



Lawton Chiles
Governor

Florida Department of Environmental Protection

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

Virginia B. Wetherell
Secretary

November 23, 1993

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DEPT. OF ENV. PROTECTION
WEST PALM BEACH

The Honorable Judge Rupert J. Smith
327 Courthouse Addition
218 S. Second St.
Fort Pierce, FL 34950

Re: State of Florida Department of Environmental Protection
vs. Florida Tire Recycling, Inc. Case No. 93-895-CA-17;
DEP OGC NO. 92-1094C.

Dear Judge Smith:

Enclosed for your review is a "Stipulation for Protective Order and Order Concerning Proprietary and Privileged Information," prepared by Defendant, Florida Tire Recycling, Inc. I have enclosed the original and two copies of the order and self-addressed envelopes for your use if the order meets your approval.

Thank you for your assistance in this matter.

Sincerely yours,

Janet E. Bowman
Janet E. Bowman
Assistant General Counsel

cc Donald Beuttenmuller, Jr., Esq.
Joseph Kahn, DEP

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

STATE OF FLORIDA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Plaintiff,

CASE NO. 93-895CA17

vs.

FLORIDA TIRE RECYCLING INC.,

Defendant.

STIPULATION FOR PROTECTIVE ORDER AND ORDER
CONCERNING PROPRIETARY AND PRIVILEGED INFORMATION

The Defendant, Florida Tire Recycling, Inc. (Fla. Tire), through its undersigned counsel, and State of Florida, Department of Environmental Protection (DEP), through its undersigned counsel, hereby stipulate and agree as follows:

1. In connection with this litigation, DEP has requested that Fla. Tire produce certain documents for which Fla. Tire claims protection pursuant to Rule 1.280(c)(7), Fla.R.Civ.P. The categories of documents for which Fla. Tire Claims protection are as follows:

- A. Copies of contracts with landfills, waste to energy facilities or any entity receiving whole and/or processed tires from Fla. Tire.
- B. Loan documents, mortgages, or notes financing any equipment or property used in the business of Fla. Tire Recycling, Inc.
- C. Audited or unaudited financial statements and income tax returns of Fla. Tire.

- D. Daily bookkeeping documents of Fla. Tire including accounts payable, cash receipts, etc.
- E. Any written business plan or financial projections re compliance costs and/or income and expense information.
- F. Miscellaneous other documents relating to leases of equipment and other financial details concerning the Fla. Tire operation.

2. Fla. Tire contends that the documents, described above, individually and particularly in the aggregate would constitute a complete revelation of every aspect of the operations of Florida Tire. If such information became available to the public, including Fla. Tire's competitors in the industry, this would place Fla. Tire at a competitive disadvantage and would injure Fla. Tire in its business and its ability to compete in the market place. Fla. Tire further contends that the information is privileged and not currently available to the public.

3. Fla. Tire further contends that even as to some documents which may be publicly available, such as recorded mortgages, or otherwise required to be made available for inspection, ~~such as information specified in Rule 17-711.530(3)(a) and (b), F.A.C.,~~ that the aggregation of these documents or information would have an injurious effect and place Fla. Tire at a competitive disadvantage in the market place.

4. DEP, on the other hand, does not wish to admit nor concede that any or all of the documents requested are entitled to protection under the cited Rule.

5. In order to avoid controversy and an unnecessary waste of judicial time and effort and in order not to delay these proceedings or the settlement thereof, DEP and Fla. Tire agree to the following terms.

* Deletion agreed to by
DJB per telephone
conversation of 11/23/93.

6. Fla. Tire will produce and make available to DEP for copying all documents in its possession falling within the categories specified.

7. Any documents which Fla. Tire claims are confidential shall be marked by Fla. Tire with a stamped designation "CONFIDENTIAL".

8. Any documents marked by Fla. Tire as "CONFIDENTIAL" shall be treated by DEP as confidential documents.

9. All confidential documents and the information contained therein shall be used solely for the purpose of this action, and shall not be disclosed to any person or used for any other purpose except in accordance with the terms of this Stipulation.

10. Access to confidential documents and the information contained therein or extracted therefrom shall be limited to DEP counsel of record, DEP employees assisting counsel in this matter, and any expert retained by DEP for consultation or testimony in connection with this proceeding, but only to the extent that such access to such documents and information is directly relevant to those areas in which the expert is being consulted or about which the expert will testify.

11. DEP counsel of record shall advise each non-lawyer given access to the confidential documents or information pursuant to the terms of this Stipulation that the documents or information contained therein is confidential and not to be re-copied or disclosed pursuant and subject to the terms hereof.


12. If for any reason DEP feels that a document or information contained therein is not confidential, proprietary or otherwise entitled to protection under the cited rule of Civil Procedure, DEP may make a

motion for dissolution or modification of the order approving this Stipulation. In the event of a timely appeal by Fla. Tire from such an order, however, DEP agrees that this Stipulation shall remain in effect.

13. Insofar as the provisions of this Stipulation restrict the communication and use of the documents produced, this Stipulation shall continue to be binding after the conclusion of this action except (a) that there shall be no restriction on documents that are used as exhibits (except that such exhibits shall be filed under seal); and (b) that DEP may seek the written permission of Fla. Tire or further order of Court with respect to dissolution or modification of this Stipulation.

14. At the conclusion of this litigation and any appeals therefrom, DEP agrees to return to Fla. Tire (1) all Documents labeled "CONFIDENTIAL"; (2) all copies which have been made thereof; (3) all summaries or extracts which have been made based upon the information contained in the confidential documents, in its possession, custody, or control.

Date: 11-17-93

By 
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By Janet E. Bowman 11-23-93
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ORDER

This matter having come before the Court upon the Stipulation of counsel above set forth and the Court being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED that the foregoing Stipulation is approved and made the order of this Court. The parties are ordered to abide by the provisions of the Stipulation.

DONE AND ORDERED at Fort Pierce, St. Lucie County, Florida this _____ day of November 1993

Rupert Jasen Smith
Circuit Judge

Copies furnished to
Counsel above noted.