

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: HSA Engineers & Scientists, Inc.

Petition for Variance

OGC File No. 00-2227

FINAL ORDER GRANTING PETITION FOR
VARIANCE FROM RULE 62-522.300(3), F.A.C.

On December 1, 2000, HSA Engineers & Scientists, Inc., filed a petition for variance from requirements in rule 62-522.300(2)(a) (renumbered in August 2000 as, and hereafter cited as, 62-522.300(3)) 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(3), which prohibits a zone of discharge for discharges through wells, in order to use its in-situ remedial technology. This technology 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 December 22, 2000.

1. Petitioner is located at 4019 E. Fowler Avenue, Tampa, Florida 33617.

2. HSA Engineers & Scientists, Inc., wants to use potassium lactate for enhanced in-situ reductive dechlorination for the remediation of chlorinated solvents, chlorinated pesticides, polychlorinated biphenyls, and other related compounds in soil and ground water.

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. The process uses a 60 per cent solution of potassium lactate in water as biological substrate to reduce dissolved oxygen and create reducing conditions in the subsurface. Under anoxic conditions, anaerobic bacteria have been shown to dehalogenate compounds through the replacement of halogens with hydrogen in the chemical molecule detoxifying the contaminant molecule. The end products from this reaction are chloride ions, ethane, and ethene. Upon injection, the secondary drinking water standards under section 62-550.320, F.A.C., for pH, color, chloride, and total dissolved solids may be exceeded in a small area of a fifty feet around the point of injection. The presence of pH outside the standard's range, and color, chloride, and total dissolved solids above the drinking water standards, (maximum contaminant levels "MCLs"), has no anticipated adverse impacts to human health because such exceedances will occur only in ground water at a site already contaminated by chlorinated solvents or other contaminants, 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 pH, color, chloride, and total dissolved solids will return to meeting the their respective standards, or natural background, whichever is less, within one year 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(3)) 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 potassium lactate 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(3) Other discharges through wells or sinkholes that allow direct contact with Class G-I, F-I, or Class G-II ground water shall not be allowed a zone of discharge.

8. HSA Engineers & Scientists, Inc., has stated in its petition that to apply the zone of discharge prohibition to its use of this remediation technology would create a substantial hardship because the use of the technology 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 secondary drinking water standards 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 injected potassium lactate, 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 injected potassium lactate has been tentatively approved by the Department's Division of Waste Management as being a sound environmental solution to the contamination, so long as HSA Engineers & Scientists, Inc., is able to obtain a variance.

9. Zones of discharge for the use of the injected potassium lactate are necessary because of the temporary exceedance of pH, color, chloride, and, total dissolved solids in the ground water immediately surrounding the injection. Because this ground water is already contaminated and does not meet all applicable standards or levels, 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, HSA Engineers & Scientists, Inc., has demonstrated that it is entitled to a variance from the prohibition of zones of discharge in rule 62-522.300(3) for its remedial product, with the conditions below.

a. Use of the injected potassium lactate 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 that 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 pH, color, chloride, and total dissolved solids shall be a 50-foot radius from the point of injection and the duration of the zone of discharge shall be 280 days from last injection. This will allow ample time for the temporarily exceeded parameters to return to below their respective drinking water standards, or natural background, whichever is less.

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 injected potassium lactate 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 potassium lactate, to determine the background levels of pH, color, chloride, and total dissolved solids, which are the parameters pertinent to this variance. Monitoring shall be required of all of these parameters in

ground water downgradient from the injection points for at least one year 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 HSA Engineers & Scientists, 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 the attorney representing HSA Engineers & Scientists, Inc., Ronald H. Noble, Fowler, White P.A., 501 E. Kennedy Boulevard, Suite 1700, Tampa, Florida 33602, 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 2nd day of February 2001 in Tallahassee, Florida.

Mimi Drew

Mimi A. Drew
Director
Division of Water Resource
Management

2600 Blair Stone Road
Mail Station 3500
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.

Lisa Suearengji
Clerk

2/5/01
Date

Copies furnished to:

George Heuler, UIC Section, MS 3530
Jeff Lockwood, Bur. Waste Cleanup, MS 4535
Brent Hartsfield, Bur. Waste Cleanup
Rick Ruscito, Petroleum Cleanup, MS 4580
Cynthia Christen, OGC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Final Order has been furnished to Ronald H. Noble, Esquire, by facsimile at 813/229-8313, and to him by U.S. Mail at Fowler, White, P.A., 501 E. Kennedy Blvd., Suite 1700, Tampa, Florida 33602 on this _____ day of _____ 2001.

Cynthia K. Christen
Sr. Assistant General

Counsel

Department of Environmental
Protection
3900 Commonwealth Blvd.
MS 35
Tallahassee, FL 32399-3000
Telephone 850/921-9610