

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:
Mr. John Buttrey
Buttrey Development Two, LLC
6239 Edgewater Drive, Suite D-1
Clarcona, Florida 32710-1029

SWVA No. 00-02
Buttrey Development/
Keene Road Disposal

ORDER GRANTING VARIANCE

The Department hereby gives notice that it is granting a variance to Buttrey Development (Petitioner) pursuant to Section 120.542, Florida Statutes (F.S.). Petitioner seeks a variance from Rule 62-701.340(4)(c), Florida Administrative Code (F.A.C.), which requires a minimum horizontal separation between waste deposits in a landfill and the landfill property boundary of 100 feet. Subject to the conditions specified below, this variance will allow Petitioner to construct and operate a Class III landfill within 100 feet of the property boundary.

FINDINGS OF FACT

1. The Petitioner is proposing to construct and operate a Class III landfill in Apopka, Florida. The Petitioner has filed permit applications for this facility with the Department's Central District office, which have been assigned numbers SC48-0165969-001 and SO48-0165969-002.

2. The proposed landfill site is currently a borrow pit which is excavated to within 50 feet of the property boundary on three sides. In order to meet the 100-foot setback required by Rule 62-701.340(4)(c), F.A.C., the Petitioner would have to refill parts of this borrow pit with clean fill and would lose up to 550,000 cubic feet of air space otherwise available for waste disposal.

3. The Petitioner has contacted all of the adjoining property owners. Of the six private owners, three have signed letters indicating that they have no objection to the proposed landfill, and the other three are under contract to sell their property to the Petitioner.

4. Orange County also owns property adjacent to the proposed landfill. Orange County has its own permitting program which includes setbacks, and has not at this point granted permission for the Petitioner to construct the landfill within 50 feet of its property boundary.

5. As part of this proposed disposal facility, the Petitioner is requesting a reduction in the required setback from 100 feet to 50 feet on three sides of the proposed landfill. The side fronting Keene Road is designed as a 400 foot setback and will stay that way throughout the life of the project.

6. In order to provide assurance that the reduced setback would not result in contamination of ground water outside of the property boundary, the Petitioner has proposed to construct a clay liner under the disposal area between 50 and 100 feet from the property boundary on three sides of the landfill. The liner would be sloped to convey leachate away from the property line and would meet the design specifications for a clay liner of Rule 62-701.400, F.A.C., including a construction quality assurance plan. The design of this liner will be specified in the Class III landfill permit application.

7. The Petitioner has agreed to design the ground water monitoring plan, stormwater control system, and access controls to accommodate the 50-foot setback. The operation plan shall also take into account the 50-foot setback. The design and operation plan will also be specified in the Class III landfill permit application.

8. On May 26, 2000, the Petitioner filed a Request for Variance seeking relief from the requirements in Rule 62-701.340(4)(c), F.A.C. Petitioner provided evidence that the requested relief, when considered in conjunction with the pending permit application, was not expected to cause any significant threat to public health or the environment.

CONCLUSIONS OF LAW

1. The Department concludes that, for the reasons stated in the petition and subsequent correspondence, the actions taken by the Petitioner are expected to meet the purpose of the underlying statute, and that the Petitioner would suffer an undue hardship if the variance was not granted.

2. This variance, by itself, does not constitute authorization for the Petitioner to construct or operate the proposed Class III landfill. The Petitioner shall not commence construction or accept waste unless and until the appropriate permits are issued by the Department's Central District Office.

For these reasons, the Petition for Variance is GRANTED, subject to the following conditions.

CONDITIONS

1. This variance will allow the Petitioner to dispose of solid waste within 50 feet of its property boundary on the west, south, and east sides of the property. It does not authorize disposal of waste less than 100 feet from the north side of the property fronting Keene Road, nor does it authorize disposal of waste outside of the permitted footprint of the landfill or in contravention of any permit conditions which may be imposed.

2. This variance will become effective only when the Department's Central District issues permit number SC48-0165969-001. This variance will be incorporated into that permit and will be reviewed at the time of permit renewal. However, unless the Department takes affirmative action to revoke or modify this variance, it will have an unlimited duration.

