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FAX TRANSMITTAL FORM

DATE: May 25, 1995

TO: CARLOS RIVERO-DEAGUILAR
FIRM: DEPARTMENT OF ENVIRONMENTAL PROTECTION
CITY, STATE: WEST PALM BEACH FL 33401
FAX #: (407) 433-2666
PHONE #: (407) 433-2650, EXT. 228

FROM: JAMES BRINDELL

PHONE #: (407) 650-0511

ORIGINAL FOLLOWS: NO

NO. OF PAGES TRANSMITTED (INCLUDING THIS COVER PAGE) 11

NOTE: PLEASE CALL IMMEDIATELY IF ALL PAGES ARE NOT RECEIVED: (407) 650-0511

Message:

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CLIENT/MATTER#:



Florida Tire Recycling, Inc.

May 25, 1995

Mr. Carlos Rivero-deAgullar
Director of District Management
Department of Environmental Protection
1900 South Congress Avenue
West Palm Beach, FL 33406

Dear Sir,

We have reviewed the Penalty Computation Worksheet presented in our meeting this past Monday, May 15, 1995 and comment as follows.

Item One on the Penalty Computation Worksheet states, "Exceeding waste pile dimensions, no fire lanes and storage requirement." Prior to February 28, 1994 (when the revised Waste Tire Rule was published), a "waste tire" was defined as "a whole tire that is no longer suitable for its original intended purpose because of wear, damage or defect." [See Para.41(1)(d) of the Waste Management Act.] Processed tires were not encompassed within the definition of material stored at a waste tire site as defined in Para.403.717(1)(e), Fla.Stat (1989) because processed tires were waste tires which had been cut or shredded or otherwise altered so that they were no longer whole tires. [See definition at Rule 17-711.200(5), F.A.C. (1989).] Thus the regulatory requirements for waste tire pile dimensions and for fire lanes between the piles of waste tires pertained only to inventories of whole tires and not to inventories of processed tires. Thus the proposed penalty is not supported by the regulations in effect at the time.

Observed
2-2-90
4-10-92
@ 9,000 x 2
= \$18,000

At the outset, whole waste tires were not stored in conformance with DEP regulations. However this was remediated as evidenced by the attached letter from the St. Lucie County-Port Pierce Fire District dated June 24, 1992. While a major fine might be imposed for this infraction, the condition was corrected and no multiplier should be applied.

Item Number Two states "No permit modification to maintain a waste tire site or increase storage." As noted above, no permit modification was required to provide for the storage of processed tires. Consequently, no fine can be imposed for this item.

To the extent that DEP claimed FTR exceeded its permit to store whole waste tires, we note as follows. Chapter 17-711.530(2).

Providing An Environmental Solution

9675 Range Line Road • Port St. Lucie, Florida 34987 • (407) 465-0477 • FAX (407) 489-2124

F.A.C. (1989) provided that a waste tire processing permit holder be permitted to store whole tires equal to 30 times the daily through-put of the processing equipment being used. The daily through-put of FTR's processing equipment allowed 4,500 tons of whole tire storage. Inasmuch as FTR never stored in excess of 4,500 tons of whole tires, no penalty can be applied.

Negotiations regarding the status of FTR's processing site had been the subject of extensive discussions between DEP and FTR. FTR had met with DEP several times in 1992 and as a result of those meetings FTR had decided that a consent order was the most expeditious course of action. FTR had negotiated the terms of a consent order with DEP in those meetings and in December, 1992 DEP committed to draft such an agreement. Assuming a consent order was in development, and acting in good faith, FTR undertook certain compliance actions on its own as the attached letter from the fire marshall attests.

However, instead of drafting the negotiated consent order, DEP embarked on a different course of action. In the 1993 legislative session, DEP sponsored legislation intended to alter the definition of "waste tire" in the Section 403.717, Florida Statutes, in such a way as to give itself the jurisdiction over processed materials that it lacked in the past. Once it succeeded in obtaining these changes, the Department immediately, and without warning or reasonable opportunity to adjust or adapt, filed a civil complaint with the Circuit Court on August 18, 1993, a full six months before publication of the rules to support these legislative provisions. These events evidence DEP's overly aggressive handling of this matter, which is further documented by the magnitude of the penalties now sought.

