

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:
Florida Recyclers of Brevard, Inc.
3351 Sarno Road
Melbourne, FL 32934

OGC No.: 14-0657
SWVA No.: 14-5

ORDER GRANTING VARIANCE

The Department hereby gives notice that it is granting a variance to Florida Recyclers of Brevard, Inc. (Petitioner) pursuant to Section 403.201(1)(c), Florida Statutes (F.S.), for its Construction and Demolition Debris (C&D) disposal facility (Facility) located at 3351 Sarno Road, Melbourne, Brevard County, Florida (Section 24, Township 27 South, Range 36 East). The Petitioner has requested a variance from Section 403.707(9)(c), F.S., which prohibits the use of an escrow account to provide proof of financial assurance for closure for privately owned and operated C&D disposal facilities.

FINDINGS OF FACT

1. The Petitioner is the holder of a permit to construct and operate a C&D disposal facility in Brevard County, Florida, under Department permit number 05-0133456-010-SO-22. Rule 62-701.710(7)(a), Florida Administrative Code (F.A.C.), requires that proof of financial assurance for the closure of the Facility be maintained as a necessary part of that permit. The Department has assigned WACS number 18444 to the Facility.

2. The Facility had been permitted as a Class III landfill from 1999 until 2014, and Petitioner has used an escrow account to provide proof of financial assurance for closure of the Facility. Since, in accordance with Section 403.7125(2)(e), F.S., the

Facility was permitted as a Class III landfill prior to January 1, 2007, the use of escrow accounts as proof of financial assurance was allowed. However, on July 28, 2014, the Facility was re-permitted as a C&D disposal facility, and was required as part of that permit to provide an alternate form of financial assurance.

3. Even though the Facility was permitted as a Class III landfill in 1999, Petitioner claimed it always was operated as a C&D disposal facility. Based on inspections and a review of available records, the Department agreed that the Facility appeared to only be operated as a C&D disposal facility and considered this information when renewing the permit in 2014.

4. Petitioner has investigated the availability of alternate forms of financial assurance, including performance bonds, guarantee bonds, and insurance. At this time, due to poor market conditions Petitioner has not been able secure an alternate form of financial assurance but is continuing to seek a replacement instrument. Petitioner has also been attempting to secure an insurance policy, and while this remains a possibility it will require additional time to secure such a policy.

5. On October 23, 2014, Petitioner submitted a variance request seeking to have the Department temporarily waive the provisions of Section 403.707(9)(c), F.S., that prohibit the use of an escrow account for privately owned C&D disposal facilities. On February 27, 2015, Petitioner also submitted additional information in support of the petition. This petition and the additional information have demonstrated Petitioner will suffer a substantial and unnecessary hardship if it is required to immediately obtain and maintain an alternate form of financial assurance for closure rather than having additional time to secure an alternate mechanism. The petition and additional

information have also demonstrated that granting a short term variance would not be expected to have any adverse environmental consequences.

CONCLUSIONS OF LAW

1. Section 403.201(1), F.S., authorizes the Department to grant a variance from the provisions of Chapter 403, F.S., for any one of the following three reasons.

(a) There is no practicable means known or available for the adequate control of the pollution involved.

(b) Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

(c) To relieve or prevent hardship of a kind other than those provided for in paragraphs (a) and (b). Variances and renewals thereof granted under authority of this paragraph shall each be limited to a period of 24 months, except that variances granted pursuant to part II may extend for the life of the permit or certification.

2. The Department concludes Petitioner has demonstrated it will suffer a substantial hardship if the variance is not granted from the provisions of Section 403.709(9)(c), F.S., and that this hardship is of a kind other than those provided for in paragraphs 403.201(1)(a) and (b), F.S.

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

CONDITIONS

1. Petitioner shall at all times maintain financial assurance for closure (i.e., closing and five years of long-term care after closing) of the Facility in accordance with Department rules. Petitioner may continue to use an escrow account to provide financial assurance for closure of the Facility until the date this variance expires.

