STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Arion Holdings, L.L.C.

OGC Case Nos. 26-0247, 26-0265

Petitions for declaratory statement

_____/

FINAL ORDER DENYING PETITIONS FOR DECLARATORY STATEMENT

Factual Background

1. On January 30, 2026, Arion Holdings, L.L.C. (Petitioner), filed a petition for declaratory statement requesting an opinion from the Florida Department of Environmental Protection (Department) as to the applicability of sections 403.702(1)(a), 403.702(1)(f), and 403.707(11), Florida Statutes, and Florida Administrative Code Rule 62-110.106(9) (January Petition, attached as Exhibit 1).

2. On February 4, 2026, Petitioner filed a petition for declaratory statement requesting an opinion from the Department as to the applicability of sections 403.703(24) and 403.7045(1)(c), Florida Statutes, and Florida Administrative Code Rules 62-701.200(2) and (69) (February Petition, attached as Exhibit 2).

3. The Department published notice of receipt of the January Petition and February Petition in the Florida Administrative Register on February 3, 2026,[1] and February 6, 2026, respectively. The January Petition and February Petition will collectively be referred to as "Petitions."

4. On February 11, 2026, Far Niente Stables IX, LLC, and Agricultural Blending Company, LLC, filed a motion to intervene and to dismiss the January Petition, pursuant to Florida Administrative Code Rules 28-105.0027 and 28-106.204 (Motion, attached as Exhibit 3).

Findings of Fact

5. For this Final Order, factual allegations were derived solely from the Petitions. Pursuant to Florida Administrative Code Rule 28-105.003, the Department relies on the statements of facts as presented by Petitioner in the Petitions but takes no position on the truth or accuracy of such facts:

[1] On February 6, 2026, the Department published a notice of correction to the notice of receipt published February 3, 2026, to include the date the January Petition was received.

a. Petitioner is the owner of real property in Palm Beach County, bearing a physical and mailing address of 15000 46 Lane S., Wellington, Florida 33414.

b. The Department, through the Department of Health-Palm Beach County, is currently processing applications for the construction and operation of a facility that proposes to process equestrian bedding into biochar using pyrolysis, including an "Application for Air Permit- Non-Title V Source," on a site which is located within 500 feet of Petitioner's property ("Adjacent Site").

c. The Department is currently processing applications for a new solid waste management facility permit and a source-separated organics processing facility registration for activities on the Adjacent Site.

d. Up to 500 tons of horse manure with used bedding will be transported to the Adjacent Site. Horse manure will be separated from the used bedding and handled, stored, and transported off-site for disposal.

e. Per the statements made by the applicant and contained in the Adjacent Site "Application for Air Permit-Non-Title V Source," the facility is not subject to federal standards; the facility does not require a Prevention of Significant Deterioration (PSD) or Non-Attainment New Source Review (NNSR) permit; and the facility category does not fall within sources that are under the jurisdiction of the Department.

Conclusions of Law

Conduct Of Another Person

6. "A declaratory statement is not the appropriate means for determining the conduct of another person." Fla. Admin. Code R. 28-105.001; *see Manasota-88, Inc. v. Gardinier, Inc.*, 481 So. 2d. 948 (Fla. 1st DCA 1986) (upholding agency's denial of petition for declaratory statement concerning the applicability of statutory permitting requirements to a third party and not petitioner). Instead, a declaratory statement is the means to obtain an agency's opinion as to the applicability of a statute, rule, or order of the agency "as it applies to the *petitioner's* particular set of circumstances." §120.565(1), Fla. Stat. (emphasis added).

7. Here, Petitioner requests the Department's opinion as to the applicability of certain statutes or rules as they apply to another person, namely, the owner or operator of the described facilities on the Adjacent Site. Based on the facts presented, Petitioner does not have an ownership interest in the Adjacent Site and is not an owner or operator of the described facilities on the Adjacent

Site. Petitioner asserts only that it is the owner of property within 500 feet of the Adjacent Site. Accordingly, Petitioner is not entitled to a declaratory statement on the requests in paragraphs 5, 6, and 8 of the January Petition, and paragraphs 21, 22, and 23 of the February Petition.