3. The issuance of this variance does not relieve the Petitioner from the need to comply with all conditions of the solid waste permit, or from any requirements of other federal, state, or local agencies.

Pursuant to Section 403.815, F.S., you are required to publish at your own expense the enclosed Notice of Proposed Agency Action. The notice shall be published one time only within 30 days in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. Where there is more than one newspaper of general circulation in the county, the newspaper used must be one with significant circulation in the area that may be affected by the permit. If you are uncertain that a newspaper meets these requirements, please contact the Department

at the address or telephone number listed below. You must provide proof of publication to the Department at the address listed below within seven days of publication.

In the alternative, you may include the following language in the notice of proposed agency action for the permit which authorizes the construction of the Class III landfill, provided that the public notice allows 21 days for the filing of any petition:

The Department of Environmental Protection also gives Notice of its Intent to grant a variance pursuant to Section 120.542, Florida Statutes (F.S.), to Buttrey Development Two, LLC as part of the proposed permit. The variance is from Rule 62-701.340(4)(c), Florida Administrative Code, which requires a minimum horizontal separation between waste deposits in a landfill and the landfill property boundary of 100 feet. This variance will allow Buttrey Development to construct and operate a Class III landfill within 100 feet of the property boundary.

The Department's Order Granting Variance will be considered 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 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 proposed agency action may petition 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 by the applicant or any of the parties listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by other persons must be filed within twenty-one days of publication of the notice or receipt of the written notice, whichever occurs first. The petitioner shall mail a copy of the petition to the applicant at the address indicated above 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 applicant's name and address, the Department File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;

(d) A statement of all material facts disputed by petitioner or a statement that there are no disputed facts;

(e) A statement of the ultimate facts alleged, including a statement of the specific facts which the petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wants the Department to take with respect to the Department's action or 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 shall contain the same information as set forth above, as required by Rule 28-106.301.

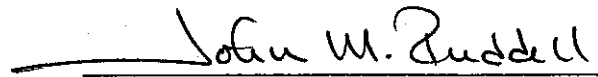
Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of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

Mediation is not available in this proceeding.

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 of appeal must be filed within thirty days after this order is filed with the clerk of the Department.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



John M. Ruddell, Director
Division of Waste Management
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

CERTIFICATE OF SERVICE

I, the undersigned designated Department clerk, HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States Mail to Mr. John Buttrey, Buttrey Development Two, LLC, 6239 Edgewater Drive, Suite D-1, Clarcona, Florida 32710-1029, on this 2nd day of November, 2000.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52(11), Florida Statutes, with the designated Department clerk, receipt of which is hereby acknowledged.

Patricia Lanjean
(Clerk)

11/2/00
(date)

Copies furnished to:

Chris McGuire, DEP

Jim Bradner, Central District

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF PROPOSED AGENCY ACTION

The Department of Environmental Protection gives Notice of its Intent to grant a variance pursuant to Section 120.542, Florida Statutes (F.S.), to Buttrey Development Two, LLC, 6239 Edgewater Drive, Suite D-1, Clarcona, Florida. The variance is from Rule 62-701.340(4)(c), Florida Administrative Code, which requires a minimum horizontal separation between waste deposits in a landfill and the landfill property boundary of 100 feet. This variance will allow Buttrey Development to construct and operate a Class III landfill within 100 feet of the property boundary.

The Department's file on this matter is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Division of Waste Management, Solid Waste Section, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

Persons whose substantial interests are affected by the above proposed agency action have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative determination (hearing) on the proposed action. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 21 days of publication of this notice. A copy of the petition must also be mailed at the time of filing to the applicant at the address indicated. Failure to file a petition within 21 days constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, F.S.

The petition shall contain the following information;

(a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;

(d) A statement of all material facts disputed by petitioner or a statement that there are no disputed facts;

(e) A statement of facts which the petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, 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 decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of publication of this notice in the Office of General Counsel of the Department at the above address. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, Florida Administrative Code.

In accordance with Section 120.573, F.S., the Department advises that mediation is not available in this case as an alternative to filing a petition for an administrative determination.