



Jeb Bush
Governor

Department of Environmental Protection

Northwest District
160 Governmental Center
Pensacola, Florida 32502

David B. Struhs
Secretary

December 1, 2003

CERTIFIED MAIL
RECEIPT REQUESTED

In the matter of an
Application for Variance
by:

Premier Chemicals, LLC
c/o Stephen A. Becker
Vice President, General Counsel and Secretary
850 First Avenue
King of Prussia, PA 19406

DEP File No. FL0002607
OGC File No. 03-630
Gulf County

AGENCY ACTION ON PETITION FOR VARIANCE
UNDER SECTION 403.201, F.S.

The Department of Environmental Protection hereby gives notice of its intent to grant a variance from Rule 62-302.500(1)(a)4, F.A.C., the minimum criteria for acute toxicity and Rule 62-4.244(3)(a), F.A.C., which limits acute toxicity for Premier Chemicals, LLC's discharge into a barge basin of the Gulf County Canal, a Class III marine waterbody. The Department intends to grant the variance pursuant to the provisions of Section 403.201, Florida Statutes (F.S.).

Premier Chemicals, LLC filed with the Department a Petition for Variance pursuant to Section 403.201(1)(a), F.S., and in accordance with Rule 62-110.104, F.A.C.; the petition is for renewal of an existing variance. A \$6000.00 variance processing fee was received on July 31, 2002.

The Department intends to grant this variance subject to the following findings and conditions:

Findings:

1. Premier Chemicals, LLC (Premier) operates a magnesium hydroxide production plant (Facility) located on State Road 382, Port St, Joe, Gulf County, Florida. Premier operates the Facility pursuant to NPDES Permit No. FL0002607, issued on January 30, 1998, and Variance OGC No. 99-1144 granted on August 30, 1999. The current permit authorizes mixing zones for pH & Chronic Toxicity and a variance for the limit for acute toxicity in a mixing zone.
2. On July 31, 2002, Premier concurrently applied for renewal of Permit No. FL0002607, requested renewal of mixing zones for pH and Chronic Toxicity and petitioned for renewal of the variance for acute toxicity. The renewal application and petition for variance were made complete on December 16, 2002.
3. The manufacturing process at the Premier Facility removes magnesium from seawater. The process does not substantially introduce pollutants into the seawater it discharges; however, it adds calcium during the process. Studies have determined that the apparent acute toxicity is due to an ionic imbalance that results from the exchange of calcium and magnesium in the seawater during the manufacturing process. The Facility's inability to meet the acute toxicity requirements of Rules 62-302.500(1)(a)4 and 62-4.244(3)(a), F.A.C., has been attributed to the imbalance of the calcium ion.

4. Effluent from the Facility fails to meet the 50 percent survival rate requirement for acute toxicity of Rules 62-302.500(1)(a)4 and 62-4.244(3)(a), F.A.C. The hydrodynamics of the receiving waters are such that a mixing zone is not permitted for discharges with a survival rate of less than 50 percent. Thus, Premier is unable to obtain a mixing zone to allow its seawater discharge to mix with receiving waters prior to compliance.
5. There are no practicable means available for adequate control of the pollution involved as defined by Section 403.201(1)(a), F.S. Dilution with additional seawater or diversion of the discharge to another location are the only currently available treatment technologies that could address this issue; both are impractical due to cost.
6. Studies and historical data indicate that acute toxicity has not been exhibited beyond the barge basin. The discharge will comply with the acute toxicity levels required by rule prior to exiting the barge basin and prior to reaching the Gulf County Canal, a Class III water.
7. A variance for acute toxicity is contingent upon the facility's ability to obtain mixing zones for chronic toxicity and pH. The facility concurrently requested mixing zones for chronic toxicity and pH. Mixing zones for chronic toxicity and pH will be granted by Rule to allow the discharge to mix with ambient waters. The requirements of Rule 62302.530(62), F.A.C., for chronic toxicity, and Rule 62-302.530(52)(c), F.A.C., for pH, must be met as specified in Wastewater Permit No. FL0002607, PA File No. FL0002607-005-IW1S.
8. Premier has addressed all of the provisions of Rule 62-110.104, F.A.C. to the satisfaction of the Department.
9. Premier has demonstrated to the satisfaction of the Department that there is no practicable means known or available for the adequate control of the pollution involved with this discharge.

