

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Destin Water Users, Inc.

OGC Case No. 20-1123

DEP File No.: FLA010194-032-DWF

Petition for Variance from
Rule 62-610.568(4), F.A.C.

ORDER GRANTING PETITION FOR VARIANCE

On July 14, 2020, Destin Water Users, Inc., (Petitioner or DWU), filed a petition with the Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes, variance from the requirements of Rule 62-610.568(4), Florida Administrative Code (F.A.C.). Rule 62-610.568(4), F.A.C., requires that domestic wastewater treatment facilities designed to meet the full treatment and disinfection requirements shall have the reclaimed water sampled and analyzed for Carbon, Total Organic (TOC) and Halogen, Total Organic (TOX) daily, seven days per week. The Petitioner seeks a variance in order to allow reclaimed water to be sampled and analyzed for TOC and TOX once per injection month.

Notice of receipt of the petition was published in the Florida Administrative Register on July 20, 2020. No public comment was received.

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

1. Petitioner, DWU, operates a domestic wastewater utility. Petitioner holds DEP domestic wastewater permit, FLA010194 for treatment of domestic wastewater and aquifer storage and recovery (ASR) of reclaimed water in accordance with Chapters 62-600, 62-620, 62-610, 62-699 and 62-520, F.A.C., and underground injection control (UIC) permit (Facility ID 98505) for the ASR of reclaimed water injection wells in accordance with Chapter 62-528, F.A.C.
2. The George F. French Water Reclamation Facility is located at 14 Industrial Park Lane, Destin, FL 32541, in Section 00, Township 2S, Range 22 in Okaloosa County, at Latitude: 30°23' 36.98" N, Longitude: 86°28' 40.96" W.
3. In October 2006, Petitioner was granted a variance from Rule 62-610.568(4), F.A.C., to allow DWU to test for TOC and TOX once per injection period or once per injection week (OGC Case No.: 03-0656). This petition seeks to further reduce the sampling for TOC and TOX from once per week to once per month.
4. Section 10.05.05(A) of the City of Destin Land Development Code stipulates that shallow wells which draw water from the Sand-and-Gravel Aquifer, which is the G-II ground water aquifer used by the Petitioner's ASR, shall be used for irrigation purposes only and not for potable water.
5. Petitioner's TOC and TOX weekly monitoring data for the last 5 years was reviewed. These parameters are indicators of disinfection by-products and have no maximum contaminant level ("MCL") for potable water or ground water and was granted a variance

in October 2006, in DEP OGC Case No.: 03-0656, to reduce sampling frequency from daily to weekly and not to establish a limit. Treatment processes are required to control organic compounds deemed necessary to protect a source of drinking water. Department permitted this treatment process without strict control of TOC and TOX. Data from this analysis demonstrate that DWU's ASR system has maintained consistent values for both TOC and TOX such that monthly versus their current weekly sampling will remain characteristic of their reclaimed water. There is not ground water quality criteria for TOC or TOX. It is also of note that TOC is used as an indicator of TTHM formation and that the DWU injectate has a reclaimed water Annual Average Total Trihalomethane limit of less than 80 ppb which is the drinking water primary standard.

6. Further, a reduction in unnecessary testing would reduce testing related expenses by \$4,000 annually or \$20,000 for this 5-year permit cycle.
7. The applicable rules state in pertinent part:

62-610.568 Monitoring and Operating Protocol.

(4) Treatment facilities designed to meet the full treatment and disinfection requirements shall have the reclaimed water sampled and analyzed for TOC and TOX daily, seven days per week.

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

8. 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. DWU's permit protect G-II ground water for potable water use, when in fact, this aquifer is not used for potable water use.
9. Rule 62-610.568(4) list the following sections of the Florida Statutes as law implemented: 403.021, 403.051, 403.061, 403.062, 403.064, 403.085, 403.086, 403.087, and 403.088, F.S.
10. Describe underlying purpose of statute. This is often written into the statute as its intent.
 - a. Section 403.021, F.S., Legislative declaration; public policy: states in part public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water. Further, section 403.021, F.S., (10) states the policy of the state to ensure that the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants.
 - b. Section 403.051, F.S., Meetings; hearings and procedure: states in part any department planning, permitting, design, construction, modification, or operating standards, criteria, and requirements for treatment works, disposal systems, and

sewerage systems for wastes from any source shall be promulgated as a rule or regulation.

- c. Section 403.061, F.S., Department; powers and duties: states in part the department shall exercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to water pollution. Further, section 403.061, F.S., states the department shall establish a permit system whereby a permit may be required for the operation, construction, or expansion of any installation that may be a source of water pollution and provide for the issuance and revocation of such permits and to file reports.
 - d. Section 403.062, F.S., Pollution control; underground, surface, and coastal waters: states in part the department and its agents shall have general control and supervision over underground water under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.
 - e. Section 403.064, F.S., Reuse of reclaimed water: states in part the Legislature further finds that for those wastewater treatment plants permitted and operated under an approved reuse program by the department, the reclaimed water shall be considered environmentally acceptable and not a threat to public health and safety.
 - f. Section 403.085, F.S., Sanitary sewage disposal units; advanced and secondary waste treatment; industrial waste treatment: states sanitary sewage treatment plants which discharge effluent through disposal wells shall provide for advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection.
 - g. Section 403.086, F.S., Sewage disposal facilities; advanced and secondary waste treatment: states in part no sanitary sewage disposal by deep well injection without providing for secondary waste treatment and, in addition thereto, advanced waste treatment deemed necessary by the department to protect adequately the beneficial use of the receiving waters.
 - h. Section 403.087, F.S., Permits; general issuance; denial; revocation; prohibition; penalty: states in part the department shall issue permits on such conditions as are necessary to affect the intent and purposes of this section.
 - i. Section 403.088, F.S., Water pollution operation permits; conditions: states in part a permit shall require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the department and contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters.
11. The Petitioner demonstrated that the purpose of the underlying statute will be achieved by continued operating in compliance with their wastewater permit (FLA010194).
12. Describe particular facts that demonstrate the underlying purpose of the statute will be met.

