

# Department of Environmental Protection

Lawton Chiles  
Governor

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

cc: Joe Lurix  
return VK  
Virginia B. Wetherell  
Secretary

September 11, 1995

RECEIVED

SEP 13 1995

DEPT OF ENV PROTECTION  
WEST PALM BEACH

The Honorable Scott M. Kenney  
Circuit Judge  
324 Courthouse Addition  
218 S. Second St.  
Ft. Pierce, FL 34950

By Federal Express

Re: State of Florida Department of Environmental Protection  
vs. Florida Tire Recycling, Case No. 93-895 CA.

Dear Judge Kenney:

Enclosed for your review, and execution, if acceptable, is a proposed "Consent Judgment Order" adopting the terms of the "Stipulation of Settlement and Request for Consent Final Judgment" executed by the parties to resolve the Complaint and Motion for Temporary Injunction filed in this action. This case is scheduled for the September 15th calendar call.

Also enclosed for your use are self-addressed envelopes for the return of the Order, if entered, to the parties. Thank you for your consideration.

Sincerely yours,

*Janet E. Bowman*  
Janet E. Bowman

Assistant General Counsel

cc. James Brindell, Esq.  
Carlos Rivero-deAguilar

Post-it® Fax Note	7671	Date	12-22-99	# of pages	▶
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IN THE CIRCUIT COURT OF THE  
THE NINETEENTH JUDICIAL  
CIRCUIT IN AND FOR  
ST. LUCIE COUNTY, FLORIDA

RECEIVED

FEB 20 1997

DEPT OF ENV PROTECTION  
CASE NO.: 93-895 CA 17

CLERK OF CIRCUIT COURT

SEP 15 P 4: 08

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

FLORIDA TIRE RECYCLING, INC.,

Defendant.

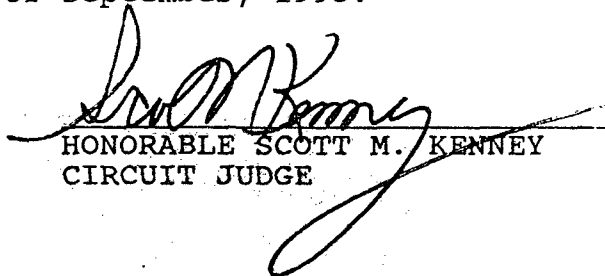
CONSENT JUDGMENT ORDER

THIS CAUSE came before this Court upon the Stipulation executed by the parties in this action entitled "Stipulation of Settlement and Request for Consent Final Judgment" (Stipulation) executed by the parties and incorporated herein as Exhibit 1, to resolve the Complaint and Motion for Temporary Injunction filed in this action, and the Court having considered the Stipulation, reviewed the file and being otherwise duly informed,

IT IS HEREBY ORDERED AND ADJUDGED that:

The terms and conditions of the "Stipulation and Consent for Injunction" are hereby accepted and ratified by this Court, and this Court retains jurisdiction of this cause to enforce the terms thereof.

DONE AND ORDERED in chambers in Fort Pierce, St. Lucie County, Florida, this 15th day of September, 1995.

  
HONORABLE SCOTT M. KENNEY  
CIRCUIT JUDGE

Copies Furnished to:

JAMES BRINDELL, ESQ.  
JANET E. BOWMAN, ESQ.

EMERGENCY

JoAnne Holman, Clerk of the Circuit Court - St. Lucie County  
File Number: 1422641 OR BOOK 0975 PAGE 0926  
Recorded: 09-19-95 10:54 A.M.

