Hg Variance

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412

ORDER GRANTING VARIANCE

By this order the Department of Environmental Protection (Department) takes agency action in response to a petition for variance filed by the Solid Waste Authority of Palm Beach County (SWAPBC) under Section 120.542, Florida Statutes (F.S.), which permits the granting of a variance when the person subject to a rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means or when application of a rule would create a substantial hardship or would violate principles of fairness. The petitioner seeks a variance from Rule 62-296.416(3)(b)2., Florida Administrative Code (F.A.C.).

Having considered Petitioner's request for variance and supporting documentation, the following Findings of Fact, Conclusions of Law, and Order are entered:

FINDINGS OF FACT

1. Petitioner's request for variance from the quarterly mercury testing requirements of Rule 62-296.416(3)(b)2., F.A.C., was received by the Department on May 29, 1997.

2. A notice of receipt of petition for variance was published in the Florida Administrative Weekly (F.A.W.) on June 13, 1997, in Volume 23, Number 24, page 2967. No comments were received concerning this petition for variance. A notice of the Department's intent to issue the variance was published in the F.A.W. on July 25, 1997.

3. Rule 62-296.416(3)(b)2., F.A.C., requires all municipal waste combustion (MWC) units using mercury waste separation (the removal of objects containing mercury from the waste stream before the waste is used as a fuel) to comply with the mercury emission limiting standard of Rule 62-296.416(3)(b)1., F.A.C., to demonstrate compliance with the standard by testing each MWC unit twice every calendar year. The testing of multiple units must be staggered so that at least one unit is tested every calendar quarter.

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4. The purpose of the quarterly testing requirement in Rule 62-296.416(3)(b)2., F.A.C., is to confirm that mercury emissions are being adequately controlled at those MWC facilities that use waste separation programs to reduce mercury emissions. In 1993, when Rule 62-296.416, F.A.C., was adopted by the Environmental Regulation Commission, it was unclear whether waste separation programs would adequately control the mercury emissions from MWC units. Given this uncertainty, the Department required quarterly stack testing for those MWC facilities that use waste separation programs. By comparison, the Department required annual stack testing in Rule 62-296.416(3)(a)3., F.A.C., and operating parameter monitoring in Rules 62-296.416(4)(b) and (5), F.A.C., for those MWC facilities that use post-combustion mercury control equipment to reduce mercury emissions.

5. Test results over the last eight years demonstrate that mercury emissions from the SWAPBC units have decreased.

6. From the time the mercury emission limiting standard was promulgated (October 1993) through January 1997, no single test of the SWAPBC units has exceeded 30 percent of the limit currently allowed and, when averaged, the test results are approximately 17 percent of the mercury limit currently allowed. Thus, there exists a substantial database demonstrating that the facility's mercury emissions are significantly less than the emissions allowed under Rule 62-296.416(3)(b)1., F.A.C.

7. Quarterly testing for mercury also poses practical problems and hardships for the SWAPBC. For most pollutants, the petitioner performs stack tests once each year. Quarterly testing requires SWAPBC to spend its manpower and other resources on the mobilization, setup, and initiation of the stack sampling on three extra occasions each year. Logistically and practically, it is not efficient or cost-effective to perform stack tests to measure only one parameter.

8. The conditions of this variance will provide a significant cost savings. SWAPBC estimates that annual testing rather than quarterly testing will save the citizens of Palm Beach County approximately $200,000 over the next 20 years.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to consider the petitioner's request pursuant to Section 120.542, F.S.

2. The Department has determined that the petitioner has complied with the requirements of the law and has provided sufficient information to enable the Department to evaluate the merits of the request.

3. In Section 403.021(3), F.S., the legislature declared the purpose of the Florida Air and Water Pollution Control Act to be, in part, "to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree

practicable, prevent injury to plant and animal life and property, ..." The Department's duty under Section 403.061(9), F.S., is to "[a]dopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state, and from time to time review and modify such program as necessary." The Department's authority and duty to "[c]ause field studies to be made and samples to be taken out of the air and from the waters of the state periodically and in a logical geographic manner . . . .," is declared in Section 403.061(12)(a), F.S. Further, under Section 403.061(13), F.S., the Department is granted the authority to "[r]equire persons engaged in operations which may result in pollution to file reports which may contain information relating to . . . rate and period of emission."

4. Petitioner's historical database of compliance, which has consistently been significantly below the emissions limits, demonstrates that the health and environmental concerns addressed by the underlying statute will be met with an annual testing requirement, thus avoiding the onerous and costly requirements of quarterly testing.

ORDER

Having considered Petitioner's request for variance and supporting documentation, it is hereby ordered that:

1. Petitioner's request for variance from the quarterly mercury testing requirements of Rule 62-296.416(3)(b)2., F.A.C., is granted subject to the terms of this Order.

2. The variance will permanently exempt SWAPBC from the quarterly mercury testing requirements of Rule 62-296.416(3)(b)2., F.A.C., and impose the annual mercury testing requirements of Rule 62-296.416(3)(a)3., F.A.C., applicable to MWC units using mercury control equipment rather than waste separation, provided that each future annual test demonstrates compliance with the mercury emission limiting standard of Rule 62-296.416(3)(b)1., F.A.C.

3. The Department retains the right to reinstate the quarterly testing requirement of Rule 62-296.416(3)(b)2., F.A.C., if compliance is not demonstrated by each annual test.

4. The variance shall not apply to any other new or existing state or federal rule which may require more frequent mercury testing.

RIGHT TO APPEAL

Once this variance becomes final and effective, any party to this variance has the right to seek judicial review of the variance pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department of Environmental Protection in the Office of

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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 filling fees with the appropriate District Courts of Appeal. The Notice of Appeal must be filed within 30 days from the date the Final Order is filed with the Clerk of the Department.

Executed in Tallahassee, Florida.

Issued this 25 day
of A + 1997

Howard L. Rhodes, Director
Division of Air Resources
Management

HLR/mh

cc: Michael Hewett, OPAPM
Linda Reel, Office of General Counsel
Isidore Goldman, Southeast District Office
James Stormer, Palm Beach County Health Dep.

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CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that copies of this Order Granting Variance were mailed before the close of business on the date indicated below to the listed persons.

Clerk Stamp

FILING AND ACKNOWLEDGMENT
Filed, on this date, pursuant to section 120.52(9) of the Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Charlotte J. Hayes 8/25/97
Clerk Date

Copies furnished to:
Palm Beach County Solid Waste Authority
David Dee
Isidore Goldman, Southeast District Office
James Stormer, Palm Beach County