

BEFORE THE STATE OF
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: City of Auburndale Petition for
Variance from Rules 62-610.469(7)(g),
62-610.650(3), and 62-610.660(3)(a), F.A.C

OGC Case No. 18-1097
DEP File No.: FL0021466-024-
DWF/VO

ORDER GRANTING PETITION FOR VARIANCE

On July 6, 2018, the City of Auburndale, (Petitioner or City), filed a petition with the Florida Department of Environmental Protection (Department) for variance under section 120.542, Florida Statutes, (F.S), from requirements in Rules 62-610.469(7)(g), 62-610.650(3), and 62-610.660(3)(a) 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 62-610.650(3), F.A.C., defines the return of reclaimed water flowing out of the industrial wastewater, shall be considered as an industrial. Rule 62-610.660(3)(a), F.A.C., prohibits the return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to an industrial facility.

The Petitioner seeks a variance from the requirements of Rules 62-610.469(7)(g), 62-610.650(3), and 62-610.660(3)(a), F.A.C., in order to allow the return of reclaimed water to the City of Auburndale's Allred Wastewater Treatment Facility (WWTF) reclaimed water distribution system after the reclaimed water has been used as once-through non-contact cooling water by the Duke Energy Center.

On August 20, 2013, the Department issued a Variance for OGC File No. 13-10190, to the City of Auburndale from Rules 62-610.469(7)(g), 62-610.650(3) and 62-610.660(3)(a), F.A.C. The original variance, OGC File No. 05-2220, was issued on December 15, 2008.

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

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

1. Petitioner's address is: City of Auburndale, P.O. Box 186, Auburndale, Florida 33823. The activities authorized by this variance are located at City of Auburndale Allred WWTF, 1300 Recker Hwy. 655, Auburndale, FL 33823 in Section 14, Township 28 South, Range 25 East, in Polk County, at Latitude: 28° 03' 04" N/Longitude: 81° 47' 30" W.
2. The applicable rules pertinent to the variance request are as follows:
 - a. *Rule 62-610.469(7)(g) [Cross- Connection Control]*: The return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to a user is prohibited.
 - b. *Rule 62-610.650(3) [Description of System]*: The reclaimed water flowing out of the

industrial process shall be considered as an industrial wastewater and shall be subject to regulation under Chapters 62-4, 62-302, 62-520, 62-521, 62-522, 62-620, 62-621, 62-650, 62-660, 62-670, 62-671, 62-672, and 62-673, F.A.C., except as provided in Rule 62-610.668, F.A.C.

c. *Rule 62-610.660(3)(a) [Cross-Connection Control and Protection of the reclaimed Water Supply]*: The return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to an industrial facility is prohibited. This prohibition shall not apply to industrial sites which were using reclaimed water before January 1, 1996, or which were identified as future users of reclaimed water in a complete permit application received by the Department before January 1, 1996.

3. In support of the Petition for Variance, the Petitioner alleges as follows:

The Duke Energy Center is a natural gas-fired, combined cycle facility, located close to the City of Auburndale's Allred WWTF [Permit ID # FL0021466]. Reclaimed water from the City of Auburndale's Allred WWTF, which meets public access reuse quality, is utilized in the Duke Energy Center once-through non-contact cooling water system. The reclaimed water increases in temperature while flowing through the Duke Energy Center non-contact cooling water system; conditioning chemicals are added to the reclaimed water. The reclaimed water use is once through non-contact cooling. The once through process, reduces any adverse concentration impact from repeated cycling use. Sampling data prior to the original variance as well as on-going monitoring, has demonstrated no adverse impacts to the return of the water to the reclaimed water distribution system. Results of the samples analyzed from the reclaimed water return, combined with the industrial pretreatment from the Duke Energy Center non-contact cooling water system, have met standards as required by the domestic wastewater treatment permit requirements. Additionally, as a permit condition, continuous monitoring for chloride with an on-site meter, is performed prior to the return of cooling water to the reclaimed water distribution system as a method for determining any increase in conditioning chemical concentration.

a) The introduction of the returned reclaimed water to the headworks of the City of Auburndale's Allred WWTF 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.

b) Not allowing this variance would constitute a substantial hardship because the most likely alternative source of high quality water for use in the once through non-contact cooling water system is potable water. Use of potable water for once-through cooling water is expensive, inefficient, and an unsustainable use of drinking quality water.

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

1. 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.

2. The purpose of the underlying statutes 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, 403.088 for Rules 62-610.469(7)(g), 62-610.650(3) and 62-610.660(3)(a), F.A.C., 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.

3. The variance would serve the purpose of the statute 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, 403.088 because the City of Auburndale's Allred WWTF was designed and built to meet high-level disinfection standards. The results of the sample analyzed from the reclaimed water returned to the City of Auburndale's Allred WWTF from the Duke Energy Center non-contact cooling water system met water quality standards as required by applicable regulations.

4. The variance would serve the purpose of the statute 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, 403.088 because the sole change in the quality of the reclaimed water is a temperature increase. The temperature increase does not affect the reclaimed water's ability to be reused or disposed. The energy center is close to the City of Auburndale's Allred WWTF. Cross connection control and backflow prevention is used and inspected on a routine basis

5. The variance would serve the purpose of the statute because, granting the variance will encourage, promote, and continue the reuse of 1.4 million gallons per day of reclaimed water and reasonably conserve 1.4 million gallons per day of potable water the most likely other sources of high quality water for use in the once through non-contact cooling water system.

SUBSTANTIAL HARDSHIP TO THE PETITIONER and VIOLATIONS OF PRINCIPLES OF FAIRNESS

1. "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.

2. Petitioner requests a variance of the strict application of Rules 62-610.469(7)(g), 62-610.650(3) and 62-610.660(3)(a), F.A.C., because applying the rules would be unfair, and would create a substantial hardship, and would violate the principles of fairness.

3. 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 water conservation by reducing the use of groundwater and substantial energy savings for the City by preventing re-pumping of already treated reclaimed water through the Allred WWTF.

4. The current configuration reduces the hydraulic loading on the City of Auburndale's Allred WWTF, especially during the wet-season. Duke Energy Center returns over 1.4 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 Allred WWTF. Bringing this flow back to the head of the Allred WWTF would require reevaluation of the design for the entire Allred WWTF 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 City of Auburndale's Allred WWTF's hydraulic capacity.

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

THEREFORE, IT IS ORDERED:

1. Based on the foregoing reasons, the Petitioner's request for a variance is granted. 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 Duke Energy Center non-contact cooling water system that may impact the reclaimed water quality are appropriately addressed.

2. This variance shall remain in effect until the expiration of the City of Auburndale's Allred WWTF permit # FL0021466, i.e. until September 14, 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 27th day of September 2018 in Hillsborough County, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Order, including all copies, were mailed before the close of business on September 27, 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

September 27, 2018

Date