- a. DWU's operation of a public access reuse system of reclaimed water in compliance with their wastewater permit (FLA010194) fulfills the department's requirements to protect the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants and is considered environmentally acceptable and not a threat to public health and safety.

SUBSTANTIAL HARDSHIP TO THE PETITIONER and VIOLATIONS OF PRINCIPLES OF FAIRNESS

13. "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.
14. Petitioner requests a variance or waiver of the strict application of Rule 62-610.548(4), F.A.C., because applying the rules for licensure application would be a substantial hardship and would violate the principles of fairness.
15. The Petitioner demonstrated that strict application of the rule would result in substantial economic hardship to the Petitioner and that literal application of the rule would affect the Petitioner in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.
16. Relevant facts and reasons how application of the rule would affect the Petitioner in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule and how the Petitioner faced a substantial hardship
 - a. DWU has five years of TOC and TOX reclaimed water data, for which the wastewater permit has no ground water criteria or reclaimed water limit. TOC and TOX data have maintained consistent range of values such that reducing monitoring frequency to monthly will still provide sufficient data for future trend assessment. Reducing the sampling frequency for TOC and TOX to monthly, would save DWU \$20,000 over the 5-year permit cycle.
 - b. The underlying assumption of the rules that are the subject of DWU's Petition is that the receiving ground water (aquifer) is or will be a source of potable water. DWU's use of the storage zone (the main-producing zone of the Sand-and-Gravel Aquifer) for its ASR System is reserved in Destin for irrigation use only and its use for public consumption is not allowed. As a practical matter, the Sand-and-Gravel Aquifer is not a viable drinking water source as it lacks the capacity to yield fresh water on a sustainable basis and is of poor quality for use as drinking water because of high iron and hydrogen sulfide concentrations. The Sand-and-Gravel aquifer at this location is also surrounded by saline water. The Sand-and-Gravel Aquifer where DWU injects its reclaimed water is also confined from the Floridan Aquifer, which is used for drinking water, so that there is an effective barrier between the injected reclaimed water and potable water sources. The receiving aquifer will not be used as a source of potable water. As a result, the application of these rules would result in the imposition of regulatory requirements that are not appropriate in the context of DWU's ASR system.

THEREFORE, IT IS ORDERED:

17. Based on the foregoing reasons, the Petitioner has demonstrated that it has met the requirements for a variance of 62-610.568(4), F.A.C. **PETITIONERS REQUEST FOR A VARIANCE IS GRANTED.**
18. This variance shall remain in effect as long as the current wastewater permit, FLA010194-029-DW1P. Petitioner shall apply for a renewal of the variance when the Petitioner applies for the renewal of domestic wastewater permit.
19. DWU's variance are conditioned as follows:
 - a. TOC and TOX sampling and testing shall be conducted only during periods of injection. DWU shall sample and test once per injection period or once per injection month.
 - b. Operation of the reclaimed water ASR shall be as authorized by wastewater permit, FLA010194-029-DW1P issued June 6, 2020.

PUBLICATION OF NOTICE

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), F.A.C.

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 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, 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@FloridaDEP.gov. 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. 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), F.A.C.

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@FloridaDEP.gov, 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.

DONE AND ORDERED this 10th day of November 2020 in Escambia County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Elizabeth Mullins Orr
Interim Director

Attachments:

Petition

Optional Notice for Newspaper Publication

Copies furnished to:

Joint Administrative Procedures Committee (JAPC@leg.state.fl.us)

Lockwood Wernet, General Manager, Destin Water Users, Inc. (lwernet@dwuinc.com)

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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 November 10, 2020, 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

November 10, 2020

Date

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN RE: PETITION FOR VARIANCE
FROM RULE 62-610.568(4),
FLORIDA ADMINISTRATIVE CODE
BY DESTIN WATER USERS

FDEP OGC CASE NO.: _____

PETITION FOR VARIANCE
FROM RULE 62-610.568(4), FLORIDA ADMINISTRATIVE CODE
BY DESTIN WATER USERS

Petitioner, Destin Water Users (“Petitioner” or “DWU”), through the above-styled action and pursuant to Section 120.542, Florida Statutes and Rule 28-104.002, Florida Administrative Code, requests a permanent variance from the Department of Environmental Protection’s (the “Department” or “DEP”), Rule 62-610.568(4), Florida Administrative Code, which provides that treatment facilities designed to meet the full treatment and disinfection requirements shall have the reclaimed water sampled and analyzed for TOC and TOX daily, seven days per week. Specifically, DWU seeks a variance from this rule to allow reclaimed water to be sampled and analyzed for TOC and TOX once per injection month. In support thereof, Petitioner states:

PARTIES

1. The Petitioner is Destin Water Users (“Petitioner” or “DWU”), a private not for profit corporation, which is headquartered in Destin, Florida, with a service area covering most of the City of Destin and portions of unincorporated Okaloosa County, Florida. The Petitioner holds DEP Permits related to the treatment of domestic wastewater and aquifer storage and recovery of reclaimed water. Petitioner’s address is 14 Industrial Park Lane, Destin, FL 32541, but for the purposes of this proceeding the address of the Petitioner is that of its undersigned counsel, Timothy J. Perry, Esq., Oertel, Fernandez Bryant & Atkinson, P.A., P.O. Box 1110, Tallahassee, FL 32302.

