



Florida Tire Recycling, Inc.

Joe
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Joe
Any thoughts?
MEX

(VIA FACSIMILE TRANSMISSION 407-433-2666 AND US MAIL)

April 8, 1994

J. C. Wilcox, Environmental Specialist
SOUTHEAST DISTRICT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
1900 South Congress Avenue, Suite A
West Palm Beach, FL 33416

3-1-94
DA

RE: DREDGE AND FILL VIOLATIONS

Dear Mr. Wilcox,

At your direction and following an exchange of correspondence with Ms. Hedgepeth, Program Administrator, I am writing to provide information to address your allegation that FLORIDA TIRE RECYCLING, INC. (FTR) dredged and filled without a permit. It is my understanding that this written response is part of the administrative process begun at the meeting held at FDEP's office on March 24, 1994 to solve the penalty issue.

In addition to alleged violations it is my understanding that the Department believes FTR has operated in "bad faith"; as a result the Department has doubled the penalty in several areas.

It is FTR's response that the allegation of violation is inaccurate. Moreover, the Company is not guilty of "bad faith". On the contrary, in an effort to anticipate the prescriptions of the draft Stipulation handed to FTR by FDEP on November 5, 1993 (see attached "Chronology"), FTR took immediate action which it believed would best position the Company to comply.

Specifically, and as the attached "Chronology" demonstrates, FTR retained the services of an outside contractor in order to begin developing the access road around the south and west portions of the property. As part of the road building procedure, and in order to maintain the adjacent swale which had filled over time, and in accordance with accepted road building practices, the contractor scooped dirt from the swale and added it to fill brought in from outside to construct the base of said road. At no time did the

MTL
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PROPER CONVERSION.

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THIS DITCH WAS DISCHARGING THE
MORNING OF TERRY'S SAMPLING
EVENT. JVC, DO WE HAVE VIDEO OR
PHOTO SHOWING

Company attempt to connect the swale cleaning process to the waters of the State. In fact, as your own pictures are said to indicate, there was an earthen plug left in place at the juncture between this cleaned swale and the County swale. DISCHARGE?

The event which caused the plug to be breached results from improper and inadequate maintenance at the County's Range Line Road swale. Periodically and as a result of this improper maintenance at the Range Line Road County swale, water "backs up" onto FTR's property and causes flooding. In fact, FTR has pictures of this circumstance and hopes to provide these in a subsequent meeting to demonstrate the likelihood of the events described above.

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In short, during the course of road building, the earthen plug which had been left to separate the newly cleaned swale on FTR's property from the County swale on Range Line Road was breached when water from the County swale topped this plug and then drained back into the County swale as the water level there receded. Later, when it was noticed that water was now running off FTR's property through this newly opened area, FTR immediately restored the integrity of the plug to prevent further drainage at this point.

Moreover, the FDEP should reduce its determination of "potential for harm" from the major category because:

A. The system (regardless of how or why it failed) did not undergo complete failure; only the very top of the plug eroded away, and the majority of the water remained within the ditch and contained behind the substantial amount of remaining plug. Perhaps, the top six inches of ditch water was all that escaped into the swale. THIS DOES NOT CONSTITUTE A COMPLETE SYSTEM FAILURE!

B. Heavy siltation in waters of the State did not occur as a result of the blown plug. Only minor siltation occurred, and it was impossible to identify that siltation from the background siltation concurrently flowing in the swale during flooding conditions.

C. FTR had installed the plug as an erosion/sedimentation control, and it functioned well until high water in the swale pushed it out into the ditch. Additionally, the siltation resulting from the blown plug was not extensive. In fact, the siltation was minor when compared with other siltation violations which FDEP has pursued in other circumstances in the recent past.

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D. The blown plug malfunction resulted in infrequent releases, not frequent releases of inadequately treated storm water. Only the plug failed; this is a small portion of the ditch system and no where near the complete system.

Since the visual information we have to document this presentation requires some narrative interpretation, a situation which has been discussed at length with Ms. Hedgepeth, we look forward to a second meeting with the Department to review this information and to bring the penalty issue to closure.

Thank you for your attention in this matter.

