

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Reeves Southeastern Site Trust OGC File No.: 16-0406
Petition for Variance
From Rule 62-520.310(9), F.A.C.

FINAL ORDER GRANTING PETITION FOR
VARIANCE FROM RULE 62-520.310(9), F.A.C.

On July 13, 2016, Arcadis U.S., Inc. (Arcadis), filed a petition on behalf of the Reeves Southeastern Site Trust (Trust or Petitioner) for variance, under Section 120.542 of the Florida Statutes (F.S.), from requirements in Rule 62-520.310(9), of the Florida Administrative Code (F.A.C.), which provides that "Other discharges through wells or sinkholes that allow direct contact with Class G-I, Class F-I, or Class G-II ground water shall not be allowed a zone of discharge." Petitioner seeks the variance to discharge an in-situ groundwater remediation product known as Tetragard through Petitioner's wells as part of a cleanup of the Reeves Southeastern Superfund Site in Tampa, Florida (Site). This process involves the use of wells or borings and is considered installation of one or more temporary Class V, Group 4 underground injection control wells at the site of contamination.

A notice of receipt of the petition was published in the Florida Administrative Register on July 25, 2016. No comments were received.

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

1. The Trustee of the Reeves Southeastern Site Trust is located at 300 N. LaSalle Street, Suite 4000, Chicago, Illinois 60654-3406.
2. The Trust is requesting to use Tetragard for the remediation of ground water contaminated with metals at and associated with the Site. Ground water at the Site is classified as G-II under Rule 62-520.410(1), F.A.C.
3. Tetragard is a metal precipitant; when injected in groundwater, it reduces the mobility of metals in ground water. The key ingredients of Tetragard are sodium

polysulfide and water. Selenium is an impurity in Tetragard.

4. Under Rule 62-520.420, F.A.C., the standards for Class G-II ground waters include the primary and secondary drinking water standards set forth in Rules 62-550.310 and 62-550.320, F.A.C., and the minimum criteria of Rule 62-520.400, F.A.C. (also reflected in Rule 62-777, F.A.C., as ground water target cleanup levels) (Class G-II standards). Fluid injected into an injection well that effects a Class G-II ground water must meet the Class G-II standards. On August 27, 2001, Rule 62-522.300(2), F.A.C. (transferred to Rule 62-520.310(8), F.A.C.) and Rule 62-528.605(3), F.A.C., were amended to allow injection of materials for ground water cleanup that do not meet the primary or secondary drinking water standards by allowing a zone of discharge (Rule Amendment). Specific limitations were included in the rule amendment. The use of Tetragard requires a variance for selenium. The sodium does not require a variance, but will be addressed in the remedial action plan, pursuant to Rule 62-520.310(8)(c), F.A.C.
5. The Petitioner makes the following assertions in the Petition: Tetragard is an inorganic salt solution typically supplied in an aqueous form in a 36 percent by weight mixture. This product is to be injected through wells or borings into the soil and ground water. The injected fluid, at a maximum concentration of 2 percent sodium polysulfide by weight, may exceed the primary drinking water standard for selenium of 0.05 milligrams per liter (mg/L). Selenium is only expected to exceed the drinking water standard within an area of the aquifer extending out in a radius of 300 feet from the immediate point of injection for a period of 1 year. The presence of selenium above the primary drinking water standard has no anticipated adverse impacts to human health because such an exceedance will occur only in ground water that is already contaminated and the ground water is not presently used for domestic purposes. No other constituents of the injected product will exceed any other primary or secondary drinking water standard not covered by the Rule Amendment. Selenium will return to meeting the primary drinking water standard or naturally occurring background values, whichever is less stringent, within, at most, 1 year from injection.
6. Based on a potable well location survey conducted by Petitioner as part of the areawide ground water remedial investigation/feasibility study and remedial design for the Reeves Southeastern Superfund Site, no potable wells are

within 800 feet of the north west corner of the Site. Contamination at this Site is in the surficial aquifer and the extent of the contamination is approximately 400 feet north west of the Site property boundary. The absence of surficial aquifer potable wells within 800 feet downgradient of the Site was substantiated by the 2004 Private Well Survey Report for the combined Peak Oil/Bay Drums and Reeves Southeastern Superfund sites.

