

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:
Hillsborough County Southeast Landfill
15960 CR 672
Lithia, Florida

OGC No.: 10-0923
SWVA No.: 10-01

ORDER GRANTING VARIANCE

The Department hereby gives notice that it is granting a variance to Hillsborough County, Florida (Petitioner) pursuant to Section 120.542, Florida Statutes (F.S.), for a change in waste tire storage capacity of the Waste Tire Processing Facility located at Southeast Landfill. The Petitioner has requested a variance from Rule 62-711.530(2)(a), Florida Administrative Code (F.A.C.), which requires the Petitioner to have an aggregate of waste whole tires, waste processed tires and residuals storage capacity no greater than 60 times the daily through-put of the processing equipment. The Petitioner has also requested a variance from Rule 62-711.530(3), F.A.C. which requires the Petitioner to annually remove for disposal or recycling at least 75 percent of the whole tires, used tires, and processed tires that are delivered to or are contained on the site of the waste tire processing facility at the beginning of each calendar year.

FINDINGS OF FACT

1. On December 20, 2004, the Department issued Permit No. 126787-002-WT/02 to the Petitioner for the continued operation of a waste tire processing facility located at the existing Southeast Landfill.

2. On June 23, 2009, the Petitioner submitted a renewal application for the waste tire processing facility permit to the Department that included an increase in the waste tire storage capacity to a total of 16,106 tons. The basis for the increase was to

have sufficient waste tires available for use as a construction material in bottom liner system construction, gas system construction and internal landfill cover material for the Southeast Landfill.

3. On July 22, 2009, the Department issued a Request for Additional Information on the renewal permit application. The Department notified the Petitioner that the total storage capacity for waste tires proposed in the application exceeded the amount allowed by Rule 62-711.530(2)(a), F.A.C. Specifically, the total capacity proposed in the permit application exceeded 60 times the daily through-put of the processing equipment being used.

4. On January 27, 2010, the Petitioner requested a Variance from Rule 62-711.530(2)(a), F.A.C. to allow increasing the amount of stored waste tires at the processing facility (i.e. whole tires, processed tires and residuals) from 12,787 tons currently allowed in the rule to 16,106 tons. The Petitioner also requested relief from Rule 62-711.530(3), F.A.C., which limits the holding time for processed waste tires since the processed tires must be stored on-site for planned future construction projects of the landfill. The Petitioner intends to reconfigure the storage of the waste tires and to expand its existing waste tire processing and storage area from a total of 13.06 acres to 19.62 acres. This extra area will allow for another 6.56 acres of storage space. The Petitioner will meet all the Department's storage requirements for the waste tire piles contained in Rule 62-711.540, F.A.C. such as setbacks to water bodies, maximum dimensions and minimum distances between the piles.

5. The Petitioner has demonstrated that it will suffer a substantial hardship to its planned construction projects if it is required to limit the storage and holding times of waste tires on-site as required by the rule. This restriction will create an unnecessary

technical hardship on future construction projects for the Southeast Landfill. The Petitioner has demonstrated that increasing the storage and holding times for the waste tires will not create an adverse environmental or human health effect. The Petitioner has also demonstrated that denial of the variance will create adverse social and economic impacts on residents of the area.

6. The petition submitted by the Petitioner has met all of the requirements of Rule 62-110.104, F.A.C., as well as the requirements of Section 403.201(1)(c), F.S.

CONCLUSIONS OF LAW

1. The Department concludes that, for the reasons stated in the petition, the actions taken by the Petitioner are expected to meet the general intent and purpose of the underlying statute and implementing rules, and that the Petitioner will suffer a hardship peculiar to the affected property and not self-imposed if the variance is not granted.

2. This variance, by itself, does not constitute authorization for the Petitioner to operate the facility. This facility shall operate only in accordance with the appropriate permits issued by the Department's Southwest District Office. This variance will be incorporated into that permit and will be reviewed at the time of permit renewal. It is anticipated this variance will be needed until the final expansion cell of the landfill is constructed. However, unless the Department takes affirmative action to revoke or modify this variance, it will have an unlimited duration.

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

CONDITIONS

1. The maximum storage allowed for the whole waste tires, processed waste tires and residuals at the waste tire processing facility shall not exceed 16,106 tons provided the storage requirements contained in Rule 62-711.540, F.A.C. are satisfied and financial assurance is provided for all of the waste tires, processed waste tires and residuals stored at the facility.

2. The 75 percent removal requirement for whole tires, used tires and processed tires contained in Rule 62-711.530(3), F.A.C. is waived provided the processed waste tires are used as soon as practicable in construction projects for the Southeast Landfill.

3. The Petitioner shall continue to meet all other applicable requirements contained in Chapter 62-711, F.A.C.

4. To the extent that the permit for the facility needs to be modified to accommodate this variance, the Southwest District is instructed to do so.

5. The issuance of this variance does not relieve the Petitioner from the need to comply with all conditions of the solid waste permit, or from any requirements of other federal, state, or local agencies.

Pursuant to Section 403.815, F.S., you are required to publish at your own expense a Notice of Proposed Agency Action. The following paragraph must be included in the notice of proposed agency action for the permit that authorizes the operation of the waste processing facility:

The Department of Environmental Protection also gives Notice of its Intent to grant a variance pursuant to Section 120.542, Florida Statutes (F.S.), to Hillsborough County. The variance is from Rule 62-711.530(2)(a), Florida Administrative Code (F.A.C.), which requires the Petitioner to have an

aggregate of waste whole tires, waste processed tires and residuals storage capacity no greater than 60 times the daily through-put of the processing equipment, and from Rule 62-711.530(3), F.A.C., which requires the Petitioner to annually remove for disposal or recycling at least 75 percent of the whole tires, used tires, and processed tires that are delivered to or are contained on the site of the waste tire processing facility at the beginning of each calendar year. 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 of the Florida Statutes. The requirements for filing a petition relating to the proposed variance are the same as those set forth herein relating to the proposed permit, except that the petition must be filed (received) within 21 days of receipt of this notice in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

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 of the Florida Statutes 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 of the Florida Statutes. 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 twenty-one days of receipt of this written notice. Petitions filed by other persons must be filed within twenty-one days of publication of the notice or receipt of the written notice, whichever occurs first. 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 of the Florida Statutes, 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 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

(a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;

(d) A statement of all material facts disputed by petitioner or a statement that there are no disputed facts;

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

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wants the Department to take with respect to the Department's action or 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.

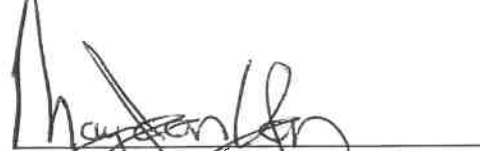
Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of 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 as an alternative to filing a petition for an administrative determination.

Any party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the 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

A handwritten signature in black ink, appearing to read "Mary Jean Yon", is written over a horizontal line. The signature is somewhat stylized and overlaps the text below.


Mary Jean Yon, Director
Division of Waste Management
Twin Towers Office Building
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 Jason Timmons, P.E., Jones Edmunds & Associates, Inc., 324 South Hyde Park Avenue, Suite 250, Tampa, Florida 33606, on this 2ND day of March, 2010.

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.

 02/02/10
(Clerk) (date)

Copies furnished to:
Chris McGuire, OGC
Susan Pelz, Southwest District
Fred Wick, Solid Waste Section