Last year the Department waived a \$2.54 million fine levied against Escambia County. According to the record, this action was taken because the county was doing its best to be proactive and make the required improvements. FTR acted in good faith from the outset, agreeing to enter into a compliance agreement and doing the initial work that would be required under such an agreement. Moreover, when the Stipulation Agreement was entered into, FTR again exhibited good faith by aggressively coming into compliance with the numerous terms of that agreement even though several exceeded the scope of the stated regulations. That effort cost FTR approximately \$900,000 in 1994 in the form of out-of-pocket expenses, capital purchases and lost revenue as can be seen by the attached summary report. Recognition of this investment would certainly be consistent with the DEP policy of allowing some or all of a civil penalty to be invested in pollution control improvements at a waste facility.

On the other hand, the penalties DEP has levied against at least one other waste tire processor has been considerably less even though significant violations have occurred. National Tire Recycling has been described as "a significant environmental and

public health hazard." by DEP's waste tire consultant. A copy of his report is attached. Among the points mentioned are:

1. National Tire, operational since 1988, has never had a permit to operate a waste tire processing facility.
2. Virtually all material on site is in the form of unprocessed whole tires. The estimated volume is large enough to be categorized as a major violation.
3. The fire lanes are inadequate.
4. The piles encroach on the property line.
5. The site lacks perimeter fencing.
6. The whole tire piles exceed permissible dimensions.
7. National Tire has agreed to several stipulation agreements in the past but has made no effort to comply.

Despite this record, National Tire's proposed fine is \$11,800 including \$500 of costs and expenses. And it has been reported that DEP recently agreed to extend the deadline for the stipulation agreement disregarding the fact National Tire has still done nothing to bring itself into compliance. Needless to say, FTR has great difficulty trying to reconcile its treatment by DEP with that afforded to National Tire.

As for items three through eight on the Penalty Computation Worksheet, FTR has firm footing to oppose a number of these. However, given the small dollar amounts of these fines, we are willing to dispense with further comment and allow the matrix amounts to stand.

Based on the preceding comments, we propose that the penalty determination read as follows:

	Matrix Amount	Multi- Day	Total
1. Exceeding waste pile dimensions for whole waste tires.	\$9,000	(1)	\$9,000
2. Existing regulations did not pertain to processed waste tires			-0-
3. Modified MSSW	900	1	900
4. Late yearly reports	400	1	400
5. Lack of Yearly fin. est.	400	1	400
6. Inadequate fin. resp.	400	(4)	400

4-10-92
2-2-90

2 = 18,000

3 reports 1,200
2 years 800
90, 91
1,600

7. No decal	400	1	400
8. Failure to recycle 75%	400	1	<u>400</u>
Total			\$11,900

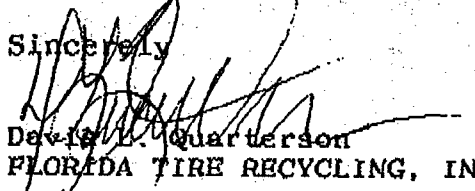
As for the Costs and Expenses, we contend that these expenditures were unnecessary and/or inappropriate inasmuch as they were incurred primarily for litigation initiated by DEP at a time when FTR had agreed to the terms of a consent order which DEP was to have been preparing. Consequently, we do not feel it realistic for FTR to absorb any portion of these Costs and Expenses.

Therefore, the total penalty for which we believe FTR should be obligated is \$11,900. This is consistent with the penalty levied against National Tire Recycling. It also reflects the considerable investment FTR has made and has yet to make in the processing facility. This payment will be made with the following provisions:

1. This will be the limit of all fines and expenses paid by FTR and that DEP will impose no additional penalties or claims of any kind for prior acts.
2. One half of the sum will be paid on January 1, 1996 and the second half on July 1, 1996.
3. The agreement to pay the penalties and costs be part of the overall closure agreement between FTR and DEP.

To close, we look forward to a final resolution of this matter.

Sincerely,


David L. Quarterston
FLORIDA TIRE RECYCLING, INC.

DLQ:ms
Att.

①	18,000	⑧ 400
②	-	
③	900	
④	1,200	
⑤	800	
⑥	1,600	
⑦	400	
		<u>Total \$ 23,300</u>

BUSINESS OFFICES
(407) 467-3300
FIRE PREVENTION
(407) 467-2312

Mailing Address
P.O. Box 3030
Ft. Pierce, Fla. 34948-3030

ST. LUCIE COUNTY - FORT PIERCE

Fire District

2400 RHODE ISLAND AVENUE
FORT PIERCE, FLORIDA

June 24, 1992

Mrs. Carol Meeds
Florida Department of Environmental Regulations
Southeast District
1900 South Congress Avenue
Suite A
West Palm Beach, FL 33406

RE: Florida Tire Recycling, Inc.

