

MINUTES OF MEETING
TECHNICAL REVIEW AND ADVISORY PANEL
September 23, 2010

Members present were:

Ken Odom, Home Building Industry, Chairman
Mark Cotton, Home Building Industry
Frank Dragoun, Consumer Representative
Scott Franz, Soil Scientist
Greg Liskey, Septic Tank Manufacturer
Russell Melling, County Health Department
Patti Sanzone, Florida Environmental Health Association
Derek Woodruff, Septic Tank Industry

Alternate members present:

Ed Cordova, Local Government
Martin Guffey, Septic Tank Industry
Roy Pence, Home Building Industry, Vice Chairman
Oren Reedy, Soil Scientist
William Sirmans, County Health Department
Pamela Tucker, Real Estate Professional
Ellen Vause, Septic Tank Industry

Department of Health staff present:

Gerald Briggs, Chief, Onsite Sewage Programs
Marcelo Blanco, Environmental Health Program Consultant
Paul Booher, Professional Engineer III
Kim Duffek, Environmental Health Program Consultant
Melissa Durkin, Environmental Health Program Consultant
Bart Harriss, Environmental Manager
Dale Holcomb, Environmental Administrator
Shirley Kugler, Administrative Assistant
Eberhard Roeder, Professional Engineer

Absent members and alternates:

Raymond Collins, Florida Environmental Health Association
Dikran Kalaydjian, Home Building Industry
Scott Johnson, P. E., Florida Engineering Society
Paul Steinbrecher, Local Government
Clay Tappan, Florida Engineering Society

Speakers:

Sam Averett, Averett Septic Tank Co.
Carey Baker, Senator, District 20
Quentin (Bob) Beitel, Markham Woods Assn., Inc.

Fred Brummer, Orange County Commission
 Dominique Buhot, Greens Environmental Services
 John Byrd, Representing Teresa Jacobs
 Lee Constantine, Senator, District 22
 Frankie Elliott, Orlando Regional Realtor Association
 Bob Himschoot, Crews Environmental
 Melissa Holt, Citizen
 Gino Ratti, Citizen
 Andrea Samson, Wekiva Area Homeowners Assn.
 Carol Saviak, Coalition for Property Rights
 Bill Segal, Orange County Commission
 David Smith, Contractor
 Clarence VanWaardhuizen, Sunny Pines MHP

Others present:

Interested persons including representatives from:
 Concerned Citizens
 Contractors
 County Health Departments
 Florida Onsite Wastewater Association
 Industry Representatives

Chairman Odom called the meeting to order at 9:05 AM. He greeted the panel members and welcomed the audience participants. Introductions followed. Mr. Odom accepted a letter from Russell Melling in which he announced his impending retirement from state government in mid November and thus his resignation from the TRAP. Mr. Odom wished him well and thanked him for his years of service and valuable input to the TRAP. Mr. Odom proceeded with a review of the minutes from the July 15, 2010 meeting. Mr. Woodruff noted on the first page that Chris Brown was erroneously listed as being present at that meeting. Mr. Odom referred to page 9, Issue 09-17 – Site Plans and asked if language had been developed for lines 5 and 6 regarding the margin of error. Mr. Briggs relayed that changes to the Site Plans issue are pending and will be brought to the TRAP at a future meeting. Issue 10-06 – Existing Systems on Page 11 brought comments from Ms. Tucker. She felt her comments on that issue were not clearly stated regarding the language about the Voluntary Inspection form concerning liabilities and concerns with the Realtor Association. She said she was not suggesting a change to the drafted minutes but wanted to know what is happening with the form. Mr. Briggs responded that the Voluntary Inspection form will not be used because it is a different program, a more in-depth, detailed inspection. A form is being developed for the state wide evaluation that addresses the requirements of SB 550. Mr. Odom asked if the questions about Issue 10-11 – PBTS Design Standards at the previous meeting have been addressed to be presented at today's meeting. Mr. Briggs responded affirmatively. Mr. Odom also asked about the retesting of polyethylene tanks. Mr. Briggs responded that the requirement for polyethylene tanks to be retested to the current standards will be included in the next rule change which should be effective in January 2011. Review of the minutes concluded and Mr. Liskey, seconded by Mr. Dragoun, motioned to accept the minutes with the noted comments. The panel voted their approval.

Issue 10-12 – SB 550: Five-year System Evaluation
 Rule Sections: 64E-6 – NEW

Mr. Briggs briefly explained the proposed language of this issue which implements SB 550 requiring evaluation of all onsite systems every five years and providing a grant program for low-income homeowners. He advised that the department has worked closely with the panel, industry and the county health departments in a concerted effort to stay very close to the exact words of the statute in terms of what this evaluation is supposed to do to make it the least invasive and the least cost as possible. The grant program will not become effective until January 2012. Therefore, rule language for the grant program is pending development. In the meantime a qualified owner could be granted a one-time, one year extension. Mr. Odom asked the established amount collected from fees from each inspection that will go into the grant program. Two dollars from each recording fee would go into the grant program. If the program stays on track with what was presented to the Legislature, that two dollar fee would generate \$208,000 the first year and that would double each year until the fifth year when maximum evaluations are reached. The grant program covers the evaluation and any required repair upgrade.

