

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



INTERIM SUPPLEMENTAL REQUEST FOR FY 2011-12

**DEPARTMENT OF PUBLIC HEALTH AND
ENVIRONMENT**

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

**Prepared By:
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September 20, 2011**

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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**Interim Supplemental Request #1
Waste Tire Processors and End Users**

	Request	Recommendation
<u>FY 2010-11 Total</u>	<u>\$0</u>	<u>\$609,320</u>
Cash Funds - Processors and End Users Fund	0	609,320

	Request	Recommendation
<u>FY 2011-12 Total</u>	<u>\$1,282,494</u>	<u>\$0</u>
Cash Funds - Waste Tire Cleanup Fund	(1,431,527)	(1,431,527)
Cash Funds - Processors and End Users Fund	2,714,021	1,431,527

<p>Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an over expenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the over expenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the over expenditure is to be made.]</p>	YES
<p>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]</p>	In Part
<p>JBC staff and the Department agree that this request meets the interim supplemental criteria of Section 24-75-111, C.R.S., but agree <u>in part</u> on whether the JBC's supplemental criteria have been met.</p>	
<p>The Department states that this request is the result of a technical error and data that was not available when the original appropriation was made. JBC staff believes that a technical error did occur and should be corrected, but <u>does not</u> believe that certain data was unavailable when the original appropriation was made.</p>	

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Department Request: The Department's request contains three components which are discussed below and outlined in the table on the following page.

Detailed Description of each of the request components

1 - Technical Correction to a FY 2011-12 Long Bill letternote

The Department requests a technical corrections to the Waste Tire Program letternote in the FY 11-12 Long Bill. The current letternote mistakenly excludes the Processors and End Users Fund. The increase of \$1.4 million from the Processors and End Users Fund is offset by a decrease of the same amount from the Waste Tire Cleanup Fund. The letternote currently includes an appropriation from the Waste Tire Cleanup Fund that is \$1.4 million to large.

2 - Remove FY 2010-11 over expenditure restriction in FY 2011-12

The Department requests an increase to the FY 2011-12 Long Bill appropriation for the Waste Tire Program of \$609,320 cash funds from the Processors and End Users Fund. This request is due to the restriction placed on the Processors and End Users Fund (Fund) in FY 2011-12 due to the over expenditure of \$609,320 from the Fund in FY 2010-11.

3 - Increase FY 2011-12 Appropriation

The Department requests an increase above the FY 2011-12 appropriation of \$1.4 million from the Processors and End Users Fund (Fund) to provide the Department with the ability to spend all of the fund balance in FY 2011-12. Due to the misinterpretation of statutory language regarding the roll forward versus continuous spending authority of the Fund, there is a significant unspent fund balance in FY 2011-12.

Summary of the Department's Waste Tire Processors and End Users Interim Supplemental Request			
Component	Brief Deception of Requested Change	Cash Fund	Change Amount
1	Technical correction to a FY 2011-12 Long Bill letternote	Waste Tire Clean Up Fund	(\$1,431,527)
		Processors and End Users Fund	\$1,431,527
2	Remove FY 2010-11 over expenditure restriction	Processors and End Users Fund	\$609,320
3	Increase FY 2011-12 appropriation	Processors and End Users Fund	\$1,282,494
<i>Subtotal - Waste Tire Clean Up Fund</i>			<i>(\$1,431,527)</i>
<i>Subtotal - Processors and End Users Fund</i>			<i>\$3,323,341</i>
FY 2011-12 Total Request			\$1,891,814

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Staff Recommendation: Based on the Joint Budget Committee supplemental criteria, **staff recommends the Committee approve an increase of \$609,320 from the Processors and End Users Fund in FY 2010-11 and a net zero increase in FY 2011-12** to make the technical correction to the Waste Tire Program letternote in the FY 2011-12 Long Bill. The recommended increase to the appropriation from the Processors and End Users Fund in FY 2010-11 will occur as an add-on to the Department's FY 2011-12 regular supplemental bill because the adjustment will occur in the appropriation clause in H.B. 10-1018.

Staff does not recommend the Committee approve the increase of \$1,282,494 cash funds from the Processors and End Users Fund in FY 2011-12 based on the strict interpretation of statutory supplemental criteria.

Comparison of Department Request to Staff Recommendations		
	Department Request	Staff Recommendation
1	<u>FY 2011-12</u> Waste Tire Clean Up Fund - (\$1,431,527) Processors and End Users Fund - \$1,431,527	<u>FY 2011-12</u> Waste Tire Clean Up Fund - (\$1,431,527) Processors and End Users Fund - \$1,431,527
2	<u>FY 2011-12</u> Processors and End Users Fund - \$609,320	<u>FY 2010-11</u> Processors and End Users Fund - \$609,320
3	<u>FY 2011-12</u> Processors and End Users \$1,282,494	<u>FY 2011-12</u> Processors and End Users Fund - \$0
Totals	FY 2010-11 - \$0 FY 2011-12 - \$1,891,814	FY 2010-11 - \$609,320 FY 2011-12 - \$0

The rules governing interim supplementals in Section 24-75-111 (5), C.R.S., require the Committee to introduce all interim supplementals that it approves.

