

The STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:

H. Lee Moffitt Cancer Center & Research Institute, Inc.
for Moffitt Cancer Center
10901 McKinley Drive
Tampa, Florida 33612

OGC No.: 22-0176

ORDER GRANTING VARIANCE

The State of Florida Department of Environmental Protection ("Department") hereby gives notice that it is granting a variance to H. Lee Moffitt Cancer Center and Research Institute, Inc., ("Petitioner") pursuant to section 120.542, Florida Statutes ("F.S."), for the Moffitt Cancer Center facility located at 10901 McKinley Drive, Latitude/Longitude: 28°2' 52.4868"N/-82°24' 53.3442"W ("facility"). On February 3, 2022, the Department received a petition for a variance ("Petition for Variance") from Petitioner. The Petitioner requests a variance from paragraphs 62-762.501(3)(a)5., Florida Administrative Code ("F.A.C."), which requires that all pressurized small diameter integral piping that is in contact with the soil is installed with electronic line leak detectors "LLDs".

FINDINGS OF FACT

1. On February 3, 2022, the Department received a Petition for Variance from Rule 62-762.501(3)(a)5. F.A.C., to operate an emergency generation fuel supply system at their facility. This rule specifically requires piping in contact with soil to be equipped with electronic LLDs that immediately shut off power to the system fuel pump, and therefore, flow of fuel to the hospital's emergency generator system.

These electronic LLDs shall be capable of detecting a discharge of 3.0 gallons per hour (gph) with a probability of detection of 0.95 and a probability of false alarm of 0.05 at an equivalent line pressure of 10 pounds per square inch (psi) and shut off power to the pump, or in the case of mechanical line leak detectors, restrict the flow of fuel within one hour of leak detection.

2. The facility has historically operated as the Moffitt East Business Center, but is currently under construction to operate as an in-patient medical facility.

3. Petitioner has indicated that operations at the facility involve the use of four (4) double wall 25,000-gallon aboveground storage tanks (ASTs) that contain and supply diesel fuel to emergency backup generators which support electronic medical lifesupport systems and pumps for fire control sprinkler systems in the case of power outage. The generators are located within the hospital's energy plant, and the tanks are located in an enclosure just outside of the energy plant.

4. The current configuration for release detection is an electronic line leak detector in the interstitial space within the double wall tanks. A pump package located on the top exterior of the storage tanks provides pressure and flow to fill the generator day tanks, also housed on the exterior of the energy plant building. The piping from the pump to the building is pressurized and runs underground in a double wall fiberglass piping system, which is sloped to a sump equipped with leak detection sensors. These sensors trigger an audible and visible alarm at the plant engineering control room should a leak in the piping and/or tank occur. The planned configuration conflicts with the 2019 amendments to rule 62-762.501(3)(a)6., F.A.C., requiring that "All new pressurized small diameter integral piping that is in contact with the soil must be installed with line leak detectors meeting the requirements of paragraph 62-762.601(4)(b), F.A.C."

5. Paragraph 62-762.601(4)(b), F.A.C., requires an automatic shut off of the fuel pump at the time of leak detection.

6. The Petitioner provided justification for this variance regarding potential loss of patient lives if emergency generator fuel is restricted upon release detection and petitioned for the audible/visible alarm and sloped system to be considered by the Department. Additionally, the petitioner provided assurance that this system will be manned 24 hours each day. Should an alarm occur, any release will be managed immediately by the engineering staff in the control room.

7. Based on the information submitted on February 3, 2022, the Petitioner has demonstrated that the current emergency generator configuration does not pose an imminent threat to the protection of the lands, surface waters, or groundwaters of the state, as personnel will be immediately alerted and available to address any leak detection incidents immediately.

8. 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 February 3, 2022.

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 Rules 62-762.501(3)(a)5., 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.

3. The Department concludes Petitioner has demonstrated that a variance from the provision of Rules 62-762.501(3)(a)5., 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 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 aboveground storage tanks and emergency generators based upon the regulations issued by the Department, except the requirement of Rules 62-762.501(3)(a)5., F.A.C., which would otherwise prohibit use of an audible/visible alarm and sloped flow only. This variance only applies to periods of power outage when emergency generators are required to support life-sustaining equipment, and during these times, the system must be monitored continuously.

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 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.

DONE AND ORDERED this 22nd day of April 2022, in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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 L. David de la Parte, Esq., ATTENTION: LEGAL SERVICES DEPARTMENT, H. Lee Moffitt Cancer Center and Research Institute, 12902 Magnolia Drive, Tampa, Florida 33612-9416, on this 22 day of APRIL, 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.

Judith Pennington

Digitally signed by Judith Pennington
Date: 2022.04.22 11:15:24 -04'00'

(Clerk)

(date)

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