2. The Florida Department of Environmental Protection is an administrative agency of the State of Florida having the power and duty to enforce the provisions of Chapter 403, Florida Statutes, and the rules promulgated thereunder, including Chapter 62-610, Florida Administrative Code. The Agency Clerk of the Florida Department of Environmental Protection is located at 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399.

THE APPLICABLE RULES

3. This Petition is filed pursuant to section 120.542, Florida Statutes, dealing with variances or waivers. Petitioners request a permanent variance from a permanent variance from DEP Rule 62-610.568(4), Florida Administrative Code, which provides that treatment facilities designed to meet the full treatment and disinfection requirements shall have the reclaimed water sampled and analyzed for TOC and TOX daily, seven days per week. Specifically, DWU seeks a variance from this rule to allow reclaimed water to be sampled and analyzed for TOC and TOX once per injection month.

4. Rule 62-610.568, Florida Administrative Code, implements sections 403.021, 403.051, 403.061, 403.062, 403.064, 403.085, 403.086, 403.087, and 403.088, Florida Statutes.

5. A copy of rule 62-610.568, Florida Administrative Code, is attached to this Petition as Exhibit A.

DISCUSSION OF REASONS FOR VARIANCE

6. Petitioner, DWU, operates a domestic wastewater utility. DWU undertakes aquifer storage and recovery (“ASR”) of reclaimed water at its George F. French Water Reclamation Facility (“WRF”) pursuant to DEP underground injection control permit 0213104-003-UO/5X through 0213104-009-UO/5X (the “ASR Permit”) and its domestic wastewater facility permit FLA010194 (the “Wastewater Permit”). When not discharging reclaimed water to its ASR system,

DWU discharges its reclaimed water primarily for golf course and residential irrigation by slow-rate public access land application system and by rapid infiltration basin.

7. DWU's use of the storage zone (the main-producing zone of the Sand-and-Gravel Aquifer) for its ASR System is reserved in Destin for irrigation use only and its use for public consumption is not allowed. Section 10.05.05(A) of the City of Destin Land Development Code states that "[s]hallow wells which draw water from the Sand-and-Gravel Aquifer shall be used for irrigation purposes only." As a practical matter, the Sand-and-Gravel Aquifer is not a viable drinking water source as it lacks the capacity to yield fresh water on a sustainable basis, and is of poor quality for use as drinking water because of high iron and hydrogen sulfide concentrations. The Sand-and-Gravel aquifer at this location is also surrounded by saline water. The Sand-and-Gravel Aquifer where DWU injects its reclaimed water is also confined from the Floridan Aquifer, which is used for drinking water, so that there is an effective barrier between the injected reclaimed water and potable water sources. In addition, DWU operates its wellfield in such a manner that reclaimed water injected into the aquifer is contained within DWU's property boundaries. As a result, reclaimed water injected by DWU into the ASR system is inaccessible to other users.

8. In October 2006, in DEP OGC Case No.: 03-0656, DWU was granted a variance from Rule 62-610.568(4) to allow DWU to test for TOC and TOX once per injection period or once per injection week (the "2006 Variance"). A copy of the 2006 Variance is attached to this Petition as Exhibit B.

9. DWU has analyzed lab data for the last 5 years for TOC and TOX. These parameters are indicators of disinfection by-products and have no maximum contaminant level ("MCL"). Data from this analysis demonstrate that DWU's ASR system has maintained consistent values for both TOC and TOX that fall within universally accepted potable water ranges. The maximum results for

both parameters during this period are deemed to be non-hazardous. It is also of note that TOC is used as an indicator of TTHM formation and that the DWU injectate has a current Annual Average of < 20 ppb.

10. The data demonstrate that allowing DWU to test for TOC and TOX once per injection month will achieve similar results to the current testing regime. Further, a reduction in unnecessary testing would reduce testing related expenses by \$4,000 annually or \$20,000 for this 5-year permit cycle.

11. Section 120.542(2), Florida Statutes on variances and waivers provides that:

(2) 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. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "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.

12. The stated intent of Chapter 62-610, Florida Administrative Code, "Reuse of Reclaimed Water and Land Application," is to meet the State of Florida goals of encouraging and promoting water conservation and use of reclaimed water, and to require "that no wastes be discharged to any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water." See Rule 62-610.100, Fla. Admin. Code. DWU seeks variances from or waivers of rules in Part V of Chapter 62-610, entitled "Ground Water Recharge and Indirect Potable Reuse." The underlying assumption of the rules that are the subject of DWU's Petition is that the receiving ground water (aquifer) is or will be a source of potable water. As discussed above, the receiving aquifer will not be used as a source of potable water. As a result, the

application of these rules would result in the imposition of regulatory requirements that are not appropriate in the context of DWU's ASR system.

13. The requested variances and waivers are consistent with the state's goals of promoting water conservation and the use of reclaimed water. The project is also consistent with the requirement for protection of beneficial uses of waters, since irrigation is the most beneficial use of the Sand and Gravel Aquifer in the Destin area. DWU's site specific geographic limitations, which include the potential for saltwater intrusion and the legal prohibition against potable use, eliminates the potential that the Sand and Gravel Aquifer will be used as a potable water source.

CONCLUSION

14. The Department should grant DWU a permanent variance from Rule 62-610.568(4), Florida Administrative Code, to allow reclaimed water to be sampled and analyzed for TOC and TOX once per injection month. The variance would achieve the purposes of the underlying statutes, would alleviate a substantial hardship by reducing costs associated with unnecessary testing expenses, and would also avoid a violation of principles of fairness because the associated rules are related to potable aquifers, but the receiving aquifer is not for potable use.

