

IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL
CIRCUIT IN AND FOR
ST. LUCIE COUNTY, FLORIDA

CASE NO. 93-895 CA

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

FLORIDA TIRE RECYCLING INC.,

Defendant.

STIPULATION AND CONSENT FOR INJUNCTION

Plaintiff, State of Florida, Department of Environmental Protection ("DEP" or "Department") and Defendant, Florida Tire Recycling Inc. ("Florida Tire"), hereby enter the following stipulation and request the Court to enter an order adopting the terms of this stipulation and state:

1. DEP is the regulatory agency of the State of Florida, created by Chapter 93-213, Laws of Florida, charged with the duty to enforce Chapter 403, F.S., and the regulations adopted thereunder.

2. Florida Tire is a Florida Corporation and is a person within the meaning of Sections 403.031(5) and 403.703(4), F.S.

3. Florida Tire is the owner of a total of 32.83 acres of property located at 9675 Range Line Road, Port St. Lucie, Florida, located in Section 1, Township 37 South, Range 38 East. The

property consists of two adjacent parcels; the first is an 8.4369 acre parcel deeded to Trinity Holding Co., Inc. (merged into Florida Tire, Inc.) and the second is a 24.34 acre parcel deeded to Florida Tire, Inc.

4. On August 28, 1989, the Department issued to Mr. John J. Wilson, Secretary/Treasurer of Florida Tire Recycling, Inc., Permit WT 56-165345 ("Permit") to operate a Waste Tire Processing Facility pursuant to Section 403.087, and 403.707, Florida Statutes. The permit expires on August 28, 1994.

5. The Permit authorizes a waste tire processing facility.

6. Pursuant to Chapter 93-207, Section 26, and for purposes of this settlement agreement, "Waste tire" includes, but is not limited to, used tires and processed tires; and "Processed tire" means a tire that has been treated mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal.

7. At present, an amount of whole and processed tires are stored on both the 8.4369 acre parcel and the 24.34 acre parcel in alleged violation of certain of the storage limitations and fire safety requirements of Rule 17-711, Florida Administrative Code.

8. A volume of shredded tires is piled at the North end of the 24.34 acre parcel adjacent to an electric transmission line and encroaching on a portion of a Florida Power & Light transmission line easement.

9. DEP alleges that the volume of tires and a lack of fire lanes and access roads traversable by fire equipment creates an

imminent hazard requiring immediate abatement. Florida Tire denies these allegations. Florida Tire does not object to the entry of an injunction adopting the terms of this Stipulation, subject to the reservation of rights in Paragraphs 16 and 17, below.

10. In order to satisfy the requirements of Chapter 17-711, Florida Administrative Code and to address the alleged hazard, Florida Tire Recycling, Inc. agrees to perform the following:

- A. Within 30 days of the entry of an order adopting this stipulation ("Stipulation Order"), Florida Tire shall apply to DEP for a Management and Storage of Surface Water ("MSSW") permit pursuant to Chapters 17-330, 40E-4 and 40E-40, F.A.C., to address drainage issues and to ensure that stormwater or floodwaters are diverted away from the storage piles at the site. The permit shall address both the 8 and 24 acre parcels owned by Florida Tire and shall include the specifications for road construction required by this stipulation. In addition, within 30 days of entry of the Stipulation Order, Florida Tire shall apply for a water resource permit, pursuant to 17-312, F.A.C., from the Department if any of the road construction, or existing or planned whole or processed tire storage is to take place or has occurred within jurisdictional wetlands. Within 10 days of the entry of the Stipulation Order Florida Tire and DEP shall meet in a pre-application conference to discuss possible wetland areas at the Florida Tire site and Florida Tire's proposed tire material reconfiguration plan and surface water management system. DEP shall review the permit application required by this provision for completeness within 15 days after
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filing of the application by Florida Tire. Within 10 days of receipt from DEP of any request for additional information, Florida Tire shall submit its response to DEP. Thereafter DEP shall process the application in accordance with the applicable time frames set forth in Chapter 120, Florida Statutes and Department Rules. DEP shall use its best efforts to process the application as expeditiously as possible.

