

Notice of Public Workshop

DEPARTMENT OF HEALTH
Division of Environmental Health

Rule No.: RULE TITLE

64E-6.001 General

The Department of Health announces workshops to which all persons are invited.

DATE AND TIME: October 12, 2010 at 9:00 AM until 12:00 Noon
PLACE: John P. D'Alessandro State Office Building
2295 Victoria Avenue
Fort Myers, Florida 33901
Room 165C

DATE AND TIME: October 14, 2010 at 9:00 AM until 12:00 Noon
PLACE: Broward County Health Department
780 SW 24th Street
Ft. Lauderdale, Florida 33315

DATE AND TIME: October 18, 2010 at 9:00 AM until 12:00 Noon
PLACE: Conference Room 152
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399

DATE AND TIME: October 21, 2010 at 9:00 AM until 12:00 Noon Central Time
PLACE: DeFuniak Springs Community Center
361 N 10th Street
DeFuniak Springs, Florida 32433

GENERAL SUBJECT MATTER TO BE CONSIDERED: Rules necessary to implement the provisions of Chapter 2010-205, Laws of Florida (SB 550), requiring the Department to administer an onsite sewage treatment and disposal system evaluation and assessment program. In general, the proposed rules include applicability, notification, evaluation schedule, evaluator qualifications, evaluation procedures, exemptions, penalties and standards of practice. The specific location for placement of the proposed language within Chapter 64E-6, Florida Administrative Code, Standards for Onsite Sewage Treatment and Disposal Systems, has not been determined. The proposed language can be downloaded from www.MyFloridaEH.com or obtained from the persons listed below.

A copy of the agenda may be obtained by contacting: Gerald Briggs, Department of Health, Bureau of Onsite Sewage Programs, HSES, 4042 Bald Cypress Way, Bin # A08, Tallahassee, FL 32399-1713

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least seven days before the workshop/meeting by contacting: Shirley Kugler, Department of Health, Bureau of Onsite Sewage Programs, HSES, 4042 Bald Cypress Way, Bin # A08, Tallahassee, FL 32399-1713. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

For more information, you may contact: Dale Holcomb, Department of Health, Bureau of Onsite Sewage Programs, HSES, 4042 Bald Cypress Way, Bin # A08, Tallahassee, FL 32399-1713

AGENDA

- 9:00 Welcome, introductions, collection of speaker cards
- 9:05 Workshop procedures
- 9:10 Rulemaking process and the process after the workshops
- 9:15 Statutory requirements being implemented
- 9:20 Review of the proposed rule draft
- 9:30 Public input regarding the proposed rule
- Noon Adjournment

PORTIONS OF CHAPTER 381, FLORIDA STATUTES, AMENDED BY SB550 (2010-205
LOF) RELATING TO THE FIVE-YEAR EVALUATION AND ASSESSMENT OF ONSITE
SEWAGE SYSTEMS

1001 381.0065 Onsite sewage treatment and disposal systems; regulation.—

1002 (1) LEGISLATIVE INTENT.—

1003 (a) It is the intent of the Legislature that proper management of onsite sewage treatment and
1004 disposal systems is paramount to the health, safety, and welfare of the public. It is further the
1005 intent of the Legislature that the department shall administer an evaluation program to ensure the
1006 operational condition of the system and identify any failure with the system.

1007 (5) EVALUATION AND ASSESSMENT.—

1008 (a) Beginning January 1, 2011, the department shall administer an onsite sewage treatment and
1009 disposal system evaluation program for the purpose of assessing the fundamental operational
1010 condition of systems and identifying any failures within the systems. The department shall adopt
1011 rules implementing the program standards, procedures, and requirements, including, but not
1012 limited to, a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or
1013 repair of a failing system, enforcement procedures for failure of a system owner to obtain an
1014 evaluation of the system, and failure of a contractor to timely submit evaluation results to the
1015 department and the system owner. The department shall ensure statewide implementation of the
1016 evaluation and assessment program by January 1, 2016.

