



FLORIDA DEPARTMENT OF Environmental Protection

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December 2, 2022

SENT VIA EMAIL

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Lee County
Petition for Variance
Lake Fairways Wastewater Treatment Plant
North Fort Myers, Florida

OGC File No. 22-2681
PA File No. FLA014463-014-DWF

Submitted by:

Sam Cain, P.E.
Utility Engineer
Florida Governmental Utility Authority
280 Wekiva Springs Rd.
Suite 2070 Longwood, FL 32779
Scain@govmserv.com

**FINAL ORDER GRANTING PETITION FOR
VARIANCE FROM RULE 62-610.462(3), F.A.C., AND
REVISION OF PERMIT FLA014463**

On September 26, 2022, a petition for variance from requirements in Rule 62-610.462(3), 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 Florida Governmental Utility Authority (hereinafter “FGUA” or “Petitioner”), for its Lake Fairways Wastewater Treatment Plant (“LFWWTP”) located at US Hwy 41 and Lake Fairways Blvd., North Fort Myers in Lee County. Rule 62-610.462(3), F.A.C., provides in part 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.” Petitioner requested a permanent variance to further reduce the staffing requirement at its LFWWTP to 6 hours/day, 5 days/week, and one visit of one hour duration during the weekend, provided that the LFWWTP does not produce public access reuse water during the weekends. Petitioner seeks a variance in order to avoid the substantial economic hardship of providing a certified operator for 6 hours on each weekend day even though the LFWWTP rarely produces public access reuse water on weekends. A notice of receipt of the petition was published in the Florida Administrative Register on October 7, 2022. No comments have been received.

1. Petitioner’s address is: FGUA, 280 Wekiva Springs Rd., Ste 2070, Longwood, FL 32779.
2. Operation of the Petitioner’s LFWWTP is authorized by Department of Environmental Protection (“Department”) domestic wastewater facility permit number FLA014463 which expires on September 6,

2027.

3. Based on Rule 62-610.462(3), F.A.C., specific condition number V. A. 1. of permit number FLA014463 requires the petitioner to provide a class C or higher operator for a minimum of 6 hours per day, 7 days per week.

4. The applicable rule states in pertinent part 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 not produce public access reuse water during weekends and will 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. 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 September 6, 2027, subject to the four conditions (7a - 7d) below, and the last sentence of specific condition number V.

A. 1. of permit number FLA014463 is hereby replaced by the four conditions (7a – 7d) 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 of one hour duration during each weekend.

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. 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 Sam Cain, P.E., Utility Engineer, Florida Governmental Utility Authority, 280 Wekiva Springs Rd., Suite 2070, Longwood, FL 32779, email: scain@govmserv.com, 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, address and telephone number of each petitioner; 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 the material facts disputed by the petitioner, if any;

(e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;

(f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department 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 wants the Department to take with respect to the 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.

FGUA
Variance 22-2681
Operator Staffing

DONE AND ORDERED on December 2, 2022, in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jennifer Carpenter
Acting 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.

Barbara Browning December 2, 2022
Clerk Date

Copy furnished to:
Joint Administrative Procedures Committee, joint.admin.procedures@leg.state.fl.us