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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 OF SETTLEMENT AND REQUEST FOR CONSENT FINAL  
JUDGMENT

Plaintiff, State of Florida, Department of Environmental Protection ("DEP" or "Department") and Defendant, Florida Tire Recycling, Inc. ("Florida Tire"), hereby enter the following Stipulated Settlement Agreement ("Stipulation") and respectfully request the Court to enter a Consent Final Judgment adopting the terms of the Stipulated Settlement Agreement set forth below:

1. The Court has jurisdiction over the subject matter and over the parties hereto.
2. The Department is the administrative agency of the State of Florida having the duty and authority to administer and enforce the provisions of Chapter 403, Florida Statutes.
3. Florida Tire is a Florida Corporation and is a person within the meaning of Sections 403.031(5) and 403.703(4), Florida Statutes.
4. On January 14, 1994, the Court entered an order adopting the "Stipulation and Consent for Injunction" (Consent Injunction) attached hereto as Exhibit A.
5. The Consent Injunction requires Florida Tire to reduce and reconfigure the volume of waste tires at the site, construct stabilized fire roads, construct a Management and Storage of Surface Water System (MSSW), and either obtain a waste tire processing permit from the Department or remove all

of the waste tires from the site by December 31, 1994. Florida Tire has submitted to the Department a Waste Tire Processing Permit application to process and store a maximum of 9700 tons of waste tires at the Port St. Lucie facility. Florida Tire estimates that as of December 31, 1994, the volume of waste tires present at the site was 24,642 tons.

6. On November 7, 1994, the Department issued a Management and Storage of Surface Waters (MSSW permit #56-2451186) to Florida Tire. The MSSW permit authorizes construction of improved roadways, storage pads for waste tires and stormwater storage capability. Construction of the MSSW system had not commenced as of December 31, 1994. On July 17, 1995, the Department issued a permit modification (File No. 272004) to the MSSW permit.

7.. Paragraph 10D(6.) of the Consent Injunction requires Florida Tire to, within 180 days of entry of the Consent Injunction, reconfigure the whole and shredded waste tires on the site to piles meeting the pile dimension and fire lane requirements of Chapter 17-711 (renumbered 62-711) F.A.C., and complying with Paragraph 11 and Rules 17-330 (renumbered 62-330), 40E-4, and 40E-40 and 17-312 (renumbered 62-312), F.A.C. As of December 31, 1994, Florida Tire had not completed the reconfiguration of the site following these requirements.

8. The terms of the Consent Injunction entered by the Court on January 14, 1994 are incorporated herein and attached as Exhibit "A". Defendant, Florida Tire Recycling, Inc., agrees to comply with all of the terms of the Consent Injunction as modified by the following:

A. Paragraph 10E of the Consent Injunction is amended to state:

(1) Commencing September 1, 1995, and continuing until November 30, 1995, Florida Tire shall remove each month at least 1,000 tons of waste tires as defined in Chapter 403, Florida Statutes, more than the volume of waste tires received at the site during the calendar month. Compliance with this requirement shall be computed on a calendar month basis starting with the month of September 1, 1995 and continuing through November 30, 1995. By summing the actual amount of waste tires in tons brought on to the site each working day during the month plus 1,000 tons ("base removal amount") and comparing that figure with the total amount of waste tires removed from the site during the 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 waste tire intake and removal on a daily basis.

(2) At the end of the three month period from September 1, 1995 to November 30, 1995, the Department shall evaluate whether Florida Tire has achieved the removal requirements set forth above. If Florida Tire achieves the volume removal requirements over the three month period, from September 1-November 30, 1995, Florida Tire shall, commencing December 1, 1995 and continuing through July 31, 1996, remove at least 1500 tons of waste tires per month more than the volume of waste tires received at the site during the calendar month. (The base removal amount for December 1, 1995 through July 31, 1996).

(3) (a) If Florida Tire fails to remove at least 80% of the base removal amount for the period from September 1, 1995 to November 30, 1995, Florida Tire shall, by December 31, 1995, submit to the Department a plan to remove all of the waste tires from the site, and shall cease bringing waste tires to the site as of December 31, 1995. If Florida Tire fails to remove 100% of the volume of tires required to be removed from September 1 through November 30, 1995, but removes over 80% of this volume, Florida Tire must demonstrate to the Department that it is capable of complying with the removal, construction and permitting requirements of this Stipulation. This demonstration shall be submitted to the Department in the form of a report no later than December 10, 1995. If Florida Tire fails to demonstrate to the Department that it is capable of achieving the Stipulation deadlines, Florida Tire shall cease bringing waste tires on to the site as of December 31, 1995 and shall submit to the Department a plan to remove all of the waste tires from the site.