1017 (b) Owners of an onsite sewage treatment and disposal system, excluding a system that is
1018 required to obtain an operating permit, shall have the system evaluated at least once every 5
1019 years to assess the fundamental operational condition of the system, and identify any failure
1020 within the system.

1021 (c) All evaluation procedures must be documented and nothing in this subsection limits the
1022 amount of detail an evaluator may provide at his or her professional discretion. The evaluation
1023 must include a tank and drainfield evaluation, a written assessment of the condition of the
1024 system, and, if necessary, a disclosure statement pursuant to the department's procedure.
1025

1026 (d)1. Systems being evaluated that were installed prior to January 1, 1983, shall meet a minimum
1027 6-inch separation from the bottom of the drainfield to the wettest season water table elevation as
1028 defined by department rule. All drainfield repairs, replacements or modifications to systems
1029 installed prior to January 1, 1983, shall meet a minimum 12-inch separation from the bottom of
1030 the drainfield to the wettest season water table elevation as defined by department rule.

1031 2. Systems being evaluated that were installed on or after January 1, 1983, shall meet a minimum
1032 12-inch separation from the bottom of the drainfield to the wettest season water table elevation
1033 as defined by department rule. All drainfield repairs, replacements or modification to systems
1034 developed on or after January 1, 1983, shall meet a minimum 24inch separation from the bottom
1035 of the drainfield to the wettest season water table elevation.

1036 (e) If documentation of a tank pump-out or a permitted new installation, repair, or modification
1037 of the system within the previous 5 years is provided, and states the capacity of the tank and
1038 indicates that the condition of the tank is not a sanitary or public health nuisance pursuant to
1039 department rule, a pump-out of the system is not required.

1040 (f) Owners are responsible for paying the cost of any required pump-out, repair, or replacement
1041 pursuant to department rule, and may not request partial evaluation or the omission of portions of
1042 the evaluation.

1043 (g) Each evaluation or pump-out required under this subsection must be performed by a septic
1044 tank contractor or master septic tank contractor registered under part III of chapter 489, a
1045 professional engineer with wastewater treatment system experience licensed pursuant to chapter
1046 471, or an environmental health professional certified under chapter 381 in the area of onsite
1047 sewage treatment and disposal system evaluation.

1048 (h) The evaluation report fee collected pursuant to s. 381.0066(2)(b) shall be remitted to the
1049 department by the evaluator at the time the report is submitted.

1050 (i) Prior to any evaluation deadline, the department must provide a minimum of 60 days' notice
1051 to owners that their systems must be evaluated by that deadline. The department may include a
1052 copy of any homeowner educational materials developed pursuant to this section which provides
1053 information on the proper maintenance of onsite sewage treatment and disposal systems.

1054 381.00656 Grant program for repair of onsite sewage treatment disposal systems.—Effective
1055 January 1, 2012, the department shall administer a grant program to assist owners of onsite
1056 sewage treatment and disposal systems identified pursuant to s. 381.0065 or the rules adopted
1057 thereunder. A grant under the program may be awarded to an owner only for the purpose of
1058 inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied
1059 by an owner with a family income of less than or equal to 133 percent of the federal poverty
1060 level at the time of application. The department may prioritize applications for an award of grant
1061 funds based upon the severity of a system's failure, its relative environmental impact, the income
1062 of the family, or any combination thereof. The department shall adopt rules establishing the grant
1063 application and award process, including an application form. The department shall seek to make
1064 grants in each fiscal year equal to the total amount of grant funds available, with any excess
1065 funds used for grant awards in subsequent fiscal years.

1066 381.0066 Onsite sewage treatment and disposal systems; fees.—

1067 (2) The minimum fees in the following fee schedule apply until changed by rule by the
1068 department within the following limits:

1069 (b) A 5-year evaluation report submitted pursuant to s. 381.0065(5): a fee not less than \$15, or
1070 more than \$30. At least \$1 and no more than \$5 collected pursuant to this paragraph shall be
1071 used to fund a grant program established under s. 381.00656.

