



FWEA UTILITY COUNCIL

Protecting Florida's Clean Water Environment

August 10, 2006

Gerald Briggs
Department of Health
Bureau of Onsite Sewage Programs, HSES
4042 Bald Cypress Way, Bin # A08
Tallahassee, FL 32399-1713

Dear Mr. Briggs,

The Florida Water Environment Association Utility Council (FWEAUC) appreciates the opportunity to submit comments regarding the Florida Department of Health (DOH) notice of development of rulemaking for onsite sewage treatment and disposal systems (OSTDS). This development of rulemaking is based on the recommendations of the Technical Review and Advisory Panel (TRAP).

FWEAUC is an association of local government utilities in Florida that own and operate domestic wastewater treatment, disposal, reuse, and recycling facilities. Our utility members serve a population of over 7 million Florida residents, and many utility systems accept waste that is pumped from septic tanks by individual contractors. FWEAUC recognizes that many Floridians lack access to centralized wastewater treatment systems and that OSTDS will continue to be an element of wastewater treatment and disposal in Florida. FWEAUC wants to ensure, however, that the reliance on OSTDS in lieu of an available centralized system does not harm the environment. Thus, DOH regulations should require enhanced OSTDS performance; ensure proper maintenance; and facilitate technological innovation. To that end, FWEAUC offers the following comments on the notice of development of rulemaking for chapter 64E-6, F.A.C.

FWEAUC recommends that DOH endorse and implement the principles announced in the "strategic framework" developed by the National Onsite Wastewater Recycling Association (NOWRA), which is an organization comprised of OSTDS industry members.¹ NOWRA emphasizes the use of "performance codes" over "prescriptive codes." In general, a performance code regulates an activity in terms of measurable objectives and provides a means to verify the achievement of the objectives. The inherent flexibility of a performance code facilitates cost-

¹ See, NOWRA, *Reforming Onsite Wastewater Regulations: A Whitepaper of the National Onsite Wastewater Recycling Association* (Sept. 2004) at <http://www.nowra.org/files/NOWRAAdoptedSept29Paper.pdf>.

effective technological advancement, and its emphasis on ensuring the achievement of performance objectives enhances environmental protection. A prescriptive code, on the other hand, delineates the specific method for achieving a regulatory objective, and it thereby eliminates novel approaches until the agency develops and implements new regulations that recognize technological advancements. A prescriptive code also generally deemphasizes regular performance audits and instead considers performance only in the context of the permitting process or in an enforcement action.

NOWRA's "strategic framework" for establishing a "future national policy for onsite wastewater technology, systems and management" provides seven performance-based components:

1. Performance requirements that protect human health and the environment.
2. System management to maintain performance within the established performance requirements.
3. Compliance monitoring and enforcement to ensure system performance is achieved and maintained.
4. Technical guidelines for site evaluation, design, construction, operation and acceptable prescriptive designs for specific site conditions and use.
5. Education / training for all practitioners, planners, and owners.
6. Certification / licensing for all practitioners to maintain standards of competence and conduct.
7. Program reviews to identify knowledge gaps, implementation shortcomings and necessary corrective actions.²

The Florida Onsite Wastewater Association (FOWA), which represents sections of the Florida OSTDS industry, endorses NOWRA's seven principles.³ FOWA also emphasizes that education is a "critical element" of the model framework and that users should actively manage and inspect their systems "every two to three years."⁴

FOWA and NOWRA's recommendations follow similar actions by the Environmental Protection Agency (EPA). In 1997, EPA recommended to Congress that state and local authorities should manage OSTDS based on performance goals.⁵ EPA determined:

Management programs should be developed on state, regional, or local levels, as appropriate, to ensure that decentralized wastewater systems *are sited, designed, installed, operated, and*

² *Id.* at 1.

³ See, FOWA, *The Status and Future of Decentralized and Onsite Wastewater Treatment Technologies in Florida*, 6 SMALL FLOWS QUARTERLY 12, 15 (2005) at http://www.nesc.wvu.edu/nsfc/Articles/SFQ/SFQ_w05_PDF/Florida_SFQ_w05.pdf.

⁴ *The Status and Future of Decentralized and Onsite Wastewater Treatment Technologies in Florida* at 14.