In accordance with Section 403.201(4), F.S., the following conditions are applicable to this variance:

1. The variance is granted under Section 403.201(1)(a), F.S., which limits variances to those cases where no practicable means are known or available for the adequate control of the pollution at the site. The Department grants these variances for a period not to exceed five years or the life of a permit. This variance shall expire upon expiration of the facility's Wastewater Permit No. FL0002607 to be issued pending final action by the Department on the application for renewal, PA File No. FL0002607-005-IW1S.
2. Application for renewal of this variance shall be made no less than 180 days prior to the expiration date of the variance.
3. Requirements of Rule 62-302.500(1)(a)4, F.A.C, must be met at a distance no greater than 45 meters from the discharge point in the barge basin. Requirements of Rule 62-4.244(3)(a) must be met at a distance no greater than 30 meters from the discharge point in the barge basin.

Under Section 403.815, Florida Statutes, and Rule 62-110.106, Florida Administrative Code, you are required to publish at your own expense the enclosed Notice of Proposed Agency Action. The notice must be published one time only within 30 days in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, Florida Statutes, in the county where the activity is to take place. Where there is more than one newspaper of

general circulation in the county, the newspaper used must be one with significant circulation in the area that may be affected by the action. If you are uncertain that a newspaper meets these requirements, please contact the Department at the address or telephone number listed below. You must provide proof of publication to the Department, at the Department of Environmental Protection, Northwest District Office, 160 Governmental Center, Pensacola, Florida, 32501, within seven days of publication.

The Department will issue the variance unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, Florida Statutes, within twenty-one days of receipt of notice. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's proposed decision may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, Florida Statutes. The petition must contain the information set forth below and 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.

Under Rule 62-110.106(4), Florida Administrative Code, a person may request enlargement of the time for filing a petition for an administrative hearing. The request must be filed (received by the clerk) in the Office of General Counsel before the end of the time period for filing a petition for an administrative hearing.

Petitions by the applicant or any of the persons listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), Florida Statutes, must be filed within twenty-one days of publication of the notice or within twenty-one days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within twenty-one 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 or request for enlargement of time within twenty-one days of receipt of notice shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, Florida Statutes. 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, Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; the Department case identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department action;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

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 addition to requesting an administrative hearing, any petitioner may elect to pursue mediation. The election may be accomplished by filing with the Department a mediation agreement with all parties to the proceeding (i.e., the applicant, the Department, and any person who has filed a timely and sufficient petition for a hearing). The agreement must contain all the information required by Rule 28-106.404, Florida Administrative Code. The agreement must be received by the clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within ten days after the deadline for filing a petition, as set forth above. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for holding an administrative hearing and issuing a final order. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons seeking to protect their substantial interests that would be affected by such a modified final decision must file their petitions within twenty-one days of receipt of this notice, or they shall be deemed to have waived their right to a proceeding under Sections 120.569 and 120.57, Florida Statutes. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57 remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

Executed in Pensacola, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Mary Jean Von
Director of District Management
160 Governmental Center
Pensacola, FL 32501-5794
(850) 595-8300
(850) 595-8417 FAX

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this NOTICE OF AGENCY ACTION was mailed before the close of business on 12-01-03.

FILING AND ACKNOWLEDGMENT

FILED, on this date, under Section 120.52, Florida Statutes, with the designated Department clerk, receipt of which is hereby acknowledged.

