

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: City of St. Petersburg Petition for Variance
from Rules 62-610.469(7)(g) and 62-610.668(1)(c),
F.A.C.

OGC Case No. 17-0188
DEP File No.: FLA012881-006-DWF/VO

ORDER GRANTING PETITION FOR VARIANCE

On March 10, 2018, City of St. Petersburg, Petitioner, filed a petition with the Florida Department of Environmental Protection (Department) for variance under section 120.542, Florida Statutes, from requirements in Rule 62-610.469(7)(g) and Rule 62-610.668(1)(c) Florida Administrative Code (F.A.C.). Rule 62-610.469(7)(g), F.A.C., prohibits the return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to a user. Rule 62-610.668(1)(c), F.A.C., defines reclaimed water to be a “domestic wastewater”, on flowing out of the once-through, non-contact, cooling system, that is returned to the domestic wastewater facilities for additional treatment or disposal or reuse.

The Petitioner seeks a variance from the requirements of Rules 62-610.469(7)(g) and 62-610.668(1)(c), F.A.C., to allow the return of reclaimed water to the tail end of the Southwest Water Reclamation Facility’s reclaimed water distribution system after the reclaimed water has been delivered to the once through, non-contact cooling, closed system of Eckerd College.

A notice of receipt of the petition was published in the Florida Administrative Register on March 16, 2018. No public comment was received.

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

1. Petitioner’s address is: City of St. Petersburg Water Resources, P.O. Box 2842, City of St. Petersburg, Florida 33731. The activities authorized by this variance are located at Eckerd College, 4200 54th Avenue South, St. Petersburg, Florida 33711 in Section 10, Township 32 South, Range 16 East, in Pinellas County, at Latitude: 27° 43’ 04” N/Longitude: 82° 41’ 22” W.
2. The applicable rules pertinent to the variance request states the following:

Rule 62-610.469(7)(g): The return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to a user is prohibited.

Rule 62-610.668(1)(c): Reclaimed water, upon flowing out of the once-through, non-contact, cooling system, that is returned to the domestic wastewater facilities for additional treatment or disposal or reuse, shall be defined to be a “domestic wastewater.” This definition is made solely for the purposes of classifying wastewater treatment, reuse, and effluent disposal facilities associated with the domestic wastewater facilities. This definition shall apply only if the sole change to the quality

of the reclaimed water during the once-through, non-contact, cooling process is a temperature increase, and conditioning chemicals, other than chlorine and other chemicals accepted by the Department, have not been added to the reclaimed water.

3. In support of the Petition for Variance, the Petitioner alleges as follows:
 - (a) Eckerd College is a private liberal arts college with buildings used for classrooms and dormitories, located adjacent to the St. Petersburg Southwest Water Reclamation Facility (SWWRF) with permit ID # FLA128848. Reclaimed water treated at the SWWRF, which meets public access reuse quality, is utilized in the Eckerd College non-contact HVAC cooling system. The reclaimed water increases in temperature while flowing through the Eckerd College HVAC system, however no conditioning chemicals are added to the reclaimed water.
 - (b) The introduction of the returned reclaimed water to the headworks of the SWWRF would result in unnecessary cost for additional treatment of reclaimed water that has only increased in temperature. It is not practicable to mandate additional treatment of reclaimed water that has only increased in temperature during usage nor is treatment available or necessary for temperature increase of the reclaimed water. Cross connection control and backflow prevention are used and inspected on a routine basis in the reclaimed water system.
 - (c) Petitioner has collected and analyzed twenty-six samples of the reclaimed water returned to the St. Petersburg Master Reuse System from the Eckerd College HVAC system. The sampling results indicate that the returned reclaimed water continues to meet public access reuse quality.
 - (d) Not allowing this variance constitutes a substantial hardship because the most likely other sources of high quality water for use in the Eckerd College heat exchange system is potable water. Use of potable water for once-through cooling is expensive, inefficient, and an unsustainable use of drinking quality water. The estimated cost for Eckerd College to replace the reclaimed water with potable water is over six million dollars per year.

THE VARIANCE OR WAIVER WILL MEET THE UNDERLYING PURPOSE OF THE
STATUTE

4. Section 120.542(2), Fla. Stat., states “variances and waivers shall be granted 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.” The variance procedure is intended to provide relief from unreasonable, unfair, and unintended results in unique cases.
5. The purpose of the underlying statutes for rules 62-610.469(7)(g) and 62-610.688(1)(c), F.A.C., will not be violated. The purpose of the statute is to ensure that the quality and use of the public access reuse water is environmentally acceptable and not a threat to public health and safety.

