September 11, 2012

Mr. Donald D. Conn. Esq.
DeSoto County Board of County Commissioner
County Attorney’s Office
201 East Oak Street, Suite 201
Arcadia, Florida 34266

RE: Phosphate Mining Code Revisions

Dear Mr. Conn:

Thank you for affording Mosaic an opportunity to comment on the language that has been proposed to replace the current phosphate mining regulations. Your effort to involve stakeholders is commendable. Of the issues that were presented to you in July 13, 2012 and December 5, 2011 have almost all been worked through. Notwithstanding that, there are a few things that should be entered into the record for consideration by the Board. These are as follows.

1. There seems to be some discussion on whether this belongs in the LDR or not. If it is to be included in the LDR, there may have to be other revisions to the LDR to insure there are no conflicts with definitions and lumping phosphate mining with other development. If it is not to be included in the LDR, then it is suggested that a separate definition section be provided. Something else to consider, phosphate mining is considered a temporary use by the state and not the same as other land development.

2. Section 1 A.7 (Page 2) – Mentions the purpose and intent is to “protect and preserve vested rights” which is a good first step. In our phone conversations, it was your position that the proposed language is sufficient to handle claims for vested rights. No exception is taken with that position but wanted this exchange reflected in the record. It seems the proposed language did not convey this understanding.

3. Section 5 F.2.e (Page 39) – Mosaic requests this paragraph be removed. While it is appreciated that an attempt was made at alternative language, Mosaic cannot consent to language that removes rights.

There are a couple of issues that have come up since our last correspondence that should be considered.

4. Reduce the number of copies of applications from 10 to 5.
5. Consider staff (DRC) granting approval for the Operating Permit.

Again thanks for your time and consideration. If you have any questions please call me at 813-500-6891.

Sincerely,

[Signature]

Bartley E. Arrington, PE, CFM

BEA/
Enclosure

cc: C. Guy Maxcy, DeSoto County
    Diana Jagiella, Mosaic
    Patrick van der Voorn, Mosaic
    Bryant Grant, Mosaic
    Heather Nedley, Mosaic
    Geri Waksler, Berntsson, Ittersagen, Gunderson, Waksler, Wideikis, LLP
Dealing With High Fertilizer Costs in Forage Production Systems

M.L. Silveira, J.M. Vendramini, P.J. Hogue and J.F. Selph

Introduction

Fertilizer costs have increased tremendously over the last few decades. For instance, nitrogen (N) fertilizer prices have doubled in the last two years. Unfortunately, this trend is expected to continue in the future in response to high energy demand and decreased reserves of fossil fuels. Commercial fertilizers are the most costly input in warm-season grass forage production. Thus, it is important that fertilizers are used efficiently, so the investment return can be optimized. This document addresses some important issues relative to fertilizer efficiency as well as alternatives for reducing fertilizer use and reducing production costs for forage production.

Soil Testing

Adequate soil fertility is one key to successful forage and livestock production in Florida. Most soils in Florida are deficient to some degree in more than a single essential plant nutrient. Unless all required nutrients are supplied in adequate amounts, the benefits of a single nutrient application are not fully maximized.

Soil testing is still the best management tool to monitor soil fertility levels. Routine soil tests can help identify nutrient deficiencies and inadequate soil pH. Similarly, soil test results can also indicate which nutrients are present at adequate levels in the soil so fertilizer can be omitted. In addition to the money saved by limiting application to required fertilizers, losses and associated environmental problems can also be minimized. Based on soil test results, cost-effective fertilization programs can be developed to meet forage nutrient requirements and minimize production costs.

Although soil testing is a vital component of soil fertility programs for forage crops, the results and interpretation of a soil test are only applicable if the soil samples have been properly collected. Soil samples submitted to the laboratory should accurately represent the area of interest. A minimum of 15 to 20 subsamples (0 to 6 inches in depth) should be collected from each field. Areas that are managed or cropped differently should be sampled separately. Similarly, areas that show clear problem signs (i.e., poor forage production, disease) should also be


2. M.L. Silveira, assistant professor, Range Cattle REC - Ona, FL; J.M. Vendramini, assistant professor, Agronomy Department, Range Cattle Research and Education Center–Ona, FL; P.J. Hogue, Patrick J. Hogue, Extension agent III M.S. Livestock, Okeechobee County; J.F. Selph, county extension director & Extension Agt IV, M.A., Desoto County; Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32610.

All chemicals should be used in accordance with directions on the manufacturer's label.
sampled and analyzed separately. After collecting a minimum of 15-20 subsamples, soil should be mixed in a clean plastic bucket. A hand full (~1 pint) of soil should be sent to a reputable laboratory for analysis. Soil testing should be repeated at least every 3 years.

**Soil pH**

Often overlooked, maintenance of adequate soil pH is an extremely important step in soil fertility programs for forage crops. Soil pH is one of the most important soil properties because it controls nutrient availability to plants, root development and fertilizer efficiency. Optimum soil pH promotes better root growth, which, in turn, results in more efficient fertilizer and water utilization by the plants. For instance, N fertilization efficiency in forage systems can increase 2.5 times by increasing soil pH from 4.5 to 5.5. Similarly, P and K fertilization efficiency is also increased when soil pH is adequate.

Florida soils often exhibit low pH and are considered "acidic". Lime is frequently used to raise soil pH. By raising the soil pH, macronutrient (i.e. N, P, and K) availability is typically increased. However, at high soil pH (> 6.5) micronutrients become less available. Therefore, it is important that adequate amounts of lime material are applied to the soil to bring the pH to a desirable range.

Forage crops require different soil fertility conditions and target pH varies according to the forage species. In general, warm-season grasses are more tolerant of soil acidity than legumes. Liming frequency as well as application rates will depend on the soil's characteristics and management practices. Nitrogen fertilization and decomposition of organic materials contribute to soil acidity. It is important to closely monitor pH and soil fertility status by testing the soil regularly. Routine soil testing provides the soil pH levels as well as the recommended lime application rates.

**Choosing the most adequate fertilizer source**

Several fertilizer sources are commercially available to supply N, P, K, and micronutrients to forage crops. In this section, we will focus on commercial N sources, but the same considerations should be applied to other essential nutrients.

Ammonium nitrate, ammonium sulfate, and urea are the major N sources used on pastures in Florida. Organic sources such as biosolids and animal manure also represent important sources of N that can be used in pastures. When choosing the right fertilizer source, it is important to consider important factors, such as price, fertilizer effectiveness, method and rate of application.

Cost of fertilizer should be calculated in terms of dollars per pound of nutrient. Below is an example how this can be easily calculated. Please note the fertilizer prices used here are just an example, so please check with your local fertilizer dealer the current fertilizer cost.

- Ammonium nitrate (34% N) costs $350/Ton. 2000 lb ammonium nitrate contains 680 lb N (2000 X 0.34 = 680). Thus, the price per lb of N is $0.51 (350/680= 0.51)

- Ammonium sulfate (21% N) costs $300/Ton 2000 lb ammonium sulfate contains 420 lb N (2000 X 0.21 = 420). Thus, the price per lb of N is $0.71 (300/420= 0.71)

In addition to fertilizer costs, it is also important to consider the acidity potential of each N fertilizer source. Regardless of the source, N fertilization typically reduces soil pH. However, some N sources can cause a reduction in soil pH more rapidly than others. Thus, when choosing a N source, it is also important to account for additional costs associated with lime application. For instance, ammonium nitrate requires 0.61 lb of lime per lb of fertilizer, while ammonium sulfate and urea require 1.10 and 0.81 lb of lb of lime per lb of fertilizer to maintain soil pH.

Commercial fertilizer mix often provides multiple nutrients, which can be most economical in some situations. However, the N:P:K ratio of the fertilizer formula should coincide with the soil test recommendations to avoid unnecessary nutrient application. For instance, if a soil test indicates that P levels are adequate, producers should select fertilizer mixes that contain no P (i.e. 20-0-20).
Organic fertilizer sources such as animal manure and biosolids can satisfactorily provide N and other nutrients to forage grasses. When properly applied, these organic sources can be beneficial to agriculture with no negative impact on the environment. Another advantage of organic sources is that, because of the alkaline nature of some of these materials (i.e., lime-stabilized biosolids), they can increase soil pH and reduce costs associated with liming.

One important aspect to consider when using organic amendments is that the N present in these sources is not readily available to plants and total N is often a poor indicator of N availability. For instance, while only 40% of the total N in some biosolids materials may become available in the first year, up to 80 to 90% of the total N present in chicken manure may be available during the same period. As the organic compounds mineralize, N and other essential nutrients become available to the plants. Factors such as source, time and rate of application and environmental conditions can impact the effectiveness of organic materials in providing N to pastures. From an environmental prospective, because improper application of organic amendments may lead to excessive soil P concentrations and increase soil pH above the desirable range, it is important to monitor soil fertility after manure and/or biosolids application.

**Timing and rate of fertilizer application**

Fertilizer should be applied when the forage is actively growing. For most warm-season grasses commonly used in Florida, such as bahiagrass, growing season does not start until night temperatures reach 60°F, which typically occurs in early spring. For establishment of new plantings, fertilizer should not be applied until plants have emerged. Nitrogen and K should be split-applied into two applications: after emergence and 30 to 50 days later. For hayfields, N and K should be applied after each cutting.

Unlike P and K recommendations, N application rates are not based on soil test results, but rather they are calculated based on expected yields. From an economic perspective, it is important to consider realistic yield expectations when calculating the amount of N that a pasture will receive. Improved grasses such as bermudagrass and stargrass usually require higher fertilizer application rates than bahiagrass pastures. Beside the forage species, another important aspect that should be considered is how much grass is needed. Do not fertilize pastures if forage production will not be consumed by grazing animals and/or harvested for hay. For instance, N fertilization will likely increase forage production and nutritive value but these benefits may not be economical if not converted into animal product. Thus, adequate stocking rate is another important variable to consider when choosing N rates.

