

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for waiver by:
Friends Recycling, L.L.C.
2350 NW 27th Avenue
Ocala, Florida 32824

OGC No.: 17-0048
SWVA No.: 17-1

ORDER GRANTING WAIVER

The State of Florida Department of Environmental Protection ("Department") hereby gives notice that it is granting a waiver to Friends Recycling, L.L.C., ("Petitioner") pursuant to section 120.542, Florida Statutes ("F.S."), for the facility at 2350 NW 27th Avenue, Ocala, Marion County, Florida ("Facility"), Latitude/Longitude: 29°12'02"/82°10'7.01". On January 25, 2017, the Petitioner submitted a petition for variance or waiver ("Petition for Waiver") to the Department. The Petitioner requests a waiver from paragraph 62-701.300(2)(b), Florida Administrative Code ("F.A.C."), which requires that solid waste shall not be stored or disposed within 500 feet of an existing or approved potable water well.

FINDINGS OF FACT

1. The Petitioner owns and operates a construction and demolition (C&D) disposal and yard trash processing facility at 2350 NW 27th Avenue, Ocala, Marion County, Florida. The Department has assigned WACS Number 21012 to the facility.

2. The facility encompasses approximately 56.65 acres, and the C&D disposal area consists of approximately 26.8 acres. The facility accepts C&D debris and yard waste, and removes recyclable materials from the waste stream at the working face. The recyclable materials include: untreated lumber, concrete, metals, plastics, etc.

3. On July 26, 2013, the Department issued Solid Waste Operation Permit Number 0019600-008-SO-24, for continued operation of the C&D disposal facility. The C&D disposal facility consists of two main cells, Cell #1 and Cell #2. Cell #1 is divided into Subcell #1A and Subcell #1B. Cell #2 is divided into Subcells #2A, #2B, and #2C. Due to the presence of existing off-site potable water wells to the west and north, specific language was included in Section 1.C. of the permit concerning the placement of C&D debris and clean debris in the various subcells, including Subcell 2B, to comply with the 500-foot setback requirement specified in 62-701.300(2)(b), F.A.C.

4. On October 28, 2014, the Department issued Minor Modification Permit Number 0019600-009-SO-MM, which allows the facility to operate a yard trash processing facility, and provided additional specific criteria for the placement of C&D debris and clean debris in Subcell #2B. Page 1, Section 1.C., third bullet item, indicated that “There are existing potable wells located to the west and southeast of the facility. A 500-foot separation must be maintained between the wells and authorized waste disposal areas”. As a result, only a small portion of Subcell #2B was allowed for the placement of C&D debris.

5. As part of Solid Waste Operation Permit Number 0019600-008-SO-24 and Minor Modification Permit Number 0019600-009-SO-MM, the facility has a groundwater monitoring plan that is maintained and is being implemented pursuant to 62-701.510, F.A.C.

6. At the present, there are three existing potable wells located off-site to the west of Subcell #2B which are in use and less than 500 feet from the facility. These are identified as “W7”, “W12” and “W13”. W7 is located approximately 430 feet to the west,

W12 is located is approximately 320 feet to the southwest, and W-13 is located approximately 310 feet to the southwest.

7. On January 25, 2017, the Petitioner submitted a request for waiver from the provision in 62-701.300(2)(b), F.A.C., which requires that no solid waste disposal is placed within 500 feet of an existing or approved potable water well. The waiver specifically requested that the facility be allowed to use the entire portion of Cell 2B for the placement of C&D debris. Along with the request for waiver, the Petitioner submitted a separate document entitled "Waiver Justification Report", which is dated January 16, 2017.

8. The information submitted by the Petitioner, based on multiple water level measurement events, indicated the existing off-site potable wells to the west are hydraulically upgradient from the facility, and the direction of groundwater flow is consistently to the east in the western portion of the facility. It was also indicated that no groundwater impacts or exceedances have been identified for designated parameters in Monitoring Well MW-6, which is located in the western portion of the facility. MW-6 is required to be sampled semi-annually as part of the facility's groundwater monitoring plan.

9. On January 30, 2017, the Department requested additional information be provided regarding the "Waiver Justification Report". This request included providing additional data and maps in support of the groundwater flow determination to the east and information for the site lithology in the vicinity of the western portion of the facility.

