

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Roth Global Plastics, Inc.

OGC Case No. 21-1148

Petition for Variance from
Provisions of Paragraph 62-6.013(2)(a) F.A.C.

ORDER GRANTING PETITION FOR VARIANCE

On November 1, 2021 Roth Global Plastics, Inc. (Roth) filed a petition with the Florida Department of Environmental Protection (DEP) requesting a section 120.542, Florida Statutes (F.S.), variance from the requirements of paragraph 62-6.013(2)(a), Florida Administrative Code, (F.A.C.), which requires stiffening members in all receptacles to be a homogeneous integral part of the receptacle. The DEP made a timely request for additional information on December 1, 2021. Roth provided additional information to the DEP on January 13, 2022. Roth seeks variances from a rule related to septic tank construction materials and standards for treatment receptacles to improve the structural integrity of specific tanks (tank legend numbers 70-142-08S/D-C4, 70-142-09S/D-C4, 70-142-10S/D-C4, 70-142-12S/D-C4 and 70-142-15S/D-C4) that are already approved for use in Florida.

Notice of receipt of the petition was published in the Florida Administrative Register on November 15, 2021. No public comment was received.

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

Roth requests a state-wide variance from a rule requiring that stiffening members are homogeneous to allow for stiffening members to be installed in tanks already approved for use in Florida for the purpose of improving the structural integrity of these tanks.

The applicable rules state in pertinent part:

Paragraph 62-6.013(2)(a) F.A.C. *“Onsite wastewater treatment receptacle design requirements. The following details shall be incorporated into the design:*

(a) ...“All receptacle stiffening members such as ribs shall be a homogeneous integral part of the structure...”

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

Section 120.542(2), F.S., 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.

Rule 62-6.013, F.A.C., implements Section 381.0065(3)(a), F.S., which states the Department shall adopt rules to administer ss. 381.0065-381.0067, F.S., including requirements for “...the design and construction of any component part of an onsite sewage treatment and disposal system”. This includes standards for treatment receptacles or septic tanks.

The underlying purpose of the statute is stated in Section 381.0065(3)(c), F.S.:” Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the department are sized, designed, constructed, installed, sited, repaired, modified, abandoned, used, operated, and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination, including impacts from nutrient pollution, and surface water contamination and to preserve the public health. The department is the final administrative interpretive authority regarding rule interpretation. In the event of a conflict regarding rule interpretation, the Secretary of Environmental Protection, or his or her designee, shall timely assign a staff person to resolve the dispute.”

A treatment receptacle that fails to maintain its structural integrity could result in the leakage of untreated sewage into the ground, daylighting of untreated sewage on the ground surface, or cause untreated sewage to back up into an occupied structure. These would adversely affect public health and degrade groundwater or surface water in violation of Section 381.0065(3)(c), F.S.

Roth demonstrated that the purpose of the underlying statute will be achieved. The tanks to which Roth is requesting this variance apply are already approved under Florida rule without the addition of stiffening members. Adding the non-homogenous stiffening members in lieu of continuing to sell approved tanks without support structures will reduce the need for tank repairs. Decreasing the need for tank repairs will reduce a) the risk to public health based on exposure of people to untreated wastewater; b) the potential risk of spillage of untreated wastewater that could impact surface and ground water, and c) the possibility of interruption of service to the entity connected to a failed system.

Additionally, specific facts that demonstrate the underlying purpose of the statute will be met include the following:

Paragraph 62-6.013(2)(a), F.A.C., requires that all stiffening members such as ribs are a homogenous integral part of the structure. Roth’s proposal to add non-homogenous stiffening members requires a variance from this rule. Roth has demonstrated that over the last decade 40-50 of their currently Florida approved tanks installed without stiffening members have experienced deformation of the tank in the area adjacent to the access covers when tanks are installed in native Florida soils. The Department estimates approximately 423 tanks were installed in Florida during that time. In a wastewater system application that is outside the purview of the onsite sewage rules (specifically, the City of Vero Beach, Florida, Septic Tank Effluent Pump Project), Roth has provided 900 tanks with non-homogenous stiffening members installed and no deformations in these tanks have been reported. The mold modification and proposed procedure of including stiffening posts was integrated in approved tanks in 2005 outside of Florida and across North America and there have been no known failures of these tanks.

Stiffening posts are proposed to be placed in the tanks consistent with the drawings provided to the Department and this placement will only occur at Roth manufacturing facilities where the

process and product will undergo Roth quality control and inspection procedures as described in the supporting documents for the variance petition. Roth claims the process of installing the stiffening posts, which requires squeezing the tanks, has no potential to damage the tanks because the deflection required for installation of the posts is far less than the yield point of the coextruded high-density polyethylene material that the tank is constructed from. Thus, based on the foregoing, Roth demonstrated that the purpose of the underlying statute will be achieved.

SUBSTANTIAL HARDSHIP TO THE PETITIONER

“Substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

Roth requests a variance or waiver of the strict application of Rule 62-6.013 (2)(a), F.A.C., because applying the rules for licensure application would create a substantial hardship.

Roth demonstrated that strict application of the rule would result in substantial economic hardship to Roth. When tanks deform over time, Roth is responsible for the remediation of the affected tanks, including the costs for product replacement, installation labor costs, and costs associated with emergency variances to install a tank with stiffening posts. Liability claims are also a cost factor from homeowners of the affected tanks. Roth estimated the approximate total cost of remediation to be between \$85,000-\$90,000. If the variance was not granted the cost of remediation of the deformed tanks would continue to grow. Thus, based on the foregoing, Roth demonstrates a substantial hardship.

THEREFORE, IT IS ORDERED:

Based on the foregoing reasons, Roth has demonstrated that it has met the requirements for a waiver of 62-6.013(2)(a), F.A.C.

The PETITIONER’S REQUEST FOR A VARIANCE IS GRANTED.

This variance shall remain in effect permanently.

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 request for a variance or waiver.

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 13th day of April 2022 in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Kendra Goff, PhD, DABT, CPM, CEHP
Deputy Director
Division of Water Resources Management

Copies furnished to:
Roth Global Plastics, Inc.
Joint Administrative Procedures Committee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Order, including all copies, were mailed before the close of business on 04/13/2022, 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.

Lisa Williams 04/13/2022
Clerk Date