1072
1073 On or before January 1, 2011, the Surgeon General, after consultation with the Revenue
1074 Estimating Conference, shall determine a revenue neutral fee schedule for services provided
1075 pursuant to s. 381.0065(5) within the parameters set in paragraph (b). Such determination is not
1076 subject to the provisions of chapter 120. The funds collected pursuant to this subsection must be
1077 deposited in a trust fund administered by the department, to be used for the purposes stated in
1078 this section and ss. 381.0065 and 381.00655.

Proposed amendments to Chapter 64E-6, Florida Administrative Code, implementing SB550 (2010-205, LOF) relating to Five-Year Evaluation and Assessment of Onsite Swage Systems

1 9/24/2010 version

2 Evaluation and Assessment

3 (1) Except for systems required to obtain an operating permit, all systems shall be evaluated
4 every five years to assess their fundamental operational condition and identify any failures. The
5 following standards shall apply:

6 (a) The Department shall notify owners of the requirement to have their system evaluated at
7 least 60 days prior to the deadline for their system evaluation.

8 (b) The owner may request an exemption from the evaluation requirement or an extension of
9 the time to obtain an evaluation under the following conditions:

10 1. A notice that sewer will be available within the next five years. A letter from the sewer
11 utility regarding the anticipated date of sewer availability must be provided to the Department
12 with the request. A system owner may receive only one such exemption for one five-year
13 evaluation cycle for a piece of property.

14 2. A notice that sewer is available and written arrangement for payment of any utility
15 assessments or connection fees has been made. A letter from the sewer utility verifying that
16 sewer is available to the property and acknowledging the payment of assessments and fees must
17 be provided to the Department with the request. A property-owner may receive only one such
18 exemption for a piece of property.

19 3. The owner of a single family owner-occupied residence who meets the income level for
20 grant assistance under 381.0066, F.S., may request a one-year extension. A homeowner may
21 receive only one such extension per five-year evaluation cycle. Written documentation of
22 current income level, such as a written determination, provided by a government agency, of the
23 family income level as a percentage of the federal poverty level, must be provided with the
24 request.

25 4. Systems that have been installed, repaired, modified or replaced are exempt from
26 evaluation under this section for five years following the date of final system approval.

27 (c) If the evaluation cannot be scheduled by the deadline, the owner shall provide to the
28 Department, not later than the deadline, a copy of a signed contract to have the evaluation
29 performed with the expected completion date, not later than 60 days after the original deadline,
30 noted in the contract. In addition to any other administrative action authorized by law, the

31 Department may impose a fine of up to \$500 for failure to comply with the provisions of this
32 section. Each day the violation continues may constitute a separate violation.

33 1. If there is more than one onsite sewage system on the owner's property or where the owner
34 owns multiple properties, the owner may elect to have some systems evaluated in subsequent
35 years provided at least 20% of all systems on the property and no less than one system are
36 evaluated by the original deadline and each subsequent year until all systems on the property are
37 evaluated. The written evaluation schedule for all systems shall be signed by the property owner
38 and provided to the Department prior to the original deadline.

39 2. Initial notification shall begin in 2011 with notification to owners of systems with permit
40 records in the Department database. Subsequent notifications shall be to owners of developed
41 property for which there is no record of publicly-owned or investor-owned sewer connection.
42 Nothing in this section prevents a county from enacting ordinances to authorize earlier
43 notifications of property owners in areas of environmental or public health concern.

44 (d) Upon receipt of notice to have the system evaluated, a property owner may apply to have
45 the system modified, repaired or replaced in lieu of having the system evaluated. The
46 application shall be made before the evaluation deadline and the repair, modification or
47 replacement shall be completed before the expiration of the permit.