8. Should Petitioners substantial environmental interests be affected by a proposed Department agency action in the future, they will receive notice of said agency action and an opportunity to request an administrative hearing for the formulation of final agency action. § 120.569, Fla. Stat. & Fla. Admin. Code R. 62-110.106. However, prior to taking such action, the Department cannot opine on whether and when the Petitioner is entitled to notice and a right to hearing.

General Applicability

9. Petitioner also requests the Department's interpretation of statutory and rule definitions (February Petition, at paragraph 20) and seeks clarification as to how the identified statutes or rules generally apply to solid waste management facility permits or source-separated organics processing facility registrations issued under section 403.707, Florida Statutes (January Petition, at paragraphs 5, 6, and 8).

10. Petitioner does not assert that it is the owner or operator of a facility or activity to which the identified statutes or rules apply. Again, Petitioner fails to state how the identified statutes or rules apply to the *Petitioner's* own circumstances. *See* §§ 120.565(1)-(2), Fla. Stat.; Fla. Admin. Code R. 28-105.001-.002. While a declaratory statement may address a matter of interest to more than one person, a declaratory statement is an improper means to adopt broad statements of general applicability. *See* §120.565(1), Fla. Stat.*; See also MB Doral, LLC v. Florida Dep't of Bus. & Prof'l Reg.*, 298 So. 3d 132 (Fla. 1st DCA 2020); *Soc'y for Clinical & Med. Hair Removal, Inc. v. Dep't of Health*, 183 So. 3d 1138 (Fla. 1st DCA 2015); *Sutton v. Dep't of Envtl. Prot.*, 654 So. 2d 1047 (Fla. 5th DCA 1995) (*citing Mental Health Dist. Bd., II–B v. Dep't of HRS*, 425 So.2d 160 (Fla. 1st DCA 1983)).

Statutory Provision, Rule, Or Order

11. The purpose of a declaratory statement is to answer questions regarding the applicability of a "statutory provision, or of any rule or order of the agency," as applied to the petitioner. §120.565(1), Fla. Stat.

12. The request in paragraph 7 of the January Petition is not appropriate for a declaratory statement because it fails to specify a statutory provision, rule, or order of the Department. Instead,

the request seeks the Department's opinion as to whether it has developed certain "internal guidance, technical memorandum, or other policies." *See* §120.565(1), Fla. Stat.; *Coastal Petroleum Co. v. State, Dep't of Nat. Res.*, 608 So. 2d 110 (Fla. 1st DCA 1992) (declining to expand section 120.565 to authorize an agency to issue a statement concerning the applicability of a policy adopted by the agency); *Rector v. Dep't of Business Regulation, Div. of Pari-Mutuel Wagering*, 592 So. 2d 797 (Fla. 4th DCA 1992) (holding agency memo was not a statute, rule, or order which could support rendition of a declaratory statement).

Pending Motion

13. The Department finds that Far Niente Stables IX, LLC and Agricultural Blending Company, LLC's substantial interests will be affected by the disposition of the Petitions. The Motion meets the requirements of Florida Administrative Code Rule 28-105.0027.

DISPOSITION

IT IS THEREFORE ORDERED:

Far Niente Stables IX, LLC's and Agricultural Blending Company, LLC's motion to Intervene is **GRANTED**.

The Petitioner's requests for declaratory statements are **DENIED**.

Any party to this order has the right to seek judicial review of the order under section l20.68 of the Florida Statutes by filing a notice of appeal under rules 9.110 and 9.190 of the 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 thirty days from the date this order is filed with the clerk of the Department.

DONE AND ORDERED this 27th day of March 2026 in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Justin G. Wolfe
General Counsel
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Lea Crandall Digitally signed by Lea Crandall
Date: 2026.03.27 11:52:26 -04'00'

Clerk Date

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was emailed to Katie A. Edwards-Walpole, Esq., Katie A. Edwards-Walpole, P.A., 300 S. Pine Island Rd., Suite 201, Plantation, Florida 33324, at katie@flfarmlaw.com and kg@flfarmlaw.com, and John J. Fumero, Esq., and Joshua R. Holmes, Esq., Nason Yeager Gerson Harris & Fumero, P.A., 110 East Broward Blvd., Suite 1010, Ft. Lauderdale, Florida 33301, at jfumero@nasonyeager.com, jholmes@nasonyeager.com, and mdinatale@nasonyeager.com, on this 27th day of March 2026.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Katie Slattery
Assistant General Counsel
3900 Commonwealth Boulevard,
Mail Station 35
Tallahassee, Florida 32399-3000

RECEIVED
January 30, 2026
Dept. of Environmental Protection
Office of General Counsel

Exhibit 1

PETITION FOR DECLARATORY STATEMENT BEFORE THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

ARION HOLDINGS, L.L.C., by and through the undersigned counsel, files this Petition for Declaratory Statement Before the Florida Department of Health (the "Petition"), pursuant to Section 120.565, Fla. Stat. (2025), and in states:

NOTICE OF APPEARANCE FOR PETITIONER

Firm: Katie A. Edwards-Walpole, P.A.

