



Florida Department of
Environmental Protection
Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

File

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

August 20, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Combs Oil Co.
C/o Robert D. Fingar, Esq.
Frank, Gramling & Fingar
3323-C Thomasville Road
Tallahassee, Florida 32308

Re: Petition for Waiver
Combs Oil Co.
OGC #07-1046

Dear Mr. Fingar:

The Department of Environmental Protection (Department) has granted a variance under Section 120.542, Florida Statutes, from Paragraph 62-296.418(2)(b)2., Florida Administrative Code, for the Combs Oil Company bulk gasoline plant located at 76 Industrial Boulevard, in Naples, Florida. The Department's "ORDER GRANTING VARIANCE" is enclosed.

Sincerely,

Joseph Kahn, Director
Division of Air Resource Management

JK/lg/thl

cc: Mr. Dennis Combs, Combs Oil Co.
Ms. Patricia Comer, Senior Attorney, Office of General Counsel
Mr. Ajaya Satyal, Program Administrator, DEP South District Office

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:

Combs Oil Company
76 Industrial Blvd.
Naples, Florida 34104

ORDER GRANTING VARIANCE

By this order the Department of Environmental Protection (Department) takes agency action in response to a petition for variance filed by Combs Oil Company (Petitioner) 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 62-296.418(2)(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 vapor collection and control system requirements of Rule 62-296.418(2)(b)2., F.A.C., was received by the Department on May 30, 2007. A request for additional information was mailed to the Petitioner on June 21, 2007. A subsequent letter was mailed to the Petitioner on March 20, 2008, requesting that the information previously requested on June 21, 2007, be addressed, or the Department would evaluate the petition based on the information initially received. The additional information requested from the Petitioner was received by the Department on May 30, 2008.

2. A notice of receipt of petition for variance was published in the Florida Administrative Weekly (F.A.W.) on June 22, 2007, in Volume 33, Number 21, page 2828. No comments were received concerning this petition for variance.

3. Rule 62-296.418(2)(b)2., F.A.C., requires the owner or operator of a bulk gasoline plant that begins operation on or after August 1, 2007, to equip the loading racks with a vapor collection and control system.

4. Petitioner is subject to the requirements of Rule 62-296.418(2)(b)2, F.A.C., for the Combs Oil Company bulk gasoline plant currently under construction at 76 Industrial Boulevard, Naples, Florida.

5. Petitioner currently operates an existing bulk gasoline plant. In June of 2002, the Petitioner successfully bid to acquire a former state-owned property at 76 Industrial Boulevard, in Naples, Florida, with the intention of relocating its gasoline bulk plant and business headquarters to that property.

6. The Petitioner received approval of Conditional Use from the Collier County Board of County Commissioners for the newly acquired property in July of 2003.

7. The Petitioner submitted water management permits to South Florida Water Management District (SFWMD) in April of 2004. The water management permits were issued to the Petitioner by the SFWMD in November of 2004.

8. The Petitioner applied for the building permits for the office, warehouse containment area, tank foundations and loading/unloading areas in February of 2005. The building permits were issued in August of 2005.

9. The Petitioner experienced substantial construction delays during the period between July 2005 and January 2007 due to the effects of hurricanes, both in Florida and the upper Gulf Coast. Most notably, there were delays in obtaining steel for the office and loading /tank areas. Supplies of steel rebar and concrete were rationed to builders.

10. The Department began rulemaking in January of 2007, to revise the requirements for bulk gasoline plants. The rule revisions became effective on May 9, 2007. Under the revised rule, bulk gasoline plants which begin operation on or after August 1, 2007, are required to install and operate a vapor collection and control system on the loading racks (Rule 62-296.418(2)(b)2., F.A.C.)

11. In developing Rule 62-296.418, F.A.C., the Department determined that, for purposes of the law implemented, the provisions of Rule 62-296.418(2), F.A.C., should only apply to bulk gasoline plants that begin operation after August 1, 2007.

12. The Petitioner had invested \$67,053.00 in equipment and \$40,235.25 in construction costs for the support structure of the loading rack prior to the Department's initiation of rule revisions, requiring a vapor collection and control system on the loading racks. However, the Petitioner was unable to complete construction by August 1, 2007, due to the aforementioned construction delays.

13. The Petitioner has demonstrated that principles of fairness would be violated based on the circumstances as outlined above which delayed the relocation and operation of the facility and were beyond control of the Petitioner. Specifically, the Petitioner has demonstrated that, but for construction delays between July 2005 and January 2007 due to the effects of hurricanes, the Combs Oil Company bulk gasoline plant at 76 Industrial Boulevard, Naples, Florida, would have begun operation prior to August 2007. Therefore, Petitioner's request for variance is consistent with statutory intent as implemented by Rule 62-296.418, F.A.C.

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 is pending approval by the U.S. Environmental Protection Agency (EPA) as a revision to Florida's state implementation plan (SIP) under the Clean Air Act (40 CFR Part 52, Subpart K.) The Department is not authorized under the SIP to issue any variance or waiver from a SIP-approved rule except as a SIP change in accordance with the procedures of 40 CFR Part 51. Section 120.542, Florida Statutes, does not grant authority to issue this variance except in conformity with the federally approved SIP revision process. Therefore, this variance cannot be effective until the EPA has approved into the SIP, both the rule from which the variance is requested and the variance itself.

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 developing Rule 62-296.418, F.A.C., the Department determined that, for purposes of the law implemented, the provisions of Rule 62-296.418(2), F.A.C., should only apply to bulk gasoline plants that begin operation after August 1, 2007. Petitioner's request for variance is consistent with statutory intent as implemented by Rule 62-296.418, 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 loading racks vapor collection and control system requirement of Rule 62-296.418(2)(b)2., F.A.C., is granted subject to the terms of this Order.

2. This variance will exempt Combs Oil Company, at the 76 Industrial Boulevard, Naples, Florida, location from the requirements of Rule 62-296.418(2)(b)2., F.A.C.

3. This variance shall not be effective until approved by EPA into Florida's SIP.

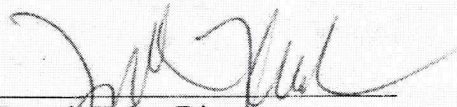
4. This variance shall not apply to any other new or existing state or federal rule that may require a vapor collection and control system be installed and operated on loading racks at the Combs Oil Company gasoline bulk plant.

RIGHT TO APPEAL

Any party to this order has the right to seek judicial review of the order 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.

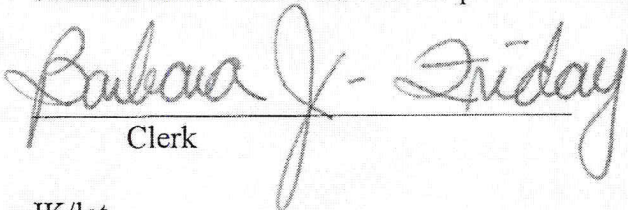
DONE AND ORDERED this 20th day of AUGUST 2008 in Tallahassee, Florida.



Joseph Kahn, Director
Division of Air Resource Management
Department of Environmental Protection
2600 Blair Stone Road, MS 5500
Tallahassee, Florida 32399-2400
Telephone 850/488-0114

FILING AND ACKNOWLEDGMENT:

FILED, on this date, pursuant to Section 120.52, F.S., 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

8/20/08

Date

JK/lgt

cc: Mr. Robert D. Fingar, Esq., Frank, Gramling & Fingar
Ms. Patricia Comer, Office of General Counsel
Mr. Ajaya Satyal, Program Administrator, DEP South District Office