



# Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

June 11, 2010

Ms. Suzanne G. Printy  
Chief Attorney  
Joint Administrative Procedures Committee  
Holland Building, Room 120  
Tallahassee, Florida 32399-1300

Re: Rule No.: 62-640, Florida Administrative Code  
OGC No.: 09-3841

Dear Ms. Printy,

The Department is making changes to the above-referenced rulemaking due to Committee's concerns as expressed in your letter dated March 17, 2010, as well as comments made at the rule adoption hearing held in front of the Environmental Regulatory Commission (ERC) on May 20, 2010. The Notice of Change will be published in the *Florida Administrative Weekly* on June 11, 2010; a copy is enclosed.

The Notice of Change reflects the changes proposed in the Department's May 10, 2010, response to the Committee (along with some additional changes) with three exceptions. The Notice of Change does not include the changes to paragraph 62-640.700(6)(b), subparagraph 62-640.700(8)(a)4., and subparagraph 62-640.700(8)(b)1., F.A.C., to remove provisions allowing various setback distances to be reduced when the permittee obtains written consent from the adjacent property owner. You previously indicated that these provisions constituted an impermissible delegation of the Department's authority to adopt and modify its rules. The Department staff proposed amendments to these provisions, as I explained in the May 10, 2010, letter, to the ERC; however, they were not approved. Instead, the ERC approved alternate amendments to paragraph 62-640.700(6)(b) and subparagraph 62-640.700(8)(a)4., F.A.C., establishing a minimum setback distance if written consent is obtained from the adjacent property owner.

The Department believes that these provisions do not constitute an impermissible delegation of the Department's authority to adopt and modify these rules. The Department has established by rule both the mandatory setback distance and an alternative setback distance that is permissible if consent is obtained. Through these provisions the Department is exercising, and not delegating, its authority by establishing the setback distances and the conditions necessary for reducing a setback distance by rule.

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Ms. Suzanne Printy

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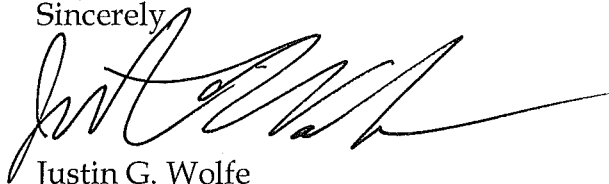
The primary basis for establishing setback distances is to reduce the potential for nuisance odors. These provisions implement Sections 403.021(6), 403.031(7), 403.061(9) and (28), and 403.702(1)(f), of the Florida Statutes. These statutes address "pollution" that may "unreasonably interfere with the enjoyment of life or property, including outdoor recreation" including from the storage of wastes. See 403.031(7), Fla. Stat. The Department believes the primary setback distance in these rules will provide assurance that the permitted activities will not unreasonably interfere with the enjoyment of life or property of others. However, the Department also believes it is appropriate to establish a procedure to allow a permittee to have a reduced setback distance when the affected adjacent property owner provides consent.

As previously discussed, prior to filing the rule for adoption the Department will replace references to Section 373.4595, Florida Statutes, in the Rulemaking Authority with the proper citation to Section 373.043, Florida Statutes.

Also enclosed are documents incorporated by reference in the Notice of Change and the statement of regulatory cost revised in accordance with Section 120.541, Florida Statutes, due to the submission of a lower cost regulatory alternative.

Although I will be out of the office June 11-18<sup>th</sup>, please feel free to contact me at 245-2214 upon my return on June 21<sup>st</sup>.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin G. Wolfe", with a long horizontal flourish extending to the right.

Justin G. Wolfe

Assistant General Counsel

Attachments