

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of

Mark D. Simpson

OGC CASE NO. 21-0649

Petitioner.

_____ /

FINAL ORDER DENYING PETITION FOR DECLARATORY STATEMENT

THIS CAUSE came for consideration upon a receipt of a Petition for Declaratory Statement (Petition), received by the Department of Environmental Protection (Department) on June 28, 2021. The Petition was filed pursuant to section 120.565, F.S., and the Department published notice of receipt of the Petition on July 2, 2021, in the Florida Administrative Register.

As of July 1, 2021, pursuant to the Florida Clean Waterways Act, SB712, Chapter 2020-150, Laws of Florida, the Onsite Sewage Program (“OSP”) was transferred from the Department of Health by a “type two transfer”, as defined in section 20.06(2), Florida Statutes (F.S.), to the Department, which includes the transfer of rule Chapter 62-6 F.A.C., *Standards for Onsite Sewage Treatment and Disposal Systems* (formerly Chapter 64E-6 F.A.C.).

Section 120.565, F.S., and Chapter 28-105, F.A.C., authorize a substantially affected person to seek a declaratory statement regarding an agency’s interpretation of its statutes, rule, and orders as they apply to a particular set of circumstances.

As of the date of this Final Order, no third-party has petitioned for leave to intervene pursuant to Florida Administrative Code Rule 28-105.0027.

FINDINGS OF FACT

The following findings of fact are extracted from the allegations presented within the Petition. The Department takes no position concerning the truth or accuracy of these allegations, but merely accepts them as presented by the Petitioner for the purpose of this Final Order. Pursuant to Florida Administrative Code Rule 28-105.003, the Department relies on the statements of facts as presented by Petitioner in the disposition of the Petition.

- a) Mark D. Simpson (Petitioner) resides at 2205 Martin Road, Unit #4, Dover, Florida 33527.
- b) On March 3, 2021, Petitioner submitted an application for a permit to the Department of Health, County Health Department (DOH-CHD) in Hillsborough County for a new limited use well regulated by DOH rule Chapter 64E-8, F.A.C.
- c) The limited use well will serve a small residential manufactured home community (subject property) in unincorporated Hillsborough County.
- d) The subject property will have no more than twelve (12) manufactured homes and approximately twenty-one (21) to twenty-four (24) occupants.
- e) The homes will be comprised of two-bedroom units, approximately 864-1,050 square feet, with future plans to add one-bedroom homes with 499 square feet to make up a community with small homes and occupied by small households.
- f) During review of the Petitioner's permit application, the DOH-CHD, Hillsborough County stated that system size determination for sewage/water flows must be estimated for the property using Rule 62-6.008 – Table I, F.A.C., (formerly Rule 64E-6.008 – Table I, F.A.C.) as required by DOH's Rule 64E-8.002(4), F.A.C.

g) Petitioner alleges system size determinations may also be estimated using metered water use data pursuant to paragraph 62-6.008(1)(a), F.A.C. (formerly paragraph 64E-6.008(1)(a), F.A.C.).

h) Petitioner alleges both system size determinations are equally acceptable and included with the permit application data supporting use of the “metered water use data”.

QUESTION PRESENTED

The Petition requests a determination as to the applicability of paragraph 62-6.008(1)(a), F.A.C., (formerly paragraph 64E-6.008(1)(a), F.A.C.), *System Size Determinations*, as it applies to the Petitioner’s application for permitting a limited use well regulated by the Department of Health under Chapter 64E-8, F.A.C.

CONCLUSIONS OF LAW

1. Section 120.565(1), F.S., states that “[a]ny substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.”

2. Rule 28-105.001, F.A.C., further specifies that a declaratory statement “is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.”

3. The Department must deny this Petition because the Petitioner is asking the Department for an interpretation of DOH’s Rule 64E-8.002, F.A.C., a rule over which it does not have authority.

4. The Department has permitting authority over Chapter 62-6, F.A.C., *Standards for Onsite Sewage Treatment and Disposal Systems*. If Petitioner were applying for a permit for

an onsite sewage treatment and disposal system, the Department could interpret Rule 62-6.008, F.A.C., in calculating the system size for the onsite sewage system.

5. However, the Petitioner has filed a permit application for a limited use well. Limited use wells are regulated by the Department of Health under Chapter 64E-8, F.A.C., and are permitted by County Health Departments. Even though Petitioner must use Rule 62-6.008, F.A.C. (formerly Rule 64E-6.008, F.A.C.) for the purpose of calculations required by Rule 64E-8.002, F.A.C., it is the County Health Department, not the Department that must determine whether Petitioner has met the criteria for a limited use well.

6. Essentially, the Petitioner is requesting the Department to interpret a rule as it will be applied by a different agency - the DOH-CHD. Therefore, “he is seeking an interpretation from one agency in an attempt to bind another. For the [Department] to provide such an interpretation would be inconsistent with the purpose of declaratory statements.” *In re: March 8, 2019, Petition for Declaratory Statement Elias Makere*, 2019 WL 1526817 (Fla. Div. Admin Hrgs.).

7. Thus, this Petition must be denied.

IT IS THEREFORE ORDERED:

Based on the foregoing Findings of Fact and Conclusions of Law the Petitioners’ request for a Declaratory Statement is denied in its entirety.

NOTICE OF RIGHTS

Any party to this order has the right to seek judicial review of the order under section 120.68 of the Florida Statutes by filing a notice of appeal under rules 9.110 and 9.190 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or by electronic mail to Agency_Clerk@dep.state.fl.us, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days from the date this order is filed with the clerk of the Department.

DONE AND ORDERED this September 23, 2021, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Justin G.
Wolfe

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G. Wolfe
Date: 2021.09.23
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JUSTIN G. WOLFE
General Counsel
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Lea Crandall

Digitally signed by Lea
Crandall
Date: 2021.09.23
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CLERK

DATE

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was sent via regular mail and electronic mail to Mark D. Simpson, 2205 Martin Road, Unit #4, Dover, Florida 33527, at MarkSimpson@Brighthouse.com on September 23, 2021 .

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

**Carolin
Ciarlariello**

Digitally signed by Carolin
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