



January 15, 2020

Delivered by U.S. Mail and Email

Ms. Cari Roth
Chair, Environmental Regulation Commission
c/o Dean Mead
215 South Monroe Street, Suite 815
Tallahassee, FL 32301
croth@deanmead.com

RE: FDEP's Proposed Biosolids Rule (Chapter 62-640, F.A.C.)

Dear Ms. Roth:

On behalf of the Board of County Commissioners of St. Lucie County (Board), I am sending you this letter to emphasize the Board's concern about biosolids and their impacts on Florida's water quality. We respectfully request you and the other members of the Environmental Regulation Commission (ERC) to significantly strengthen the Florida Department of Environmental Protection's rules governing the use of biosolids (Chapter 62-640, F.A.C.). Although we appreciate the FDEP's efforts to improve these rules, we believe the FDEP's proposed rule amendments are not sufficient to protect Florida's water resources.

Background Information:

In 2007 the Florida Legislature enacted the Northern Everglades and Estuaries Protection Program, based on the Legislature's finding that "it is imperative for the state, local governments, and agricultural and environmental communities to commit to restoring and protecting the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed. . . ." (See Section 373.4595(1)(d), Florida Statutes). In 2007 the Legislature recognized that action must be taken "immediately" because these watersheds are "critical water resources of the state." Notwithstanding the Legislature's findings, the water quality in these watersheds has deteriorated dramatically over the last 13 years. The recurring algae blooms in these watersheds emphatically demonstrate that Florida's regulatory programs are not protecting our critical water resources.

St. Lucie County already has spent seventy million dollars (\$70,000,000) on projects that are designed to improve the water quality in the St. Lucie River watershed (e.g., floodplain restoration projects; the preservation of environmentally sensitive lands). We estimate that the FDEP's recent revisions to the BMAP for the St. Lucie Estuary could require the County's taxpayers to spend nearly one billion dollars (\$1,000,000,000). In effect, our taxpayers are being asked to pay for water quality impacts that have resulted from historic shortcomings in the FDEP and FDACS regulatory programs. It is much more cost-effective to control pollution before it is released into the environment. Given these facts, we have concluded that the FDEP should take a more aggressive and proactive approach toward the regulation of biosolids, before the current water quality problems become worse. Adopting this approach will provide environmental and financial benefits to the State of Florida that will vastly outweigh the financial impacts of the new regulations.

St. Lucie's Proposals for Improving FDEP's Biosolids Rule:

Under the FDEP's regulatory program for biosolids, Class AA biosolids are exempt from virtually all of the requirements applicable to Class A and Class B biosolids. (See FDEP Rule 62-640.850, F.A.C.). These exemptions in Chapter 62-640 should be eliminated. All biosolids, including Class AA biosolids, contain nutrients (nitrogen and phosphorus) that leach into ground water and surface water. All biosolids, including Class AA biosolids, have the potential to contribute to the nutrient loadings in Florida's waters.

We support the FDEP's proposals for improving its biosolids program; however, the FDEP should do more. Among other things, the setbacks and operating requirements for sites managing Class B biosolids should be applied to sites that manage Class AA biosolids. Nutrient management plans and water quality monitoring should be required at sites where Class AA biosolids are land applied. Water quality monitoring should be required at sites where Class B biosolids are used to create compost (i.e., Class AA biosolids).

At a minimum, these proposed requirements for the management of Class AA biosolids (i.e., setbacks, operational limits, water quality monitoring, reporting) should be implemented in areas where the FDEP has adopted a Basin Management Action Plan (BMAP) for nutrients or the FDEP has otherwise determined that the receiving waters are suffering from excessive nutrient loadings. In addition, in all areas of Florida, the distribution and use of Class AA biosolids should be tracked and reported.

Last summer the South Florida Water Management District (SFWMD) announced a plan to significantly increase its water quality monitoring program in the regional watershed. We applaud the SFWMD's efforts, but the SFWMD's data collection program will only provide part of the information that is needed for an effective regulatory program. To supplement the SFWMD's activities, the FDEP should require water quality monitoring by the owners/operators of sites where biosolids are managed and used. Obtaining water quality data from these sites (i.e., at the point of discharge into the region's waterbodies) will provide essential information about these potential sources of water pollution. Without monitoring, it will be very difficult for the FDEP to accurately assess the magnitude of the water quality impacts associated with a site or facility that uses biosolids.

Florida's algae blooms make it clear that a "presumption of compliance" with water quality standards should no longer be relied upon by the FDEP or the Florida Department of Agriculture and Consumer Services (FDACS) when the agencies evaluate sites where biosolids are managed. Sites using biosolids, including Class AA biosolids, need to affirmatively demonstrate that they are not causing or contributing to water quality problems. The best way to make that demonstration is through water quality monitoring.

Unfortunately, the proposed rules published by the FDEP on October 29, 2019 do not adequately address the critical issues that have been summarized above. Our consultants (CDM Smith) have evaluated the FDEP's proposals for us and they have offered their comments in a letter dated December 18, 2019. A copy of the CDM letter is attached for your review.

Lower Cost Regulatory Alternative:

CDM also evaluated the Lower Cost Regulatory Alternative (LCRA) that has been proposed for Section 62-640.700(10)(a), Florida Administrative Code. The LCRA would allow the application of biosolids in places where there normally is less than 15 centimeters (approximately 5.9 inches) of separation between the land surface and the seasonal high water table, provided the landowner draws down the ground water levels and thus temporarily increases the separation between the ground surface and the seasonal high water table. CDM notes that the "active management" of the seasonal high groundwater table in this manner may "promote infiltration [of nutrients] during the period of drawdown, [and] induce groundwater transport of legacy nutrients and other parameters out of the surficial aquifer system (e.g., nutrients, pesticides, herbicides, and others), . . ." Artificially lowering the water table will temporarily increase the depth of the vadose zone, but it will not prevent the water-soluble nutrients in the biosolids from leaching out of the soil when the ground water returns to its normal levels. For this reason, and the other reasons cited in the CDM letter, we believe the LCRA should be rejected or substantially modified.