48 (2) Evaluations shall be conducted by licensed septic tank contractors, environmental health
49 professionals certified in the area of onsite sewage treatment and disposal systems, or licensed
50 professional engineers. Except for Department personnel conducting evaluations for the
51 Department, persons conducting evaluations shall complete Department-approved trainings on
52 the evaluation process and wettest season water table determination and pass examinations on
53 the trainings with a score of at least 80%. Employees under the supervision and control of
54 engineers or septic tank contractors may conduct evaluations provided both the employee and the
55 supervising contractor or engineer have successfully completed the Department-approved
56 training. The employee as well as the supervising contractor or engineer must sign the
57 evaluation report. Any violation by the employee shall constitute a violation by the supervising
58 contractor or engineer. Employee is defined as a person who receives compensation from and is
59 under the supervision and control of an employer who regularly deducts the F.I.C.A. and
60 withholding tax and provides workers' compensation, all as prescribed by law.

61 (a) The training on the evaluation process shall be approved in accordance with the

62 Department Policy on Requirements for Continuing Education Courses and Course Providers
63 and shall include 6 hours of instructional time comprised of the following subjects:

- 64 1. statutory and rule requirements;
- 65 2. form completion and reporting;
- 66 3. field procedures; and
- 67 4. standards of practice.

68 (b) The training on wettest season water table determination shall be approved in accordance
69 with the Department Policy on Requirements for Continuing Education Courses and Course
70 Providers and shall include 6 hours of instructional time comprised of the following subjects:

- 71 1. soil color determination and documentation;
- 72 2. soil color contrast determination and documentation;
- 73 3. wettest season water table feature identification, quantification and documentation;
- 74 4. determining soil texture in the field; and
- 75 5. proper use of soil surveys.

76 (c) Persons who successfully complete the Department-approved training on soils
77 morphology that is required for persons being certified under 381.0101, F.S., and for becoming
78 master septic tank contractors may substitute that training for the training required in
79 subparagraph 2.

80 (3) The evaluation report shall be made on Form DH ####, System Evaluation Report,
81 ##/2010, herein incorporated by reference. The evaluator is responsible for submitting the report
82 and required report fee to the Department postmarked within 10 business days of completion of
83 the evaluation. Electronic submission of the report to a Department-approved data system is
84 allowed. Where the evaluator uses electronic submission, reports must be filed within 10
85 business days with monthly payment of the reporting fee by the 10th business day of each month.

86 (a) The evaluator, with the written approval of the owner, may conduct a more in-depth and
87 complete evaluation of the system provide those evaluation activities that go beyond the
88 requirements of this section are identified on the evaluation report.

89 (b) All tanks shall be pumped. A pump out is not required when documentation of a pump
90 out in the previous five years includes the capacity and condition of the tank.

91 (c) The evaluator shall visually inspect the tanks for any cracks or leaks or corrosion. The
92 evaluator shall document tank deformities which result in less than 1-inch of fall from the tank
93 inlet to the outlet or which prevent lids or manhole covers from being properly installed.

94 (d) The evaluator shall inspect the area of the system for any exposed sewage or effluent.

95 (e) The evaluator shall determine the wettest season water table in accordance with
96 Department rule and record that elevation referenced to a reference point or benchmark on the
97 site. The evaluator shall probe or dig to determine the lowest elevation of the bottom of the
98 drainfield and record that elevation relative to the elevation of the wettest season water table.

99 (f) When the evaluation of the tank interior is completed, the original lid or manhole cover of
100 the tank shall be put back in place, or be replaced with a new lid or manhole cover from an
101 approved septic tank manufacturer if the original one is broken. Tank lids and manhole covers
102 shall be completely sealed and secured as required in paragraph 64E-6.013(2)(i), F.A.C. Lid or
103 manhole cover replacement does not require a permit but shall be documented on the evaluation
104 form. Missing or damaged outlet devices or filters shall be replaced. During the pumping, the
105 outlet filter shall be cleaned. If the owner refuses permission to make these corrections, the
106 evaluator shall document this on the evaluation form. The Department will issue a notice to
107 correct and, if required, take enforcement action.

