

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

Petition for rulemaking of
The Florida Brownfields Association to
Update and Ensure Consistency of Chapter 62-524, F.A.C
with the provisions and requirements of FS 373.309

Petition to Initiate Rulemaking

Petitioner, the Florida Brownfields Association, on behalf of itself and its members, submits this Petition pursuant to Section 120.54(7), Florida Statutes, seeking to revise the language of Chapter 62-524, Florida Administrative Code (“F.A.C.”), on the following grounds:

I. Petitioner's Substantial Interest in the Proposed Action

1. Petitioner, Florida Brownfields Association (“FBA”), is a voluntary non-profit association. FBA's membership is diverse and composed of individual, public, and private members. FBA’s business address is P.O. Box 10885, Tallahassee, Florida 32302. FBA’s telephone number is 850-666-2947. FBA was created in 2002 to advance Brownfields cleanup and redevelopment throughout Florida. The FBA brings together a diverse group of members to provide Brownfields information, assistance, and redevelopment strategies to communities and the public. Since our founding and through our engagement with the Florida Department of Environmental Protection (“Department” or “FDEP”) and the Florida Legislature, our members have been instrumental in facilitating over \$550 million in capital investments in Brownfields sites, many located in inner cities and neighborhoods, which have resulted in over 16,500 new direct jobs.¹ Among other activities, the FBA continuously engages with the Department to improve the process of rehabilitating contaminated sites and

¹ 2023-2024 Florida Brownfields Redevelopment Program Annual Report (August 2024).

advocates for policy changes and legislation that has resulted in one of the highest performing Brownfields programs in the nation.²

2. FBA’s members and the public are subject to Chapter 373.309, Florida Statutes, which requires and authorizes the Department or its delegated political subdivisions such as Water Management Districts, Florida Department of Health, or another political subdivision to adopt and amend rules governing the location, installation, and abandonment of wells in “areas of known contamination” and to establish a “procedure for clearing for use all potable wells, except wells that serve a public water system, in areas of known contamination” (emphasis added).

3. The Department has promulgated regulations that implement the requirements of s. 373.309, under the provisions of Chapter 62-524, F.A.C., “New Potable Well Permitting in Delineated Areas” or more commonly known as the “Delineated Areas Rule”. Chapter 62-524, F.A.C., was promulgated in 1989 with amendments in 1996. The Chapter has not been updated in almost three decades.

4. Since our founding, the FBA has advocated for the cost-effective cleanup and restoration of Florida’s natural resources and to rehabilitate contaminated properties for productive use. We share the Department’s and the public’s fundamental interest of protecting public health by preventing access to contaminated groundwater for consumptive or irrigation purposes. We fully support the spirit and intent behind s. 373.309, and Chapter 62-524, F.A.C. However, as set forth below, the current version of Chapter 62-524, F.A.C., is both so cumbersome to implement that it cannot be effectively used as intended and is inadequate to protect the public’s access to contaminated groundwater and, therefore, does not achieve the authorizing statute’s purpose.

5. This Petition specifically focuses on updating Chapter 62-524, F.A.C, since its current version limits the statutory legislative’s intent, and it also limits the Department and delegated political subdivisions’ ability to readily protect the public from exposure to groundwater contamination. Florida Brownfield Association members, which include local governments, developers, and owners of contaminated

² **Florida Brownfield Program outperforms its funding - Florida Specifier (April 20, 2023).**

properties that desire to revitalize affected inner cities, rural or marginalized neighborhoods, are substantially and adversely affected by the Department's lack of updating Chapter 62-524, F.A.C., to provide an alternative and effective means to manage the risk posed by geographically larger areas of groundwater contamination associated with brownfield areas and sites.