(b) The Department shall notify Florida Tire by letter as to compliance with the first three month removal requirements no later than December 15, 1995.

(4) During the thirty day period from September 1, 1995 to September 30, 1995, Florida Tire shall remove all whole waste tires which are not stacked in piles meeting the dimension requirements of Chapter 62-711, Florida Administrative Code. During the sixty day period from September 1, 1995 to October 31, 1995, Florida Tire shall clear all waste tires and establish fire lanes between and around the piles located in the interim storage area as shown in Exhibit B attached hereto. Beginning September 1, 1995, Florida Tire shall, in achieving the base removal amount requirements set forth above in Paragraph 8.A. (4)., first process and remove the loose waste tires and waste tire shreds located in the interim shredded tire storage area, the unconfigured

shred area and the Florida Power and Light Easement. The loose and unconfigured shreds shall be processed and removed from the site by November 30, 1995.

(5) By November 1, 1995, or sixty days (60) after the Department issues the MSSW permit, whichever occurs first, Florida Tire shall have initiated construction of the MSSW system as set forth in Permit No. 56-2451186, as modified on July 17, 1995. By March 1, 1996, or within 150 days of issuance of the MSSW permit by the Department, whichever occurs first, Florida Tire shall have completed construction and certified completion by a Professional Engineer registered in the State of Florida of the DEP approved MSSW system, including construction of access roads, tire storage pads and stormwater retention areas.

B. Paragraph 10K is amended to read that by July 31, 1996, Florida Tire shall remove and properly dispose of all waste tires for which storage is not authorized by a DEP waste tire processing permit.

9. Florida Tire agrees to pay the Department civil penalties in the amount of \$30,500 and costs and expenses in the amount of \$35,240.21 for a total of \$65,740.21. Florida Tire shall pay the Department one quarterly installment of \$5,740.21 and 20 quarterly installments of \$3,000. The first installment in the amount of \$5,740.21 is due on September 1, 1995. Subsequent to the initial payment, quarterly payments of \$3,000 are due on December 1, March 1, June 1, and September 1, and continuing each quarter, until the sum of \$65,740.21 has been received by the Department. Payment shall be made payable to the "Department of Environmental Protection" and shall include thereon OGC No. 92-1094C and the notation "Pollution Recovery Trust Fund." Payment shall be made to the Department's Southeast District Office, P.O. Box 15425, West Palm Beach, Florida 33416.

10. If Florida Tire fails to meet the deadlines set forth in the "Stipulation of Settlement", the Department may file a motion with the Court to enforce the "Stipulation of Settlement" and/or to be granted access pursuant to Chapter 403.709(4), Florida Statutes, (1994 Supp.), to the site to perform stabilization and abatement, including the removal of whole and processed waste tires from the site.

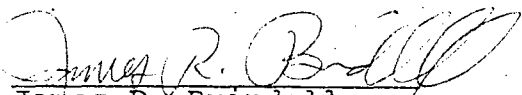
11. The terms and conditions set forth in this Stipulated Settlement may be enforced by post-judgment motions for specific performance, injunctive relief, contempt for a money


judgment for penalties and costs, or any appropriate relief. The Court shall retain jurisdiction to enforce the terms of this "Stipulation of Settlement."


12. The Department may initiate appropriate legal action to prevent or prohibit future violations of applicable statutes or the rules promulgated thereunder not covered by the terms of this "Stipulation of Settlement," or to compel future compliance with this "Stipulation of Settlement."


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 and Order adopting the terms set forth herein.

On this 11<sup>th</sup> day of September, 1995.

  
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P.O. Box 15425  
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IN THE CIRCUIT COURT OF  
THE NINETEENTH JUDICIAL  
CIRCUIT IN AND FOR  
ST. LUCIE COUNTY, FLORIDA

CASE NO. 93-895 CA

OR BOOK 0975 PAGE 0932

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

FLORIDA TIRE RECYCLING INC.,

Defendant.

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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

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.