Sincerely,


Skip Robinson
FLORIDA TIRE RECYCLING, INC.

cc: James R. Brindell, Esquire
David Nickerson, C & N ENVIRONMENTAL

encl

CHRONOLOGY OF EVENTS
LEADING UP TO ROAD BUILDING AT SOUTHERN MARGIN OF PROPERTY

NOVEMBER 5, 1993: During a meeting in Tallahassee (the 2nd meeting with the Secretary staff - Virginia Wetherell was absent) Janet Bowman presented a draft of a Stipulation which highlighted the following issues: (1) drainage; (2) access and perimeter road. At that time Mary Williams emphasized the priorities to stabilize and begin the abatement process immediately.

It should be noted that Item 11 in the Stipulation specifically states that FTR "shall apply for a water source permit pursuant to 17-312 FAC from the Department if any of the road construction, existing or planned whole or processed tire storage is to take place or occurred within jurisdictional wetlands." Item 12 calls for FTR to "construct a 24' perimeter roadway around the site and a central access road way".

Taking these two requirements together, and as will be shown later, FTR determined that it should commence this road construction as soon as possible in order to meet the time line contemplated and to provide evidence of its good faith effort to comply.

Further, it should be noted that FTR believed and continues to believe that the southern road which it was to improve and which lies on the boundary of its property does not involve any jurisdictional wetlands until and unless the swale adjacent to the northern edge of the road is connected to waters of the State.

NOVEMBER 7, 1994: A telephone conversation with Captain Fred Vaughn regarding the training of a fire battalion as called for in the proposed Stipulation.

NOVEMBER 8, 1993: On this date the South Florida Water Management District notified FTR of the need to apply for a Solid Waste Surface Waste Management Permit because "the total combined contiguous property acreage (32+) exceeds the 10 acres exemption allowance."

NOVEMBER 9, 1993: A telephone conversation with Doug at AA FIRE regarding the purchase of foam and equipment to outfit the fire trucks called for in the proposed Stipulation.

NOVEMBER 9, 1993: A telephone conversation with Billy Chapman at ATLAS FENCE regarding the pricing, lead time and availability of a fence along Range Line Road as called for in the proposed Stipulation.

NOVEMBER 9, 1993: A second telephone conversation with Captain Vaughn regarding fire training.

NOVEMBER 10, 1993: FTR held a meeting with Joe Friscia, Engineer, to review the requirements of the proposed Stipulation. At that meeting it was determined: (1) that the South road could be created on top of the current south berm/road which divides the property from the adjacent land owner - the road would continue to serve as the berm; (2) that a retention pond of approximately 12' in depth and 2 acres could be created to provide adequate water for fire fighting; (3) an estimate for engineering services was reviewed and it was decided to retain Mr. Friscia to apply for the Surface Water Management and Wetlands Permit.

NOVEMBER 15, 1993: FTR met with David Nickerson of C&N ENVIRONMENTAL CONSULTANTS. Mr. Nickerson walked the site and determined that there was very little jurisdictional wetlands (two small pockets) present and that it was not of high quality. FTR agreed to retain Mr. Nickerson to assist with the preparation of the necessary permits.

NOVEMBER 16, 1993: A telephone conversation with Mike McEwen regarding drilling wells in order to achieve the gallonage required in the proposed Stipulation - an alternate to a pond.

DECEMBER 7/8, 1993: FTR retained the services of an outside contractor who worked for 7-10 days to: (1) begin building a roadway along the south and west margins of the property; (2) perform maintenance work in the swale area located adjacent to this road; (3) then, to grade that swale area with a gentle slope on the north side of the road and in place of the current swale which had filled since the topographical survey of 1987 and which now required maintenance. At no time was it FTR's intention to connect this area to State waters.

During the course of road building the earthen plug which had been left to separate the newly cleaned swale on FTR's property from the County swale on Range Line Road was breached when water from the County swale topped this plug. Later, when it was noticed that water was now running off FTR's property (as it does after heavy rains flood the County swale and it backs up onto FTR's property) through this open area, FTR immediately restored the integrity of the plug to prevent further drainage through this area.

DECEMBER 13, 1993: During a telephone conversation with Joe Kahn FTR explained to Mr. Kahn that it was building a road at the southern margin of its property and cleaning its swale. It was not dredging or filling. This response to Mr. Kahn's representation that Janet Bowman believed that FTR dredged and filled without a permit.