

Rick Scott
GovernorCarlos Lopez-Cantera
Lt. GovernorNoah Valenstein
Secretary

Florida Department of Environmental Protection

South District
Post Office Box 2549
Fort Myers, Florida 33902-2549
SouthDistrict@floridadep.gov

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Collier County Utilities
Collier County
Petition for Variance

OGC File No. 17-1038

**FINAL ORDER GRANTING PETITION FOR
VARIANCE FROM RULE 62-610.865, F.A.C.**

On October 3, 2017, a petition for variance from the requirements in Rules 62-610.865(8)(b)(d), 62-610.865(9)(a), and 62-610.865(10)(b), Florida Administrative Code (F.A.C.), under §120.542 of the Florida Statutes (F.S.) and Rule 28-104.002, F.A.C., was filed by Collier County Utilities (“Petitioner”), for the Orange Tree Utilities Wastewater Treatment Plant (WWTP) located at 1341 Oil Well Road, Naples, Florida. The petition was for a temporary variance from subsections 62-610.865(8)(b)(d), 62-610.865(9)(a), and 62-610.865(10)(b), F.A.C., which apply to a domestic wastewater facility that blends concentrate with reclaimed water, and specify prerequisite engineering, constituent limits, monitoring requirements, permitting requirements, operating protocols, and concentrate storage requirements. The Petitioner acquired the facility on March 1, 2017.

The facility does not have continuous monitoring devices nor the ability to return concentrate stored in the storage pond to the facility for blending. The Petitioner requested a temporary variance from the requirement for continuous monitoring and recording of flow and blend ratio, a temporary variance from the requirement to store demineralization concentrate and a temporary variance from the requirement to establish an operating protocol for the blending.

The Petitioner petitioned for a variance in order to avoid substantial technical hardship and provide sufficient time to install the necessary componenets and develop the minimum blend ratio to minimize impacts to vegetation. A notice of receipt of the petition was published in the Florida Administrative Register on October 13, 2017. No comments have been received.

1. Petitioner's address is: Collier County, 5600 Warren Street, Naples, Florida 34113.
2. Operation of the Petitioner's WWTP is authorized by Department domestic wastewater facility permit number FLA014165 which expires on March 25, 2022.
3. Based on Rule 62-610.865(8)(b), F.A.C., specific condition number I.A.1. of permit number FLA014165 requires the petitioner to monitor and record flows of the blend and the concentrate.

The applicable rule states in pertinent part:

62-610.865(8)(b), F.A.C.: "Flows shall be monitored continuously in two locations. The flow of the concentrate shall be monitored continuously. In addition, either the flow of the reclaimed water (before blending) or the flow of the blend shall be continuously monitored. The blend ratio shall be calculated continuously"

4. Based on Rule 62-610.865(8)(d), F.A.C., specific condition number I.A.1. of permit number FLA014165 requires the petitioner to use continuous monitoring devices.

The applicable rule states in pertinent part:

62-610.865(8)(d), F.A.C.: "Continuous monitoring equipment shall be equipped with an automated data logging or recording device...."

5. Based on Rule 62-610.865(9)(a), F.A.C., specific condition number I.B.13. of permit number FLA014165 requires the petitioner to review and update an operating protocol based on a demineralization concentrate blend ratio and specific conductance limit.

The applicable rule states in pertinent part:

62-610.865(9)(a), F.A.C.: "the domestic wastewater permittee shall establish an operating protocol for the blending. This operating protocol shall contain procedures designed to ensure that only acceptable quality blend water is released to the reuse system. The acceptability of the reclaimed water will be based on factors addressed in the engineering report, as described in subsection 62-610.865(5), F.A.C., such that protection of public health, environmental quality, and site vegetation will be assured. The two key parameters to be used in making continuous judgments of the acceptability of the blend are the blend ratio and the specific conductance."

6. Based on Rule 62-610.865(10)(b), F.A.C., specific condition number I.A.10. of permit number FLA014165 requires the petitioner have storage or alternative disposal of demineralization concentrate when blending is not available.

The applicable rule states in pertinent part:

62-610.865(10)(b), F.A.C.: “Provisions shall be made for storage of demineralization concentrate, unless a permitted alternate discharge mechanism or other approved methods are available for disposal or handling of the concentrate during periods when blending is not possible.”

7. The facility has not reported a groundwater excursion in the last year (2017).

8. The source water for the membrane concentrate is from a relatively low level source of TDS (Lower Tamiami Aquifer).

9. The Petitioner will perform quarterly monitoring for total dissolved solids, chlorides, pH, and specific conductance in the groundwater monitoring wells to demonstrate that ground water quality will be protected.

10. The Petitioner will perform weekly monitoring of total suspended solids, fluoride, total dissolved solids, chlorides, pH, and sodium adsorption ratio in the blend to demonstrate that site vegetation and public health will be protected.

