

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:

LTA Distributors LLC
3710 NW 79th Street
Miami, Florida 33147

SWVA No.: 12-3

ORDER GRANTING VARIANCE

The Department hereby gives notice that it is granting a variance to LTA Distributors LLC (Petitioner) pursuant to Section 120.542, Florida Statutes (F.S.), for its New Life Tires & Auto Repair facility located at 3710 NW 79th Street, Miami, Florida 33147. The variance request was submitted by Mr. Antonio Glustak, Proprietor for the Petitioner. Petitioner has requested a variance from Rule 62-711.500(3)(a), Florida Administrative Code (F.A.C.), which requires submittal of proof of financial assurance for closing a waste tire site at a waste tire processing facility as part of the permit application.

FINDINGS OF FACT

1. Petitioner operates an automobile tire business facility, located at 3710 NW 79th Street, Miami, Florida, at which it sells new and used tires. Petitioner is not in the business of collecting and transporting waste tires. Rather, tires are removed from the cars of customers as part of the normal business operation and are either resold as used tires or sent off-site to a recycling or disposal facility. 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. Petitioner has indicated that when operating the facility it may have up to 4,000 used tires on-site.

2. On January 17, 2012, Petitioner submitted a permit application to operate a waste tire processing facility for its tire business. This application is being processed by the Miami-Dade County Department of Regulatory and Economic Resources (Miami-Dade County RER), which operates under a delegation agreement with the Department, and is being tracked under file number 0309599-001-WT. The facility has been assigned WACS ID number 100381. 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 application.

3. Petitioner asserts that the closure cost estimated for the maximum number of used tires on-site is \$2,000. Petitioner further states that it would be impractical to provide a bond, insurance policy, or other mechanism to demonstrate financial assurance for this small amount of estimated closure cost. In some cases financial mechanisms are not available for such a small amount. In other cases, the transactional costs of providing financial assurance for such a small amount would far outweigh the value of the assurance over the lifetime of the permit.

4. On August 23, 2012, Petitioner submitted a variance request seeking to have the provisions of Rule 62-711.500(3)(a), F.A.C., not apply to its waste tire processing facility. This petition has demonstrated that Petitioner will suffer a substantial and unnecessary hardship if it is required to maintain proof of financial assurance for closure of the waste tire site. The petition has also demonstrated that granting the variance would not be expected to have any adverse environmental consequences and would not be likely to pose any significant economic risk to Florida taxpayers.

5. No comments have been received from the public in response to the Notice of Receipt of this variance published in the Florida Administrative Weekly on September 21, 2012.

CONCLUSIONS OF LAW

1. Section 120.542, F.S., authorizes the Department to grant a variance 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 Department concludes Petitioner has demonstrated that a variance from the provisions of Rule 62-711.500(3)(a), F.A.C. is warranted, that it would suffer a substantial hardship if the variance was not granted, and that the grant of the variance will be consistent with the general intent and purpose of Chapter 403, F.S.

4. This variance, by itself, does not constitute authorization for Petitioner to proceed with the proposed project. Petitioner shall be required to operate the facility only in accordance with the appropriate permit issued under the Department's delegation agreement with the Miami-Dade County RER.

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

CONDITIONS

1. Petitioner shall comply with the applicable requirements for obtaining a waste tire processing facility permit contained in Chapter 62-711, F.A.C., 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 application may be accepted and processed by the Miami-Dade County RER even though it does not include proof of financial assurance for closure. Provided that the permit includes a condition establishing that no more than 4,000 waste tires be stored at the facility at any one time, no proof of financial assurance for closure will be required as a condition of permit issuance.

3. The issuance of this variance 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 requirements of other federal, state, or local agencies.

NOTICE OF RIGHTS

The Department's Order Granting Variance 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.

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 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, and telephone number of the petitioner; 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, Mail Station 35, 3900 Commonwealth Boulevard, 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 thirty days after this order is filed with the clerk of the Department.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



John A. Coates, P.E.
Assistant Director
Division of Waste Management
2600 Blair Stone Road
Tallahassee, FL 32399-2400

CERTIFICATE OF SERVICE

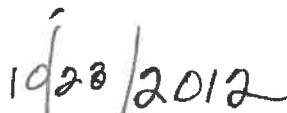
I, the undersigned designated Department clerk, HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States Mail to Antonio Glustak, LTA Distributors LLC, 3710 NW 79th Street, Miami, Florida 33147, on this 23rd day of October, 2012.

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.



(Clerk)



(date)

Copies furnished to:

Chris McGuire, OGC

Joe Lurix, DEP SED

Pablo Asencio, Miami-Dade County RER