

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Nautilus MH and RV Park WWTF

OGC Case No. OGC 21-0794

Petition for Variance from

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

DEP File No.: FLA010708

FINAL ORDER GRANTING PETITION FOR VARIANCE

On August 17, 2021, Nautilus Ocala Mobile Home Park, LLC., (Petitioner), filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes, variance from the requirements of subparagraph 62-699.310(2)(a)1., Florida Administrative Code (F.A.C.), for its wastewater treatment facility located at 3441 S. Pine Avenue, Ocala, Marion County, Florida.

1. Subparagraph 62-699.310(2)(a)1. F.A.C., establishes staffing requirements for wastewater treatment facilities that have treatment processes to meet limits for total nitrogen with or without filtration. The rule requires staffing by a Class C or higher operator for 1 hour/day for 5 days/week and one visit each weekend for a facility with total nitrogen limits and a permitted capacity under 0.010 MGD. The facility was previously required to be staffed by a Class D or higher operator for 2 visits/week on nonconsecutive days for a total of 1 hour/week.

2. When the Silver Springs, Silver Springs Group, and Upper Silver Springs River Basin Management Area Plan (BMAP) Rule, Section 403.067, F.S., became effective, it required the facility to meet a new Total Nitrogen (TN) limit. Subparagraph 62-699.310(2)(a)1. F.A.C., requires increased staffing requirements for facilities with a nutrient limit, such as TN, in their permit.

3. The Petitioner requested a variance that, if approved, would reduce the staffing requirement to one half-hour per day, 5 days per week by a Class D or higher operator.

4. The facility has been able to successfully meet the limit for total nitrogen with the existing staffing requirements since the first quarter of 2017. The requirement for increased staffing poses a substantial financial hardship.

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

6. The purpose of the underlying statutes 403.021, 403.051, 403.061, 403.062, 403.085, 403.086, 403.087, and 403.088, Florida Statutes, is to ensure that treatment at this facility is environmentally acceptable and not a threat to public health and safety. The facility's previous staffing requirements are contained in Rule 62-699.310(2)(a)1, F.A.C., provide reasonable assurance of proper operation and to meet effluent limits, other than the increased limit for total nitrogen. The increased staffing is intended to provide reasonable assurance the facility could meet the reduced limit for total nitrogen. The total nitrogen limit has been successfully met under the current staffing requirements.

7. The Petitioner has demonstrated the purpose of the underlying statutes will be achieved through other means:

(a) Ground water quality standards will be met by the facility being required to meet their reclaimed water effluent limits.

(b) Public health will not be adversely affected because the increased staffing was required to provide reasonable assurance that an environmental limit for total nitrogen could be met. The facility will be required to continue to meet this permit limit.

(c) The facility will be required to meet the annual average effluent limit for total nitrogen as a condition of the continued approval of this variance.

(d) Public welfare will not be adversely affected. The public will benefit from less costly service that meets all underlying water quality regulations.

8. No public comments were received. Notice of Receipt was published in the Florida Administrative Register (FAR) on August 19, 2021.

9. 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.

10. Based on the foregoing, Petitioner has demonstrated that it meets the requirements for a variance from Florida Administrative Code subparagraph 62-699.310(2)(a)1. The petition for variance is granted subject to the following conditions:

The requested variance shall require 5 visits/week for one half-hour/day by a Class D or higher operator.

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 September 9, 2021 in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



Aaron Watkins, Director
Central District

Attachments: Notice of Disposition of Final Order

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this Order and all copies were sent on the filing date below to the following listed persons:

FDEP: Allison Chancy, Reggie Phillips, David Smicherko, Dennise Judy, Douglas Beason

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.

Shonathway Buie

Clerk

September 15, 2021
Date

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 File No. FLA010708 to grant a variance to Nautilus Ocala Mobile Home Park, LLC from Rule 62-699.310(2)(a)1, Florida Administrative Code (F.A.C.), in order to reduce the staffing requirements to 5 days per week for a total of one half-hour per day by a Class D operator rather than the required 1 hour per day, 5 days per week and one visit each weekend at the Nautilus Mobile Home & RV Park WWTF (3441 S Pine Ave, Ocala, Marion County, Florida).

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, and telephone number of the petitioner; 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 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.

In accordance with rule 62-110.106(3) of the Florida Administrative Code, petitions for an administrative hearing must be filed within 21 days of publication of this notice or receipt of written notice, whichever occurs first. However, any person who has previously asked the Department for notice of this agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure to file a petition within 28 days of 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.

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 is not available in this proceeding.

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, this process may result in a modification of the agency action or even a denial of the request for a variance or waiver.

A copy of the Order may be obtained by contacting: Charles LeGros, Department of Environmental Protection, (407) 897-4158, Charles.LeGros@FloridaDEP.gov; during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.