II Background

1. Responding to widespread groundwater contamination of over 427,000 acres by a chemical compound known as Ethylene Dibromide (EDB), and to control human exposure to contaminated groundwater, the Florida Legislature enacted F.S. 373.309 in 1989. The statute authorizes and directs the Department to establish the "Delineation of areas of groundwater contamination for implementation of well location and construction, testing, permitting, and clearance requirements...". This law was a direct response to the State's obligation to protect people from unknowingly ingesting contaminated groundwater. As such, the statutory framework already exists to address widespread contamination by regulating the access to groundwater via well permits and implementing long accepted industry standards and techniques in the construction of potable water wells.

2. Upon its enactment, s. 373.309 required the Department to promulgate regulations to protect the public's access to contaminated groundwater and to make the public aware of areas where testing had revealed aquifer contamination. Regulations were promulgated in 1989 as Chapter 62-524, F.A.C., titled "New Potable Water Well Permitting in Delineated Areas" and last amended in 1996; however, certain provisions of the rule have not been fully implemented and have become an impediment to achieve protection of human health. In addition, given advances in information technology and public awareness of groundwater contamination and the risks it poses to public health since the rule's last update in 1996, the rule in its current version does not perform its statutory mandate and should be revised to take advantage of widely available technology.

3. Chapter 62-524, F.A.C., sets up a series of procedures for delineation and approval of known areas of contamination and provides for a setback distance for any potable well application from areas of known groundwater contamination. However, as will be

explained in more detail later, the process of delineation and approval are two separate actions with the former required of the Department and the latter constituting only an official or formal consent or authorization of a delineated area by the Environmental Regulation Commission (“ERC”) after the Department has already delineated an area of groundwater contamination.

4. In section 62-524.420(11), the rule states that “The Department shall present delineated areas to the Environmental Regulation Commission for approval at rulemaking public hearings duly noticed as required by Section 120.54, F.S.” As explained in more detail below, this rule section inappropriately transfers the Department’s statutory obligations of ensuring protection of human health to the ERC and is an unnecessary impediment to efficient implementation of the legislative intent of s. 373.309.

5. Section 403.805(1), F.S., requires the Secretary of FDEP to submit for review, “any proposed rule containing standards to the Environmental Regulatory Commission for approval, modification, or disapproval pursuant to s. 403.804, except for total maximum daily load calculations and allocations developed pursuant to s. 403.067(6)” (emphasis added). However, the act of approving a delineated area under s. 373.309, does not seek to change or modify any groundwater quality standard that requires ERC approval.

6. Section 62-524.420(1) states that the Department is charged with the responsibility to “identify and locate...” areas of known groundwater contamination. However, in fact, in the overwhelming majority of cases, other parties actually perform this task, primarily through assessment performed pursuant to Chapter 62-780, F.A.C., under Department oversight. In addition, many other parties have supported the Department by identifying areas of known contamination of Florida’s aquifers and making the Department aware of where these areas are located. The current rule does not recognize the contribution of other parties in identifying and locating known areas of groundwater contamination and the role that such parties can play in identification of affected groundwater and implementing the intent of s. 373.309. In the context of ensuring that the public is protected from ingestion of contaminated water obtained from potable wells, this limitation is inappropriate.

7. In addition, the current rule does not provide the opportunity for a private party possessing technical information to request that the Department delineate an area where the nature and extent of groundwater contamination is known. The process for submittal and

review of technical information is already established in the site assessment provisions of section 62-780.600, F.A.C., which requires (among other matters) demonstration of horizontal and vertical delineation of impacts to groundwater (section 62-780.600(3)(b), F.A.C.) and upon the successful completion of the site assessment process, the Department's written acknowledgment of same, see Section 62-780.600(9), F.A.C. As a result, and upon request, the Department should accept an area of groundwater contamination that has been defined and approved pursuant to section 62-780.600(3)(b), F.A.C. as a delineated area under Chapter 62-524, F.A.C.

8. Rule 62-524.420(14) specifies that "additional areas for application of the requirements of this chapter may be delineated at any time as technical information is available" (emphasis added). Therefore, the intent can be achieved without intervention of the ERC to delineate an area of groundwater contamination.

