Public Comments on Notice of Rule Development: Workshop 2 - Dec. 6, 2022

Chapter 62-6, Florida Administrative Code

The Department of Environmental Protection (DEP) is involved in on-going rulemaking for Chapter 62-6, Florida Administrative Code. We welcome public comments during the rulemaking process. The following responses are a compilation based on questions raised during and after the second public workshop. Questions voiced during the public workshop have been edited and condensed for clarity and brevity. These responses are preliminary and not definitive regarding the ultimate rule language that will be adopted.

Roxanne Groover Florida Onsite Wastewater Association

1. Question: One of the things and I think I've mentioned it before, if you look at 62-6, we no longer have part 1, part 2, part 3, part 4. When we used to look at it here, it would say part one before general, right? And then we would have part 2, part 3, part 4.

   Response: The part 1,2,3,4 texts were meant as orientations when you read the document and included in compilations of regulations, but they were not a part of the official rule text. When Chapter 64E-6 was transferred to Chapter 62-6 in 2021 as part of the program moving over to DEP, the "part" language disappeared from the print-out. The definition of parts is now only in that top line of 62-6.001(1) that defines it for the purposes of using it with the rule. The separation into parts itself has not changed, it is just harder to find them in the document. The Department is exploring with the Department of State if the part text can be incorporated into the official rule text. Thank you for that question.

David Hammonds General Public

2. Question: The Department continues using the term construction approval and final installation approval which I agree with, but I think the Department should strongly consider breaking this out. Add the definition of construction approval and final installation approval and be specific. It's under approved, and you do talk about construction approval and final installation approval. Break them down and tell them exactly what it is about. All you need to do here is put in a paragraph A and paragraph B. I think it would be much more useful to you.

   Response: Thank you for the comment, we will consider it.

Gabbie Milch Soil and Water Conservation District

3. Question: Is there a DEP site and inspection and an as-built certification?

   Response: Prior to the Onsite Sewage Program transfer to DEP, which was effective July 1, 2021, all inspections were done by Department of Health, County Health Department (DOH-CHD) staff. Now the DOH-CHD performs these inspections under an interagency agreement with DEP. For the new private provider inspectors, the law does say the Owner elects to use a private provider inspector and that the Department (by DOH-CHD pursuant to the interagency agreement) will not perform the inspection unless there is a complaint and/or some sort of issue that needs to be resolved visually at the site.

   For the second part of the question, referencing the as-built certification. Under current procedures, an as-built sketch is generally not required as part of the inspection if the

installation is as depicted on the site plan. If the Department does the inspection, they create an as-built sketch if there is a change to the current site plan. Similarly, the private provider inspector is responsible to provide an as-built sketch if there is something wrong or different on the site plan.

David Hammonds General Public

4. Question: I just needed to point out the vary last sentence on that page (DEP 4016 p. 2). This says final approval will not be granted to the Department or delegate until the office has confirmed that building construction is in substantial compliance. That wording does not exist in your rule language itself and the phrase "substantial compliance" is not identified or defined anywhere, which would therefore be arbitrary and capricious. The rule language in the section does not have the words. Standard compliance says, "you were in compliance", so you now have created a schism.

   Response: Thank you for that comment. We will work on making the language more consistent.

Gabbie Milch Soil and Water Conservation District

5. Question: Is the owner able to have an "as built" for their records?

   Response: The owner can obtain a copy of the final installation approval from the local county health department after the system receives final installation approval. The private provider inspector is required to provide a copy of each of their construction inspections to the owner. As mentioned above, there is usually not a requirement for a separate as-built drawing, only the site plan that was used for obtaining the permit.

   Elaboration by Johanna Whelan, County Health Department

   It is unfortunate that the homeowner would not receive all the useful information regarding views and the septic system we (a particular county health department) distribute when the final inspection is completed by a private provider inspector.

   Response: Distribution of the materials varies by county, and there are alternate points in the process. Issued permits, for example, could be distributed to the applicant or agent.

Christine Mullen County Health Department

6. Question: Private inspectors do not know what # 39 stabilization is (DEP 4016 p. 2). They typically put the type of stabilization, but it is a date field in the Florida Department of Health's Environmental Health Database.

   Response: Thank you. The specific information to be recorded is included for item 39 and the draft instructions for the form being presented. The correct information is the type of stabilization material and the date stabilized is the date of the verification as part of the construction approval. To make this consistent will require an update to Florida Department of Health's Environmental Health Database.

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Tasha Smith Private Provider

7. Question: We have come up with a better signature form where there is a final inspection section for after the initial is passed, and the system is covered and sodded and ready for final inspection. Is this going to be added to the new form?

   Response: Thank you. The Department's final installation approval is granted by within the Florida Statutes. Addition of a final approval, to be filled out by the private provider inspector, would be contrary to the current statutes. A private provider inspector needs to indicate on the draft form when additional private provider inspections are involved . To clarify, if there are multiple private provider inspections, each must be listed on a separate form. For example, one for the system inspection and construction approval before the system is covered and another when the system is stabilized, and the stabilization is inspected and approved.

   Follow-up Question: I tried to submit a picture of what Lee County had come up with. All they did was keep the final approval box on there, but there needs to be some type of indication as to the separation between an initial construction inspection and a final inspection after the system is covered. I understand it's not the final final approval for where the health department is going to pass it, but there needs to be some type of indication for the second inspection. There are two separate forms that are filled out as of right now. Lee is requiring at the initial inspection information be transferred onto the final, whether it has been checked by the private provider or not. What is the best way to come up with another word other than final inspection for that second inspection, before it gets sent to the health department?

   Response: Thank you. The area where the private provider inspector indicates construction approval or not also has a section for indicating whether additional inspections are required. As drafted, that is the indication that there are no further inspections required. If no further inspections are needed, that construction inspection would be your final inspection. Previous complete inspection forms would be submitted to the Department along with that final inspection form.

8. Question: Will we need to copy over this information (from previous inspections) now twice? We, as the private provider inspector, would have to copy it over once, say the health department did the initial and we do the final as the private provider. Are we copying this over twice since it only has one area for the construction inspection date or are we overriding the previous date and changing the date on the form and just saying no more inspection needed?

   Response: Thank you. That might be an issue with local practice where a single inspection form is used for multiple inspections. Each inspection must be a complete record of what is compliant or not on that date. For the subsequent inspections, the information needs to be copied over from previous inspections and the date of the subsequent inspection is entered as the construction inspection date. There is an effort through the Department of Health right now to create an online private provider inspection portal where inspectors could electronically submit inspection results for review and previous inspection information can automatically transfer to a new inspection form. That will make it easier to see what was done previously and submit complete records.

Roxanne Groover Florida Onsite Wastewater Association

9. Question: Given what you just said, could we ask Lee County to send a copy of that form and it can be shared with people. So we could see what they are doing that is different and Tasha seems to feel comfortable with?

   Response: It is public record and we can get a copy of that form and send it to you for consideration in how to phrase comments.

Ashlyn Crotty Crotty Services Septic Installations

10. Question: Ashlyn references chapter 62-6.003, Section 2A. Department will notify versus issue a construction approval to the installer. I am concerned on how our installers in the field will know that they are good to cover up a system after construction inspection.

    Response: Thank you. The private provider inspector must notify the contractor via copy of the inspection record.

    Follow-up Question: Would that be in the field at the time of the inspection or back in the office? This is a concern because when a system is repaired, it is covered immediately after inspection.

    Response: The private provider inspector is responsible for performing the inspection that follows applicable regulatory requirements of the onsite sewage treatment and disposal system, which includes proper notification and permit handling. The installer as well as the private provider inspector are responsible for their involvement and have a duty to make sure the system is in compliance with Chapter 62-6, F.A.C. The burden of this communication to complete a proper installation is on the installer and private provider inspector. The Department has regulatory oversight. Chapter 62-6, F.A.C., does not prohibit several avenues of communication. The Department is currently in rulemaking to confirm the private provider inspectors' role in the regulatory process to inspect the system, and that copies of the inspection be provided to the owner, contractor, installer and Department.

