



Division of Air Resource Management – Scanning Submission

FOLDER	FILE NAME
V62-252	2003_07-22 - ORDER - 03-0800

V + Chapter # (Variance Folder)	YYYY – MM – DD	Description	OGC/Docket #
		PETN NOTICE ORDER	

Example File Names:

2007-04-22-PETN-07-0123

1995-11-06-NOTICE-95-31R

SCANNING NOTES:

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(DEP USE: For PETN File Only)

Applicant Name: _____

Affected Rule Provision(s): _____

Type of Variance: 403.201 120.542 (circle one)

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:

Broward County Aviation Department
320 Terminal Drive
Ft. Lauderdale, Florida 33315

ORDER GRANTING VARIANCE

By this order the Department of Environmental Protection (Department) takes agency action in response to a petition for variance filed by Broward County Aviation Department 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 62-252.400, 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 Stage II vapor recovery requirements of Rule 62-252.400, F.A.C., was received by the Department on April 22, 2003.
2. A notice of receipt of petition for variance was published in the Florida Administrative Weekly (F.A.W.) on May 23, 2003, in Volume 29, Number 21, page 2126. No comments were received concerning this petition for variance.

3. Rule 62-252.400, F.A.C., requires Stage II vapor recovery systems for all gasoline dispensing facilities located in Broward, Dade and Palm Beach counties which commence construction or undertake a significant modification after November 15, 1992, prior to dispensing 10,000 gallons or more in any one month.

4. Petitioner is subject to the Stage II vapor recovery requirements of Rule 62-252.400, F.A.C., for the Ft. Lauderdale-Hollywood International Airport (Broward County) expansion program, consolidated rental car facility fueling area. After the expansion, the Petitioner expects to dispense at least 10,000 gallons per month.

5. Rule 62-252.400, F.A.C., requires that the Stage II vapor recovery system shall be 95% efficient in the recovery by weight of vapors displaced from a vehicular fuel tank during refueling.

6. Petitioner has estimated that 100% of the vehicles to be refueled at the consolidated rental car facility fueling area will be new vehicles equipped with on-board refueling vapor recovery (ORVR) technologies.

7. The design recovery efficiency of installed ORVR systems is 95%.

8. Petitioner estimates the cost of installation of Stage II vapor recovery will be \$250,000 to \$370,000 initially, with additional costs for maintaining the system.

9. By letter of July 18, 2003, the U.S. Environmental Protection Agency (EPA) stated that the Rule 62-252.400, F.A.C., Stage II vapor recovery provision is not mandatory for the Florida State Implementation Plan.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to consider the petitioner's request pursuant to Section 120.542, Florida Statutes. However, the rule from which a variance is requested has been approved by the U.S. Environmental Protection Agency (EPA) into the Florida State Implementation Plan (SIP) at 40 CFR Part 52, Subpart K. The Department is not authorized under the SIP to issue any variance or waiver from the rule except as a program change to the SIP in accordance with the procedures of 40 CFR Parts 51 and 52. Section 120.542, Florida Statutes, does not grant authority to issue this variance except in conformity with the federally delegated or approved program processes. Therefore, this variance cannot be effective until the EPA has approved the variance as a SIP change after publication in the Federal Register.

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." 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." Further, under Section 403.061(35), F.S., the Department is given the responsibility to "(e)xercise the duties, powers, and responsibilities required of the state under the federal Clean Air Act, 42 U.S.C. 65.7401 et seq."

4. Petitioner's use of on-board refueling vapor recovery technologies for all vehicles demonstrate that the health and environmental concerns addressed by the underlying statute will be met without Stage II vapor recovery systems, thus avoiding the onerous and costly requirements of Rule 62-252.400, F.A.C.

ORDER

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

1. Petitioner's request for variance from the Stage II vapor recovery requirements of Rule 62-252.400, F.A.C., is granted subject to the terms of this Order.

2. The variance will permanently exempt Broward County Aviation Department from the requirements of Rule 62-252.400, F.A.C., provided that Petitioner does not routinely refuel any vehicles without on-board refueling vapor recovery technologies.

3. The variance shall not apply to any other new or existing state or federal rule that may require Stage II vapor recovery.

4. Since EPA has determined that Rule 62-252.400, F.A.C., is not a mandatory requirement for the Florida SIP, this variance shall be effective unless EPA subsequently disapproves this variance as a revision to Florida's SIP.

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 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 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 22 day
of July, 2003

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Joe Kahn, Acting Director
Division of Air Resource
Management

HLR/bdh

cc: Brent Hartsfield, OPAPM
Pat Comer, Office of General Counsel
Tom Tittle, Southeast District Office
Daniella Banu, Broward Co. DPEP

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this ORDER GRANTING VARIANCE was sent by certified mail before the close of business on July 25, 2003 to the person(s) listed or as otherwise noted:

Delores Smith, Broward County Aviation Department, 320 Terminal Drive, Ft. Lauderdale, Florida 33315

The undersigned duly designated deputy agency clerk hereby certifies that a copy of this ORDER GRANTING VARIANCE was sent by U.S. Mail before the close of business on July 25, 2003 to the person(s) listed or as otherwise noted:

Tim Gallagher, URS Corp.
3550 SW 2nd Avenue
Ft. Lauderdale, Florida 33315

Clerk Stamp

FILING AND ACKNOWLEDGEMENT FILED, on this date, pursuant to § 120.52(7), Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Victoria Gibson July 25, 2003
(Clerk) (Date)