9. In spite of the clear direction in Rule 62-524.420(14), the prevailing interpretation of the rule has been for the ERC to approve an area of groundwater contamination before certain public health protection mechanisms such as developing maps and notification to stakeholders and the public takes place. This is contrary to the Department's mandate of protecting the public as soon as groundwater contamination meeting certain technical criteria is determined, as clearly expressed in s. 373.309(1)(e)(1).

10. In addition, we note that the rule's definition of a delineated area in Rule 62-524.200(2) does not specifically mention the words "approval," "approved," or "subject to ERC approval." In this regard, we believe it is clear that the Department has the obligation to delineate areas of groundwater contamination and provide a means to ensure that appropriate well construction techniques are implemented in areas of groundwater contamination to protect the public, particularly in rural and marginalized urban communities that rely on private wells for potable water. Therefore, the act of delineation and the resulting requirements of implementation of certain well construction techniques through the well permitting process must be accomplished without delay to protect human health, and the ERC approval of a delineated area to protect the public is not, nor should it be, a condition to establishing the mechanism designed to protect human health.

11. We also note that in previously delineated areas of groundwater contamination, the Department gives the impression that all (emphasis added) aquifer depth

intervals are contaminated and, therefore, not available to be accessed for consumptive or irrigation purposes. This is technically incorrect as the Department may not have considered that the vertical migration of contaminants is usually restricted by geological confining units and that deeper depth intervals of an aquifer may not be contaminated and thus available for human consumptive or irrigation uses by using certain construction techniques widely employed by the water well installation industry. If available (for example as a result of an assessment performed pursuant to Chapter 62-780, F.A.C.), the Department shall take the vertical extent of contamination into account as a part of accepting an area for delineation. However, complete vertical delineation is not a requirement of the delineated area process. Where the vertical extent of contamination is not initially known, in order to implement the protections that delineation under the rule provides, the Department may assume some or all aquifers are affected based upon the nature of the contaminant, prevailing hydrogeology, geochemistry, and known site conditions. Upon confirming the vertical extent of contamination, the Department shall adjust the delineated vertical extent of the affected aquifer(s) in the delineated area so that groundwater can be accessed from the uncontaminated aquifer.

12. In addition, we submit that the process of delineation of an area of groundwater contamination is not a static process. In fact, with current advancements in remediation technologies and proven natural contaminant attenuation over time, formerly listed delineated areas could be reduced in their aerial extent or eliminated altogether. We propose a more dynamic and interactive approach to the delineation process than set forth in the current rule.

13. The proposed rule changes set forth herein are consistent with existing rules and statutes.

14. Accordingly, and building on an existing framework to address extensive groundwater contamination and to protect the public from current and future emerging contaminants, such as PFAS, the Florida Brownfields Association proposes that the Department amend Chapter 62-524, F.A.C., as follows.

III. Proposed Rule Changes³ and ⁴

A. Petitioner seeks to review the language of Rule 62-524.200

1. *To provide clarity to the definition of a “Delineated Area” and to define that a delineated area can be accepted by the Department; however, the Department’s acceptance of a delineated area upon request of private parties or governmental agency⁴ must prompt actions to protect the public.*

62-524.200(2) “Delineated Area” means a ~~surface-geographic area identified~~ accepted by the Department pursuant to Rule 62-524.420, F.A.C. upon the request of a governmental agency or private party, defined by GIS coordinates, shape file, or other appropriate means including known (or estimated) vertical extent, within which groundwater contamination in the Surficial, Intermediate, and/or other Aquifers is known or estimated to exist or which encompasses vulnerable areas or areas in which the Department provides a subsidy for restoration or replacement of contaminated drinking water supplies.

2. *To clarify that the definition of a “Vulnerable area” may include, in addition to nitrate, other types of contamination.*

62-524.200(5) “Vulnerable area” is an area in which groundwater assessment, research or monitoring data provided to the Department by a governmental agency or private party, indicate that groundwater is vulnerable to nitrate or other contaminants because of the presence of potential sources of nitrate or other contamination, and because of land surface and subsurface characteristics.