**Utilization of forage N-fixing forage legumes**

Nitrogen-fixing legumes have the ability to convert atmospheric N into compounds that plants can use. Symbiotic fixation of N is achieved by the association of bacteria and the roots of legumes species. Normally the association between legume and bacteria species is very specific, so the efficiency of the symbiosis is largely dependent on the presence of the bacteria. Legumes are only able to fix N from the air if specific strains of bacteria are present in nodules on their roots. The seed must be inoculated before planting to ensure that the best strain of bacteria is present for each legume species. In addition, soil fertility (i.e. pH and cations) and environmental conditions also affect the efficiency of N fixation. The primary driving force in calculation of N fixation is legume yield. High yielding legumes fix more N.

Cool-season legumes grow the most in the spring when temperature and rainfall are favorable. Cool-season legumes are more widely used in North Florida because they more adapted to well drained soils and mild temperatures. Some clovers such as arrowleaf, ball, rose, and white clover produce a high percentage of hard seed which allows them to reseed if managed properly. Cool-season legumes are high in nutritive value and when grazed by beef cattle provide excellent animal performance. Annual clovers can contribute with about 75-100 lbs N/acre for the subsequent grass crop.
The most common warm-season legumes species adapted to Florida’s conditions are perennial peanut (North-Central regions of the state), and aeschynomene (South region). Perennial peanut has primarily been used for hay production, while aeschynomene, an annual warm-season legume, is commonly used in beef cattle grazing systems.

The majority of the legume-N is transferred to the soil by unused plant material and/or animal excreta. Grazing animals can return more than 80% of the consumed nutrients to the soil through the feces and urine. If the legume crop is harvested and removed from the pasture as hay, haylage, or silage, the contribution of legume-N to the subsequent crop is reduced.

**Grazing management**

Because a large proportion of nutrients are returned to the soil via animal excreta, grazing management can have significant impacts on soil fertility status. Significant amounts of N, P, Ca, Mg, and micronutrients can be recycled to the soil via animal feces and urine. However, because grazing animals tend to excrete near to water, shade and feeding area, homogeneous distribution of excreted minerals is typically a major challenge. The heterogeneous distribution of nutrients is not only undesirable in terms of forage management, but it may also result in high concentration of nutrients in small areas.

Grazing management can have a major role in maximizing the benefits of nutrient recycling in grazing pastures and, consequently, reducing the dependence on commercial fertilizer. Stocking rate and grazing method (rotational versus continuous) are important factors that may affect nutrient redistribution. Typically rotational grazing leads to a more homogeneous distribution of excreta. Research in Florida has shown that short grazing periods can increase the uniformity of excreta return as well as the efficiency of nutrient recycling compared to continuous grazing. Similarly, increasing the stocking rate may increase nutrient concentration and redistribution across the pasture but it may also lead to excessive nutrient accumulation in the soil. Environmental factors such as daily temperature and animal type may also affect animal grazing behavior and, consequently, nutrient redistribution in pastures.
Domestic Wastewater Biosolids

When domestic wastewater is treated, a solid by-product accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly. The collected material, called biosolids or more commonly "sewage sludge," is high in organic content, and contains moderate amounts of nutrients that are needed by plants. These characteristics make biosolids valuable as a soil conditioner and fertilizer.

Properly treated biosolids may be used as a fertilizer supplement or soil amendment, subject to regulatory requirements that have been established to protect public health and the environment. These requirements (found in Chapter 62-640, F.A.C.) include pollutant limits, treatment to destroy harmful microorganisms, and management practices for land application sites. Biosolids may be used by application to land in farming and ranching operations, forest lands, and public areas such as parks, or in land reclamation projects such as restoration of mining properties. The highest quality of biosolids, known in Florida as "Class AA," are distributed and marketed like other commercial fertilizers.

Biosolids Rules and Forms

- Chapter 62-640, F.A.C., Biosolids (as amended on 8/29/10)

Revisions to Chapter 62-640, F.A.C., became effective on August 29, 2010. To view information about the rulemaking effort, see the Domestic Wastewater Residuals Rulemaking Updates page.

New! – Training Aid: Overview of the New Biosolids Rule (393 KB)

Get the following Biosolids Forms:

- DEP Form 62-640.210(2)(a), F.A.C., Treatment Facility Biosolids Plan
- DEP Form 62-640.210(2)(b), F.A.C., Treatment Facility Biosolids Annual Summary
- DEP Form 62-640.210(2)(c), F.A.C., Biosolids Application Site Annual Summary
- DEP Form 62-640.210(2)(d), F.A.C., Biosolids Site Permit Application
- DEP Form 62-640.210(2)(e), F.A.C., Biosolids Application Site Log

Note: for facilities using existing land application sites, provisions in the March 30, 1998 version of Chapter 62-640, F.A.C., may still be applicable through January 1, 2013. Therefore, the following are still available for download:

- Chapter 62-640, F.A.C., Domestic Wastewater Residuals, as amended on 3-30-98
The Basics of Biosolids Application to Land in Florida

T.A. Obreza and G.A. O'Connor

What are biosolids?

Biosolids are nutrient-rich, predominantly organic materials. Although classified as a waste material, biosolids can be a beneficial agricultural or horticultural resource because they contain many essential plant nutrients and organic matter. Following proper treatment and processing, biosolids can be recycled as fertilizers or soil amendments to improve and maintain productive soils and stimulate plant growth, with negligible human health or environmental impacts.

How are biosolids generated and processed?

Biosolids are generated when solids accumulated during domestic sewage processing are treated further to meet regulatory requirements. Wastewater residuals are produced wherever the population is concentrated enough to require a centralized domestic wastewater treatment facility. These treatment plants continuously generate sewage sludge that must be disposed of by one of several means, including the production of biosolids. Sewage sludge becomes biosolids when it undergoes pathogen control treatment that meets federal and state sewage sludge regulatory requirements, followed by land application to beneficially recycle it. Sewage sludge that is disposed of by landfiling or incineration is not biosolids.

Wastewater treatment sometimes begins before the wastewater reaches the general treatment facility. In many larger wastewater treatment systems, regulations require that industrial facilities pre-treat their wastewater to remove many hazardous contaminants (metals like lead and cadmium, for example) before sending it to the main system. Wastewater treatment facilities monitor their incoming wastewater stream to ensure that the water and the accompanying organic material are safe to recycle and are compatible with the treatment plant process. This pre-treatment has resulted in dramatic decreases in metal concentrations of biosolids nationwide, so the biosolids of today are substantially different from the metal-laden sewage sludges that were produced before 1980.

Once wastewater reaches the treatment plant, domestic sewage is subjected to physical, chemical, and biological processes that kill pathogens and remove solids. The overall mass of solids is reduced as the organic matter is degraded by microorganisms, not unlike the process that goes on in a septic tank, but much faster. At some treatment plants, the solids

are further treated with lime (calcium oxide or calcium hydroxide) to raise the pH, which helps to eliminate objectionable odors. Lime treatment also reduces the amount of pathogens (disease-causing organisms, including various bacteria, viruses, and parasites) and the attractiveness of the material to other organisms capable of transporting disease ("vectors").

**How, where and why are biosolids used?**

After treatment and processing, biosolids can be recycled and applied as fertilizer to improve and maintain productive soils and stimulate plant growth. The controlled land application of biosolids completes a natural cycle in the environment. By treating sewage sludge, the material becomes biosolids that can be used as valuable fertilizer instead of occupying dwindling landfill space. When regulations (Federal: 40 CFR Part 503; State: Chapter 62-640, FAC) and guidelines (USEPA Process Design Manual) are followed, the protection of food, animals, human, and environmental health is assured. Farmers and gardeners have been recycling biosolids, or their equivalent, for many years. Land application of biosolids takes place in all fifty states, and includes use on farms, ranches, gardens, parks, forests, and reclaimed mining sites.

Agricultural uses of biosolids that meet strict quality criteria have been shown to produce significant improvements in crop growth and yield when applied at recommended rates. Nutrients found in biosolids, including nitrogen, phosphorus, sulfur, calcium, magnesium and numerous micronutrients, are necessary for crop growth and production. The fertilizer value of biosolids is estimated to be $60 to $160 per acre at normal application rates. Thus, the use of biosolids reduces farmer's production costs and replenishes soil organic matter that is depleted with time. The organic matter in biosolids improves the capacity of the soil to store nutrients and water. Crops use nutrients from biosolids efficiently because they are released slowly throughout the growing season as the biosolids break down. The slow-release nature of biosolids nutrients also decreases the likelihood of water quality impairment by the leaching and/or runoff of nitrogen and phosphorus.

The fertilizer value of biosolids is well documented both nationally and in Florida. Research in Florida has focused on both the nutritional value of biosolids and on the environmental impact of biosolids-associated nutrients and contaminants. For example, researchers have shown that biosolids application to pasture can improve bahiagrass growth due to improved nitrogen and sulfur availability, and that turfgrass performance can be improved by applying a slow-release nitrogen source like biosolids.

Because the fertilizer value of biosolids is so well established, most recent investigations in Florida have focused on various environmental or health risk evaluations. Research has addressed "heavy metal" (cadmium) availability to plants, toxic organic behavior, and possible molybdenosis risk to cattle grazing biosolids-amended pastureland. A major current interest in Florida is the biosolids-phosphorus relationship because many states, including Florida, are moving to restrict biosolids application rates based on phosphorus concerns associated with water quality impairment (leaching and runoff). Researchers are studying phosphorus forms, solubility, leachability, and availability to plants.

