

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for waiver by:
ATS Americas LLC
50 County Road 1672
Cullman, Alabama 35058

OGC No.: 16-0085
SWVA No.: 16-1

ORDER GRANTING WAIVER

The State of Florida Department of Environmental Protection ("Department") hereby gives notice that it is granting a waiver to ATS Americas LLC ("Petitioner") pursuant to section 120.542, Florida Statutes ("F.S."), for a medical waste treatment facility on the campus of St. Joseph's Hospital at 3001 W. Dr. Martin Luther King, Jr. Blvd., Tampa, Hillsborough County, Florida ("Facility"), Lat/Long: 27°58'55"/82°29'28". On February 24, 2016, Petitioner submitted a petition for variance or waiver ("Petition for Waiver") to the Department. The Petitioner requests a waiver from paragraph 62-701.520(5)(d), Florida Administrative Code ("F.A.C."), which requires that treated biomedical waste be disposed of only at a permitted Class I landfill or an incinerator used to combust solid waste.

FINDINGS OF FACT

1. Petitioner owns and operates a medical waste treatment facility on the campus of St. Joseph's Hospital at 3001 W. Dr. Martin Luther King Jr. Blvd., Tampa, Hillsborough County, Florida.
2. Petitioner is permitted to operate as a biomedical waste transporter in the State of Florida with a Florida Department of Health ("FDOH") permit number 29-64-1644943. Petitioner is also permitted to operate a biomedical waste treatment facility on the campus of St. Joseph's Hospital under FDOH permit number 29-64-1564409.
3. On February 24, 2016, Petitioner submitted a request for waiver from the provision in Rule 62-701.520(5)(d) F.A.C., which requires that treated biomedical waste

be disposed of only at a permitted Class I landfill or an incinerator used to combust solid waste. As an alternative, the Petitioner is seeking approval to use biomedical waste that has been treated by the TFD-1000 system, as a fuel in cement kilns. The TFD-1000 system is an FDOH approved alternative treatment technology that utilizes thermal friction to generate the temperature necessary to disinfect medical waste. ATS has termed the material generated as a result of this treatment process "Sanitized Homogenized Dehydrated Fluff" ("SHDF").

4. Petitioner indicated that typical plastics used to manufacture the SHDF have a heating value of approximately 15,000 to 16,000 Btu per pound, which is higher than coal, which is typically in the range of 10,000 to 13,000 Btu per pound. The paper and other textiles that make up part of the SHDF have a heating value of approximately 5,000 to 6,000 Btu per pound. The Petitioner also indicated that the SHDF has an average heating value of 13,000 Btu per pound and is a high quality fuel product that is well suited for use in cement kilns.

5. Petitioner indicated that cement kilns provide superior destruction efficiencies due to higher temperatures and longer residence times. Petitioner indicated that cement kilns operate at higher temperatures (approaching 3,500 degrees Fahrenheit) than a waste-to-energy facility, (approaching 1,600 degrees Fahrenheit). Petitioner indicated that the residence time in a waste-to-energy facility is typically about three or four seconds at 1,600 degrees and that material in a cement kiln is subject to a ten-second residence time at temperatures of 600 to 1,800 degrees Fahrenheit; three more seconds in the range of 1,800 to 2,200 degrees Fahrenheit, and an additional ten seconds in the range of 2,200 to 3,500 degrees Fahrenheit.

6. Petitioner has demonstrated that requiring the facility to landfill or incinerate biomedical SHDF waste following treatment by their system would subject Petitioner to an unnecessary and substantial technological hardship by requiring a disposal mechanism that is not technically warranted thereby eliminating the opportunity to use this material as a quality fuel product in cement kilns.

7. No comments have been received from the public in response to the Notice of Receipt of this waiver published in the Florida Administrative Register on March 8, 2016.

CONCLUSIONS OF LAW

1. Section 120.542, F.S., authorizes the Department to grant a waiver from any of its rules upon a demonstration that the purpose of the underlying statute will be achieved by other means and that application of the rule would create a substantial hardship or would violate principles of fairness.

2. The Petitioner has demonstrated that it will suffer a substantial and unnecessary technological hardship if it is required to landfill or incinerate its treated biomedical SHDF waste when not technically warranted, as would otherwise be required by Rule 62-701.520(5)(d), F.A.C. The Petitioner has also demonstrated that granting the waiver would not be expected to have any adverse environmental consequences.

3. The Department concludes Petitioner has demonstrated that a waiver from the provision of Rule 62-701.520(5)(d), F.A.C. is warranted, that it would suffer a substantial technological hardship if the waiver was not granted, and that the grant of the waiver will be consistent with the general intent and purpose of Chapter 403, F.S.

4. This waiver, by itself, does not constitute authorization for Petitioner to proceed with the proposed project. Petitioner is required to process treated biomedical SHDF waste in accordance with the permit 29-64-1644943 issued by the FDOH for treatment of biomedical waste, pursuant to 64E-16011, F.A.C.

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

CONDITIONS

1. Petitioner shall operate the medical waste treatment facility on the campus of St. Joseph's Hospital at 3001 W. Dr. Martin Luther King Jr. Blvd., Tampa, Hillsborough County, Florida in accordance with applicable permits issued by the FDOH, and only

biomedical waste treated by a technology according to FDOH permit requirements shall be used as a fuel in cement kilns. The requirement of Rule 62-701.520(5)(d), F.A.C., which would otherwise require disposal of treated biomedical waste only at a permitted Class I landfill or an incinerator used to combust solid waste, shall not apply to the treated SHDF waste as long as it is used as a fuel in cement kilns. Any treated biomedical SHDF wastes not used as a fuel in cement kilns shall be disposed of at a permitted Class I landfill or an incinerator used to combust solid waste.

2. Petitioner shall make a copy of this waiver available to all generators providing biomedical waste to the Facility that is intended for treatment at the Facility.

3. Unless the Department takes affirmative action to revoke or modify this waiver; it shall not expire and shall have an unlimited duration.

4. The issuance of this waiver does not relieve the Petitioner from the need to comply with any applicable requirements of other federal, state, or local laws.

NOTICE OF RIGHTS

The Department's Order Granting Waiver 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, or by electronic mail at Agency_Clerk@DEP.state.fl.us.

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 be in accordance with Rule 28-106.201, F.A.C., and 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, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; 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, 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 after this order is filed with the Clerk of the Department.

DONE AND ORDERED this 8th day of April, 2016, in Leon County, Florida.

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 United States Mail to Mr. John R. Self, 50 County Road 1672, Cullman, Alabama, 35058, on this 8th day of April, 2016.

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.



Digitally signed by
Derbra B. Owete
Date: 2016.04.08
14:23:20 -04'00'

(Clerk)

4/8/2016
(date)

Electronic copies furnished to:

Benjamin Melnick, OGC
Steve Morgan, DEP Southwest District
Cory Dilmore, P.E., DEP Tallahassee
James Jarmolowski, P.G., DEP Tallahassee
Gina Valone-Hood, FDOH
Angela Morrison, Esquire, Berger Singerman, Tallahassee