108 (4) The Department shall review the system evaluation and, if required, issue a notice to
109 obtain a construction permit to repair the system, modify the system or install a new system.

110 (a) A repair permit shall be required when:

111 1. The tank is not watertight; or

112 2. The tank has deformed sufficiently that there is less than 1-inch of fall from the inlet to the
113 outlet or to prevent the lids from being properly replaced; or

114 3. There is exposed sewage or effluent on the site.

115 4. The bottom of the drainfield does not meet the minimum separation from the wettest
116 season water table as required in s. 381.0065(5)(d), F.S.

117 (b) A permit to construct a new system shall be required when:

118 1. There is no tank; or

119 2. The tank is not constructed of sealed concrete block, monolithic concrete, fiberglass, or
120 polyethylene.

121 3. The system includes a cesspool or bottomless tank; or

- 122 4. There is a direct discharge of sewage or effluent to surface water; or
123 5. The tank cannot be accessed because it is beneath a building or obstruction that is not
124 permanently removed prior to the evaluation; or
125 6. The drainfield is beneath a building or obstruction that prevents determination of failure or
126 the separation between the drainfield and the wettest season water table.

127 (c) Installation date shall be based on the most recent final approval of a new system or
128 system modification. If a Department record is not available the installation date shall be based
129 on property appraiser or building Department records.

130 (5) The owner shall make application for a construction permit within 60 days of the notice
131 from the Department to obtain a construction permit; however, if the only correction being
132 addressed is separation from wettest season water table, the system owner shall have one year to
133 make application following receipt of notice from the Department to obtain a construction
134 permit.

135 (6) Repairs or new system installation shall be completed within 90 days following the
136 issuance of the system construction permit. Until the system repair or replacement has been
137 completed, the owner shall ensure that the sewage or effluent is not exposed in open tanks or on
138 the ground surface or discharged into surface water.

139 (7) Evaluators are responsible for compliance with the standards of section 381.0065, F.S.,
140 and this chapter in conducting and submitting evaluations. Violations committed by the
141 employee of a contractor or engineer shall subject both the employee and the supervising
142 contractor or engineer to penalty. The following actions shall be subject to the following
143 penalties:

144 (a) Failure to conduct the evaluation in accordance with this section. First violation, Letter of
145 Warning and fine up to \$500; repeat violation, \$500 fine per violation and suspension or
146 revocation of approval to conduct evaluations.

147 (b) Failure to submit reports within timeframes. First violation, Letter of Warning; repeat
148 violation, fine up to \$500; additional violation, \$500 fine and suspension or revocation of
149 approval to conduct evaluations.

150 (c) False payment statements. First violation, Letter of Warning and fine up to \$500; repeat
151 violation, \$500 fine per violation and suspension or revocation of approval to conduct
152 evaluations.

153 (d) Failure to complete work within timeframes of contract or abandoning a contract. Letter
154 of Warning and fine up to \$500; repeat violation, \$500 fine per violation and suspension or
155 revocation of approval to conduct evaluations.

156 (e) Conducting evaluations without being licensed or certified or completing required
157 training. First violation, Letter of Warning and fine up to \$500; repeat violation, \$500 fine per
158 violation and suspension or revocation of approval to conduct evaluations.

159 (f) Practicing fraud or deceit, making misleading or untrue representations. First violation,
160 Letter of Warning and fine up to \$500; repeat violation, \$500 fine per violation and suspension
161 or revocation of approval to conduct evaluations.

162 (g) Illegal disposal of septage. First violation, Fine up to \$500; repeat violation, \$500 fine
163 per violation and suspension or revocation of septic tank contractor registration.

164 (h) Absence of any violation from this section shall not be construed as an indication that no
165 penalty is to be assessed.

166 (8) In addition to the penalties of this section, complaints may be issued and disciplinary
167 action may be taken under the provisions of law and rule under which an evaluator is licensed or
168 certified.

169
170 (9) Owners who do not comply with provisions of this section shall be subject to
171 administrative fines up to \$500 per day per violation.