Mr. Briggs began on page one of the proposed language inviting comments and questions. Mr. Pence questioned the language beginning on line 10 that says 'A notice that sewer will be available within the next five years and written arrangement for payment of any utility assessments or connection fees have been made.' Mr. Briggs relayed that this language was borrowed from the language that was put in place for the Keys where availability of sewer is sought as well as arrangements to pay the assessment fees. Mr. Pence was doubtful that this premise would work outside the Keys. He thinks people will be reluctant to pay up-front for something they do not have. Mr. Franz stated that he understands the verbiage as meaning there will be a fee arrangement established rather than paying fees up-front. Mr. Briggs said department staff will talk with utility companies to assess their mechanism as to how they get a commitment from an owner once notified that they are going to connect.

Mr. Briggs continued with line by line explanation eliciting questions and comments. Mr. Pence asked if the one time extension talked about on line 16 is in addition to the one year extension that is allowed under line 8. Mr. Odom asked about line 17 and wanted to know if asking for written documentation of the previous year's federal tax return is a common practice to determine poverty level. Mr. Briggs said that a better choice may be to go with "written documentation provided by a government agency."

Mr. Briggs moved on to page 2 that deals with the implementation schedule. It is anticipated that 104,000 systems across the state will be evaluated the first year. Those notifications would be quarterly across the state in all counties under the current proposal. Notification to onsite system owners would start drawing from the Environmental Health (EH) data base records that presently comprise approximately 900,000 systems. Time is needed to build the rest of the inventory and Mr. Briggs described methods to accomplish refinement of the inventory. Line 35 deals with who can do evaluations. The statute language for SB 550 specifically outlines who can perform the evaluations - licensed septic tank contractors, environmental health professionals certified in the area of onsite sewage treatment and disposal systems, or licensed professional engineers. The draft rule language also includes employees under the direct supervision and control of engineers or septic tank contractors can do the evaluations providing they have successfully completed Department approved training. All people doing evaluations, both licensed contractors, engineers and their employees must attend mandatory training. The training consists of two courses, one on the evaluation process and one on determining the wettest season water table. He clarified that those master septic tank contractors and certified EH personnel and engineers who have already taken the soils course as part of the accelerated certification training do not have to take the wettest season water

table course. Mr. Reedy asked if the evaluation course has been developed or is that a part of the week long training course taken to be a CEHP. It is a separate course that is being developed. Training is scheduled to begin in November. The total training for those needing both courses will be two days. Ms. Tucker was curious about why licensed state plumbers are not included. Mr. Briggs explained that plumbers are not listed in the statute language, but that they can opt to become licensed as septic tank contractors with DOH in order to do evaluations. Mr. Briggs stressed the importance of proper training for people doing the evaluations. Mr. Odom asked about discrepancies from one person to another when making the water table call. Mr. Briggs delineated the current process followed to make a final determination beginning with assessment by county health department people, headquarters' bureau staff and, if necessary, a final determination made by a NCRS state soil scientist. Mr. Franz reiterated that standardization is absolutely imperative so that every one is on the same page. Mr. Odom asked how voluntary inspection comes into play in relation to mandatory inspections. Will this class training be required to do water table calls for voluntary inspections? Mr. Briggs replied that language is not presently in the code but that he is open to doing so. Mr. Franz suggested that if done that it mirror this language.

Mr. Briggs talked about submittal of the evaluation report beginning on page 3, line 66. There will be a standard form used to submit the reports. The evaluator is responsible for submitting the report that is required to be postmarked within 10 business days of the completion of the evaluation. He also talked about specifics of electronic submission of the reports. Mr. Odom asked about the 10 day requirement to submit the completed evaluation. He feels a timeframe of 10 business days is too short to accomplish all the necessary steps. Mr. Briggs responded that 10 business days is the requirement to submit the evaluation to the department. The department will be the one to make the determination as to whether or not that evaluation indicates that a repair or replacement is required. At that point the owner will be notified and then the owner will have an additional 60 days to make application for their repair. Mr. Odom was adamant that he felt the timeframe too short citing examples of possible overlap of fees. Mr. Briggs allowed that he was not sure how to address Mr. Odom's concerns given that there are separate fees and separate processes. Mr. Franz made a cogent suggestion that when a repair is obviously needed the inspection could be submitted along with a repair application thus saving the homeowner one of the fees. Mr. Briggs said his staff will look at possible verbiage to put in place to accomplish that as well as an appropriate timeframe. Mr. Odom added that this also relates to the grant program. If application for a grant program is necessary, will that 10 day time period, with the fee for the inspection still be required? Mr. Briggs said that verbiage can be dealt with next year with development of the grant program language. New member, Mr. Mark Cotton, followed suit with Mr. Odom's comments about the short timeframe and the possible financial difficulty imposed on the homeowner. Mr. Franz said if it appears that a repair is required, there is no language that says a repair permit has to be submitted within 10 days. Mr. Cotton said the timeframe is 60 days within which a repair process must begin.