Dear Mrs. Meeds:

Upon receiving a copy of DER's warning letter of April 10, 1992 sent to Florida Tire Recycling, I have been in contact with Mr. Wilson and Mr. Robinson at least once a month at their facility to monitor the progress they are making in restacking their tires.

At this time the piles of tires to be processed are being stacked 100' long x 100' wide and 7-10' in height. There will be a fire lane between piles of at least 100'. The shredded piles will be allowed to be 250' long x 250' wide and 20' high, also with a 100' fire lane between piles, provided these dimensions meet with DER regulations. All roadways and fire lanes shall have an all weather driving surface. There are two 12,500 gallon water tanks on-site to be used for fire protection. These are connected together and supplied by a 2" well with a float to maintain full water. Mr. Wilson is in the process of purchasing additional tanks which will be hooked up at a later date.

I feel Mr. Wilson and his staff are working very diligently with the Fire Marshal's Office to improve the safety conditions of his business, not only for himself but for the entire community.

If I can be of further assistance, please contact my office.

Sincerely,

ST. LUCIE COUNTY-FT. PIERCE
FIRE PREVENTION BUREAU

Captain Robert K. Tomlinson
Assistant Fire Marshal

Capt Robert K. Tomlinson
cc: J. Wilson
Files

FLORIDA TIRE RECYCLING INC
DECONTAMINATION RELATED EXP
OPERATING EXPENSES

	1993	1994 YTD
COMPLIANCE EXPENSE		97060
ADMIN LABOR		33466
CLEANUP LABOR		51429
DISP. SHRED LABOR		1880
EQUIP OPERATORS		20468
PAYROLL TAX		10346
WORKERS COMP INS		5632
FUEL		13244
MAINTENANCE		41334
SITE SECURITY		3890
LANDFILL FEE		93058
SHRED TRANSPORT		122435
EQUIP RENTAL		35844
TOTAL OP COST	213750	840086
CAPITAL EXPENSES		
TWO FIRE TRUCKS		20000
TWO EUCLID END DUMPS		30000
TWO FRONT END LOADERS		50000
LIGHTING SYSTEM		3500
TOTAL CAPITAL EXPENSES		103500
LOST OPERATING PROFIT		
JANUARY		165654
FEBRUARY		150381
MARCH		164197
APRIL		151837
MAY		138292
JUNE	220361	136674
JULY	194457	146360
AUGUST	177154	
SEPTEMBER	165563	
OCTOBER	164088	
NOVEMBER	163836	
DECEMBER	162858	
	1248317	1053395
REVENUE DECREASE 7 MO 1994 VS		194922
GROSS OPERATING MARGIN		0.5
LOST OPERATING PROFIT		94461

OPERATING PROFIT

AUG10'9

June 28, 1994

D.E.P.

JUL 07 1994

SOUTHWEST DISTRICT
TAMPA

Mr. Bill Parker
Florida Department of Environmental Protection
2600 Blairstone Road
Tallahassee, FL 32399

RE: NATIONAL TIRE RECYCLING SITE EXAMINATION ON APRIL 28, 1994

Dear Bill,

At your request, an examination of National Tire Recycling's site in Mulberry was conducted with Mr. Bernie Puttersnit on April 28, 1994. The objective was to define stockpiled waste tire quantities and conformance with FDEP storage requirements in support of the Tampa District FDEP Office. This review was conducted as a task assignment under our contract with FDEP. The following comments briefly summarize significant observations.

WASTE TIRE QUANTITY ESTIMATE

National's historical reports and letters indicate an estimated on-site inventory of approximately 3,000 tons of waste tires and processing waste. However, an analysis of pile sizes and characteristics conducted by Tom LeDew (FDEP, Tallahassee) in mid-July, 1993 indicated that their on-site quantity was approximately 563,500 passenger tire equivalents (PTE) representing 5,635 tons.

Due to this difference in quantity and its potential impact on National's implementation of its site abatement agreement with FDEP, stockpile quantities were reassessed as part of this visit. Quantities were estimated by measuring pile dimensions to define volumes, followed by application of densities (expressed in passenger tire equivalents representing 20 pounds each) based on tire size and pile characteristics. In some cases, actual tire counts were obtained to further enhance accuracy. This technique has proven to be accurate on other waste tire sites analyzed within the State. Exhibit 1 provides a rough schematic representation of site conditions as of this visit for reference purposes.