Address: 300 S. Pine Island Rd., Suite 201, Plantation, FL 33324

E-Mail: katie@flfarmlaw.com; kg@flfarmlaw.com (assistant)

Telephone: (305) 281-7323

IDENTIFICATION OF PETITIONER; DESCRIPTION OF PETITIONER'S PARTICULAR SET OF CIRCUMSTANCES

1. Arion Holdings, L.L.C. is the owner of real property in Palm Beach County, bearing a physical and mailing address of 15000 46 Lane S., Wellington, Florida 33414 (the "Arion Property"). The Petitioner has retained the undersigned firm to serve as its representative in connection with this Petition.
2. Petitioner is substantially affected by DEP's interpretation and opinion of the statutes and rules identified herein and would satisfy the standing requirements to challenge any final action pursuant to Chapter 120, Florida Statutes, on pending permits and registrations applications currently being processed by the department for a 'source separated organics processing facility' annual registration and a new solid waste management facility permit. The subject site of the pending permit applications and registrations is within 500 feet of Petitioner's residential property. The agency may rely on the statements of fact set out in

the petition without taking any position with regard to the validity of the facts. Fla. Admin. Code R. 28-105.003.

3. Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision as it applies to the petitioner's particular set of circumstances. § 120.565(1), Fla. Stat. (2025). A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes may apply to the petitioner's particular circumstances; however, a declaratory statement is not the appropriate means for determining the conduct of another person. *Carr v. Old Port Cove Prop. Owners Ass'n, Inc.*, 8 So. 3d 403, 404 (Fla. 4th DCA 2009).
4. The benefit of declaratory statements is avoiding "costly administrative litigation by selecting the proper course of action in advance." *Novick v. Dep't of Health, Bd. of Med.*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002). Petitioner requires the opinion of DEP so it may select a course of action, in accordance with the proper interpretation and application of specific provisions of Chapter 403, Fla. Stat., to avoid delay in asserting a challenge to any final action taken on pending permit applications and renewals where the law confers standing to Petitioners. *Id.* at 405.

STATE STATUTES, RULES, AND ORDERS; DESCRIPTION OF HOW THEY SUBSTANTIALLY AFFECT PETITIONER UNDER PARTICULAR CIRCUMSTANCES

5. The Petitioner does not wish to litigate over whether certain pending permits or registrations are validly issued by DEP in any challenge to final agency action. Therefore, Petitioners request the Department's opinion on whether compliance with Fl. Admin. Code R. 62-110.106(9), F.A.C. is required prior to the issuance of both a solid waste management facility permit and a source-separated management facility registration issued pursuant to § 403.707, Fla. Stat.

6. Notice to substantially affected persons on applications for Department permits or other authorizations is an essential and integral part of the state environmental permitting process. Therefore, *no application for a permit or other authorization for which published notice is required shall be granted* until proof of publication of notice is made by furnishing a uniform affidavit in substantially the form prescribed in Section 50.051 of the Florida Statutes, to the office of the Department issuing the permit **or other authorization**. Fl. Admin. Code R. 62-110.106(9), F.A.C.; *accord* § 50.051, Fla. Stat. Petitioners request the Department's opinion on whether compliance with Fl. Admin. Code R. 62-110.106(9), F.A.C. is required prior to the issuance of a source-separated management facility registration as an **other authorization**.
7. Petitioners seek the Department's opinion on whether the Department has developed internal guidance, technical memorandum, or other policies to evaluate whether the permit applicant proposing to receive, store, process, transport, or handle up to 500 tons of horse manure per day can provide reasonable assurances that the activity will not have an adverse effect on land values, and create public nuisances. §§ 403.702(1)(a) and (f), Fla. Stat.
8. Department rules state that permits for the construction, modification, operation, and closure shall be evaluated by the respective DEP district office in accordance with chapters 62-4 and 62-701, F.A.C. *See* Fla. Admin. Code R. 62-701.320(9)(b) (last amended 2-15-15). To determine any applicable timelines to assert its rights as a substantially affected party under Chapter 120, Fla. Stat., Petitioner requests the Department's opinion on whether the statutory notice requirement in § 403.707(11), Fla. Stat., applies to applications and renewals to operate a 'source separated organics processing facility.'

