

Memorandum

Florida Department of
Environmental Protection

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DEPT OF ENV PROTECTION
WEST PALM BEACH

TO: Virginia Wetherell, Secretary
Dan Thompson, Assistant Secretary

THROUGH: Ken Plante, General Counsel
Larry Morgan, Deputy General Counsel

FROM: Janet Bowman, Assistant General Counsel

DATE: February 8, 1995

SUBJECT: Briefing Memo Re: DEP vs. Florida Tire Recycling, Inc., OGC No. 92-1094C.

I. ISSUE:

The Department and Florida Tire Recycling entered a stipulated "Consent Injunction" in January of 1994 to settle issues raised by a Temporary Injunction Motion filed by the Department regarding the stockpiling of tires at Florida Tire's waste tire processing facility in St. Lucie County. The Consent Injunction requires Florida Tire to either remove all the waste tire material from the site or obtain and comply with the terms of a waste tire processing permit by December 31, 1994.

As described in your letter of February 1, 1995 to Representative Pruitt (attached as Exhibit I), Florida Tire had a series of meetings with Ernie Frey to discuss extending the deadlines set forth in the Consent Injunction. The discussion focused on Florida Tire's waste tire processing permit application, which requested a permitted capacity of 9700 tons. As of November 1, 1994, the Department's waste tire expert estimates that approximately 40,000 tons of tires remains at the Florida Tire site. In order to qualify for a permit, therefore, Florida Tire would have to reduce the volume of material at the site by 30,300 tons in addition to complying with other permit requirements.

Florida Tire estimated last fall that approximately 25,000 tons of waste tire material remained on the site and that it would take until December 31, 1995 to reduce the stockpile of tires to 9700 tons or the requested permit volume. Hence, at the last meeting held in West Palm Beach in September 1994, Florida Tire proposed to extend the Consent Injunction for at least one year in order to reduce the stockpile to an acceptable volume. Florida Tire's proposal and pending permit application are unacceptable to

the District because they fail to provide reasonable assurances that the stockpiled tire material at the site will be removed in a reasonable amount of time or that the material will be properly configured and maintained to prevent the threat of fire. Attached for your approval as Exhibit II, is a proposed letter for Carlos Rivero-deAguilar's signature communicating this conclusion to Florida Tire.

Southeast District staff have requested that OGC file a motion with the circuit court to enforce the terms of the Consent Injunction. Both the terms of the Consent Injunction and Chapter 403.709(3), Florida Statutes, authorize the Department to ask the court to take possession of the waste tire site "in order to protect the health, safety, and welfare of the community and the environment...." and to remove the waste tires.

OPTIONS:

1. Take Florida Tire back to circuit court to enforce the terms of the Consent Injunction.

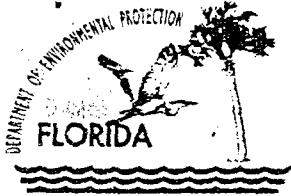
This strategy avoids the problem of the Department authorizing the continued operation of the facility outside of the waste tire rules. Other waste tire processing facilities in South Florida have complained that DEP is not aggressively requiring Florida Tire to comply with the waste tire rules. The court could impose its own deadline for waste tire removal and enforce the deadline with the sanction of contempt or authorize the Department to remove the waste tires from the site pursuant to Chapter 403.

2. Offer Florida Tire a "take it or leave it" extension of the Consent Injunction of no more than six months and require stringent monthly volume removal requirements. For example, require the removal of 100 tons/day of waste tires in addition to removal of an amount equal to the volume of tires brought onto the site each day.

The drawback to this strategy is that District staff do not believe that Florida Tire will be able to comply with the terms of a reasonable extension or be able to qualify for a waste tire processing permit within the next six months. In addition, we have already given Florida Tire a one year opportunity to come into compliance with the Department's rules. If this option is adopted, it is likely that the Department would be back in the same position within six months without achieving any environmental benefit in the interim.

RECOMMENDATION:

Authorize OGC to enforce the terms of the Consent Injunction.



Department of Environmental Protection

Lawton Chiles
Governor

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

Virginia B. Wetherell
Secretary

February 1, 1995

The Honorable Ken Pruitt
Florida House of Representatives
2400 SE Midport Road, Suite 310
Port St. Lucie, Florida 34952

Dear Representative Pruitt: *Ken*

This letter responds to your inquiry regarding the status of the Florida Tire Recycling, Inc. site in St. Lucie County. As you know, the Department filed a civil lawsuit against Florida Tire in 1993 seeking injunctive relief and civil penalties based on Florida Tire's failure to comply with the terms of their waste tire processing permit and Chapter 62-711, Florida Administrative Code, and based on the public health threat posed by the improper storage of tires at the site. In January 1994, the Department and Florida Tire entered a stipulated Consent Injunction, negotiated during mediation, which requires Florida Tire to reconfigure and remove the stockpiled tires at the site. Ultimately, the Consent Injunction requires Florida Tire to either obtain a waste tire processing permit or remove all of the tire material from the site by December 31, 1994.

