

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**IN RE: CITY OF DUNNELLON, FLORIDA
PETITION FOR A VARIANCE FROM
RULE 62-505.350(4), F.A.C.**

OGC No.14-0738

**FINAL ORDER GRANTING PETITION FOR VARIANCE
FROM RULE 62-505.350(4), FLORIDA ADMINISTRATIVE CODE**

On December 16, 2014, the City of Dunnellon, Florida ("Petitioner"), filed a Petition for Variance under Section 120.542, Florida Statutes, from the requirements of Florida Administrative Code Rule 62-505.350(4). The Petitioner is requesting a variance from the \$500,000 annual limitation on construction grant funds.

1. On February 28, 2013, the Petitioner was issued a Small Community Wastewater Facilities Construction Grant Agreement SG420800. On March 17, 2014, Amendment 1 to Grant Agreement SG420800 was executed and increased grant eligible funding to \$1,004,384 (the construction grant percentage of 79.4% multiplied by the total estimated project cost of \$1,264,967). The construction project will remove the Rio Vista wastewater treatment facility that is not in compliance with the DEP's rules.

2. Rule 62-505.350(4), F.A.C., provides in pertinent part:

Construction grants. The amount of funds available to a project sponsor shall be determined by multiplying the construction grant percentage as determined in subsection (5) below, by the project costs. Funds shall be limited to no more than \$500,000 annually .

...

3. On October 13, 2014, the Petitioner commenced construction of the grant project. The construction contract completion date is March 12, 2015. Under the above-referenced rule, "annually" means the 12-month period between July 1 and June 30, which is the State of Florida fiscal year. Therefore, grant eligible costs incurred will exceed the \$500,000 annual limitation. As a result, the Petitioner would be required to finance the costs in excess of \$500,000 until the beginning of the next fiscal year.

4. The Petitioner qualifies as a financially disadvantaged small community as defined in Rule 62-505.200(7), F.A.C., and has limited financial resources. Petitioner alleges that requiring the Petitioner to finance the construction costs in excess of \$500,000 would create an undue financial hardship on the Petitioner because service fees or origination fees and interest would be charged on such an interim loan. If the petition for variance is not approved, Petitioner alleges this substantial hardship could cause a delay in contractor payment and jeopardize the timely completion of the construction project.

5. Rule 62-505.200(7), F.A.C., implements, in part, Section 403.1835, Florida Statutes, which authorizes the Department to provide financial assistance to local government agencies to accelerate the implementation of water pollution control projects. Petitioner is a local government agency within the meaning of Section 403.1835(2)(c), Florida Statutes. Section 403.1838(2), Florida Statutes, authorizes the Department to award grants to assist financially disadvantaged small communities with their needs for adequate sewer facilities.

6. The Petitioner has demonstrated that the application of the Department's rule would create a substantial hardship. The purpose of the underlying statute is to provide financial assistance to accelerate the successful implementation of water pollution control projects. The Petitioner has demonstrated that the purpose of the underlying statute will be achieved because the variance will allow for the timely completion of construction of the wastewater management systems.

7. Notice of receipt of the Petition for Variance was published in the Florida Administrative Register (FAR) on December 22, 2014. No public comment was received.

8. Based on the foregoing, Petitioner has demonstrated that it meets the requirements for a one-time variance from the annual limitation in Florida Administrative Code Rule 62-505.350(4).

NOTICE OF RIGHTS

This final order will become final unless a petition for an administrative proceeding is filed pursuant to the provisions of sections 120.569 and 120.57 of the Florida Statutes. Any person whose substantial interests are affected by the Department's action may file such a petition. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. Petitions filed by Petitioner, or any of the parties listed below must be filed within 21 days of receipt of this order. Petitions filed by any other person must be filed within 21 days of publication of the public notice or within 21 days of receipt of this order, whichever occurs first. Under section 120.60(3), 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. A petitioner must mail a copy of the petition to Eddie R. Esch, City Manager, City of Dunnellon, 20750 River Drive, Dunnellon, FL 34431, E-mail: eesch@dunnellon.org, 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 will only be 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 disputed 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 Department case identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;

- (c) A statement of how each petitioner's substantial interests are affected by the Department action;
- (d) A statement of the material facts disputed by the petitioner, if any;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

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 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 final action may be different from the position taken by it in this order. Persons whose substantial interests will be affected by any such final decision of the Department on the petitions have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation under section 120.573 of the Florida Statutes is not available for this proceeding.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above.

A 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 must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 26th day of January 2015, in Tallahassee, Florida.

DEPARTMENT OF ENVIRONMENTAL PROTECTION




Mark P. Thomasson, P.E., Director
Division of Water Resource Management
Tallahassee, Florida

FILED, on this date, pursuant to Section 120.52, F.S.
with the designated Department Clerk, receipt of which
is hereby acknowledged.



Clerk



Date

Copies furnished to:

Eddie R. Esch, Sr., City Manager, City of Dunnellon, eesch@dunnellon.org

Timothy Banks, DEP timothy.banks@dep.state.fl.us

Lea Crandall, DEP Agency Clerk, agency.clerk@dep.state.fl.us

Lisa Brown, paralegal to Doug Beason, Asst. General Counsel, lisa.l.brown@dep.state.fl.us