9. Petitioners respectfully request that the agencies render a final order denying the petition or issuing a declaratory statement within 90 days of the filing of this Petition.

10. I certify that this Petition was filed by electronic mail on January 30, 2026, with the Agency Clerk's Office, Department of Environmental Protection, lea.crandall@FloridaDEP.gov.

KATIE A. EDWARDS-WALPOLE, P.A.

Attorney for the Petitioner
300 S. Pine Island Rd., Suite 201
Plantation, FL 33324
Phone: (305) 281-7323
E-Mail: katie@flfarmlaw.com
kg@flfarmlaw.com (assistant)

By: */s/Katie A. Edwards-Walpole*
Katie A. Edwards-Walpole, Esq.
Florida Bar No. 107325

Exhibit 2

RECEIVED
February 4, 2026
Dept. of Environmental Protection
Office of General Counsel

PETITION FOR DECLARATORY STATEMENT BEFORE THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

ARION HOLDINGS, L.L.C., by and through the undersigned counsel and pursuant to Section 120.565, Fla. Stat. (2025), files this Petition for Declaratory Statement Before the Florida Department of Environmental Protection (the "Petition") and states:

IDENTIFICATION OF PETITIONER; NOTICE OF APPEARANCE

1. Arion Holdings, L.L.C. is the title owner of real property located in Palm Beach County, bearing a physical and mailing address of 15000 46 Lane South, Wellington, Florida 33414 (the "Arion Property").
2. Petitioner has retained the services of Katie A. Edwards-Walpole, Esq. of the firm Katie A. Edwards-Walpole, P.A., whose mailing address is 300 S. Pine Island Rd., Suite 201, Plantation, FL 33324; e-mail address is katie@flfarmlaw.com; and telephone number is (305) 281-7323.
3. Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision as it applies to the petitioner's particular set of circumstances. § 120.565(1), Fla. Stat. (2025). A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes may apply to the petitioner's particular circumstances; however, a declaratory statement is not the appropriate means for determining the conduct of another person. *Carr v. Old Port Cove Prop. Owners Ass'n, Inc.*, 8 So. 3d 403, 404 (Fla. 4th DCA 2009).
4. The benefit of declaratory statements is avoiding "costly administrative litigation by selecting the proper course of action in advance." *Novick v. Dept. of Health, Bd. of Med.*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002). The Petitioner has filed this Petition with the Department so Petitioner may select a course of action in accordance with the Department's

opinion on the statutory definitions of 'pyrolysis' and 'post polymers' and the applicable statutes and agency rules governing exemptions from obtaining a solid waste management facility permit and compliance with federal environmental and challenging pending agency action where Petitioner is substantially affected by the interpretation of specific statutes. *Id.* at 405.

5. Petitioner does not wish to litigate over whether bed shavings-comprised of materials such as pine, straw, hemp, other non-plastic sources- used to absorb horse manure and urine meets the statutory definition of 'post polymer' in any petition brought under Chapter 120, Florida Statutes, to challenge agency action on pending permits.
6. The Department may rely on the statements of fact set out in a petition without taking any position with regard to the validity of the facts. Fla. Admin. Code R. 28-105.003.
7. Petitioners respectfully request that the Department render a final order denying this petition or issuing a declaratory statement within 90 days of the filing of this Petition.

APPLICABLE STATUTES, RULES, AND ORDERS

8. Petitioner's request for a declaratory statement from the Department is based on the following statutory provisions and agency rules. Fla. Admin. Code R. 28-105.002(4).
9. The Florida Department of Environmental Protection ("DEP" or the "Department") is an agency, as defined in §120.52, Fla. Stat.
10. A solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the Department. § 403.707(1), Fla. Stat.
11. A "solid waste management facility" means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of

which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities or pyrolysis facilities that meet the requirements of s. 403.7046, Fla. Stat. except the portion of such facilities, if any, which is used for the management of solid waste. § 403.703(38), Fla. Stat.