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 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 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

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.

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.

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.
- 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.
- 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

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:

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

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

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.

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



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, 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 1994. The trust instrument shall be as set forth in Appendix 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. 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.

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.

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.

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.

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 <sup>part of</sup> ~~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

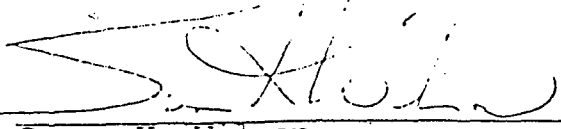
this paragraph in a timely manner shall constitute waiver of Florida Tire's right to request an extension of time for compliance with the requiremens or deadlines of this Stipulation.


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.

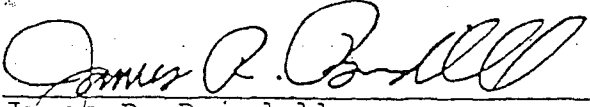
WHEREFORE, the Plaintiff, State of Florida Department of Environmental Protection and Defendant, Florida Tire Recycling, Inc. hereby enter the above-described Stipulation and request the

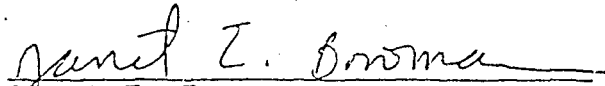
Court to enter an Order adopting the terms set forth herein. On  
this 13<sup>th</sup> day of ~~December~~ <sup>January</sup>, 1992.

  
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

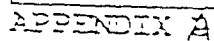
44538.01

  
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

OR BOOK 0975 PAGE 0948





STATE OF FLORIDA

SOLID WASTE MANAGEMENT FACILITY FINANCIAL GUARANTEE BOND  
DEMONSTRATE CLOSURE AND/OR LONG-TERM CARE FINANCIAL ASSURANCE

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: \_\_\_\_\_  
Legal Name and business Address of Owner or Operator

Type of Organization: \_\_\_\_\_ Individual  
\_\_\_\_\_ Joint Venture  
\_\_\_\_\_ Partnership  
\_\_\_\_\_ Corporation

State of Incorporation: \_\_\_\_\_

Surety(ies): \_\_\_\_\_  
Name(s) and business Address(es)

FDER GMS-identification number, name, address, and closure and/or long-term care amount(s) for each facility guaranteed by this bond

FDER GMS-I.D. No. \_\_\_\_\_  
Indicate Closure and/or Long-Term Care Amounts Separately  
Name \_\_\_\_\_ Address \_\_\_\_\_

Total penal sum of bond: \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

OR BOOK 0975 PAGE 0950

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Florida Department of Environmental Regulation (hereinafter called FDER), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be full amount of the penal sum.

WHEREAS, said Principal is required, under the Florida Resource Recovery and Management Act as amended, to have a permit in order to construct, operate or close each solid waste management facility identified above, and

WHEREAS, said Principal is required to provide financial assurance for closure and/or long-term care, as a condition of the permit(s), and

WHEREAS, said principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin closure is issued by the Secretary of the FDER or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance and obtain the FDER Secretary's written approval of such assurance, within 90 days after the date of notice or cancellation is received by both the Principal and the FDER Secretary from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by FDER Secretary that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the FDER Secretary.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Secretary of the FDER; however, cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the FDER Secretary, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Secretary of the FDER.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or long-term care amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the FDER Secretary.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies).

PRINCIPAL

Signature \_\_\_\_\_

Type name and title \_\_\_\_\_

Corporate Seal

CORPORATE SURETY(IES)

