

**Indian River County, Florida
Department of Utility Services
Board Memorandum**

Date: November 12, 2019
To: Jason E. Brown, County Administrator
From: Vincent Burke, PE, Director of Utility Services
Subject: Biosolids Rule Making Comments for Chapter 62-640 Florida Administrative Code

Background/Analysis:

The Florida Department of Environmental Protection (FDEP) is conducting rule making for Chapter 62-640 Florida Administrative Code (FAC) to address recommended actions of the Biosolids Technical Advisory Committee (TAC) following their review of management practices and potential nutrient impacts related to the land application of Class B biosolids.

The FDEP solicited input from stakeholders and subject matter experts and asked that comments be submitted by July 29 2019. Staff brought a departmental agenda item to the Board of County Commissioners (BCC) on July 16, 2019, and were directed to submit the comments to the FDEP.

In other meetings with FDEP personnel, staff was verbally informed that, due to the voluminous comments received by stakeholders, the proposed rule would more than likely undergo another round of comments. However, that has not happened, and the FDEP has now issued the rule, which has some, but not all, of the comments requested by staff or other municipalities, such as Martin and St. Lucie County.

On October 29, 2019, the FDEP published a notification of rule change and sent out an email notification to all interested parties (Attachment 1). The email summarized the rule changes and indicated that this new rule (Attachment 2) will require legislative ratification based on the statement of economic costs. Included with the proposed rule was a Statement of Estimated Regulatory Costs (SERC) - Attachment 3. As noted in the proposed rule:

Any person who wishes to provide information regarding a statement of estimated regulatory costs or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

Comments are therefore due to the FDEP on or before **November 19, 2019**.

A link to the rule and submittal portal can be found here:

https://www.flrules.org/gateway/View_Notice.asp?id=22546212

The FDEP's summary of proposed revisions to Chapter 62-640 Florida Administrative Code (FAC) are as follows:

- Existing sites – revisions apply at permit renewal or within 3 years [100(5)(f)-(j)]
- All biosolids applications “projects of heightened public interest” [300(3)(d)]
- All biosolids site enroll in an FDACS Best Management Practices (BMP) Program [300(3)(g)]
- Nutrient management plan (NMP) major revisions
 - Compliance with Basin Management Action Plans [500(5)(c)]
 - Revisions to the determination of application rates [500(5)(i)]
 - Most limiting nutrient, Nitrogen (N) or Phosphorous (P), unless permittee can provide reasonable assurance [500(5)(i)]
 - Table of recommended N and P rates for crops with using biosolids [500(5)(i)1]
 - Soil phosphorus storage “capacity index” required [500(5)(i)4]
 - Biosolids Water Extractable Phosphorous (PWE) required [500(5)(i)6]
 - Adjustments of P allowed if positive capacity index and low WEP [500(5)(i)7]
 - If N-based application rate, can only adjust N by a factor of 1.5 [500(5)(i)8]
 - Septage-specific application rates [500(5)(f)10]
 - Review NMP annually, revise if appropriate [500(8)]
 - Require annual soil fertility monitoring using IFAS “Phosphorus Index” test that provides “capacity index” [500(5)(e) and 650(3)(b)1]
- Require biosolids water extractable phosphorus (WEP) monitoring; site ground water monitoring and surface water monitoring [650(3)(a)1, 650(3)(a)3, 650(3)(c), and 650(3)(d)]
- Prohibit land application where the seasonal high water table is within 15 cm of soil surface (or depth of biosolids placement). [700(10)]
- Septage changes (delete flows, pathogen reduction and vector attraction reduction, staffing) [100(5)(c), 600(2)(b) and (c), 880(2)(j)2]

Staff has reviewed and has the following comments based on the proposed rule (Attachment 4). Staff has been informed that it is likely that the draft rule may not change from its current version, and thus staff presents the top 5 concerns as the rule is written now:

1. Existing land application sites can remain grandfathered in under the current rule for up to three years (based on permit expiration dates) before they need to abide by the items in this rule. This timeframe could potentially allow for a considerable amount of excess Nitrogen and Phosphorus applied to lands before they are required to adhere to the new rule application rates.
2. Nitrogen, Phosphorus, pH, and Fecal coliform are included in quarterly groundwater monitoring only if the application rates trip a certain threshold (revised from 400 lbs of Plant Available Nitrogen annually to 160 lbs of Total Nitrogen annually). Biosolids are suspected of containing additional pollutants that could create or contribute to water quality issues.
3. Soil Fertility tests are required to be run annually and covered in the Nutrient Management Plan (NMP), but not at a specified time (it should be *prior* to any application). This issue could lead to an annual test showing one thing, while approved applications rates show another due to the time differential. Additionally, Water Extractable Phosphorus (WEP) values can vary significantly based on wastewater plant operations. Biosolids generator facilities should be required to test for WEP as well as all parameters identified in 62-640.650(3)(a)3 should they enact a process change,

or the plant suffer an upset or pass-through episode. Biosolids application rates should be based on the most recent data available from the Biosolids generating facility and not necessarily what was included in the last NMP revision submitted to the Department in accordance with permit requirements.

4. Permanent monitoring wells or piezometers used for water level measurements and groundwater monitoring should be identified in the NMP, with Water Levels being collected and documented prior to land application in accordance with application rules. This will allow for FDEP inspections to take place at facilities and verify, through reproducible measurements, field conditions.
5. The new Rule does take into account some of the comments made by Indian River County or other stakeholders, but along with our comments and the changes identified in the proposed rule, there appears to be considerably more resources required by the Department to verify compliance with the new rule and its requirements. The Department's SERC document indicated that this revised rule is not expected to require any additional time or resources from the Department.

Recommendation:

Staff has prepared this agenda items as an informational update to the Board of County Commissioners (BCC). The BCC can direct staff to submit this list (or modify the list with additional comments) to be submitted to the Florida Department of Environmental Protection regarding Chapter 62-640 Florida Administrative Code by close of business on November 19, 2019.

Attachments:

1. FDEP Email notification regarding proposed rule
2. FDEP Notice of Proposed Rule
3. Statement of Estimated Regulatory Costs (SERC)
4. Staff Comments on 2nd version of Draft Rule changes for 62-640 FAC