



FWEA UTILITY COUNCIL

Protecting Florida's Clean Water Environment

Position on the Land Application of Biosolids & DEP Rule 62-640 F.A.C. August 11, 2006

The Florida Water Environment Association Utility Council (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. Many of our utility members routinely make biosolids available for reuse in conjunction with agricultural practices. This practice is economically and environmentally superior to landfilling such materials. The land application of biosolids allows wastewater utilities to allocate more resources to wastewater collection and treatment and maintain reasonable rates for our customers.

Domestic wastewater contains organic matter and nutrients that can be traced back to agricultural food products that are consumed by humans. The return of these nutrients back to the land through biosolids application represents the most environmentally responsible means of sustaining the production of our agricultural lands for future generations. As the Environmental Protection Agency (EPA) points out, “[t]he controlled land application of biosolids completes a natural cycle in the environment” and “reduces the need for chemical fertilizers.”¹ Section 403.702(2), Florida Statutes, similarly encourages the reuse and recycling of wastewater treatment products, and section 187.201(12)(a) states that “the use of landfills shall be eventually eliminated” and encourages reuse research initiatives.

Given EPA and the Florida Legislature’s support of beneficial reuse, it would appear counterintuitive that DEP would develop a draft rule that frustrates the reuse of biosolids; however, Florida Department of Environmental Protection (DEP) has issued a preliminary draft of rule amendments that would do just that. DEP recently developed a draft biosolids rule that amends existing wastewater residual regulations found in chapter 62-640, Florida Administrative Code. The draft amendments regulate the treatment, transportation, storage, and application of biosolids, including Class AA residuals. FWEAUC analyzed the extensive draft rule and concluded that it creates severe administrative burdens without appreciable environmental benefits. The rule appears flawed for three significant reasons: (1) it is a 109-page web of often superfluous and scientifically unsupported regulations, including extensive biosolid testing and

¹ Environmental Protection Agency, Biosolids: Frequently Asked Questions, at <http://www.epa.gov/owm/mtb/biosolids/genqa.htm> (last accessed July 18, 2006).

retesting requirements, personnel certifications, land application procedures, geographic constraints, and language creating unlimited liability; (2) it would likely make it unfeasible for many utilities to land apply biosolids, and these utilities will likely simply landfill their wastes; (3) it contrasts sharply with DEP's relatively brief Concentrated Animal Feeding Operation (CAFO) regulations,² and this disparity demonstrates that existing regulatory tools, such as the Total Maximum Daily Load (TMDL) program, should address environmental concerns. Thus the draft rule appears to be a step in the wrong direction.

The draft rule would likely regulate biosolid applications to the point that the practice becomes administratively and economically unfeasible. FWEAUC believes that a far more logical policy is to directly address the root of environmental concerns associated with biosolid application. Namely, DEP should increase its enforcement and oversight of existing regulations, and the agency should require additional treatments for septic wastes and restaurant sludge or remove them from the rule. DEP could then use the TMDL program to address any remaining concerns regarding surface water quality. This alternative avenue would be consistent with EPA and state policies regarding reuse, DEP's policy of "more protection, less process," and state rulemaking principals codified in the Florida Administrative Procedure Act (APA). Pursuant to the APA, a state agency must adopt the "less costly alternative" when confronted with more than one regulatory option that would achieve statutory objectives. *See* § 120.54(1)(d), 120.541(1)(b), F.S.

² *See* ch. 62-670.400, F.A.C.