



Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

BEFORE THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

In Re:

Petition for Variance
Charlotte Harbor Water Association, Inc.
Reverse Osmosis Water Treatment Facility
2515 Highlands Road
Punta Gorda, FL 33983

Charlotte County
FL0035378
OGC File No. 10-3491

Paul Brayton, Corporate Secretary and Registered Agent
Charlotte Harbor Water Association, Inc.
2515 Highlands Road
Punta Gorda, FL 33983

FINAL AGENCY ACTION GRANTING VARIANCE **UNDER SECTION 403.201, F.S.**

The Department of Environmental Protection (Department) hereby grants a variance for the proposed project as detailed in the petition specified above, for the reasons stated below.

The applicant, Charlotte Harbor Water Association, petitioned on November 10, 2006, to the Department for a variance from the acute toxicity requirements in Rules 62-302.500(1)(a)4, 62-4.241(2)(a), and 62-4.244(3)(a), Florida Administrative Code (F.A.C.), for waters discharging from the Charlotte Harbor Water Association, Inc.'s Reverse Osmosis Water Treatment Facility (RO Facility) Outfall, D-001, to the San Marino Canal and then to the Peace River, located in Charlotte County, Florida.

The Department hereby grants this variance subject to the following findings and conditions.

Findings:

1. The Charlotte Harbor Water Association, Inc., owns and operates the Charlotte Harbor Water Association, Inc., RO Facility located at 2515 Highlands Road,

Punta Gorda, FL. The RO Facility currently operates under wastewater Permit No. FL0035378-005, which expires on May 20, 2014.

2. The facility has received variances in previous permits for the acute toxicity limitations of Rules 62-302.500(1)(a)4 and 62-4.244(3)(a), F.A.C., in the waters discharging from the RO Facility. Whole effluent acute toxicity data on file indicated the facility to be in compliance with whole effluent acute toxicity. The facility was granted a mixing zone for chronic toxicity according to the provisions of Rule 62-4.244(3)(a), F.A.C.

3. Since the Department issued the last permit for the RO Facility on May 21, 2009, whole effluent acute toxicity bioassay results have ranged from 48 percent effluent to greater than 100% effluent. The waters discharging from the RO Facility have not consistently met whole effluent acute toxicity limitations in the wastewater permit, FL0035378-005, and Rules 62-302.500(1)(a)4, 62-4.241(2)(a), and 62-4.244(3)(a), F.A.C.

4. Charlotte Harbor Water Association, Inc., provided the following documentation in support of the variance petition:

- a. Results of an ion imbalance study conducted by Mickley & Associates for Charlotte Harbor Water Association, Inc.;
- b. A mixing zone analysis conducted for the San Marino Canal by Stone & Webster Engineering; and
- c. Whole effluent acute toxicity bioassay reports for tests initiated May 18, 2010, and June 21, 2010.

5. The Department reviewed and concurred with the findings of the reports provided by Charlotte Harbor Water Association, Inc., and has determined that the acute toxicity is the result of the imbalances of naturally occurring marine ions, specifically calcium and fluoride in the discharge.

6. Charlotte Harbor Water Association, Inc., has addressed all of the variance requirements of Rule 62-110.104, F.A.C.

7. Charlotte Harbor Water Association, Inc., has demonstrated to the satisfaction of the Department that there is no practicable means known for the adequate control of the ion imbalances of calcium and fluoride noted in the discharge to the San Marino Canal/Peace River that will allow Charlotte Harbor Water Association, Inc., to meet the acute toxicity criterion.

Conditions:

1. The variance is granted under section 403.201(1)(a), F.S., which limits variances to those cases where no practicable means are known or available for the adequate control of the pollution at the site. The Department grants these variances for a period not to exceed five years or the life of the permit. The variance shall run concurrent with the RO Facility's Wastewater Permit (FL0035378) which expires May 20, 2014. This variance also expires May 20, 2014.

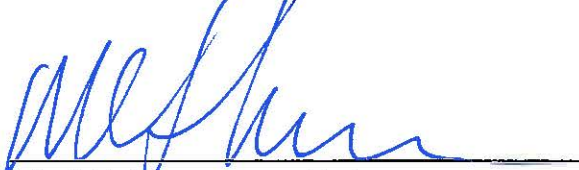
2. If the Facility intends to seek renewal of this variance, application for renewal shall be made not later than 180 days prior to expiration (November 21, 2013).

3. For the duration of this variance, the whole effluent acute toxicity 96 hour LC₅₀ shall not be less than 48% effluent in any test.

Any Party to this Order has the right to seek judicial review of the Order Pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of the Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, 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 30 days from the date this Order is filed with the clerk of the Department.

DONE AND ORDERED this *7th* day of *March*, 2012, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Mark P. Thomasson, P.E.
Director of Division of Water Resource Management
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida

FILING AND ACKNOWLEDGMENT

FILED, on this date, under Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Wandra Carpenter 3/7/12
Clerk Date

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this Final Order Granting Variance and all copies were mailed before the close of business on this

7 day of March 2012 to the listed persons.

cc: Nancy Ross/DEP/Tallahassee
Doug Gilbert/DEP/Tallahassee
Jan Mandrup-Poulsen/DEP/Tallahassee
Deanna Newburg/Water Facilities/DEP/Ft. Myers
Florida Game and Fresh Water Fish Commission
Florida Department of State Historic Preservation
U.S. Corp of Army Engineers
David Whiting/DEP/Tallahassee
Al Hubbard/DEP/Tallahassee
Lauren Petter/ EPA Region IV