The language beginning on line 75 deals with the details of the evaluation. Mr. Briggs talked about requirements for pumping tanks. All tanks are required to be pumped at least during this initial cycle. The statute does provide that if a tank has been pumped within the last five years and there is certification of the condition and capacity of the tank then the tank does not have to be pumped again. Mr. Pence asked under what conditions would that documentation be present. Typically, a normal pump out does not include water tight evaluation. Mr. Briggs said the department is preparing to inform the disposal companies about these requirements. He added that some, but not all, of the disposal companies keep those kinds of records. At this point, pump out information will depend on the pumper's records. Mr.

Odom said "if you pull an inspection on a system and the tank was pumped and certified two years ago, then you don't have to certify that tank...you just have to go out and inspect the drainfield." Affirmative. Then in three years from now do you have to go out and inspect the tank? No, the evaluation is every five years. Mr. Odom remarked that the tank evaluation will have actually gone for 7 years. Ms. Vause said a lot of contractors currently use a check sheet for their own records when pumping a system because a good percentage of pump outs reveal problems that will initiate a repair. Mr. Odom referred to line 75 and asked why the tank is pumped since each system for maintenance depends on what goes into the system. Mr. Briggs agreed on the maintenance aspect but first and foremost a priority is to determine that the tank is water tight. An accurate determination cannot be made without pumping the tank. Mr. Odom wondered if anyone has calculated the amount of sewage that will be pumped from these tanks, where it will be disposed of and the available capacities to handle the sewage. Mr. Briggs replied that one reason to phase in the process over several years is to make sure that the capacity is in place. Industry, the disposal sites and the plants will have to gear up to deal with the wastes from these evaluations.

Mr. Briggs continued on line 78 that addresses visual inspection of the tanks for cracks, leaks or corrosion, i.e. something that has impacted the tank so that it is not water tight. Poly tank deformities which restrict flow through the system or which prevent lids or manhole covers from being properly re-installed must also be documented. Mr. Briggs sought guidance for at what point does the deformation impact the functioning of the system. Mr. Odom referred to the pumping of tanks on line 76 and wanted to know if there is a form that has to be filled out for the tank certification. That is covered on the form referenced earlier in the language. Line 81 deals with exposed sewage or effluent. Line 82 through 86 talks about determination of the wettest season water table that is required by the statute. The statute requires pre-1983 systems to meet a minimum six inch separation; on or after 1983 they must meet a minimum 12 inch separation. The current requirement in the rule, in place since 1985, is 24 inches. Mr. Woodruff asked if the soil evaluation performed for this SB 550 inspection will count towards the repair permit if a repair permit is required. Mr. Briggs said that question ties in with the earlier discussion about the various permit fees and recognizes that the language needs refinement. Mr. Pence commented on the 1985 rule that requires a 24 inch water table separation. Since 1985 any system installed, has been permitted, installed and inspected by the health department attesting that it meets that water table separation. He further observed that now we will look at those same systems, permitted by the health department, and determining if the job was done right. Mr. Briggs assented but stressed that site conditions do change describing a scenario where that has happened in the Tallahassee area. Mr. Pence is concerned about the financial impact to a homeowner who had a system installed after 1985, and inspected by the health department verifying that the 24 inch separation criteria was met. What happens if the SB 550 evaluation determines that there is no 24 inch separation? Mr. Briggs noted that a lot more training on water table determinations has been done in the last 10 years. Mr. Reedy added also that a lot more has been learned about soil science since 1985. He reiterated that site conditions do change, a seasonal high water table can rise or fall based on the hydrology in the area, the morphological features can reestablish, re-express themselves. Another variation is that, unfortunately, the bottoms of drainfields do change after final inspections. He has observed this happening because of occasional illegal practice. So it is not just a matter of looking at the health department to see if they did their job right initially. There are too many variables in the scenario. You have to evaluate a system or soils on how they exist that day. Mr. Odom conjectured about Mr. Reedy's comments about illegal practices as being where an installer has the health department perform an inspection on a system they've just installed perhaps using chambers, or multi pipe, etc. Once that inspector leaves a job, the installer could

remove a section of the drain line, lower it or do anything at that point. It is illegal but may happen on rare occasions. Mr. Pence reiterated his concerns about potential cost.

Mr. Briggs continued with line 87 about placing the lid back on the tank upon completion of the evaluation. If the lid is damaged it should be replaced with approved components. Any missing or damaged outlet devices or filters shall also be replaced. If the owner refuses permission to make these corrections, the evaluator's responsibility is to report that to the health department. Mr. Pence commented on the event of an owner refusing permission to make corrections. He does not think this rule addresses that point. From the audience, Mr. Sam Averett stated that the time to make these corrections is when the tank is pumped and empty. If there is no outlet filter or the outlet tee needs to be replaced then there is actually a savings to the customer in making the needed corrections when the tank is empty. Ms. Vause added further remarks to Mr. Averett's about filter and lid replacement. Ms. Tucker referred to line 92 about the outlet filter being cleaned during the pump out. She asked about older, systems that are operating correctly during evaluation but were never retrofitted for a filter. Mr. Briggs answered that there is no requirement for filters to be installed on the older systems. Ms. Tucker also suggested that the verbiage for..."owner refuses permission" be replaced with "willing and able." Mr. Briggs said this is not an option and reminded the panel that a damaged lid is not only a health hazard but a safety hazard. Mr. Briggs stressed that work cannot be done on an owner's property without their permission. If an owner says, "get off my property" then the evaluator's obligation is to report that to the health department.