B. Petitioner seeks to review the language of Rule 62-524.420

³ Petitioner provides excerpts containing its proposed revisions to the referenced rule. New language proposed to be added to the rule is underlined; language proposed to be deleted is struck through. An explanation for each proposed change precedes each revised provision.

⁴ Government entities include, without limitation, the US EPA, and other statutorily authorized authorities such as airports and ports which may request delineation of groundwater protection areas surrounding federal Superfund Sites.

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1. To allow parties other than the Department to provide technically defensible data that meets the rule requirements.

62-524.420(3) Sources of groundwater data to be used for delineation of areas under this chapter shall include:

- (a) Local, state, and federal agencies.
- (b) Water management districts.
- (c) Department programs.
- (d) Governmental agencies or private parties that have provided information to the Department meeting the technical requirements specified in Section 9 and that have requested the Department to accept for delineation a specified area where the nature, lateral extent, and vertical extent of contamination are known (or estimated) and has the potential to affect public or private wells.

2. To allow parties other than the Department to provide technically defensible data to establish an alternate setback distance from a site, well, or source boundary.

62-524.420(4)(b) Where data from the distribution or movement of ground water contamination indicate that a plume of groundwater contamination is stable or shrinking, or that a 1,000-foot setback is insufficient not technically justified, the Department shall establish an alternate setback based on such data. The Department shall review and accept technical data submitted by parties other than the Department to establish an alternate setback distance.

3. To allow the Department to accept for delineation areas meeting specific technical requirements. In addition, the depth interval of the aquifer must be known to allow the public access to groundwater from the non-contaminated intervals of the aquifer.

62-524.420(5) and (6)

(5) For sites with a history of application of ethylene dibromide or the presence of other contaminants where insufficient site specific ground water data exist for determination of contaminant plume boundaries, depth, or stability, the Department shall accept for delineation an area which encompasses the area of application or area of known presence of contaminants, the area of known or estimated affected aquifer depth interval, and a setback, based on data on the distribution and nature of ethylene dibromide groundwater contamination, fate and transport modeling, or other technically defensible analysis, or in the absence of the submission of such technical analysis, a 1000-foot setback, whichever is larger.

(6) For sites where a hydrogeologic investigation of ground water has been conducted and the nature and lateral and vertical extent of a contaminant plume is documented and sufficient data exist for predictive ground water modeling, the Department shall delineate an area which encompasses the ground water contamination and known or estimated affected aquifer depth interval, and its predicted movement for the next two years in order to protect the public health, safety, and welfare; water resources; and the environment. The Department shall accept groundwater modeling data submitted by parties other than the Department to allow the establishment of the predictive movement of contamination.

4. *Add additional contaminants, besides nitrate, to determine aquifer vulnerability and delineation. In addition, allow for other parties to present information for the Department to request delineation of areas of groundwater contamination.*

62-524.420(9) For areas in which the Department determines that ground water is vulnerable to or is contaminated by nitrate or other contaminants, the Department shall delineate such vulnerable areas or areas of groundwater contamination. The Department shall determine where vulnerable areas or an area of groundwater contamination is appropriate for delineation under this rule, by using the following information when available:

- (a) Physical properties of soils;
- (b) Vadose and saturated zone media;
- (c) Hydrogeologic characteristics of aquifer systems;
- (d) Depth to ground water;
- (e) Recharge;
- (f) Karst features;
- (g) Topography;
- (h) Presence of Class G-II ground water or other potable ground water with less than 10,000 mg/L total dissolved solids;
- (i) Water quality or groundwater assessment data, including without limitation, groundwater assessment data obtained pursuant to Chapter 62-780, F.A.C.; and
- (j) Soil cover;
- (k) Regional Water Supply Plans;
- (l) Nitrogen application or loading rates for potential sources of nitrate contamination; and
- (m) Potential sources or presence of contaminants that have the potential to affect human health over large geographical areas.