WHEREFORE, Petitioners respectfully request that the Florida Department of Environmental Protection grant Destin Water Users a permanent variance from Rule 62-610.568(4), Florida Administrative Code, to allow reclaimed water to be sampled and analyzed for TOC and TOX once per injection month, in order to alleviate a substantial hardship, and to avoid a violation of principles of fairness.

FILED this 14th day of July, 2020.

/s/ Timothy J. Perry

TIMOTHY J. PERRY, ESQ.

Florida Bar No. 0496391

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Variance has been filed by electronic mail with the Agency Clerk of the Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399, Agency_Clerk@FloridaDEP.gov; a copy sent to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300 by U.S. Mail; and a copy sent by electronic mail to Doug Beason, Esq., Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399, Doug.Beason@dep.state.fl.us on this 14th day of July, 2020.

/s/ Timothy J. Perry

Attorney

62-610.568 Monitoring and Operating Protocol.

(1) Only acceptable quality reclaimed water shall be discharged to reuse systems regulated under Part V of Chapter 62-610, F.A.C.

(2) Reclaimed water limitations shall be met before injection to ground water or discharge to surface waters. For projects requiring high-level disinfection, the total suspended solids limitation shall be achieved before disinfection, regardless of the actual reclaimed water compliance monitoring location.

(3) The treatment facility shall include continuous on-line monitoring for turbidity before application of the disinfectant. Continuous monitoring for chlorine residual or for residual concentrations of other disinfectants, if used, shall be provided at the compliance monitoring point. Instruments for continuous on-line monitoring shall be equipped with an automated data logging or recording device. Continuous online monitoring instruments shall be calibrated according to the requirements of Chapters 62-160 and 62-601, F.A.C. Continuous online monitoring instruments shall be maintained according to the manufacturer's operation and maintenance instructions.

(4) Treatment facilities designed to meet the full treatment and disinfection requirements shall have the reclaimed water sampled and analyzed for TOC and TOX daily, seven days per week.

(5) Treatment facilities that are required to meet the drinking water standards shall sample the reclaimed water for parameters regulated as drinking water standards as follows:

(a) If the treatment facility is required to meet the bacteriological requirements of the drinking water standards, total coliforms and total suspended solids shall be analyzed daily.

(b) Parameters listed as primary drinking water standards that are imposed as reclaimed water limits shall be analyzed monthly. After the first year, the Department shall reduce the monitoring frequency if the applicant provides an affirmative demonstration that reclaimed water limits and ground water standards will be met and that public health will be protected. In no case shall the frequency of this monitoring be reduced below quarterly.

(c) Parameters listed as secondary drinking water standards that are imposed as reclaimed water limits shall be analyzed quarterly. After the first year, the Department shall reduce the monitoring frequency if the applicant provides an affirmative demonstration that reclaimed water limits and ground water standards will be met and that public health will be protected. In no case shall the frequency of this monitoring be reduced below annually. The pH of the reclaimed water shall be analyzed daily.

(d) Except for total coliforms and pH, twenty-four hour composite samples shall be used to analyze the reclaimed water for parameters listed as primary or secondary drinking water standards.

(6) Other reclaimed water monitoring shall meet the requirements of Chapter 62-601, F.A.C.

(7) In accordance with Rule 62-610.320, F.A.C., the permittee shall develop, and the Department shall approve, an operating protocol designed to ensure that the reclaimed water limitations will be met before the reclaimed water is released to the reuse system. For treatment facilities required to provide full treatment and disinfection, the operating protocol shall include monitoring and control of key treatment processes for removal of organic compounds required by subsection 62-610.563(3), F.A.C., and shall incorporate the fail safe "lock-out" provisions of subsection 62-610.567(2), F.A.C. In the engineering report, the applicant shall describe and justify the operational controls on the key treatment processes for removal of organic compounds. Reclaimed water produced at the treatment facility that fails to meet the criteria established in the operating protocol shall not be released to the system storage or reuse system. Such substandard reclaimed water (reject water) shall be either stored for subsequent additional treatment or shall be discharged to another permitted reuse system requiring lower levels of preapplication treatment or to a permitted effluent disposal system. The operating protocol shall be reviewed and updated by the permittee as required by Rule 62-610.320, F.A.C. The permittee shall submit the current operating protocol to the Department for review with any application to renew or modify the permit.

(8) Ground water monitoring requirements shall be as specified in Rule 62-610.412, F.A.C. A ground water monitoring plan meeting the requirements of Chapters 62-522, 62-601, and 62-610, F.A.C., is required. Submittal and approval of ground water monitoring plans shall be in accordance with Rule 62-522.600, F.A.C. Department approval of the ground water monitoring plan is a prerequisite for issuance of the initial permit.

(9) The surface water or ground water receiving the reclaimed water shall be sampled quarterly for the parameters for which primary or secondary drinking water standards have been established. After the first year of operation, the Department shall reduce the sampling frequency if the applicant provides an affirmative demonstration that water quality standards will be met in the receiving surface water or ground water and that public health will be protected. For ground water recharge projects, reductions in

monitoring shall be considered only after the injected reclaimed water reaches a monitoring well. The complete list of all regulated parameters shall be sampled and analyzed for at least annually.

(10) Except as noted in subsection 62-610.568(11), F.A.C., the permittee shall sample the reclaimed water for Cryptosporidium and Giardia. The following requirements shall be met:

(a) Sampling shall be conducted quarterly. Intervals between sampling shall not exceed three months.