**Are biosolids safe?**

Decades of worldwide research have demonstrated that biosolids can be safely used on food crops. In 1996, the National Academy of Sciences (NRC 1996) reviewed current practices, public health concerns, and regulatory standards, and concluded that

> the use of these materials in the production of crops for human consumption when practiced in accordance with existing federal guidelines and regulations, present negligible risk to the consumer, to crop production, and to the environment.

In addition, an epidemiological study of the health of farm families using biosolids showed that the use of biosolids was safe.

A report issued by the National Academy of Sciences (NRC 2002) in 2002 found that
There is no documented scientific evidence that the Part 503 rule has failed to protect public health. However, additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids.

The Academy report also recommended that the US Environmental Protection Agency (USEPA) conduct another national sewage sludge survey to confirm the continuing reduction in biosolids metal concentrations, the negligible concentration of toxic organics previously identified as problematic, and to expand biosolids analysis to include compounds recently suggested as potentially troublesome (e.g., antibiotics, flame retardants, and endocrine-disruptors). Such a survey is welcomed by most people familiar with biosolids, as it will replace unbridled speculation with fact.

**What is the current atmosphere surrounding biosolids land application in Florida?**

**Lime-stabilized vs. non-lime-stabilized biosolids**

As previously mentioned, some biosolids are treated with lime to reduce pathogen concentrations. These *lime-stabilized biosolids* have an alkaline pH and can increase soil pH the same way agricultural lime does following application to soil. A major land application issue in Florida is the use of lime-stabilized biosolids on pastures where “acid-loving” grasses like bahiagrass grow. Addition of an alkaline material can result in elevated soil pH which in turn leads to poor grass growth caused by micronutrient deficiencies. Florida’s sandy soils have low capacity to resist changes in pH. Thus, soil pH can increase quickly and substantially in fields where lime-stabilized biosolids have been land applied. Land managers using biosolids soil amendments should be aware that biosolids may contain lime, and should apply biosolids stabilized by other means where acid-loving plants are growing.

**Additional application restrictions and concerns**

Biosolids are land-applied across most of the state of Florida without restriction beyond the basic federal and state guidelines. However, since biosolids contain considerable amounts of phosphorus, application has recently been limited or banned outright in phosphorus-sensitive regions (e.g., the area adjacent to Lake Okeechobee) due to water quality concerns. In other regions, decisions dealing with the land application of biosolids are not being made solely on a scientific basis. Rulemaking at the county level has been influenced by factors peripheral to the core scientific issue, such as odors associated with land application of wastes (biosolids, manures, etc.) and unfounded reports of vague “toxics” in human wastes being indiscriminately spread on nearby land. Some counties have gone as far as banning all land application of biosolids, even those that can be sold as commercial fertilizer (such as the material produced for many years in Milwaukee, WI known as “Milorganite”).

Some of the opposition to land application is associated with the "NIMBY" (Not In My Back Yard) syndrome, which may have some credence if biosolids haulers and land applicators do not strictly follow the language of permits issued by the Florida Dept. of Environmental Protection (FDEP) when carrying out their duties. However, adherence to these rules assures proper hauling and application of biosolids, which should prevent noticeable “incidents” and should satisfy the concerns of most citizens about biosolids safety.

It is telling that FDEP and the USEPA continue to support land application of biosolids and insist that, when conducted correctly, the practice is safe. USEPA continues to support research to improve testing and verification procedures confirming that treatment practices accomplish intended pathogen reductions and additional analysis for the latest “toxics of concern.” Biosolids land application continues across the country, as it has for decades. There have never been any documented cases of public health endangerment, deaths, serious illnesses, or malformed animals attributed to biosolids land application worldwide.
Further Reading


Q: Does EPA believe there is an environmental or public health problem related to the beneficial use of biosolids in accordance with the Part 503 rule?

A: It is EPA's long-standing position that the beneficial application of biosolids to provide crop nutrients or to condition the soil is not only safe but good public policy, so long as preparers and land appliers comply with all applicable requirements of the Part 503 rule. Among other things, those requirements address the quality of biosolids allowed for land application, the rates of application of biosolids under various circumstances, and monitoring. Beneficial use of biosolids reclaims a wastewater residual, converting it into a resource that is recycled to land. EPA's position on biosolids use is based on extensive research involving hundreds of successful land application projects over the past 25 years.
6. Management procedures for ensuring biosolids meet Class AA requirements prior to distribution and marketing, including procedures for notifying persons who received biosolids that failed to meet Class AA requirements; and

7. Contingency plans if the biosolids or biosolids products are not distributed or marketed as planned.

(4) Any treatment facility distributing and marketing biosolids in Florida or any person who delivers biosolids to Florida shall submit a monthly Discharge Monitoring Report with the following information:

(a) The total quantity of biosolids (dry tons) distributed and marketed in Florida. Treatment facility permittees in Florida also shall report the total quantity of biosolids (dry tons) distributed and marketed outside of Florida;

(b) The name and address of the treatment facility or person that produced the biosolids; and

(c) The results of monitoring performed in accordance with subparagraph 62-640.650(3)(a)3., F.A.C. For facilities located outside the state of Florida, a biosolids analysis report(s) from a laboratory certified in accordance with paragraph 62-620.610(18)(d), F.A.C., to perform the analyses being reported, for each month the biosolids were distributed and marketed in Florida, shall be included with the Discharge Monitoring Report.

(5) In addition to any fertilizer labeling requirements of Chapter 576, F.S., and Chapter 5E-1, F.A.C., or the equivalent information for biosolids composites certified and enrolled in the USCC STA program in effect on 5-20-2010, hereby adopted and incorporated by reference (a copy of the USCC STA program document is available from the Department of Environmental Protection, Domestic Wastewater Section, M.S. 3540, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400 or any of the Department’s District Offices), the following information must be made available to the users by the manufacturer by product labels or other means:

(a) The name and address of the treatment facility or person that produced the biosolids;

(b) A statement that the biosolids or biosolids product meets the criteria of subsection 62-640.700(5), F.A.C.;

(c) Recommendations on proper storage of the biosolids or biosolids product prior to use and a recommendation that biosolids be applied at a rate that does not exceed crop or plant nutrient needs. For distributed quantities of biosolids or biosolids products greater than one dry ton, the recommendations on proper storage shall include the prohibition language from subsection 62-640.400(13), F.A.C.

(6) Any person who intends to begin shipping biosolids into Florida for distribution and marketing shall notify the Department in writing of their intent to distribute and market the biosolids in Florida and provide reasonable assurance that the biosolids meet the requirements for Class AA biosolids. The notification shall be sent to the Domestic Wastewater Section, M.S. 3540, 2600 Blair Stone Road, Tallahassee, FL 32399-2400. The notification shall be submitted at least 30 days prior to initiating shipment of the biosolids into Florida. Any persons currently shipping biosolids into Florida for distribution and marketing shall have 90 days after August 29, 2010 to provide the notification. The notification shall include:

(a) The name of the treatment facility producing the biosolids;

(b) A copy of the treatment facility permit from the state permitting authority where the facility is located;

(c) The treatment facility address and telephone number;

(d) The name of the person or entity shipping the biosolids into Florida;

(e) The name of the principal executive officer or authorized agent for the entity shipping the biosolids into Florida;

(f) The contact information for the person or entity shipping the biosolids into Florida;

(g) A description of how the biosolids meet the requirements of Rule 62-640.850, F.A.C., and documentation demonstrating the biosolids meet the pathogen reduction and vector attraction reduction requirements;

(h) A copy of the latest analysis report from a laboratory certified in accordance with paragraph 62-620.610(18)(d), F.A.C.;

(i) A copy of the most recent treatment facility annual report submitted to EPA in accordance with 40 CFR 503.18, hereby adopted and incorporated by reference;

(j) The approximate date of the first shipment into Florida;

(k) The brand name and product type of the biosolids; and

(l) The information listed in subsection 62-640.850(3), F.A.C.

(7) By February 19 of each year, any person shipping biosolids to Florida for distribution and marketing shall submit a copy of the applicable EPA facility annual biosolids report required by 40 CFR 503.18, July 1, 2009, hereby adopted and incorporated by reference, to the Department’s Domestic Wastewater Section, M.S. 3540, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. A copy of 40 CFR 503.18 is available from the Department of Environmental Protection, Domestic Wastewater Section, M.S. 3540, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400 or any of the Department’s District Offices.
Rulemaking Authority 373.043, 403.051, 403.061, 403.062, 403.087, 403.088, 403.704, 403.707 FS. Law Implemented 373.4595, 403.021, 403.051, 403.061, 403.087, 403.088, 403.0881, 403.702, 403.704, 403.707, 403.708 FS. History–New 8-12-90, Formerly 17-640.850, Amended 3-30-98, 8-29-10.
SECTION 1. REPEAL OF PRIOR ORDINANCES

If on the effective date of this ordinance any ordinance or DeSoto County is found to be in conflict herewith, including but not limited to Ordinances 2001-05, 2002-10, 2002-11, 2002-14, 2003-08, or 2003-09 or 2004-10 and resolution 2003-20, such ordinance and resolution is hereby superseded to the extent of such conflict.

SECTION 2. INTENT

It is the intention of the County to conform its ordinances and resolutions to the requirements of the Department of Environmental Protection's Rule Chapter 62-640, Florida Administrative Code, Settlement Agreement while retaining and implementing its regulation of the land spreading and transportation of Biosolids to the extent not inconsistent with the Settlement Agreement, in the interest of the public health and welfare. In the event of any inconsistency with this ordinance and the Settlement Agreement, the Settlement Agreement shall govern.

