



*amr
Dec 14, 2007*

Charlie Crist
Governor

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

INTEROFFICE MEMORANDUM

**INFORMATION
HSES 07-013**

DATE: December 10, 2007

TO: County Health Department Directors/Administrators
ATTN: Environmental Health and Engineering Directors

THROUGH: Lisa Conti, D.V.M., M.P.H., Dipl. ACVPM, CEHP
Director, Division of Environmental Health *[Signature]*

FROM: *[Signature]*
Gerald Briggs, Chief,
Bureau of Onsite Sewage Programs

SUBJECT: Alternative Drainfield Approval-PSA Inc., ARC 24 Plastic Leaching Chamber

INFORMATION ONLY

Attached is a copy of the settlement agreement with P.S.A., Inc. for approval of their chamber drainfield system as an alternative drainfield system for use in the State of Florida. Please take particular note of page 2. The ARC 24 product is rated at 15.0 square feet per chamber section.

The alternative drainfield sizing table has been updated. It is available on the Department of Health Internet site. You can access the sizing table at:

<http://www.doh.state.fl.us/environment/ostds/form/docfiles/forms/Alternative.DOC>

Also attached is a copy of the Design and Installation Manual for Florida.

Please provide a copy of this memorandum to all licensed septic tank contractors and plumbers performing septic tank contracting services in your county.

If you have any questions about this memo please contact Kim Duffek at 850-245-4070 or suncom 205-4070.

Attachments



Division of Environmental Health, Bureau of Onsite Sewage Programs
4052 Bald Cypress Way, Bin #A08, Tallahassee, Florida 32399-1713

STATE OF FLORIDA
DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL HEALTH
BUREAU OF ONSITE SEWAGE PROGRAMS

RECEIVED
DEPARTMENT OF HEALTH
07 JAN 25 PM 2:43
OFFICE OF THE CLERK

IN RE: Petition for Variance Under
Section 120.542, Florida
Statutes, Filed by:

Richard H. Bachelder,
PSA, Inc.,
Petitioner.

ORDER GRANTING VARIANCE WITH STIPULATIONS

This cause having come before the Department of Health, Division of Environmental Health, Bureau of Onsite Sewage Programs (Department), in consideration of the Petition for Variance filed by Richard H. Bachelder, Qualified Representative for PSA, Inc., (Petitioner), seeking a variance of Florida Administrative Code Rule 64E-6.009(7) and 64E-6.009(7)(a)4., filed with the Department on November 17, 2006. The Department timely requested additional information that was received on January 11, 2007. The petition seeks a variance from the rule as it relates to the "ARC 24 Plastic Leaching Chamber". Upon consideration of the Petition and supporting evidence, the Department finds the following:

FINDINGS OF FACT

1. Petitioner has produced a drainfield product, the ARC 24 Plastic Leaching Chamber, that has not previously been approved or used in Florida.
2. Florida Administrative Code Rule 64E-6.009(7) requires that, after innovative system testing is completed, requests for approval of system components not specifically

addressed in the rule chapter be submitted to the Department's Bureau of Onsite Sewage Programs.

3. Florida Administrative Code Rule 64E-6.009(7)(a)4. requires requests for approval to include empirical data showing results of innovative system testing in the State of Florida.
4. Florida Administrative Code Rule 64E-6.009(7)(d) prohibits approval of a product that results in a smaller drainfield size than would be required using mineral aggregate.
5. Petitioner alleges that the ARC 24 Plastic Leaching Chamber is a modification of a previously approved product, the "Bio 3 Chamber."
6. Petitioner provided documentation from an engineer, registered in Florida, certifying that the ARC 24 Plastic Leaching Chamber should perform to at least the same standard as the existing Bio 3 Chamber, if not to a higher standard.
7. Petitioner provided documentation from an engineer, registered in Florida, certifying that the modifications between the ARC 24 Plastic Leaching Chamber and the previously approved Bio 3 Chamber are so minor as to not be expected to affect the performance or, if performance is affected, to improve the product for use in Florida.
8. Drainfield products provide an absorption surface for effluent from the septic tank to be absorbed into the soil surface. Absorption occurs through the open bottom as well as the sidewalls of the drainfield. Petitioner alleges the 15.0 square feet per five (5) feet of chamber rating requested is equivalent to the rating that was allowed for the Bio 3 chamber.
9. Petitioner alleges that application of the in-state testing requirements imposed by rule 64E-6.009(7) [and 64E-7.009(7)(a)4.] to the product improvements incorporated in the ARC 24 Plastic Leaching Chamber would impose a substantial financial hardship on the Petitioner.
10. Petitioner alleges that the modifications incorporated into the ARC 24 chamber will improve the alternative component's performance, thus providing assurances that onsite systems utilizing these parts will neither adversely affect the public health nor degrade

ground or surface waters.

