



# FLORIDA DEPARTMENT OF Environmental Protection

South District  
PO Box 2549  
Fort Myers FL 33902-2549  
SouthDistrict@FloridaDEP.gov

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

SENT VIA EMAIL

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Highlands County  
Petition for Variance

OGC File No. 22-0159  
PA File No. FLA281484-013

Submitted by:

Joseph Barber P.E.  
Utility Director/Town Engineer  
Town of Lake Placid  
311 West Interlake Blvd.  
Lake Placid, FL 33852-9662  
[lputilities@mylakeplacid.org](mailto:lputilities@mylakeplacid.org)

**FINAL ORDER GRANTING PETITION FOR  
VARIANCE FROM RULE 62-610.462(3), F.A.C., AND  
REVISION OF PERMIT FLA281484**

On January 18, 2022, a petition for variance from requirements in Rule 62-610.462(3) of the Florida Administrative Code (F.A.C.), under §120.542 of the Florida Statutes (F.S.) and Rule 28-104.002, F.A.C., was filed by the Town of Lake Placid (“Petitioner”), for its north wastewater treatment plant located at 131 John Smoak Road, Lake Placid, FL 33852, in Highlands County. The petition was for a variance from Rule 62-610.462(3), F.A.C., which states that “the minimum staffing requirement at the wastewater treatment facility shall be reduced to staffing by a Class C or higher operator 6 hours per day, 7 days per week, unless Chapter 62-699, F.A.C., requires additional operator presence or a higher level of operator.” The Petitioner requested a permanent variance to further reduce the staffing requirement at its north wastewater treatment plant to 6 hours/day, 5 days/week, and one visit each weekend day, provided that the north wastewater treatment plant does not produce public access reuse water during the weekends.

The Petitioner petitioned for a variance in order to avoid the substantial economic hardship of providing a certified operator for 6 hours on each weekend day. A notice of receipt of the petition was published in the Florida Administrative Register on February 2, 2022. No comments have been received.

1. Petitioner's address is: Town of Lake Placid, 311 West Interlake Blvd., Lake Placid, FL 33852.

2. Operation of the Petitioner's north wastewater treatment plant is authorized by Department domestic wastewater facility permit number FLA281484 which expires on May 7, 2027.

3. Based on Rule 62-610.462(3), F.A.C., specific condition number V. A. 1. of permit number FLA281484 requires the petitioner to provide a class C or higher operator for a minimum of 6 hours per day, 7 days per week, upon commencement of irrigation of the US Highway 27 medians.

4. The applicable rule states in pertinent part:

62-610.462(3), F.A.C.: that "the minimum staffing requirement at the wastewater treatment facility shall be reduced to staffing by a Class C or higher operator 6 hours per day, 7 days per week, unless Chapter 62-699, F.A.C., requires additional operator presence or a higher level of operator."

5. The Petitioner will discontinue the production of public access reuse water during weekends and send all weekend effluent flow to Petitioner's rapid infiltration basin system as an alternative to providing a certified operator for 6 hours per day on each weekend day.

6. The purpose of the underlying statutes 403.061, 403.064, 403.087, 403.088 is to ensure that the quality and use of public access reuse water is environmentally acceptable and not a threat to public health and safety. The Petitioner's proposed alternative will provide an equivalent safeguard for the quality of the public access reuse water and therefore the Petitioner meets the purpose of the underlying statutes by other means.

7. The Department received no comments about the petition for variance.

8. For the foregoing reasons, in order to avoid unnecessary substantial financial hardship, the Department has determined that the Petitioner has met the requirements for a variance from Rule 62-610.462(3), F.A.C. Although the Petitioner requested a permanent variance, the Department is limiting this variance to the current operation permit cycle because the variance deals with an operational requirement rather

than a physical construction requirement, and because the applicable science, rules, or laws may change during the permit cycle. The Petitioner can petition to renew this variance when the Petitioner applies to renew its operation permit. The Department hereby grants a temporary variance, through May 7, 2027, subject to the four conditions (8a - 8d) below, and the last sentence of specific condition number V. A. 1. of permit number FLA281484 is hereby replaced by the four conditions (8a – 8d) below:

- a. The minimum operator certification and minimum on-site operator presence shall be:  
Staffing by a Class C or higher operator; 6 hours/day for 5 days/week and one visit each weekend day.
- b. If the Petitioner produces public access reuse water on any weekend day, then the Petitioner shall staff the wastewater treatment plant on that weekend day with a Class C or higher operator for 100% of the time that the Petitioner is producing public access reuse water or 6 hours, whichever is less.
- c. 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.
- d. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department.

### **RIGHTS**

This order will become final unless a timely petition for an administrative proceeding is filed pursuant to the provisions of sections 120.569 and 120.57 of the Florida Statutes. Any person whose substantial interests are affected by the Department's action may file such a petition. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000 or Agency\_Clerk@FLoridaDEP.gov. Petitions filed by the Petitioner or any of the parties listed below must be filed within 21 days of receipt of this order. Petitions filed by any other person must be filed within 21

days of publication of the public notice or within 21 days of receipt of this order, whichever occurs first. Under section 120.60(3), 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. A petitioner must mail a copy of the petition to Joseph Barber, P.E., Utilities Director, Town of Lake Placid, 311 West Interlake Blvd., Lake Placid, FL 33852, 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 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will only be 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 disputed the material facts on which the Department's action is based 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, 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 determination number and the county in which the subject matter or activity is located;
- (c) A statement of how and when the petitioner received notice of the Department's 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 Department's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department'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 Department to take with respect to the Department'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 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 final action may be different from the position taken by it in this order. Persons whose substantial interests will be affected by any such final decision of the Department on the petitions have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

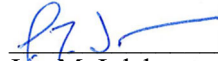
Mediation under section 120.573 of the Florida Statutes is not available for this proceeding.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above.

A party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel (Mail Station 35) 3900 Commonwealth Boulevard, 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 must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 11<sup>th</sup> day of March, 2022 in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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Jon M. Iglehart  
Director of District Management  
South District

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to s. 120.52, Florida Statutes, with the designated Agency Clerk, receipt of which is hereby acknowledged. All copies were mailed before the close of business on the date below to the persons listed.



\_\_\_\_\_  
**Clerk**

\_\_\_\_\_  
April 4, 2022

**Date**

Copies furnished to:

Roger Dale Polston P.E. [dale@polstonengineering.com](mailto:dale@polstonengineering.com)

Joint Administrative Procedures Committee [JAPC@leg.state.fl.us](mailto:JAPC@leg.state.fl.us)