

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: PERIX INDUSTRIES
Petition for Variance

OGC File No.99-1173

FINAL ORDER GRANTING PETITION FOR
VARIANCE FROM RULE 62-522.300(2)(a)

On July 12, 1999, Perix Industries filed a petition for variance from requirements in rule 62-522.300(2)(a) of the Florida Administrative Code, under section 120.542 of the Florida Statutes and rule 28-104.002 of the Florida Administrative Code. The petition was for a variance from rule 62-522.300(2)(a), which prohibits a zone of discharge for discharges through wells, in order to use an in-situ remedial product. This product is used by injection through one or more temporary Class V underground injection control wells at the site of soil and ground water contamination. A notice of receipt of the petition was published in the Florida Administrative Weekly on August 13, 1999.

1. Petitioner is located at 100 Canterbury Circle, Niceville, Florida 32578.

2. Perix Industries markets a biodegradable product manufactured by International Enzymes, Inc., of Las Vegas, Nevada, for the remediation of ground water and soils contaminated with petroleum hydrocarbons. This product is called

HC-Zyme, which is used to enhance the biodegradation of contaminants in soil and ground water. The product is a mixture of simple sugars, amino acids, and other growth agents that are capable of stimulating bioremediation by the indigenous microbes at a contaminated site. The by-products from the microbial reactions are water and carbon dioxide. Actual full scale remediation efforts using this product have demonstrated a high degree of success in reducing the levels of petroleum contaminants, including MTBE.

3. Under rule 62-520.420 of the Florida Administrative Code, the standards for Class G-II ground waters include the primary and secondary drinking water standards of rules 62-550.310 and 62-550.320 of the Florida Administrative Code.

4. HC-Zyme is shipped as a liquid, which is then mixed with clean water before application by injection. The injected HC-Zyme (an aqueous solution of 6% by volume, maximum) may contain as much as 0.9 mg/L of iron, 0.17 mg/L of manganese, 705 mg/L total dissolved solids, and could have a pH as low as 4.6 units. The secondary drinking water standards for these parameters are iron at 0.3 mg/L, manganese at 0.05 mg/L, total dissolved solids at 500 mg/L, and pH with a range of 6.5 to 8.5. If these standards are exceeded, the area impacted would only be thirty-five feet from the point of injection and each parameter would meet its standard, or its naturally-occurring background level, within 365 days. No adverse impacts to human health are anticipated from

the iron, manganese, total dissolved solids, or pH because such exceedances will occur only within ground water already contaminated by petroleum hydrocarbons, and the ground water is not being used for domestic purposes. No other constituents from the use of the product will exceed any primary or secondary drinking water standard. Iron, manganese, total dissolved solids, and pH will return to meeting the respective secondary drinking water standard, or its naturally-occurring background level, within 365 days from injection.

5. The type of underground injection control wells will be Class V, Group 4, "injection wells associated with an aquifer remediation project," as described in rule 62-528.300(1)(e)4 of the Florida Administrative Code. Under rule 62-528.630(2)(c), "Class V wells associated with aquifer remediation projects shall be authorized under the provisions of a remedial action plan . . . provided the construction, operation, and monitoring of this Chapter are met."

6. The rule (62-522.300(2)(a)) from which this petition seeks a variance prohibits the Department from granting a zone of discharge for a discharge through an injection well to Class G-II ground water. Strict adherence to this rule would preclude the Department from granting approval for Perix Industries to use HC-Zyme as a remedial technology.

7. The applicable rules state in pertinent part:

62-522.300(1) . . . [N]o installation shall directly or indirectly discharge into any ground

water any contaminant that causes a violation in the ground water quality standards and criteria for the receiving ground water as established in Chapter 62-520, F.A.C., except within a zone of discharge established by permit or rule pursuant to this chapter.

62-522.300(2) No zone of discharge shall be allowed under any of the following circumstances:

(a) Discharges through wells or sinkholes that allow direct contact with Class G-I and Class G-II ground water

8. Perix Industries has stated in its petition that to apply the zone of discharge prohibition to its use of this remediation process would create a substantial hardship. Remediation would improve the water quality, and to prohibit any exceedance of the iron, manganese, total dissolved solids, or pH standards, all non-health-based standards, in such a small area of already contaminated ground water would create a substantial hardship. To use traditional methods for clean up would be more costly, would take longer, and would not be as effective. This small and temporary exceedance is not the usual occurrence, nor are most dischargers involved in the remediation of contaminated ground water. By allowing the use of HC-Zyme, the clean up of the contaminated ground water will be accelerated and returned to a usable condition. In addition, the use of HC-Zyme has been tentatively approved by the Department's Bureau of Petroleum Storage Systems as being a sound environmental solution to the contamination, so long as Perix Industries is able to obtain a variance.

9. Zones of discharge for the use of HC-Zyme are necessary because of the temporary exceedance of the iron, manganese, total dissolved solids, and pH standards in the ground water immediately surrounding the injection from the well. Because this ground water is contaminated and does not meet all applicable standards, allowing a zone of discharge as part of the approved remediation of organic contaminants meets the purpose of the underlying statute, which is to improve the quality of the waters of the state for beneficial uses. Such contaminated ground water would not be used for drinking purposes, thus posing no threat to human health.

10. The Department received no comments about the petition for variance.

11. For the foregoing reasons, Perix Industries has demonstrated that it is entitled to a variance from the prohibition of zones of discharge in rule 62-522.300(2)(a) for its remedial technology, with the conditions below:

a. Use of HC-Zyme must be through a Department-approved remedial action plan, or other enforceable document, and such approval shall not be solely by a delegated local program.

b. The discharge to the ground water must be through a Class V, Group 4 underground injection control well which meets all of the applicable construction, operating, and monitoring requirements of chapter 62-528 of the Florida Administrative Code.

c. The extent of the zone of discharge for iron, manganese, total dissolved solids, and pH shall be a thirty-five foot radius from the point of injection, and the duration of the zone of discharge shall be for 365 days from the date of injection.

d. The injection of the product shall be at such a rate and volume that no undesirable migration occurs of either the product or the contaminants already present in the aquifer.

e. The Department-approved remedial action plan (or other enforceable document) shall address appropriate ground water monitoring requirements associated with the use of HC-Zyme for remediation based on site-specific hydrogeology and conditions. These shall include ground water monitoring for the parameters pertinent to that process before the use of HC-Zyme, and monitoring of ground water down gradient from the injection points for at least one year after active remediation.

This final order will become final unless a 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 Perix Industries 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 30 days of receipt of such notice, regardless of the date of publication. A petitioner must mail a copy of the petition to Perix Industries, 100 Canterbury Circle, Niceville, Florida 32578, 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 of the Florida Administrative Code.

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; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

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.

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.

DONE AND ORDERED this 8th day of September 1999 in
Tallahassee, Florida.

Mini A. Erew

Mini A. Erew
Director,
Division of Water Resource
Management

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

S. Shields
Clerk

09. 9-99
Date

Copies furnished to:

Richard Ruscito, Petroleum Cleanup Section 4 ✓
Rich Deuerling, UIC
Brent Hartsfield, Waste Cleanup Cynthia Christen, GGC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Final Order has been furnished by facsimile to Terry L. Adair, at (850) 897-4546, and by U.S. Mail at Perix Industries, 100 Canterbury Circle, Niceville, Florida 32578 on this _____ day of September 1999.

Cynthia K. Christen
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