



following national codes as the State Boiler Code for the safe construction, installation, inspection, maintenance and repair of boilers.

(1) The A.S.M.E. Boiler and Pressure Vessel Code, Sections I; II, Parts A, B, C and D; IV; V; VI; VII; IX, and the ANSI/ASME CSD-1, 1998 edition and all 1999 amendments, addenda and interpretations thereto.

4. As grounds for granting the Petition, Petitioner provides the following:

A. The Petitioner has contracted with a boiler supplier who intends to design and manufacture three boiler units following the latest ASME Boiler and Pressure Vessel Code ("Code") issued in 2010 by American Society of Mechanical Engineers (ASME).

B. The boilers will be placed at Petitioner's new facility which will be constructed at the existing Palm Beach Renewable Energy Park (PBREP). The existing facility is located in Palm Beach County at 6501 North Jog Road in West Palm Beach, Florida.

C. The Petitioner points out that the current Rule 69A-51.010, Florida Administrative Code, was issued in October 2000. Further, the Rule 69A-51.010(1), Florida Administrative Code, refers to adoption of the ASME Boiler Pressure Vessel Code, 1998 edition and all 1999 amendments, addenda and interpretation thereto.

D. The Petitioner asserts that it would only be a logical and fair principle to adopt a boiler code that has been updated with advancements made in over one decade of time for the design and construction of boilers for public safety.

E. The Petitioner provides that the latest version of the Code (i.e. ASME Boiler and Pressure Vessel Code edition 2010/2011 Addenda) has taken into consideration the changes in the tools and techniques used for design and analysis as technology progressed since the previous issuances of the Code.

F. The Petitioner further asserts that the latest version of the Code has taken into consideration (a) revisions of the rules of the Code; (b) new rules as dictated by technological development; (c) Code Cases; and (d) requests for interpretations.

G. The Code provides that after code revisions are approved by ASME it is mandatory to use the latest version of the Code six months after issuance of such Code.

H. Petitioner contends that the current code requirement prevents the boiler manufacturer from constructing a new ASME Code stamped boiler using an older edition of the ASME Code. Furthermore, the specific language contained in the section titled "Forward,"

Section I – Power Boilers:

After Code revisions are approved by ASME, they may be used beginning with the date of the issuance. Revisions, except for revisions to material specifications in Section II, Parts A and B, **become mandatory six months after such date of issuance**, except for boilers or pressure vessels contracted for prior to the end of the six-month period. [emphasis added]

I. The Petitioner believes that the generally accepted nationwide engineering standards for new boiler construction and safety at this time is the "ASME Boiler and Pressure Vessel Code, edition 2010/2011 Addenda."

J. Therefore, Petitioner requests a permanent variance that will continue for the useful life of the three boiler units to be placed at Petitioner's new facility.

5. A copy of the Petition was sent to the Joint Administrative Procedures Committee on October 18, 2011, pursuant to Rule 28-104.002(1), Florida Administrative Code.

6. Notice of the Petition for Variance or Waiver was provided to the Secretary of State for publication in the Florida Administrative Weekly.

7. Said notice contained the name of the Petitioner, the date the Petition was filed, the rule number and nature of the rule from which variance or waiver is sought, an explanation of how a copy of the petition can be obtained, and a statement that the Division will accept comments concerning the Peitition for fourteen (14) days from the date of publication of the notice.

8. Said notice was published in Volume 37, Number 43, of the Florida Administrative Weekly, on October 28, 2011.

9. No comments were received in response to the notice.

10. The Department has given due consideration to the Petition and, being otherwise fully advised in the premises, hereby

ORDERS:

That the Petition for Variance or Waiver of Rule 69A-51.010(1), Florida Administrative Code, is granted to the following limited extent:

A. The variance is limited to the three boiler units to be designed and manufactured for Petitioner's new facility which will be constructed at the existing Palm Beach Renewable Energy Park (PBREP).

B. The proposed boilers shall be required to meet the standards listed in the ASME Boiler and Pressure Vessel Code, edition 2010/2011 Addenda as opposed to the ASME Boiler Pressure Vessel Code, 1998 edition and all 1999 amendments.

C. Petitioner shall make every effort possible to comply with all applicable Florida Statutes.

D. The effective date of the variance is the date of the filing of this Order.

E. To the extent of the variances set forth in paragraphs A. through D., above, the requirements of Rule 69A-51.010(1), Florida Administrative Code, are waived.

IT IS SO ORDERED.

NOTICE OF RIGHTS

You have the right to request a proceeding to contest this action by the Department pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rule 28-107, Florida Administrative Code. The proceeding request must be in writing, signed by you, and must be filed with the Department within twenty-one (21) days of your receipt of this notice. Completion of the attached Election of Proceeding form and/or a petition for administrative hearing will suffice as a written request. The request must be filed with Julie Jones, Agency Clerk, at the Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333. Your written response must be received by the Department no later than 5:00 p.m. on the twenty-first day after your receipt of this notice. Mailing the response on the twenty-first day will not preserve your right to a hearing.

YOUR FAILURE TO RESPOND IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THIS NOTICE WILL CONSTITUTE A WAIVER OF YOUR RIGHT TO REQUEST A PROCEEDING ON THE MATTERS ALLEGED HEREIN AND AN ORDER OF REVOCATION WILL BE ENTERED AGAINST YOU.

If you request a proceeding, you must provide information that complies with the requirements of Rule 28-107.004, Florida Administrative Code. As noted above, completion of the attached Election of Proceeding form conforms to these requirements. Specifically, your response must contain:

- (a) The name and address of the party making the request, for purpose of service;

(b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and

(c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

If a hearing of any type is requested, you have the right to be represented by counsel or other qualified representative at your expense, to present evidence and argument, to call and cross-examine witnesses, and to compel the attendance of witnesses and the production of documents by subpoena.

If a proceeding is requested and there is no dispute of material fact, the provisions of Section 120.57(2), Florida Statutes, apply. In this regard, you may submit oral or written evidence in opposition to the action taken by the Department or a written statement challenging the grounds upon which the Department has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary, one will be conducted in Tallahassee, Florida, or by telephonic conference call upon your request.

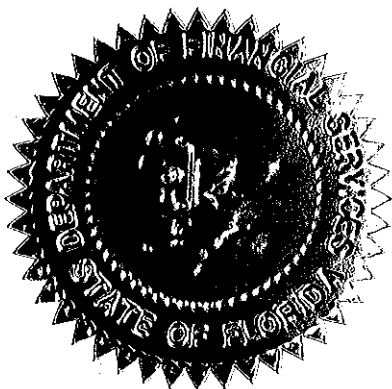
However, if you dispute material facts which are the bases for the Department's action, you must request an adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. These proceedings are held before a State administrative law judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Department will request that the hearing be conducted in Tallahassee, Florida.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. All prior oral communication or correspondence in this matter shall be considered freeform agency action, and no such oral communication or correspondence shall operate as a valid request for an administrative proceeding. Any request for an

administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Mediation of this matter pursuant to Section 120.573, Florida Statutes, is not available. No Department attorney will discuss this matter with you until the response has been received by the Department of Financial Services.

DATED and SIGNED this 10<sup>th</sup> day of January, 2012



A handwritten signature in black ink, appearing to read "R. C. Kneip", written over a horizontal line.

Robert C. Kneip  
Chief of Staff

STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
DIVISION OF LEGAL SERVICES

IN THE MATTER OF:

Solid Waste Authority of Palm Beach

CASE NO.: 120570-11-FM

ELECTION OF PROCEEDING

I have received and have read the Order granting my Petition or Variance or Waiver filed by the Florida Department of Financial Services ("Department"), including the Notice of Rights contained therein, and I understand my options. I am requesting disposition of this matter as indicated below. **(CHOOSE ONE)**

1.  I do not desire a hearing. I waive my right to any hearing in this matter.
2. I do not dispute any of the Department's factual allegations and I hereby elect a proceeding to be conducted in accordance with Sections 120.57(2), Florida Statutes. In this regard, I desire to:
  - Submit a written statement and documentary evidence;
  - personally attend an informal hearing to be held in Tallahassee; or
  - attend an informal hearing by way of telephone conference call.
3.  I do dispute one or more of the Department's factual allegations. I hereby request a hearing pursuant to Section 120.57(1), Florida Statutes, to be held before the Division of Administrative Hearings. I have attached to this election form the information required by Rule 28-106.2015, Florida Administrative Code, as specified in subparagraph (c) of the Notice of Rights. Specifically, I have identified the disputed issues of material fact in the response attached hereto.

TO PRESERVE YOUR RIGHT TO A HEARING, YOU MUST FILE YOUR RESPONSE WITH THE DEPARTMENT OF FINANCIAL SERVICES WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT. THE RESPONSE MUST BE RECEIVED BY THE DEPARTMENT NO LATER THAN 5:00 P.M. ON THE TWENTY-FIRST DAY AFTER YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT.

The address for filing is: DFS Agency Clerk, Julie Jones, Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Date Administrative  
Complaint Received: \_\_\_\_\_

Phone No.: \_\_\_\_\_

**If you are represented by an attorney or qualified representative, please attach to this election form his or her name, address, telephone and fax numbers**

Fax No.: \_\_\_\_\_