SECTION 3. DEFINITIONS

The definitions contained in County Land Development Regulation and Rule Chapter 62-640 shall apply to this ordinance unless the context clearly indicates otherwise. As adopted by County Ordinances 2003-08 shall be revised, restated and amended to read as follows:

C. Definitions.

1) Definitions are as set forth in Chapters 62-640 and 62-660, F.A.C., and 40 CFR, Part 503, and as adopted under this section. To the extent of a conflict or inconsistency, the specific definitions set out in Section 14550C.2 herein shall prevail. References to the Florida Department of Environmental Protection ("FDEP") or ("the Department") and the Secretary of the FDEP ("the Secretary") within Chapters 62-640 and 62-660, F.A.C., shall be construed, to refer to the County and to the County Administrator, respectively.

2) The following specific definitions apply within the context of this Ordinance:

a) Administrator shall mean the County Administrator of DeSoto County or the County Administrator's designee.

b) Approved Management Plan means a plan for spreading Biosolids, approved by the County under the terms of this Ordinance, which, when approved, is part of the Land Spreading Permit.

c) AUP means an Agricultural Use Plan described in Rule 62-640.500, Florida Administrative Code ("F.A.C.").
d) **AWS** means refers to American Water Services Biosolids Management, Inc., the successor in interest and in name to Azurix North America Biosolids Management, Inc.

e) **Biosolids** means the residual material which is produced by wastewater treatment plants and which is licensed by FDEP for application on agricultural lands as a form of fertilizer and soil conditioner when applied in conformance with Chapter 62-640, F.A.C., as the same now reads or as it may be amended, from time to time, in the future.

f) **Biosolids Application Site** means an agricultural field, pasture, grove or other area upon which the Land Application of Biosolids is allowed by FDEP.

g) **Biosolids Hauling Permit** means a permit issued in accordance with LDR §12113 and as defined in Subsection C thereof, but which is transferable from one Vehicle to another.

h) **Boran Properties** means those parcels of real property which are collectively described in Exhibit F attached hereto and incorporated by reference herein.

i) **CFR** means the Code of Federal Regulations.

j) **Chemical/Portable Toilet Sludge** shall mean all solid or liquid wastes containing human feces, or Biosolids of such, that have been pumped from chemical or portable toilets.

k) **Class A Biosolids** shall mean those Biosolids described in Title 40 CFR 503.32(a) and Rule 62-640.200(8), F.A.C.

l) **Class AA Biosolids** means biosolid that meet all the requirements of Rule 62-640.850, F.A.C.

m) **Class B Cake** means any Class B Biosolid which is not a Class B Liquid.

n) **Class B Liquid** means a Class B Biosolid which is applied using a sealed-tanker truck or trailer to deliver the Biosolids to the place of Land Application.

o) **Class B Biosolid** means Biosolids that meet the Class B pathogen-reduction requirements of Rule 62-640.600(1)(b) F.A.C.

p) **Climbing C Properties** means those parcels of real property which are collectively described in Exhibit G attached hereto and incorporated by reference herein.

q) **County** means DeSoto County, Florida.

r) **Development Plan** shall mean the plan referred to in Section F herein.

s) **Eastern Properties** mean, collectively, VCH East, Four Mile Grade and Prairie River.
t) FDEP shall mean the Florida Department of Environmental Protection.

u) F. A. C. means the Florida Administrative Code.

v) Field shall mean the discrete numbered areas within a Site within which land spreading occurs at different times.

w) Field Stockpile means Biosolids which have been transported to a Biosolids Application Site but which have not yet been applied throughout the site in accordance with the AUP which applies to that Site.

x) Food Establishment Sludge shall mean those materials defined in Rule 62-640.200(21), F.A.C.

y) Four Mile Grade Properties means those parcels of real property which are collectively described in Exhibit D attached hereto and incorporated by reference herein.

z) Generator shall mean a Wastewater Treatment Plant or facility generating Biosolids.

aa) Hazardous Waste shall mean those wastes defined as hazardous in 40 CFR, Part 261, or Chapter 62-730, F.A.C.

bb) Holding Tank Sludge shall mean domestic sewage (see 40 CFR §503.9(g)), wastewater, kitchen wastes, and similar wastes produced at locations which lack permanent sanitary facilities and operate only for short periods of time.

e,c) Hollingsworths means Vernon Clyde Hollingsworth, Jr., whether acting individually or as Trustee of the Vernon Clyde Hollingsworth, Jr. Revocable Trust, Trustee of the Betty Jo Hollingsworth Revocable Trust, Personal Representative of the Estate of V.C. Hollingsworth or as a General Partner of V.C.H. Citrus, a Florida general partnership and Vernon Clyde Hollingsworth, III, whether acting individually or as a General Partner of V.C.H. Citrus, a Florida general partnership.

dd) Incident shall mean an unusual occurrence, including, but not limited to, a spill, leak, or discharge to the environment of wastes regulated by this ordinance, which if not mitigated immediately has the potential to endanger public health or the environment.

ee) Industrial Sludge shall mean sludges that are primarily composed of materials generated through a manufacturing or other industrial process as defined in Rule 62-640.200(22), F.A.C.

ff) Land Application means the placement of Biosolids on a Biosolids Application Site using the methods and application rates prescribed by FDEP.

gg) Land Spreading Development Plan Standards shall mean the standards listed in Section F herein.
hh) — Land Spreading Permit means the permit referred to in Section F herein.

ii) — LDR shall mean a Land Development Regulation of DeSoto County, Florida.

jj) — Non-Conforming Use Approval means an approval pursuant to a Non-Conforming Use Determination.

kk) — Non-Conforming Use Determination shall mean a determination that a use is a non-conforming use, which determination is made pursuant to Section 10101 of the Desoto County LDRs.

ll) — Nutri-Cycle means the facility and surrounding storage areas which have been leased by AWS from Hollingsworth in Section 8, Township 36 South, Range 23 East, of DeSoto County, Florida and which is operated by AWS to process wastewater into Class AA Biosolids.

mm) — Nutri-Cycle Stockpile means that quantity of Class AA Biosolids which is stored at Nutri-Cycle as of January 1, 2004.

nn) — Odor and Runoff Controls means the complete covering of a Field Stockpile with plastic sheeting that is tied down and strong enough to protect the Field Stockpile against the effects of normal wind and rain.

oo) — Prairie River Properties refers to that assembly of real property which is described on Exhibit E hereto by reference to the parcel identification number which has been assigned by the DeSoto County Property Appraiser to each separately taxed area within said assembly.

pp) — Public Nuisance shall mean a nuisance as defined by Florida Statutes, case law, or County Ordinance.

qq) — Remedial Measures means such measures as are appropriate and necessary to remedy a violation of this ordinance and prevent its recurrence, including without limitation the following:

i. — Tilling or diskng the material into the soil;
ii. — Masking or neutralizing the odor with an appropriate chemical treatment;
iii. — Establishing greater setbacks;
iv. — Creating Reverse Swales;
v. — Limiting land spreading to certain days, times of day or weather conditions;
vi. — Limiting land spreading to certain locations within the Site; and
vii. — Prohibiting land spreading of Biosolids from a Generator until the County is provided with evidence satisfactory to the County that the Biosolids from that Generator will not cause a Public Nuisance.

rr) — Reverse Swale means an earthen berm with a 1:4 slope that is a minimum of three feet wide at the top and is capable of retaining water in the event of a 25-year 24-hour storm event.
ss) Site means each permitted area for land spreading, which contains specific numbered Fields.

tt) Special Master shall mean a Special Master appointed pursuant to the authority of Section 1:1702 of the DeSoto County LDR’s.

uu) Surface Waters shall mean natural bodies of water, including, but not limited to wetlands, swamps, or marsh areas, bayheads, cypress ponds, sloughs and natural or constructed ponds contained within a recognizable boundary.

vv) Treated Domestic Septage shall mean a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an onsite sewage treatment and disposal system and treated in accordance with the provisions of Chapter 62-640, F.A.C. This term does not include: Food Establishment Sludge, Industrial Sludge, water treatment sludge, air treatment sludge, Chemical/Portable Toilet Sludge, Holding Tank Sludge, or Biosolids.

ww) VCH East Properties means those parcels of real property which are collectively described in Exhibit C attached hereto and incorporated by reference herein.

xx) VCH West Properties means those parcels of real property which are collectively described in Exhibit A attached hereto and incorporated by reference herein. However, the vested rights protected by this Agreement apply only to those areas within VCH West which are highlighted in yellow on Exhibit B hereto.

yy) Wastewater Treatment Plant (“WWTP”) shall mean a central public or private facility for the processing and treatment of wastewater, which is the combination of liquid, solid and semi-solid waste from residences, commercial buildings, industrial plants and institutions, together with any entrained groundwater, surface runoff or leachate which may be present. Wastewater Treatment Plant shall not be construed to mean portable toilets or septic tanks.

zz) Western Property means VCH West Properties.

SECTION 4. GENERAL PROVISIONS – LAND SPREADING

The provisions contained in County Land Development Regulation entitled 14550 D, as adopted by County Ordinance 2003-08 shall be revised to read as follows:

D. General Provisions.

The following general provisions shall apply to any person, business or other entity seeking to engage in the land spreading of Biosolids in DeSoto County, Florida.

1. The property owner must obtain a special exception or Non-Conforming Use Approval, a Development Plan approval, and a Land Spreading Permit from the Board of County Commissioners.

2. The person, business or other entity seeking to engage in land spreading of
Biosolids property owner (the "Applicator") must comply with all relevant federal, state and local regulations pertaining to the land spreading of Biosolids and other related material.

3.2. Copies of all permits required by federal or state authorities must be provided to the DeSoto County Development Department as part of the application for a Land Spreading Permit, Special Exception or Non-Conforming Use Determination.