Based on this methodology, the site contained an estimated 598,709 PTE, or 5,987 tons, as of April 28, 1994. Pile dimensions and calculations are summarized in Exhibit 2. The numbering sequence in Exhibit 2 corresponds with pile numbers in the site schematic. Although it is difficult to directly compare the quantity estimates performed in July, 1993 by Tom LeDew with this current estimate due to site changes, it is clear that: (1) the site still represents the fourth highest priority waste tire site in Florida based on DEP's 1994 prioritization list and (2) the on-site quantity has not significantly decreased (and may have actually increased by up to 35,000 PTE) in the 9 -10 month interim period.

INVENTORY CHARACTERISTICS

Exhibit 3 provides a summary of estimated on-site quantities according to type of material contained in the storage piles. National indicated that there is virtually no market for the duplex and off-road tires, so they must be disposed of in landfills willing to accept these tires. Most of the stored sidewalls have already been punched to remove usable rubber, so the remaining skeletons have no residual value. Less than 30% of the truck and passenger tires reportedly represent saleable casings, but the remainder are awaiting shredding and disposal. The shred inventory near the shredder is pending shipment to a landfill for disposal or to Georgia Pacific for use as a fuel supplement. As a result, approximately 80 - 90% of the existing inventory has no value and simply represents deferral of proper disposal.

REGULATORY CONFORMANCE

Although National Tire Recycling appears to have devoted some effort to reconfiguring on-site storage, the site still does not conform with FDEP rules governing waste tire storage based on the following observations:

- (1) Perimeter Property Separation - Many of the piles are located within 50 feet of their property boundary.
- (2) Internal Fire Lanes - Piles are not separated from each other by at least 50 feet as required, including piles that have apparently been recently reconfigured.
- (3) Pile Dimensions - FDEP rules limit pile dimensions to a maximum of 200 feet long by 50 feet wide. Many of the piles exceed the 50-foot width limitation.
- (4) Perimeter Fencing - Portions of the site are not fenced to control intruders.

In its current configuration, the site continues to represent a significant environmental and public health hazard. It must be promptly brought into compliance. National has reportedly been making an effort to do so. However, if National was serious about showing good faith in achieving storage compliance, they should have been able to achieve this objective within the interim 9 month period. In addition, it does not appear that storage quantities have actually been reduced in accordance with their agreement with FDEP, raising additional questions about their receipt/shipment reporting. Failure to achieve interim site stabilization and storage quantity reductions raises serious questions about their

National Site - Mulberry
Final 6/28/94

desire and/or ability to operate a viable long-term facility deserving of a permit.

FDEP should not allow processors to operate in an accumulation mode. Continued accumulation allows a processor to obtain a competitive advantage versus legitimate operators by avoiding proper disposal costs, and the accumulated inventory often becomes a future public liability. Inventory levels must be reduced within a reasonable period of time (negotiable but preferably not exceeding 12-18 months) to achieve conformance with storage regulations based on historical processing rates. If National continues to fail to implement agreed upon plans, then FDEP appears to be well justified in denying their permit and initiating legal actions promptly to prevent the site from becoming a greater public liability.

We welcome the opportunity to discuss the above comments with you and participate in future discussions with National if so requested.

Sincerely yours,



Terry A. Gray
President

cc: Bob Butera, Kim Ford, Steve Morgan - FDEP, Tampa
Jan Clark, Francis Keith, Bernie Puttersnit - DEP, Tallahassee

