 9, 2013.

III. Waste Tire Program – Shana Baker

a. Waste Tire Fire Prevention Fund

i. Total amount to be awarded $290,007. Pretty much close to the amount of money we have available to award.
ii. Applicants were notified late last month if their grant application was selected.
1. Six applicants were awarded the total amount they requested.
a. Colorado Springs Fire District
b. Florence Fire Protection District
c. Hanover Fire District
d. Lamar Fire District
e. Lefthand Fire Protection District
f. West Douglas County Fire Protection District
2. Two applicants were awarded a partial award amount.
a. City of Grand Junction Fire Department
b. Julesburg Rural Fire District

b. Law Enforcement Grant Fund
i. Did not get any applicants for this Fund.
ii. Working to get a meeting scheduled with the Department, the State Patrol, and the Division of Fire Safety to explore possibilities to work together regarding distribution of these grant funds, as no applicants for this Fund.
1. Identified the State Patrol Grant Manager.

c. Waste Tire Hauler Renewals
i. Renewal forms were sent out the middle of December.
ii. Renewal forms are due February 1, 2013 for issuance of new waste tire hauler decals.

d. Waste Tire Annual Reports
i. Postcards reminder went out to waste tire haulers and waste tire facilities (waste tire processors, end users, monofills, and collection facilities) the end of December.
ii. The Waste Tire Hauler and Waste Tire Facility reports are both due on April 1, 2013.

IV. Waste Tire Grants & Funds Update - Brian Gaboriau

a. Processors/End User Partial Reimbursement Program
i. October 2012 applications are slightly delayed. Estimate to have these reviewed and ready in the next few days.
1. Estimate $500,000 available for the October payout.
ii. Started review of November 2012 applications.
iii. The new Processor/End User Application and Tire Bale Processor/End User Approval Form are on the website.
1. The updated application and new form were the result of the 6 CCR 1007-2, Part 4 Regulations that were passed by the Solid and Hazardous Waste Commission in November (effective December 30, 2012).
a. Patti Fredrick brought up that the Solid and Hazardous Waste Commission are going to rehear the Regulations on February 19, 2013. Patti asked Brian if the Commission makes a different

decision on the Regulations will we go back to the old applications/forms?

i. Brian responded that he did not know.

b. Recycling Incentives
   i. Closed out three more site projects. Of the thirteen projects, all but two projects have been completed. Waiting on paperwork on two completed projects.
      1. These two projects will be completed in the spring.

c. Illegal Tire Cleanup Fund
   i. El Paso County – asked for further funding on one of their sites, as it was under estimated by around 17,000-18,000 tires.
      1. Did an extension from the end of March and increased the funding, so the cleanup cost will now be $75,000
         a. Brian responded to Jim Reid's and Joel Bolduc's questions on the original cleanup grant amount.
            i. The original cleanup grant was for $47,700 for ~20,000 tires.
            ii. It's turning out to be about 40,000 tires at this site (tires buried deeper that initially estimated).

d. Market Development Fund
   i. Tetra Tech will be present (in person or by phone) at the February WTAC meeting to discuss the current status of their review and any conclusions they are able to share.
      1. They will try to have a draft of their report ready by March 1.
         a. They are still relying on stakeholder information they have asked for, but have not received, to complete the report.
            i. This information is needed for their analysis.
      2. Patti Fredrick asked if there was an original time frame that Tetra Tech was supposed to complete their market analysis by.
         a. Brian reviewed the time frame.
            i. Draft – Due March 15, 2013.
            ii. Draft will be distributed to WTAC members for review and comment. Members will not be allowed to change outcomes or recommendations.
            iii. Final Version – Due April 30, 2013
            iv. Presentation May 2013 to the WTAC, Department, and any other stakeholders.
               1. Date and place to be determined and will be announced.
            v. Brian responded to Joel Bolduc's question that Tetra Tech is still on schedule with the agreed time frame that was established.