4.3. Only Class A, AA or B Biosolids may be used for land spreading.

5.4. Land spreading shall be permitted only in Agricultural Five (A-5), Agricultural Ten (A-10) and Phosphate Mining-Industrial (PM-I) zoning districts. Land spreading is prohibited in all other zoning districts.

6.5. a) Subject to such Remedial Measures as may be applicable and subject to the ability of the Land Owner to obtain a variance under Paragraph 14550 K of the LDRs, Land Application of Biosolids shall be permitted only during hours from sunrise to sunset (as those times are published by the Weather Bureau for the part of Florida in which Desoto County is located), Monday through Friday.

b) Notwithstanding the foregoing, AWS or Hollingsworths may conduct Land Application of Biosolids pursuant to the grandfathered use approval recognized in Sections 20 and 21 at other times and on other dates if AWS provides the County with at least 24 hours advance notice before each such occasion on which there will be Land Application.

7.6. It shall be a condition of the Land Spreading Permit that County employees or inspectors designated by the County Administrator shall be permitted to enter upon any private property used for Land Application of Biosolids for the purpose of conducting an inspection to ensure compliance with the LDRs and this ordinance. The property owner must grant consent to such access as a condition of said permit. Loads of Biosolids may be sampled by the County to provide independent verification of the type of Biosolids and level of treatment achieved. The County may set a fee for said sampling.

7. The Applicator shall be responsible to repair road and bridge damage caused by the hauling of biosolids. Such damage does not include normal wear and maintenance of the road. The Applicator shall submit information on the estimated number and weight of trucks, and truck routes to the DeSoto County Road and Bridge Department and County Engineer. If it is determined that increased maintenance is likely to be required as a result of the truck traffic hauling biosolids, the Board may
require the Applicator to enter into a road maintenance agreement to reimburse cost to the County for such increased maintenance.

8. Biosolids shall be created and/or processed in such a manner that they will be free from litter prior to land application.

9. The Applicator shall contribute a fee for each acre that is applied with biosolids into a fund designated for the continuing study of odors, pathogen transmissions, environmental effects and other concerns relating to land application of biosolids, and/or establishment of educational information pertaining to the land application of biosolids. The fee shall be set annually by the Board of County Commissioners.

8. Employees, agents, and independent contractors of a property owner which has obtained a Land Spreading Permit are not required to obtain a separate Land Spreading Permit when acting on behalf of that entity. This ordinance does not regulate property owners, their employees, agents, or contractors when disking, or other means to incorporate Biosolids into the soil after a permit holder has land spread such Biosolids.

9. Any vehicle used to deliver Biosolids to a land spreading site shall be thoroughly cleaned at the Site after delivery of the Biosolids and prior to entering upon the public roads of DeSoto County so that Biosolids do not fall off of the vehicle onto the road or property other than the permitted Site.

10. The land application of Biosolids within DeSoto County will be accomplished by using techniques that spread the Biosolids as uniformly as practical, such as broadcast spreading, injection into the soil, or disking of Biosolids into the soil. Dumping or piling Biosolids on the ground is prohibited. For the purposes of this section, “broadcast spreading” shall mean the use of a device that slings or throws the Biosolids out over a wide area, distributing the material as evenly as practical.

11. Notwithstanding the foregoing, AWS or Hollingsworths may conduct Land Application pursuant to the grandfathered use approval recognized in Sections 20 and 21 as follows: (1) Class B Biosolids shall be incorporated into the soil and otherwise stored, land applied and managed as set forth in the applicable AUP. Biosolids may be land applied under weather and soil conditions that satisfy the applicable FDEP requirements; and (ii) Class AA Biosolids may not be left in a Field Stockpile for more than two weeks unless Odor and Runoff Controls are implemented.

SECTION 5. PROHIBITED ACTS – LAND SPREADING

The prohibited acts contained in County Land Development Regulations entitled 14550-E, as adopted by County Ordinance 2003-08 shall be revised to read as follows:
E. Prohibited Acts:

The following acts are prohibited:

1. Land spreading or disposal of untreated domestic or industrial wastewater, Chemical/Portable Toilet Sludge, Treated Domestic Septage, Industrial Sludge, Food Establishment Sludge, Hazardous Waste, or Holding Tank Sludge;

2. Land spreading of wastewater that is not Class A, Class AA or Class B Biosolids, and disposal or land spreading of any form of wastewater or sludge not specifically permitted by this ordinance.

3. Land spreading of Biosolids in the special water resource protection zone in Township 39S, Range 23E, Sections 7 through 23 and Sections 26 through 35, inclusive.

4. Land spreading of Biosolids in violation of the Land Spreading Development Plan Standards or this ordinance.

5. Land spreading, managing or handling Biosolids in any manner that causes, continues or contributes to a Public Nuisance.

6. Land spreading of Biosolids on any land that is water soaked by recent rain or where there is standing water from rain or flooding.

7. Notwithstanding the foregoing, AWS or Hollingsworths may conduct Land Application pursuant to the grandfathered use approval recognized in Sections 20 and 21 as follows: Biosolids may be land applied under weather and soil conditions that satisfy the applicable FDEP requirements.

8. Land spreading of Biosolids during any period of an emergency declared by the Governor of Florida or the Board of County Commissioners if such emergency is caused by extreme wet weather conditions.

9. Failing to follow any of the provisions of LDR 14550.

SECTION 6. LAND SPREADING PERMIT

The following provisions contained in County Land Development Regulations entitled 14550-F, as adopted by County Ordinance 2003-08 shall be revised to read as follows:

F. Land Spreading Permit Required.

1. Any Applicator property owner intending to land spread Biosolids in DeSoto County shall, in conjunction with the approval of a special
exception or a Non-Conforming Use Approval, obtain a Land Spreading Permit— and Development Plan— approval from the Board of County Commissioners for such activity prior to the commencement of any land spreading activities. In order to obtain such Land Spreading Permit—and Development Plan—approval, the **Applicator**—property owner must submit the following:

a)  A **$1,000** application fee;

b)  The names and addresses of each **Generator** that will provide Biosolids to the property owner for land spreading; the quantities and types (A, AA or B) of Biosolids to be land spread on the property owner’s Site, copies of the contract(s) between the **Generator(s)** and the **hauler**—transporter(s) for the transportation of Biosolids to the Site, and the contract(s) and/or approval(s) between the **hauler**—transporter(s) and the property owner for the land spreading of the Biosolids;

c)  An estimate of the number of trucks that will deliver Biosolids to the Site each day;

d)  A management plan which shall contain—such information as the County may reasonably require in order to assure compliance with Section 14550 of the DeSoto County LDRs, including but not limited to the following:

 i.  Hours and days of operation;

 ii.  Location of land spreading, identifying each individually numbered Field on a map of each Site that will be used for Land Spreading;

 iii. Methodology for land spreading;

 iv.  List of contact people and telephone numbers where they may be reached 24 hours a day, seven days a week;

 v.  Method of reporting land spreading activities to the County;

 vi.  Provision for **24 hour** advance notice to the County of land spreading on each Field;

 vii. Provision for reporting to the County of the next day’s land spreading, including the following information: the number of loads of Biosolids that are going to be land spread, the source of the Biosolids, the **Generator** thereof, whether the Biosolids are AA, A or B Biosolids, and whether the Biosolids are liquid or cake Biosolids.

e)  A copy of each Florida Department of Environment Protection **Nutrient Management Plan**—Agricultural Use Plan for each proposed
Field within the Site.

f) A map or schematic with the names and mailing addresses of the owners and occupants (or their authorized agents) of all structures located within one-half mile of the perimeter property line of the proposed Site.

g) A map or schematic of each proposed Field within the overall Site, identifying all areas subject to minimum setbacks as provided for in Section F of Section 14550 of the LDR's.

h) A copy of the Biosolids Hauling Permit or permits required by Desoto County for transportation of Biosolids to the Site for land spreading or application(s) for such permit(s).

i) A performance bond in an amount sufficient to protect the County against loss due to spills of Biosolids or due to environmental contamination and to provide for cleanup of such spills the minimum amount of such performance bond shall be $100,000 and may be set higher at the County Administrator's discretion. If such bond is utilized to remedy such events, the bond shall be immediately restored to its full original amount. This bond may be combined with the $50,000 bond described in Section F(8) of Section 12113 of the LDR's.

h) A Certificate of Pollution Liability Insurance indicating insurance in an amount no less than $1,000,000 (One Million Dollars).

2. All submittals must satisfactorily demonstrate compliance with Chapter 62-640, Florida Administrative Code, and shall make such records available to the County for inspection and verification upon request. The following Land Spreading Development Plan Standards:

a) Minimum Setbacks. Land spreading of Biosolids shall meet the following minimum setbacks: (structures owned by the same person who owns the Site where land spreading is permitted are exempt from the setback requirements for such structures):

b) Setbacks for Class A and Class AA Biosolids shall be:

i. A minimum of one thousand (1,000) feet from any Class I water body or Outstanding Florida Water as defined in Chapter 62-302, F.A.C., or from the Peace River, Joshua Creek, Prairie Creek, Horse Creek and their tributaries;

ii. A minimum of five hundred (500) feet from any other Surface Water, except canals or water bodies used for irrigation that are located entirely within the Site and which
will not discharge from the Site at any time:

iii. A minimum of five hundred (500) feet from any shallow potable water supply well;

iv. A minimum of three hundred (300) feet from a residence or any structure occupied by the general public; and

v. A minimum of three hundred (300) feet from any adjoining property line, unless the adjoining property is similarly permitted.

vi. Notwithstanding the foregoing, AWS or Hollingsworth's may conduct Land Application of Class AA Biosolids on the Western Property pursuant to the setbacks for the grandfathered use approval recognized in Section 20 hereof.

e) Setbacks for Class B Biosolids shall be:

i. A minimum of one thousand five hundred (1,500) feet from any Class I water body or Outstanding Florida Water as defined in Chapter 62-302, F.A.C., or from the Peace River, Joshua Creek, Prairie Creek, Horse Creek and their tributaries;

ii. A minimum of seven hundred fifty (750) feet from any other Surface Water, except canals or water bodies used for irrigation that are located entirely within the Site and which will not discharge from the Site at any time;

iii. A minimum of five hundred (500) feet from any shallow potable water supply well;

iv. A minimum of five hundred (500) feet from a residence or any structure occupied by the general public; and

v. A minimum of five hundred (500) feet from any adjoining property line, unless the adjoining property is similarly permitted.

d) In the event that there are any conflicts among the regulations concerning setbacks, the more restrictive setback shall apply.

e) Notwithstanding the foregoing, AWS may conduct Land Application of Biosolids on the Eastern Properties pursuant to the setbacks for the grandfathered use approval recognized in Section 21 hereof.

