

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Infiltrator Water Technologies, LLC

OGC Case No. 22-2089

Petition for Variance from  
Provisions of subparagraphs 62-6.009(8)(a)3., 62-6.009(8)(a)4., and a portion of  
paragraph 62-6.009(8)(d), Florida Administrative Code (F.A.C.)

**ORDER GRANTING PETITION FOR VARIANCE**

On June 21, 2022, Infiltrator Water Technologies, LLC (IWT), Petitioner, filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes (F.S.) variance from the requirements of subparagraphs 62-6.009(8)(a)3., 62-6.009(8)(a)4., and a portion of paragraph 62-6.009(8)(d), Florida Administrative Code (F.A.C.). These paragraphs require submission of research supporting product materials and data from innovative system testing prior to alternative drainfield product approval and prohibit approval of alternative drainfield materials and designs which would result in a reduction of drainfield size using a mineral aggregate drainfield. The Department made timely requests for information on July 21, 2022 and September 2, 2022. IWT provided additional information to the Department on August 8, 2022 and October 3, 2022. The Petitioner seeks a variance in order to sell and distribute the Quick5 Equalizer 36 Chamber (Quick5 EQ 36) in Florida.

Notice of receipt of the petition was published in the Florida Administrative Register on June 28, 2022. No public comment was received.

**BACKGROUND AND APPLICABLE REGULATORY CRITERIA**

IWT requests state-wide permanent variances from rules related to research and data for innovative system testing and alternative drainfield materials and design, to allow them to sell and distribute their Quick5 EQ 36 Chamber in the State of Florida.

The applicable rules state in pertinent part:

Subparagraphs 62-6.009(8)(a)3. and 62-6.009(8)(a)4., F.A.C.:

*Requests for alternative system component material and design approval shall include: ...*

*3. Research supporting the proposed system materials,*

*4. Empirical data showing results of innovative system testing in the State of*

Florida; ...

Paragraph 62-6.009(8)(d) F.A.C.:

*Except as provided for in Part IV of this chapter, alternative drainfield materials and designs shall not be approved which would result in a reduction in drainfield size using the mineral aggregate drainfield system as described in Rule 62-6.014, F.A.C., and the total surface area of soil at the bottom of the drainfield as the criteria for drainfield sizing comparisons...*

**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 62-6.009, 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, including requirements for “the design and construction of any component part of an onsite sewage treatment and disposal system”. This includes standards and approvals for system components and designs for alternative drainfield products.

The underlying purpose of the statute is stated in paragraph 381.0065(1)(b), F.S., “...It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.”

Without meeting standards for system components and designs for alternative drainfield products, a product might fail to work properly. A product that fails to work properly could result in discharge of sewage on the ground or within an occupied structure and contamination of groundwater or surface water, adversely affecting public health or degrading groundwater or surface water, which are all in violation of section 381.0065, F.S.

IWT demonstrated that the purpose of both underlying provisions of subparagraphs 62-6.009(8)(a)3., 62-6.009(8)(a)4., F.A.C., and a portion of paragraph 62-6.009(8)(d), F.A.C., will be achieved by the following:

- a) In lieu of providing research supporting the proposed system materials and empirical data showing results of innovative system testing, IWT sufficiently demonstrated that the new product is functionally equivalent to the Quick4 Equalizer 36 model. This model was approved on December 8, 2004 after IWT was granted a variance on December 1, 2004. The Quick4 Equalizer 36 approval in turn was based on the 1998 Florida approval of another similar earlier product, the Equalizer 36. That approval was based on innovative testing. The Quick5 EQ 36 will also be manufactured using the same injection molding process and the same polypropylene thermoplastic as the Quick4 EQ 36.

- b) In lieu of meeting the portion of paragraph 62-6.009(8)(d) F.A.C. that prohibits alternative drainfield materials which would result in a reduction in drainfield size using the mineral aggregate drainfield system, IWT proposes using proportional sizing as already approved for the 4-foot long Equalizer 36 and Quick4 EQ 36 chambers. The Quick5 EQ 36 chamber sizing is 15 square feet per chamber in a trench or bed configuration. This is 3-square feet per linear foot of the 5-foot linear length of the chamber.
- c) IWT will provide a 2-year limited warranty against defects in materials and workmanship, which will provide a measure of safety to consumers.

