

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: ConSeal International, Inc.
Petition for Variance

_____/ OGC Case No.: 01-1124

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

On July 9, 2001, ConSeal International, Inc., (ConSeal) filed a petition for variance from requirements in rule 62-522.300(3), 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 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 August 3, 2001.

1. Petitioner is located at 728 Industry Road, Longwood, Florida, 32750.

2. ConSeal wants to market a bioremediation product that contains hydrogen peroxide to clean up sites contaminated with petroleum hydrocarbons. This product is called BiOx.

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, F.A.C.

4. BiOx is a concentrated liquid that is diluted with water. The concentration of the hydrogen peroxide in the BiOx is

40 to 50% when shipped from the manufacturer. The concentration of the hydrogen peroxide in the BiOx (after it is diluted with clean water at a ratio of 1 to 1) when used for remediation of the contaminated sites will not exceed 30%. This Product is to be injected through wells or borings into the soil and ground water. The ultimate degradation products of petroleum hydrocarbon contamination when using BiOx for remediation are gaseous oxygen and water. Actual full-scale remediation efforts using this product have demonstrated success in reducing levels of petroleum contaminant concentrations. When this product is added to the contaminated ground water it may be exceeding the secondary drinking water standard for pH (standard 6.5 - 8.5 units) within an area extending out in a radius of 50 feet from the immediate point of injection. No other constituents of the injected product or resulting remediation will exceed any other primary or secondary drinking water standard.

5. On August 27, 2001, rule amendments were in effect that no longer require a variance for this kind of in-situ ground water remediation when only secondary drinking water standards will be exceeded. These rules, 62-522.300(2) and 62-528.605(3), F.A.C., require the inclusion of requirements for ground water monitoring and zone of discharge dimensions and duration to be addressed in a Department-approved remedial action plan. No variance is needed at this time.

6. The Department received no comments concerning the petition for variance.

Therefore, the petition for variance is dismissed as being unnecessary. Petitioner may proceed without a variance, so long

as the provisions of rules 62-522.300(2) and 62-528.605(3), F.A.C., (attached) are met.

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 ConSeal 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 ConSeal International, Inc., 728 Industry Road, Longwood, Florida 32750 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 2 day of October 2001 in Tallahassee, Florida.



Mimi A. Drew
Director
Division of Water Resource
Management
Department of Environmental
Protection

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Tallahassee, Florida 32399-2400
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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.



Clerk

10-02-01

Date

Copies furnished to:
George Heuler, MS 3530
Rick Ruscito, MS 4580

Jeff Lockwood, MS4535
Cathy McCarty, MS 3530
Brent Hartsfield, MS 4520
Cynthia Christen, MS 35
Richard Deuerling, MS3530

RECENT RULE AMENDMENTS

62-522.300 General Provisions for Ground Water Permitting and Monitoring.

(1) Unless exempted by Rule 62-520.500, 62-520.510, or 62-520.520, F.A.C., no installation shall directly or indirectly discharge into ground water any contaminant that causes a violation in the 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.

(2) Zones of discharge shall be allowed for projects or facilities that allow direct contact with ground water listed in (a) through (c) below, which provide beneficial discharges through wells to ground water as described in the cited rules.

(a) projects designed to recharge aquifers with surface water of comparable quality, or projects designed to transfer water across or between aquifers of comparable quality for the purpose of storage or conservation;

(b) facilities permitted under Rule 62-610.466 for aquifer storage and recovery of reclaimed water, 62-610.560(3) for ground water recharge by injection of reclaimed water, or 62-610.562(4) for creation of salinity barrier systems by injection of reclaimed water; and

(c) Department-approved aquifer remediation projects that use Class V, Group 4, underground injection control wells as described in Rule 62-528.600(2)(d), F.A.C. A zone of discharge shall be allowed for primary standards for ground water for closed-loop re-injection systems and for the prime constituents

of the reagents used to remediate site contaminants, and for the secondary standards for ground water, as specified in a Department-approved remedial action plan that addresses the duration and size of the zone of discharge, and ground water monitoring requirements.

(3) through (8) No change.

Specific Authority 403.061 FS. Law Implemented 403.021, 403.061, 403.087, 403.088 FS. History-- New 9-8-92, Amended 4-14-94, Formerly 17-522.300, Amended 12-9-96, 8-21-2000, 8-27-2001.

62-528.605 Well Construction Standards for Class V Wells.

(1) through (2) No change.

(3) Class V wells shall be constructed so that their intended use does not violate the water quality standards of Chapter 62-520, F.A.C., at the point of discharge, except where specifically allowed in Rule 62-522.300(2), F.A.C., provided that the drinking water standards of 40 C.F.R. pt. 142 (1994) are met at the point of discharge for projects and facilities described in Rule 62-522.300(2)(a) and (b), F.A.C. Migration or mixing of fluids from aquifers of substantively different water quality (through the construction or use of a Class V well) shall be prevented by preserving the integrity of confining beds between these aquifers through cementing or other equally protective method acceptable to the Department.

Specific Authority 373.309, 403.061, 403.087 FS. Law Implemented 373.308, 373.313, 373.323, 403.061, 403.062, 403.087 FS. History-- New 4-1-82, Amended 5-8-85, Previously numbered as 17-28.52, Formerly 17-28.520, 62-28.520, Amended 8-10-95, 6-24-97, 8-27-01.