Continuing on page 4, beginning on line 95 addresses repairs and time frames. Line 101 details requirements for repair permits. Line 106 speaks to requirement of a modification permit when the issue is a separation from the wet season water table. Line 109 through 118 is about permits required to construct new systems. Mr. Odom referred to line 106 about a modification permit when the drainfield does not meet the minimum separation. When going from a repair permit to a modification permit, doesn't the modification permit require all new requirements such as property lines, setbacks, building foundations, wells, surface water, etc. He stated that this is getting back into other statutes that protect pre '72 lots and pre '83 lots. He thinks this language should be carefully thought out and compared with the statute in the event of conflicts or contradictions. Mr. Odom feels that many problems might be created by rushing through this language in order to meet the January 1, 2011 deadline. Mr. Franz thinks dealing with the setback issue should remain with the age of the house and dealt accordingly with that separation. Mr. Woodruff said everyone needs to understand that the modification requirements are far stricter than the repair requirements. Mr. Briggs agreed and said we will work on the language to make sure we don't inadvertently impose stricter standards.

Mr. Reedy asked for further clarification about the modification for the separation from the seasonal high water table. He asked if systems are pre '83, the number is 6 inches or greater and post '83 is 12 inches or greater. If a system does not meet those criteria, does it have to be brought up to the 24 inch separation? Mr. Briggs responded that if a pre 1983 system does not meet a 6 inch separation it must be brought up to 12 inches. So whatever the criteria is supposed to be that is what it has to be brought up to under the modification. Correct.

Mr. Briggs picked up again on line 119 with the review that deals with determination of the installation dates since that is a factor in the wet season water table determination.

Line 122 deals with the 60 day timeframe for obtaining construction permits after notification from the Department. Mr. Pence and Mr. Cotton asked how that relates to the other timeframes. The evaluator has 10 business days to submit the report. The Department will

review that and send out a notice. From the time the applicant gets the notice, they have 60 days to make application for their repair permit if they are required to get one. Repair permits run for 90 days and they can be extended for 90 days.

Page 5 begins explanation of disciplinary guidelines that specifically outlines the violations for the evaluators, the pumpers, and the system owners. All have responsibilities under this program. Mr. Pence asked what is a false payment statement. Mr. Briggs replied that it is a billing for something not done.

The panel concluded discussion about the SB 550 issue language and Mr. Odom opened the meeting for public comments. The first speaker that Mr. Odom invited to the podium was Mr. Fred Brummer, Orange County Commissioner. Mr. Brummer expressed appreciation to the panel for their service to the state. He briefly expressed his thoughts that the economic impact of this particular rule to be substantial and that people around the state cannot afford the expense. He read an email from Representative Trudy Williams, District 75. Mr. Brummer added his own concerns about 'modifications' addressed beginning on line 106 of the proposed language.

Mr. Franz commented in response to Representative Williams' email. He said the panel members were provided a copy of SB 550 and what he reads does not appear to be misrepresented by what is being proposed as her email indicates. He would like for someone to point that out to him if he is wrong. Mr. Odom said he was not sure but maybe that was misrepresented to them as Legislators or maybe they supported a bill that they did not completely understand.

Senator Lee Constantine, District 22, spoke next. He thanked the panel for their dedicated service adding that he recognizes that SB 550 is not an easy issue to resolve. Regarding the process of working through SB 550, he advised the panel to keep it simple, use common sense, and make it user friendly. He said the Legislature did not try to dot all the 'i's' and cross all the 't's' because persons in the Department of Health and the Department of Environmental Protection are the experts and understand this complicated business more than the 60 day Legislators. The legislators involved were aggressive in trying to put SB 550 into play and he appealed to the panel to put together the right method to bring this process about. He believes that most folks agree this particular inspection program is necessary and is the right thing to do. He added that in listening to the questions and responses today he can see that the panel is obviously putting together something that would be doable and workable for the people of Florida. Senator Constantine invited questions. Ms. Tucker said she never thought it was his intent for existing systems to have to renovate them, pull them out of the ground, etc. if they are functioning properly to the code. She believes the separation language was intended for those systems that are not functioning, that need repair, or for new construction but the bill is not written that way. Senator Constantine responded that landmark legislation such as this always presents opportunities to go back and say that this is really not what we intended or this is a glitch. We all understand that there may be some things that were not put together properly. The key to all of this in the big picture is that this process is necessary and it is necessary as quickly as possible. It will in the long run save all Florida tax payers both health and safety concerns, as well as money, especially when looking at what EPA is considering. He is concerned about the rush of judgment to eliminate this as is evidenced by dent of letters and questions asking 'how are we going to fix this or why should we do this'. Senator Constantine was emphatic that it is called personal responsibility as to why a septic tank needs to be inspected, needs to be fixed if it is not working. He does not think, as Ms. Tucker said, that it was ever the intent to haul out the whole septic tank for replacement if the problem was fixable.

