

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Global BioSciences, Inc.
Petition for Variance

OGC File No. 00-0939

FINAL ORDER GRANTING PETITION FOR
VARIANCE FROM RULE 62-522.300(2)(a), F.A.C.

On April 27, 2000, Global BioSciences, Inc., 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 its in-situ remedial product. This process involves the use of wells or borings which is considered installation of one or more temporary Class V underground injection control wells at the site of contamination. A notice of receipt of the petition was published in the Florida Administrative Weekly on May 19, 2000.

1. Petitioner is located at 608 Normandy Drive, Norwood, Massachusetts 02062.

2. Global BioSciences, Inc., wants to use in-situ biodegradation using butane and air in a process called Butane Biostimulation Technologies™ for the remediation of sites contaminated with chlorinated solvents, MTBE, and other petroleum products.

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. Butane Biostimulation Technologies™ enhance natural attenuation processes in soil and ground water. The byproducts from the microbial reactions are non-toxic, short-lived intermediates, and carbon dioxide and water. The process uses n-butane with a purity greater than 99%. Typical butane injection rates range from 2 to 16 cubic feet per day per injection point. Actual full-scale remediation efforts using this process have demonstrated high levels of success in reducing levels of chlorinated solvents, MTBE, and other petroleum contaminants. When butane is added to the ground water, it may temporarily exceed the Department's ground water cleanup target level (GCTL) of 9 parts per

million. The presence of butane above the suggested ambient concentration has no anticipated adverse impacts to human health because such exceedance will occur only in ground water at a site already contaminated by organics, and the ground water is not presently used for domestic purposes. No other constituents of the injected product or resulting remediation by-products will exceed any primary or secondary drinking water standard. The butane will return to meeting the GTCL within, at most, two years from injection.

5. The injection of this product through temporary wells or borings is considered a type of underground injection control well, 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 the in-situ use of Butane Biostimulation Technologies™ for remediation of contaminated ground water and soils.

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. Global BioSciences, Inc., 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 because the use of the process is to remediate contaminated ground water as quickly and inexpensively as possible, without causing further harm to the environment or public health. The petition also states that other methods of remediation not using in-situ products or processes are more costly and take longer. Remediation would improve the water quality, and to prohibit any exceedance of the GCTL in such a small area of already contaminated ground water and for short

duration would cause a substantial hardship. 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 the in-situ Butane Biostimulation Technologies™, the clean up of the contaminated ground water and soils will be accelerated and returned to a usable condition. In addition, the use of the in-situ Butane Biostimulation Technologies™ has been tentatively approved by the Department's Division of Waste Management as being a sound environmental solution to the contamination, so long as Global BioSciences, Inc., is able to obtain a variance.

9. Zones of discharge for the use of the in-situ Butane Biostimulation Technologies™ are necessary because of the temporary exceedance of butane in the ground water immediately surrounding the injection. Because this ground water is already contaminated and does not meet all applicable standards, allowing a zone of discharge as part of an approved remediation strategy for 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 is not presently 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, Global BioSciences, Inc., 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 product, with the conditions below.

a. Use of the in-situ situ Butane Biostimulation Technologies™ must be through a Department-approved remedial action plan, or other Department-enforceable document, for an aquifer remediation project 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 butane shall be a 100-foot radius from the point of injection and the duration of the zone of discharge shall be two years. This will allow ample time for the temporarily exceeded parameter to return to below the suggested ambient concentration.

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

e. The Department-approved remedial action plan shall address appropriate ground water monitoring requirements associated with the use of the in-situ Butane Biostimulation Technologies™ for remediation based on site-specific hydrogeology and conditions. These shall include the sampling of ground water at monitoring wells located outside the contamination plume, before use of the in-situ Butane Biostimulation Technologies™, to determine the background levels of butane which is the parameter pertinent to this variance. They should also include monitoring of this parameter in ground water downgradient from the injection points for at least two years after active remediation.

This order will become final 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 a 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 action may file for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions filed by the Global BioSciences, Inc., or any of the parties listed below must be filed within 21 days of receipt of this written notice. Petitions filed by any other persons other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within 21 days of publication of the public notice receipt of the written notice, 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. The petitioner shall mail a copy of the petition to Global BioSciences, Inc., 608 Normandy Drive, Norwood, Massachusetts 02062, 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 (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 of the 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 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 shall contain the same information as set forth above, as required by rule 28-106.301.

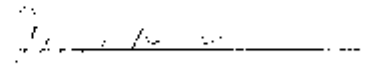
Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

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.

Any 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 9th day of June 2000 in
Tallahassee, Florida.


Yvonne A. Drew
Director

Division of Water Resources
Management

2620 Blair Stone Road
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Tallahassee, Florida 32399-2400
Telephone: (850) 487-1855

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.

Cheryl Burke
Deputy Clerk

June 9, 2000
Date

Copies furnished to:
George Heuler, UIC Section
Jeff Lockwood, Bur. Waste Cleanup
Brent Hartsfield, Bur. Waste Cleanup
Rick Ruscio, Petroleum Cleanup
Cynthia Christen, OGC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Final Order has been furnished to Felix Perriello by facsimile at 781/762-0590, and by U.S. Mail at Global BioSciences, Inc., 608 Normandy Drive, Norwood, MA 02060, on this _____ day of _____ 2000.

Cynthia K. Christen
Sr. Assistant General Counsel

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