12. A "pyrolysis facility" means a facility that receives, separates, stores, and converts **post-use polymers**, using gasification or pyrolysis. § 403.703(27), Fla. Stat. A pyrolysis facility meeting the conditions of s. 403.7045(1)(e), Fla. Stat. is not a solid waste management facility. *Id.*

13. Emissions to the air from a stationary installation or source regulated under Chapter 403, Fla. Stat. or the Clean Air Act, Pub. L. No. 95-95, may not be regulated pursuant to this part. § 403.7045(1)(c), Fla. Stat.

14. "Pyrolysis" means a process through which **post-use polymers** are heated in the absence of oxygen until melted and thermally decomposed, and then cooled, condensed, and converted to any of the following:

    (a) Crude oil, diesel, gasoline, home heating oil, or another fuel.
    (b) Feedstocks.
    (c) Diesel and gasoline blendstocks.
    (d) Chemicals, waxes, or lubricants.
    (e) Other raw materials or intermediate or final products.

    § 403.703(26), Fla. Stat.

15. A "post-use polymer" means a **plastic** polymer that is derived from **any domestic, commercial, or municipal activity** and which might otherwise become waste if not converted to manufacture crude oil, fuels, or other raw materials or intermediate or final products using gasification or pyrolysis. As used in Part IV, Chapter 403, Florida Statutes, post-use polymer may contain incidental contaminants or impurities, such as paper labels

or metal rings. Post-use polymers intended to be converted as described in this subsection are not solid waste. § 403.703(24), Fla. Stat.

16. "Manure" means a solid waste composed of excreta of animals, and residual materials that have been used for bedding, sanitary or feeding purposes for such animals. Fla. Admin. Code R. 62-701.200(69).

17. "Agricultural wastes" means the solid wastes resulting from normal farming operations, the raising and slaughtering of animals, and the processing of animal products, orchard, and field crops, which are stored, transported, or disposed of as an unwanted waste material. Fla. Admin. Code R. 62-701.200(2).

18. "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial solid waste. Fla. Admin. Code R. 62-701.200(22).

DESCRIPTION OF HOW THE STATUTES, RULES, OR ORDERS MAY SUBSTANTIALLY AFFECT THE PETITIONER IN THE PETITIONER'S PARTICULAR SET OF CIRCUMSTANCES

19. The Legislature has found that inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances. § 403.702(1)(a), Fla. Stat. Petitioner, given the proximity of its property to the site of the pending applications and ability to satisfy the standing requirements to challenge the agency action on these applications pursuant to Chapter 120, Florida Statutes, needs the Department's opinion on the following questions of interpretation.

20. The Department, through the Department of Health-Palm Beach County, is currently processing applications for the construction and operation of facility that proposes to

process **equestrian bedding** into biochar using **pyrolysis** within 500 feet of Petitioner's residential property, including an 'Application for Air Permit- Non-Title V Source' to install a **pyrolysis process** to produce biochar from used equestrian bedding. Petitioner seeks the Department's opinion on whether "manure" as defined by agency meets the applicable statutory definition of "post use polymer." Petitioner needs the Department's interpretation of whether the statutory definition of "post use polymer" extends beyond what is **"derived from any domestic, commercial, or municipal activity**" to include "agricultural wastes" as the term is defined in agency rule.

21. Per the statements made by the applicant and contained in the 'Application for Air Permit- Non-Title V Source', the facility is not subject to federal standards. Petitioner needs the Department's opinion of § 403.7045(1)(c), Fla. Stat., specifically whether a facility using a pyrolysis system to produce biochar from used shavings separated from horse manure is regulated under the Clean Air Act, Pub. L. No. 95-95. Petitioners need the Department's opinion on agency regulation of emissions to the air from the pending stationary installation, specifically whether the emissions may be regulated by the Department if the waste or activity at the facility is not subject to federal standards.
22. Per the statements made by the applicant and contained in the 'Application for Air Permit- Non-Title V Source' the facility does not require a Prevention of Significant Deterioration (PSD) or Non-Attainment New Source Review (NNSR) permit. Petitioner needs the Department's opinion on § 403.7045(1)(c), Fla. Stat., specifically whether the waste source and activities are exempt from Department regulation, precluding Petitioner with any ability to intervene or challenge final agency action. Petitioner needs the Department to interpret and provide an opinion of its ability to regulate emissions to the air from the horse

manure that will be separated from the used bedding and handled, stored, and transported off-site for disposal. Petitioners need the Department's opinion, as up to 500 tons of horse manure with used bedding, will be transported to the site, which is within 500 feet of its residential property.