Mr. Odom asked Senator Constantine about his reference to EPA. He wondered if part of this bill language was driven by some upcoming EPA mandates for water quality standards. Senator Constantine responded that SB 550 is multi-faceted and this inspection portion is actually a small part of the whole bill. He reflected on a settlement that the EPA had done on a law suit concerning the numeric standards of Florida waters that could put a potential large expense on every household in the state of Florida as well as a strong damper on our economy. The Senate Committee considered a number of ideas and concepts to mitigate what the EPA may try to do. Some business groups have estimated that the EPA standards could potentially cost \$700 a household whether using a sewer, septic tank or whatever. He said there was universal agreement among the affected agencies, business groups, and environmental groups to support the concept of five year inspections. Mr. Franz commented about keeping the process user friendly and ways DOH can save the homeowners money. He is in favor of the separation language but to be more user friendly, if a tank is structurally sound and the system is functioning why force that homeowner to replace the drainfield and bring it up to meeting the 12 or 24 inch separation. There is a difference between the system functioning mechanically and the system working biologically, e.g. the soil providing treatment. Mr. Odom commented on the state-level \$30 fee and asked if the counties have the ability to tack on to that fee. This is a state inspection fee and other than the DOH and the county working together on delegation an additional county fee is not anticipated. Senator Constantine talked more about fees, the timetable for the grant program and the implementation of the process. Mr. Dragoun wanted to know if the 5 year inspection program will satisfy the EPA. Senator Constantine could not guarantee that but in working with DOH, DOA, DEP, and business representatives from communities, cities, counties and environmental groups; found that they collectively feel that this is the best answer.

Senator Carey Baker spoke next. Anticipating the strong possibility of a glitch bill in the 2011 Legislature, he recommended assimilating a list of suggestion and concerns, both statutory and regulatory, to DOH. If these issues of concern are not addresses, the public backlash could jeopardize the program in its entirety. He stressed that a program is needed that works for everybody. Mr. Woodruff said he thinks the five year inspection program is a great idea but recognizes the many challenges to work through. Senator Baker's response, "So, let's fix them and make this a successful program that we can all be proud of that can work for all Floridians. Mr. Odom asked Senator Baker's opinion of waiting until June 1, 2011, after the Legislative meets again for the DOH to send out the notifications. He noted that the timeframe extends to 2016 to fully implement the program. Senator Baker replied DOH is required to follow whatever the statute sets forth. He thinks some changes are assured; the Department needs to be aware of that and make accommodations where possible. Mr. Odom reiterated that the panel's utmost concern is public health but they also must consider the economical impact of forcing these inspections until after the Legislature meets to see what changes are made. He encourages finding a way to allay financial burden on folks especially if there is a chance the law will be changed. Mr. Franz concurred with those assessments. Mr. Odom said the statute says the program is to be administered by January 1, 2011; but he interprets that as not necessarily meaning the inspections have to start on that date. A full implementation of the program is to be done by 2016. Mr. Briggs said he wanted to clarify again that if the schedule is maintained, the rule would go into effect in January 2011. DOH will send out the first round of notifications to homeowners with newer systems giving 60 days notice. He does not anticipate a lot of problems in the first round. The 2011 Legislative will have started before determinations have to be made about those systems. Senator Constantine interjected that the intention was to have something in place as soon as possible knowing that the EPA was going to be initiate a process over the next six-months. How it works, whether notifications are sent in January or three months down the road is up to you all as how you implement it. He

talked about the possible glitch bill and indicated that it is incumbent upon the agencies and the TRAP to present recommendations to the Legislature so that problems and concerns can be fixed in a glitch bill. Senator Baker asked if he understood correctly that DOH could go ahead by rule and postpone these inspections or start a process that may notify of inspections but not have the first inspections begin until next May or June. Senator Constantine said that the process would be in place by January and therefore the process would decide how long notification for inspection is given. So you could give 60 days or 90 days, that would be part of the implementation process. He said, "we never said you have to have the first inspection on January 1, what we said is that the process needed to be in place to implement it in January." Senator Baker noted that both he and Senator Constantine are term limited and will not be in the 2011 Legislature.

Mr. John Byrd spoke on behalf of Teresa Jacobs who is a mayoral candidate for Orange County. He expressed appreciation to the panel for their continued outstanding work. A concern of theirs is the verification of the evaluation process. He said Ms. Jacobs feels very strongly the need to do pump outs, the need for inspections, and the need to protect the environment. However, we should not do something that will have a crippling effect on homeowners and businesses that are just trying to survive. He summed up by urging to act rationally and not push through something that has a crippling effect on homeowners and businesses.