e. Questions/Comments

i. Patti Fredrick brought up that her client is appealing a denial for Processor/End User Funds and remarked displeasure with the Department's time frame for responding to the appeal.
    1. Scott Schultz informed Patti that the Department is not going to comment on any pending appeal or any pending litigation or give any legal advice on the appeal.
    2. Jim Reid indicated that this matter needs to be discussed outside of this forum.
ii. Rick Welle had Processor/End User Fund questions regarding hitting the spending authority. What is the protocol going forward?
    1. Brian noted that it is currently business as usual. The spending authority will run out by December 2012 or January 2013 applications. Until applicants hear from the Department, continue applying as normal. Unfortunately, Brian doesn't have an answer right now.
iii. Rick had a question about when the application for Recycling Incentives will be released.
    1. Brian indicated that last year the applications were released in April and applicants had a few months to complete and submit the application.
        a. Goal to get this out early April. Approved projects would start around July.
iv. Rick asked if there will be a balance in the Market Development Fund (even after the Tetra Tech contract).
    1. Brian indicated that there is a project that is being funded under this Fund and another project that is awaiting finalizing.
        a. Will have ~$50,000 left over. Brian is not planning on running an additional grant cycle due to the low dollar amount.
        b. Tetra Tech will be looking out how Market Development Funds should be used going forward.
    2. Rick commented that the WTAC should be thinking proactively regarding ideas on how we can move on this Fund quickly.
        a. Jim Reid asked when the new state Fiscal year begins.
            i. July 1.
        b. Jim Reid suggested having on a calendar the kickoff fund dates (Market Development, Recycling Incentives).

V. Waste Tire Program Expenditures – Patrick Hamel

a. This review of the waste tire program expenditures is in response to the WTAC request for this last meeting.
b. The waste tire program expenditures review will include:
    i. Money that is collected.
    ii. How the money is allocated among waste tire program funds.
    iii. What happens to fund money if it is not spent.

c. Patrick displayed a chart with Fiscal Year 2011-2012 numbers. The chart showed the different grant funds, the percentage of the $1.50 fee on that goes to each fund, the amount of money each fund receives, and the spending authority.
    i. This chart will be posted on the WTAC website along with the approved January 10, 2013 minutes.
d. Money that is collected.
    i. These numbers come from the Department of Revenue.
    ii. $1.50 fee is collected on the sale of each new tire.
    iii. The total revenue collected was $5,816,333.
        1. This is approximately 3,877,555 new tires sold a year.
            a. Have been told by many people that this number is low and that we are not getting all the money we should be from tire sales.
    iv. 1.67% ($97,133) of the money collected goes to the Department of Revenue for administrative costs.
e. How the money is allocated among waste program funds and what happens if the money is not spent.
    i. Patrick Hamel pointed out how the Higher Education Research Fund is allocated 6.67% ($381,471) of the revenue collected.
        1. This Higher Education Research Fund does not get rolled over to the Processor/End User Fund at the end of the fiscal year.
            a. This Higher Education Research Fund will end on 6/30/14 and the 6.67% that was allocated to this fund will go into the Processor/End User Fund.
        2. All other program funds get rolled over into the Processor/End User Fund at the end of the fiscal year.
    ii. For historical reference, the Recycling Resources Economic Opportunity (RREO) Fund ended on July 1, 2011.
        1. A percentage of 16.67% (almost a million dollars) that was allocated to this fund went to the following funds: increase of a little over 1% to the Waste Tire Fire Prevention Fund and creation of the Waste Tire Market Development Fund and Law Enforcement Grant Fund.
    iii. Processor/End User Fund is allocated 30.33% ($1,734,637) of the revenue collected.
        1. Starting July 1, 2014, 6.67% that was allocated to the Higher Ed Research Fund will go into the Processor/End User Fund. This will increase the percentage to 37% ($2,116,105).
    iv. The following funds roll over to the Processor/End User Fund at the end of the fiscal year.
        1. Waste Tire Cleanup Fund is allocated 39.66% ($2,268,235) of the revenue collected.
        2. Waste Tire Fire Prevention Fund is allocated 8% ($457,536) of the revenue collected.