2. If the Petitioner has not provided an alternate proof of financial assurance pursuant to Rule 62-701.630(6), F.A.C., within 270 days from the date this Order becomes final, then the Petitioner shall submit a Financial Affidavit for a Corporation, demonstrating the Petitioner's ability to provide proof of financial assurance meeting the requirements of Rule 62-701.710(7)(a), F.A.C., and Section 403.707(9)(c), F.S., to the Permitting Program Administrator, Florida Department of Environmental Protection Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767, Where required to be submitted hereunder, the Petitioner's Financial Affidavit for a Corporation shall include, at a minimum, the information reflected on Attachment A; and may be submitted by electronic mail to the specified recipient.

3. This variance will expire no later than 12 months from the date this Order becomes final. However, if Petitioner is able to procure an alternate form of financial assurance that is also approved by the Department earlier than 12 months from the date this Order becomes final, then this variance will expire upon the date of such approval.

4. 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 has been or 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, email address (if any), 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 electronic mail to Mr. Timothy C. Jelus, Florida Recyclers of Brevard, LLC, 1676 West Hibiscus Blvd., Suite 102, Melbourne, Florida 32901, on this 22 day of May, 2015.

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.

Joanie Diestelhorst 5-22-15
(Clerk) (date)

Copies furnished to:
Chad Stevens, OGC
Tom Lubozynski, CD Office
Richard Tedder, Tallahassee
Chris McGuire

Attachment A

Financial Affidavit for a Corporation

INSTRUCTIONS FOR COMPLETING THE CORPORATE FINANCIAL AFFIDAVIT

The following financial affidavit is used by the Department's financial analyst in determining the corporation or s-corporation's ability to comply with corrective action or pay proposed penalties for contaminated property when audited or reviewed financial statements or annual 10-K reports are unavailable. The analysis is performed as a response to your claim of inability to pay and is voluntary on your part.

Identify revenue, expenses, assets, and liabilities on the financial affidavit provided by the district personnel or attorney handling the case. If revenue, expenses, assets, or liabilities exist for which a line item is not available, add the item at the end of the appropriate section and include it in the total for that section.

In addition, the following documents may be requested if applicable:

1. A list of **all** bank accounts, a copy of the corporate charter, chart of accounts, organization chart, complete and current list of officers and directors, complete and current list of shareholders and their ownership percentages; annual board meeting minutes for the previous two years;
2. Copies of form 966 in cases of dissolution; 1099-dividend or miscellaneous forms;
3. Copies of consolidated returns (if applicable), general ledgers, payroll journals, year end trial balances, depreciation worksheets, canceled checks and collateral for shareholder loans;
4. All investment, brokerage, insurance and bank accounts statements;
5. Copies of agreements for all loans, leases, rentals, promissory notes, mergers, purchases (with schedules for asset appraisals), settlements, guarantees, liens, deeds, agreements to sell or buy receivables; treasury stock purchases (with appraised value at time of purchase); and, schedules detailing stock ownership, if applicable.

Upon completion, the Chief Executive Officer, Chief Financial Officer, or other appropriate personnel should sign and date, as a corporate representative, the last page of the financial affidavit in the presence of a notary public or attorney.

Submit a complete notarized/certified financial affidavit, a signed and dated letter of management representations, and copies of the corporate tax returns for the previous three years, with applicable schedules attached (as filed with the Internal Revenue Service) to the DEP district contact or enforcement attorney handling your case.

Since the requested documentation is essential to performing an analysis, it is important information be supplied to the Department in a complete and timely manner. The Department retains the right to request further information, as identified above, or refuse to perform an analysis if required documentation is not received. Again, this analysis is performed upon your request and is voluntary on

your part. The Department's goal is to render a complete, correct and fair conclusion as to your ability to pay.

