

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for waiver by:
E.A. Tires International Corp.
Ernesto Alguera
13845 SW 26th Terrace
Miami, Florida 33175

OGC No.: 16-1282
SWVA No.:16-4

ORDER GRANTING WAIVER

The State of Florida Department of Environmental Protection (Department) hereby gives notice that it is granting a waiver to E.A. Tires International Corp (Petitioner), pursuant to section 120.542, Florida Statutes (F.S.), for its facility located at 3729 NW 71st Street, Hialeah, Florida 33175 (Facility). On September 14, 2016, the Department received a petition for variance or waiver submitted by Mr. Ernesto Alguera, President of E.A. Tires International Corp. (Petitioner) to the Department. The Petitioner requests a waiver from Rule 62-711.500(3)(a), Florida Administrative Code (F.A.C.), which requires that owners and operators of waste tire sites provide financial assurance in the amount of the closing cost estimate for the facility.

FINDINGS OF FACT

1. The Petitioner intends to operate a waste tire processing facility, located at 3729 NW 71st Street, Hialeah, Florida 33175. The Petitioner will purchase loads of used tires that will then be evaluated for marketability. Used tires that can be reused will be sold. Used tires that cannot be sold due to their condition will be sent to off-site disposal facilities. Section 403.717(1)(d), F.S., defines waste tires to include used tires, and section 403.717(3)(a), F.S., prohibits any person from storing more than 1,500 waste tires except at a permitted waste tire processing facility or other permitted solid

waste management facility. During operation, the Petitioner intends to store up to 3,000 waste tires at the Facility, where all tires are stored inside a 5,000 square foot building, and there is no outside tire storage. This amount exceeds the statutory permitting threshold of 1,500 waste tires on-site.

2. The Petitioner has received permit number SW-1711 to operate a waste tire storage facility (Permit) that is valid from January 1, 2016 through December 31, 2016, from the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management, which operates under a delegation agreement with the Department. The Facility has been assigned WACS ID #99436. Rule 62-711.500(3)(a), F.A.C., requires that proof of financial assurance for the closure of the Facility be provided as a necessary part of the permit. The permit to operate a waste tire processing facility to be issued by the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management, will limit the number of waste tires stored on-site to no more than 3,000 tires.

3. The proof of financial assurance specified in Rule 62-711.500(3)(a), F.A.C. is more stringent than Rule 62-701.710(7)(b), F.A.C., where a standalone waste processing facility is exempt from the requirement to provide proof of financial assurance, as long as the approved closing cost estimate is less than \$10,000. The Department may propose modification of Rule 62-711.500(3)(a), F.A.C. in the future to make it more consistent with Rule 62-701.710(7)(b), F.A.C.

4. On September 14, 2016, Petitioner submitted a waiver request seeking to have the provisions of Rule 62-711.500(3)(a), F.A.C., not apply to its permitted waste tire processing Facility. The closure cost estimate provided to the Department for the

maximum number of waste tires stored at the Petitioner's Facility is \$5,000.00. The Petitioner provided documentation for two methods of financial assurance. The first method involves pre-payment of \$4,500.00 for disposal of up to 3,000 tires by Liberty Recycling LLC, which has a high uncertainty since Liberty Recycling may not be utilized for closure if the Facility can close on its own, or if Liberty Recycling is not viable at the time of closure. The second method involves the purchase of a Letter of Credit from Regions Bank for an annual fee of \$750.00; along with maintaining a Standby Escrow Account for \$5,000.00, for an annual fee of \$500.00. The Petitioner claims it would be unfair to pay the full cost of removal and disposal in advance of a cleanup event that may never occur. The Petitioner also believes that it would not be fair to continue to pay the annual fees of \$750.00 and \$500.00 to maintain the required financial mechanism documents. The annual combined payment amount of \$1,250.00 is 25% of the standby escrow account.

5. No comments were received from the public in response to the Notice of Receipt published in the Florida Administrative Register on September 19, 2016.

6. On October 31, 2016, the Petitioner provided additional information to the Department regarding why other financial instruments, specified in 62-711.500, F.A.C., are not viable options. It was indicated that most funded trust funds cost \$2,000 per year (some are more expensive), many bonds cost 10% of the bond amount per year (others require documentation of a strong financial position) and there are sometimes other set-up fees. Closure insurance is functionally not available to most permittees in Florida. Letters of credit, bonds and insurance all require a standby trust fund which usually costs at least \$500 per year.