3. Waste Tire Market Development Fund is allocated 6.67% ($381,471) of the revenue collected.
4. Law Enforcement Grant Fund is allocated 8.67% ($495,855) of the revenue collected.

f. Patrick Hamel reviewed the past two fiscal years (FY 2010-2011 & FY 2011-2012) revenue collected and expenditures (revenue analysis)
    i. The revenue analysis will be posted on the WTAC website along with the approved January 10, 2013 minutes.
        1. Patrick Hamel reviewed the amount of money spent.
            a. Money went to the Higher Education Research Fund, but we do not know the total amount of money spent.
            b. The Department of Revenue only spent $4,203.76 in FY 2010-2011 and $3,480.87 in FY 2011-2012.
                i. This money does not rollover into the Processor/End User Fund.
        2. Patrick Hamel explained the RREO Funds expenditures and how a portion of these Funds came from Solid Waste tipping fees.
        3. Jim Reid noticed that the Waste Tire Cleanup Fund was not entirely spent in FY 2010-2011 and only half of the amount collected was spent in FY 2011-2012.
            a. Patrick Hamel explained that this was a new program. Brian, Shana, and Nick go out to counties to get the word out about this fund.
                i. Brian explained that because there's a reimbursement piece for this fund, it is difficult for many counties/municipalities to front the money.
                ii. The counties/municipalities also have to make the cleanup request to Brian.
                1. The contracts for the cleanup are between the state and county/municipality.
                2. The county/municipality follows their procurement rules to select and hire a cleanup contractor.
                iii. A change in the statute would have to be made to change the current structure.
                1. Brian reviewed how other states run their cleanup programs.
                a. Many states directly contract with the cleanup contractor.
                i. Alan Greer also added how some states work with the county/municipality to prioritize

the cleanup jobs around the state. Then the state issues the prioritized cleanup sites that need to be addressed and these are opened up for bidding.

iv. Patti Frederick brought up how the county/municipality does not have to make an in-kind contribution if they are unable to.
    1. Patti and Brian also brought up that on the DEHS Waste Tire Program website there is a vendor list of those who provide waste tire cleanup services.

v. Teresa Immel asked how to address a cleanup contractor that would continually under bid and receive a contract and then comes back and asks for additional money to compete the job.
    1. Input from Jim, Rick Welle, and Joel on this issue.
        a. There needs to be a way that these bids are competitive.
        b. If a contractor is continually underbidding, then this should be tracked.
        c. Each county is managing the contract. The counties need to make the decision on dollars per tire cost instead of a project cost.
            i. Brian normally asks for cost per tire. However, every cleanup site is different.
            ii. Brian indicated that there have been cleanups where we did not know the full extent of the cleanup.

4. Patrick Hamel brought up how that no or only small amount of moneys from the first year funds (Waste Tire Fire Prevention Fund, Waste Tire Market Development Fund, Law Enforcement Grant Fund) was spent.
    a. The reason for this was that these were new program funds. However, the second year money was being spent from the funds.
        i. Waste Tire Fire Prevention Fund spent more money in the second year and will spend almost all of the money in the third year.
        ii. Waste Tire Market Development Fund will spend most of the money in the second year.
        iii. Law Enforcement Grant Fund – Jim noted that he will be meeting with the Department, State Patrol, and the

Division of Public Safety to discuss spending this fund. Jim expects that most of this Fund will go into enforcement.

5. Patrick Hamel reviewed the rollover that went into the Processor/End User Fund in FY 2011-2012.
    a. As the other waste tire program funds continue to develop and be used, we should see less money from other funds rolling over.
6. In FY 2010-2011, a rollover of $1,056,922 went into the Processor/End User Fund
    a. The Higher Education Research Fund does not rollover into the Processor/End User Fund.

g. Questions/Comments
    i. Jim Reid asked how to manipulate where these funds go.
        1. Patrick Hamel pointed out that these allocated percentage amounts are set in statute. A statutory change would be needed to change allocation percentage amounts.
    ii. Jim brought up the TetraTech report and how their recommendations may be to change funding allocations. How would this be changed by the legislature?
        1. Patrick Pfaltzgraff indicated that the WTAC would then make a recommendation to the legislature how the funding should be allocated.
    iii. Jim noted situations where there may be a point where the requests for a fund don't meet the requirements. The money would need to go somewhere else (to other funds).
        1. Patrick Hamel responded that a legislative change would be needed to have money go somewhere else.
    iv. Chris Houtchens asked if per 25-17-202(3)(b), the Department should be able to reallocate uncommitted funds to other funds at the end of each fiscal quarter. Is this something the Department explored, and if so, why not?
        1. Patrick Hamel indicated that the Department explored this but were told by, he believed, the AG's office that we couldn't do this.
            a. Scott Schultz indicated that the Department may reallocate these funds. There is nothing in the statute that requires the Department to reallocate money into other funds.
            b. Patrick Hamel and Brian explained that the Department would still be limited by the spending authority. Each fund has a spending authority; funds cannot be reallocated into another fund if the reallocation will exceed that fund's spending authority.
                i. Brian explained that the spending authority tells us what the Department can spend. For example, for FY 2011-2012 the Law Enforcement Grant Fund had a spending authority of $460,076. The Department could only spend