The documentation submitted may be subject to disclosure as a public record under Section 119, Florida Statute; therefore, this submittal should not be considered confidential.

I hereby authorize the Department of Environmental Protection to verify the earnings, records, bank accounts, stock holdings, pension, credit information (including past and present mortgages), and any other assets, liabilities, revenues or expenses necessary to perform an analysis of the company's financial position.

AUTHORIZED CORPORATE SIGNING OFFICER

DATE

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN RE:

IN THE OFFICE OF THE
_____DISTRICT

_____ /

FINANCIAL AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF _____) ss

BEFORE ME this day personally appeared _____,
who being duly sworn, deposes and says that the following information is true and correct according to
_____ best knowledge and belief:

CORPORATE INFORMATION

CORPORATION NAME: _____

ADDRESS: _____

EMPLOYER ID NUMBER #: _____

FILING STATUS: _____
(i.e. corporation, s-corporation, etc.)

PROFIT STATUS: _____
(i.e. for profit, not-for-profit, etc.)

BUSINESS ACTIVITY: _____
(i.e. tanks, hazardous waste water, etc.)

ACCOUNTING METHOD: _____
(i.e. cash basis, accrual, etc.)

BALANCE SHEET INFORMATION

ASSETS

Cash and cash equivalents:

Petty cash	\$	_____
Cash in bank- general		_____
Cash in bank- payroll		_____
Cash in bank- tax account		_____
Cash in bank- savings		_____
Money market		_____
Other: _____		_____

Certificate(s) of Deposits _____

Treasury Bills _____

Stocks _____

Bonds _____

Accounts Receivable:

Trade Accounts	_____
Less: Allowance for bad debts	_____
Officers	_____
Employees	_____
Stockholders	_____
Dividends	_____
Other	_____
Less: Allowance for bad debts	_____

Prepaid Assets:

Prepaid Insurance _____

Prepaid Rent _____

Other Prepaid Assets: _____

Inventory _____

Supplies _____

Trade notes _____

Less: Allowance for bad debts _____

Federal and state obligations _____

Investments: _____

FIXED ASSETS:

Buildings & other depreciable assets (describe):

Furniture and Fixtures	_____
Transportation:	
Automobiles:	
_____	_____
_____	_____
_____	_____
Trucks	_____
Tractors	_____
Forklifts	_____
Recreational vehicles:	
Aircraft	_____
Boats	_____
Other watercraft	_____
Other land vehicle(s)	_____

OTHER FIXED ASSETS:

Tanks	_____
Treatment Plants	_____
Lift Stations	_____
Drainfields	_____
Filters	_____
Pumps	_____
Blowers	_____
Other: _____	_____
_____	_____
Less: Accumulated Depreciation	_____

OTHER ASSETS:

Leasehold Improvements	_____
Less: Accumulated depreciation	_____
Depletable assets (describe):	_____
Less: Accumulated depletion	_____
Intangible Assets (describe):	
Patents	_____
Trademark	_____
Goodwill	_____
License	_____
Other Intangible	_____
Less: Accumulated amortization	_____
Natural Resources	_____
Property:	
Rental	_____
Investment	_____
Timberland	_____
Other Land: _____	_____

Construction In Progress	_____
Life Insurance Policy- cash surrender value	_____
Livestock	_____
Machinery and equipment	_____
Other: _____	_____
_____	_____
TOTAL NET ASSETS	\$ _____

LIABILITIES

Accounts payable	_____
Accrued salaries	_____
Bonus payable	_____
Accrued income tax	_____
Loans :	
Line(s) of credit	_____
Mortgage(s)	_____
Automobile(s)	_____
From stockholder(s)	_____
Other loan(s)	_____
Bonds payable	_____
Notes payable	_____
Franchise fees payable	_____
Liens	_____
Other liabilities:	
_____	_____
_____	_____
_____	_____
TOTAL LIABILITIES	_____

EQUITY

Capital stock:

Common	_____
Preferred	_____
Paid in capital	_____
Retained Earnings- appropriated	_____
Retained Earnings- unappropriated	_____
Less: Cost of treasury stock	_____

TOTAL LIABILITIES & STOCKHOLDERS EQUITY \$ _____

NOTE: Prior to forwarding to the Department, please ensure that the balance sheet does in fact

balance: $TOTAL\ ASSETS = TOTAL\ LIABILITIES + OWNERS\ EQUITY$

INCOME AND EXPENSE INFORMATION

REVENUE:

Gross Sales	\$	_____
Less: Sales returns and allowances		_____
Gross Receipts from services		_____

OTHER REVENUE

Commissions	_____
Rental income	_____
Interest income:	
Bonds	_____
Certificate of Deposit(s)	_____
Other _____	_____
Other _____	_____
Proceeds from life insurance	_____
Gross Royalties	_____
Other Revenue:	
_____	_____
_____	_____
_____	_____

TOTAL REVENUE	\$	_____
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EXPENSES

Cost of Goods Sold	\$	_____
Officer Compensation		_____
Salaries and wages		_____
Commission		_____
Travel, meals, etc.		_____
Supplies		_____
Rent Expense		_____
Lease Expense:		
Buildings		_____
Equipment		_____
Automobile		_____
Other		_____
Loan payments:		
Mortgage(s)		_____
Automobile(s)		_____
Machinery		_____
Other		_____
Repairs and maintenance		_____
Bad debt expense		_____
Utilities:		

Electricity	_____
Gas / Propane	_____
Taxes:	
Property	_____
Payroll	_____
General _____	_____
Interest expense	_____
Insurance	_____
Contributions	_____
Depreciation expense	_____
Amortization expense	_____
Depletion	_____
Advertising	_____
Subcontractor expense	_____
Permits	_____
Employee benefit programs	_____
Pension, profit-sharing, etc., plans	_____
Manufacturing expense	_____
Management fees	_____
Other :	
_____	_____
_____	_____

OTHER EXPENSES

Security expense	_____
Premium on life insurance	_____
(identify the insured)_____	_____
Inspection expense	_____
Penalties	_____
Professional Fees:	
Audit expense	_____
Legal expense	_____
Other _____	_____

TOTAL ITEMIZED EXPENSES	\$	_____
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TOTAL REVENUE	_____
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LESS: TOTAL ITEMIZED EXPENSES (above)	_____
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NET INCOME	\$	_____
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STATEMENT OF CASH FLOWS

CASH FLOWS FROM OPERATING ACTIVITIES

Net Income	\$	_____
Adjustments to reconcile net income to net cash provided by operating activities:		_____
Gain (loss) on sale/disposition of asset(s)		_____
Increase (Decrease) in Non-Cash Items		_____
Depreciation		_____
Amortization		_____
Depletion		_____
Deferred Taxes		_____
Provision for bad debts		_____
(Increase) decrease in assets:		_____
Trade accounts receivable		_____
Notes Receivable		_____
Interest Receivable		_____
Inventory		_____
Prepaid Expenses		_____
Other _____		_____
Other _____		_____
Increase (decrease) in liabilities:		_____
Trade accounts payable		_____
Other accounts payable		_____
Income taxes payable		_____
Other _____		_____
Other _____		_____

NET CASH PROVIDED BY OPERATING ACTIVITIES _____

CASH FLOWS FROM INVESTING ACTIVITIES

(Purchase) Sale of equipment	\$	_____
(Purchase) Sale of other fixed asset(s)		_____
(Increase) Decrease in outstanding advances		_____
(Increase) Decrease in restricted cash		_____
(Increase) Decrease in other short-term investments, maturities less than 90 days		_____
Other _____		_____
Other _____		_____

