

BEFORE THE STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

In re: Edgewater WRF

OGC Case No. 20-1169

Petition for Variance from

Provisions of Rule 62-611.110(3)(b), F.A.C. DEP File No.: FL0021431-020-DWF/VO

FINAL ORDER GRANTING PETITION FOR VARIANCE

On July 29, 2020, the City of Edgewater (Petitioner) filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes, variance from the requirements of paragraph 62-611.110(3)(b), Florida Administrative Code (F.A.C.), which does not allow use of an herbaceous wetland as a receiving wetland for effluent from a wastewater facility except under specific conditions. The Petitioner seeks a variance in order to allow their Dale Street Reclaimed Water (RW) Pond to overflow to an adjacent isolated herbaceous wetland that does not meet the conditions of the rule. The Department has assigned file number FL0021431-017 to the proposed project.

Notice of receipt of the petition was published in the Florida Administrative Register on August 5, 2020. No comments were received, and no petition was filed in accordance with the requirements of Section 120.542(6), Florida Statute (F.S.).

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

The activities authorized by this variance are located at the Dale Street RW Pond, latitude 28°59'27.75" N, longitude 80°55'33.36" W, on Dale Street, in Edgewater, Volusia County, Florida.

The applicable rules state in pertinent part: "**62-611.110 Applicability...** (3) The use of wetlands as receiving wetlands shall not be permitted where the: ... (b) Wetland is a herbaceous wetland, unless the herbaceous groundcover of the entire wetland is composed of greater than 50% *Typha* spp. (cattail). This prohibition shall not apply in hydrologically altered wetlands."

THE VARIANCE WILL MEET THE UNDERLYING
PURPOSE OF THE STATUTE

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.

The City of Edgewater operates a domestic wastewater treatment facility located at 500 W Ocean Avenue, Edgewater, Volusia County, Florida, that includes a 0.83 MGD discharge to the Indian River North (Mosquito Lagoon) and a 2.75 MGD Public Access Reuse System. Reclaimed water for the Public Access Reuse System is discharged to a Reclaimed Water Pond (RW Pond) on Dale Street near West Park Avenue, in Edgewater. The RW Pond is adjacent to an isolated herbaceous wetland that is on property owned or under the control of the Petitioner by agreement. The Petitioner requested a variance that, if approved, would allow periodic discharges from the RW Pond to the wetland under specific hydrologic conditions, as described in the supporting documents for the variance.

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 reclaimed water from this facility is used in an environmentally acceptable way and is not a threat to public health and safety. The Petitioner has demonstrated that all requirements for discharge to a receiving wetland will be met, the discharge will not degrade the receiving water, the wetland is isolated with no discharge offsite or to other surface waters, and use of the RW Pond and associated discharge will reduce the direct discharge to the Indian River North (Mosquito Lagoon).

The Petitioner has demonstrated the purpose of the underlying statutes will be achieved through other means, as follows:

1. Water quality standards for discharge to a receiving wetland will be met for all reclaimed water sent to the RW Pond.
2. Public health will not be adversely affected because of the high level of treatment the reclaimed water receives before being discharged by and the isolated nature of the receiving wetland.
3. The facility will be required to adhere to the limits and protocols described in the supporting documents and of the revised wastewater facility permit as a condition of the continued approval of this variance.
4. Public welfare will not be adversely affected. The public will benefit by decreasing the effluent discharged directly to the Indian River Lagoon system.

VIOLATIONS OF PRINCIPLES OF FAIRNESS

“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.

Petitioner requests a variance or waiver of the strict application of Rule 62-611.110(3)(b), F.A.C., because applying the rules would be unfair, create an unintended result, and violate the principles of fairness.

The Petitioner demonstrated 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. As a stormwater pond that receives reclaimed water, the discharge would be permissible, but without the stormwater component the rule prevents the overflow that would otherwise be allowed. Because stormwater is a lower quality water than the reclaimed water the

use of the adjacent wetland to reduce the direct discharge is an overall benefit and application of the rule is unfair to the community that will benefit from the approval of the variance.

THEREFORE, IT IS ORDERED:

Based on the foregoing, Petitioner has demonstrated that it meets the requirements for a variance from Florida Administrative Code paragraph 62-611.110(3)(b). **The petition for variance is granted subject to the following conditions:**

1. Reclaimed water discharge to the RW Pond shall meet all Advanced Wastewater Treatment limits.
2. Discharge from the pond shall only occur when the receiving wetland has water elevations below 8 feet NGVD.
3. Monitoring and Reporting shall be conducted in accordance with the approved sampling plan and the wastewater facility permit.
4. The sum of the discharge from the discharges shall not exceed 0.83 MGD annual average daily flow.
5. 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.
6. This variance shall remain in effect for the duration of the facility permit and will be renewed based on the results of the annual wetland report and continued compliance with conditions of the variance and facility permit.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the 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 26th day of January 2021 in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Aaron Watkins, Director
Central District

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: Reggie Phillips, David Smicherko, Dennise Judy, Ravi Sharma, Marc Harris, Tamara Blyden

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

January 26, 2021

Date