

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

In re: NR Varela Property Owner, LLC,

Petition for Waiver.

Case No. 13-EPC-004

**FINAL ORDER ON APPLICATION FOR SECTION 1-2.50 RULE OF THE
ENVIRONMENTAL PROTECTION COMMISSION WAIVER**

BACKGROUND

On March 19, 2013, NR Varela Property Owner, LLC, (hereinafter "applicant") submitted a waiver request to the Environmental Protection Commission of Hillsborough County (EPC) under section 1-2.50, Rules of the EPC. The applicant requested a waiver of Section 1-7.203(7), Rules of the EPC with respect to soils testing for some areas during construction of an apartment complex undertaken as part of a Brownfield Site Redevelopment Agreement. This Rule Section 1-7.203(7) requires that Recovered Screen Materials (RSM) proposed for onsite reuse and excavated solid waste shall be characterized, managed, reused and disposed in accordance with the specific requirements, including extensive testing and sampling.

The applicant requests a waiver of the above rule section for the apartment construction based on a substantial hardship and based on compliance with the underlying purpose of the rule will still be met. The applicant asserts that the purpose of complying with the testing requirements of the rule would still be achieved through work previously performed, as well as the engineering and institutional controls that will be in place under the Brownfield Redevelopment program. These measures would ensure ample protection to human health and the environment.

FINDINGS OF FACT

1. The applicant owns property located at the southeast corner of West Spruce Street and North Lois Avenue in the City of Tampa in Hillsborough County where they are intending to construct an apartment complex. The property is the subject of a Brownfield Site Redevelopment Agreement dating back to December 23, 2008.

2. The site has previously been accepted into the Florida Brownfield Redevelopment Program regulations and any activities are subject to the regulations provided in Section 62-785, Florida Administrative Code (F.A.C.).

4. The site will have engineering and institutional controls in place during site development which will provide ample protection to human health and the environment.

5. The applicant requests a variance from Rule 1-7.203(7), Rules of the EPC for RSM intended to be located under the building foundation but all other provisions of Rule 1-7.203(7) would apply to the remainder of the subject property.

6. The additional extensive testing provided in Section 1-7.203(7), Rules of the EPC would be a substantial hardship for the applicant. This is because the requirements would result in a demonstrated additional and unnecessary expense to the applicant. Further, the principles of fairness would be violated since the literal application of the testing rules would affect the applicant in a manner significantly different from the way it affects other similarly situated persons who are subject to the Brownfields rule and the applicant's tests would not provide added protection considering the various engineering and institutional controls that will be implemented during site development with the agreement of the EPC.

7. The purpose of Section 1-7.203(7), Rules of the EPC to protect human health and the environment is fully achieved under the Brownfields rules also administered by EPC under Chapter 62-785 F.A.C., including the planned institutional and engineering controls.

8. Finally, the requirement is not a rule provision which originates from the Florida Department of Environmental Protection (FDEP). The EPC rules under Chapter 1-7 at issue does not originate with FDEP.

CONCLUSIONS OF LAW

9. This variance is requested pursuant to section 1-2.50, Rules of the EPC, which states as follows:

1-2.50 REQUEST FOR VARIANCE OR WAIVER

(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to Chapter 84-446, where the applicant demonstrates:

(1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

(2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

(b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation summarizing the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

(d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a public hearing during a Commission meeting. The Commission shall grant, in whole

or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

10. The applicant has demonstrated that complying with the additional requirements under Rule 1-7.203(7), Rules of the EPC, would impose a substantial hardship if the applicant were not granted a waiver in this specific situation.

11. The applicant has demonstrated that by following the planned institutional and engineering controls under Chapter 62-785, F.A.C., the purpose of Section 1-7.203(7), Rules of the EPC will still be achieved.

12. The applicant has demonstrated that the provision from which the waiver is being sought did not originate with the FDEP where the variance must be considered by the FDEP pursuant to Section 403.201, F.S.

13. This waiver applies only to the RSM located under the building foundation and this subject area would not require the soil sampling and analysis required under Rule 1-7.203(7), Rules of the EPC.

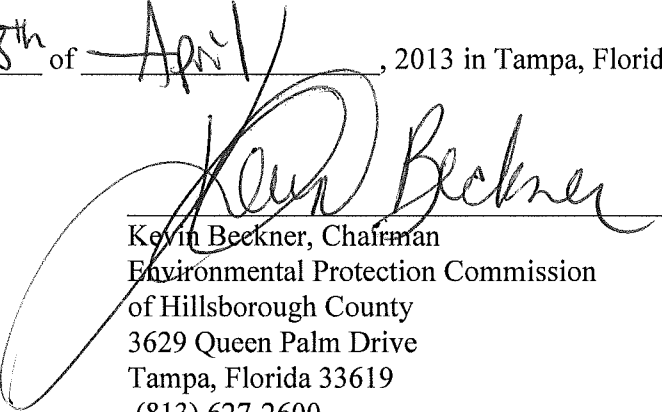
ORDER

For the foregoing reasons, the requested waiver from Section 1-7.203(7), Rules of the EPC, requiring soil sampling and analysis for that RSM that is proposed to be located under the building foundation, is **GRANTED**. All provisions of Section 1-7.203(7), Rules of the EPC would still apply to other RSM located at the subject property.

NOTICE OF RIGHTS

The EPC's proposed action on this waiver shall become final unless a timely appeal via writ of *certiorari* to the 13th Judicial Circuit is filed with any appropriate fee. A copy of the appeal must be provided to the EPC Legal Department, 3629 Queen Palm Dr., Tampa, Florida 33619.

DONE AND ORDERED this 18th of April, 2013 in Tampa, Florida.


Kevin Beckner, Chairman
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of Hillsborough County
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