6. The variance would serve the purpose of the statute because SWWRF was designed and built to meet high-level disinfection standards. The results of the sample analyzed from the reclaimed water returned to the St. Petersburg Master Reuse System from the Eckerd College HVAC system has met water quality standards as required by applicable regulations.
7. The variance would serve the purpose of the statute because, the sole change in the quality of the reclaimed water is a temperature increase. The temperature increase does not affect the effluents ability to be reused or disposed. No conditioning chemicals have been added to the reclaimed water. The property is adjacent to the SWWRF. Both properties share the same boundary. Cross connection control and backflow prevention is used and inspected on a routine basis
8. The variance would serve the purpose of the statute because, allowing this will encourage, promote, and continue the reuse of over one million gallons per day of reclaimed water and reasonably conserve one million gallons per day of potable water the most likely other sources of high quality water for use in the Eckerd College heat exchanger.

SUBSTANTIAL HARDSHIP TO THE PETITIONER and VIOLATIONS OF PRINCIPLES OF FAIRNESS

9. “Substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. “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. Section 120.54(2), Florida Statutes.
10. Petitioner requests a variance of the strict application of rules 62-610.469(7)(g) and 62-610.688(1)(c), F.A.C., because applying the rules would be unfair, and would create a substantial hardship, and would violate the principles of fairness.
11. Petitioner seeks a variance in order to avoid substantial economic hardship. Not allowing this variance constitutes a substantial hardship because the current configuration provides a substantial energy savings for Eckerd College by reducing the use of electric driven cooling systems and substantial energy savings for the City of Saint Petersburg by preventing re-pumping of already treated reclaimed water back through the entire SWWRF treatment process.
12. The current configuration reduces the hydraulic loading on the SWWRF, especially during the wet-season. Eckerd returns over one million gallons per day of reclaimed water from the heat exchange system and substantially more during the summer which corresponds to the time of the peak flow wet season at the SWWRF. Bringing this flow back to the head of the SWWRF would require reevaluation of the design for the entire SWWRF to account the return flow and the hydraulic load this returned reclaimed water would cause. Failure to reevaluate the facility design would create an unacceptable risk of exceeding the SWWRF’s hydraulic capacity.

13. The Petitioner believes that principles of fairness would be violated if the City of St. Petersburg is required to comply with rules 62-610.469(7)(g) and 62-610.668(1)(c), F.A.C., because the City of St. Petersburg entered into this project in 2011 cooperatively with Eckerd College, in good faith, and with the consent of the Department.
14. The Petitioner demonstrated that strict application of the rule would result in substantial hardship to the Petitioner.

THEREFORE, IT IS ORDERED:

15. Based on the foregoing reasons, the Petitioner has demonstrated that there are no practicable means known or available for the adequate control of the pollution involved, the Department intends to grant the proposed variance. The Petitioner must continue to utilize the proper cross connection controls and backflow prevention techniques. Additionally, the Petitioner must ensure that any operational changes or maintenance issues in the Eckerd College non-contact HVAC system that may impact the reclaimed water quality are appropriately addressed. **PETITIONERS REQUEST FOR A VARIANCE IS GRANTED.**
16. This variance shall remain in effect until the expiration of the SWWRF permit # FLA128848, i.e. until May 07, 2023. The Petitioner can petition to renew this variance when the Petitioner applies to renew its operation permit.

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 e-mail address of the petitioner; the name, address, telephone number, and any e-mail 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. 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, 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; 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.

DONE AND ORDERED this 25th day of May 2018 in Hillsborough county, Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Mary E. Yeargan, P.G.
Southwest District Director
Florida Department of Environmental Protection
13051 North Telecom Parkway, Suite 101
Temple Terrace, Florida 33637

Copies furnished to:

Kim Streeter, Assistant City Attorney, City of St Petersburg., Kim.Streeter@stpete.org

Steve Thompson, FDEP-SWD, Steve.Thompson@floridadep.gov

Gerald Loesch, FDEP-SWD, Gerald.Loesch@floridadep.gov

Michelle Holton, FDEP-SWD, Michelle.Holton@floridadep.gov

Raji Ravindran, FDEP-SWD, Raji.Ravindran@floridadep.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Order, including all copies, were mailed before the close of business on May 25, 2018, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, under 120.52(7) of the Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk

May 25, 2018

Date