7. According to Petitioner not allowing a zone of discharge for the use of Tetragard would create a substantial hardship because other remedial alternatives have higher costs than use of Tetragard and do not remediate ground water as quickly as Tetragard. The goal of site remediation will be achieved through the use of Tetragard. Petitioner further states that using this product over the alternative remediation methods would be a cost savings of \$6,225,000.00. According to the Petitioner, "Tetragard sodium polysulfide has a significant advantage over other methods of metals remediation, such as groundwater extraction and treatment. Groundwater extraction and treatment is a viable remediation option; however, it presents an increased risk to health and safety and is less sustainable due to the requirement to manufacture, transport, and manage waste solids and extracted groundwater." The Petitioner also states that remediation using Tetragard allows for a quicker and more effective cleanup of contaminated ground water over traditional remediation methods.

FINDINGS AND CONCLUSIONS

8. The temporary wells or borings through which Tetragard will be injected are underground injection control Class V, Group 4 injection wells ("injection wells associated with an aquifer remediation project," as described in Rule 62-528.300(1)(e)4, F.A.C.) Under Rule 62-528.630(2)(c), F.A.C., "Class V wells associated with aquifer remediation projects shall be authorized under the provisions of a remedial action plan ... provided the requirements of the rules governing the remediation project, as well as the construction, operation, and monitoring requirements of this chapter are met."
9. The Rule (62-520.310(9), F.A.C.) from which the variance is sought prohibits the Department from granting a zone of discharge for a discharge through an underground injection well to Class G-II ground water. Strict adherence to this Rule would preclude the Department from granting approval for the use of Tetragard for remediation of contaminated

ground water and soils, which other rules of the Department would otherwise allow.

10. The applicable rules state in pertinent part:

62-520.310(7), F.A.C. - ...[N]o installation shall directly or indirectly discharge into ground water any contaminant that causes a violation of the water quality standards and minimum criteria for the receiving ground water as established in this chapter, except within a zone of discharge established by permit or Rule 62-520.465, F.A.C.

62-520.310(9), F.A.C. - Other discharges through wells or sinkholes that allow direct contact with Class G-I, Class F-I, or Class G-II ground water shall not be allowed a zone of discharge.

11. Pursuant to Section 120.542(2), F.S., the Department shall grant a variance "when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.
12. "Substantial hardship" is defined in Section 120.542(2), F.S. to mean a "demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver".
13. According to Section 120.542(2), F.S., "principles of fairness" are violated "when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule."
14. By allowing the use of Tetragard, the cleanup of contaminated ground water and soils will be accelerated. In addition, the use of this product has been approved by the Department's Division of Waste Management as part of a remedial action plan approved on July 21, 2016, as being a sound environmental solution to clean up the ground water contamination at the Site.
15. Allowing use of Tetragard by granting a variance of Rule 62-520.310(9), F.A.C., will serve the underlying purpose of Section 403.021(2), F.S. (the purpose of the statute is to "conserve, protect, maintain, and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and

other beneficial uses"). Injection of Tetragard will cause a temporary exceedance of the primary drinking water standard for selenium in the ground water immediately surrounding the injection, but according to the approved remediation strategy for the Reeves Southeastern Superfund Site, its use will be an effective remedy for the groundwater contamination, and thus, will have the net effect of improving this water resource. The ground water at the Site is already contaminated and does not meet all applicable standards, and allowing a zone of discharge with the granting of this variance and as part of an approved remediation strategy for the Reeves Southeastern Superfund Site meets the purpose of the underlying statute. Section 403.021(2), F.S.

