



FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nufiez
Lt. Governor

Noah Valenstein
Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
NUMBER: 70019 1120 0000 2207 1733

November 13, 2019

Marilyn Wambold
7920 Garden Dr N
St. Petersburg, FL 33710

Re: Order Granting Petition for a Waiver of Provisions of Rule 62-769.800(4)(c), F.A.C.
OGC No.: 19-1624
FDEP File No/Facility ID: 529101624
Facility Address: 7920 Garden Drive N, St. Petersburg, Pinellas County
Discharge Date: 03/27/1991
Discharge Score: 10

Dear Ms. Wambold:

On October 8, 2019, Marilyn Wambold, Petitioner, filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes (F.S.), waiver from the requirements of Rule 62-769.800(4)(c), Florida Administrative Code (F.A.C), which requires, when a site is eligible for the Abandoned Tank Restoration Program (ATRP), that responsible persons pay a restoration coverage deductible of five hundred dollars (\$500.00).

Notice of receipt of the petition was published in the Florida Administrative Register on October 18, 2019. No public comments were received.

The purpose of the ATRP, pursuant to section 376.305(6), F.S., is to provide financial assistance to clean up sites with petroleum storage systems that have been abandoned or are no longer in service. The ATRP Rule 62-769.800(4)(C), F.A.C. states “eligible responsible persons are subject to the restoration coverage deductible of \$500.00.”

Section 120.542(2), F.S., states that “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 the application of a rule would create a substantial hardship or would violate the principals of fairness.” Substantial hardship is defined as “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”.

The petition states that the Petitioner was initially provided information indicating that Petitioner would not be responsible to pay any sum for the work conducted by the State to remediate Petitioner’s contaminated

property. Due to conflicting information Petitioner received about the deductible payment, principals of fairness are violated because literal application of this rule against Petitioner is significantly different from the way it affects others eligible for the ATRP who received accurate information about the requirement for participating in the ATRP.

The Department has reviewed the documentation submitted in the petition pursuant to Section 120.542, F.S. and based on the demonstrated violation of the principal of fairness to the Petitioner hereby **approves** the petition for a permanent waiver of the requirement to pay a \$500.00 deductible to participate in the ATRP.

Therefore, it is ordered based on the foregoing reasons, the Petitioner has demonstrated that it has met the requirements for a waiver of 62-769.800, F.A.C. **PETITIONERS REQUEST FOR A WAIVER IS GRANTED.** This deductible will not be required of the Petitioner at any time.

This Order only applies to the deductible for ATRP eligibility and does not address in any way to any storage tank regulation or other regulatory compliance matters of the Department, including any discharges not addressed herein. You continue to be responsible for compliance with all environmental regulations and will be subject to enforcement should you fail to comply with any environmental regulations.

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 a subsequent order of the Department. Because the administrative hearing process is designed to formulate final agency action, the subsequent order may modify or take a different position than this action.

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, 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 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 addressee 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 addressee must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the addressee must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62-110.106(10)(a).

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. If you do not publish notice of this action, this waiver may not apply to persons who have not received a clear point of entry.

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 (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 30 days from the date this action is filed with the Clerk of the Department.

Marilyn Wambold
FDEP Facility ID # 529101624
Page 4
November 13, 2019

Questions

Any questions regarding the Variance or Waiver review should be directed to Monica J. Brady at (850) 245-8844. Questions related to the status of cleanup for this discharge should be directed to Kevin Thornton, Site Manager at (407) 836-1467. Questions regarding legal issues should be referred to the Department's Office of General Counsel at (850) 245-2242. Contact with any of the above does not constitute a petition for administrative hearing, or a request for a time extension to file a petition for hearing or an agreement to mediate.

EXECUTION AND CLERKING

Executed in Tallahassee, Florida.
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Natasha Lampkin
Program Administrator
Petroleum Restoration Program

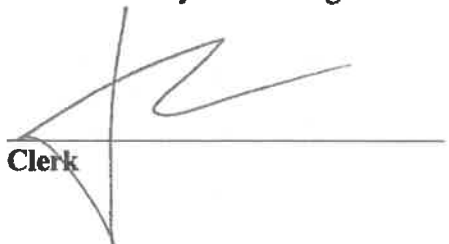
CERTIFICATE OF SERVICE

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:

- Cc: Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building Room 680, Tallahassee, Florida 32399
Ec: Petitioner, Marilyn Wambold, wambold02@aol.com
Rebecca Robinette, OGC, FDEP, Rebecca.robinette@FloridaDEP.gov
PRP Accounting, PRP_Accounting@FloridaDEP.gov
Kristy Trueblood, Administrative Services Contractor, Northstar Contracting Group, Inc., ktrueblood@northstar.com

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

Date 11.13.19