CONCLUSIONS OF LAW

1. Section 120.542, F.S., authorizes the Department to grant a waiver from any of its rules upon a demonstration that the purpose of the underlying statute will be achieved by other means and that application of the rule would create a substantial hardship or would violate principles of fairness.

2. The Petitioner has demonstrated that it will suffer a substantial and unnecessary economic hardship if it is required to maintain proof of financial assurance for closure of its Facility. Because Petitioner's Facility's closure costs are small, it has also demonstrated that granting the waiver would not be expected to pose any significant economic risk to Florida taxpayers, and therefore, is not expected to have any adverse environmental consequences.

3. The Department concludes the Petitioner has demonstrated that it has met the requirements for a waiver from Rule 62-711.500(3)(a), F.A.C., with the conditions below. The Department concludes that Petitioner would suffer a substantial economic hardship if the waiver was not granted, and to grant the waiver will be consistent with the general intent and purpose of Chapter 403, F.S., and consistent with the exemption in 62-701.710(7)(b), F.A.C., for standalone waste processing facilities.

4. The Department concludes that the purpose of the underlying statute has been achieved by other means by the Petitioner. Specifically, as a result of the low closure cost estimate provided, the costs of maintaining financial assurance in the form of a prepayment for disposal or a Letter of Credit along with a Standby Escrow Account would surpass the cost of closure; therefore, placing a burden on the Petitioner and increasing the Petitioner's risk and need for closure funds. The Department will have more assurance that the Petitioner has the ability to pay the costs of closure if the funds were instead used for Petitioner's business and operating expenses.

5. This waiver, by itself, does not constitute authorization for the Petitioner to proceed with the proposed project. The Petitioner is required to operate the Facility only in accordance with the appropriate permit to be issued by the Department.

For these reasons, the Petition for Waiver is GRANTED, subject to the following conditions.

CONDITIONS

1. The Petitioner shall comply with the applicable requirements for obtaining and maintaining a waste tire processing facility permit contained in Chapter 62-711, F.A.C., including all requirements for the appropriate closure of the Petitioner's Facility, except it shall not be required to provide financial assurance for closure of the Facility in accordance with Rule 62-711.500(3)(a), F.A.C.

2. The Petitioner shall not store more than 3,000 waste tires on-site at the Facility at any one time. The Department reserves the right to revoke this Order if the Petitioner fails to comply with this provision of its Permit.

3. The issuance of this waiver does not relieve the Petitioner from the need to comply with all other conditions of any solid waste permit that may be issued, or from any other requirements of federal, state, or local agencies.

4. This Order is subject to reconsideration by the Department at the time of Petitioner's Permit renewal and upon the Department's adoption of new rules which would provide Petitioner financial assurance options that would not create a substantial and unnecessary hardship upon Petitioner.

NOTICE OF RIGHTS

The Department's Order Granting Waiver will be considered final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57, F.S.,

before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's proposed agency action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or by electronic mail at Agency_Clerk@DEP.state.fl.us.

Petitions by the applicant or any of the parties listed below must be filed within 21 days of receipt of this written notice. Petitions filed by other persons must be filed within 21 days of publication of the notice or receipt of the written notice, whichever occurs first. Under section 120.60(3), F.S., however, any person who asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Department's action is based must be in accordance with Rule 28-106.201, F.A.C., and contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

In accordance with section 120.573, F.S., the Department advises that mediation is not available in this case under the provisions of that statute. This does not prevent any interested parties from agreeing to other forms of alternate dispute resolution.

Any party to this order has the right to seek judicial review of it under section 120.68, F.S., by filing a Notice of Appeal under Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days after this order is filed with the Clerk of the Department.

DONE AND ORDERED this 13th day of December 2016, in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Tim J. Bahr, P. G., Assistant Director
Division of Waste Management
2600 Blair Stone Road
Tallahassee, FL 32399-2400

CERTIFICATE OF SERVICE

I, the undersigned designated Department clerk, HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States Mail to E.A. Tires International Corp., 3729 NW 71st Street, Hialeah, Florida 33175, on this 13th day of December, 2016.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52(11), Florida Statutes, with the designated Department clerk, receipt of which is hereby acknowledged.

Hepa Thigpen
(Clerk)

12/13/2016
(date)

Electronic copies furnished to:

Ashanti McBride, DEP OGC
Karen Kantor, P.G., DEP SED
Cory Dilmore, P.E, DEP Tallahassee
James Jarmolowski, P.G., DEP Tallahassee
Tor Bejnar, DEP Tallahassee