



Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

May 19, 1995

James R. Brindell, Esq.
Gunster, Yoakley Valdes-Fauli & Stewart, P.A.
Phillips Point, Suite 500 East
777 South Flagler Drive
West Palm Beach, Florida 33401-6194

Re: Department of Environmental Protection vs.
Florida Tire Recycling, Inc. OGC NO. 92-1094C.

Dear Jim:

Enclosed for your review and comment is a redraft of a proposed "Amendment to Stipulation and Consent for Injunction" I prepared to reflect the negotiations between the Department and Florida Tire occurring at the meeting of May 15, 1995 at the Southeast District Office of DEP in West Palm Beach. Please let me know whether the redraft is acceptable to Florida Tire.

As discussed at the meeting of May 15th, the Department requests that Florida Tire provide a written response to the Department's proposed penalty of \$150,540 within ten days of our meeting or by May 25, 1995.

If you have any questions regarding the redraft or wish to discuss the proposed penalty, please call me at (904) 921-9660.

Sincerely yours,

Janet E. Bowman
Janet E. Bowman

cc. Carlos Rivero-deAguilar
Vik Kamath
Joe Kahn
Joe Lurix

RECEIVED
MAY 23 1995
DEPT OF ENV PROTECTION
WEST PALM BEACH

DRAFT
May 18, 1995

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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.

AMENDMENT TO 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 stipulated Amendment to the "Stipulation and Consent for Injunction" filed in this case and state:

1. On January 14, 1994, the Court entered an order adopting the "Stipulation and Consent for Injunction" (Consent Injunction) attached hereto as Exhibit A.
2. 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.
3. On November 7, 1994, the Department issued 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.
4. 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.

5. In order to complete the required activities set forth in the "Stipulation and Consent For Injunction" the Department and Florida Tire agree to amend the Consent Injunction as follows:

A. Paragraph 10E is amended to state:

1. Commencing June 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 June 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 six month period from June 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 six month period, from June 1-November 30, 1995, Florida Tire shall, commencing December 1, 1995 and continuing through May 31, 1996, remove at least 1500 tons of waste tires per month in addition to the volume of waste tires received at the site during the calendar month.

3. (a) If Florida Tire fails to remove at least 80% of the volume of waste tires required to be removed during the period from June 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 tire 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 June 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 the "Amendment to Stipulation and Consent For Injunction." 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 Amendment 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 six month removal requirements no later than December 15, 1995.

4. During the thirty day period from June 1, 1995 to June 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 August 1, 1995 to September 30, 1995, Florida 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 August 1, 1995, Florida Tire shall, in achieving the 1000 ton/per day removal requirement set forth above, 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 June 1, 1995, Florida Tire shall submit its revised MSSW permit application to the Department. By November 1, 1995, or thirty days (30) after the Department issues the MSSW permit, whichever occurs first, Florida Tire shall have initiated construction of the MSSW system either as set forth in Permit No. 56-2451186, or as set forth in a permit modification approved by the Department. By March 1, 1996, or within 120 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 June 1, 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.

6. If Florida Tire fails to meet the deadlines set forth in the Amendment to the Consent Injunction, the Department may file a motion with the Court to enforce the Amendment to Stipulation and Consent for Injunction and/or to be granted access to the site to perform stabilization and abatement, including the removal of whole and processed waste tires from the site.

7. This Amendment to the Consent Injunction 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.

8. The Court shall retain jurisdiction to enforce the terms of this "Amendment to Stipulation" as well as the "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 and Order adopting the terms set forth herein.

On this ____ day of May, 1995.

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