For each co-surety provide the following

Name and Address \_\_\_\_\_

State of Incorporation \_\_\_\_\_

Liability Limit \$ \_\_\_\_\_

Signature \_\_\_\_\_

Type name and title \_\_\_\_\_

Corporate Seal

OR BOOK 0975 PAGE 0952

STATE OF FLORIDA

SOLID WASTE MANAGEMENT FACILITY TRUST FUND AGREEMENT  
TO DEMONSTRATE CLOSURE AND/OR LONG-TERM CARE FINANCIAL ASSURANCE

TRUST AGREEMENT, the "Agreement," entered into as of \_\_\_\_\_ Date

by and between \_\_\_\_\_  
Name of the Owner or Operator

a \_\_\_\_\_ (the Grantor,) \_\_\_\_\_  
Name of State Insert "corporation, partnership, association, or proprietorship",

and \_\_\_\_\_  
Name and Address of Corporate Trustee

\_\_\_\_\_ (the Trustee.)  
Insert "incorporated in the State of \_\_\_\_\_" or "a national bank"

WHEREAS, the Florida Department of Environmental Regulation (FDER), an agency of the State of Florida, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for closure and/or long-term care of the facility,

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "FDER" means the Florida Department of Environmental Regulation, an Agency of the State of Florida or any successor thereof.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A.

On Schedule A, for each facility list the FDER GMS Identification Number, name, address, and the current closure and/or long-term care cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.

Section 2. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the Fund) for the benefit of the FDER. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, ~~less~~ any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the FDER.

Section 4. Payment for Closure and/or Long-Term Care. The Trustee shall make payments from the Fund as the FDER Secretary shall direct, in writing, to provide for the payment of the costs of closure and/or long-term care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the FDER Secretary from the Fund for closure and long-term care expenditures in such amounts as the FDER Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the FDER Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Power of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Secretary of the FDER a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the FDER Secretary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, FDER Secretary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the FDER Secretary to the Trustee shall be in writing, signed by the FDER Secretary, or the designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the FDER hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the FDER, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the FDER Secretary by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the FDER Secretary, or by the Trustee and the FDER Secretary if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the FDER Secretary, or by the Trustee and the FDER Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.



Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the FDER Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Florida.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

\_\_\_\_\_  
Signature of Grantor

\_\_\_\_\_  
Signature of Trustee

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Attest:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Seal

Seal

BELOW ARE EXAMPLES OF THE FOUR REQUIRED ATTACHMENTS THAT MUST ACCOMPANY A TRUST FUND AGREEMENT. THEY ARE ONLY EXAMPLES OF FORMATS ACCEPTABLE TO THE DEPARTMENT. THEREFORE, VARIATIONS CONTAINING THE REQUIRED INFORMATION ARE ALSO ACCEPTABLE.

CERTIFICATION OF ACKNOWLEDGMENT FOR  
SOLID WASTE MANAGEMENT FACILITY TRUST FUND AGREEMENT

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_, before me personally came \_\_\_\_\_  
Date Owner or Operator

to me known, who, being by me duly sworn, did depose and say that she/he resides at

\_\_\_\_\_  
Address

that she/he is \_\_\_\_\_ of  
Title

\_\_\_\_\_, the corporation described in and which  
Corporation Name

executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.  
(Please delete all references to a corporate seal if one does not exist for your corporation)

Signature of Notary Public \_\_\_\_\_ Date

seal

SCHEDULE A

This Agreement demonstrates financial assurance for the following cost estimate(s) for the following facility(ies):

Indicate closure and/or long-term care for each facility

FDER GMS- I.D. No.: \_\_\_\_\_

COST ESTIMATES:

NAME: \_\_\_\_\_

Closure \$

ADDRESS: \_\_\_\_\_

Long-Term Care \$

Total

SCHEDULE B

The Fund is established initially as consisting of the following property:

List the property used to establish the trust fund (e.g. Check # \_\_\_\_\_ in the amount of \$ \_\_\_\_\_).