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Staff Analysis:

Staff Analysis of Component 1:

Staff recommends the Committee approve the technical correction to include the Processors and End Users Fund in the letternote for the Waste Tire Program. This will provide the Department with the spending authority to reimburse the processors and end users of waste tires for costs incurred in handling and disposing of waste tires in FY 2011-12.

Staff Analysis of Component 2:

The Waste Tire Program underwent significant changes during FY 2010-11 due to the passage H.B. 10-1018 (Reduce Waste Tire Stockpile Risks (Looper and Primavera/Gibbs)). House Bill 10-1018 made major structural changes to the Waste Tire Program, including consolidating the entire program within the Department of Public Health and Environment, creating three new cash funds and redistributing the waste tire fee among nine different waste tire cash funds. Four times during FY 2010-11 (April, May, June, and July) the Department of Public Health and Environment (CDPHE) submitted requests to the Controller to increase spending authority from the Processors and End Users Fund, operating under the impression that the Fund was continuously appropriated pursuant to Section 25-17-202.5 (1), C.R.S. Despite approval by the Controller's Office of the April, May, and June requested increases, the Fund is not continuously appropriated. After identifying the error in approving the increased spending authority requests in July, the Controller placed a restriction on the FY 2011-12 appropriation in an amount equal to the total FY 2010-11 over expenditure amount.

Since the \$609,320 overspent in FY 2010-11 has already been paid out to waste tire processors and end users, staff is recommending a FY 2010-11 supplemental add-on to increase the FY 2010-11 appropriation from the Fund by \$609,320. This will lift the restriction in FY 2011-12 on the Fund and enable the Long Bill to accurately reflect the expenditures from the Fund in FY 2010-11.

Staff Analysis Component 3:

The supplemental criteria identified by the Department for this component of the request was new data that resulted in substantial changes in funding needs. The statutory language cited by the Department concerning the spending authority of the Processors and End Users Fund (25-17-202.5 (1), C.R.S.) clearly states, "Any moneys in the fund not expended or encumbered from any appropriation at the end of any fiscal year shall remain available, without further appropriation, for expenditure in the next fiscal year by the department." This language was not amended by H.B. 10-1018, and provides the department with roll forward spending authority only for moneys unspent in one fiscal year to the next fiscal year.

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Since the language was not amended by H.B. 10-1018 and therefore was known to the Department prior to the start of the FY 2011-12 figure setting process, this does not meet the new data supplemental criteria.

Staff will note that if the increased spending authority is not granted to the Department, the waste tire processors and end users are the stakeholders that will be directly impacted. Since the Waste Tire Advisory Committee considers the Processor and End Users fund balance as a basis for determining the reimbursement amounts paid to processors and end users, it is likely if this increase is not approved the amount of reimbursements issued to processors and end users will be lower than they would be if the Department had the spending authority.

Additionally the requested increase in appropriation represents funds available in the Processors and End Users Fund and will not result in an increase in the fee paid by a consumer when purchasing new tires. If the JBC decides to approve the requested increase of \$1.2 million, the funds will be used for the intended purpose of reimbursing processors and end users for a portion of the costs incurred in handling waste tires.

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	FY 2010-11 Appropriation	FY 2011-12 Appropriation	Fiscal Year 2011-12 Interim Supplemental		
			Requested Change	Recommended Change	New Total with Recommendation
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT					
Executive Director - Christopher E. Urbina					
Interim Supplemental #1 - Waste Tire Processors and End Users					
<i>(1) Administration and Support</i>					
<i>(D) Special Environmental Programs</i>					
Waste Tire Program	N/A	3,366,509	1,891,814	0	3,366,509
FTE	N/A	<u>1.0</u>	<u>0.0</u>	<u>0.0</u>	<u>1.0</u>
Cash Fund - Waste Tire Cleanup Fund		3,051,696	(1,431,527)	(1,431,527)	1,620,169
Cash Fund - Waste Tire Market Development Fund		314,813	0	0	314,813
Cash Fund - Processors and End Users Fund		0	3,323,341	1,431,527	1,431,527
Total for Supplemental #1 - Cash Funds*	N/A	3,366,509	1,891,814	0	3,366,509

*Note: Since The Waste Tire Program line item was created by H.B. 10-1018, the staff recommended increase of \$609,320 to the FY 2010-11 appropriation will occur as an add-on to the regular supplement because the appropriation for the Waste Tire Program was in the appropriation clause for H.B. 10-1018 not the FY 2010-11 Long Bill.

Totals					
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT					
TOTALS for ALL Departmental line items	442,175,066	442,334,867	1,891,814	0	442,334,867
FTE	<u>1,227.7</u>	<u>1,050.0</u>	<u>0.0</u>	<u>0.0</u>	<u>1,050.0</u>
General Fund	27,460,904	27,478,228	0	0	27,478,228
Cash Funds	131,914,492	121,579,430	1,891,814	0	121,579,430
Reappropriated Funds	26,696,827	26,207,571	0	0	26,207,571
Federal Funds	256,102,843	267,069,638	0	0	267,069,638

Key: "N.A. = Not Applicable