    Follow-up Question: We do a lot of repairs. I just want to make sure in those situations what your objective is while you have all your equipment onsite and you have an inspection done to get that system covered up as quickly as possible because it's actively being used by a family in the home. But my question is, what verification do my contractors out in the field have to have to go ahead and cover up the system? I noticed the change was from what looks to be a construction approval which sounds like documentation, a piece of paper so they know they are good to cover. They've passed the inspection versus a notification. My question is how do my people in the field know that they are good to go ahead and cover that system and that the job is complete, and the system can go back in use?

    Response: Understood. The answer may be in two parts from the Department standpoint. The current rule language considered will require that the private provider inspector issue some sort of approval in writing and copy the health department on it as well. The private provider inspector and your group can certainly establish communication outside of what the rule requires. Remember that the Department cannot

perform an inspection at the site once a private provider inspector is authorized by the property owner. That means that the process, communication outside of the paperwork to the Department is really to be decided by you and the industry and how you want to work together with the different private provider inspectors.

Follow-Up Question: Even if it was the Department who was conducting the inspection, you know right now in Brevard County, we get a verbal "OK" and you are good to cover. Occasionally we'll get an orange tag that says you are good to cover, and a list of a couple holds. But I have had a long-standing concern that you will get a call a week later after something was reviewed in the office and they ask you to be go back out. As you know, a cost for bringing equipment back out and digging up someone's yard. You may have already put stabilization down. My concern wasn't that it was a private inspector versus the Department, but rather what sort of notification are we getting as contractors in the field that the inspection has been complete, and we are good to cover up the system and we can close out that job.

Response: The current rule language considered is that the written copy of the construction inspection is going to be the format for communicating construction approval. The statute language creates private provider inspectors who can do the inspections, allowing the construction to continue without delay, same as when the Department gives a construction approval. If there is further review and the Department finds the system is not in compliance with statute and rule, despite the construction approval indicated by the private provider inspector, the system will need to be brought into compliance. Remember that the authorization from the property owner when they notify the Department that they will use a private provider inspector indicates that if it is found not to be in compliance that they will take the responsibility of bringing it into compliance and that may require the system to be re-installed.

Follow-up Question: This brings a greater question of when does the inspection period end? Does it end in the field? Does it end after a review in the office that's conducted a week later or a month later? There has to be some sort of finite ending where these homeowners aren't being held hostage to an administrative process. I don't think we need to go into the details of that right now, but I think that's something that we need to look at as an industry to decide at what point to we draw the line and say the inspection is complete. We can't keep going back and forth. We need to move forward and call and ideally that would be in the field when we have the equipment on site. This may need to be another conversation. Is it 24 hours, is it 48 hours? We need to get something established so you know while on one hand we want to make sure all the laws are passed; we can't make sure the laws are passed to an extended period of time while the systems are left open.

Response: We understand and thank you.

Doug Wilkinson

11. Question: The new draft form 4016, page two of three has removed the private provider final system approval. Does the private provider still conduct the final inspection or is it the Department conducting the final inspection?

Response: In this context, final inspection by the private provider inspector is simply the last, or final, construction inspection conducted by them. On the interim guidance and the current draft inspection form, the fact that this is the last or final inspection performed by a private provider inspector and not the Department is conveyed by circling that additional private provider inspections will not be required just above the private provider inspector's signature.

Ian Moore Reliable Septic

12. Question: If we send them two separate forms for a construction and then final inspection, does all the information from the first form need to be on the final form even if I use different inspectors?

    Response: Yes.

Sarah Septic Company

13. Question: I want to clarify really quick what you just said about the two forms being submitted for the inspections. The second form needs to have everything even including what was on the previous inspection? Is that what you said?

    Response: Yes. Thank you for following up to that question.

Ian Moore Reliable Septic

14. Question: If we sent in separate forms, one for construction and then the final inspection, does all information need to be from the first form on the final form, even if different inspectors?

    Response: Yes, all that information needs to be the same and on the final form.

15. Question: I am from Reliable Septic from Vero Beach, and we've been doing the private inspections for a couple of months now. I am new to this, but in the issue that one of our private inspectors was asking about, being uncomfortable putting all these setbacks or tank legend on here from a different inspection when I didn't get to see that personally. Can I just put the information that I recorded? I asked the health department and they said no. You have to put everything from the previous inspection onto the new form and I just wanted to clarify, and Marcelo did. We will continue to do that.

    Response: See previous response to this issue.

David Hammonds General Public

16. Question: We're talking about all these inspections. It seems to be everything's a construction inspection, period. There is a lot of disagreement of the thought process of final construction inspection. You need to provide final in front of construction inspection because there is a final installation approval and final construction. The other thing everybody that is bringing up is these time frames. When can we get this information from the inspector, whomever they may work for etc.? Just as a thought, I would suggest the Department consider language that encompasses all inspections. If you were going

to share the information in a non-written manner, ok, it needs to be followed up, for example, an e-mail. I am going to suggest 24 hours. That way you have something written, that's not verbally communicated. You can tell somebody, but you must follow up with 24 hours. This is regarding our phone call yesterday at 3:00 pm. Yes, I told you your system was approved. Whatever you need to do with these verbal things could at some point become problematic. I am going to suggest again the Department in rule can say you must. You must notify that there is another issue with all these private provider inspections and the inspections by the Department. There are no times established on when this work has to be done. Once a private provider provides all the information to the health department, it doesn't say it needs to be done with specific time frame. So is that like 3 months, 3 years? Yes, I am being facetious however, some people are probably nodding their heads going, yeah, it could be a long time. And again, all this was meant, as I understood it, to hurry everything along. Not having constraints on it will breed problems just like where all this came from. Thank you.

Response: Thank you for your comment. We will take that into consideration as we work on the next version of this rule.

Roxanne Groover Florida Onsite Wastewater Association

17. Question: We are on section 2, talking about that right? It can translate to construction. There's a construction inspection if it's the PE design, correct? We were talking about PE designed systems a second ago, and an in ground and nitrogen reducing system. The question that I have, because some counties that have county ordinances that require PE designs that are above and beyond 62-6. Where does this final occur for the private (provider) if I have one of those situations? We have a couple of counties that no matter what kind of design is done, the PE does the engineering design. My concern is, and this has happened already, the design was not followed. I don't know if the private provider didn't have the design or what happened. We are still trying to get better details, but in this section as far as private provider inspector, are they just responsible for the INRB and performance-based treatment system to get that information or have that engineer? Is it applicable to county ordinances and that private provider is going to have to be aware of the additional requirements?

    Response: This refers to the requirement that puts it on the engineer to certify that what was installed the way it was supposed to be installed. The language has included for a long time the exception for single family residences, the engineer did not have to inspect those. In addition, it is intended to clarify that there are a couple of things that are not performance-based and there are other engineered design systems that still need the engineer certification. What this says is single family residences with baseline systems are exempt from the engineer certification requirement, but if they contain an INRB or use a performance-based treatment system, then they need engineer certifications.

18. Question: If this is a conflict with a county ordinance, where is the private provider? Let's say, in my county, the ordinance says that a PE design system must have my approval, but here it's strictly says as the provider, I am only responsible to get the engineer's certificate of approval for these two. The reason I am asking is because we already have conflict between counties and what certain counties are asking. Typically, we only enforce what's in 62-6 and not a county ordinance but these private providers will be doing in inspections for county ordinances. I don't want to see a private provider

say 62-6 says I don't have to do this because that's not part of the code for private providers but, I have a county ordinance that requires this extra step must be included because originally it was something submitted. I don't know if we have that, but you may want to say, "as required", but it may not be a dance you want to be involved in because we don't want to enforce county ordinances that are not 62-6. I am concerned because we have already had one incident of an engineer design and that design was not either properly installed and it was not inspected per the design. We have a concern about that and I don't want to see that kind of thing continue to happen. We are going to have single family residences designed by engineers. Does that private provider have that documentation to make sure they know what they are inspecting? I would assume if you are a good private provider, you are going to make sure you have all the proper documentation so you can do a proper inspection. Who is doing the follow up on a single family or do I have no accountability? It may be something we have to work through, but we have a lot of people out here that are (systems designed by engineers for) single family, and I am going to have a private provider doing the inspection. Are they aware of all the details that they have and all the information you need to make the right inspection?

Response: It is the responsibility of the applicant and private provider inspector to be aware of state regulations and any ordinances made by local government which may affect their project. Interpretation of local ordinances is left to the local government that implements them. With regard to the private provider inspector, it is the inspector's responsibility to ensure they have the information necessary, including application or permit documents, to perform a compliant inspection to the same standards required of Department inspectors.

Doug Wilkinson

19. Question: In regard to the new draft form, will the Department accept the previous form for a period of time? There does not appear to have an effective date on the new draft form and many documents are filled out in transition between initial and final. In addition, the property owner has signed the notice to use the PP document for inspection of the construction many months before the initial inspection will take place.

    Response: When it comes to the authorization forms, and incorporation into the rule, it will be draft until it is incorporated into the rule. Right now, we are not forcing the private provider inspectors during this interim period to fill out the exact form. They just have to provide all the information that is on the form. Our interim guidance does specify that we, in the meantime, are going to be using the draft forms or something that is similar, that has the same information on there.

20. Question: Say something has been phased in and the 4015A was done with the draft form and now we have a rule in place. Not now, but in the future, we will have a rule in place when does that 4015 then become no longer appropriate to use?

    Response: This is yet to be determined. Updated forms often make prior versions obsolete and no longer usable. We will discuss with legal and provide guidance on this issue.

Roxanne Groover Florida Onsite Wastewater Association

21. Question: I appreciate you making this clear. We have had some questions back and forth; a county health department must give timed inspections to master septic tank contractors on repairs as long as it fits within their normal inspection hours and is in conjunction with the inspection schedule of the department. They did not say they will not do timed inspection on repairs from that, is that correct?

    Response: That is correct, the rule affords them the right to schedule an inspection with the county health department. Like you said, as long as it fits in with the normal inspection schedule, which in some counties may be a few days out. If it fits within the normal inspection schedule, then they can request that time. Thank you.

22. Question: I noticed it on the other form, and I just wanted you to see on tank number 1, tank size. Aren't we just going to have tank size 1, tank size 2, and then ATU instead of an ATU? Are we planning on having two tanks? And then ATU, see where is has ATU listed twice?

    Response: The reason for that change is tank 1 could be a pretreatment tank and then tank 2 could be an ATU. The idea was for the inspector to be able to indicate which of the two tanks is an ATU

23. Question: The way I read this is, I am going to have two ATU's on a site and that is very unusual where I could have multiple tanks. Is it possible to do tank size 1, tank size 2, and then have the ATU number three and then the two could be a processing tank or a trash tank? I think the challenge we are going to run into is that we put that in there because we had so many systems with more than one tank. My concern is that says ATU and therefore must be an ATU, not necessarily a processing tank or trash tank if that makes sense. I am just confused

    Response: At this time, we are not proposing a drop box. We are not sure that is something we can do on a form. We will take that separately to see if we can do drop boxes. As you see here in the instruction, we have the check box for the difference between the effective capacity and treatment capacity, which is different between conventional septic tanks and ATU's. If we do need to update this to make it clearer, that would be good to know. The idea was if tank one was an ATU you could check the box. If tank 2 was an ATU and tank one is not you could only check the box for tank 2. You would have the treatment train built from there. When there is a dosing tank or another tank you would have to write that into the comments.

Ashlyn Crotty Crotty Septic Service

24. Question: Why does the form say master certification?

    Response: Thank you. DEP form 4016 page 3 of 3 replaces the previous master septic contractor repair certification.

Roxanne Groover Florida Onsite Wastewater Association

25. Question: On the form that we have, the homeowner or the owner is still left. How are we making the determination on who is the homeowner? Let's say I am a builder and I have 6 lots. By the person that signing off on this, can it be me? Can it be somebody from my office? Who is it to sign off on this form and it doesn't have to be answered now? I just think it is something we would want to think about. Typically, when we think owner, we think property owner, what if the bank owns it. Owner might not be the term we want to use, or we might want to more broadly define owner. My other question is on part A on the notification requirement. I noticed one of the things that we added was, if no inspection by the department has been scheduled by the time of the first inspection by the private provider for example: If I want to come in today to Polk County and I haven't asked the county to come and do an inspection, for me and the way I read this is, if I come in today and I give them this letter I have to wait two days before I can do my inspection, even though I haven't scheduled my inspection.

    Response: The current rule language considered will allow submittal of those forms by the time of the first inspection by the private provider inspector. That will be the deadline to notify the Department that a private provider inspection will be used.

    Response by Roxanne Groover: I think we stick to what the rule or what the law says. From my viewpoint when I read it says, as scheduled. It is only scheduled if I call it in. Hypothetically, if I know that Polk County is 5 months schedule out, I am never going to schedule with them. I am always going to use a private provider. For me this is unclear, I am still being told by folks that are doing this, that even though they have not scheduled an appointment with the County Health Department the private providers are still being told that they must wait two days after they turn in that form before they can actually go out into the field and do their inspection. The argument is what we don't want is to have anybody from our Department of Health personnel out there as well as the private provider. The reason we put that language in there is because we knew this was going July 1st and we knew there was going to be stuff in the chain, so we didn't want to have that conflict. We did not want to have two people and both people want to get paid. We know now that all of that is gone, and the inspection has not been asked for. One of the things we did was contact some of the counties and said, do you go out unannounced to do inspections, construction inspection or finals? The response back from the county was "Roxanne, how would I know to go out there? Your contractor calls me and asks for that, now I know it's been installed." If my contractor has never called in for that final, why is there a requirement for a waiting period or is that the intent? I am trying to get clarity because I get why it was originally done, but no inspection has been scheduled. I get everybody is trying to get clarity, but I am not clear.

    Response: This language is describing when notification must be provided to the Department. One is at the time of the permit application if they know ahead of time they want to use a private provider inspector. The second situation is if they have scheduled an inspection with the Department, then it needs to be provided by 2 p.m. local time, two business days before the first scheduled inspection by the Department .

    Response by Roxanne Groover: If I hear you correctly, what you are saying is if I didn't provide it at the original time and I did not ask the County Health Department to do this, then I am going to give you this form that is signed by the owner of the property at the

time I send in my paperwork. There is no requirement for me to give advance notice to you that I am using a private provider inspector.

Response: The statute requires notification to the Department prior to the time of the first scheduled inspection by the Department or at the time of permit application. The current rule language considered addresses the notification requirement to the Department by the time of the first inspection It puts a time-frame for when the authorization form is to be handed in.

Ashlyn Crotty Crotty Services

26. Question: At bottom of the form, it says master certification statement instead of inspection. Was that the Department's intent to reduce the inspection form from a master and repair situation to a certification rather than an inspection?

    Response: Thank you for your comment. The form brought in the language from the current repair certification form the master septic tank contractors are currently required to use.

    Response by Ashlyn Crotty: Language provided to the group: "This is to certify that I have personally inspected the above referenced onsite sewage treatment and disposal system installation. The system installed in is full compliance with the permit and section 381.0065 Florida Statutes and Chapter 64E-6 Florida Administrative Code. I understand that falsification of this report is grounds for imposition of an administrative fine or suspension or revocation of my septic tank contracting registration and authorization."

    Response by Ashlyn Crotty: It says inspection as well, not a certification. I hope we see that corrected on the form. If Department of Health is trying to reduce it to a certification, then we should have a workshop on that as well.

    Response: This is the current repair certification form language. It has always been the master contractor certifying that they have inspected the repaired system and submitted the document for review by the Department. The Department makes the determination of whether it can be approved using the standard Construction Inspection form based on the repair certification information that a Master Septic Tank Contractor supplies. This rulemaking effort is not intended to change for systems where the master contractor has both installed and inspected the system.

Tasha Smith Private Provider

27. Question: So basically, you get your form in the day you do the inspection

    Response: That is an option.

David Hammonds General Public

28. Question: There has been some discussion regarding the property owners notice that authorizes the private provider inspector. I understand that you know the form can be used in certain circumstances, however I don't believe it complies with law and what the law says. The way I read this form, and I might be incorrect, but it requires the owner to

sign it, and it says owners authorized contractor to have. An owner who is not authorizing anybody obviously had to sign up. It's not a problem. They can also authorize the contract. The issue I am having, if you look at chapter 2022-105 Florida Statutes 381.0065, subsection 8, paragraph A, it says not withstanding any other law, ordinance or policy the owner of an onsite sewage treatment system or a contractor upon original owners' authorization may hire a private provider to perform an inspection etc. etc. So, if the owner supplied the contractor the letter saying my contractor can hire somebody, does not appear to meet that standard. If the owner is saying the contractor can sign for me, this form does not allow for the contractor to sign. Only the owner.

Response: We can bring this up again with our Office of General Counsel but in Florida Statutes s. 381.0065(d)(2), the acknowledgement is from the owner and it specifically states that they are the ones that are authorizing the system for their own property. The authorized contractor is able to hire, but the owner of the property is the one that is making the declaration. So that they are aware of those things. We can discuss that again with our Office of General Counsel. We appreciate the comment.

Gavin Sexton Engineering Firm

29. Question: Based on the previous discussion for Section 62-6.003(c)(1), the way it reads, an engineering design is not required for all systems. That's correct?

    Response: There is specific rule language specifying when an engineer is required. However, there may be local ordinances requiring engineered design and more situations required by rule.

    Response from Gavin Sexton: Assuming this would be required per code for PBTS?

    Response: Yes, thank you.

Ashlyn Crotty Crotty Services

30. Question: Section 4D (draft 62-6.003(2)(d), F.A.C.) and our repair situation. How can a homeowner wait for a final inspection installation approval and not continue to use the system? This would require them to be put out of their homes for that gap of time because of code. There seems to be some practicality issues with the code as written word context, but not in a repair situation.

    Response: During a repair of an existing prior-approved system there is not a certificate of occupancy on hold pending approval of the system. Enforcement to require compliance if the system is not repaired would occur through a separate process.

Sarah Septic Company

31. Question: Is there a list of specifically what documents need to be kept?

    Response: The specific documents that need to be kept are all the supporting documentation and the inspections that are available for that permit that are used by the private provider inspector for the purpose of their inspection.

Kenneth Think

32. Question: Does the audit apply per company or per inspector?

    Response: Per inspector.

33. What is the frequency for audit?

    Response: That would be annually 25% of the inspectors and we plan to base that on the number of inspectors, or the number of inspections done by the private inspector, or it could be completely random, we could do a mix of those two. There are various ways that we might be able to select a provider but we would not expect every single year the same provider to be audited.

34. Question: Can an engineer inspect a system they have designed?

    Response: Yes, but not a system they or their company installed.

Roxanne Groover Florida Onsite Wastewater Association

35. Question: I assumed that the 25% (audit of Private Provider Inspectors) was going to be per county. That 25% is per state. Would that be correct?

    Response: Yes, 25% of the Private Provider Inspectors statewide is correct. That is a statewide pool they would be pulling from.

Kenneth Think

36. Question: For the frequency of inspections, will this be one annually? Or if I have four inspectors, should I plan on at least one of them being audited all the time?

    Response: If we do a pure random sample, there may be some opportunity for that, but it would not necessarily be based on the number of inspectors you have. It would be based on the statewide pool of inspectors.

Ashlyn Crotty Crotty Services

37. Question: The “conflict of interest” conflicts with the delegated authority from the Statute. Can you explain where the DEP received extra authority? Is the relationship between a husband and wife a conflict of interest? What about family? What about the friend?

    Response: Regarding the relationship between a husband and wife, if there is no conflict of interest, that would be acceptable. If there is a business relationship and they are both authorized at the same company, then we may fall into a conflict of interest. If they are completely separate business entities, it would be considered a non-conflicting interest as long as it is accurate when you sign the form that there isn’t a conflict of interest.

38. Question: I am also a certified environmental health professional. I am in a situation where my husband has a company that installs the system and then I am licensed to inspect them. My question was in the statute itself; the language says it may not be conducted by a private provider, authorized representative of the private provider that installed the onsite sewage treatment and disposal system. That would suggest a business relationship which, in my opinion when you are getting your own professional liability insurance, that is pretty big thing to do. What you are supposed to do. However, looking at this new proposed rule, I don't see a definition of conflict of interest which make it very subjective. It is a small industry. I know within the Department there are some people who are environmental managers who also have husbands that install. As you know, when you are in a smaller close-knit industry, it's a family business or your brothers have companies we are going to run into these issues where everybody knows everybody. It could be said that we all have a conflict of interest. So where does the line get drawn. Also, in other administrative statutes which I can't quote at this time, but I can provide that at a later date and time as needed. There is direct language from legislature that says no family members of blood relation and there's additional language here. The language in the statute only suggests a business relationship, which is why I said it looks like an overstep of the delegated authority when legislature wants to make those extra conditions, they can. It wasn't made in the statute so clarification as to what a conflict of interest is and a husband wife situation. Would it be as simple as me signing a document saying I value my professional license more than I? It just puts it into a difficult spot. If we could get clarity that would be great

    Response: We appreciate your question. We will take that down and discuss that further as we work on the next rule draft.

    Response from Ashlyn Crotty: Thank you. I feel like there's a lot of people in the industry that are probably thinking oh man, what constitutes a conflict, clarity would definitely help up on moving forward.

    Response: For clarification, the question you are mainly concerned with is the general language in (2) and maybe less concerned about the (a), (b), (c), (d), which provides more details where the conflict of interest? Is that correct?

    Response from Ashlyn Crotty: Yes, (2) generally, not the (a), (b), (c), (d). Just the general statement of conflict of interest because it's a subjective view. It's not objective. These people in a conflict of interest. That is my concern is who? How do we decide or how do you know as we are navigating through, how do we make a conscious decision about what is a conflict of interest and what is not? Thank you.

Ana Siggs

39. Question: Is the audit in addition to routine credentialing, renewal, continuing education?

    Response: The idea here is that the audit would be in addition to or separate from your routine credentialing through the Department or other agencies.

David Hammonds General Public

40. Question: In regard to enforcement actions, someone working for an engineer as an example. It says you are going to take action against the engineer, the supervising engineer. Why is enforcement not taken against the inspector as well? I understand they work for an engineer, but they did the inspection. They shouldn't be getting away scot-free in my opinion. They need to, as an example, it the worst-case scenario, they need to lose their ability to perform these inspections. Is the thought that if this person gets a black mark, they will never be used again but they still could be? I understand they actually get the supervising engineer, but I have difficulty with what I infer to be for those people be letting go scot-free. That is all thank you.

    Response: Thank you, good comments. We will discuss.

Roxanne Groover Florida Onsite Wastewater Association

41. Question: For David's comment, what I would do is add that the individual be held responsible but also the supervisor and/ or the supervising engineer. That way we are holding the staff that took the training and the engineer who is ultimately responsible because they are working under their guidance. That is one discussion point. My other one is this is going to take additional guidance tools. I would encourage the Department to set out some guidance because every one of these has a two-prong discussion. You are going to have the discussion with violation of 381.0065(3)(h) (enforcement authority of the department), but then you will also have to have a discussion with whoever holds the licensing or registration or certification for those individuals. We need, as the industry out there and as the county health department regulatory (authority), (to know) what is the exact process. It is going to be very new. I think we already have challenges with following the exact process when we have a complaint with anything that goes on now, no matter what. We have added a whole new private provider group. It would be helpful for us as an industry to have guidance tools of "if this happens then this is how the complaint process works". We start at the local county health department, so we all know in the field, (and in the) county health departments. How do we move forward through this? There also has to be a notification place and I am using the word place that has that information, it needs to be publicly available. The reason I say this is, it goes back to the form the homeowner or the owner signing off saying "I have done my due diligence. I have made sure that the person I am going to hire knows what they are doing. They (are) in good XY and Z". We all know that enforcement issues can take several months to several years. I have not set that homeowner up for success if there is no way to see. Let's say me personally, I have various complaints against me that are now in the process of possible disciplinary action or revocation of my license. I understand that it makes people concerned that often we feel like somebody files an invalid complaint and the nuisance complaint now makes it harder for me to do business. I don't know how we navigate that. I think if we are asking homeowners to sign off that the did their due diligence, we need to make sure that they can do the due diligence in case we do have someone up for a compliance enforcement issue.

    Response: Thank you Roxanne. To clarify what you said in one part here. The enforcement action or complaint is actually a valid complaint, would your suggestion be to put all complaints (in a public listing) or only the valid ones?

Response from Roxanne Groover: That becomes the question. How do you separate out nuisance complaints? For me, I only want valid complaints but what does that procedure (look like) for determining what's invalid. Hopefully everybody on this call is having ideas flowing through their head, good, better and different. I don't want to see a nuisance complaint out there but at the same time, I don't want to have someone out there running rogue for 18 months while we work through the process.

Response: Thank you. We will discuss that further.

Ian Moore

42. Question: Auditing systems that have already been installed; how will the auditors take into account the weight of cover on the field causing settling. How will field verification be conducted.

    Response: Separately from the rule language you are discussing, the intent right now is that audits for the private provider inspectors will be like those for the Department's inspectors. The audits will be based on the program evaluation and standardization tools that have been in use by the program office for Internal Quality Assurance processes, which includes evaluations of systems that have already been covered with earth.

Kenneth Think

43. Question: Is the auditor required to have the same credentials as the inspector?

    Response: "We have not put that into our rule language, that needs discussion." Persons working in the OSTDS program (including those performing audits) are required to be certified in the program.

Ashlyn Crotty Crotty Services

44. Question: Traditionally the Department of Health only had enforcement action against somebody actually holding the license. In subsections 4, where it allows for an employee of an engineer working under their license and the question is, who has the liability. I can understand you would want to go after the employee, you mentioned you would go after both the engineer and the employee. How would that work if the employee doesn't actually hold a valid license under this section?... (following up)… In some situations we have plumbers and people that are doing septic related work but aren't subject to enforcement actions under Department of Health. It is tough stuff, but the contractor is always subject to that enforcement. In this case you have private inspectors who can be three types. A Certified Environmental Health Professional, a Master Contractor, Engineer or somebody working under the supervision of an engineer. This would apply to an unlicensed person working under the supervision of an Engineer. What disciplinary action could be brought against an employee working under the supervision on an engineer is what I was referring to.

    Response: This is similar to earlier comments and we will look into how this can be clearly addressed in rule.

Greg Mayfield Southern Water and Soil

45. Question: Have engineered systems been discussed? Private inspections allow contractors to cover, even if it doesn't meet permit requirements. We have a project where we designed it, the contractor installed something totally different then what's on the permit and a private inspector came out and inspected it. This is a 5000 to 6000 sq. ft. drainfield. It didn't go in according to the design. They want us to redesign it but it doesn't meet the room criteria so we can't. Where do we go to complain? Now the owner (is mad), it's not working. The system is already in failure. We are trying to figure out what we can do to get this closed out.

    Response: By signing the acknowledgment, the homeowner understands that in the event the system does not comply with applicable rules and law, they are responsible for remediating the system in accordance with existing law. This seems to be an ongoing situation. Please reach out to the consultant for that area so we can work out a solution for that specific case.

Unknown from the Chat

46. Are the rules around private building inspectors being referenced and drafted in rules for private septic inspectors?

    Response: Thank you for your comment. Those rules were reviewed during the rulemaking efforts.

Roxanne Groover Florida Onsite Wastewater Association

47. Question: Tank volume on the report, they are allowed to use dimensions, legend. If we are going to allow people to make decisions on how much volume did it take by filling, we need to figure out what that process is. I am not sure that all those trucks are equipped with the methodology to give us a good solid number that's verifiable. You know, measuring dimensions, I can figure that out. Legend should give me my information. Filling I am not so sure. From my viewpoint we either need to put forward a procedure that we are going to use, a verifiable procedure, and someone is going to submit documentation, or we need to remove the ability for them, the mechanism to make that determination.

    Response: This will be considered in future rulemaking.

Robert Himschoot

48. Question: (About) places that disaster destroys existing structures and must rebuilt. Will variances still apply. Many businesses have been substantially damaged but their systems are OK. There was variance allowed at the time of construction. Many need repairs.

    Response: There is specific statute language addressing these structures and allowing reconnection to systems that are not in failure under certain conditions.

Roxanne Groover Florida Wastewater Association

49. Question: When do we expect to see this going to rule? I know we are in draft form right now. Do you have any timeline you're expecting? I would assume you would comment and then submit another draft and then it would be open for the comment period again. Then, we would see the rule go into effect. These are walking through that procedure and what you think the timeline will be.

    Response: At this stage the Department is making any necessary edits to the draft rule language. If there are significant edits we may consider holding another public workshop, or we could just publish the notice of proposed rule, which also allows for a public comment period. The Department will work through the public comments and consider rule language needed prior to publishing either a notice of proposed rule or whether to hold another public workshop beforehand. In the meantime the Department released interim guidance, which explains the statutory requirements.

Tasha Smith Private Provider

50. Question: Is it possible to require all county health departments to upload permit packets to a public system like EBRIDGE or Carmody? I've noticed there are still counties that send permits via emails to the contractors or owners, and this would alleviate that workload from the health department by placing them on a portal website accessible to owners, contractors and private providers so everyone has the same information, especially if a revision is given to the health department for review.

    Response: Thank you for that comment. There is work ongoing (towards that) possibility. It requires development and IT support, and we are working closely with the Department of Health, but that aspect is not available yet.

Ashlyn Crotty Crotty Services

51. Question: When a permit is issued, we would need a system in place to notify the contractor listed or the homeowner to be informed on the permit issued. Otherwise, we would have to check the portal every day to see which of our 20 permits that we have in the queue have been issued. That is just a consideration if we are going to move towards that technology. There would need to be some sort of email notification incorporated within it.

    Response: This will be considered in future updates to the program's technology.

Tasha Smith Private Provider

52. Question: It (technology used to notify and share permit information with the public) is already available, but the counties are not using it.

    Response: The technology is available, but it is not a statewide requirement or one currently under consideration. Those are paid for and handled within the local County Health Department. There are costs associated with using those things and we have not implemented them as a statewide requirement. This comment will be considered in any efforts to upgrade statewide technology serving the OSTDS program.

Tim Mayer Private Provider

53. Question: I'd like to see CEHPs able to do MAFL determinations. Perhaps with training on "wetlands determination", folks would feel more comfortable with that. It seems inequitable that a Department CEHP can do them, but a private CEHP cannot. Same training, same experience, ... Someone could do one one week and then leave the Department the next week and not be able to do one. Need to fix that.

    Response: This requirement is in statute and not set by rule. It is in 381.0065(2)(k), Florida Statutes.

David Hammonds General Public

54. Question: 62-6.001 – See “private provider inspectors” in the language. In all other uses it has been capitalized. Should be consistent.

    Response: Depending on the sentence structure the individual PPI is capitalized to identify that particular inspector. When referencing the inspector in a general sense it will be in lowercase. Thank you for your comment. It will be taken into consideration.

55. Question: 62-6.001(4)(b) – If metered flows are allowed, MUST have accuracy requirements for said meters. Issues can arise when water pressure is too low/high. I suggest a minimum accuracy level of 95%. Meters should not be allowed to be reset after use, and starting/ending readings must be required, along with an identifying mark such as a serial number from the meter. Meters must be tested at four month intervals by filling a container of at least 100 gallons that has been verified by the CHD. Other requirements may be needed.

    Response: Thank you for your comment. It will be taken into consideration.

56. Question: 62-6.001(4)(d)2. – See later comment on defining building construction and for the permit to “remain valid” and not “will be valid…”

    Response: Thank you for your comment. It will be taken into consideration.

57. Question: 62-6.001(4)(e)2. – Suggest modifying language to include required unobstructed area in addition to the existing drainfield. This would ensure that the unobstructed area is included in the requirement, as opposed to be arguable.

    Response: We understand your suggestion to be to make the first sentence read: “increased to current rule drainfield size and unobstructed area requirements” Thank you for your comment. It will be taken into consideration.

58. Question: 62-6.002(6) – Define final installation approval versus construction approval. Note final installation approval is used multiple times, should be consistent throughout rule.

    Response: Thank you for your comment. It will be taken into consideration.

59. Question: GENERAL NOTE: LINE NUMBERS FOR THE ALL DOCUMENTS WOULD ALLOW FOR AN EASIER METHOD TO IDENTIFY ALL COMMENTS.

    Response: Thank you for your comment. It will be taken into consideration in future rulemaking efforts.

60. Question: Suggest break into paragraphs (a) Construction approval; and (b) Final installation Approval; and provide appropriate definitions.

    Response: Thank you for your comment. It will be taken into consideration.

61. Question: 62-6.002(45) – Why is the last sentence necessary?

    Response: Thank you for your comment. It will be taken into consideration.

62. Question: 62-6.003(1) - the term “building construction” is used here, as well as several times in the rule, however it is never defined. The term has been in use for over 30 years. This term needs an actual definition at this point in time, as when the term was first used the Department was given much greater latitude in how it interpreted its rules. This no longer is the case. The inclusion of a definition will provide consistency to the program.

    Response: Thank you for your comment. It will be taken into consideration.

63. Question: Second comment for subsection: the word “is” has been added and “shall be” is proposed to be deleted. I suggest the proposed word be changed from “is” to “remains” as the permit in question will actually remain valid, as it is an extension of time from the original permit.

    Response: Thank you for your comment. It will be taken into consideration.

64. Question: Third comment for subsection: DELETE FOLLOWING SENTENCE: A fee will not be charged for a repair system construction permit issued within 12 months from the date of final installation approval authorization of the onsite sewage treatment and disposal system. The purpose of the change is to begin charging for repair permits issued within 12 months of the initial approval. Removal of the sentence (as opposed to rewording) will cause a greater paradigm shift, making everyone notice it. Indeed, the first sentence in the subsection clearly indicates repairs must have a permit. Rule section 62-6.015 requires a repair permit, and section 62-6.030(1)(g) requires a fee for the repair permit. This also shows the sentence in question is not needed. The original sentence was placed in the rule 30 years ago to indicate the fee was not required if obtained within 12 months of the final installation. Removal of the sentence removes the entire thought process.

    Response: The draft rule language had not crossed out the “not”, so the waiving of fee will continue under the proposed rule language.

65. Question: 62-6.003(2)(a) – The word prelimilarily [SIC] is used. Should be preliminarily. Second comment for this paragraph: Require that all inspections must include the complete system; i.e. cannot stop inspection after the first violation is found, must

inspect the entire system as it exists during that particular inspection. Prior construction inspections are used to provide documentation on portions that previously been approved or denied.

Response: Fixed spelling. Thank you for your second comment. It will be taken into consideration.

66. Question: 62-6.003(2)(b)1. – Question: what if the installer disagrees with the Private Provider Inspector as to violations? Is there a procedure for the Department to provide an inspection, for a fee, to provide the correct interpretation? This seems to be required per the last two sentences in paragraph 381.0065(3)(c), F.S. 2022. Indeed, the "Secretary of Environmental Protection" (as opposed to the Secretary of the Department of Environmental Protection) is required to assign someone to resolve the dispute. This also makes me wonder if the statutory wording along with the agreements between the DEP/DOH would allow for a local DOH contracted person to perform this function.

    Response: Thank you for your comment. It will be taken into consideration.

67. Question: 62-6.003(2(b)2. – Is it possible the wording is incorrect? See third and fourth words in first sentence. "If the correction identified requires a revision…" Should this not be reversed, "If the identified correction requires a revision…" ?

    Response: Thank you for your comment. This has been fixed in the current draft rule.

68. Question: 62-6.003(2)(c)2. – Delete "If additional site visits after athe system construction approval inspection are necessary" as it is unnecessary.

    Response: This was updated in the December 6, 2022, draft rule.

69. Question: 62-6.003(2)(c)3. – Specify that the operating permit application must be reviewed and approved prior to granting final installation approval. Yes, this sounds weird. As written, final installation approval must be granted when the operating permit application and fee have been received. What if the application cannot be approved? DEP has the application (unapprovable) and the fee, hand them final installation approval??? I would hope not.

    Response: Thank you for your comment. It will be taken into consideration.

70. Question:62-6.003(2)(c)4. – As it relates to the "authorized agent" the following is provided: what if there is more than one authorized agent? Nowhere is there a prohibition that only one agent is allowed. Please note this comment would apply to all situations where this type of issue comes into play. It would seem that the records would need to be provided to all listed agents. I can see many CHD's having an issue with this.

    Response: Thank you for your comment. It will be taken into consideration.

71. Question: 62-6.003 – General comment: somewhere in the language as it relates to Private Provider Inspectors (PPI), there needs to be a requirement that they MUST be required to have a copy of the completed and approved system application and permit. This would then allow for them to have a copy of all information required to perform the

inspection; scaled site plan (or not, depending on requirement), floor plan, site evaluation, structure type, size, bedrooms, engineer (or contractor) plans, etc. I do not recall seeing this in the proposed language. One could argue this is found in 62-6.003(4)(c)2. based on the rather broad wording of their acknowledgement, but that is a problem with broad wording, too many different meanings can be inferred. Suggest this needs to be clarified.

Response: Thank you for your comment. It will be taken into consideration.

72. Question: GENERAL COMMENT: The use of the word “utilize” in the rule seems inappropriate to me, if the understood definition of the term is “to make use of; turn to practical use.” In my opinion, the word “utilize” should be replaced with “use” in all instances.

    Response: Thank you for your comment. This has been updated in the current draft.

73. Question: 62-6.003(4)(a) – the word “Provider” is misspelled as “Provder.”

    Response: Thank you for your comment. This has been updated in the current draft.

74. Question: Additional comment: see language “…if no inspection by the Department has been scheduled by the time of the first inspection by a Provide [SIC] Provider Inspector.” Firstly, please change incorrect “Provide” to “Private.” Secondly, this is easily interpreted as providing the form PRIOR TO the first inspection, as opposed to being supplied along with the initial construction installation inspection that must be supplied to the Department within 2 days. Should this not be fleshed out so no misunderstandings are made?

    Response: Thank you for your comment. It will be taken into consideration.

75. Question: 62-6.003(4)(d) – What is the time constraint for final approval? Per the wording of the paragraph, “upon receipt” would mean “immediately when the Department (CHD) gets all required information. However, there is no time limit for the Department to perform the functions. Chapter 120, F.S., 2022, would not seem to apply here, as this is not a permit application. The entire genesis of using a PPI is to shorten the time to the final installation approval for the system. If the Department does not set a maximum time limit it will be argued by CHD’s that there is none. You may wish to discuss with legal counsel prior to consideration of amending this language.

    Response: Thank you for your comment. It will be taken into consideration.

76. Question: Additional comment related to fees to the Department. As it relates to fees, is it a single fee to the Department per permit, or per inspection? If a new PPI is used on a job where a different PPI has performed at least one inspection, is there a separate fee for them? Please clarify.

    Response: Thank you for your comment. It will be taken into consideration.

77. Question: 62-6.003(5) – Please modify wording to require that both the system and property must be maintained per the last approved permit for the system. Currently it doesn't cover wells, surface water bodies installed off property, or other items.

    Response: Thank you for your comment. It will be taken into consideration.

78. Question: 62-6.003(6)(a) – As it relates to frequency of testing (AND inspections) required by the annual operating permit, I suggest you require specified date ranges, such as "every four to six months from last testing (OR INSPECTION)" or on a specific month basis. DO NOT continue to allow a "2X" per year type scenario, as this will allow testing OR inspections to be done within a two month time period. The systems are SUPPOSED to be working at all times, and the ORIGINAL intent was to ensure the systems were inspected every six months, for example. This changed to "2X per year" which is not automatically the same thing. Please fix this ancient and ongoing issue. This needs to apply to Department inspections as well as contractor inspections/testing.

    Response: Thank you for your comment. [(6)(a) refers to an annual inspection by the Department but the concern for inspections by other parties will be considered in future rulemaking for other sections] It will be taken into consideration.

79. Question: 62-6.003(6)(b) – Should not a deadline be in place, possibly 14 days, for this to be completed by applicant? I note that this paragraph does not state the new operating permit must be approved prior to the tenancy change, only reviewed. Is review the only necessary step? I would hope not. NOTE: the requirement of the new operating permit MUST be printed clearly and in larger type on the permit. Indeed, it would be a great idea for the CHD's to send the owner of the OP a letter immediately after it is issued stating that the OP IS NOT TRANSFERRABLE and if a new owner is contemplated, they should be directed to the CHD. THIS WOULD APPLY ANYWHERE OPERATING PERMITS ARE ISSUED.

    Response: Thank you for your comment. It will be taken into consideration.

80. Question: 62-6.003(6)(c) – What are "normal working hours" these days? Is it defined by Florida Statute? I am unsure. Would it not be more appropriate to put a time frame to this requirement? For example, between 7 a.m. and 7 p.m., M-F. In the summer, it is possible that employees could work later as opposed to the winter, when daylight hours are much reduced. Possibly allow inspections times based on hours of daylight, for example one hour after sunrise to one hour before sunset. This would allow for increased inspections based on the availability of both system owner and inspector.

    Response: Thank you for your comment. It will be taken into consideration.

81. Question: 62-6.024(1) – Capitalize private provider inspector to match other uses. Additional comment: last four words of paragraph; is the hyphen really appropriate?

    Response: Thank you for your comment. It will be taken into consideration.

82. Question: 62-6.024(3) – If Private Provider Inspectors are CEHP's are they not required to follow s. 381.0101, F.S. and Chapter 64E-18, FAC?

    Response: Thank you for your comment. It will be taken into consideration.

83. Question: 62-6.027(2) – See previous comments regarding defining "building construction" and the replacement of "is" with "remains" relating to extending the construction permit.

    Response: Thank you for your comment. It will be taken into consideration.

84. Question: Additional comment: The wording "…all services must be performed by the performance-based system maintenance entity." Requires ALL services to be PERFORMED by the AME. Has it not been allowed for the AME to either direct or allow for an approved provider (e.g. a septage disposal service or another AME) to perform necessary work on the PBTS? Would it not be better to have language where the AME can assign specific duties to persons legally allowed to perform specific functions on a case-by-case basis?

    Response: Thank you for your comment. It will be taken into consideration.

85. Question: 62-6.027(3) – Once the CHD sends the application to OSP office, what time frames are legally allowed for the further review of the PBTS application? There does not seem to be an imposed time frame on the OSP office for their review, only for the CHD who initially receives the application. Doesn't seem appropriate to allow 90 days, or even 30. This should be addressed here. Consultation with DEP legal counsel would be advisable.

    Response: Thank you for your comment. It will be taken into consideration.

86. Question: 62-6.027(5)(a) – Why does the design engineer's designee NOT have to be a PE? When comparing to 62-6.003(2)(c)1. (some exception language is in this subparagraph), the requirement is that when a system is designed by a Florida-licensed engineer, they or their designee WHO ALSO MUST BE A LICENSED ENGINEER is required to inspect the system. My question is why a PBTS that has been designed by a licensed engineer to require much higher treatment levels with great allowances for setback reductions, and in many cases to lots that MUST HAVE these systems in order for the property to be permitted, DOES NOT REQUIRE THE ENGINEER DESIGNEE TO BE A LICENSED ENGINEER AS WELL. A PBTS is much more technically complicated and has much higher public health implications if it does not function properly. This makes no sense to me. This must be changed to REQUIRE a licensed engineer to inspect the system.

    Response: Thank you for your comment. It will be taken into consideration.

87. Question: 62-6.027(5)(c)2. – Wording issue. "If a correction identified requires revision…" Should this not be "If an identified correction requires revision…"

    Response: Thank you for your comment. This has been fixed.

88. Question: Additional comment is subparagraph. The language “review and approval.” The reader can infer that the only option for the Department is to approve the amendment(s), when this is not the only legal outcome. What if the amendments cause an issue to which the Department cannot issue an approval, but must issue a denial? This could then lead to a variance application. Please review wording in all these types of scenarios.

    Response: Thank you for your comment. It will be taken into consideration.

89. Question: 62-6.027(5)(d)2. – This should read “Final installation approval will not…” This is also a similar issue to the above and previous comments. The language states the OP application and fee are all that is necessary to have final installation approval. What if the OP cannot be issued for whatever reason? Doesn’t the OP have to be issued?

    Response: Thank you for your comment. It will be taken into consideration.

90. Question: 62-6.027(5)(c)3. – What is time frame for issuing final installation approval? This language could be used to allow for extended approval times. This goes against providing quick service to the applicant. A similar comment regarding allowed time frames was provided prior to this one.

    Response: Thank you for your comment. It will be taken into consideration.

91. Question: 62-6.027(6)(e) – The following would also have implications for other parts of the rule and Chapter 489, Part III, FS. This is in regards to the long-time use of the phrase “…plumbing contractor licensed under paragraph 489.105(3)(m), F.S….” Please note that the statutory reference is to the definition of the term “plumber,” NOT licensing provisions. I suggest the ALL appropriate wording must be changed to be correct. May be as easy as referencing the plumber must be licensed per Chapter 489, F.S. For reference, please review sections 489.115 and 489.117 for background. I suggest you review the last citation first. You could also review sections 489.111 and 489.113, F.S. Again, I believe this all goes back to the main issue of the department being allowed great latitude in the interpretation of their own regulations. Additionally, changes to Chapter 489, Part I may have been made which affects this issue. Regardless, it seems to me the wording currently used does not cite the correct references.

    Response: Thank you for your comment. It will be taken into consideration.

92. Question: 62-6.030(2)(e) – The designation of “Section” is incorrect, as the citations are subparagraphs. The prior citations in the rule have broken down all citations to the actual part.

    Response: Thank you for your comment. This has been fixed.

93. Question: Also, is a fee paid for each test? I see that it states "application …including examination…" Seems all tests cause the Department time and money. Maybe a fee for retakes should be considered. This brings up another issue. If they make below a specific score, do they have to retake the ACT?

    Response: Thank you for your comment. It will be taken into consideration.

94. Question: Form DEP 4015A: Permit number area at top right of form should be increased in size.
    Property information: What if Lot/Block/Subdivision doesn't apply? For example, a metes and bounds description of a 40 acre parcel using the U.S. Public Land Survey, e.g. the NW ¼ of the NW ¼ of section X township Y range Z? Another example is a description of the west ½ of lot 5 Block A of Wetland Acres Subdivision?? CHD's are INFAMOUS for not getting complete and CORRECT information. Yes, this reflects required OSTDS application information. Oh well, that should also be addressed. Should the additional required information be attached?

    Response: Thank you for your comment. It will be taken into consideration.

95. Question: Form DEP 4015A: Back page of form: Same comment regarding increasing Permit No. spacing. Capitalize "part III of Chapter 489, F.S."

    Response: Thank you for your comment. It will be taken into consideration.

96. Question: Form DEP 4016 Page 2 of 3: Front of form: The spacing to right of DEP logo info should be reduced to enable enlargement of spaces for permit number, date paid, fee paid and receipt.

    Response: Thank you for your comment. This has been fixed.

97. Question: Form DEP 4016 Page 2 of 3: Front of form: The underlined blanks to left of items [01] – [51] could be reduced in order to add space for information to right of same items.

    Response: Thank you for your comment. This has been fixed.

98. Question: Form DEP 4016 Page 2 of 3: Front of form: See Private Provider Inspection section: Capitalize the existing "private provider inspectors" to be consistent with other parts of the rule.

    Response: Thank you for your comment. This has been fixed.

99. Question: Form DEP 4016 Page 2 of 3: Back of form: See “Site 1” and “Site 2” portions, specifically directly below these areas where is requires a reading in [inches/ft], etc. Please note this does not comport with the information format required for item [16] on the front of this form. Review of form shows the only allowed input is INCHES, see “in.” to far right of item [16]. This therefore disallows any use of a designation of ft. (feet) on the form on the front page. This now conflicts with the information on the back of the form UNLESS a measurement made in feet is converted into inches. This issue could cause much confusion. Something must be changed.

    Response: Thank you for your comment. This has been fixed.

100. Question: Form DEP 4016 Page 2 of 3: Back of form: The term “substantial compliance” is not used in applicable law of the OSP. The word “substantial” must be REMOVED to comply with existing law, as the OSP empowering statute REQUIRES “COMPLIANCE” and not “substantial” compliance. Using the term “substantial compliance” in rule does not comply with statutory provisions, as “substantial” implies a lesser standard than “compliance.” This is not allowed by statute.