Mr. Bob Himschoot directed his comments to the legislative intent of SB 550 that is to administer an evaluation program, ensure operational condition and identify failures that would require permits such as sewage on the ground, sewage backing up in the house and sewage that may be contaminating a potable well on the property. He made a number of suggestions. He referred to line 34 and suggested instead of doing notifications chronologically to do them geographically in watershed basins. He would like to see that specifically addressed. In line 38, he is a strong proponent in the fact that we need to have good water quality, that we need to use inspection and maintenance programs to evaluate the systems but he does not agree that an evaluator is needed to determine a water table separation. Therefore, under line 38 the language discussing water table issues could be eliminated. He referred to line 82 (i) through 86 about the evaluator determining the wettest season water table. He thinks a costly portion of the inspection could be eliminated by just doing the pump out and evaluation of the drainfield without doing a wet season water table determination. The thing that disturbs him most about determining the wet season water table is that there are differences between an evaluator and what a soil scientist and others might determine to be the wet season water table. If the wet season water table is miscalled and a modification is required, that opens up the spectrum of setbacks and if a system has been in existence for 10, 12, 15 years because of other various reasons the site may have changed from when a permit was first pulled. He said system failures described earlier should be eliminated from this particular rule making process. He advocates moving forward with the septic tank evaluation, the drainfield evaluation and meeting some of the EPA guidelines in Models 1-5. He observed that Senator Constantine closely followed one of the EPA guidelines when drafting the language in SB 550. Potential EPA guidelines have been part of the overwhelming umbrella used to help draft language to manage treating wastewater from both the de-centralized side and the central sewer. Mr. Odom asked Mr. Himschoot to send him those concerns and suggestions.

Ms. Carol Saviak, Executive Director of the Coalition for Property Rights based in Orlando asked the TRAP to put extraordinary thought in protecting the homeowners from onerous financial burdens. She expressed suspicion of the science behind this. She does not

understand the huge push and urgency to push this on property owners in the middle of one of the worst recessions in Florida.

Ms. Andrea Samson, Wekiva Area Homeowners Association, claims that this rule not only defies logic but it defies legal and rulemaking precedent directing further derogatory comments to the DOH about the proposed language. She talked about seven Counties, Calhoun, Jackson, Washington, Holmes, Liberty, Santa Rosa and Walton that have passed resolutions asking for repeal or modification of SB 550 because of the septic system issue. She maintains that the separation issue needs to be removed from this bill further stating that it was not intended to be there and that the precedent is there to support a challenge.

Mr. Bill Segal, Orange County Commission for District 5 said he understands the multi-faceted issues being addressed. He finds that moving ahead with this process would be a terrible move on behalf of the state of Florida causing a burden for people to shoulder the expenses required. He cautioned to tread lightly and proceed with caution.

Mr. Dominic Buhot, Greens Environmental Services, referenced a letter from Representative Trudy Williams stating that she is in line with what is being discussed; she is in line with the intent that was not to replace any working system. He also talked about the expense issues indicating his opinion to wait until after the next legislative session to proceed with this process.

Ms. Melissa Holt described herself as a septic tank homeowner, unemployed and a senior citizen. The gist of her comments was her inability to pay for any fees, repairs or upgrades. She is a candidate for the grant program and would willingly complete application immediately.

Mr. Quinton Beitel acknowledged that others have already voiced most of his concerns, but that he needed clarification about the timeframe for the DOH to respond after these inspections. He also suggested holding up on the inspection process.

Mr. Timothy McKinney, Executive Vice President, United Global Outreach which is a humanitarian aid organization that is heavily invested in helping and working with a Community in East Orange County. He referred to communities in East Orange County that would be devastated by having to either retrofit or replace existing septic tanks. He doubts the money provided in the grant program would cover the applicants from those communities let alone the whole state of Florida. He wanted to know what happens if the grant money runs out. He also wanted to know if the grant criteria would be based on a sliding scale.

Mr. Gino Ratti, an Orange County homeowner, said though once angry with the TRAP a few years ago that he has subsequently found out the TRAP has been a voice of reason. He talked about the highest concentrations of nitrogen are around the sewer plants. He also talked about the Prohibition of Ex Post Facto Laws which means, in common terminology, that you cannot make something illegal after it is already done. His opinion is that is exactly what is being considered with this process. He expounded further about the septic tank being the whipping boy for water pollution, drainage wells, waste generated by animals on mega farms, and sewer systems. He wonders why septic tanks get all the attention.

Mr. Clarence VanWaardhuizen said that he and his wife own the Sunny Pines Mobile Homes Park. They provide living facilities for senior citizens and that most cannot afford large expense. They have a number of concerns because the park has 30 septic tanks. He asked

several questions about probing the soil, high nitrates and if the tank needs to be opened wondering if there will be a shotgun effect by saying that every tank has to be opened and inspected. Chances are a lot of the old systems are working well. He talked about the potential large expense created by the inspection process and urged the panel to delay this as long as possible considering the current poor economy.

Mr. David Smith introduced himself saying that he is a contractor in Central Florida. He said that there was no water separation in 1980. Then the separation went to 6, then 12, then 24 inches, 36 inches and back to 6 inches. Does anyone know what it will be next year or five years from now? He spoke of homeowners being made to replace a septic system because a county inspector from DOH made a ruling on a water separation only to find out two years later they changed it.