(b) Samples shall be taken at a point immediately following the final treatment or disinfection process within the treatment facility.

(c) Sampling for Cryptosporidium and Giardia shall be required only for the following types of projects:

1. Discharge to Class I surface waters, as described in Rule 62-610.554, F.A.C.

2. Discharge to waters contiguous to or tributary to Class I surface waters, as described in subsection 62-610.555(1), F.A.C.

3. Injection projects used for ground water recharge or salinity barrier control, as described in Rule 62-610.560 or 62-610.562, F.A.C.

4. Discharges to surface waters that are directly connected to ground water, which serve as ground water recharge, as described in subsection 62-610.555(4), F.A.C.

(11) For projects involving discharge to waters upstream of Class I surface waters, as described in subsection 62-610.555(2), F.A.C., the permittee shall sample the reclaimed water for Cryptosporidium and Giardia. The following requirements shall be met:

(a) Sampling shall be conducted at one time during each two-year period. Intervals between sampling shall not exceed two years.

(b) Samples shall be taken at a point immediately following the disinfection process.

Rulemaking Authority 403.051, 403.061, 403.064, 403.087 FS. Law Implemented 403.021, 403.051, 403.061, 403.062, 403.064, 403.085, 403.086, 403.087, 403.088 FS. History—New 4-4-89, Amended 4-2-90, Formerly 17-610.568, Amended 1-9-96, 8-8-99, 11-19-07.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Sent Via E-Mail
(tcleveland@ohfc.com)

In the matter of a Petition
for Variance and Waiver by:

DEP File: OGC No. 03-0656
Okaloosa County

Destin Water Users, Inc.
by: Kenneth G. Oertel, Esquire
C. Anthony Cleveland, Esquire
Oertel, Hoffman, Fernandez & Cole, P.A,
Post Office Box 1110
Tallahassee, FL 32302-1110

FINAL ORDER GRANTING VARIANCE

Destin Water Users, Inc., (DWU) submitted an Amended Petition on December 15, 2005, to the Department of Environmental Protection (Department) for variance and waiver under Section 120.542, Florida Statutes (F.S.), from rules in Part V of Chapter 62-610, Florida Administrative Code (F.A.C.). DWU seeks variance from or waiver of Rules 62-610.563(3)(d), (e) and (f), 62-610.563(6)(c), 62-610.564, 62-610.567(2), 62-610.568(4), 62-610.568(5)(a) and (b), 62-610.568(7), 62-610.571(1), 62-610.573(3), and 62-610.574(3), F.A.C.

DWU submitted its initial petition for variance and waiver on March 28, 2003, with additional information received on August 7, 2003 and June 3, 2004. Notice of receipt of the initial petition was published on the Department's official notice Internet website in lieu of the Florida Administrative Weekly on May 23, 2003. The Department received two written comments in response to the notice of receipt from Sharon Maxwell, Chairperson, Sierra Club - Northwest Florida Group on May 27, 2003; and Ms. Caroline Emmons-Schramm, President, League of Women Voters of Florida on August 22, 2003.

Destin Water Users and the Department met on April 14 and 22, 2005, to discuss the initial petition and the Department's September 2, 2004, proposed denial of it. DWU also filed a petition for administrative hearing on October 22, 2004, challenging the Department's proposed denial. The administrative hearing was placed on hold pending DWU and the Department's meeting and discussing the reasons for proposed denial of the initial petition for variance. As a result of these meetings Destin Water Users filed an Amended Petition (Amended Petition). See Exhibit 1.

Based on the following findings of fact and conclusions of law, the Department hereby grants DWU's Amended Petition seeking variance from or waiver of Rules 62-610.563(3)(d), (e) and (f), 62-610.563(6)(c), 62-610.564, 62-610.567(2), 62-610.568(4), 62-610.568(5)(a) and (b), 62-610.568(7), 62-610.571(1), 62-610.573(3), and 62-610.574(3), F.A.C.

FINDINGS OF FACT

1. DWU's mailing address, telephone and fax numbers are Post Office Box 308, Destin, FL 32540-0308; telephone: (850) 837-6146; and fax: (850) 654-5173.
2. DWU is a not-for-profit corporation that owns and operates a water reclamation facility under permit number FLA010194, in Destin, Florida.
3. DWU's water reclamation facility employs tertiary treatment and produces reclaimed water that is currently used for golf course and residential irrigation and for recharge of the Sand and Gravel Aquifer through percolation ponds and adsorption fields. DWU's reclaimed water system has 7.2 MGD (million gallons per day) of wet weather storage capacity. Additional wet weather storage is needed to accommodate excess flows of reclaimed water during wet weather conditions.
4. DWU proposes to develop an underground injection system to aid in the storage of excess wet season reclaimed water flows. The lower part of the Sand and Gravel Aquifer will be recharged through a series of Class V injection wells to be located at the water reclamation facility and the Morgan Sports Complex in Destin, Florida.
5. The Sand and Gravel Aquifer at the project site is classified as a G-II ground water (potable) having a total dissolved solids concentration of less than 1,000 mg/L.
6. DWU's groundwater recharge project is subject to the requirements of Part V, chapter 62-610, F.A.C.
7. Although the Sand and Gravel Aquifer is classified as a G-II ground water, its use is restricted by law under the Destin Land Development Code in Section 10.05.05(A). The Sand and Gravel Aquifer is prohibited from being used as a potable aquifer and is designated for residential and commercial irrigation.
8. DWU also owns and operates a community water system and is the sole provider of potable water within the proposed area of injection in Destin. Potable water is supplied from Upper Floridan Aquifer wells and from wells in Walton County. The Upper Floridan Aquifer is geologically separated from the Sand and Gravel Aquifer. The Sand and Gravel Aquifer is not used as a potable water source because of the inability of the aquifer to yield fresh water on a sustainable basis and its historically poor water quality (high iron and hydrogen sulfide concentrations).
9. Destin is located on a barrier island in Okaloosa County. The Sand and Gravel Aquifer into which DWU plans to inject reclaimed water is surrounded at this location by saline water. The regional hydraulic gradient is to the south, towards the Gulf of Mexico. There's no potential for adverse impacts to off-island users of the Sand and Gravel Aquifer. The recharge of this aquifer would have a beneficial effect on irrigation users in Destin.