3. After the administrative review of the proposed Development Plan is complete, the proposed Development Plan will be forwarded to the Board of County Commissioners for its consideration and approval. Approval of a Land Spreading Permit and Development Plan is non-discretionary provided that the conditions set forth herein have been met.
f) Issuance of the Land Spreading Permit shall occur upon such approval and upon payment of the fee prescribed.

g) Fees will be adopted by resolution. The fee shall be in such amount as will compensate the County for the anticipated cost of administering this Section 14550 of the DeSoto County LDRs and shall not be established at such level as to either produce revenue in excess of expenses or to result in a deficiency of revenue to cover expenses. The fee amount will be reestablished annually to assure that the fee is established at the proper level. Each applicant shall timely pay the appropriate fees to DeSoto County.

h) Notwithstanding the foregoing, the Fees to be paid by AWS or Hollingsworths as permit holder(s) for the Western Property and Eastern Properties pursuant to the grandfathered use approval recognized in Sections 20 and 21 hereof shall be as follows:

i. Except as provided in Section (v) below, there shall be a Land Application Fee of $1.1056 per cubic yard for Class AA Biosolids which are land applied in DeSoto County during the term of this Agreement. For purposes of administration in the case of Class AA Biosolids which are processed at Nutri-Cycle, this fee shall be imposed on Biosolids delivered to or derived from wastewater delivered to Nutri-Cycle on or after January 1, 2004, measured by weight, with tons converted to cubic yards using the conversion factor of 1 cubic yard = .7 tons, but no fee shall be imposed for the Nutri-Cycle processed Class AA Biosolids which are delivered to a Biosolids Application Site from Nutri-Cycle. In those cases where Class AA Biosolids are delivered to a Biosolids Application Site from any facility other than Nutri-Cycle, the same fee rate and conversion factor shall be applied to the Class AA Biosolids, as measured by the weight of the Biosolids which are land applied.

ii. There shall be a Land Application Fee of $1.1056 per cubic yard for Class B Cake which is land applied in DeSoto County during 2005 through 2009 using the conversion factor of 1 cubic yard = .7 tons.

iii. There shall be a Land Application Fee of $0.00553 per gallon on Class B Liquid which is land applied in DeSoto County during 2005 through 2009.

iv. The Land Application Fees described above shall apply to Biosolids which are land applied through 2009 pursuant to contracts in existence during the term of this Agreement or which are bid during the term of this agreement, with the permit holder having the burden of proving that this provision applies to any particular contract.


vi. No Land Application Fee shall be paid for Class B Biosolids which are land applied in 2004.

vii. The Land Application Fees which are to be paid pursuant to this Agreement shall be calculated at the end of each calendar month based upon the quantities of Biosolids which have been land applied during that calendar month. The permit holder shall pay these fees within ten (10) business days after the billing for the calendar month in question has been received from the County by the permit holder.
i) The applicant shall post notice of the proposed land spreading at all entrances to the proposed Site and Fields abutting federal, state or county roads, easements, and rights-of-way. The applicant shall cause to be advertised, once a week for two (2) consecutive weeks, in a newspaper of general circulation, notice that an application for a Land Spreading Permit has been filed with the County. The notices shall be subject to the prior approval of the County Administrator.

3.3 Land Spreading Permits are valid for one (1) year. Annual extensions shall be considered by the Board, based upon the same criteria as an initial application. If grounds for revocation of the permit exist, revocation of the permit shall be considered and resolved before the County acts on the application for extension. All extension requests must be filed at least ninety (90) days prior to the expiration of the current Land Spreading Permit.

4. Notwithstanding the foregoing, the permit issued by this ordinance to AWS and Hollingsworths will not expire until December 31, 2009.

5. Setbacks shall be determined in the following manner:

a) The setback may be measured from the center line of the Peace River, Joshua Creek, Prairie Creek, Horse Creek and their tributaries, or, at the applicant’s election, from the recognizable boundary of such bodies of water (including but not limited to the ordinary high water line, if determined by the state of Florida.).

b) The setback may be measured from the center line of Surface Waters or, at the applicant’s election, from the recognizable boundary of such bodies of water (including but not limited to the ordinary high water line, if determined by the state of Florida.).

e) If the applicant and the County do not agree on the measurement of the setbacks, the applicant shall have the option of accepting the County determination in that regard or, at the applicant’s expense, paying for a survey to be conducted at the County’s direction, to determine the setback.

d) The setbacks for the Western Property shall be determined by preference to Exhibit B, except to the extent otherwise provided in Section 23 hereof.

SECTION 7. REPORTING AND ADDITIONAL DATA REQUIREMENTS

All persons, businesses or other entities that have been issued permits under this ordinance shall comply with the monitoring, record keeping, reporting and notification requirements set forth in Rule Chapter 62-640, Florida
The following provisions contained in County Land Development Regulations entitled 14550-G, as adopted by County Ordinance 2003-08 shall be revised to read as follows:

County Ordinance 2003-08, 14550-G

G. Grace Period for Permit Applications.

Deleted.

SECTION 8.

The following provisions contained in County Land Development Regulations entitled 14550-H, as adopted by County Ordinance 2003-08 shall be revised to read as follows:

H. Reporting and Additional Data Requirements.

1. A report must be filed monthly by the permit holder with the County Development Department commencing thirty (30) days after the issuance of the Land Spreading Permit. Reports submitted to the County Development Department must include (1) the date issued and number of the Land Spreading Permit, (2) the total volume of Biosolids spread pursuant to the Permit, (3) the location(s) of the Field(s) where Biosolids were spread pursuant to the Land Spreading Permit, and (4) for each Generator, the specific dates that the Biosolids were spread, including the location, volume and types of Biosolids spread on those specific dates. All reports and data supplied to the FDEP by the applicant during the course of the Land Spreading Permit shall be provided to the County Development Department at the same time intervals as required by the FDEP. A copy of the FDEP permit shall be provided to the County prior to land spreading activities. The County shall be provided with a copy of any application to amend, renew or extend the FDEP permit, at the time when the application is submitted by FDEP.

2. Notwithstanding the foregoing, AWS or Hollingsworth may conduct Land Application pursuant to the grandfathered-use approval recognized in Sections 20 and 21 as follows: The documents which are required for permitting under the Ordinances and which have already been furnished by AWS and Hollingsworth as part of earlier applications for variances, temporary Land Spreading Permits and Non-Conforming Use Determinations shall be sufficient to satisfy the documentary requirements of the Ordinances. Starting in February of 2004 the permit holder will provide the County monthly with copies of original invoices, delivery tickets or other documentation for all Biosolids produced at Nutri-Cycle or
delivered to Nutri-Cycle or from biosolids processed from wastewater delivered to Nutri-Cycle during the previous month, with such documentation to be provided within ten (10) business days of the end of each month so that the County may verify the quantities of materials delivered to Nutri-Cycle for processing during the preceding month.

SECTION 9.

The following provisions contained in County Land Development Regulations entitled 14550 I, as adopted by County Ordinances 2003-08 shall be revised to read as follows:

I. Permit Fees Required.

An application fee for the special exception approval or Non-Conforming Use Approval and all other applicable permit fees will be paid by the applicant. The amounts of such fees may be established or amended from time to time by resolution or ordinance of the Board.

