STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for waiver by:
Klean Tires Recycling, Inc.
10010 North Main Street
Jacksonville, Florida 32218
_____/

OGC No.: 17-1074
SWVA No.: 17-3

ORDER GRANTING WAIVER

The State of Florida Department of Environmental Protection ("Department") hereby gives notice that it is granting a waiver to Klean Tires Recycling Inc., ("Petitioner") pursuant to section 120.542, Florida Statutes ("F.S."), for the facility at 10010 North Main Street, Jacksonville, Duval County, Florida ("Facility"), Latitude/Longitude: 30°25'11.935"/81°38'58.45". On October 20, 2017, the Petitioner submitted a petition for variance or waiver ("Petition for Waiver") to the Department. The Petitioner requests a waiver from paragraph 62-701.300(2)(b), Florida Administrative Code ("F.A.C."), which requires that solid waste shall not be stored or disposed within 500 feet of an existing or approved potable water well.

FINDINGS OF FACT

1. On September 29, 2017, the Petitioner submitted an application to the Department to operate a waste tire processing facility at 10010 North Main Street, Jacksonville, Duval County, Florida. The Department's Northeast District Office reviewed the application, and on October 9, 2017, issued a Request for Additional Information (RAI) regarding the application to operate a waste tire processing facility. A response was submitted by the Petitioner on November 14, 2017 which was determined by the Department's Northeast District Office to be acceptable on November 22, 2017. The Department has assigned WACS Number 101988 to this facility.

2. The property at 10010 North Main Street, where the proposed waste tire processing facility will be located, contains approximately 8.7 acres, and is zoned CCG-IH, which is “heavy industrial”. This property is currently vacant and has been used for industrial purposes since between 1952 and 1959 to December 2011. This property contained a concrete plant from the mid 1950’s until approximately 1997, and contained an asphalt plant from 2001 to 2011.

3. Operations at the Klean Tires Recycling, Inc. waste tire processing facility are expected to result in the collection of between 1,500 and 2,500 used and waste tires per week from local vendors, which will be sorted into two groups. Group 1 is for used tires that are suitable for resale and are stored on-site for a short time prior to being transported to local vendors. Group 2 is for waste tires for car and truck tires that are not suitable for resale, and will be shredded on-site.

4. A portable shredder unit will be used for shredding tires and the shredded tire materials will be either sold as fuel or transported for proper disposal in a landfill. Approximately 500 car and truck tires will be shredded per day, or 130,000 tires a year. Sales of tires to customers will not be conducted at this location and used tires from the public will not be accepted.

5. On October 20, 2017, the Petitioner submitted a request for waiver from the provision in 62-701.300(2)(b), F.A.C., which requires that no person shall store or dispose of solid waste within 500 feet of an existing or approved potable water well. The waiver specifically requested that the facility be allowed to use the entire property for the waste tire processing operations.

6. The Petitioner provided information indicating that there are three existing potable wells located off-site which are in use and less than 500 feet from the facility's property boundary. These are identified as Well AAJ7952 located at 9962 Sisson Drive, approximately 59 feet to the west of the facility; Well AAJ3990 located at 120 Franklin Avenue, approximately 320 feet to the southwest of the facility and Well AA K9115 located at 128 Thomas Avenue, approximately 488 feet to the southwest.

7. The Petitioner indicated that the proposed shredding process is entirely mechanical, where whole tires are placed on a conveyor belt by employees and drawn into the shredding machine where cutting blades chop the tires into little pieces of rubber and a small amount of metal wire (former steel belts). The rubber pieces (shred) will then be removed from the site for use as an alternative fuel source or properly disposed of in an offsite landfill. The metal wire will be collected and sold at market rates as scrap metal. No byproducts or waste water will be produced during the shredding process and there is nothing to indicate that the storage of the tires in this instance could lead to a leachate contribution to groundwater.

8. The Petitioner also provided documentation from a previous site investigation for the subject property which indicated the direction of groundwater flow for the surficial aquifer was toward the south. As a result, the three potable wells located within 500 feet of the facility to the west and southwest are not immediately downgradient from the facility.

9. On October 26, 2017, the Department requested that additional information be provided by the Petitioner. This request included providing additional specific facts supporting a "substantial and unnecessary economic hardship" if the Petitioner is required to restrict operations to maintain a 500-ft. distance from the closest water well

along with providing additional information regarding how stormwater will be managed for the entire 8.7 acre site.

10. On October 31, 2017, the Petitioner submitted the additional information requested by the Department.

11. Based on the information submitted on October 20, 2017 and October 31, 2017, the Petitioner has demonstrated that the proposed waste tire processing activities are not expected to adversely impact the three existing off-site potable wells identified in Paragraph 6. above and that the petitioner will incur a substantial and unnecessary economic hardship if the Petitioner is required to restrict operations to maintain a 500-ft. distance from the closest water well.

12. No comments were received from the public in response to the Notice of Receipt of this waiver published in the Florida Administrative Register on October 25, 2017.

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 or has been 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 hardship if it is required to comply with Rule 62-701.300(2)(b), F.A.C., since the Petitioner would be unable to use the majority of the facility for waste tire processing operations, causing the Petitioner a significant loss of potential revenue.

3. The underlying statute for Rule 62-701.300(2)(b), F.A.C., is Section 403.704, F.S., which requires the Department to develop requirements for the operation of solid

waste management facilities and solid waste disposal that seek to minimize the adverse effects of solid waste management on the environment. The Petitioner has demonstrated that granting the waiver would not be expected to have any adverse environmental consequences or impacts to the off-site potable wells AAJ7952 located at 9962 Sisson Drive, Well AAJ3990 located at 120 Franklin Avenue and Well AA K9115 located at 128 Thomas Avenue. Thus, the Petitioner has demonstrated that the purpose of the underlying statute will be met because there will be no adverse effects on the environment.

4. The Department concludes Petitioner has demonstrated that a waiver from the provision of Rule 62-701.300(2)(b), F.A.C. is warranted, that it would suffer a substantial hardship if the waiver was not granted, that the grant of the waiver will be consistent with the general intent and purpose of Chapter 403, F.S., and that the purpose of the underlying statute has been met by other means.

5. This waiver, by itself, does not constitute authorization for Petitioner to proceed with the operation of a waste tire processing facility. The waste tire processing facility shall operate only in accordance with the appropriate permits issued by the Department's Northeast District Office or other state agencies as applicable.

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

CONDITIONS

1. Petitioner shall operate the waste tire processing facility in accordance with applicable permits issued by the Department, except the requirement of Rule 62-

701.300(2)(b), F.A.C., which would otherwise prohibit the storage of used and waste tires on-site, shall not apply.

2. Unless the Department takes affirmative action to revoke or modify this waiver; it shall not expire and shall have an unlimited duration.

3. The issuance of this waiver does not relieve the Petitioner from the need to comply with all conditions of the applicable solid waste permit, or from any applicable requirements of other federal, state, or local laws, including the requirements specified in Chapter 62-701.510, F.A.C.

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 _8__ day of _December____, 2017, 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 Mr. Sameer Hanania, Klean Tires Recycling Inc., 1104 Cassat Avenue, Jacksonville, Florida, on this ___8___ day of _December_, 2017.

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.

December 8, 2017

_____ _____
(Clerk) (date)

Electronic copies furnished to:

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