10. DWU's water reclamation facility is in Destin. Because it is a barrier island, there are no significant land areas available to DWU for managing additional reclaimed water. The proposed injection system will provide a reliable method of reclaimed water recharge during periods of excessive rainfall.

Rule 62-610.563(3)(f)

11. DWU requests a waiver of Rule 62-610.563(3)(f), F.A.C., which requires that the treatment processes shall include processes which serve as multiple barriers for control of organic compounds and pathogens. With the moderating provisions in Rule 62-610.563(6), F.A.C., the Department is able to approve either alternative TOC and TOX limitations or to waive the multiple barrier requirement. As discussed below, TOC and TOX limitations are being waived on the same grounds as the waiver of the multiple barrier requirement.

Rules 62-610.563(3)(d) and (e)

12. In paragraph 11 of its Amended Petition DWU states that it is not requesting a variance from Rule 62-610.563(3), F.A.C., which sets TOC and TOX limitations on facilities subject to full treatment and disinfection. However, further discussion with DWU and a follow up letter on July 14, 2006, confirmed that DWU requests a waiver of the TOC and TOX limits in Rule 62-610.563(3)(d) and (e), F.A.C.

Rule 62-610.563(6)(c)

13. DWU requests a variance from Rule 62-610.563(6)(c), F.A.C., which provides that treatment provided on water supply wells within one mile of the injection well includes reverse osmosis or other processes that will serve as barriers for control of organic compounds or pathogens. Existing potable supply wells are located within one mile of the proposed injection system. However, the potable supply wells are in the deeper Floridan Aquifer. The proposed injection system will be in the Sand and Gravel Aquifer.
14. If any potable supply well is constructed within one mile of the proposed injection system in the Sand and Gravel Aquifer, DWU will provide additional treatment consisting of reverse osmosis or higher treatment level on the potable supply wells.

Rule 62-610.564

15. DWU requests elimination of the pilot testing requirements of Rule 62-610.564, F.A.C. Waiver of these requirements is appropriate given the nature of the proposed injection project and the constraints placed on use of the receiving ground water (see Findings of Fact 3 through 10 above).

Rule 62-610.567(2)

16. DWU requests a variance from the fail safe “lock-out” capabilities required to be included in the engineering and instrumentation design for the wastewater treatment facilities under Rule 62-610.567(2), F.A.C. Instead DWU will provide a detailed operating protocol that will address how the shallow well system will be taken off line if required water quality cannot be maintained. The fail safe mechanism in the protocol will include SCADA alarms and operator actions. Operator actions will include the diversion of flow to reject storage or the management of the water through other permitted facilities.

Rule 62-610.568(4)

17. DWU requests a variance from Rule 62-610.568(4), F.A.C., which requires that treatment facilities designed to meet full treatment and disinfection shall have the reclaimed water sampled and analyzed for TOC and TOX daily, seven days per week. DWU’s proposed wet weather injection system will be used on an infrequent basis. TOC and TOX sampling and testing should be conducted only during periods of injection. DWU will sample and test once per injection period or once per injection week.

Rule 62-610.568(5)(a)

18. DWU requests a variance from Rule 62-610.568(5)(a), F.A.C., which provides that if the treatment facility is required to meet the bacteriological requirements of the drinking water standards, total coliform and total suspended solids shall be analyzed daily. DWU will sample and test for total coliform each day of injection. DWU’s proposed wet weather injection system will be used on an infrequent basis and daily fecal coliform sampling and testing is already in place.

Rule 62-610.568(5)(b)

19. DWU requests a variance from the requirement to analyze monthly in the first year, the parameters listed as primary drinking water standards that are imposed as reclaimed water limits under Rule 62-610.568(5)(b), F.A.C. DWU will sample and analyze seven times in the first year the parameters listed as primary drinking water standards that are imposed as reclaimed water limits.

Rule 62-610.568(7)

20. DWU requests a variance from the operating protocol requirement of Rule 62-610.568(7), F.A.C, only as it relates to the fail safe “lock out” provisions of Rule 62-610.567(2), F.A.C. (see Finding of Fact 15 above).

Rule 62-610.571(1)

21. DWU requests a variance from Rule 62-610.571(1), F.A.C., which establishes a 500-foot setback distance from potable water supply wells. Existing potable supply wells may be affected by this requirement, namely DWU Well Nos. 2 and 3. However, the rule requirements do not differentiate between different aquifers. The setback is solely a horizontal setback. The existing potable supply wells are in the deeper Floridan Aquifer. The proposed injection system will be in the Sand and Gravel Aquifer. There is confinement between the two aquifers.

Rule 62-610.573(3)

22. DWU requests a variance from Rule 62-610.573(3), F.A.C., which requires that reject water storage shall have, at a minimum, a capacity volume equal to three days flow at the average daily permitted flow of the treatment plant, or the average daily permitted flow of the reuse system, whichever is less. Given the nature of the proposed injection system project and the constraints placed on use of the receiving ground water (see Findings of Fact 3 through 10 above), reject storage of one day flow capacity will be appropriate.
23. DWU will provide reject volume capacity equal to one day flow at the average daily design flow of the treatment plant or the average daily permitted flow of the reuse system, whichever is less.