Ms. Frankie Elliot, Vice President for Governmental Affairs for the Orlando Regional Realtors Association referred to line 7 on page one of the proposed language and said she thinks the notification to owners about an impending evaluation should be extended from 60 to 90 days. She referred to line 13 and recommended having a utility company rather than property owner sending written notification to the Department when sewer connection is completed. She then referred to Line 16 about requesting a one time, one year extension and said she thinks that may actually need to be more than once. On page 3 starting with Line 73 she expressed that an owner should be notified up-front what the cost will be. She questioned Line 75 about documentation of a pump out in the last five years and wondered if there is a provision that a new system, less than five years old, should also be required to be pumped out. Language needs clarification. She continued on Line 87 that speaks to replacement of parts on some systems. She feels there should be provisions and a time period of when that has to be done and whether or not there will be another inspection fee. She also recommended on page 4 about the separation table that a second opinion should be allowed especially if the finding is inconclusive. She also said that there should be inclusion of an appeal process.

Mr. Odom called for an hour lunch break beginning at 12:10 PM.

The meeting resumed at 1:20 PM. with comments and opinions expressed by the panel members about SB 550. Oren Reedy spoke about the controversy expressed today over the point of separation from the water table. He is of the opinion that portion of the language should not be completely removed from the bill but maybe used as a determining factor in replacing the system. It should remain a part of the inspection because it provides more data to draw from down the road when the system possibly goes into failure.

Mr. Liskey stated his thoughts of the importance of the TRAP moving to pass this issue today. He recognizes the confusion about certain aspects of the bill. He suggested that DOH consider taking out the seasonal high water issue completely and let the Legislature scrutinize the language further in the anticipated Glitch Legislation. Mr. Odom said the DOH is under a mandate by statute with the water table separation. The TRAP can make the recommendation but Mr. Odom does not think they can remove the language. Mr. Liskey said he was not going to get into whether or not it is mandated but there is obvious confusion about the interpretation of that language. He thinks it would be an injustice to the state of Florida not to move forward with this bill in some capacity with everything else except the separation part because there is the possibility that the whole thing could be repealed. This bill is good for the state of Florida, it is good for the environment and it is good for the consumer. He reiterated that he thinks the TRAP should move forward with the issue but to wait on the seasonal high water table until

there is further direction from the Legislature. He further stated that we should not hold this up until the Legislature meets.

Mr. Franz concurred with Mr. Liskey's comments. He expressed reservations and concern about the ability for certain individuals to make accurate assessments about any issues concerning soils. Mr. Briggs understands Mr. Franz's concern about the level of training but reminded the panel of the situation with employees of engineers brought about by the statute change last year. There are no qualifications for them except for the fact that they have to be under the supervision of the engineer and they have to complete the soils course. The intent with this language was to ensure that these people were getting at least that level of training. Mr. Briggs said that in going back to Mr. Odom's comment, we do not get to pick and choose which parts of this law we implement. The Department is an executive agency, rule making is not an option; it is an obligation under the law. We cannot eliminate the water table issue presently in the rule. It is a clear requirement of the statute. He does not know any other way to interpret, "...the system shall meet a minimum a minimum 6 inch separation if they were installed prior to 1983."

Mr. Pence said he appreciates and respects Mr. Briggs evaluation and opinion of that language, but maintains that was not the intention based on what was heard from the legislators who passed this bill and what was received in writing since passage of the bill. He said if you ask 10 different people to interpret the language you will get 10 different answers. He said this bill requires that beginning January 1, 2011 the Department shall administer an Onsite Sewage Treatment and Disposal System evaluation program. It does not say in what detail the program has to go through at a certain point in time, but it does say that it has to be fully implemented statewide by 2016. He thinks the wise approach is to implement this in stages and not go forward with the soil evaluations and the water table evaluations up front. He said we need an inspection program and he recognizes the very big job for the Department but he does not see how it can be implemented by January 1, 2011. He understands that the Department has a heavy load on their shoulders and that they are trying to do what is right but he thinks there is leeway to use judgment in the process of implementing this up until 2016.

Ms. Vause responded to Mr. Franz's comments about incorrect calls about soil that a contractor might make. She said they are professionals and that they work hard to do a professional job and take the necessary training. She is confident that with correct training those contractors can do the job for the consumer. Her second comment was in agreement with Mr. Liskey and Mr. Pence that we need to tread carefully but we also need to move ahead with this very important issue. She suggested going ahead with the rule making process acknowledging Mr. Briggs statement that they cannot take out the seasonal high water table separation. She agrees with Mr. Reedy that it is a necessary component in evaluating a system in order to inventory and get an idea of what is out there.

Mr. Woodruff shared the comments made by Mr. Pence and Ms. Vause about delaying, if possible, the soils part until 2016. He remarked that a lot of the changes in 64E are reflecting what has come from SB 550 and he wonders what happens if some portions get repealed in the next legislative session. Do we still work under the 64E code even though SB 550 might be changed? Mr. Briggs said the statute would override the rule.

Mr. Dragoun said since the water table issue appears to be a critical point, is there any way the homeowner could appeal that decision about the depth of the water table? Mr. Briggs said that all of this process is in 381 under the variance program. Therefore, a homeowner could for reasons of hardship and other factors request a variance to this rule.