6 B. Within 30 days of the entry of the Stipulation Order, Florida Tire shall commence design and construction of a 24' wide perimeter roadway around the site and a central access roadway in an east-west direction approximately dividing the site. Nothing in this paragraph shall be construed to authorize dredging and filling at the Florida Tire site without a permit. Roadway design and construction shall conform to a limerock bearing ratio of at least 40 as determined by an independent testing laboratory

JF 2 acceptable to DEP which will support the axle weights, undercarriage characteristics, and turning radius of the fire-fighting vehicles used by the St. Lucie County - Ft. Pierce Fire District. Such design shall be certified by a Professional Engineer registered in the State of Florida. A record drawing from and sealed by the engineer that the portions of the roadway system

7 existing on the date of the entry of the Stipulation Order are built to the specifications in this provision and a design, sealed by the engineer, showing that the additional portions of the roadway system will be constructed to meet the specifications of

this provision, shall be submitted to DEP within 30 days of the entry of the Stipulation Order.

FIRE PROTECTION MEASURES

⑧ C. Within 30 days of entry of the Stipulation Order, Florida Tire shall implement the fire control measures required by subsections C.1., 2., 5., 6., 7., and 8. The onsite water system required by subsections C.3 and 4 shall commence implementation within 15 days of receipt of all necessary permits and shall proceed to completion within 90 days of receipt of all necessary permits.

⑧ 1. Minimize probability of ignition.

- (a) The tire and waste tire storage area must become a no smoking area.
- (b) All flammable and combustible liquids must be segregated and stored in appropriate containers and configurations.
- (c) Spark arresters must be placed on all internal combustion equipment.
- (d) Cutting (other than shredding or chopping of tires), welding, heating devices, and open fires must be prohibited in the tire and waste tire storage area.

⑨ 2. Site Security.

- (a) Security shall be provided each day from the close of business to the opening of business by personnel holding a Class "D" license pursuant to Section 493.6301, et seq. The mission of these personnel is to regularly survey the site for fire, intrusion, or unsafe practices and to report such incidents to Florida Tire and DEP.
- (b) Installation of a control gate at the southern access road.

- (c) Installation of perimeter lighting along the Range Line Road boundary of the Florida Tire site and which maintains a minimum light value of 5 foot candles at any given point along the perimeter using either halogen or fluorescent lighting.
- (d) An enclosed operations area shall be provided for the security personnel. Fixed and portable telephones shall be provided for the security personnel.

⑨ 3. Site fire protection systems must be installed. A method to integrate fire department motorized fire pumps into the water delivery system must be designed, developed and implemented. The design shall be acceptable to the St. Lucie County - Ft. Pierce Fire District.

⑨ 4. A water supply and distribution system must be designed and developed to insure the ability to deliver 1000 gpm to any location in the site after the first 30 minutes. After 60 minutes, the gpm delivery shall be a demonstrated 2000 gpm to distribution points a minimum of 300 feet from any point, and a maximum of 600 feet from any point on the site for the next 3 hours at a pressure which meets the requirements of the St. Lucie County - Ft. Pierce Fire District. More than one distribution point may be used to meet this requirement. Also, the equipment of the St. Lucie County - Ft. Pierce Fire District may be included in the design and development of the water distribution system. The water supply can be in the form of a single properly designed containment area or a combination of containment and well pumps. All design proposals must be proven designs developed by a licensed engineer and/or professional geologist operating within their declared area of expertise. Immediately upon the detection of a fire in the tire material, Florida Tire shall notify the St. Lucie County-Ft. Pierce Fire District. During the first 30 minutes after a fire is detected in the tire material, Florida Tire shall respond by deploying the two motor vehicles required by subparagraph C.5., below, to the location of the fire and applying the water and fire suppressant to the

fire. A front-end loader shall also be deployed to the scene to reduce the amount of tire material which is accessible to the fire.

5. Two motor vehicles must be proposed and obtained to deliver the first attack at a fire event. The vehicles must carry at least 700 gallons of water, and deliver extinguishing agent at a maximum rate of 300 gpm. A method of treating the extinguishing agent with an additive, like AFFF, shall be provided. At least 60 gallons of either a foam product or a chemical extinguishing agent must be carried on board one of the vehicles. The vehicles must have at least two 1½ inch hose lines, each 150 feet long, to be connected to said vehicles. A hose reel with 250 feet of 1 inch line must be provided. A self-contained fire pump shall be provided on the vehicles. It shall be liquid fuel driven and include all piping and apparatus required to safely control water flow to the hand lines. The vehicles shall carry adequate equipment and fittings to supply two 2 1/2 inch hand lines for use by other than the two vehicles. The platform on which this fire control assembly is built must be quickly and reliably transported to the scene of the fire on site and shall be immediately deployed to the scene of the fire.

