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May 11, 1992

Mr. Bobby A. Cooley
Acting Director of District Management
Florida Department of Environmental Regulation
Southeast District
1900 South Congress Avenue, Suite A
West Palm Beach, FL 33406

Re: Florida Tire Recycling, Inc. - Warning Letter #92-0052
SW 56 SED

Dear Mr. Cooley:

This firm has been retained to provide legal counsel and representation to Florida Tire Recycling, Inc. with regard to the warning letter to which reference is made above. This letter is to serve as Florida Tire's response to that warning letter. Your letter raises some issues which have crucial implications for the growth and development of the tire recycling industry in Florida.

Florida Tire Recycling is one of the few tire recycling companies in the state. It is my understanding that most of the other companies still dispose of the majority of their tire material at landfills. This certainly is not the overall goal of the state comprehensive plan or DER. Since John Wilson and his family gained control of the company in December of 1991, the focus of the company has been changed to emphasize the resale of processed tires for other uses such as fuel. To achieve that objective, it is necessary for Florida Tire to demonstrate to a prospective purchaser of tire derived fuel that it has a dependable flow of product material. That is achieved by having a comprehensive collection program and the warehousing

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on site of the processed rubber product. After considerable marketing effort, Florida Tire has secured an order from Marketing Services Unlimited, Inc. for 3,000 metric tons of processed rubber per month on an annual basis. It is anticipated that the first delivery should occur within a month. It is negotiating with two other potential buyers. One would take 10,000 tons per month of processed rubber and the other 50,000 tons per year.

Florida Tire Recycling has invested about \$2.2 million over the past four years in the operation. Approximately \$800,000 of that is the personal money of Mr. Wilson and his family. That investment has included the establishment of a state-wide collection system and acquisition of 136 collection trailers, 5 tractors, 3 van-style trucks, the purchase of 2 shredders (at a replacement value of \$850,000), the purchase of a 32-acre processing site, and the employment of 26 persons.

The true recycling of tires (not landfilling) is a fledgling industry with promise. The need to reinvest profits is essential to the development and growth of recycling companies such as Florida Tire. The freezing of substantial amounts of capital assets to collateralize financial assurance requirements of agencies, such as DER, significantly inhibits the growth of the industry (and thereby competition) and the achievement of the state's recycling objectives.

Mr. Skip Robinson of Florida Tire has been attempting to secure increased financial assurance from bonding and financial institutions. He has been informed by an agent of the Loomis Insurance Agency that the bond forms supplied by DER reference hazardous waste provisions rather than the waste tire regulation. Consequently, the bonding company is hesitant to issue a bond under that apparently conflicting situation. Furthermore, Mr. Robinson is informed that the type of bond being sought here requires proof of net liquid assets in the amount of the bond. Mr. Robinson has also contacted First United Bank with respect to a possible letter of credit. He has also been informed that such an instrument can be secured only if Florida Tire has 100% of the redemption value of the letter available.

Your staff is suggesting that Florida Tire should post financial assurances of approximately \$2,940,400.00. As you can see from Mr. Robinson's information, that would require tying-up an inordinate amount of capital which should be reinvested in the recycling operation. If the DER regulations are interpreted to achieve such a result, it would prevent the start-up and survival of new and most existing tire recycling operations.

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Certainly, that approach would be in direct conflict with Section 187.201 (13)(b) 1, 3 & 9 of the State Comprehensive Plan, and Sections 403.717 and 403.704 (7) of the Florida Statutes which require the State to assist and encourage recycling and the development of markets for processed materials. The present \$15,000.00 letter of credit, which Florida Tire has on its facility, was secured by a \$15,000.00 personal certificate of deposit belonging to Mr. Wilson in his personal capacity. In addition to having to secure a bond or letter of credit with the face value of those instruments, one would also have to pay an annual premium or fee of approximately 3% to the issuing entity.

The current net worth of Florida Tire is between \$300,000.00 and \$400,000.00. That is not nearly enough to secure the level of financial assurance which your staff suggests is required in this case. Furthermore, for a company the age and size of Florida Tire to have more net worth than that at this point in time, would not be viewed as sound management by the investment community because it would suggest that not enough money was being put back into the company. You should note that Florida Tire is in the process of seeking additional investment from the private sector to expand its collection, tire processing, and marketing capabilities. Ernst & Young is assisting the company in the preparation of the necessary documents to seek those funds. Florida Tire is in sound financial condition and has achieved one of the most difficult parts of the recycling effort, the establishment of a statewide collection system.

