



Jeb Bush  
Governor

# Department of Environmental Protection

Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

David B. Struhs  
Secretary

April 19, 2002

Certified Mail

Return Receipt Requested: 7001 0320 0001 7977 1670

Mr. Jean-Michel del Amo  
Nupi S.P.A.  
5500 Wiassahickon Avenue, M-404D  
Philadelphia, PA 19144

RE: DEP Approval of the Smartflex Containment Plus Piping  
Systems, File No. EQ-525

Dear Mr. del Amo:

The Bureau of Petroleum Storage Systems has concluded its review of the Equipment Approval requests dated February 15, March 20, and March 21, 2002, that were submitted for the above referenced equipment pursuant to Rule 62-761.850, Florida Administrative Code (F.A.C.).

Based on the information provided by the Nupi S.P.A., the Department finds that applicant's Smartflex Containment Piping Systems will provide environmental protection substantially equivalent to that provided by compliance with the requirements established in Rules 62-761.500(1)(e), 62-761.500(4)(b)1., and 62-761.500(4)(e)1., F.A.C.

Pursuant to Rule 62-761.850, F.A.C., the request for the use of the above referenced product is approved in the State of Florida as underground double-wall small diameter piping in contact with soil.

Please be advised that the above referenced DEP rules are subject to change. If the above rule standards are modified in the future, this order may be modified or rescinded for future upgrades and installations. Additionally, if the product(s) shows a consistent pattern of failure(s), and therefore does not provide substantially equivalent environmental protection, the Department may rescind this order.

The Department's Order shall become final unless a timely petition for an administrative hearing is filed under sections

*"More Protection, Less Process"*

*Printed on recycled paper.*

120.569 and 120.57, Florida Statutes ("F.S."), within 21 days of receipt of this Order. Persons who have filed such a petition may seek to mediate the dispute, and choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for petitioning for a hearing and pursuing mediation are set forth below.

Persons affected by this Order have the following options:

If you choose to accept the above decision by the Department about equipment approval, you do not have to do anything. This Order is final and effective as of the date on the top of the first page of this Order.

If you choose to challenge the decision, you may do one of the following:

1. File a petition for administrative hearing with the Department's Agency Clerk in the Office of General Counsel within 21 days of receipt of this Order;

OR

2. File a request for an extension of time to file a petition for hearing with the Department's Agency Clerk in the Office of General Counsel within 21 days of receipt of this Order; such a request should be made if you wish to meet with the Department in an attempt to resolve any disputes without first filing a petition for hearing or negotiate an agreement to mediate.

OR

3. In addition to requesting an administrative hearing, any petitioner may elect to pursue mediation under section 120.573, F.S., and must negotiate an agreement to mediate within 10 days after the deadline for filing a petition.

#### How to Request an Extension of Time to File a Petition for Hearing

For good cause shown, pursuant to Rule 62-110.106(4), Florida Administrative Code ("F.A.C."), the Department may grant a request for an extension of time to file a petition for hearing. Such a request must be filed (received) with the

Agency Clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000, within 21 days of receipt of this Order. Petitioner, if different from the applicant, shall mail a copy of the request to the applicant at the time of filing. Timely filing a request for an extension of time tolls the time period within which a petition for administrative hearing must be made.

#### How to File a Petition for Administrative Hearing

A person whose substantial interests are affected by this Order may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) by the Department's Agency Clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida, 32399-3000, within 21 days of receipt of this Order. Petitioner, if different from the applicant, shall mail a copy of the petition to the applicant, at the time of filing. Failure to file a petition within this time period shall waive the right of anyone who may request an administrative hearing under sections 120.569 and 120.57, F.S.

Pursuant to subsections 120.54(5)(b)4 and 120.569(2), F.S. and rule 28-106.201, F.A.C., a petition for administrative hearing shall contain the following information:

- a) The name, address, and telephone number of each petitioner, the name, address, and telephone number of the petitioner's representative, if any, the name, address of the applicant if different from petitioner;
- b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- c) An explanation of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;
- d) A statement of the material facts disputed by the petitioner, or a statement that there are no disputed facts;
- e) A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the Department's action or proposed action;
- f) A statement of the specific rules or statutes the petitioner contends requires reversal or modification of the Department's action or proposed action; and

- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Department's action or proposed action.

#### How to Pursue Mediation

In addition to requesting an administrative hearing, any petitioner may elect to pursue mediation. The election may be accomplished by filing with the Department a mediation agreement with all parties to the proceeding (i.e., the applicant, the Department, and any person who has filed a timely and sufficient petition for hearing). The agreement must contain all the information required by rule 28-106.404, F.A.C. The agreement, signed by all parties, must be received by the Department's Agency Clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000 within 10 days after the deadline for filing a petition, as set forth above. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

Pursuant to rule 28-106.404, F.A.C., an agreement to mediate must include the following:

- (i) The name, address, and telephone number of the persons who may attend the mediation (also the DEP file number, and the name and address of the applicant);
- (ii) The name, address, and telephone number of the mediator agreed to by the parties;
- (iii) How the costs and fees associated with the mediation will be allocated (the Bureau of Petroleum Storage Systems will not pay any of the costs of mediation);
- (iv) The agreement of the parties regarding the confidentiality of discussions and documents introduced during mediation to the extent authorized by law;
- (v) The date, time, and place of the first mediation session;
- (vi) The name of the party's representative who shall have authority to settle or recommend settlement; and
- (vii) The signature of the parties.

As provided in section 120.573, F.S., the timely agreement of all parties to mediate will toll the time limitations imposed by sections 120.569 and 120.57, F.S., for holding an administrative hearing and issuing a final order.

Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons seeking to protect their substantial interests that would be affected by such a modified final decision must file their petitions within 21 days of receipt of this notice, or they shall be deemed to have waived their right to a proceeding under sections 120.569 and 120.57, F.S. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under sections 120.569 and 120.57, F.S., are resumed.

This Order is final and effective as of the date on the top of the first page of this Order. Timely filing a petition for administrative hearing postpones the date this Order takes effect until the Department issues either a final order pursuant to an administrative hearing or mediation settlement.

#### Judicial Review

Any party to this Order has the right to seek judicial review of it under section 120.68, F.S., by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Agency Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the Department (see below).

#### Questions

Any questions regarding the Department's review of your equipment approval should be directed to Farid Moghadam at (850)921-9007. Questions regarding legal issues should be

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referred to the Department's Office of General Counsel at (850)488-9314. Contact with any of the above does not constitute a petition for administrative hearing (or time extension) or agreement to mediate.


Sincerely,



Michael E. Asheby, Chief  
Bureau of Petroleum Storage Systems

MEA/fm

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

  
Clerk  
(or Deputy Clerk)

  
Date