10. On March 27, 2017, the Petitioner submitted the additional information requested by the Department on January 30, 2017.

11. Based on the information submitted on January 25, 2017 and March 27, 2017, the Petitioner has demonstrated the direction of groundwater flow in the western portion of the facility is consistently to the east, and the area located off-site to the west which contains the three existing potable wells is hydraulically upgradient from the facility.

12. No comments have been received from the public in response to the Notice of Receipt of this waiver published in the Florida Administrative Register on February 1, 2017.

CONCLUSIONS OF LAW

1. Section 120.542, F.S., authorizes the Department to grant a waiver from any of its rules upon a demonstration that the purpose of the underlying statute will be achieved by other means and that application of the rule would create a substantial hardship or would violate principles of fairness.

2. The Petitioner has demonstrated through its Waiver Justification Report that it will suffer a substantial hardship if it is required to continue to place only clean debris in Subcell #2B, as would otherwise be required by Rule 62-701.300(2)(b), F.A.C., as Petitioner would be unable to use the disposal area to its full capacity, thereby, causing Petitioner a loss of potential revenue. The Petitioner has also demonstrated that granting the waiver would not be expected to have any adverse environmental consequences or impacts to the off-site potable wells W7, W12, and W13.

3. The Department concludes Petitioner has demonstrated that a waiver from the provision of Rule 62-701.300(2)(b), F.A.C. is warranted, that it would suffer a substantial hardship if the waiver was not granted, and that the grant of the waiver will be consistent with the general intent and purpose of Chapter 403, F.S.

4. This waiver, by itself, does not constitute authorization for Petitioner to proceed with the placement of C&D debris in Subcell #2B. This facility shall operate Subcell #2B only in accordance with the appropriate permits for the continued operation of the C&D disposal facility issued by the Department's Central District Office.

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

CONDITIONS

1. Petitioner shall operate the C&D facility in accordance with applicable permits issued by the Department, except the requirement of Rule 62-701.300(2)(b), F.A.C., which would otherwise require placement of clean debris in Subcell #2B, shall not apply.

2. Unless the Department takes affirmative action to revoke or modify this waiver; it shall not expire and shall have an unlimited duration.

3. The issuance of this waiver does not relieve the Petitioner from the need to comply with all conditions of the applicable solid waste permit, or from any applicable requirements of other federal, state, or local laws, including the requirements specified in Chapter 62-701.510, F.A.C.

NOTICE OF RIGHTS

The Department's Order Granting Waiver will be considered final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57, F.S., 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, F.S. 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, or by electronic mail at Agency_Clerk@DEP.state.fl.us.

Petitions by the applicant or any of the parties listed below must be filed within 21 days of receipt of this written notice. Petitions filed by other persons must be filed within 21 days of publication of the notice or receipt of the written notice, whichever occurs first. Under section 120.60(3), F.S., 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 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, F.S., 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, F.A.C.

A petition that disputes the material facts on which the Department's action is based must be in accordance with Rule 28-106.201, F.A.C., and contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

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

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's 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, F.A.C.

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

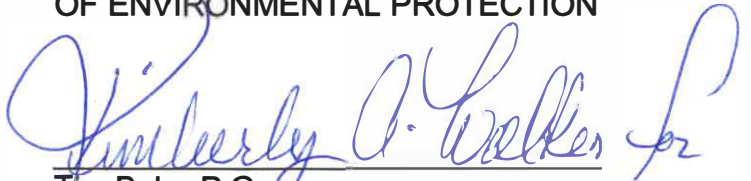
affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

In accordance with section 120.573, F.S., the Department advises that mediation is not available in this case under the provisions of that statute. This does not prevent any interested parties from agreeing to other forms of alternate dispute resolution.

Any party to this order has the right to seek judicial review of it under section 120.68, F.S., by filing a Notice of Appeal under Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, 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 30 days after this order is filed with the Clerk of the Department.

DONE AND ORDERED this 28 day of April, 2017, in Leon County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Tim Bahr, P.G.

Assistant Director

Division of Waste Management

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. Gerald Lourenco, Friends Recycling L.L.C., 2350 NW 27th Avenue, Ocala, Florida, on this 28 day of April, 2017.

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.

Hops Thigpen
(Clerk)

04/28/2017

(date)

Electronic copies furnished to:

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