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

Pursuant to the 2020 Florida Clean Waterways Act, the Onsite Sewage Program transferred from the Department of Health (DOH) to the Department of Environmental Protection on July 1, 2021. On April 7, 1998, DOH approved the Equalizer 36 based on the results of innovative system testing conducted in the State of Florida. On December 1, 2004, DOH granted a variance enabling approval of the Quick4 EQ 36 without innovative system testing requirements and allowing approval of the product resulting in a smaller drainfield size than would be required using a mineral aggregate drainfield. The granting of the variance was based on similarities between the Equalizer 36 and the Quick4 EQ 36 and successful innovative system testing of the Equalizer 36.

The Quick5 EQ 36 design incorporates slight improvements to the Quick4 EQ 36 design and is one foot longer than the previous model. To demonstrate dimensional equivalence of the Quick5 EQ 36 model and the Quick4 EQ 36, IWT provided drawings of the Quick5 EQ 36 and detailed comparisons to the Quick4 EQ 36 design. Both models are the same overall width and height. The Quick5 EQ 36 has been redesigned with increased louver density openings per unit vertical height and maintains a minimum open area of 0.29 square feet/linear foot, which is also the approved quantity of open sidewall area for the Quick4 EQ 36. Differences in the minimum louvered open area, open bottom area, weight, and effective storage volumes are slight and are the result of design improvements. IWT provided a functionality assessment from an engineer licensed in Florida certifying that the Quick5 EQ 36 should perform at the same standard as the previously approved Quick 4 EQ 36, and that the two products are dimensionally equivalent, except for the redistribution of the open area on the sidewalls and the additional 1-foot length.

IWT also provided structural performance analysis of the Quick5 EQ 36 Chamber that demonstrates that the Quick5 EQ 36 is capable of withstanding the stress induced by an American Association of State Highway Transportation Officials (AASHTO) H-10 load (including a 16,000-pound axle load and 12 inches of soil cover over the chamber dome). The chamber successfully passed the traffic loading test without collapsing, fracturing or breaking per the International Association of Plumbing and Mechanical Officials (IAPMO) standard PS 63<sup>1</sup> load testing protocol, “Plastic Leaching Chambers”.

---

<sup>1</sup> International Association of Plumbing and Mechanical Officials (IAPMO) PS 63 is a standard that specifies requirements for leaching chambers made of high-density polyethylene, polypropylene, or polyethylene terephthalate intended for infiltrating wastewater into the soil.

## **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.

IWT demonstrated that strict application of the subparagraphs 62-6.009(8)(a)3., and 62-6.009(8)(a)4., F.A.C., and a portion of paragraph 62-6.009(8)(d) would result in substantial economic hardship.

IWT has already invested over \$500,000 in product research, engineering, molds and other production equipment to develop the Quick5 EQ 36. Requiring IWT to conduct expensive innovative testing for a product that is functionally equivalent to an approved product would represent an economic hardship to IWT. At this time the 5-foot long Quick5 EQ 36 Chamber can be produced more quickly and efficiently than the Quick4 EQ 36 chamber.

### **THEREFORE, IT IS ORDERED:**

Based on the foregoing reasons, IWT demonstrated that it met the requirements for a variance from subparagraphs 62-6.009(8)(a)3., 62-6.009(8)(a)4., and a portion of paragraph 62-6.009(8)(d), F.A.C.

### **PETITIONERS REQUEST FOR A VARIANCE IS GRANTED with the following conditions:**

IWT shall offer a 2-year limited warranty against defects in material and workmanship on the Quick5 EQ 36. A copy of the 2-year limited warranty shall be provided in the approved Florida manual.

If IWT fulfills this condition this variance shall remain in effect permanently.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

## 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

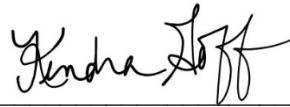
Mediation is not available in this proceeding.

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 22<sup>nd</sup> day of December 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:  
Infiltrator Water Technologies, LLC  
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 12/22/2022, 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                      12/22/2022  
Clerk                                      Date