Mr. Pence expressed the importance of keeping in mind the scale of what is being discussed, i.e. variances, and people getting financial relief. He then motioned for a small part of this rule that addresses the soils testing/water table evaluation portion be implemented in January 1, 2012. Mr. Franz called the second. Mr. Liskey suggested adding to Mr. Pence's motion... 'or as directed by the Legislature.' Mr. Pence and Mr. Franz added comments about 6 hours of training not being enough. Delaying the soils testing part until 2012 would also give time for contractors to attend the necessary training. Debate continued with similar opinions expressed about the water table issue. Mr. Odom observed from what was heard from the Legislators who spoke today, they did not seem to think that the inspections had to start before June 1. The program can be administered to have the rules in place and not do anything about notifying homeowners until after June 1. Ms. Tucker asked for clarification of Mr. Pence's motion. She has listened closely to everything said today and she interprets the remarks made by Senator Constantine and Senator Baker that the intention was not to have the seasonal water table language in the way it is interpreted by the Department. She does not think that now is the time to pass this. Ms. Sanzone made salient remarks in agreement with Ms. Vause's comments but also referred to specific language on page 109 of the Law that addresses evaluation of the water table issue that does not allow any way of circumventing the intent of the language. The written language is what needs to be considered. Bantering of the interpretation of the language and the possibility of delaying parts of the implementation continued. Mr. Dragoun motioned to amend Mr. Pence's motion from implementation to begin after the Legislative session instead of January 1, 2010. Mr. Odom's opinion was that it would be better to hold off on inspections until June 1, 2011, you can implement the program, have the rule in place but don't start the notifications until June 1 or start the notifications 2 months prior to end of session. He expressed certainty that there will be a change. Implement the program but wait until June 1 to send out notices. Mr. Pence's motion failed. Mr. Dragoun then motioned to implement the rule making but to delay inspections until June 1 after the Legislature meets. Ms. Sanzone called the second. The motion carried with 6 assenting votes and 3 votes against.

Issue 10-6 – Existing Systems
Rule Sections: 64E-6.001

Mr. Holcomb explained that the proposed language for this issue essentially simplifies the section of the rule that deals with existing systems, modifications, etc., and it incorporates the water table standards that come from SB 550. Mr. Odom asked about the language on page 1, line 13 of the Underline/Overstrike version about connection to sewage. Mr. Briggs explained that striking that language doesn't change any of the rule language, that it is a statutory requirement that if sewer is available you have to connect to it. Mr. Odom also asked about the applicant's responsibility to provide documentation of an existing system approval citing examples of reasons for not being able to provide that documentation. Mr. Briggs said it has always been the applicant's requirement to prove that their system was permitted for what they say it is permitted for. Mr. Briggs continued with explanation of the proposed language followed with more comments and questions. A motion was called by Mr. Liskey to approve the issue. Mr. Melling seconded the motions. The motion carried.

Issue 10-17 – Fees
Rule Sections: 64E-6.030

Mr. Briggs explained that this issue amends the fee structure to reflect services provided by county health departments. The proposed changes provide a fee for mean annual flood line determination, five year evaluation reporting, excavation inspections, and additional soil profiles.

Comments and questions followed with opinions expressed about the fee amounts. Mr. Briggs reminded the panel that the current fee structure covers only about 60 percent of the costs to the department to do this work. Mr. Franz said if these services were done by private industry, the expense would be much greater. Ms. Melissa Holt commented again about the financial burden all these different fees places on homeowners having septic tanks. Mr. Franz said to remember that we are not talking about what was discussed previously. This is about a requirement that is already in place, mean annual flood line. Mr. Franz delineated specific reasons for requiring determination of mean annual flood line because there are setback requirements to bodies of surface water. Debate continued with little resolution. Mr. Liskey, seconded by Mr. Franz, motioned to table the issue for further consideration. The motion carried.

Issue 10-19 – Repair Standards
Rule Sections: 64E-6.015

Mr. Holcomb explained the issue that simplifies repair standards, eliminates out-dated requirements and complies with statutory requirements. He began a line by line critique of the proposed language. Mr. Odom referred to line 17 where the verbiage talks about "...within the setbacks of Table V..." and said, "Doesn't that change in Issue 10-10 of this packet and it adds Table V plus 25 feet?" Mr. Holcomb said that needs to be dovetailed together on whether it is Table V or Table V plus 25 feet. Mr. Odom also questioned line 20, 21 about "A signed tank certification from a permitted septage disposal service..." and said, "Didn't we change that to where a registered or master contractor can sign it?" Mr. Holcomb acknowledged that Mr. Odom was right and that he would see to that correction. Ms. Vause asked about lines 56 about the removal of existing drainfields. Why can't it be disconnected if there is room for a new drainfield? Mr. Odom remarked about lines 73, 74, and 75. Ms. Sanzone noted a grammatical correction to line 2. Mr. Odom asked about Line 315 (g) resulting in the decision to remove (g). Mr. Franz motioned to table then corrected himself by saying he actually meant the motion to pass the issue providing the revisions discussed are made. The revised language is then to be sent to the Variance Committee for their review and then brought back to the TRAP. Mr. Woodruff called the second. Mr. Holcomb delineated the revisions to be made. The motion carried.

Ms. Vause noted the number of issues remaining on the agenda still to be reviewed. The possibility of a conference call was mentioned but left undetermined. The panel recognized the urgency of another face to face meeting to be held in late October. The meeting place, exact date and time were left pending. The meeting adjourned at 3:10 PM.