Brandi M. Smith 12-01-03
[Clerk/Deputy Clerk] [date]

Copies furnished electronically to:

EPA Region 4, Water Management Division, Surface Water Permits and Facilities Branch
(buff.virginia@epa.gov)
NFWFMD, Division of Resource Management, (Attn: Chief Bureau of Environment & Resource Planning
- Duncan J. Cairns) (duncancairns@nfwfmd.state.fl.us)
Florida Fish & Wildlife Conservation Commission (Attn: Director, Office of Environmental Services
- Bradley Hartman) (bradley.hartman@fwc.state.fl.us)
U.S. Fish & Wildlife Service, Panama City (Attn: Project Leader Gail A. Carmody) (panamacity@fws.gov)
District Engineer, U.S. Corps of Engineers - Jacksonville (John.R.Hall@saj02.usace.army.mil)
National Marine Fisheries Service - St. Petersburg (Attn: Eric Hawk) (eric.hawk@noaa.gov)
National Marine Fisheries Service - Panama City (Attn: W. Mark Thompson) (mark.thompson@noaa.gov)
Florida Department of State, Division of Archives and History (Attn: Director Division of Historical
Resources - Janet Synder Matthews) (c/o Scott Edwards) (sedwards@mail.dos.state.fl.us)
Florida Department of Community Affairs (Attn: Ray Eubanks)(ray.eubanks@dca.state.fl.us)
Chair, Gulf County Commission (gulfcodmn@gtcom.net)
Environmental Health Director, Gulf County Public Health Department (david_fuze@doh.state.fl.us)
Carol Moore, Pensacola Gulf Coast Keepers (Gckeeperivers@cs.com)
David Ludder, Esq., LEAF (dludder@leaflaw.org)
Linda Young, Clean Water Network, Southeast Regional Office (llyoung@igc.org)
Henry Hernandez, FDEP Panama City Branch Office (charlotte-ann.filloramo@dep.state.fl.us)
James O. Williams, Operations Manager, Premier Chemicals, LLC, Port St. Joe
(jwilliams@premierchemicals.com)
Shannon E. Crane, Process Control Engineer, Premier Chemicals, LLC, Port St. Joe
(scrane@premierchemicals.com)
Ivan B. Chou, P.E., Environmental Consulting & Technology, Inc. (ichou@ectinc.com)

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF PROPOSED AGENCY ACTION

The Department of Environmental Protection gives Notice of Intent to grant Premier Chemicals, LLC's petition requesting a variance from the minimum criteria for acute toxicity requirements as specified by Rules 62-302.500(1)(a)4, and 62-4.244(3)(a) of the Florida Administrative Code (F.A.C.). Premier Chemicals is located on the Gulf County Canal on State Road 382, Port St. Joe, Gulf County. The petition for variance was made under Section 403.201(1)(a), Florida Statutes (F.S.).

The Department's files on these matters are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Northwest District Office, Water Facilities Program, 160 Governmental Center, Pensacola, Florida.

The variance, OGC File No. 03-630, shall be final on the date filed with the Clerk of the Department unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57 of the Florida Statutes 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 decision may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, Florida Statutes. The petition must contain the information set forth below and 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.

Under Rule 62-110.106(4), Florida Administrative Code, a person may request enlargement of the time for filing a petition for an administrative hearing. The request must be filed (received by the clerk) in the Office of General Counsel before the end of the time period for filing a petition for an administrative hearing.

Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), Florida Statutes, must be filed within twenty-one days of publication of the notice or within twenty-one days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within twenty-one 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 or request for enlargement of time within twenty-one days of receipt of notice shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, Florida Statutes. 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, Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; the Department case identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department action;

- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

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 addition to requesting an administrative hearing, any petitioner may elect to pursue mediation. The election may be accomplished by filing with the Department a mediation agreement with all parties to the proceeding (i.e., the applicant, the Department, and any person who has filed a timely and sufficient petition for a hearing). The agreement must contain all the information required by Rule 28-106.404, Florida Administrative Code. The agreement must be received by the clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within ten days after the deadline for filing a petition, as set forth above. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for holding an administrative hearing and issuing a final order. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons seeking to protect their substantial interests that would be affected by such a modified final decision must file their petitions within twenty-one days of receipt of this notice, or they shall be deemed to have waived their right to a proceeding under Sections 120.569 and 120.57, Florida Statutes. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57 remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.