16. Strict application of Rule 62-520.310(9), F.A.C., would present a substantial hardship to Petitioner. Petitioner has shown that use of remediation technologies other than Tetragard would be more costly than Tetragard and would not remediate the ground water contamination as quickly as Tetragard.
17. Petitioner has shown that the presence of selenium above its primary drinking water standard in the proposed zone of discharge will not result in anticipated adverse impacts to human health because the impacted ground water is not presently used for domestic purposes. In addition, future use of the groundwater in the surficial aquifer at and near the Site is limited by two institutional controls identified in the remedial design for the Site: (a) Pursuant to Chapter 62-524, F.A.C., the area surrounding the Peak Oil/Bay Drums and Reeves Southeastern Superfund sites is a "delineated area" in which the installation of wells is limited to prevent exposure to ground water contamination and/or exacerbation/migration of a contaminant plume, and (b) pursuant to Hillsborough County Ordinance 90-35, and subject to limited exceptions set forth in the ordinance, construction of new or modification of existing residential, commercial or industrial buildings within 500 feet of a County main water line must use the public water supply system.
18. The Department has jurisdiction to grant this variance.

ORDER

For the foregoing reasons, the Department grants a variance from the prohibition of zones of discharge in Rule 62-520.310(9), F.A.C., for the use of Tetragard, subject to Petitioner's

compliance with all of the following terms and conditions of this Order:

- a. Use of Tetragard must be through a Department-approved remedial action plan, or other Department-enforceable document, for the Reeves Southeastern Superfund Site remediation project and such approval shall not be solely by a delegated local program.
- b. Tetragard may only be discharged to the ground water at the Reeves Southeastern Superfund site through Class V, Group 4 underground injection control wells which meet all of the applicable construction, operating, and monitoring requirements of Rule 62-528, F.A.C.
- c. The extent of the zone of discharge for selenium shall be a 300-foot radius from the point of injection, and the duration of the zone of discharge shall be 1 year from the last injection. This will allow time for selenium concentrations to return to the primary drinking water standard set forth in Rule 62-550, F.A.C, or its naturally occurring background levels at this site, whichever is less stringent. For the purposes of this variance, the injection of Tetragard must cease two years from the date of this final order, unless an extension is granted by the Department.
- d. The injection of Tetragard shall be at such a rate and volume (no greater than 2 percent sodium polysulfide by weight) that no migration of the product, its by-products, or the contaminants already present in the aquifer occurs.
- e. The Department-approved remedial action plan shall address appropriate ground water monitoring requirements associated with the use of Tetragard for remediation based on site-specific hydrogeology and conditions at the Reeves Southeastern Superfund Site. These requirements shall include the sampling of ground water at monitoring wells located outside the contamination plume (as defined in the Remedial Action Plan), before the use of Tetragard, to determine the naturally occurring background levels of selenium and sodium. Sodium is included in this ground water monitoring requirement because the use of this product may also cause a temporary exceedance of the primary drinking water standard, but is a prime constituent of the reagent so a zone of discharge is allowed in accordance with Rule 62-520.310(8)(c), F.A.C. Selenium

and sodium must also be included in the monitoring of the ground water downgradient from the injection points at the beginning of injection and at least 1 year after the last injection is completed (sodium is included herein solely because of the rule amendments discussed in paragraph 3 above, which require any parameter that will not meet its standard to be included in the remedial action plan for monitoring and zone of discharge purposes).

This order will become final unless a timely 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) with the Clerk of the Department, in the Office of General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000 or emailed to agency_clerk@dep.state.fl.us. Petitions filed by Reeves Southeastern Site Trust, Arcadis U.S., Inc., 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) of the Florida Statutes, 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 Reeves Southeastern Site Trust, 300 N. LaSalle Street, Suite 4000, Chicago, Illinois 60654-3406, 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, F.A.C.

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 file 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.

RIGHT OF APPEAL

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, or email at agency_clerk@dep.state.fl.us, 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 25th day of October 2016, in Tallahassee, Florida.

