

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for waiver by:
Advent Health, LLC
Room 680; Pepper Building
111 W. Madison St.
Tallahassee, FL 32399

OGC No.: 20-1251

ORDER GRANTING WAIVER

The State of Florida Department of Environmental Protection (“Department”) hereby gives notice that it is granting a waiver to Advent Health, LLC, (“Petitioner”) pursuant to section 120.542, Florida Statutes (“F.S.”), for the facility at 200 N. Lakemont Avenue, Winter Park, Orange County, Florida (“Facility”), Latitude/Longitude: 28°35' 53.952"N/81°19'36.012" W. On August 19, 2020, the Petitioner submitted a petition for a waiver (“Petition for Waiver”) to the Department. The Petitioner requests a waiver from paragraph 62-761.600(3)(b)2, Florida Administrative Code (“F.A.C.”), which requires that electronic line leak detectors shall be capable of detecting a discharge of 3.0 gph with a probability of detection of 0.95 and a probability of false alarm of 0.05 at an equivalent line pressure of 10 psi and shut off power to the pump, or in the case of mechanical line leak detectors, restrict the flow of fuel within one hour of leak detection.

FINDINGS OF FACT

1. On August 19, 2020, the Petitioner submitted a Petition for Wavier from Rule 62-761.600(3)(b)2, F.A.C. to the Department to operate an emergency generation fuel supply system at 200 N. Lakemont Ave., Winter Park, Orange County, Florida.

2. The property at 200 N. Lakemont Avenue, where the Winter Park hospital is located, contains approximately 16.90 acres, and is zoned O-1, which is “public hospital”. This property is currently an active medical facility and has operated as such since 2007.

3. Operations at the Advent Health, LLC hospital involve the use of 3 underground storage tanks (USTs) that supply fuel to emergency backup generators which support electronic medical life support systems in the case of power outage.

4. The current configuration for release detection is an electronic line leak detector equipped with an audible and visible alarm system. The system operates by sloping the underground double walled piping back towards the UST in cases of leak detection. This system is continually monitored for the presence of liquid. This configuration is in conflict with Rule 62-761.600(3)(b)2, F.A.C., which requires an automatic restriction of fuel flow (for mechanical line leak detectors) or fuel pump power shut off (for electronic line leak detectors) when a leak is detected.

5. The Petitioner provided justification for this waiver with regard to potential loss of patient lives if emergency generator fuel is restricted upon release detection and petitioned for the audible/visible alarm and sloped system to be considered by the Department. Additionally, the petitioner provided assurance that this system will be manned 24 hours each day. Should an alarm occur, any release will be managed immediately.

6. Based on the information submitted on August 19, 2020, the Petitioner has demonstrated that the current emergency generator configuration does not pose an imminent threat to the protection of the lands, surface waters, or groundwaters of the

state, as personnel will be alerted to and available to address any leak detection incidents immediately.

7. No comments have been received from the public in response to the Notice of Receipt of this waiver published in the Florida Administrative Register on August 27, 2020.

CONCLUSIONS OF LAW

1. Section 120.542, F.S., authorizes the Department to grant a waiver from any of its rules upon a demonstration that the purpose of the underlying statute will be or has been achieved by other means and that application of the rule would create a substantial hardship or would violate principles of fairness.

2. The Petitioner has demonstrated that it will suffer a substantial hardship if it is required to comply with Rule 62-761.600(3)(b)2, F.A.C., as an automatic fuel pump power shut off or restriction of emergency generator fuel flow would risk the loss of patient lives in their hospital's care. When the fuel supply to an emergency generator that is powering a life-support system is terminated, a patient could immediately experience life-threatening conditions.

3. The Department concludes Petitioner has demonstrated that a waiver from the provision of Chapter 62-761.600(3)(b)2, F.A.C. is warranted, that it would suffer a substantial hardship if the waiver was not granted, that the grant of the waiver will be consistent with the general intent and purpose of Chapter 62-761, F.A.C., and that the purpose of the underlying statute has been met by other means.

4. This waiver, by itself, does not constitute authorization for Petitioner to proceed with the operation underground storage tanks outside of the applicable underground storage rule Chapter 62-761 F.A.C. The hospital facility shall operate

only in accordance with the appropriate permits issued by the Department or other state agencies as applicable.

For these reasons, the Petition for Waiver is GRANTED, subject to the following conditions.

CONDITIONS

1. Petitioner shall operate the hospital's underground storage tanks and emergency generators based upon the regulations issued by the Department, except the requirement of Rule 62-761.600(3)(b)2, F.A.C., which would otherwise prohibit use of an audible/visible alarm and sloped flow only. This waiver only applies to periods of power outage when emergency generators are required to support life-sustaining equipment, and during these times, the system must be monitored continuously.

2. Unless the Department takes affirmative action to revoke or modify this waiver; it shall not expire and shall have an unlimited duration.

3. The issuance of this waiver does not relieve the Petitioner from the need to comply with all conditions of the applicable underground storage tank rule, or from any applicable requirements of other federal, state, or local laws, including the requirements specified in Chapter 62-761, F.A.C.

NOTICE OF RIGHTS

The Department's Order Granting Waiver will be considered final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57, F.S., before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's proposed agency action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or by electronic mail at Agency_Clerk@DEP.state.fl.us.

Petitions by the applicant or any of the parties listed below must be filed within 21 days of receipt of this written notice. Petitions filed by other persons must be filed within 21 days of publication of the notice or receipt of the written notice, whichever occurs first. Under section 120.60(3), F.S., however, any person who asked the Department for notice of agency action may file a petition within 21 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 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.

A petition that disputes the material facts on which the Department's action is based must be in accordance with Rule 28-106.201, F.A.C., and 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 the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes 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 petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

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 accordance with section 120.573, F.S., the Department advises that mediation is not available in this case under the provisions of that statute. This does not prevent any interested parties from agreeing to other forms of alternate dispute resolution.

Any party to this order has the right to seek judicial review of it under section 120.68, F.S., by filing a Notice of Appeal under Rule 9.110, 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 after this order is filed with the Clerk of the Department.

DONE AND ORDERED this 17th day of November, 2020, in Leon County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

**Tim J.
Bahr**

Digitally signed by
Tim J. Bahr
Date: 2020.11.17
12:53:53 -05'00'

Tim Bahr, P.G., Director
Division of Waste Management
2600 Blair Stone Road
Tallahassee, FL 32399-2400

CERTIFICATE OF SERVICE

I, the undersigned designated Department clerk, HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States Mail to Zoran Aleksic, Advent Health, LLC, Central Florida Division, Office of Design and Construction, on this 17 day of November, 2020.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52(11), Florida Statutes, with the designated Department clerk, receipt of which is hereby acknowledged.

Tamela Starling

(Clerk)

11/17/20

(Date)

Electronic copies furnished to:

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