EXHIBIT A

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing and signed by one of the following persons:

\_\_\_\_\_  
Name

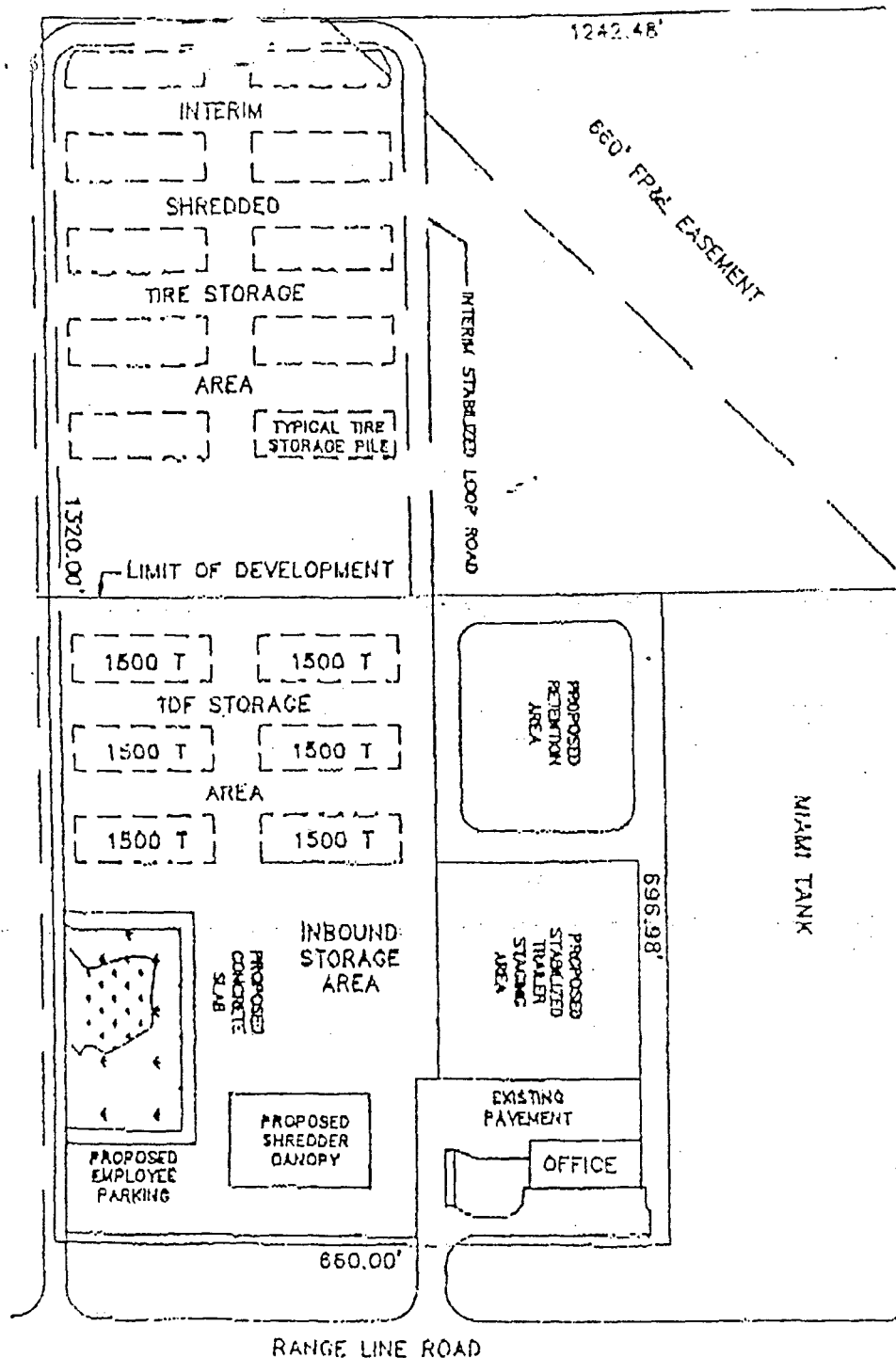
\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title



— EXHIBIT B —

CAD DWG 9343REYA

DRAWN BY: J.T.F.  
 CHECKED BY: J.T.F.  
 DATE: 04/12/95  
 SCALE: 1" = 200'  
 JOB NO.: 9243

# FLORIDA TIRE RECYCLING CONCEPTUAL PLAN

1000 SW BILTMORE ST.  
 PORT ST. LUCIE, FLORIDA 34864  
 407-340-4000

245

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 OF SETTLEMENT AND REQUEST FOR CONSENT FINAL  
JUDGMENT

Plaintiff, State of Florida, Department of Environmental Protection ("DEP" or "Department") and Defendant, Florida Tire Recycling, Inc. ("Florida Tire"), hereby enter the following Stipulated Settlement Agreement ("Stipulation") and respectfully request the Court to enter a Consent Final Judgment adopting the terms of the Stipulated Settlement Agreement set forth below:

1. The Court has jurisdiction over the subject matter and over the parties hereto.
2. The Department is the administrative agency of the State of Florida having the duty and authority to administer and enforce the provisions of Chapter 403, Florida Statutes.
3. Florida Tire is a Florida Corporation and is a person within the meaning of Sections 403.031(5) and 403.703(4), Florida Statutes.
4. On January 14, 1994, the Court entered an order adopting the "Stipulation and Consent for Injunction" (Consent Injunction) attached hereto as Exhibit A.
5. The Consent Injunction requires Florida Tire to reduce and reconfigure the volume of waste tires at the site, construct stabilized fire roads, construct a Management and Storage of Surface Water System (MSSW), and either obtain a waste tire processing permit from the Department or remove all

of the waste tires from the site by December 31, 1994. Florida Tire has submitted to the Department a Waste Tire Processing Permit application to process and store a maximum of 9700 tons of waste tires at the Port St. Lucie facility. Florida Tire estimates that as of December 31, 1994, the volume of waste tires present at the site was 24,642 tons.

6. On November 7, 1994, the Department issued a Management and Storage of Surface Waters (MSSW permit #56-2451186) to Florida Tire. The MSSW permit authorizes construction of improved roadways, storage pads for waste tires and stormwater storage capability. Construction of the MSSW system had not commenced as of December 31, 1994. On July 17, 1995, the Department issued a permit modification (File No. 272004) to the MSSW permit.

7. Paragraph 10D(6.) of the Consent Injunction requires Florida Tire to, within 180 days of entry of the Consent Injunction, reconfigure the whole and shredded waste tires on the site to piles meeting the pile dimension and fire lane requirements of Chapter 17-711 (renumbered 62-711) F.A.C., and complying with Paragraph 11 and Rules 17-330 (renumbered 62-330), 40E-4, and 40E-40 and 17-312 (renumbered 62-312), F.A.C. As of December 31, 1994, Florida Tire had not completed the reconfiguration of the site following these requirements.

8. The terms of the Consent Injunction entered by the Court on January 14, 1994 are incorporated herein and attached as Exhibit "A". Defendant, Florida Tire Recycling, Inc., agrees to comply with all of the terms of the Consent Injunction as modified by the following:

A. Paragraph 10E of the Consent Injunction is amended to state:

(1) Commencing September 1, 1995, and continuing until November 30, 1995, Florida Tire shall remove each month at least 1,000 tons of waste tires as defined in Chapter 403, Florida Statutes, more than the volume of waste tires received at the site during the calendar month. Compliance with this requirement shall be computed on a calendar month basis starting with the month of September 1, 1995 and continuing through November 30, 1995. By summing the actual amount of waste tires in tons brought on to the site each working day during the month plus 1,000 tons ("base removal amount") and comparing that figure with the total amount of waste tires removed from the site during the 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 waste tire intake and removal on a daily basis.

(2) At the end of the three month period from September 1, 1995 to November 30, 1995, the Department shall evaluate whether Florida Tire has achieved the removal requirements set forth above. If Florida Tire achieves the volume removal requirements over the three month period, from September 1-November 30, 1995, Florida Tire shall, commencing December 1, 1995 and continuing through July 31, 1996, remove at least 1500 tons of waste tires per month more than the volume of waste tires received at the site during the calendar month. (The base removal amount for December 1, 1995 through July 31, 1996).