SECTION 840. ENFORCEMENT – LAND SPREADING

The following provisions contained in County Land Development Regulations entitled 14550 J, as adopted by County Ordinance 2003-08 shall be revised to read as follows:

J. Enforcement.

Noncompliance. Upon discovery of the failure of a Land Spreading Permit holder to strictly comply with the terms of these regulations and/or the Land Spreading Permit, special exception approval, Non-Conforming Use Approval, Development Plan, or other applicable law, the following action shall be taken:

a) The permit holder shall be provided with a cease and desist order issued by the County Administrator by electronic mail, facsimile or hand delivery. Upon delivery of such cease and desist order, the permit holder shall immediately cease all land spreading on those Fields designated in the cease and desist order and shall not recommence land spreading in those Fields until the County authorizes the recommencement of land spreading. The Fields designated in the cease and desist order shall be those Fields on which the violation has occurred. Authorization to recommence land spreading shall be immediately provided to the permit holder at such time as the alleged violation shall have been determined by the Board or the Special Master to have not occurred or at such time as the County concludes that Remedial Measures have been completed.

b) A notice shall be sent to the permit holder/property owner by U.S.
mail, giving notice of the noncompliance and delivery of the cease and desist order. The notice shall give ten (10) calendar days to correct the violation or submit a satisfactory schedule to achieve compliance. The property owner shall be sent a courtesy copy of the cease and desist order and the notice.

c) If the permit holder and property owner fails to respond to the notice, or if an acceptable schedule for compliance or Remedial Measures cannot be established, or upon request of the property owner, a hearing shall be scheduled before the Board. A notice of the hearing shall be sent via U.S. mail, hand delivery, electronic mail or facsimile transmission to the permit holder and property owner. The hearing shall be quasi-judicial and shall be conducted by the DeSoto County. The County and the property owner shall have the right to be represented by legal counsel and to present evidence and testimony under oath. As an alternative, the hearing may be held before a Special Master. The hearing shall be held as soon as is practicable and, upon request of the property owner, within twenty-four hours of delivery of the cease and desist order.

d) If the Board or Special Master finds that there has been a failure to comply with the terms of this ordinance and/or the Land Spreading Permit, and that the property owner has failed to correct the noncompliance, the Board or Special Master may suspend the Land Spreading Permit, order Remedial Measures or grant additional time to achieve compliance. If additional time for compliance is granted, the hearing shall be continued until a future time and at which the Board or Special Master shall take final action on the matter. The Board may revoke the permit or order Remedial Measures if compliance has not been achieved in a timely manner.

e) Special Masters shall operate pursuant to the provisions of Sections 12804 through 12811, 11701, 11702, 11703, 11704, 11705, 11706, 11707, and 11708 of the DeSoto County LDR’s except to the extent that the same are inconsistent with this ordinance, and pursuant to such other rules as may be provided by the Board of County Commissions by resolution or ordinance.

Violations and Penalties. Violations of this ordinance, including violations of any condition or requirement of a related special exception, Non-Conforming Use Approval, Development Plan, or Land Spreading Permit shall be punishable as set forth in Section 125.69, Florida Statutes, and Section 1280412910 of these Land Development Regulations. Nothing herein shall prevent the County from taking any other lawful action necessary to prevent or remedy any violation, including but not limited to equitable action for injunction or use of the Special
Master-proceedings authorized by Sections 11700, et seq., of these LDRs.

SECTION 11.

The following provisions contained in County Land Development Regulations entitled 14550 K, as adopted by County Ordinance 2003-08 shall be revised to read as follows:

K. Variances.

Right to a variance. The hours and days allowed for land spreading of Biosolids; and the setbacks may be varied upon application to the Board of County Commissioners and provided the following criteria are satisfied and the following procedures are followed:

1. Procedure. The property owner seeking a variance shall make application therefore to the Development Director on the form provided and shall pay the fee established therefore. The fee shall be a minimum of $100.00 and shall be increased on a case-by-case basis by Resolution of the Board of County Commissioners to such amount as is determined necessary by the County to process and evaluate the application. The application shall be heard and determined by the Board of County Commissioners using the same notice procedures which are provided for notice of special exception hearing before the Board of County Commissioners and following quasi judicial procedures as provided by law.

2. Criteria. The criteria for a variance shall be:

    a) A variance to the setbacks must be justified based upon the topographical, soil, hydrological and other specific site conditions in that the applicant has demonstrated that there is no need for the strict adherence to the setbacks from a health and safety standpoint, including but not limited to control of odor.

    b) A variance to the hours and days of land application is justified because of existing contracts which necessitate spreading during such hours and days on specific sites.

    c) Under Paragraphs a. or b., the variance must be not contrary to the intent, goals and objectives of the County Comprehensive Plan and Land Development Regulations.

    d) An application for variance to the setbacks will be deemed inadequate and not processed if it does not provide site specific information in support of such variance demonstrating why a particular site warrants a variance. A request for a blanket variance from all or substantially all of the setbacks in a given Site or a
contention that the setbacks therein are not based upon valid
science shall be deemed inadequate.

3. Decision of the Board. The Board of County Commissioners shall grant or
deny a variance based strictly upon the evidence presented. There shall be
neither a presumption for nor against such a variance. The Board may
grant a variance for a specific length of time and may attach reasonable
conditions thereto in order to assure that the goals and objectives of the
Comprehensive Plan and the Land Development Regulations are met.

4. Notwithstanding the foregoing, AWS or Hollingsworths may conduct
Land Application pursuant to the grandfathered use approval recognized
in Sections 20 and 21 herein as follows: No Land Spreading Permit
application, variance, special exception or other annual review or
application process set forth in the Ordinances shall be required of AWS
and Hollingsworths during the term of the Settlement Agreement [or until
December 31, 2009.]

SECTION 12:

The definitions contained in County Land Development Regulation entitled 12113-C, as adopted
by County Ordinance 2003-09 shall be revised, restated and amended to read as follows:

C. Definitions.

1. Terms not defined in this Ordinance shall have those definitions contained
in Section 14550 of the Desoto County Land Development Regulations.
Other definitions are as follows:

a) Biosolids shall mean one or more of a class of treated sewage
sludge defined in Section 14550 of the Desoto County Land
Development Regulations as Class A, Class AA, or Class B
Biosolids and refers to only those Biosolids which may be lawfully
land-spread in Desoto County.

b) Biosolids Hauling Permit shall mean a permit issued in accordance
with this ordinance and is the Permit referred to as a "Biosolids
Hauling Permit" in Section 14550 of the Land Development
Regulations.

c) County Official shall mean the Community Development County
Official or such other official as may be designated to enforce this
ordinance.

d) Driver shall mean the person operating a vehicle engaged in
"Transportation", as defined in Subsection C(1)(j) below. A
:Driver" is not a "Transporter" as that term is defined herein.

e) Land Spreading Permit shall mean a permit for land spreading of Biosolids issued by DeSoto County pursuant to the Land Development Regulations.

f) Land Spreading Site shall mean an area in DeSoto County which has been approved for the land application of Biosolids in accordance with applicable Federal and State regulations and the DeSoto County Land Development Regulations.

g) Non-Conforming Use Determination shall mean a determination by DeSoto County that the use of a Land Spreading Site for land spreading of Biosolids is nonconforming under the DeSoto County Land Development Regulations.

h) Operations Plan shall mean the document submitted by a Transporter as part of an application for a Biosolids Hauling Permit, and which may be amended, from time to time, as the Transporter's circumstances may require. An Operations Plan is one which provides the County with at least seven (7) days prior written notice of:

i. the class of Biosolids which the Transporter will be hauling to an approved Land Spreading Site;

ii. the location of the Land Spreading Site identified by reference to a map which the Transporter has placed on file with the County and which map identifies the location of various approved Land Spreading Sites (Fields) by letter, number, or some other unambiguous reference;

iii. the haul routes which will be used for Transportation;

iv. the bridge locations and weight limits on these haul routes;

v. points of ingress and egress to the Land Spreading Site (Fields) to where the Transporter will be hauling Biosolids;

vi. the days and hours when the Transporter will be Transporting Biosolids to specific approved Land Spreading Sites (Fields);

vii. the estimated number of daily vehicle trips involving Transportation to specific Land Spreading Sites (Fields); and (8) the estimated times when such trips are expected to arrive at each such site (field). An Operations Plan is valid only for the period of time which is described on the plan as the period of operations and only as to the specific information disclosed in the plan. Once approved, Operations Plans may be amended as often as the Transporter's operational needs may require, subject,
however, to the Transporter having provided the County with the written amendment at least fourteen (14) days prior to the time when the amendment is to become effective. Should emergency conditions require an immediate amendment to an Operations Plan, such amendment may be requested orally by the Transporter and approved orally by the County Official, conditioned upon the Transporter filing an after-the-fact amendment of such plan with the County Official.

i) Transport shall mean to engage in Transportation, as defined in Subsection C.10 below.

j) Transportation means the operation and use of a Vehicle upon the public roads within the boundaries of DeSoto County to haul Class AA or Class B Biosolids to a Biosolids Application Site in DeSoto County. This term does not include the operation of a Vehicle hauling wastewater which is to be processed at Nutri-Cycle, but it does include the operation of a Vehicle carrying Class AA Biosolids from Nutri-Cycle to a Biosolids Application Site in the County.

k) Transporter shall mean the person or entity which is in privity through a lease, sublease, license or other legal relationship, with the owner of land upon which Biosolids are to be applied, which relationship authorizes such person or entity to apply Biosolids to such land, and which person or entity engages in "Transportation" of such Biosolids. The term "Transporter" does not mean the owner or the Driver of the vehicle which is transporting such Biosolids. However, the owner of the vehicle may also be a Transporter. A Transporter may own, lease, or contract with independent contractors for the use of a vehicle which is used for Transportation of Biosolids or Biosolids.

l) Vehicle means the truck, trailer or other wheeled device used to Transport Biosolids to a Biosolids Application Site. With regard to a tractor-trailer combination, the trailer is a Vehicle, but the tractor is not.

m) Vehicle Registration Fee means the amount of money that the County is entitled to collect when it issues a Biosolids Hauling Permit.

SECTION 913. GENERAL PROVISIONS – BIOSOLIDS HAULING

The provisions contained in County Land Development Regulation entitled 12113-D, as adopted
by County Ordinance 2003-09 shall be revised, restated and amended to read as follows:

D. General Provisions.

The following general provisions shall apply to any person, business or other entity seeking to engage in the transportation of Biosolids in DeSoto County, Florida for land spreading on an approved Land Spreading Site.

1. The person, business or other entity transporting Biosolids must have obtained and possess a valid Biosolids Hauling Permit. Compliance with the conditions of a Biosolids Hauling Permit does not relieve the Transporter, property owner or the lessee of property used for the land spreading of Biosolids from having to comply with all relevant federal and state regulations pertaining to the Transportation of Biosolids and other related material.