23. Per the statements made by the applicant and contained in the 'Application for Air Permit-Non-Title V Source' the facility category does not fall within sources that are under the jurisdiction of Florida DEP, such as electrical power plants, Portland cement manufacturing plants, fertilizer plants, pulp and paper mills, sugar mills, and waste-to-energy facilities. The Petitioner needs the Department's opinion on § 403.7045(1)(c), Fla. Stat., specifically whether the waste source and activities are exempt from Department regulation, precluding Petitioner with any ability to intervene or challenge final agency action. Petitioner needs the Department to interpret and provide an opinion of its ability to regulate emissions to the air from the horse manure that will be separated from the used bedding and handled, stored, and transported off-site for disposal. Petitioners need the Department's opinion, as up to 500 tons of horse manure with used bedding, will be transported to the site, which is within 500 feet of its residential property.

Certificate of Service

This Petition was filed on the 4th day of February 2026, with the Agency Clerk of the Department of Environmental Protection, by electronic mail delivery to agency_clerk@dep.state.fl.us.

KATIE A. EDWARDS-WALPOLE, P.A.
Attorney for Petitioner
300 S. Pine Island Rd., Suite 201
Plantation, FL 33324
Phone: (305) 281-7323

E-Mail: katie@flfarmlaw.com
Secondary: kg@flfarmlaw.com

By: */s/Katie A. Edwards-Walpole*
Katie A. Edwards-Walpole, Esq.
Florida Bar No. 107325

Exhibit 3

RECEIVED
February 11, 2026
Dept. of Environmental Protection
Office of General Counsel

STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Petition for Declaratory Statement Filed by Arion Holdings, LLC
_____/

FAR NIENTE STABLES IX, LLC AND AGRICULTURAL BLENDING COMPANY, LLC'S MOTION TO INTERVENE AND MOTION TO DISMISS PETITION FOR DECLARATORY STATEMENT

Far Niente Stables IX, LLC and Agricultural Blending Company, LLC ("Intervenors"), by and through its undersigned counsel in this matter and pursuant to R. 28-106-204, Florida Administrative Code ("F.A.C."), moves to intervene for the limited purpose of moving the Florida Department of Environmental Protection ("FDEP") to dismiss the Petition for Declaratory Statement ("Petition") filed by Arion Holdings, LLC ("Petitioner") on January 30, 2026.

I. BACKGROUND

1. On January 30, 2026, Petitioner filed a Petition requesting a declaratory statement concerning the FDEP's interpretation of certain statutes, rules and orders. Specifically, Petitioner seeks a declaratory statement on the following: a) whether compliance with R. 62-110.106(9), F.A.C. is required prior to issuance of both a solid waste management facility permit and a source-separated management facility registration issued pursuant to § 403.707, Fla. Stat.; b) whether the permit applicant proposing to receive, store, process, transport, or handle up to 500 tons of horse manure per day can provide reasonable assurances that the activity will not have an adverse effect on land values, and create public nuisances; and c) whether the statutory notice requirement in § 403.707(11), Fla. Stat., applies to applications and renewals to operate a source

separated organics processing facility. The Petition is nothing more than a collateral attack on pending permit applications before the FDEP.

2. Intervenors have standing under R. 28-105.0027, F.A.C., by virtue of being the "other party" and the owner and operator of the project and facility that is the improper target of the Petition. Intervenors are the owners and operators of the "adjacent property" identified in the Petition.

II. LEGAL STANDARD

3. Section 120.565, Fla. Stat., and R. 28-105.001, F.A.C., establish the legal authority pursuant to which the FDEP may lawfully issue declaratory statements. Section 120.565, Fla. Stat., provides that:

> (1) Any **substantially affected person** may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency **as it applies to the petitioner's particular set of circumstances.**
>
> (2) The petition seeking a declaratory statement shall state with particularity ***the petitioner's set of circumstances*** and shall specify the statutory provision, rule, or order that the petitioner believes may ***apply to the set of circumstances***.