(3) (a) If Florida Tire fails to remove at least 80% of the base removal amount for the period from September 1, 1995 to November 30, 1995, Florida Tire shall, by December 31, 1995, submit to the Department a plan to remove all of the waste tires from the site, and shall cease bringing waste tires to the site as of December 31, 1995. If Florida Tire fails to remove 100% of the volume of tires required to be removed from September 1 through November 30, 1995, but removes over 80% of this volume, Florida Tire must demonstrate to the Department that it is capable of complying with the removal, construction and permitting requirements of this Stipulation. This demonstration shall be submitted to the Department in the form of a report no later than December 10, 1995. If Florida Tire fails to demonstrate to the Department that it is capable of achieving the Stipulation deadlines, Florida Tire shall cease bringing waste tires on to the site as of December 31, 1995 and shall submit to the Department a plan to remove all of the waste tires from the site.

(b) The Department shall notify Florida Tire by letter as to compliance with the first three month removal requirements no later than December 15, 1995.

(4) During the thirty day period from September 1, 1995 to September 30, 1995, Florida Tire shall remove all whole waste tires which are not stacked in piles meeting the dimension requirements of Chapter 62-711, Florida Administrative Code. During the sixty day period from September 1, 1995 to October 31, 1995, Florida Tire shall clear all waste tires and establish fire lanes between and around the piles located in the interim storage area as shown in Exhibit B attached hereto. Beginning September 1, 1995, Florida Tire shall, in achieving the base removal amount requirements set forth above in Paragraph 8.A. (4)., first process and remove the loose waste tires and waste tire shreds located in the interim shredded tire storage area, the unconfigured

shred area and the Florida Power and Light Easement. The loose and unconfigured shreds shall be processed and removed from the site by November 30, 1995.

(5) By November 1, 1995, or sixty days (60) after the Department issues the MSSW permit, whichever occurs first, Florida Tire shall have initiated construction of the MSSW system as set forth in Permit No. 56-2451186, as modified on July 17, 1995. By March 1, 1996, or within 150 days of issuance of the MSSW permit by the Department, whichever occurs first, Florida Tire shall have completed construction and certified completion by a Professional Engineer registered in the State of Florida of the DEP approved MSSW system, including construction of access roads, tire storage pads and stormwater retention areas.

B. Paragraph 10K is amended to read that by July 31, 1996, Florida Tire shall remove and properly dispose of all waste tires for which storage is not authorized by a DEP waste tire processing permit.

9. Florida Tire agrees to pay the Department civil penalties in the amount of \$30,500 and costs and expenses in the amount of \$35,240.21 for a total of \$65,740.21. Florida Tire shall pay the Department one quarterly installment of \$5,740.21 and 20 quarterly installments of \$3,000. The first installment in the amount of \$5,740.21 is due on September 1, 1995. Subsequent to the initial payment, quarterly payments of \$3,000 are due on December 1, March 1, June 1, and September 1, and continuing each quarter, until the sum of \$65,740.21 has been received by the Department. Payment shall be made payable to the "Department of Environmental Protection" and shall include thereon OGC No. 92-1094C and the notation "Pollution Recovery Trust Fund." Payment shall be made to the Department's Southeast District Office, P.O. Box 15425, West Palm Beach, Florida 33416.

10. If Florida Tire fails to meet the deadlines set forth in the "Stipulation of Settlement", the Department may file a motion with the Court to enforce the "Stipulation of Settlement" and/or to be granted access pursuant to Chapter 403.709(4), Florida Statutes, (1994 Supp.), to the site to perform stabilization and abatement, including the removal of whole and processed waste tires from the site.

11. The terms and conditions set forth in this Stipulated Settlement may be enforced by post-judgment motions for specific performance, injunctive relief, contempt for a money




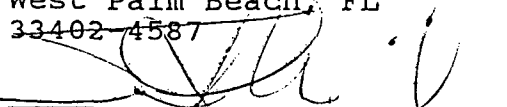
judgment for penalties and costs, or any appropriate relief. The Court shall retain jurisdiction to enforce the terms of this "Stipulation of Settlement."


12. The Department may initiate appropriate legal action to prevent or prohibit future violations of applicable statutes or the rules promulgated thereunder not covered by the terms of this "Stipulation of Settlement," or to compel future compliance with this "Stipulation of Settlement."


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 and Order adopting the terms set forth herein.

On this 11<sup>th</sup> day of September, 1995.

  
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