In addition, the Consent Injunction requires a number of corrective actions including:

- 1) Design and construction of a perimeter roadway and central access roadway around and through the site; and
- 2) Submit Management and Storage of Surface Waters (MSSW), Dredge and Fill, and Waste Tire Processing permit applications;
- 3) Fire Protection and Security Measures;
- 4) Reconfigure the tire material piles at the site following Chapter 62-711, F.A.C., and remove all tire material from the FP&L easement within 180 days of entry of the Consent Injunction;
- 5) For the first six months of the Consent Injunction, remove 100 tons/day more tires than are brought on site each day;

Honorable Ken Pruitt
February 1, 1995
Page 2

- 6) Create a financial responsibility trust fund with monthly contribution until compliance with a waste tire processing permit or all tire material is removed from the site; and
- 7) By December 31, 1994, Florida Tire shall remove and properly dispose of pursuant to a DEP approved plan, all waste tires for which storage is not authorized by a DEP waste tire processing permit.

The corrective actions are designed to abate the health and public safety threat, posed by over 60,000 tons of stockpiled tire material, and to bring Florida Tire into compliance with the Department's tire rules.

Approximately six months into the Consent Injunction, Florida Tire had submitted an MSSW, Dredge and Fill and Waste Tire Processing permit application, provided on-site security and begun to reconfigure the tire piles.

On July 11, 1994, Florida Tire filed a motion with the circuit court entitled "Motion to Enforce Injunction, for Supplemental Relief and Appointment of Special Master" requesting the court to delete some of the requirements of the Consent Injunction and extend the deadlines for compliance with the terms of the Consent Injunction. In addition, Florida Tire alleged that the Department was not acting in good faith in processing the Dredge and Fill and MSSW permit applications. The cover letter to the Department accompanying the Motion indicated that Florida Tire would postpone requesting a hearing on the Motion if DEP would agree to meet with Florida Tire.

In response to the letter, Department staff met with Florida Tire and their counsel on August 10, 1994 in West Palm Beach. During the meeting, the specific problem of Florida Tire's inability to provide financial responsibility up front for the removal of 9700 tons of waste tire material was discussed. At the meeting, Ernie Frey, Acting District Manager, committed to talking to DEP Waste Management Program Staff about alternative methods of providing financial responsibility that could be made available to Florida Tire if all of the other requirements for obtaining a waste tire permit were met.

Honorable Ken Pruitt
February 1, 1995
Page 3

On August 25, 1994, a second meeting was held between Department staff and Florida Tire in West Palm Beach. At that meeting, DEP District staff indicated their willingness to consider a six month extension of the terms of the Consent Injunction provided that Florida Tire could meet all of the other requirements for a waste tire permit before the end of the proposed six month period. In addition, the Department indicated it would consider a compliance schedule for meeting the financial responsibility requirements of the tire rule in the form of a compliance agreement to accompany the waste tire processing permit.

In early September, several landfills to which Florida Tire had previously been transporting tire material for disposal, contacted the Department and indicated that they would no longer accept material from Florida Tire. As Florida Tire indicated these locations in their waste tire processing permit application, this raised an issue of whether Florida Tire could provide reasonable assurance that it could process and dispose of the requested permit volume of 9700 tons/day. Accordingly, on September 8, 1994, the Department sent a letter to Florida Tire's counsel inquiring about the canceled landfill contracts.

On September 9, 1994, Florida Tire sent a letter to Ernie Frey, Acting District Manager, proposing the delay of the reduction of material to their requested permit volume of 9700 tons until December 31, 1995. Under this schedule, Florida Tire would not qualify for a waste tire processing permit until December 31, 1995 at the earliest. Therefore, this proposal would delay the volume reduction requirements of the Consent Injunction by at least a year.

On September 20, 1994, Florida Tire met with DEP staff, including the Acting District Manager, Ernie Frey, in West Palm Beach. At that time, staff questioned the now one year extension proposal submitted by Florida Tire. Of specific concern was Florida Tire's unwillingness to commit to monthly criteria for the removal of tire material from the site so that the Department has assurance that the stockpile of tire material at the site is reduced at an acceptable rate. At the end of the meeting, Florida Tire was asked to provide the Department with milestones for reducing the stockpile of tires at the site.

Honorable Ken Pruitt
February 1, 1995
Page 4

On September 28, 1994, Florida Tire submitted a proposal to the Department that contained quarterly reduction goals as opposed to specific monthly reduction deadlines. Moreover, Florida Tire's ability to meet these goals was portrayed in the letter as entirely dependent on whether Georgia Pacific continues to accept material from Florida Tire. Georgia Pacific is not obligated to accept guaranteed quantities of tire material from Florida Tire. Finally, the letter indicates that, by Florida Tire's estimate, 22,000 to 25,000 tons of tires remain stockpiled at the St. Lucie County site.