Either as part of these vehicles, or as part of another vehicle, adequate soft hose line must be provided in order to supply the main attack assembly at the scene of a fire on site. This hose is intended to attach to an on site water distribution system.

6. A training program shall be developed to insure the personnel on site are capable of transporting the fire attack equipment to the site of a fire event on the site. This training shall include driver training for the motor vehicles, and operation of the fire pump, hose lines, and other equipment.
7. Compile a resource list of at least five front end loaders, five 10-wheel dump trucks, and five bulldozers, which may be deployed to the site within four hours of notification to the supplier. The list shall be provided to DEP within 30 days of entry of the Stipulation

Order and shall list the source and location of the equipment.

8. Prepare a fire plan acceptable to the St. Lucie County-Ft. Pierce Fire District that describes in detail the firefighting resources available to fight a fire at the Florida Tire site. The fire plan shall be submitted to DEP within 30 days of entry of the Stipulation Order.

SITE STABILIZATION

10 D. Within 180 days of entry of the Stipulation Order, Florida Tire shall reconfigure the whole and shredded tires on site into a series of piles which do not exceed 50 feet in width, 15 feet in height and 10,000 square feet, with a 50 foot wide fire lane placed around the perimeter of each waste tire pile and which are consistent with Rules 17-330, 40E-4, 40E-40, and 17-312, Florida Administrative Code.

The stabilization of the site shall be accomplished in the following order and schedule:

10 B 1. Clear tires and shreds from a 50' perimeter around the site to allow required equipment access for installation of perimeter roadway within 30 days of entry of the Stipulation Order.

10 C 2. Clear fire lanes 1, 2 (including removal of T-12 and T-14), and 3 as identified in Appendix A to divide the shred pile into smaller segments within 60 days of entry of the Stipulation Order.

10 D 3. Clear fire lane 4 to enhance separation between whole tire piles within 90 days of entry of the Stipulation Order.

10 E 4. Lower the height of each remaining shred pile segment to 15 feet or less, then clear an additional fire lane through the center of

each segment (FL-5, FL-6, and FL-7 as depicted in Appendix A) within 160 days of entry of the Stipulation Order.

(10 F) 5. Remove all remaining whole and shredded tires from the Florida Power and Light Easement within 180 days of entry of the Stipulation Order.

(10 G) 6. Within 180 days of entry of the Stipulation Order, Florida Tire shall reconfigure all remaining material, including any tire shreds distributed in piles or on the ground, to piles meeting the pile dimension and fire lane requirements of Chapter 17-711, F.A.C., and complying with the requirements of Paragraph 11 and Rules 17-330, 40E-4, 40E-40, and 17-312, F.A.C. Notwithstanding Paragraph E above, upon completion of reconfiguration, Florida Tire shall remove any volume of tires or shreds which cannot be reconfigured in accordance with the dimensional limitations as described in Paragraph 10.D within 180 days of the entry of the Stipulation Order.

(11) E. Commencing within 14 days of entry of the Stipulation Order and continuing during the subsequent 180 days during which the facility receives tires, Florida Tire shall, during those first 180 days, or until a permitted storage limit is reached, whichever occurs first, remove at least 100 tons of shredded material for each day that tire material is received at the Florida Tire site, plus an amount equivalent to the tire material tonnage brought onto the Florida Tire site each working day from all sources. Compliance with this requirement shall be computed on a calendar month basis starting with the calendar month first occurring after entry of the Stipulation Order. By summing the actual amount of material brought on to the site each such working day in the calendar month plus 100 tons for each working day (the total hereinafter "base removal amount") and comparing

received
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that total to the total amount of material removed from the site during that month; the total amount removed shall equal or exceed the base removal amount. DEP shall have the right to inspect Florida Tire's records of tire material intake and removal on a daily basis.