Rule 62-610.574(3)

24. DWU requests elimination of the requirement to develop and implement public education and public participation programs under Rule 62-610.574(3), F.A.C. Waiver of this rule requirement is appropriate given the nature of DWU's proposed injection system project and the constraints placed on use of the receiving ground water (see Findings of Fact 3 through 10 above).
25. Requiring compliance with the rules for which variances are sought will create a financial hardship for DWU by resulting in approximately \$3.5 million in construction costs related to ground storage tank construction, land acquisition and TOC and TOX removal. Approximately \$75,000-\$150,000 for completion of the required "pilot testing program," and additional annual sampling, testing and personnel costs of approximately \$100,000 per year.

CONCLUSIONS OF LAW

26. Section 120.542, Florida Statutes authorizes an agency to grant or deny a variance from or waiver of its administrative rules 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." See §120.542(2), Fla. Stat. (2005). Section 120.542 defines "substantial hardship" as "a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver." Section 120.542 further states that "principles of fairness" will be 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." See §120.542(2), Fla. Stat.
27. The above Rules 62-610.563(3)(d), (e) and (f), 62-610.563(6)(c), 62-610.564, 62-610.567(2), 62-610.568(4), 62-610.568(5)(a) and (b), 62-610.568(7), 62-610.571(1), 62-610.573(3), and 62-610.574(3), F.A.C., list the following sections of the Florida Statutes as law implemented: sections 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, and 403.088, F.S.

28. The stated intent of Chapter 62-610, F.A.C, “Reuse of Reclaimed Water and Land Application,” is to meet the State of Florida goals of encouraging and promoting water conservation and use of reclaimed water, and to require “that no wastes be discharged to any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.” Rule 62-610.100, Fla. Admin. Code. DWU seeks variances from or waivers of rules in Part V of Chapter 62-610, entitled “Ground Water Recharge and Indirect Potable Reuse.” The underlying assumption of the rules that are the subject of DWU’s Amended Petition is that the receiving ground water (aquifer) is or will be a source of potable water. For the reasons set forth in the Findings of Fact above, the receiving aquifer will not likely be used as a significant source of potable water. As a result the application of these rules would result in the imposition of regulatory requirements that are not appropriate in the context of DWU’s proposed project.
29. The requested variances and waivers are consistent with the state’s goals of promoting water conservation and the use of reclaimed water. The project is also consistent with the requirement for protection of beneficial uses of waters, since irrigation is the most beneficial use of the Sand and Gravel Aquifer in the Destin area. DWU’s site specific geographic limitations, which include the potential for saltwater intrusion and the legal prohibition against potable use, drastically diminishes the potential that the Sand and Gravel Aquifer will be used as a potable water source.
30. The Department finds that DWU’s Amended Petition demonstrates that it achieves by other means the purpose of the underlying statutes: sections 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, and 403.088, F.S.
31. The Department finds that DWU’s Amended Petition demonstrates that application of the cited rules (as modified in this order) will create a substantial hardship or violate principles of fairness.

THEREFORE IT IS ORDERED:

- A. DWU’s Amended Petition for variance from or waiver of Rules 62-610.563(3)(d), (e) and (f), 62-610.563(6)(c), 62-610.564, 62-610.567(2), 62-610.568(4), 62-610.568(5)(a) and (b), 62-610.568(7), 62-610.571(1), 62-610.573(3), and 62-610.574(3), F.A.C., is granted.
- B. DWU’s variances and waivers are permanent and are conditioned as follows
 - (1) If the Sand and Gravel Aquifer were ever used as a potable water supply by DWU, any wells constructed into the Sand and Gravel Aquifer within one mile of the proposed injection system would be treated with reverse osmosis or a higher treatment level prior to discharge into the DWU potable water system. Existing or future DWU potable wells within one mile of the proposed injection system shall not be required to have additional treatment if the wells are in the deeper Floridan Aquifer.

- (2) DWU proposes to construct the injection wells on property owned by DWU at the water reclamation facility and the Morgan Sports Complex. The wells will be located as centrally as possible on those parcels given the existing land use constraints. Both the water reclamation facility and Morgan Sports Complex sites are already developed. The wells would be constructed within close proximity to existing reclaimed water lines and the proposed well location must not interfere with the existing land use. Separate UIC construction and operation permits and a domestic wastewater permit revision will be obtained from the Department for the proposed injection wells.
- (3) DWU agrees to record deed restrictions on the water reclamation facility and Morgan Sports Complex properties that would prohibit the construction of potable wells into the Sand and Gravel Aquifer on those properties.
- (4) Rule 62-610.567(2), F.A.C. DWU shall provide as part of the operating protocol developed under Rule 62-610.568(7), F.A.C., a detailed operating protocol that will address how the shallow well system will be taken off line if required water quality cannot be maintained. The fail safe mechanism in the protocol will include SCADA alarms and operator actions. Operator actions will include the diversion of flow to reject storage or the management of the water through other permitted facilities.
- (5) Rule 62-610.568(4), F.A.C. TOC and TOX sampling and testing shall be conducted only during periods of injection. DWU shall sample and test once per injection period or once per injection week.
- (6) Rule 62-610.568(5)(a), F.A.C. DWU shall sample and test for total coliform each day of injection. DWU's proposed wet weather injection system will be used on an infrequent basis and daily fecal coliform sampling and testing is already in place.
- (7) Rule 62-610.568(5)(b), F.A.C. DWU shall sample and analyze seven times in the first year the parameters listed as primary drinking water standards that are imposed as reclaimed water limits.
- (8) Rule 62-610.568(7), F.A.C. Due to DWU's variance from Rule 62-610.567(2), F.A.C., the operating protocol does not require fail safe "lock out" capability.
- (9) Rule 62-610.571(1), F.A.C. The 500-foot setback distance from potable water supply wells is not required for DWU's existing potable supply wells Nos. 2 and 3.
- (10) Rule 62-610.573(3), F.A.C. DWU shall provide reject volume capacity equal to one day flow at the average daily design flow of the treatment plant or the average daily permitted flow of the reuse system, whichever is less.