The issues involving the storage of waste tires and processed tires at the Florida Tire facility are being addressed. On April 23, 1992, Florida Tire hired ten (10) additional employees, leased an additional front end loader and roll-off containerized truck and commenced the redistribution of the waste tires and processed tires in accordance with the provisions of Section 17-711.540(2), F.A.C. They have been working six days a week and expect to achieve the storage requirements set forth in your warning letter by June 23, 1992. On April 27, 1992, Mr. Wilson invited and met with Capt. Robert Tomlinson of the St. Lucie County Fire Department to obtain his direction on the redistribution effort to ensure compliance with state and local fire codes. That effort is continuing under the scrutiny of Captain Tomlinson and Chief Sessom.

Florida Tire has retained the services of Culpepper & Terpening, Inc. to estimate the amount of waste tires and processed tire material at the company's facility. That estimation should be completed by June 12, 1992.

Chapter 17-711, Florida Administrative Code, makes a clear distinction between "waste tires" and "processed tires". Section 17-711.100 states that "it is the purpose of this rule to protect the public health, welfare and the environment by providing for the regulation of waste tire storage, collection, transport, processing and disposal. (Emphasis supplied.)

Section 17-711.200 defines "waste tire" to mean "a whole tire that is no longer suitable for its originally intended purpose because of wear, damage, or defect." It defines "processed tire" as a "waste tire that has been cut, shredded, burned, or otherwise altered so that is no longer whole." (Emphasis supplied.) In other words, a processed tire is no longer a tire, let alone a waste tire. (See also the definition of "tire" in the same definition section.) The vast majority of material at the Florida Tire property is rubber chips and not tires. Tires comprise only about 10% of the materials on site. The remaining rubber material is inventory of product for resale in the marketplace, not waste being stored for disposal.

Chapter 17-711, F.A.C., makes a clear distinction between waste tire sites and waste tire processing facilities. That distinction is evident in Section 17-711.400(1) which prohibits one from maintaining a waste tire site after July 1, 1989 unless such site is an integral part of a permitted waste tire processing facility. That section goes on to define that "an integral part of a waste tire processing facility" means that the "waste tire site is on the same property as the processing facility".

The financial responsibility provisions of Section 17-711.510 apply only to waste tire sites; i.e., those portions of a property on which is located a waste tire site and not those portions on which there may also be located a waste tire processing facility. Section 17-711.530, which addresses waste tire processing facility requirements, does not include a financial responsibility provision. The only link between that section and the section on waste tire site requirements is the provision that processed tires are to be stored in accordance with the requirements in Section 17-711.510. Storage is addressed under Section 17.711.510(1) by reference to the standards in Section 17-711.540. This latter Section establishes requirements for the outdoor storage of waste tire piles and processed tire piles; See 17-711.540(2). It is Florida Tire's position that Chapter 17-711 only requires financial assurances for the disposal or processing of waste tires which may be located on its property provided there are 1,000 or more whole tires accumulated thereon in the outdoors.

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Once the estimation work has been completed by Culpepper & Terpening, Florida Tire will be in a position to assess its level of financial assurance. Meanwhile, the redistribution of waste tires and processed tire material will continue to completion.

Your Warning Letter of April 21, 1992 indicates in the last paragraph under (2) that DER notified Florida Tire regarding purported deficiencies in its financial assurance on March 16 and December 13, 1990 and that copies of supporting documents were enclosed. However, Mr. Wilson advises me that no such enclosures were included with the letter he received from you dated April 21, 1992. I would appreciate receiving copies of those referenced documents.

In a related matter, other correspondence I have reviewed between DER and Mr. Wilson, references a permit for Florida Tire's facility #WT56-165345. However, Mr. Wilson finds no such permit document in his file. He does have a letter which indicates that such a permit number was assigned to his facility. Also, he filed various notifications and applications with the Department in 1989, copies of which he has provided me. Therefore, I would appreciate it if you would send me a copy of the DER Permit, if any, which has been issued for his facility.

Mr. Wilson has stated to me his desire to resolve the various outstanding issues with you regarding Florida Tire's facility and operation. I hope that the actions which are under way at the facility, as well as the matters addressed in this letter, can provide the basis for productive deliberations between Florida Tire and you, and a resolution of these various matters in a manner satisfactory to all parties. After you have had an opportunity to review this letter, Mr. Wilson, Mr. Robinson and I would like to meet with you and your staff to achieve a resolution of the issues. That resolution is not only a great import to Florida Tire, but also to the industry in general.

Sincerely yours,


James R. Brindell

JRB/edm

cc: John J. Wilson
William Parker GUNSTER, YOAKLEY & STEWART

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW