

Florida Public Health Code Section 381.0065 - Public Health: General Provisions - Onsite sewage treatment and disposal systems; regulation.

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Title XXIX PUBLIC HEALTH

Chapter 381 PUBLIC HEALTH: GENERAL PROVISIONS

381.0065 Onsite sewage treatment and disposal systems; regulation.--

(1) LEGISLATIVE INTENT.--It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.

(2) DEFINITIONS.--As used in ss. 381.0065-381.0067, the term:

(a) "Available," as applied to a publicly owned or investor-owned sewerage system, means that the publicly owned or investor-owned sewerage system is capable of being connected to the plumbing of an establishment or residence, is not under a Department of Environmental Protection moratorium, and has adequate permitted capacity to accept the sewage to be generated by the establishment or residence; and:

1. For a residential subdivision lot, a single-family residence, or an establishment, any of which has an estimated sewage flow of 1,000 gallons per day or less, a gravity sewer line to maintain gravity flow from the property's drain to the sewer line, or a low pressure or vacuum sewage

collection line in those areas approved for low pressure or vacuum sewage collection, exists in a public easement or right-of-way that abuts the property line of the lot, residence, or establishment.

2. For an establishment with an estimated sewage flow exceeding 1,000 gallons per day, a sewer line, force main, or lift station exists in a public easement or right-of-way that abuts the property of the establishment or is within 50 feet of the property line of the establishment as accessed via existing rights-of-way or easements.

3. For proposed residential subdivisions with more than 50 lots, for proposed commercial subdivisions with more than 5 lots, and for areas zoned or used for an industrial or manufacturing purpose or its equivalent, a sewerage system exists within one-fourth mile of the development as measured and accessed via existing easements or rights-of-way.

4. For repairs or modifications within areas zoned or used for an industrial or manufacturing purpose or its equivalent, a sewerage system exists within 500 feet of an establishment's or residence's sewer stub-out as measured and accessed via existing rights-of-way or easements.

(b) "Blackwater" means that part of domestic sewage carried off by toilets, urinals, and kitchen drains.

(c) "Domestic sewage" means human body waste and wastewater, including bath and toilet waste, residential laundry waste, residential kitchen waste, and other similar waste from appurtenances at a residence or establishment.

(d) "Graywater" means that part of domestic sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.

(e) "Florida Keys" means those islands of the state located within the boundaries of Monroe County.

(f) "Injection well" means an open vertical hole at least 90 feet in depth, cased and grouted to at least 60 feet in depth which is used to dispose of effluent from an onsite sewage treatment and disposal system.

(g) "Innovative system" means an onsite sewage treatment and disposal system that, in whole or in part, employs materials, devices, or techniques that are novel or unique and that have not been

successfully field-tested under sound scientific and engineering principles under climatic and soil conditions found in this state.

(h) "Lot" means a parcel or tract of land described by reference to recorded plats or by metes and bounds, or the least fractional part of subdivided lands having limited fixed boundaries or an assigned number, letter, or any other legal description by which it can be identified.

(i) "Mean annual flood line" means the elevation determined by calculating the arithmetic mean of the elevations of the highest yearly flood stage or discharge for the period of record, to include at least the most recent 10-year period. If at least 10 years of data is not available, the mean annual flood line shall be as determined based upon the data available and field verification conducted by a certified professional surveyor and mapper with experience in the determination of flood water elevation lines or, at the option of the applicant, by department personnel. Field verification of the mean annual flood line shall be performed using a combination of those indicators listed in subparagraphs 1.-7. that are present on the site, and that reflect flooding that recurs on an annual basis. In those situations where any one or more of these indicators reflect a rare or aberrant event, such indicator or indicators shall not be utilized in determining the mean annual flood line. The indicators that may be considered are:

1. Water stains on the ground surface, trees, and other fixed objects;
2. Hydric adventitious roots;
3. Drift lines;
4. Rafted debris;
5. Aquatic mosses and liverworts;
6. Moss collars; and
7. Lichen lines.

(j) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit

privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(k) "Permanent nontidal surface water body" means a perennial stream, a perennial river, an perennial lake, a submerged marsh or swamp, a submerged wooded marsh or swamp, a spring, or a most recent quadrangle map, 7.5 minute series (topographic), produced by the United States products derived from that series. "Permanent nontidal surface water body" shall also mean an body that does not have an impermeable bottom and side and that is designed to hold, or does hold, for at least 180 days of the year. However, a nontidal surface water body that is drained, either where the intent or the result is that such drainage be temporary, shall be considered a permanent body. A nontidal surface water body that is drained of all visible surface water, where the lawful drainage is that such drainage will be permanent, shall not be considered a permanent nontidal boundary of a permanent nontidal surface water body shall be the mean annual flood line.