FINANCIAL RESPONSIBILITY

F. Within 30 days after entry of the Stipulation Order,

- (2) (P) Florida Tire shall create a financial responsibility trust fund for which the Department of Environmental Protection is the sole beneficiary and deposit \$50,000.00 in cash, or, if available to Florida Tire, a \$50,000 surety, in the form attached hereto as Appendix B, in addition to the \$15,000 letter of credit submitted with Florida Tire's 1989 permit application. Said letter of credit shall be extended beyond its current expiration date of August
- (B) 1994. The trust instrument shall be as set forth in Appendix C.
- (C) After the 180 day Site Stabilization period has been completed, Florida Tire shall deposit \$4,000 per month or 5% of the monthly tipping fee revenues generated at the Port St. Lucie site each month, whichever is greater, into the trust fund until either all whole and processed tires are removed from the site or Florida Tire meets the financial responsibility requirements of a waste tire processing permit for the St. Lucie County site, whichever occurs first.

MONITORING

G. Florida Tire shall record the net weight of each truckload of waste tires brought onto the site and record the name

and waste tire collector registration number of the collector who delivered the waste tires to the site. For all waste tires shipped from the site, Florida Tire shall determine the gross, tare and net weight of each truckload, record the name and waste tire collector registration number of the waste tire collector who accepted the waste tires for transport, and, if a scale is available, record the gross, tare and net weight of the truckload upon arrival at the landfill, waste to energy facility or other disposal destination or, if no scale is available, record the cubic yardage delivered.

13 Florida Tire shall provide the Department with weekly tallies of the weight of waste tires brought onto the site and the weight of waste tire removed from the site each day.

14 H. Except as otherwise modified by a permit issued by the Department, Florida Tire shall within 10 days of the end of each calendar month provide the Southeast District Office of DEP with a report of the calendar month just ended which details the progress of Florida Tire in complying with the terms of this Stipulation. The report shall include documentation of the volume and weight of waste tires brought on and removed from the site; a description of the removal and reconfiguration of waste tires on the site; a description of the fire-fighting resources at the site; and, after the 180 day Site Stabilization period has been completed, the deposit to and balance of the Trust created in favor of the Department for financial responsibility.

I. Florida Tire shall allow all authorized representatives of the Department access to the site at reasonable

times for the purpose of determining compliance with the terms of this Stipulation and the rules of the Department including the taking of samples, photographs and video tapes, copies of which shall be supplied to Florida Tire, if requested.

(15) J. Within 180 days of entry of the Stipulation Order, Florida Tire shall: submit to DEP a complete application for a waste tire processing permit; or shall submit to DEP a complete application for a permit under the provision of F.S. 403.088(2) (e), if applicable; or shall submit a complete application for a variance; or shall submit a request for an alternate procedure determination; or shall submit to DEP a plan for removing all whole and processed waste tires at the site. DEP shall review said permit application, variance, alternate procedure determination, or plan as expeditiously as possible. If Florida Tire is in compliance with this Stipulation, DEP shall not consider the alleged violations at the Florida Tire site which have given rise to the lawsuit which is the subject of this Stipulation in determining whether Florida Tire has provided reasonable assurance that DEP's rules and requirements will be met, or that Florida Tire's proposal is in or not contrary to the public interest, or that Florida Tire's past conduct has been irresponsible.

(16) K. By December 31, 1994, Florida Tire shall remove and properly dispose of pursuant to a DEP approved plan all waste tires for which storage is not authorized by a DEP waste tire processing permit.

17 L. With respect to those things required to be performed within 180 days, or increments thereof set forth in provision 10.D hereof (e.g., 30, 60, 90, 160 days), from the date of this Stipulation Order, when the performance of such things is or may be dependent upon the issuance of a permit by an agency having regulatory jurisdiction then, in such event, the 180 day period, or increment thereof, shall only commence upon the receipt of the necessary DEP permits. In the event that there are matters set forth in provision 10.D. hereof and which are associated with or involving DEP permits which can nevertheless proceed entirely or in part prior to issuance of a permit, then the 180 day period, or increment thereof, will commence from the time of receipt by Florida Tire of written authorization from the Department permitting it to proceed with specified activities.

11. If Florida Tire fails to meet the deadlines set forth in this Stipulation, the Department may file a motion with the Court seeking to be granted access to the site to perform stabilization and abatement, including the removal of whole and processed waste tires from the site.

12. If Florida Tire submits or provides DEP with other application(s) and if Florida Tire is in compliance with the Stipulation Order, DEP shall evaluate the requested permit(s) without consideration of the alleged violations at the Port St. Lucie processing facilities which have given rise to the lawsuit which is the subject of this Stipulation in determining whether Florida Tire has provided reasonable assurance that DEP's rules and

requirements will be met, or that Florida Tire's application is in or not contrary to the public interest, or that Florida Tire's past conduct has been irresponsible.