$406,076, not the total revenue of $495,854.73 that was in the fund.

1. Patrick Pfaltzgraff noted that the Department did not have the fiscal authority to spend anything above the $460,076. In order to spend all of the money in the fund, or $495,854.73, then the Department would have had to go back to the legislature to raise the spending authority to $495,854.73 to spend the total revenue.
    a. It is difficult to a raise spending authority that has been set.
2. Karin McGowan pointed out that we also bump up against the spending authority with the Processor/End User Fund (all of the funds rollover into this Fund). The Department has struggled to find the balance to ensure that a proper spending authority is set.

v. Rick Welle asked an explanation of spending authority. Why does the Department have a spending authority?
    1. Patrick Hamel explained how the spending authority is set in statute; the legislature sets how much the Department can spend for each waste tire program fund.
    2. Patrick Hamel clarified that the spending authority for each fund amount is set by the legislature each year in the long bill.
        a. Karin McGown explained how the spending authority is set by the legislature.
            i. There is a percentage that goes into each fund. It all cascades from an estimation on how much money will be collected the following year. The legislature sets the spending authority based on this.
                1. If more is collected than what was projected and have already spend what the spending authority was set for the fund, then the Department has to go back to the legislature and ask for a supplemental to raise the spending authority.
            ii. Jim Reid suggested a spending authority just for the entire waste tire program funds as a whole, instead of spending authority for each fund, as this could be manipulated to better serve the state.
                1. Karin responded that this is a discussion this group can have.

2. Patrick Pfaltzgraff also responded that this a recommendation the WTAC could make to the legislature. Ultimately, this decision would be made by the legislature to make this change.

VI. Additional Comments from Committee Members, Staff and Guests

a. Patti Fredrick first asked Jim Reid if she can proceed with her question about how the rules (Processor/End User Reimbursement Rules and Section 10 Waste Tire Rules) that were just adopted will be reheard in front of the Solid and Hazardous Waste Commission.
    i. Patti brought up how during the Commission rulemaking hearing in November 2012 that one of the Solid and Hazardous Waste Commissioners expressed that a redlined rule change would be helpful. Patti asked if this could be provided by the Department.
        1. Jim answered he will pass this on to the Department.
            a. Patrick Hamel answered he will look into this.
    ii. Patti's understanding is that the WTAC decided not to take a position on the new rules. Is this still the position of the WTAC when the rules once again come before the Solid and Hazardous Waste Commission on February 19, 2013?
        1. Jim answered that the WTAC is not taking a position on the new rules. The reason that the WTAC did not take a position was that the WTAC could not come to a consensus.

b. Rick Welle asked where the WTAC was regarding waste tire legislation for this legislative session.
    i. Jim commented that when Tetra Tech gives us the report that may result in the WTAC to look at waste tire rules and legislation. Jim does not want to start something that is in conflict with Tetra Tech recommendations.
        1. Jim did indicate that he would like to have the spending authority changed so there is more flexibility for the use of funds.
            a. Patrick Pfaltzgraff suggested setting this as an agenda item for the next meeting so the WTAC can work on a proposal to send something to the legislature for the current legislative session.
    ii. Rick asked if the Department has a stance or view on what they hope to accomplish this legislative session.
        1. Because Karin McGowan left, Patrick Hamel answered that Karin would probably want to hear from the WTAC, such as a list of what the WTAC would like addressed.
        2. Rick asked if the Department had a list of concerns that they would like addressed.
            a. Patrick indicated not at this time.