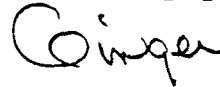
On October 24, 1994, Florida Tire sent a letter to Ernie Frey stating that Florida Tire would not proceed with the construction of the stormwater system as required by the Consent Injunction unless the Department would commit to the issuance of a waste tire processing permit. In response to this letter, Carlos Rivero-deAguilar, the new Director of District Management, sent a letter to Florida Tire on November 29, 1994 stating that construction of the stormwater system, for which a permit was issued on November 7, 1994, must be initiated under the Consent Injunction and is not tied to Florida Tire's pending waste tire processing permit. In response, on December 9, 1994, Florida Tire sent a letter to Carlos Rivero-deAguilar stating that Florida Tire did not want to construct the stormwater system without the Department promising them a permit and contesting statements made in the November 29th letter regarding the state of compliance of the site.

At present, Florida Tire's proposal of September 28, 1994 to extend the Consent Injunction by a year is unacceptable to the Department. Both the proposal and Florida Tire's pending permit application fail to provide reasonable assurances that the stockpiled material at the site will be removed in a reasonable amount of time or that the material will be properly configured and maintained to prevent the threat of fire. A survey conducted at the Florida Tire site in late September and early October indicates that many of the tire piles at the site do not have adequate fire lanes and exceed the dimension limitations of the Department's tire rule and that the volume of material at the site significantly exceeds the 25,000 ton figure estimated by Florida Tire.

Honorable Ken Pruitt
February 1, 1995
Page 5

I have asked Carlos Rivero-deAguilar to meet with Florida Tire as soon as possible to discuss the Department's position. In addition, if you are interested in additional information regarding Florida Tire, my staff is available to brief you on this matter at your convenience.

Sincerely yours,



Virginia B. Wetherell
Secretary

cc: Carlos Rivero-deAguilar
Vivek Kamath
Janet Bowman



Department of Environmental Protection

Lawton Chiles
Governor

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

Virginia B. Wetherell
Secretary

February , 1995

David L. Quarterson
Florida Tire Recycling, Inc.
9675 Range Line Road
Port St. Lucie, Florida 34987

Dear Mr. Quarterson:

This letter is in response to your letter of December 9, 1994 regarding my letter of November 29, 1994. In my letter, I articulate the Department's position that, under the Consent Injunction, Florida Tire must proceed with construction of the MSSW system independently of whether Florida Tire qualifies for an operating permit or not. The MSSW system for which a DEP permit was issued on November 7, 1994, includes the construction of perimeter roads, tire storage pads and drainage capability necessary to reduce fire and safety concerns at the site. For example, the construction of stabilized roads is necessary to provide St. Lucie Fire Protection District fire vehicles access to the site.

With respect to your inquiry regarding Florida Tire's proposal of September 28, 1994 in which the Florida Tire would be given until December 31, 1995 to reduce the volume of tires at the site to 9700 tons, I have discussed the proposal with Ernie Frey and evaluated the proposal on my own. The proposal is unacceptable to the Department for several reasons. First, under the proposal submitted by Florida Tire, Florida Tire would not qualify for a DEP waste tire permit until December 31, 1995 at the earliest. The Department's concerns regarding this period of delay were discussed at the meeting of September 20, 1994 with Ernie Frey. Second, DEP is unwilling to agree to any extension of the deadlines set forth in the Stipulation and Consent Injunction without specific monthly volume disposal requirements. Again, the Department's need for specific monthly reduction criteria was discussed at the September 20, 1994 meeting.

Finally, the Department is unable to make any promises regarding Florida Tire's ability to qualify for a waste tire processing permit before Florida Tire has reduced the volume of tire material at the site to a permittable volume. Indeed, Florida Tire estimates in its letter of December 9, 1994 that 25,000 tons of tire material remains stockpiled at the site. Following the assumptions set forth in the letter, it would take over ten months to remove the stockpiled material from the site. The original term of the Consent Injunction was

David L. Quarterson
February , 1995
Page 2

for one year, and was intended to be a short term remedy designed to bring Florida Tire in compliance with Chapter 62-711, Florida Administrative Code, and not to authorize continued operation of the facility without a permit.

In conclusion, the Department is not willing to agree to Florida Tire's proposal of September 28, 1994. Instead, DEP's expectation is that Florida Tire will comply with the storage and removal requirements of the Consent Injunction.

Sincerely,

Carlos Rivero-deAguilar
Director of District Management

cc: Janet Bowman, DEP OGC
Joe Kahn, DEP SE District