

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re: Victory Casino Cruises, LLC
Petition for Variance from Rule 62-606.400, F.A.C.
Facility/File No: FLV754668

OGC Case No. 18-0230

Submitted by: Lester Bullock
Chief Executive Officer
Victory Casino Cruises, LLC
180 Christopher Columbus Drive
Cape Canaveral, Florida
lbullock@victorycanaveral.com

Final Order Granting Petition for Variance from Rule 62-606.400, F.A.C.

PROJECT LOCATION

Victory Casino Cruises, LLC. (Petitioner) is the owner of the Victory I Casino Vessel, a gambling vessel operating out of Cape Canaveral. The vessel is moored at 180 Christopher Columbus Drive, Cape Canaveral, Florida, 32920, in Brevard County.

PROJECT DESCRIPTION

On April 26, 2018, the Petitioner filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes (F.S.), variance from the requirements of Rule 62-606.400, Florida Administrative Code (F.A.C.). Rule 62-606.400, F.A.C., exempts gambling vessels from the requirement to register the gambling vessel if it operates a marine waste treatment system that produces sterile, clear, and odorless reuse water without generating solid waste and that eliminates the need to pump out or dump wastes. The rule states that the standard is met if the effluent meets all primary and secondary drinking water standards in Chapter 62-550, F.A.C. In order to qualify for the statutory exemption in section 376.25(8)(e), F.S., the Petitioner seeks a variance, for a period of five years, from having to meet the primary and secondary drinking water standards in Chapter 62-550, F.A.C.

Notice of receipt of the petition was published by the Department in the Florida Administrative Register on May 10, 2018 and re-noticed on May 16, 2018 to correct the name of the Petitioner. No public comment was received.

The Petitioner demonstrated that the purpose of the underlying statute has been achieved by operation of a marine waste treatment system that recycles effluent which meets the standards of high level disinfection; with fecal parameter results below detectable limits, total suspended solids below detectable limits, and a carbonaceous biological oxygen demand of 3.28 mg/L. The marine waste treatment system does not pump out or dump wastes and does not generate solid waste. Petitioner has demonstrated compliance with section 376.25(8)(e), F.S. Additionally, the Petitioner has

demonstrated that strict application of the rule would result in substantial economic hardship to the Petitioner.

CONDITIONS

Based on the foregoing reasons, the Petitioner has demonstrated that it has met the requirements for a variance from Rule 62-606.400, F.A.C., subject to the following conditions:

1. The Petitioner annually samples and tests the effluent for fecal coliforms in accordance with Chapter 62-600, F.A.C., and verifies to the Department that the results are below the detection limit.
2. The Petitioner annually samples and tests the effluent for CBOD₅ in accordance with Chapter 62-600, F.A.C., and verifies to the Department that the results are 5 mg/L or less.
3. The Petitioner annually samples and tests the effluent for TSS in accordance with Chapter 62-600, F.A.C., and verifies to the Department that the results are 5 mg/L or less.

Sampling events shall occur during November of each year.

DETERMINATION

The Department has determined that pursuant to section 120.542, F.S., the Petitioner has demonstrated that it has met the requirements for a variance from Rule 62-606.400, F.A.C., with the conditions above. As such, the Petitioner is granted a temporary variance from Rule 62-606.400, F.A.C., for a period of five years.

PUBLICATION OF NOTICE

You (the petitioner) may choose to publish at your own expense the enclosed notice of this variance. The notice is required to be published one time within 30 days, in the legal advertisements section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected," means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The applicant shall provide proof of publication to:

Department of Environmental Protection
Domestic Wastewater Program
2600 Blairstone Road, MS 3540, Tallahassee, FL 32399-2400

The proof of publication shall be provided to the above address within seven (7) days of publication. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for denial of the variance or waiver.

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 Section 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 19 day of June 2018 in Leon, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Benjamin Melnick
Deputy Director
Division of Water Resource Management

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.

Clerk

June 20th, 2018
Date

Attachments:
Notice for Newspaper Publication

Copies furnished to:
Petitioner
DEP, Agency Clerk
DEP, Office of General Counsel
Joint Administrative Procedures Committee