(l) "Potable water line" means any water line that is connected to a potable water supply source, but the term does not include an irrigation line with any of the following types of backflow devices:

1. For irrigation systems into which chemicals are not injected, any atmospheric or pressure vacuum breaker or double check valve or any detector check assembly.
2. For irrigation systems into which chemicals such as fertilizers, pesticides, or herbicides are injected, any reduced pressure backflow preventer.

(m) "Septage" means a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an onsite sewage treatment and disposal system.

(n) "Subdivision" means, for residential use, any tract or plot of land divided into two or more lots or parcels of which at least one is 1 acre or less in size for sale, lease, or rent. A subdivision for commercial or industrial use is any tract or plot of land divided into two or more lots or parcels of which at least one is 5 acres or less in size and which is for sale, lease, or rent. A subdivision shall be deemed to be proposed until such time as an application is submitted to the local government for subdivision approval or, in those areas where no local government

subdivision approval is required, until such time as a plat of the subdivision is recorded.

(o) "Tidally influenced surface water body" means a body of water that is subject to the ebb and flow of the tides and has as its boundary a mean high-water line as defined by s. 177.27(15).

(p) "Toxic or hazardous chemical" means a substance that poses a serious danger to human health or the environment.

(3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.--The department shall:

(a) Adopt rules to administer ss. 381.0065-381.0067, including definitions that are consistent with the definitions in this section, decreases to setback requirements where no health hazard exists, increases for the lot-flow allowance for performance-based systems, requirements for separation from water table elevation during the wettest season, requirements for the design and construction of any component part of an onsite sewage treatment and disposal system, application and permit requirements for persons who maintain an onsite sewage treatment and disposal system, requirements for maintenance and service agreements for aerobic treatment units and performance-based treatment systems, and recommended standards, including disclosure requirements, for voluntary system inspections to be performed by individuals who are authorized by law to perform such inspections and who shall inform a person having ownership, control, or use of an onsite sewage treatment and disposal system of the inspection standards and of that person's authority to request an inspection based on all or part of the standards.

(b) Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of an onsite sewage treatment and disposal system for a residence or establishment with an estimated domestic sewage flow of 10,000 gallons or less per day, or an estimated commercial sewage flow of 5,000 gallons or less per day, which is not currently regulated under chapter 403.

(c) Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the department are sized, designed, constructed, installed, repaired, modified, abandoned, used, operated, and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination and surface water contamination and to preserve the public health. The department is the final administrative

interpretive authority regarding rule interpretation. In the event of a conflict regarding rule interpretation, the Division Director for Environmental Health of the department, or his or her designee, shall timely assign a staff person to resolve the dispute.

(d) Grant variances in hardship cases under the conditions prescribed in this section and rules adopted under this section.

(e) Permit the use of a limited number of innovative systems for a specific period of time, when there is compelling evidence that the system will function properly and reliably to meet the requirements of this section and rules adopted under this section.

(f) Issue annual operating permits under this section.

(g) Establish and collect fees as established under s. 381.0066 for services provided with respect to onsite sewage treatment and disposal systems.

(h) Conduct enforcement activities, including imposing fines, issuing citations, suspensions, revocations, injunctions, and emergency orders for violations of this section, part I of chapter 386, or part III of chapter 489 or for a violation of any rule adopted under this section, part I of chapter 386, or part III of chapter 489.

(i) Provide or conduct education and training of department personnel, service providers, and the public regarding onsite sewage treatment and disposal systems.

(j) Supervise research on, demonstration of, and training on the performance, environmental impact, and public health impact of onsite sewage treatment and disposal systems within this state. Research fees collected under s. 381.0066(2)(k) must be used to develop and fund hands-on training centers designed to provide practical information about onsite sewage treatment and disposal systems to septic tank contractors, master septic tank contractors, contractors, inspectors, engineers, and the public and must also be used to fund research projects which focus on improvements of onsite sewage treatment and disposal systems, including use of performance-based standards and reduction of environmental impact. Research projects shall be initially approved by the technical review and advisory panel and shall be applicable to and reflect the soil conditions specific to Florida. Such projects shall be awarded through competitive negotiation, using the procedures provided in s. 287.055, to public or private entities that have experience in onsite sewage treatment and disposal systems in Florida and that are principally

located in Florida. Research projects shall not be awarded to firms or entities that employ or are associated with persons who serve on either the technical review and advisory panel or the research review and advisory committee.

(k) Approve the installation of individual graywater disposal systems in which blackwater is treated by a central sewerage system.

(l) Regulate and permit the sanitation, handling, treatment, storage, reuse, and disposal of byproducts from any system regulated under this chapter and not regulated by the Department of Environmental Protection.

(m) Permit and inspect portable or temporary toilet services and holding tanks. The department shall review applications, perform site evaluations, and issue permits for the temporary use of holding tanks, privies, portable toilet services, or any other toilet facility that is intended for use on a permanent or nonpermanent basis, including facilities placed on construction sites when workers are present. The department may specify standards for the construction, maintenance, use, and operation of any such facility for temporary use.