CONCLUSIONS OF LAW

11. Pursuant to section 120.542, Florida Statutes, state agencies are authorized to grant variances and waivers to requirements of their rules when the party subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and that application of the rule would create a substantial hardship or violate principles of fairness.
12. Florida Administrative Code Rule 64E-6.009 was promulgated to implement, among other statutes, section 381.0065, Florida Statutes, and Part I, Chapter 386, Florida Statutes.
13. The primary purpose of section 381.0065, Florida Statutes, is to "Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the Department are sized, designed, constructed, installed, repaired, modified, abandoned and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination and surface water contamination and to preserve public health."
14. The purpose of Part I, Chapter 386, Florida Statutes, is to prevent the creation or maintenance of a sanitary nuisance. Section 386.041(1), Florida Statutes, expressly identifies the following two conditions as prima facie evidence of a sanitary nuisance injurious to health: (a) untreated or improperly treated human waste; and (b) improperly built or maintained septic tanks.
15. A drainfield product that fails to function could result in effluent emerging onto the ground surface or being obstructed from leaving the septic tank causing sewage to back-up into a building. Either condition can result in exposure to untreated or improperly treated human waste and violate the purpose of Part I, Chapter 386, Florida Statutes.
16. A drainfield product that fails to function could result in effluent emerging onto the ground surface where exposure could adversely affect public health or subsequent run-off could

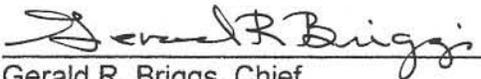
contaminate surface water, both conditions being in violation of section 381.0065, Florida Statutes.

17. The ARC 24 Plastic Leaching Chamber, having only minor modifications from the already approved Bio 3 Chamber product should be expected to perform similarly to the existing approved product.
18. Requiring testing whenever a manufacturer incorporates minor modifications to improve a product or to address apparent deficiencies in an existing product presents a substantial hardship to the Petitioner.
19. Allowing unlimited use of a modified product without testing to demonstrate that the product indeed performs similarly to the unmodified form could result in widespread use of a product that does not function properly and could result in hardship to numerous consumers who must replace the product to eliminate violations of section 381.0065 or Part 1, Chapter 386, Florida Statutes.
20. A manufacturer's warranty for the modified chamber would provide a measure of safety to the consumers without creating an undue hardship on the Petitioner.
21. The requested rating of 15.0 square feet per five (5) feet of chamber rating requested is equivalent to the rating that was allowed for the Bio 3 chamber.

CONCLUSIONS

Based on the forgoing findings of fact and the conclusions of law, the Petition for Variance filed by Richard H. Bachelder, Qualified Representative for PSA, Inc., is hereby GRANTED subject to the stipulation that PSA, Inc, shall offer a 2-year performance warranty on the ARC 24 Plastic Leaching Chambers installed in Florida for a minimum of three years from the date of this final order.

DONE and ORDERED this 24 day of January, 2007, in Tallahassee, Leon County, Florida.

By: 
Gerald R. Briggs, Chief
Bureau of Onsite Sewage Programs

NOTICE OF RIGHTS TO APPEAL

A party whose substantial interest is affected by this order may petition for an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes. Chapter 28-106, Florida Administrative Code, governs such proceedings. A petition for a hearing must be in writing and must be received by the Agency Clerk for the Department within twenty-one (21) days from receipt of this order. The address for the Agency Clerk is 4052 Bald Cypress Way, BIN #A02, Tallahassee, Florida 32399-1703. The Agency Clerk's facsimile number is (850) 410-1448.

Mediation is not available as an alternative remedy.

Your failure to submit a petition for hearing within 21 days from receipt of this order will constitute a waiver of your right to an administrative hearing, and this order shall become a 'final order'.

Should this order become a 'final order', a party who is adversely affected by it is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings may be commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by the filing fees required by law, with the Court of Appeal in the appropriate District Court. The notice must be filed within 30 days of the rendition of the final order.

Copies furnished to:

Richard Bachelder, representing
PSA, Inc.
4640 Trueman Blvd
Hilliard, OH 43026

Lucy Schneider, Esq.
Assistant General Counsel
Office of the General Counsel
4052 Bald Cypress Way, Bin #A02
Tallahassee, FL 32399-1703

✓ Gerald R. Briggs, Bureau Chief
Bureau of Onsite Programs
Department of Health
4052 Bald Cypress Way, BIN #A08
Tallahassee, FL 32399-1713

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order and Notice of Disposition of Petition for Variance or Waiver has been sent by U.S. Mail, interoffice mail, or hand delivery to each of the above-named persons this 25th day of January, 2007.



Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin # A02
Tallahassee, FL 32399-1703