Conclusion:

Thank you and the other members of the ERC for carefully considering our comments. We also encourage you to carefully consider the comments that have been submitted by Martin County, Indian River County, and the citizens in our respective communities. We trust that you and the ERC will address these exceptionally important issues by strengthening the provisions in the FDEP's biosolids rule.

Please feel free to contact our County Administrator, Howard Tipton, at (772) 462-1156 if you have any questions about our proposals.

Sincerely,



Cathy Townsend
Chairperson
St. Lucie Board of County Commissioners

Copies provided to:

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December 18, 2019

Mr. David S. Dee, Esq.
Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308

Subject: Proposed Rule Changes to Chapter 62-640, FAC regarding the management, use, and land application of biosolids

Dear Mr. Dee,

At your request on behalf of St Lucie County, CDM Smith reviewed the notice of proposed rule published by the Florida Department of Environmental Protection (FDEP) 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". Based on our review of the proposed rule changes, we have the following observations with respect to the proposed rule changes:

1. We understand that the current regulations do not pertain to "Class AA" biosolids although it is unclear in Section 62-640.700 FAC (Requirements for Land Application of Class AA, A, and B Biosolids) since the specific list of biosolids categories are proposed to be deleted.

We understand that Class AA biosolids may be excluded from the rule since these are processed to a higher level of treatment and are distributed for lot-scale fertilizer applications.

It should be noted that large-scale composting can potentially be a transport mechanism to surface and ground waters. On behalf of St Lucie County, we have noted engineering concerns for a facility in St Lucie County where this potential exists.

2. Under Section 62-640.100 5. (h) FAC, existing biosolids applications site, biosolids treatment facilities, etc. shall meet the requirements at the time of renewal or within three years of the effective date of the rule. Based on data available from the 2017 FDEP Annual Report for Biosolids Land Application sites within St. Lucie County, it would be responsible to reduce the timeframe to comply with all sections of the new rule.
3. No prohibitions zones were proposed in Section 62-640.400 FAC St. Lucie County may want to consider proposing prohibition zones that are upstream of the watershed (Note that the St Lucie River watershed is already included).

4. Since surface and ground waters often directly interact in Florida, it may be advisable to further vet and confirm the total nitrogen and total P₂O₅ application rate numbers (62-640.650 3. (c) FAC) as well as the 1,000 ft setback (62-640.650 3. (d) FAC), and it may be appropriate to monitor surface water (if there is an overflow) and shallow groundwater for all applications.
5. The proposed rule (Section 62-640.700 10 FAC) prohibits the land application on any site where the seasonal high groundwater table (SHGWT) is within 15 centimeters (5.9 inches) of the soil surface or within the placement of biosolids if tilled or placed in excavated areas. Areas with SHGWT elevations within 15 cm of the surface are often associated with wetlands, floodplains, and sites in close proximity to waterbodies.
6. Under Section 62-640.700 (10) (b) FAC, it would be appropriate to further define what professional experience and certifications qualify as “a professional engineer with soils training” or a “professional soil scientist”. While the preferred methodologies are called out, these terms with respect to personnel are ubiquitous, and do not specify required training or years of experience in determining area groundwater levels. It may be appropriate to have certified professional engineers with training and certifications in hydrogeology and/or geotechnical engineering make these determinations.

Additionally, at the request of St. Lucie County, we reviewed several letters submitted to FDEP in response to the proposed rule changes which made reference to a “Lower Cost Regulatory Alternative for Proposed Biosolids Rule” (related to Section 62-640.700 (10) (a) FAC).

The “Lower Cost Regulatory Alternative for Proposed Biosolids Rule” related to 62-640.700 (10) a. states that “reducing nutrient flushing can be achieved without creating a total prohibition on the land application of biosolids at sites where the SHGWT is within 15 cm of the surface for only a very short duration of the year” by nutrient management plans and water quality plans that 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 groundwater standards. After review of the “lower cost alternative”, CDM Smith notes the following observations: 1) even if reasonable assurance is provided, this could result in placement of biosolids closer to environmentally sensitive and impaired water systems; 2) the limit of accuracy for SHGWT estimates is unclear and an additional safety factor may be considered for any site that does not meet the 15 cm throughout the year; and 3) “active management” of the groundwater table per proposed Chapter 62-640.700 (10) (a) 2 may promote infiltration during the period of drawdown, induce groundwater transport of legacy nutrients and other parameters out of the surficial aquifer system (e.g., nutrients, pesticides, herbicides, and others), and increase the potential of unintentionally drawing down groundwater levels offsite. The requirements of these management and monitoring plans may include additional details such as potential adverse impacts on adjacent landowners’ ability to beneficially use their own properties and potential risks to wetlands, environmentally sensitive, and impaired water systems in the zone of groundwater level drawdown influence.

Mr. David Dee, esq.
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Summary

We offer these considerations to the proposed amendment to Chapter 62-640, F.A.C and the "Lower Cost Alternative" to assist in further supporting reasonable assurance to "minimize the migration of nutrients, nitrogen and phosphorus that impair or contribute to the impairment of waterbodies".

We appreciate the opportunity to provide comments on this summary review. Please contact me at 772.633.7160 or grotkeej@cdmsmith.com if you have any questions or comments to discuss.

Sincerely,



Eric J. Grotke, PE, BCEE
Vice President
CDM Smith Inc.

cc: St Lucie County
CDM Smith File 221692