NET CASH (USED) PROVIDED BY INVESTING ACTIVITIES _____

CASH FLOWS FROM FINANCING ACTIVITIES

Proceeds (Repayment) of short-term borrowings		_____
Proceeds (Repayment) of notes payable and long-term debt		_____
Proceeds from stock issue		_____
(Purchase) Sale of Treasury Stock		_____

Dividends (paid)		_____
Loans from Stockholders		_____
Other _____		_____
NET CASH (USED) PROVIDED BY FINANCING ACTIVITIES		_____
NET (DECREASE) INCREASE IN CASH		_____
CASH AT BEGINNING OF YEAR		_____
CASH AT THE END OF THE YEAR	\$	_____

RETAINED EARNINGS INFORMATION

Balance January 1, 199_	\$	_____
Net Profit (before federal income tax)		_____
Income tax accrued for current year		_____
Dividends paid during current year		_____
Cash		_____
Stock		_____
Property		_____
Reserve for contingencies (describe)		_____
Refund of prior year income tax		_____
Balance December 31, 199__	\$	_____

Inventory valuation method, choose one:

- Lower of cost or market _____
- First in first out _____
- Last in first out _____
- Other: _____

GIFTS AND RELATED PARTY SALES

List any assets either gifted or sold, within the previous twenty-four months, to a related party if the asset value individually exceeded \$500. Related party is defined as any entity that can control or significantly influence the management or operating policies of another entity to the extent that one of the entities may be prevented from pursuing its own interests. Related parties for this purpose include, but are not limited to:

1. Principal owners and members of management and their immediate families or others who reside in the same household (i.e. officers, stockholders)
2. Affiliated companies
3. Investments accounted for under the equity method
4. Trusts for the benefit of employees

**LETTER OF MANAGEMENT REPRESENTATIONS
ATTACHMENT I**

In connection with the Departments analysis of the balance sheet, income statement, statement of cash flow, and supplemental financial information of _____ as of _____ and for the period of _____ for the purpose of determining the corporations ability to comply with corrective action or pay proposed penalties, I/WE HEREBY CERTIFY under penalty of perjury and subject to provisions of Section 403.161, Florida Statute, that to the best of my/our knowledge, information and belief, the following representations made to the Department during its analysis of the financial affidavit or financial statements provided, and as supplemented, are true and correct:

1. I/We accept responsibility for the fair presentation in the statements, of the corporation's financial position, results of operations, and cash flow in conformity with generally accepted accounting principles.
2. I/We accept responsibility for the fair presentation in the affidavit, of the corporation's financial position, results of operations, and cash flow in conformity with generally accepted accounting principles.
3. The use of any other comprehensive basis of accounting (i.e. not generally accepted accounting principles) has been identified.
4. I/We have no knowledge of pending or imminent events that may materially affect the carrying value or classification of assets and liabilities, which have not been identified.
5. The following have been properly recorded or disclosed in the financial statement or affidavit:
 - a. Related party transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements, and guarantees.
 - b. Capital stock repurchase options or agreements; or capital stock reserved for options, warrants, conversions, or other requirements.
 - c. Arrangements with financial institutions involving compensating balances or arrangements involving restrictions on cash balances and line-of-credit or similar arrangements.
 - d. Agreements to repurchase assets previously sold
5. There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements or financial affidavit.
6. Provision, when material, has been made to reduce excess or obsolete inventories to their estimated net realizable value.

**LETTER OF MANAGEMENT REPRESENTATIONS
ATTACHMENT I**

Page Two

7. The company has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged, where such lien, encumbrance, or pledge was not clearly identified in the financial statements, affidavit or information provided to the Department.

Chief Executive Officer Date Chief Financial Officer Date

**STATE OF FLORIDA
COUNTY OF**

The foregoing instrument was acknowledged before me this _____ by _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

NOTARY PUBLIC

My Commission Expires: _____.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this Financial Affidavit was furnished by _____ to:
on the _____ day of _____ 199__.

ATTORNEY FOR AFFIANT