5. *To provide for notice by publication when a delineated area has been accepted or modified by the Department.*

62-524.420(10) ~~In delineating areas under this rule, the Department shall coordinate with other affected agencies, particularly those receiving delegation under Rule 62-524.800, F.A.C., in the technical aspects of delineation.~~ When a delineated area has been accepted or modified by the Department, the Department shall publish notice of the delineated area in the legal advertisements section of a newspaper of general circulation meeting the requirements of Sections 50.011 and 50.031, F.S. in the county or counties in which the delineated area lies, including a map of the delineated area and providing references where additional information

Commented [A1]: This section of the rule previously was repealed but apparently cross reference was not caught and deleted.

can be obtained.

6. The authorizing statute (s. 373.309) does not state that the Department requires approval from the ERC to delineate areas of known contamination.

Delete current section 62-524.420(11).

7. To improve human health protection and notification, create a new rule section that specified the requirements for a publicly accessible database of delineated areas.

New Rule Section 62-524.420(11)

62-524.420(11) The Department shall develop and maintain a database of accepted delineated areas where the nature, the lateral and vertical extent of a contaminant plume is documented. Such database shall be accessible to the public and governmental agencies including water management districts, regional planning councils, the Department of Health, and county building and zoning departments. Maps or other information on delineated areas meeting the technical requirements of this chapter must be GIS-based and kept in a publicly accessible repository under a “Delineated Areas” heading.

8. Provide clarification that the well permitting process will be implemented in delineated areas to allow groundwater to be extracted from the non-contaminated depth interval of aquifers, facilitate the availability of information for the public’s benefit, and to prevent the accidental ingestion or use of contaminated groundwater.

62-524.420(12): To facilitate the well permitting process, the Department shall create and provide maps which indicate all sections which contain any portion of the location of all delineated areas. The maps must be available to the public and housed in a GIS-based database updated semiannually. Prior to issuing a well construction permit for a new potable water well within a mapped section, the well permitting authority shall potential applicant should contact the appropriate permitting authority or consult the publicly available database and which shall determine if the proposed well is within a delineated area and if so require specific well construction procedures to allow the extraction of groundwater from a non-contaminated portion of the aquifer. Delineated areas shall constitute “institutional controls” within the meaning of sections 376.301(21) and 376.76(11), F.S.

9. Should the well permitting authority permit a well in an approved area for delineation by requiring a well to access groundwater from a non-contaminated aquifer depth interval, allow for other parties to provide to the well permitting authority analytical data from a permitted well. The analytical data would be obtained from an FDEP- certified laboratory and of quality equivalent to analytical data obtained by the Department of Health.

62-524.600(2). The Department shall accept only groundwater analytical test results obtained from water samples collected and analyzed by the Department of Health or by governmental agencies or private parties in accordance with Chapter 62-160, F.A.C. The well construction

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~~permit applicant shall be responsible for the cost of sample collection, shipping, and analysis. The data shall be provided to the well permitting authority having permitted the well and to the Florida Department of Health with jurisdiction over the area where the well is located.~~

10. Propose the creation of a new rule section that provides that an accepted delineated area extent can be modified or eliminated at the request of a private party or governmental agency based upon on the submission of supporting data meeting the requirements of Chapter 62-160, F.A.C. This makes the delineation process more dynamic and incentivizes stakeholders such as water resource planners, cities, and the public to play an active role in public health protection. In addition, tracking changes in groundwater quality of delineated areas is crucial to inform the public and to inform management decisions to protect and sustain valuable groundwater resources.

62-524.500 Modification to Delineated Areas.

Upon the request of a private party or a governmental agency that has provided data meeting the requirements of Chapter 62-160, F.A.C. and demonstrating a change in the location and/or vertical extent of the delineated area, the Department shall modify or eliminate the delineated area, as appropriate.

WHEREFORE, Petitioner respectfully requests the Department initiate rulemaking pursuant to Section 120.54, Fla. Stat., for the purpose of amending Chapter 62-524, F.A.C., as set forth herein.