13. If DEP performs stabilization and abatement pursuant to an Order of this Court, Florida Tire shall reimburse the Department for the costs of such stabilization and abatement pursuant to Section 403.709(3), Florida Statutes.

14. DEP shall hold in abeyance its Administrative Complaint For Revocation of Permit filed against Florida Tire's on August 20, 1993, OGC Case No. 93-3075 pending compliance and completion of this Stipulation. Said Complaint shall be dismissed upon compliance and completion of the terms of this Stipulation or the issuance of a permit to Florida Tire, whichever occurs first.

15. If any event occurs which causes delay, or the reasonable likelihood of delay, in complying with the requirements or deadlines of this Stipulation, Florida Tire shall have the burden of proving that the delay was or will be caused by circumstances beyond the reasonable control of Florida Tire and could not have been or cannot be overcome by Florida Tire's due diligence. The circumstances shall include, but not be limited to, inability to perform as a result of force majeure conditions which shall include acts of God, acts of war, hurricanes, tornadoes, floods, 25 year storm events until an approved surface water management system is constructed, rain events of one inch per day for 12 of 14 consecutive days until an approved surface water management system is constructed, catastrophic mechanical failures not caused by

equipment abuse or the failure to maintain and repair said equipment, acts of third persons, and the inability of Florida Tire to obtain necessary governmental approvals, other than DEP approvals, after making timely and sufficient applications and prosecuting such applications diligently. Economic circumstances shall not be considered circumstances beyond the control of Florida Tire, nor shall the failure ^{part of} ~~be~~ a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Florida Tire, unless the cause of the Contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Florida Tire shall notify the Department orally within 24 hours or by the next working day and shall, within seven days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which Florida Tire intends to implement these measures. If the parties can agree that the delay or the anticipated delay has been or will be caused by circumstances beyond the reasonable control of Florida Tire the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstance. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Florida Tire to comply with the notice requirements of

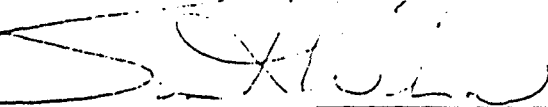
this paragraph in a timely manner shall constitute waiver of Florida Tire's right to request an extension of time for compliance with the requiremens or deadlines of this Stipulation.

16. This Stipulation does not resolve DEP's claims for civil penalties, damages, attorneys, fees, expert witness fees, or costs (hereinafter, "penalties") and shall not be construed as settlement of DEP's Complaint. Within a reasonable time after the entry of the Stipulation Order the parties agree to enter into negotiations with respect to DEP's claim for penalties. The penalty issue shall not be used by DEP as a basis for denial of any application by Florida Tire for a permit, variance, or alternative procedure determination. If the parties are unable to reach mutual agreement concerning penalties then DEP reserves the right to seek penalties in this action. In such event, all of DEP's and Florida Tire's rights, claims, defenses and counterclaims in this action shall be preserved and nothing in this Stipulation shall be construed as an admission or waiver of any rights, claims, counterclaims or defenses of either Florida Tire or DEP.

17. The Court shall retain jurisdiction to enforce the terms of this Stipulation.

WHEREFORE, the Plaintiff, State of Florida Department of Environmental Protection and Defendant, Florida Tire Recycling, Inc. hereby enter the above-described Stipulation and request the

Court to enter an Order adopting the terms set forth herein. On
this 13th day of ~~December~~ ^{January}, 1992.



Susan K. Wilson
President
Florida Tire Recycling, Inc.
9675 Range Line Road
Port St. Lucie, Florida 34987

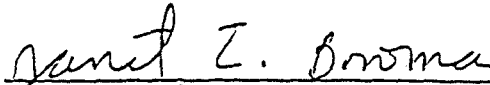


Mary E/S. Williams
Director of District Management
Southeast Florida Office
State of Florida Department of
Environmental Protection
P.O. Box 15425
West Palm Beach, Florida 33416

44538.01



James R. Brindell
Counsel for Florida Tire
Recycling, Inc.
Gunster, Yoakley & Stewart PA
777 South Flagler Drive, Ste 500E
West Palm Beach, FL 33401
Telephone: (407) 650-0551



Janet E. Bowman
Assistant General Counsel
Department of Environmental
Protection
2600 Blair Stone Road
Tallahassee, FL 32399
Telephone: (904) 488-9730