



Protecting Florida's Clean Water Environment

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November 18, 2019

Attention: Submitted electronically to Maurice.Barker@dep.state.fl.us.

Maurice Barker
Senior Program Analyst
Division of Water Resource Management
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399

Re: Lower Cost Regulatory Alternative for Proposed Biosolids Rule

Dear Mr. Barker:

This is a lower cost regulatory alternative submitted by the Florida Water Environment Association (FWEA) Utility Council regarding the Florida Department of Environmental Protection's (FDEP's) Notice of Proposed Rule published in the Florida Administrative Register on October 29, 2019, that would amend Chapter 62-640, F.A.C., to "revise the monitoring and permitting criteria for the land application and management of biosolids."¹ This Notice of Proposed Rule seeks to amend the existing biosolids permitting requirements to establish a rate of biosolids application based on biosolids characteristics and site-specific conditions, such as soil characteristics, water table, hydrogeology, site use, and distance to surface water, in order to prevent nutrient pollution offsite.

The FWEA Utility Council is the statewide umbrella organization for Florida's domestic wastewater treatment utilities, and the voice of Florida's domestic wastewater treatment community. Protecting the environment and public health is our core business. Our members operate domestic wastewater collection, treatment, disposal, and reuse facilities providing essential infrastructure services to over 9 million Floridians. In providing these services, member utilities across the State have invested millions of dollars upgrading wastewater treatment systems to remove pollutants, including nitrogen and phosphorous, before safely returning that water to the environment or providing it for reuse. As you know, biosolids are a byproduct of domestic wastewater treatment. This material has high organic content and contains nutrients that plants need to grow. For years, communities, ranchers, and agricultural producers have beneficially reused biosolids as a fertilizer and soil amendment. Biosolids land application provides the

¹ See FDEP, Notice of Proposed Rule, Rule 62-640, F.A.C., (Oct. 29, 2019).

environmental benefits of reducing the need for chemical fertilizers and providing soil amendment which can increase crop production and reduce water demands.

The FWEA Utility Council is supportive of FDEP's effort to strengthen, in a science-backed manner, the existing rules for the land application of biosolids to reduce the potential for nutrients to enter the state's surface and ground waters. However, the FWEA Utility Council is concerned that the portion of the proposed biosolids rule prohibiting land application on any site where the seasonal high-water table is within 15 centimeters of the soil's surface imposes an undue regulatory burden on FWEA Utility Council members. The FDEP's proposed biosolids rule would substantially impact the interests of FWEA Utility Council members by significantly reducing the areas of the state where biosolids can be land applied. We believe that FDEP's environmental objectives, which we support, could be achieved with some modification of the proposed rule language to allow flexibility on a case by case basis where reasonable assurance is provided that the land application of biosolids will not cause or contribute to a violation of Florida water quality standards.

The overly broad scope of the prohibition in the proposed rule will force a significant number of FWEA Utility Council members to find alternative means of biosolids disposal, even though currently available alternatives, such as landfilling, are not capable of handling the amount of biosolids typically land applied. Meeting the requirements of this proposed rule will come at a considerable cost to utilities and ratepayers across the state while lower cost measures exist to achieve the mutually desired goal of protecting water quality and controlling offsite nutrient transport. As such, the FWEA Utility Council formally proposes the following amendment to Proposed Rule 62-640.700(10), F.A.C., as a good faith lower cost regulatory alternative pursuant to section 120.541(1), Florida Statutes.

Lower Cost Regulatory Alternative

Rule 62-640.700 Requirements for Land Application of ~~Class AA, A, and B~~ Biosolids.

(10) Seasonal High Water Table.

(a) A minimum unsaturated soil depth of two feet is required between the depth of biosolids placement and the water table level at the time the Class A or Class B biosolids are applied to the soil. Biosolids shall not be applied on soils having a seasonal high water table less than 15 centimeters from the soil surface or within 15 centimeters of the intended depth of biosolids placement, unless:

1. A department approved nutrient management plan and water quality monitoring plan provide reasonable assurance that the land application of biosolids at the site will not cause or contribute to a violation of Florida surface water quality standards or ground water standards; or

2. The actual water table can be determined to be greater than 15 centimeters from the soil surface or the intended depth of biosolids placement at the time of application and the applicant can provide a reasonable assurance that any subsequent changes in the depth of the actual water table after the application of biosolids will not result in the movement

of biosolids beyond the application site and presents a low potential for nutrient transport from the site. The applicant may provide this reasonable assurance by showing that the water table at the application site will be actively managed to prevent the offsite movement of biosolids and nutrients.

(b) The permittee can indicate the seasonal high ground water ~~table level~~ for each application zone at the application site in the Biosolids Site Permit Application, Form 62-640.210(2)(d), by use of soil survey maps or by an evaluation conducted by a professional engineer with soils training who is licensed in the State of Florida or a professional soil scientist certified and registered by the Florida Association of Environmental Soil Scientists. The methodologies set forth in the document “Soil and Water Relationships of Florida’s Ecological Communities” (Florida Soil Conservation Staff 1992, <https://floridadep.gov/sites/default/files/soil-and-water.pdf>), which the Department adopts and incorporates by reference, may be used to establish the seasonal high water table.

(c) If the seasonal high ground water level is within two feet of the depth of biosolids placement or cannot be determined at the time of permitting, the water table level shall be determined in one or more representative location(s) in the application zone before each application of biosolids, by measuring the water level in a water-table monitoring well or a piezometer.

The purpose of FDEP’s biosolids rule is to protect waters of the state from nutrient pollution and minimize the migration of nutrients to prevent the impairment of waterbodies. The FDEP’s primary justification for the proposed rule’s 15 cm seasonal high-water table prohibition is to reduce potential flushing that can occur when the actual water table interacts with the soil shortly after biosolids are applied and before the nutrients have had time to bind with the soil or be taken up by the plant being fertilized, thus causing nutrients to be flushed from the soil and transported offsite and potentially entering surface or groundwater. However, as provided in this lower cost regulatory alternative, reducing nutrient flushing can be achieved without creating a total prohibition on the land application of biosolids at sites where the seasonal high-water table is within 15 cm of the surface for only a very short duration of the year. The increased regulatory scrutiny and affirmative demonstrations required by the Utility Council’s proposed amendment will ensure that the Department’s clean water goals are met, and it will do so while significantly reducing the regulatory costs for FWEA Utility Council members and the communities we serve.

If our proposed lower cost regulatory alternative is not adopted, we respectfully request the FDEP to prepare a statement of estimated regulatory costs for the proposed amendments to Rule 62-640.700(10), F.A.C., as mandated by section 120.541, F.S. The FWEA Utility Council also hereby requests party status and a public hearing pursuant to 120.54(3)(c), F.S. We also note for your reference that subsection 120.54(1)(d), F.S., provides as follows:

In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which

could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

The FWEA Utility Council appreciates the opportunity to provide this lower cost regulatory alternative to the revisions in Rule 62-640.700(10), F.A.C., of the proposed rule. As noted above, we support the Department's environmental protection objectives and believe that those objectives will be achieved with the incorporation of this suggested rule revision. If you would like to discuss this lower cost regulatory alternative, please do not hesitate to contact FWEA Utility Council President, Paul Steinbrecher, at steipk@jea.com, or FWEA Utility Council Legal Counsel, David Childs at davidc@hgslaw.com.

Sincerely,



David Childs
General Counsel, FWEA Utility Council

CC: John Truitt, Deputy Secretary for Regulatory Programs