(n) Regulate and permit maintenance entities for performance-based treatment systems and aerobic treatment unit systems. To ensure systems are maintained and operated according to manufacturer's specifications and designs, the department shall establish by rule minimum qualifying criteria for maintenance entities. The criteria shall include: training, access to approved spare parts and components, access to manufacturer's maintenance and operation manuals, and service response time. The maintenance entity shall employ a contractor licensed under s. 489.105(3)(m), or part III of chapter 489, or a state-licensed wastewater plant operator, who is responsible for maintenance and repair of all systems under contract.

(4) PERMITS; INSTALLATION; AND CONDITIONS.--A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the

department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and

provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding the provisions of paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. The department may consider assurances filed with the Department of Business and Professional Regulation under chapter 498 in determining the adequacy of the financial assurance required by this paragraph. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewerage system is available. It is the intent of this paragraph not to allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) Onsite sewage treatment and disposal systems must not be placed closer than:

1. Seventy-five feet from a private potable well.
2. Two hundred feet from a public potable well serving a residential or nonresidential

establishment having a total sewage flow of greater than 2,000 gallons per day.

3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.
4. Fifty feet from any nonpotable well.
5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.
6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.
7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.
8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

(f) Except as provided under paragraphs (e) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.

(g) All provisions of this section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1,

1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the

department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

- a. The Division Director for Environmental Health of the department or his or her designee.
- b. A representative from the county health departments.
- c. A representative from the home building industry recommended by the Florida Home Builders Association.
- d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.
- e. A representative from the Department of Environmental Protection.
- f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.
- g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

- (i) A construction permit may not be issued for an onsite sewage treatment and disposal system

in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewerage system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewerage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department shall not grant approval when the proposed use of the system is to dispose of toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals.
2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, need not obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.
3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system for a single-family residence that is designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department

subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.
2. The technical review and advisory panel shall assist the department in the development of performance criteria applicable to engineer-designed systems.
3. A person electing to utilize an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may utilize an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.
4. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall obtain a biennial system operating permit from the department for each system under service contract. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation. The

maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced.

5. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and which considers water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems.

(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(i). The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:

1. A representative of the Division of Environmental Health of the Department of Health.
2. A representative from the septic tank industry.
3. A representative from the home building industry.
4. A representative from an environmental interest group.
5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.
6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.
7. A representative from the real estate profession.
8. A representative from the restaurant industry.
9. A consumer.

Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(p) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(q) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior to submission of an application for an onsite sewage treatment and disposal system.

(r) Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(s) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering shall not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(t) Notwithstanding the provisions of subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield shall not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs either: a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system approved by the State Health Office that is capable of reducing effluent nitrate by at least 50 percent; or a system approved by the county health department pursuant to department rule other than a system using alternative drainfield materials. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management

Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water shall not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(u) The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall obtain a system operating permit from the department for each aerobic treatment unit under service contract. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The owner shall allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(v) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

(5) ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.--

(a) Department personnel who have reason to believe noncompliance exists, may at any reasonable time, enter the premises permitted under ss. 381.0065-381.0066, or the business premises of any septic tank contractor or master septic tank contractor registered under part III of chapter 489, or any premises that the department has reason to believe is being operated or maintained not in compliance, to determine compliance with the provisions of this section, part I of chapter 386, or part III of chapter 489 or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489. As used in this paragraph, the term "premises" does not include a residence or private building. To gain entry to a residence or private building, the department must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction.

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed \$500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, shall deposit any fines it collects in the county health department trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065-381.0067, part I of chapter 386, and part III of chapter 489. This section does not prohibit the department from

enforcing ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 75-145; s. 72, ch. 77-147; s. 1, ch. 77-174; ss. 1, 2, ch. 77-308; s. 1, ch. 78-430; s. 1, ch. 79-45; s. 1, ch. 82-10; s. 37, ch. 83-218; ss. 43, 46, ch. 83-310; s. 1, ch. 84-119; s. 4, ch. 85-314; s. 5, ch. 86-220; s. 14, ch. 89-324; s. 26, ch. 91-297; ss. 1, 10, 11, ch. 93-151; s. 40, ch. 94-218; s. 352, ch. 94-356; s. 1033, ch. 95-148; ss. 1, 3, ch. 96-303; s. 116, ch. 96-410; s. 181, ch. 97-101; s. 21, ch. 97-237; s. 7, ch. 98-151; s. 2, ch. 98-420; s. 192, ch. 99-13; ss. 1, 7, ch. 99-395; s. 10, ch. 2000-242; s. 19, ch. 2001-62; s. 1, ch. 2001-234; s. 7, ch. 2004-350; s. 48, ch. 2005-2; s. 4, ch. 2006-68.

Note.--Former s. 381.272.

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