

The STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request

for variance by:

Hillsborough County Public Utilities Department
925 E. Twiggs St.
Tampa, Florida 33602

OGC No.: 21-1237

ORDER GRANTING VARIANCE

The State of Florida Department of Environmental Protection (“Department”) hereby gives notice that it is granting a variance to Hillsborough County Public Utilities Department (“Petitioner”) pursuant to section 120.542, Florida Statutes (“F.S.”), for the Hillsborough County Public Utilities facility located at 925 E. Twiggs Street, Tampa, Florida, 33602, Latitude/Longitude: 27° 57' 5.3958"N/-82° 27' 4.2798"W (“Facility”). On December 3, 2021, the Department received a petition for a variance (“Petition for Variance”) from the Petitioner. The Petitioner requests a variance from Paragraph 62-762.701(1)(g), Florida Administrative Code (“F.A.C.”), which requires that a storage tank system that requires repair, but cannot be repaired within 90 days be taken out-of-service in accordance with subsection 62-762.801(1), F.A.C.

FINDINGS OF FACT

1. On December 3, 2021, the Department received a Petition for Variance from Paragraph 62-762.701(1)(g), F.A.C., to continue operating a 3,000 gallon above ground storage tank (AST) at their facility as in-service, until June 1, 2022, from the Hillsborough County Public Utilities Department. The tank in question has a small leak that is introducing fuel into the tank’s secondary containment at a rate of < 0.25 gallons/week. Paragraph 62-762.701(1)(g), F.A.C., specifically requires that a tank in need of repair must be repaired within 90 days or taken out-of-service until such repair can be

performed. If repairs are unable to be performed within 365 days of the tank being placed out-of-service, the tank is required to be permanently closed pursuant to subsection 62-762.801(2), F.A.C.

2. The Petitioner states that a new tank has been purchased, but due to supply chain delays, diesel tank deliveries have been postponed by up to six (6) months.

3. The facility is the Hillsborough County Public Utilities Department building, located at 925 E. Twiggs Street, Tampa, FL 33602.

4. Petitioner has indicated that operations at the facility involve the use of one (1) double wall 3,000-gallon AST that contains and supplies diesel fuel to an emergency backup generator that provides power for the county utility's sewage pump station.

5. The Petitioner provided justification for this variance in the form of three potential hardships: 1) a temporary diesel tank used for the six month period (until June 1, 2022) will cost \$10,000 to \$15,000 in addition to the cost of the new tank (approximately \$75,000); 2) Petitioner outlines site safety limitations on placing the a temporary tank and supply hoses in the proximity of large utility vehicles that maneuver inside an enclosed fenced area where it would be located; 3) temporary loss of a reliable emergency fuel source for the sewage pump station that pumps over two million gallons of raw sewage per day to the County's sewage treatment plant.

6. Based on the information submitted on December 3, 2021, the Petitioner has demonstrated that temporary continued use of their current 3,000 diesel AST does not pose an imminent threat to the protection of the lands, surface waters, or groundwaters of the state, as personnel are performing daily visual inspections and physically removing any traces of fuel from the secondary containment interstice.

7. No comments have been received from the public in response to the Notice of Receipt of this variance published in the Florida Administrative Register on December 8, 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 62-762.701(1)(g) F.A.C., as utilizing a temporary diesel tank is cost-prohibitive, and a temporary loss of emergency fuel supply to the sewage pump station could cause massive sewage flow into the environment.

3. The Department concludes Petitioner has demonstrated that a variance from the provision of Rule 62-762.701(1)(g), F.A.C. is warranted, that it would suffer a substantial hardship if the variance was not granted, that the grant 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.

4. This variance, by itself, does not constitute authorization for Petitioner to proceed with the operation of aboveground storage tanks outside of the applicable aboveground storage rule Chapter 62-762, F.A.C. The county's utility 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 county utilities aboveground storage tanks and emergency generators based upon the regulations issued by the Department, except the requirement of Rules 62-762.701(1)(g), F.A.C., which would otherwise require the 3,000 gallon AST to be placed out of service after 90 days with no repair. This variance only extends to June 1, 2022, during periods of power outage when emergency generators are required to support flow to the sewage treatment plant, and during these times, the tank interstice must be monitored and managed daily.

2. This variance expires on June 1, 2022, unless the Department takes affirmative action to revoke or modify this variance.

3. The issuance of this variance does not relieve the Petitioner from the need to comply with all other requirements 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.

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 25th day of February, 2022, in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

**Tim J.
Bahr**

Digitally signed by
Tim J. Bahr
Date: 2022.02.25
08:29:27 -05'00'

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 Gerard Watson, ATTENTION: LEGAL SERVICES DEPARTMENT, Hillsborough County Public Utilities Department, on this 28th day of February, 2022.

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)

2/28/2022
(date)

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