

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: MCUD/Northwest Regional WRF

OGC Case No. OGC 18-0986

Petition for Variance from

Rule 62-610.462(3), F.A.C.

DEP File No.: FLA272060-006

FINAL ORDER GRANTING PETITION FOR VARIANCE

On May 17, 2018, the Marion County Utility Department, (Petitioner), filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes, variance from the requirements of Rule 62- 610.462(3) and Rule 62-699.310(2)(a)1., Florida Administrative Code (F.A.C.), for its wastewater treatment facility located at 11800 S. US Hwy 441, Belleview, Florida 34420.

1. Subsection 62-610.462(3), F.A.C., establishes staffing requirements for wastewater treatment facilities that have treatment processes to produce reclaimed water for public access reuse. The rule requires staffing by a Class C or higher operator for a minimum of 6 hours per day, 7 days per week for a facility of this size producing reclaimed water for public access irrigation.
2. The Petitioner has requested a variance that, if approved, would a) reduce the staffing requirements on weekends only to 3 hours per day, while maintaining all automatic and electronic monitoring, notification, and diversion systems. A Class C operator or higher is required.
3. A revision to the facility's operating permit is being issued to incorporate the staffing reduction associated with this variance.
4. The Petitioner has demonstrated that the application of the rule would create a substantial economic hardship.
5. The purpose of the underlying statutes 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, and 403.088, Florida Statutes, is to ensure that treatment at this facility is environmentally acceptable and not a threat to public health and safety. The facility's previous staffing requirements were contained in Rule 62-610.462(3), F.A.C., and were required to provide assurance of proper operation and to meet effluent limits for public access reuse on weekends. The reduced weekend staffing with the additional monitoring and electronic controls in place provide reasonable assurance the facility will meet the all reclaimed water limits prior to releasing water for public access irrigation.
6. The Petitioner has demonstrated the purpose of the underlying statutes will be achieved through other means:

(a) Ground water quality standards will be met by the facility being required to meet their reclaimed water effluent limits.

(b) Public health will not be adversely affected because the facility will be under constant surveillance by trained operators.

(c) The facility will be required to maintain compliance with reclaimed water limits, and the conditions of the approved Operating Protocol for the public access reuse system, as a condition of the continued approval of this variance.

(d) Public welfare will not be adversely affected. The public will benefit from less costly service that meets all underlying water quality regulations.

7. Notice of Receipt was published in the Florida Administrative Register (FAR) on May 24, 2018, and one public comment was received on the same day, concerning reduced staffing at wastewater treatment facilities. The Department considered these comments during this variance review process.

8. 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.

9. Based on the foregoing, Petitioner has demonstrated that it meets the requirements for a variance from Florida Administrative Code Rules 62-610.463(3) and 62-699.310(2)(a)1. The petition for variance is granted subject to the following conditions:

A Class C or higher operator 6 hours/day Monday through Friday and 3 hours/day on Saturday and Sunday. The lead/chief operator must be a Class B operator, or higher. The staffing reduction below 6 hours/day on weekends is contingent upon proper operation of all automatic and electronic monitoring, notification, and diversion systems, as described in the approved operating protocol, as required by Condition VI 3 of the permit revision and in the Final Order Granting the Petition for Variance, attached. This condition is part of the facility permit, will be revoked if noncompliance associated with the reduced staffing occurs, and will expire with the current 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 29th day of June 2018 in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



(on behalf of)

Jeff Prather
District Director, Central District

Attachments: Variance Petition Exhibit (4 pages)

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this Order and all copies were sent on the filing date below to the following listed persons:

Suzanne Printy, Joint Administrative Procedures Committee
Chuck Pigeon, P.E., Pigeon Roberts & Associates, LLC, cpigeon@pigeon-roberts.com
Mike Darrow, President, FW&PCOA, mdarrow99@gmail.com
FDEP: David Smicherko, Dennise Judy, Christine Daniel, Kim Rush, Sharon Sawicki, Douglas Beason, Lea Crandall

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.



June 29, 2018

Clerk

Date



Florida Department of Environmental Protection

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Noah Valenstein
Secretary

NOTICE OF PERMIT REVISION

June 29, 2018

Angel Roussel, Director
Marion County Utility Department
11800 US Hwy 441
Bellevue, FL 34420
Angel.roussel@marioncountyfl.org

Marion County - DW
MCUD/Northwest Regional WRF
File No. FLA272060-006
Permit Revision – Weekend Staffing Reduction

Dear Mr. Roussel:

The Department is in receipt of your request to revise the conditions of the permit referenced above in accordance with the revision request and Final Order Granting a Variance, OGC No. 18-0986.

The requested revision and associated variance reduces the staffing below the minimum requirements of 6 hours/day for 7 days/week described in Chapters 62-699 and 62-610, Florida Administrative Code (FAC). The conditions are hereby changed as follows:

V. OPERATION AND MAINTENANCE REQUIREMENTS

A. Staffing Requirements

1. During the period of operation authorized by this permit, the wastewater facilities shall be operated under the supervision of operators certified in accordance with Chapter 62-602, F.A.C. In accordance with Chapter 62-699, F.A.C., this facility is a Category III, Class C facility and, at a minimum, operators with appropriate certification must be on the site as follows:

A Class C or higher operator 6 hours/day Monday through Friday and 3 hours/day on Saturday and Sunday. The lead/chief operator must be a Class B operator, or higher. The staffing reduction below 6 hours/day on weekends is contingent upon proper operation of all automatic and electronic monitoring, notification, and diversion systems, as described in the approved operating protocol, as required by Condition VI 3 of this permit revision and in the Final Order Granting the Petition for Variance, attached [62-620.630(3)] [62-699.310] [62-610.462]

VI. SCHEDULES

3. **Provide an updated operations protocol for Department review and approval within 30 days of the date of this revision. 62-610.320.**

This letter must be attached to Wastewater Permit No. FLA272060 and becomes a part of and subject to all conditions of that permit.

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 application.

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 Rules 28-106.201 and 28-106.301, 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 via electronic correspondence at 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 by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within **14** days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within **14** days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. 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, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the 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

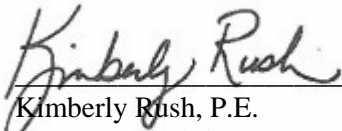
Mediation is not available in this proceeding.

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 Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (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 30 days from the date this action is filed with the Clerk of the Department.

Executed in Orlando, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Kimberly Rush, P.E.
Program Administrator
Permitting and Waste Cleanup

KR/dj

Attachments: Final Order Granting Petition for Variance

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments were sent on the filing date below to the following listed persons:

Chuck Pigeon, P.E., Pigeon Roberts & Associates, LLC, cpigeon@pigeon-roberts.com

David Smicherko, DEP, david.smicherko@dep.state.fl.us

Dennise Judy, DEP, dennise.judy@dep.state.fl.us

Christine Daniel, DEP, Christine.daniel@dep.state.fl.us

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk

June 29, 2018

Date