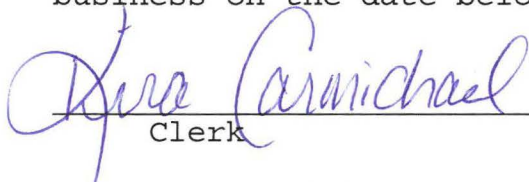
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Jane Herndon, Esq., Deputy Director
Division of Water Resource Management
State of Florida Department of Environmental Protection
2600 Blair Stone Road
Mail Station 3500
Tallahassee, Florida 32399-2400

FILING AND ACKNOWLEDGMENT:

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Agency Clerk, receipt of which is hereby acknowledged. All copies were mailed before the close of business on the date below to the persons listed.


Clerk

October 25, 2016
Date

Copies furnished to:

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NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the request for a variance or waiver.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing 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, telephone number, and any email address of the petitioner; the name, address, telephone number, and any email address 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 are or 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 that the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that 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 that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, agency_clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing must be filed within 21 days of receipt of this written notice. The failure 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.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, agency_clerk@dep.state.fl.us, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000, agency_clerk@dep.state.fl.us; 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 action is filed with the Clerk of the Department.

PUBLICATION OF NOTICE OF AGENCY ACTION

Be advised that, under Florida law, your neighbors and other parties who may be substantially affected by this determination have a right to request an administrative hearing. Because the administrative hearing process is designed to re-determine final agency action, the filing of a petition for an administrative hearing may result in a final determination different from this determination. Generally, the 21-day period for filing a petition begins to run on the date of publication of the notice (if published) or the date a person receives actual notice, whichever occurs first.

Publication of notice by you is optional and is not required for you to proceed. In the event that an administrative hearing is held and the Department's determination is reversed, however, proceeding with the proposed activity before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required permit or authorization. In cases where notice is not published, there may be instances in which a substantial amount of time could pass before an affected person receives notice of the agency action.

If you wish to limit the time within which all substantially affected persons may request an administrative hearing, you may elect to publish, at your own expense, the notice specified below in the legal advertisement section of a newspaper of general circulation in the county where the activity is to take place. A single publication will suffice.

For the purposes of publication, a newspaper of general circulation means a newspaper meeting the requirements of sections 50.011 and 50.031 of the Florida Statutes. In the event you do publish this notice, within seven days of publication, you must provide to the following address proof of publication issued by the newspaper as provided in section 50.051 of the Florida Statutes. If you provide direct written notice to any person as noted above, you must provide to the following address a copy of the direct written notice: Florida Department of Environmental Protection, Aquifer Protection/UIC Program, MS 3530, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; Attn: Cathleen McCarty or email to cathleen.mccarty@dep.state.fl.us.

Notice for Order Granting Variance Newspaper Publication

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF ORDER GRANTING VARIANCE

The Department of Environmental Protection gives notice of its determination pursuant to section 120.542, Florida Statutes (F.S.), in File No. OGC 16-0406 to grant a variance to Reeves Southeastern Site Trust, from Rule 62-520.310(9), Florida Administrative Code (F.A.C.), in order to injection Tetragard, through wells, for aquifer remediation at the Reeves Southeastern Superfund Site in Tampa Florida.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing 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, 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 are or 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 that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that 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 that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 or emailed to agency_clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

In accordance with rule 62-110.106(3) of the Florida Administrative Code, petitions for an administrative hearing must be filed within 21 days of publication of this notice or receipt of written notice, whichever occurs first. However, any person who has previously asked the Department for notice of this agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure 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.

A person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or emailed to agency_clerk@dep.state.fl.us, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation is not available in this proceeding.

On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, this process may result in a modification of the agency action or even a denial of the request for a variance or waiver.

A copy of the Order may be obtained by contacting Cathy McCarty, Florida Department of Environmental Protection, APP/UIC Program, MS 3530, 2600 Blair Stone Road, Tallahassee, Florida, 32399-2400; (850)245-8654; cathleen.mccarty@dep.state.fl.us during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.