⁵ Response to Congress on Use of Decentralized Wastewater Treatment Systems, 22 (April 14, 1997) at http://www.epa.gov/owm/septic/pubs/septic_rtc_chap4.pdf

*maintained properly and that they continue to meet public health and water quality performance standards.*⁶

In addition to this recommendation, EPA and several trade associations recently executed a Memorandum of Understanding that seeks to, *inter alia*, “improve accountability, control, and oversight through enhanced state, tribal and local program implementation.”⁷

FWEAUC agrees with FOWA, NOWRA, and EPA that performance-based rules are the preferred regulatory tools for OSTDS, and thus recommends the full incorporation of these principles into DOH rules.⁸ Thus far DOH has incorporated performance-based criteria to varying degrees in the agency’s site evaluation criteria;⁹ education, certification, and training requirements;¹⁰ and program reviews.¹¹ Despite these positive steps, DOH has failed to mandate “performance requirements that protect human health and the environment” across the board; instead, DOH regulations specify that “performance-based treatment systems are intended as an alternative to the systems conforming to the prescriptive standards.”¹² FWEAUC recommends that DOH incorporate the regulatory oversight and review criteria currently applied only to performance-based and other limited systems to all OSTDS.

As Florida’s population growth continues to place greater strains on environmental resources, DOH should take stronger steps to ensure the proper performance of OSTDS. This regulatory response would support principles of sustainable development and further the legislative intent “that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.”¹³ DOH should therefore seek to fully implement NOWRA’s performance-based principles into its regulations. Namely, FWEAUC recommends that DOH pursue rulemaking and any necessary legislative changes to increase its oversight of the performance of OSTDS.¹⁴ For instance, DOH could ensure proper performance and environmental protection by requiring performance-based operating permits for all systems,¹⁵ or DOH could mandate an inspection report from a certified inspector after a specified number of years have passed since an OSTDS’s initial System Construction Permit. This latter recommendation would capture the oldest systems that are most likely to be functioning improperly. Additionally, DOH should seek legislation that ensures

⁶ *Id.* (emphasis added).

⁷ Memorandum of Understanding Regarding Cooperation in Decentralized Wastewater Management Programs Between the U.S. Environmental Protection Agency and Signatory Organizations, Jan. 12, 2005, at http://www.epa.gov/owm/septic/pubs/septic_mou.pdf.

⁸ Part IV of the existing rule specifically addresses performance-based treatment systems, including Advanced Secondary Treatment Standards, Advanced Wastewater Treatment Standards. See 64E-6.025, *et. seq.*, F.A.C.

⁹ See ch. 64E-6.006, F.A.C.

¹⁰ See ch. 64E-6.019, 6.020, 6.021, F.A.C. Chapter 2006-252, Laws of Florida, also increased the educational requirements for contractors, which the preliminary draft rulemaking recognizes.

¹¹ TRAP identifies and reviews issues relating to OSTDS.

¹² Ch. 64E-6.001(1), F.A.C.

¹³ § 381.0065, F.S.

¹⁴ Many of the prescriptive requirements are statutorily-mandated. See, e.g., §§ 381.0065(4)(e) (concerning setback requirements); 381.0065(4)(i) (prohibition of OSTDS in manufacturing or industrial zones); 381.0065(4)(k) (special requirements for the Florida Keys), F.S. (2005).

¹⁵ Operating permit requirements are found in chapter 64E-6.003, F.A.C.

Gerald Briggs
August 10, 2006
Page 4

OSTDS meet performance parameters to restore impaired waters under the Total Maximum Daily Load (TMDL) program.

Conclusion

In sum, FWEAUC recommends that DOH implement performance-based standards for OSTDS. Performance-based regulations would ensure that OSTDS function properly and do not compromise environmental or human health. These modifications would help property owners and local governments make environmentally legitimate economic comparisons between utilizing centralized sewer systems and OSTDS. Performance-based regulations would also facilitate sustainable development in Florida. Thus, FWEAUC recommends that DOH incorporate performance-based principles in its current development of rulemaking for OSTDS and that TRAP explore regulatory amendments that would facilitate proper OSTDS performance and technological innovation.

Sincerely,

Henry Hicks
President, Florida Water Environment Association Utility Council

cc: Colleen M. Castille, Mike Sole, Monica Greer