11. The purpose of the underlying statutes 403.0621, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, 403.088, is to ensure that the quality and use of reuse water is environmentally acceptable and not a threat to public health and safety. The Petitioner’s proposed alternative will provide an equivalent safeguard for the quality of the reuse water and therefore the Petitioner meets the purpose of the underlying statutes by other means.

12. The Department received no comments about the petition for variance.

13. For the foregoing reasons, in order to avoid unnecessary substantial technical hardship, the Department has determined that the Petitioner has met the requirements for a variance from Rules 62-610.865(8)(b)(d), 62-610.865(9)(a), and 62-610.865(10)(b), F.A.C. The Department hereby grants a temporary variance, through June 30, 2019, subject to the five conditions (13.a – 13.d) below:

- a. The Petitioner shall install continuous flow monitoring by the expiration date of this variance. Until such time, The petitioner shall monitor the flows using flow meters with totalizers.
- b. The Petitioner shall establish a correlation between conductivity and TDS and chlorides, and develop an operating protocol in accordance with 62-610.865(9), F.A.C., by the expiration date of this variance.
- c. The Petitioner shall construct adequate storage facilities or alternative disposal in accordance with 62-610.865(10), F.A.C., by the expiration date of this variance.
- d. This variance does not relieve the Petitioner from liability for harm or injury to human health or welfare, animal, or plant life, or property, or from penalties therefore; nor does it allow pollution in contravention of Florida Statutes or Department rules.
- e. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department.

RIGHTS

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) in the Department's Office of General Counsel (Mail Station 35), 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. Petitions filed by the 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 Diane DiPascale, Collier County, 5600 Warren Street, Naples, Florida 34113, 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 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 determination;
- (c) A statement of when and how the petitioner received notice of the Department's 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 Department's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department'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 Department to take with respect to the Department'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 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 31st day of January, 2018 in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jon M. Iglehart
Director of District Management
South District

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to s. 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.

Barbara Browning

Clerk

January 31, 2018

Date

Attachments:

Notice of Rights of Substantially Affected Persons
Notice for Optional Publication

Copies furnished to:

Nick Casalanguida nickcasalanguida@colliergov.net
Joint Administrative Procedures Committee joint.admin.procedures@leg.state.fl.us
Daniel M. Nelson, P.E. danny.nelson@tetrattech.com
Diane DiPascale dianedipascale@colliergov.net

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

This determination is final and effective on the date filed with the Clerk of the Department unless a timely and sufficient petition for an administrative hearing is filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. The procedures for petitioning for a hearing are set forth in Rules 28-106.201-.202 and 62-110.106, F.A.C., and are summarized below.

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 speaking, 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 (see below).

The Department will not publish notice of this determination. Publication of notice by you is optional and is not required for you to proceed. However, in the event that an administrative hearing is held and the Department's determination is reversed, 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.

If you wish to limit the time within which any specific person(s) may request an administrative hearing, you may provide direct notice to such person(s), by certified mail and enclosing a copy of this determination.

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, P.O. Box 2549, Fort Myers, FL 33902-2549; Attn: Nolin Moon

NOTICE
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

The Department of Environmental Protection gives notice that a temporary variance has been granted to Collier County Utilities for its Wastewater Treatment Plant (WWTP) located at 1341 Oil Well Road, Naples, Florida. The temporary variance, which expires June 30, 2019, granted relief from subsections 62-610.865(8)(b)(d), 62-610.865(9)(a), and 62-610.865(10)(b), F.A.C., which require facilities that blend concentrate with reclaimed water to perform certain continuous monitoring; set extra constituent limits, monitoring requirements, permitting requirements, and operating protocols; and provide for concentrate storage. Collier County will provide weekly and quarterly monitoring for the extra constituents during the variance period, and will fully comply with the rule requirements by June 30, 2019.

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 of the Florida Statutes. The petition must contain the information set forth below and 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. Mediation is not available.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only 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 (F.A.C.).

In accordance with Rules 28-106.111(2) and 62-110.106(3)(a)(4), F.A.C., petitions for an administrative hearing must be filed within 21 days of publication of the notice or receipt of written notice, whichever occurs first. 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. A timely request for extension of time will toll the running of the time period for filing a petition until the request is acted upon. Upon motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect, the Department may also grant the requested extension of time.

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 for an administrative hearing within the appropriate time period shall constitute a waiver of that right.

A petition that disputes the material facts on which the Department's action is based 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 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.

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.

Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing shall be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

Complete copies of all documents relating to this determination are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, at Florida Department of Environmental Protection, 2295 Victoria Avenue, Suite 364, Fort Myers, FL 33901. The contact person is Nolin Moon at 239-344-5672.