

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request  
for waiver by:

OGC No.: 21-0720

Department of Veterans Affairs  
James A. Haley Veterans' Hospital  
13000 Bruce B. Downs Boulevard  
Tampa, FL 33612

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ORDER GRANTING VARIANCE

The State of Florida Department of Environmental Protection ("Department") hereby gives notice that it is granting a variance to the Department of Veterans Affairs, ("Petitioner") pursuant to section 120.542, Florida Statutes ("F.S."), for the facility at 13000 Bruce B. Downs Boulevard, Tampa, Florida 33612 ("Facility"), Latitude/Longitude: 28°3'50.256"N/-82°25'43.899"W. On July 27, 2021, the Petitioner submitted a petition for a waiver ("Petition for Waiver") to the Department. The Petitioner requests a waiver from paragraph 62-762.601(4)(b)3, Florida Administrative Code ("F.A.C."), which requires that small diameter integral piping with secondary containment be equipped with a release detection system that is capable of detecting a release of 10 gallons within one hour and shutting off the fuel pump.

FINDINGS OF FACT

1. On July 27, 2021, the Petitioner submitted a Petition for Waiver from Rule 62-762.601(4)(b)3, F.A.C. to the Department to operate an emergency generation fuel supply system at 13000 Bruce B. Downs Boulevard, Tampa, Florida 33612. This rule specifically requires that pressurized small diameter integral piping in contact soil be equipped with line leak detectors that immediately shut off power to the system fuel

pump, and therefore, flow of fuel to the hospital's emergency generator system when a leak is detected.

2. The property at 13000 Bruce B. Downs Boulevard, where the James A. Haley Veterans' Hospital is located, contains approximately 47.84 acres, and is zoned SPI-UC2, which is "University Community". This property is currently an active medical facility and has operated as such since 1972.

3. Operations at the James A. Haley Veterans' Hospital involve the use of 11 regulated above ground tanks (AST): Tank #20 (12,000 gallons), Tank #21 (12,000 gallons), Tank #22 (6,000 gallons), Tank #23 (6,000 gallons), Tank #24 (6,000 gallons), Tank #25 (6,000 gallons), Tank #26 (6,000 gallons), Tank #27 (12,000 gallons), Tank #28 (12,000 gallons), Tank #29 (6,000 gallons), and Tank #30 (6,000 gallons).

4. All of the tanks are located and operated within the hospital's emergency generator plant that supplies fuel to emergency backup generators which support electronic medical life support systems in the case of power outage. The AST system has four 12,000-gallon main tanks which have two main fuel pump systems (A system and B system). Each system (A and B) has its own fuel sump box, where the fuel pipes come from the fuel pumps and through the sump box, through an 8" steel Permapipe underground, to the generator belly tanks (6,000-gallon tanks).

5. The AST system is equipped with a control system and Programmable Logic Controller (PLC) that monitors the system 24/7 and makes sure that the system does not have any pressure on it if the pumps are not running. If there is any pressure in the system, the PLC opens the relief valves to relieve the pressure in the system. The integral piping for the sump box and the associated underground transfer piping were originally installed with a sloped design, so that any fuel leaks within the small diameter

pipng would be contained inside the outer 8” Permapipe, and flow back towards the sump box where the sensors are located (Sensor 1 and Sensor 2). Sensor One is for the Supervisory Control and Data Acquisition (SCADA) system. Sensor One will log any leak in the AST system and alert system operators (who are present at all times during operation). Any release will be immediately managed by these system operators.

4. Based on the information submitted on August 10, 2021, the Petitioner has demonstrated that the current AST system’s 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.

5. 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 July 30, 2021.

#### CONCLUSIONS OF LAW

1. Section 120.542, F.S., authorizes the Department to grant a variance 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 62-762.601(4)(b)3, 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. While the Petitioner is requesting a waiver, the

conditions of this request as granted are more appropriately described as a variance from Rule 62-762.601(4)(b)3, and as such, a variance is being granted.

3. The Department concludes Petitioner has demonstrated that a variance from the provision of Rule 62-762.601(4)(b)3, F.A.C. is warranted, that it would suffer a substantial hardship if the variance was not granted, and that the granting of the variance will be consistent with the general intent and purpose of Chapter 62-762, F.A.C., and that the purpose of the underlying statute has been met by other means.

3. This variance, by itself, does not constitute authorization for Petitioner to proceed with the operation underground storage tanks outside of the applicable underground storage rule Chapter 62-762 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 Variance 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 62-762.601(4)(b)3, F.A.C., which would otherwise prohibit use of an audible/visible alarm and sloped flow only.

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

3. The issuance of this variance 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 62-762, F.A.C.

### NOTICE OF RIGHTS

The Department's Order Granting Variance 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](mailto: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 variance 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.

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DONE AND ORDERED this 4<sup>th</sup> day of October, 2021, in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

**Tim J.  
Bahr**

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Tim J. Bahr  
Date: 2021.10.04  
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Tim J. 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 Byron Taylor, Department of Veterans' Affairs, James A. Haley Veterans' Hospital, on this 4<sup>th</sup> day of October, 2021.

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)

10/04/21  
(date)

Electronic copies furnished to:

Byron Taylor, James A. Haley Veterans' Hospital, [Byron.Taylor@va.gov](mailto:Byron.Taylor@va.gov)  
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