    Response: Thank you for your comment. This will be taken into consideration.

101. Question: Form DEP 4016 Page 2 of 3: Back of form: Construction Inspection and Final Approval Instructions Instructions Draft December 2022. The name must be changed to include “Final INSTALLATION approval” in order to be consistent with other parts of rule and to avoid confusion.

    Response: Thank you for your comment. This has been fixed.

102. Question: Form DEP 4016 Instructions Page 1 of 7: Back of form: Regarding the phrase “Setback measurements must be to the closest point of the system to the feature.” While I understand what this is for, it could be misleading as it relates to the required unobstructed area (UA), which is discussed later. It would best be considered together, at least for overall system compliance purposes. Also, it states “The location of any public drinking well within 200 feet of the system must also be measured.” This is again misleading if the unencumbered UA is closer to the feature than the actual system.

    Response: Thank you for your comment. This will be taken into consideration.

103. Question: Form DEP 4016 Instructions Page 2 of 7:
    See number [07], last sentence. What if the inlet PIPE has been disturbed, but an inlet device has not been installed? It is quite common for plumbers to modify inlets on existing tanks (i.e. chip away, raise or lower original inlet). The inlet should always be observed by inspector.

    Response: Thank you for your comment. This will be taken into consideration.

104. Question: Form DEP 4016 Instructions Page 3 of 7:
    See number [12], last sentence. Should add “, whichever is greater.” to end of sentence.

    Response: Thank you for your comment. This will be taken into consideration.

105. Question: Form DEP 4016 Instructions Page 3 of 7: See number [15], last sentence. The statement misleading and could be problematic. For a drip irrigation system, this is incorrect based on the maximum amount of cover over a drip system. Additionally, what if the system designer/contractor, etc., restricts the installation to a lesser amount? The written instructions could confuse the issue and make an inspector incorrectly approve an installation when a violation exists.

Response: Thank you for your comment. This will be taken into consideration.

106. Question: Form DEP 4016 Instructions Page 4 of 7: See number [21], last sentence. Where the aggregate drainbed is large (allows for up to 1500 square feet), this is entirely inadequate. This would mean one probing for each 375 square feet of surface area for the large drainfield. There are some complete drainfields that are approximately 375 square feet. If a 2 bedroom home in a sandy soil is being installed with an aggregate absorption bed, the required size is 333.33 square feet. This drainfield would have 4 quadrants, each only 83.33 square feet. At a very minimum, maybe this should be the standard, i.e. 4 probes per 83 square feet. When I inspected systems during the time frame 1984-1992, they consisted almost 100% of aggregate systems. I would never have used the proposed inspection standard, as in my opinion it is entirely inadequate. Aggregate has the potential of hidden issues, unlike current drainfield products.

Form DEP 4016 Instructions Page 4 of 7: Could consider using the same standards as used for checking slope (see number [14]), i.e. every 10 feet, which must be checked anyway. Checking aggregate quality is exceedingly important for the proper functioning of the system. The Department should modify their fees for inspecting (maybe even permitting) systems. Not all systems are created equally, therefore different standards must apply. Larger or more technical systems will require more time to inspect. All contractors involved in the OSP do not give the same price for a job, especially where the facts are different. Do homebuilders give the same price for different size homes? I think not. The larger systems require more time to review/evaluate/permit/inspect. Fees need to reflect this. The increase in fees will compensate the Department for increased inspection times. I wonder if PPI raise their prices for larger system inspections. I would, even for applications for larger systems. As I recall, the standard was originally made due to complaining by the CHD inspectors, but I don't believe that the large systems were adequately addressed for the issue.

Response: Thank you for your comments. They will be taken into consideration.

107. Question: Form DEP 4016 Instructions Page 4 of 7: See number [22] – Rule citations are incorrect. First one: 62-6.009(7)(b)(10). Highlighted portion is a subparagraph and is not enclosed by parentheses, it has a period after 10. Next incorrect citation is 62-6.009(7)(b)(1)-(2). Same issue, these are subparagraphs and coded incorrectly.

Response: Thank you for your comment. This has been fixed.

108. Question: Form DEP 4016 Instructions Page 4 of 7: See number [23] – see end of first paragraph. While I know the beginning of the sentence refers to USDA NRCS, would it not be better to "reaffirm" this at the end so that improper methodology has less

chance of being used? I suggest clearly stating that the testing lab must use USDA NRCS methodology.

ANOTHER COMMENT ON SAME SECTION: Same issue as aggregate drainfield. A 1500 square foot drainbed or a trench system of 14,286 square feet (5,000 gpd/0.35 loading rate). Having only four soil profiles FOR EITHER SITE EVALUTION PERMITTING OR SYSTEM INSPECTION IS ENTIRELY INADEQUATE. Please revise. Another comment: please correct incorrect citations. Again, the citation is down to the subparagraph, all are incorrect.

Response: Thank you for your comments. They will be taken into consideration.

109. Question: Form DEP 4016 Instructions Page 4 of 7: See number [24] – See "Must have 54"effective soil depth…." Rule requires a minimum of 54" effective soil depth. Please revise. Additional comment: See "For rapidly percolating soil, used a 42" effective soil depth." Remove the "d" as highlighted; also rule citation states "a minimum depth of 42 inches" so the instructions should match rule citation.

Response: Thank you for your comment. It will be taken into consideration.

110. Question: Form DEP 4016 Instructions Page 5 of 7: See number [26] – This rule section 62-6.016 no longer exists, therefore cannot be referenced here.

Response: Thank you for your comment. This has been fixed.

111. Question: Form DEP 4016 Instructions Page 5 of 7: See number [28] – [35]: If mean annual flood line or mean high water line is not delineated on property or possibly the site plan, a PPI cannot inspect the system as they have not been trained to identify the MAFL, and they are not qualified to perform a MHWL determination UNLESS they meet the required standard. There must be a method for the determination of the proper boundaries. Measurements must also be made to UNOBSTRUCTED AREA.

Response: Thank you for your comment. This will be taken into consideration.

112. Question: Form DEP 4016 Instructions Page 5 of 7: See number [30]- Setbacks to 200 feet of the system and UNOBSTRUCTED AREA need to be measured.

Response: Thank you for your comment. Measuring setback to unobstructed area is included in the instructions to item [40], unobstructed area.

113. Question: Form DEP 4016 Instructions Page 5 of 7: See number [37] – regarding "o-horizon" wording. The rule wording in paragraph 62-6.009(3)(c), uses "O horizon." Suggest rewording wording in this number to comport with wording already in the rule.

Response: Thank you for your comment. This has been fixed.

114. Question: Form DEP 4016 Instructions Page 6 of 7: See number [46] – Should state minimum drainfield cover is 6 inches on any type of drainfield. Regarding the 30" from bottom of infiltrative surface to grade, same comment as before. This is incorrect for drip systems, and it is quite possible that systems designed by appropriate personnel may require less than 30 inches. This needs to be changed here to prevent misunderstandings and improper inspections and approvals.

Response: Thank you for your comment. This has been fixed.

115. Question: Form DEP 4016 Instructions Page 6 of 7: See number [51] – Should not "Private Provider Inspector" be used, not "private inspector" to allow for consistency?

Response: Thank you for your comment. This has been fixed.

116. Question: Form DEP 4016 Instructions Page 7 of 7: See "Department Final Installation Approval" portion. See earlier comments on use of the phrase "substantial compliance." Use of the term decreased the statutory requirement of "compliance."

Response: Thank you for your comment. This has been fixed.

117. Question: Form DEP 4016 Instructions Page 7 of 7: See elevation worksheet portion: Should describe how this is used and define terms. Undefined terms such as "SHOT"; H.I., etc. Plenty of room to provide drawing. Also, "Top of aggregate" portion. Would it be appropriate to change the word "aggregate" to "drainfield" and explain how this works with aggregate systems?

Response: Thank you for your comment. It will be taken into consideration.

118. Question: Form DEP 4016 Page 3 of 3: FORM DEP 4016 Page 3 of 3: I suggest that the department review this form for the same issues that occur in the previous form. Similar issues exist, such as improper rule citations.

Response: Thank you for your comment. Edits done to DEP 4016 Page 2 of 3 will transfer over to DEP 4016 Page 3 of 3.