c. Patti asked if the Department anticipates that the agriculture beneficial use will go through rulemaking or legislation.

i. Nick Boudreau answered that the intent of the beneficial use of waste tires in agricultural activities stakeholder process is to develop beneficial use guidance for the use of whole waste tires on agricultural lands.
ii. Nick provide a summary of the January 4, 2013 Beneficial Use of Waste Tires in Agricultural Activities Stakeholder meeting.
    1. This was the second stakeholder meeting that was held; the first was held November 16, 2012.
    2. This meeting discussed how the focus would be on whole, not processed, tires use on agricultural land.
        a. What are tires currently being used for on agricultural land?
            i. Base guidance on this and get this use on the pre-approved beneficial use list (per Section 8 regulations).
        b. With stakeholder feedback, have started to develop these lists which will streamline current processes.
iii. Jim asked if it would be beneficial to add this to February's agenda?
    1. Consensus was this should be added to next month's agenda.
iv. Nick indicated that he planned on putting out meeting minutes or a meeting summary for this second stakeholder meeting.
v. Teresa Immel attended this meeting and expressed her thoughts on the meeting. Teresa noted that a wide spectrum of the agricultural industry was represented and that there was a lot of good discussion and ideas.

d. Alan Greer asked for additional clarification on the February Solid and Hazardous Waste Commission where the rules will be reheard.
    i. Patti offered her perspective and explained how prior to the November 20, 2012 Solid and Hazardous Waste Commission meeting she made a request that the Department perform a regulatory analysis. This regulatory analysis was not completed by the Department and Patti raised this issue with the AG's Office and requested that the regulatory analysis be performed. The AG's Office informed the Solid and Hazardous Waste Commission of this, and the Solid and Hazardous Waste Commission agreed on February 19, 2013 to rehear the rules and to consider the regulatory analysis that was performed.

VII. Legal Update

a. Patrick Pfaltzgraff indicated that the legal update was regarding the elections.
    i. There was a majority of votes for regaining Jim Reid as the Chair.
    ii. There was a split in the vote for Vice-Chair (equal number of votes for both candidates running).
        1. The by-laws allow for a procedure to allow a re-vote. The Vice-Chair re-vote can take a number of different shapes depending on what the WTAC decides. This can include:
            a. An immediate re-vote today if WTAC member thinks they will change their vote; or

b. Ballots to be submitted by e-mail for a re-vote.
    i. This is Pat's recommendation as this allows each WTAC member to participate and provide a vote. If each WTAC member votes then there would not be a tie because there are nine members (would not be an even number of votes if everyone votes).

iii. Pat recommended the following:
    1. We certify Jim as the Chair today, as he received a majority of votes
    2. That a re-vote for Vice-Chair take place by e-mail.
        a. Completed ballots would be sent to Shana Baker. Shana would tally the votes and at the next WTAC meeting the vote would be announced in open forum.

iv. Jim put forth a motion to certify himself as the Chair and hold an e-mail vote for Vice-Chair.
    1. WTAC motion to certify Jim as the Chair and hold an e-mail vote for Vice-Chair passed unanimously.
        a. Shana outlined the timeframe for the e-mail vote. Shana will send out an e-mail with the ballot for Vice-Chair. The completed ballot will be due to Shana by February 7.
        b. Pat noted that the results will not be announced until the February 14 meeting.
        c. Pat also noted that we have the ballots if anyone desires to see them. Shana will hold onto the ballots until we get a Vice-Chair certified.

VIII. Setting of the February 14, 2013 Agenda

a. The WTAC set the agenda for the February 14, 2013 meeting.
    i. Items from the January agenda, with updated meeting information dates, will remain.
        1. Agenda items 1 – 4 and 6 – 9 will stay the same.
        2. Agenda item 2 (General Business) will include the Vice-Chairman election results.
        3. Agenda item 3 (Waste Tire Program) will include a Beneficial Use of Waste Tires in Agricultural Activities Stakeholder Briefing.
        4. Agenda item 5 will be a legislative (spending authority) discussion.

IX. Meeting Adjourned

a. Chairman Reid called the meeting to a close.
b. Next meeting is Thursday, February 14, 2013 at 10 am – 12 pm at CDPHE in Room C1E.