§ 120.565(1), Fla. Stat. (emphasis added). Further, R. 28-105.001, F.A.C., states in pertinent part that:

> A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may ***apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.***

R. 28-105.001, F.A.C. (emphasis added). If a petitioner is not substantially affected or fails to present its own particularized set of circumstances, the agency lacks statutory authority to issue a declaratory statement, and dismissal is required.

III. SUMMARY OF ARGUMENNT

4. Intervenors only seek to participate in this process for an improper purpose to request the FDEP dismiss the Petition. The Petition should be dismissed because the Petitioner: a) improperly requests a declaratory statement concerning the conduct of another person (Intervenors); b) Petitioner lacks standing as it fails to demonstrate it is a "substantially affected person" and fails to identify their own "particular set of circumstances" for which FDEP must resolve questions or doubts as to how the statutes, rules, or orders may apply; and c) inappropriately requests FDEP issue a broad statement of general applicability amounting to a rule.

IV. MEMORANDUM OF LAW

A. The Petition Improperly Seeks a Declaration Regarding the Conduct of Others.

5. It is well established under Florida law that a declaratory statement cannot be used to determine the conduct of a person other than the petitioner. Sec. 120.565, Fla. Stat.; R. 28-105.001, F.A.C.; *Carr v. Old Port Property Owners Association, Inc.*, 8 So.3d 403, 404 (Fla. 4th DCA 2009). As summarized in Paragraph 1 above, Petitioner seeks a declaration regarding the conduct of others, specifically the application of statutes and rules related to FDEP's evaluation of Intervenors' permit application and certain notice requirements that may be applicable to Intervenors' permit applications.

6. On its face, this is an improper petition for a declaratory statement. Requests for declaratory statements cannot be made seeking the effect of a statute, rule, or order to a third

party, including a state agency. R. 28-105.101, F.A.C.; *Manasota-88, Inc. v. Gardinier, Inc.*, 481 So.2d 948, 949-50 (1st DCA 1986) (upholding agency denial of petition for declaratory statement concerning the applicability of air pollution permit statutes to a third party); *see also Kahn v. Office of Ins. Regulation,* 881 So. 2d 699 (Fla. 1st DCA 2004) (affirming dismissal of a petition for declaratory statement where petitioner inappropriately sought a statement regarding the conduct of an agency rather than its own conduct). *In Re: Ty M. Mullins, Petitioner*, 2008 Fla. ENV LEXIS 207 (dismissing petition after finding it sought a declaration related to the conduct of county officials, not the petitioner). The Petition is an attempt to seek a declaratory statement regarding the conduct of Intervenors and FDEP and not concerning the particular circumstances of the Petitioner. Accordingly, if FDEP were to issue the requested declaratory statement, FDEP would exceed its authority under Section 120.565, Fla. Stat., and R. 28-105.101, F.A.C. Therefore, the Petition should be dismissed.

B. The Petitioner Lacks Standing as the Petition Does Not Set Forth Facts Demonstrating that it is a "Substantially Affected Person" or that the Cited Statutes and Rules Apply to its own "Particular Set of Circumstances."

7. The FDEP's authority to issue a declaratory statement is limited "to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the ***petitioner's particular set of circumstances***." Sec. 120.565, Fla. Stat. (emphasis added). Rule 28-105.002 (5), F.A.C. states clearly that the petition for declaratory statement must set forth "a description of how the statues, rules, or orders ***may substantially affect the petitioner's particular set of circumstances***." (emphasis added). The purpose of a declaratory statement is "to answer the petitioner's questions about how the statutes or rules apply to his own circumstances so that he may select a proper course of action." *Carr* 8 So.3d at 404; *Sutton v. Department of Environmental Protection,* 654 So. 2d 1047, 1048 (Fla. 5th DCA 1995) ("A declaratory statement

cannot be issued for general applicability" and are appropriate only when they deal with a petitioner's particular set of circumstances).There should be no doubt that the petitioner for a declaratory statement can only seek a declaration regarding the application by an agency of statutes, rules or orders to itself, and not to any others.

8. Additionally, to qualify for issuance of a declaratory statement from an agency, a petitioner must be "a substantially affected person" who seeks such a statement as to how the application of an agency's statutes, rules or orders may affect themselves and not others. Sec. 120.565, Fla Stat; R. 28-105.001, F.A.C. The test for standing to obtain a declaratory statement is similar to standing for administrative challenges. See, *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981)("A 'substantially affected' petitioner must demonstrate that: 1) he will suffer an injury in fact of sufficient immediacy to entitle him to a [declaratory statement], and; 2) that his substantial injury is of a type or nature the proceeding is designed to protect.").

