

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Magnolia Mobile Home Park WWTF

OGC Case No. OGC 20-0025

Petition for Variance from

Rule 62-699.310(2)(a)1., F.A.C.

DEP File No.: FLA010862

FINAL ORDER GRANTING PETITION FOR VARIANCE

On January 4, 2020, The Horne Corporation, (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 62-699.310(2)(a)1., Florida Administrative Code (F.A.C.), for its wastewater treatment facility located at 3828 Dr. Love Road, Orlando, Orange County, Florida.

1. Subsection 62-699.310(2)(a)1. F.A.C., establishes staffing requirements for wastewater treatment facilities that have treatment processes to meet limits for total nitrogen with or without filtration. The rule requires staffing by a Class C or higher operator for 1 hour/day for 5 days/week and one visit each weekend for a facility with total nitrogen limits and a permitted capacity under 0.05 MGD. The facility was previously required to be staffed by a Class D or higher operator for 3 visits/week on nonconsecutive days for a total of 1 1/2 hours/week and required the lead/chief operator to be a Class D operator, or higher.

2. When the Wekiva Wastewater Management Rule, 62-600.550, F.A.C., became effective, it required the facility to meet a new Total Nitrogen (TN) limit. Rule 62-699.310(2)(a)1. F.A.C., requires increased staffing requirements for facilities with a nutrient limit, such as TN, in their permit.

3. The Petitioner requested a variance that, if approved, would maintain the previously allowed level of staffing, which required a Class D or higher operator for 3 visits/week on nonconsecutive days for a total of 1½ hour/week, rather than increase the level of staffing to a Class C or higher operator 1 hour per day, 5 days per week and one visit each weekend.

4. The facility has been able to successfully meet the limit for total nitrogen with the existing staffing requirements. The operator is a family member, has a vested interest in the success of the facility, and lives on site. The requirement to hire an additional operator would pose a substantial financial hardship.

5. The staffing reduction associated with this variance will be incorporated in the facility's permit.

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 are contained in Rule 62-699.310(2)(a)1, F.A.C., to provide assurance of proper operation and to meet effluent limits, other than the increased limit for total nitrogen. The increased staffing is intended to provide reasonable assurance the facility could meet the reduced limit for total nitrogen. The total nitrogen limit has been successfully met since 2011 under the current staffing requirements.

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 increased staffing was required to provide assurance that an environmental limit for total nitrogen could be met. The facility will be required to continue to meet this limit.

(c) The facility will be required to meet the annual average effluent limit for total nitrogen 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. One public comment was received on January 26, 2020, concerning reduced staffing at wastewater treatment facilities. The Department considered these comments during this variance review process. Notice of Receipt was published in the Florida Administrative Register (FAR) on January 24, 2020.

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 Rule 62-699.310(2)(a)1. The petition for variance is granted subject to the following conditions:

The requested variance shall maintain the currently required Class D or higher operator for 3 visits/week on nonconsecutive days for a total of 1½ hour/week.

## 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 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 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 18<sup>th</sup> day of March 2020 in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



Aaron Watkins, Director  
Central District

Attachments: Notice of Disposition of Final Order

## **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:

FDEP: Allison Chancy, Reggie Phillips, David Smicherko, Dennise Judy, Douglas Beason  
Mark Cadenhead, P.E., Cadenhead Environmental Engineering Services, Inc.,  
[mark\\_cadenhead@bellsouth.net](mailto:mark_cadenhead@bellsouth.net)  
Mike Darrow, President, FW&PCOA, [mdarrow99@gmail.com](mailto:mdarrow99@gmail.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**

March 19, 2020

**Date**

## Notice of Variances and Waivers

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.:        RULE TITLE:

62-699.310        Classification and Staffing of Domestic Wastewater or Water Treatment Plants and Water Distribution Systems

The Department of Environmental Protection hereby gives notice: That a Final Order was issued on March 18, 2020, granting The Horne Corporation's Petition for a Variance. The Petition was filed pursuant to Section 120.542, F.S., and was received on January 4, 2020. Notice of receipt of this Petition was published in the Florida Administrative Register on January 24, 2020. The petition requested a variance, to maintain the currently required Class D or higher operator for 3 visits/week on nonconsecutive days for a total of 1½ hour/week rather than increasing to Class C or higher operator for 1 hour/day for 5 days/week and one visit each weekend for a facility with total nitrogen limits and a permitted capacity under 0.05 MGD. A public comment was received and considered. The Final Order, File No. FLA010862-005; OGC Case No. 20-0025, granted the variance to subparagraph 62-699.310(2)(a)1., F.A.C., based on a showing that Petitioner demonstrated that a strict application of the rule would result in substantial hardship to Petitioner and because Petitioner demonstrated that the purpose of the underlying statute will be achieved by other means.

A copy of the Order or additional information may be obtained by contacting: Allison Chancy, (407)897-2968, Allison.Chancy@dep.state.fl.us; Department of Environmental Protection, Central District, 3319 Maguire Boulevard, Orlando, Florida 33803; during normal business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday, except legal holidays.