NOTICE OF RIGHTS

The Department's proposed agency action shall become final unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, Florida Statutes, within twenty-one days of receipt of notice. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's proposed decision may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, Florida Statutes. The petition must contain the information set forth below and 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.

Under Rule 62-110.106(4), Florida Administrative Code, a person may request enlargement of the time for filing a petition for an administrative hearing. The request must be filed (received by the clerk) in the Office of General Counsel before the end of the time period for filing a petition for an administrative hearing.

Petitions by the applicant or any of the persons listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), Florida Statutes, must be filed within twenty-one days of publication of the notice or within twenty-one days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within twenty-one days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition or request for enlargement of time within twenty-one days of receipt of notice shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, Florida Statutes. 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, Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; the Department case identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department action;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;

- (f) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

In addition to requesting an administrative hearing, any petitioner may elect to pursue mediation. The election may be accomplished by filing with the Department a mediation agreement with all parties to the proceeding (i.e., the applicant, the Department, and any person who has filed a timely and sufficient petition for a hearing). The agreement must contain all the information required by Rule 28-106.404, Florida Administrative Code. The agreement must be received by the clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within ten days after the deadline for filing a petition, as set forth above. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for holding an administrative hearing and issuing a final order. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons seeking to protect their substantial interests that would be affected by such a modified final decision must file their petitions within twenty-one days of receipt of this notice, or they shall be deemed to have waived their right to a proceeding under Sections 120.569 and 120.57, Florida Statutes. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57 remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

This action is final and effective on the date filed with the Clerk of the Department unless a petition (or request for enlargement of time) is filed in accordance with the above. Upon the timely filing of a petition (or request for enlargement of time) this action will not be effective until further order of the Department.

Any party to this agency action has the right to seek judicial review of the action under Section 120.68, Florida Statutes, by the filing of a notice of appeal under 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, Mail Station 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 when this agency action is filed with the Clerk of the Department.

Executed in Pensacola, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Dick Fancher
Division Director, District Manager
160 Governmental Center
Pensacola, Florida 32502-5794
(850) 595-8300

FILING AND ACKNOWLEDGMENT

FILED, on this date, under Section 120.52, Florida Statutes, with the designated deputy clerk, receipt of which is hereby acknowledged.

 October 20, 2006
[Clerk/Deputy Clerk] [Date]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this FINAL ORDER GRANTING VARIANCE and all copies were mailed electronically before the close of business on October 20, 2006 to the listed persons.


Name

October 20, 2006
Date

Exhibits: The following exhibits are provided on the Department's website at the following url addresses:

1. Amended Petition (December 15, 2005).
<http://appprod.dep.state.fl.us/nwu/DWU-Amended-Petition12-16-2005.pdf>

Copies without exhibits furnished to:

Richard F. Griswold, P.E., General Manager, Destin Water Users (rgriswold@destinwaterusers.com)
Tony Cleveland (tcleveland@ohfc.com)
Greg Kisela, City Manager, City of Destin (gkisela@cityofdestin.com)
Chuck Meister, P.E., City of Destin, City Engineer (lbeat@cityofdestin.com)
Environmental Health Director, Okaloosa County Public Health Depart (Doug_Sims@doh.state.fl.us)
Chair, Okaloosa County Board of County Commissioners, Elaine Tucker (priggs@co.okaloosa.fl.us)
Sharon Maxwell, Chairperson, Sierra Club - Northwest Florida Group (swturtlewh@earthlink.net)
Ms. Caroline Emmons-Schramm, President, League of Women Voters of Florida (lwvf@tfn.net)
Dan Pascale (dpascale@mail.ashlawfirm.com)
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Francine Ffolkes (Francine.Ffolkes@dep.state.fl.us)

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF ORDER GRANTING VARIANCE

The Department of Environmental Protection gives notice of its determination pursuant to section 120.542, Florida Statutes, in OGC Case No. 20-1123 and File No. FLA010194-032-DWF to grant a variance to Destin Water Users, Inc., from Rule 62-610.568(4), Florida Administrative Code (F.A.C.), in order to DWU to reduce sampling frequency for TOC and TOX from daily to once per injection period or once per injection month at the George F. French Water Reclamation Facility, 14 Industrial Park Lane, Destin, FL 32541, in Section 00, Township 2S, Range 22 in Okaloosa County, at Latitude: 30°23' 36.98" N, Longitude: 86°28' 40.96" W.

A copy of the Order may be obtained by contacting: Bill Evans, Department of Environmental Protection, Northwest District, 160 W Government Street, Suite 308, Pensacola, Florida 32502; telephone 850-595-0584; Bill.Evans@FloridaDEP.gov during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. The files are available electronically from the Department's Electronic Document Search Portal <http://prodenv.dep.state.fl.us/DepNexus/public/searchPortal> using application number FLA010194032.

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 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, 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@FloridaDEP.gov. 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

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 21 days of publication of the notice or within 21 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@FloridaDEP.gov, 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.