9. Petitioner sets forth no facts or circumstances which demonstrate the applicability of the identified statutes and rules to its own him him particular set of circumstances. Instead, the Petitioner impermissibly seeks a broad declaratory statement of general applicability, that only applies to the permit application of a third-party (Intervenor) and does not apply to the Petitioner itself.

10. Further, Petitioner fails to meet either prong for standing set out above in *Agrico*. First, the petitioner has not alleged any "facts specific to the nature of injury" it expects to have applied to itself by the FDEP to determine whether any injury or affect from application of FDEP statutes, rules or orders to it will occur in any manner. Secondly, the extent to which the petition seeks a declaratory statement that may only affect the conduct of others and not itself is not the

type or nature of action the declaratory statement proceeding is designed to protect. Therefore, Petitioner lacks standing and FDEP lacks authority to issue a declaratory statement in this circumstance.

C. The Petition Improperly Seeks a Broad Statement of General Applicability

11. The case law is clear and on point. While a declaratory statement may be issued even if it may affect not only the petitioner, but also others within a limited group, it should not be issued if the declaration requested is a statement of general applicability that would amount to a rule. *Lennar Homes, Inc. v. Department of Business and Professional Regulation*, 888 So. 2d 50, 51 (Fla. 1st DCA 2004) (an agency may not issue a general policy of far-reaching applicability through a declaratory statement proceeding). The First District Court of Appeal has stated:

> *Although the line between the two is not always clear, it should be remembered that declaratory statements are not to be used as a vehicle for the adoption of broad agency policies. Nor should they be used to provide interpretations of statutes, rules or orders which are applicable to an entire class of persons. Declaratory statements should only be granted where the petition has clearly set forth facts and circumstances which show that the question presented relates only to the petitioner and his particular set of circumstances. Thus, petitions which provide only a cursory factual recitation or which use broad, undefined terms ... should be carefully scrutinized ...*

Fla. Optometric Association v. Department of Professional Regulation, 567 So. 2d 928, 937 (Fla. 1st DCA 1990).

12. In this case, Petitioners do not seek a declaration that would apply to them. Rather, they seek one that could apply to and affect all entities seeking authorizations for solid waste

management facilities, source-separated management facilities, and entities handling more than 500 tons per day of horse manure. The stark reality is that the Petitioner seeks statements of general applicability that would apply broadly to entire classes of applicants, but not to the Petitioner's own circumstances. Indeed, the declaration Petitioner's seek would be tantamount to FDEP creating a "rule" which is defined in Section 120.52(16), Fla. Stat., as follows:

> (16) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

13. It is apparent on the face of the petition that this is nothing more than a collateral attack on a pending project. Here, Petitioner's request seeking a declaratory statement on whether applicants proposing to store, process, transport, or handle 500 tons of horse manure per day can provide reasonable assurances that the activity will not have an adverse effect on land values, and create public nuisances, reveals it's true objective. Moreover, Petitioner invites FDEP to identify a process for evaluating a class of applicant outside the rule making process. Because declaratory statements should not be used as a vehicle for the adoption of broad agency policies, see *Fla. Optometric Association*, 567 So. 2d at 937, Petitioner's request should be denied.

V. CONCLUSION

14. Because Petitioner has not set forth facts demonstrating that it is a "substantially affected person" or that the cited statutes and rules apply to its own "particular set of circumstances" the FDEP lacks authority to issue a declaratory statement. The Petitioner instead impermissibly

seeks determinations regarding third-parties and broad policy questions, which do not meet the legal requirements for proper use of petitions for declaratory statements.

REQUEST FOR RELIEF

WHEREFORE, Intervenors, Far Niente IX, LLC and Agricultural Blending Company, LLC respectfully requests that this Motion for Leave to Intervene in Proceedings and Motion to Dismiss Petition for Declaratory Statement be granted and that the Florida Department of Environmental Protection accept this filing and dismiss the Petition for Declaratory statement with prejudice, based on the grounds articulated above.

Respectfully submitted this 11th day of February, 2026.

/s/ John J. Fumero
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