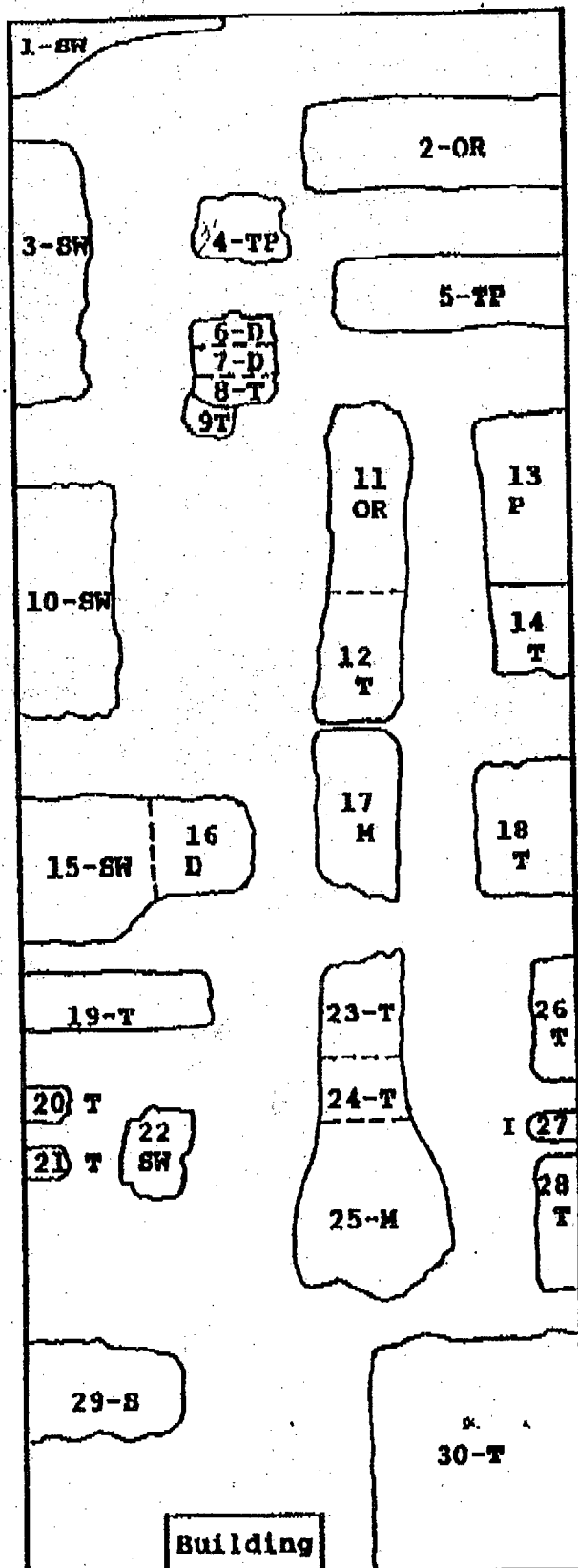


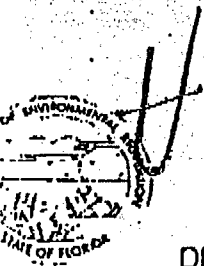
EXHIBIT 1

NATIONAL TIRE RECYCLING SITE SCHEMATIC (as of April 28, 1994)

SYMBOLS

- D = Duplex
- I = Inner Tubes
- M = Mixed
- OR = Off Road
- P = Passenger
- S = Shreds
- SW = Sidewalls
- T = Truck
- TP = Truck/Pass

Approximate Scale:
1 inch = 100 feet



State of Florida
DEPARTMENT OF ENVIRONMENTAL REGULATION

For Routing To Other Than The Addressee	
To: _____	Location: _____
To: _____	Location: _____
To: _____	Location: _____
From: _____	Date: _____

Interoffice Memorandum

ENFORCEMENT/COMPLIANCE COVER MEMO

TO: RICK GARRITY, DDM
 ✓ WILLIAM KUTASH, ENV. ADM.
 OGC, ATTN: _____

FROM/THROUGH:

Bill Kutash _____, DIVISION ADMINISTRATOR
Bob Butera _____, PROGRAM SUPERVISOR
Steve Morgan _____, SECTION SUPERVISOR
Stephanie Hansen _____, ENG (ENV SPEC) GEOLOGIST

DATE: 5/18/94

FILE NAME: National Tire/Viking CASE #: 94-0838
PROGRAM: SW COUNTY: Polk

TYPE OF DOCUMENT:

WARNING LETTER _____ FINAL ORDER _____ CASE REPORT _____
DRAFT ✓ OR FINAL _____ NOV _____ CONSENT ORDER ✓
PENALTY AUTHORIZATION _____ OTHER _____

BRIEF DESCRIPTION OF VIOLATION:

WTFE w/out permit - cleaning up & closing
facility

SUMMARY OF CORRECTIVE ACTIONS:

Steve: Do we want costs & expenses? If not, which SW? OK?

PENALTY SUMMARY:

EXTENT OF DEVIATION _____ POTENTIAL FOR HARM _____
MODIFIERS: _____

PENALTY AMOUNT: \$11,300 COST AND EXPENSES: \$500

TOTAL PENALTY AMOUNT: \$11,800 APPROVED BY SECRETARY: _____