2. The applicant for a Biosolids Hauling Permit Transporter must provide the County Administrator with copies of all permits required by federal or state authorities for the transportation and/or the land application of Biosolids in DeSoto County as a required condition precedent to obtaining a Biosolids Hauling Permit.

3. Transportation of only Class A, AA or B Biosolids to an approved Land Spreading Site is permitted.

4. The hauling Transportation of treated Biosolids from a point of origin to a designated Land Spreading Site within DeSoto County shall be permitted only in accordance with the hauler Transporter's approved Operations Plan.

5. Each hauler Transporter shall store or park vehicles (except as described in Section D6 herein) which are used in hauling of Biosolids Transportation and which contain Biosolids only on an approved Land Spreading Site and then only during the times in which land spreading on the Land Spreading Site is specified in the hauler Transporter’s Operations Plan and is allowed by Section 14550 of the DeSoto County Land Development Regulations.

6. Any vehicle which is hauling Transporting Biosolids in DeSoto County may not be parked or stopped for any period of time exceeding thirty (30) minutes, except to change flat tires, to effect emergency roadside repairs, to await towing after breakdown, to render assistance or comply with traffic laws involving vehicular or pedestrian accidents, or when otherwise required by any other law or unavoidable traffic condition.

7. Any vehicle engaged in hauling Transportation of Biosolids to a Land Spreading Site shall be thoroughly cleaned at the site after delivery of the Biosolids and prior to entering upon the public roads of DeSoto County so that Biosolids do not fall off of the vehicle onto the road.
SECTION 1044. PROHIBITED ACTS – BIOSOLIDS HAULING

The prohibited acts contained in County Land Development Regulations entitled 12113 E, as adopted by County Ordinance 2003-09 shall be revised to read as follows:

E. Prohibited Acts.

The following acts are prohibited:

1. **Hauling** Transportation of Biosolids to an approved Land Spreading Site except when done pursuant to an approved Operations Plan and pursuant to a valid Biosolids Hauling Permit.

2. **Hauling** Transportation of Biosolids from a point of origin to a designated land spreading site within DeSoto County except during hours from sunrise to sunset (as those times are published by the Weather Bureau for the part of Florida in which Desoto County is located), Monday through Friday, and except pursuant to a variance allowing land spreading during otherwise prohibited days or hours obtained under Section 14550 of the DeSoto County LDR’s.

3. Notwithstanding the foregoing, AWS or Hollingsworths may conduct Land Application pursuant to the grandfathered use approval recognized in Sections 20 and 21 at other times or on other days if AWS provides the County with at least 24 hours advance notice before each occasion on which the permit holder will be land-applying at such other times or on such other days.

4. **Hauling** Transportation of Biosolids except to a site where such land spreading may lawfully occur.

5. Any activity inconsistent with the permit submittals listed under Section G herein, including but not limited to storing or parking, temporarily or permanently, trucks containing Biosolids on sites not disclosed under such Section G or at sites not approved for such storage or parking by the permit.

6. **Violation** of any provision of this ordinance, including but not limited to failure to adhere to all of the provisions thereof.

7. **Hauling** Transportation for land spreading of any form of sludge or Biosolids not specifically permitted by this ordinance.

SECTION 1145. BIOSOLIDS HAULING PERMIT REQUIRED

The following provisions contained in County Land Development Regulations entitled 12113 E,
as adopted by County Ordinance 2003-09 shall be revised to read as follows:

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E. Biosolids Hauling Permit Required.

Any haulerTransporter who intends to haulTransport Biosolids to a Land Spreading Site in DeSoto County shall first obtain a Biosolids Hauling Permit for such activity from the Board of County Commissioners. The Board of County Commissioners shall not approve the permit unless the haulerTransporter provides the following information:

1. A site map showing the location of the Land Spreading Site(s). The Sites shall be shown on a U.S. Geological Survey Quad Sheet or other type of map clearly depicting topography, surface features of the site and distances; and

2. Zoning classifications of the Site(s), according to the DeSoto County Zoning Atlas; and

3. Proof of permission from the property owner or the owner’s authorized agent to accept Biosolids for land spreading on each Land Spreading Site; and

4. Ann Operations Plan; and

5. A copy of the approved Agricultural Use Plan for each Land Spreading Site to where Biosolids will be transported under the terms of the requested permit; and

6.5. The permanent location, address, the daytime telephone number, and the weekends, holidays and nighttime telephone numbers of the business where haulingTransportation operations will originate and where vehicles and ancillary equipment used for land spreading are stored when not in use; and

7.6. Proof that the haulerTransporter has at least $500,000 in commercial liability insurance, in form satisfactory to DeSoto County. The applicant shall submit a certificate of insurance when applying for the permit, when insurance is changed, or when the insurance policy is renewed. A current insurance policy is required throughout the life of the permit and the permittee shall ensure that a copy of such policy is maintained as part of the County’s records. If the haulerTransporter is a governmental entity, the governmental entity may submit a certificate of self-insurance to fulfill this requirement; and

8. Performance security in the amount of $250,000 to ensure that any environmental damage, damage to the public roads or public health threat
caused by the haulerTransporter may be adequately remedied. Such performance security shall comply with the requirements of law and shall be reasonably satisfactory to the County as to form and manner of execution. In lieu of requiring this security, the County AdministratorOfficial may permit governmental units to submit a certified resolution, ordinance or other written assurance from the governing body agreeing to reimburse and indemnify DeSoto County for any funds expended to remedy environmental damage or injury to the roads of the County or the public health caused by that haulerTransporter, governmental entity, or by anyone employed by, or subcontracted to, that haulerTransporter. The Bond may be combined with the Bond required by F.1., LDR-Section 14550; and

9. Notwithstanding the foregoing, AWS or Hollingsworths may conduct Land Application pursuant to the grandfathered use approval recognized in Sections 20 and 21 as follows: the permit holder shall register Vehicles pursuant to the registration provisions in the Ordinances, with the Vehicle Registration Fee not to exceed $50.00 per Vehicle during the term of this Agreement; provided, however, the County shall retain the right to increase such fees to cover increased costs of administering the Vehicle registration provisions of the Ordinances if the $50.00 maximum fee is not adequate to pay for such administration costs. The County shall process Biosolids Hauling Permit applications within one business day of the permit holder making application; and

10.7. The applicable permit fee to be set by Resolution of the DeSoto County Board of County Commissioners. The fee shall be in such amount as will compensate the County for the anticipated cost of administering this ordinanceSection 12113 of the DeSoto County LDR's and shall not be established at such level as to either produce revenue in excess of expenses or to result in a deficiency of revenue to cover expenses. The fee amount will be reestablished annually based upon experience and anticipated costs of the regulation in order to assure that the fee is established at the proper level. Notwithstanding the foregoing, AWS or Hollingsworths pursuant to the grandfathered use approval recognized in Sections 20 and 21 shall pay fees as follows: The Land Application Fees which are to be paid pursuant to this Agreement shall be calculated at the end of each calendar month based upon the quantities of Biosolids which have been land applied during that calendar month. The permit holder shall pay these fees within ten (10) business days after the billing for the calendar month in question has been received from

11.8. The location of each site or road upon which trucks will be stored or parked in accordance with this ordinance while containing Biosolids en route to a land spreading site. The sites shall be shown on a U.S. Geological Survey Quad Sheet or other type of map clearly depicting

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topography, surface features of the site and distances.

SECTION 1246. BIOSOLIDS HAULING PERMIT ISSUANCE AND CONDITIONS

The following provisions contained in County Land Development Regulations entitled 12113-G as adopted by County Ordinance 2003-09 shall be revised to read as follows:

G. Permit Issuance and Conditions.

If all of the requirements set forth above have been met and if there is an approved Special Exception (or Non Conforming Use Determination by the County) and if there is an approved Land Spreading Permit for land spreading of Biosolids on the Land Spreading Site listed in the application, the Biosolids Hauling Permit shall issue, subject to the following conditions:

1. Transferability. The permit shall not be transferable.

2. Display of the Permit. When a permit is issued, the number of the permit, together with the name of the hauler/transporter, its address, phone number, empty weight of the vehicle and vehicle capacity (stated in gallons and tons) shall be permanently applied and prominently displayed on both sides of each vehicle used for hauling/transportation in three (3) inch or larger letters or numbers.

3. Required documentation. It shall be a condition of the permit that each driver of each permitted vehicle carry with him or her at all times the following documentation: (a) a complete copy of the permit issued pursuant to this ordinance; (b) a trip manifest which shall identify: (1) the point of origin of the materials being carried in the vehicle, the Generator of the Biosolids, and (2) the specific class of Biosolids being carried and (3) the name and location of the wastewater treatment plant (Generator) that produced the materials; and (4) the date and time when the materials were loaded, and the location where the Biosolids are to be land applied, this location to correspond with the location identification system used in the Biosolids Hauling Permit application and the Transporter’s approved Operations Plan.

4. Notwithstanding the foregoing, AWS or Hollingsworth may conduct Land Application pursuant to the grandfathered use approval recognized in Sections 20 and 21 as follows: In cases involving trailers used to Transport Biosolids, only the trailers are required to have a Biosolids Hauling Permit. Tractors are not required to be permitted. Biosolids Hauling Permits are transferable from one vehicle to another. Except as provided in Section 11.3 below, each Vehicle used to Transport Class AA Biosolids from Nutri-Cycle to a Biosolids Application Site or used to Transport Biosolids from wastewater treatment plants directly to a Biosolids...
Application Site must have a Biosolids Hauling Permit at the time it is being used for this purpose. No Biosolids Hauling Permits are required for Vehicles which are used only to move the Nutri-Cycle Stockpile to a Biosolids Application Site.

5.4. Right of Inspection. It shall be a condition of the Biosolids Hauling Permit that all Drivers of Vehicles operating under the Permit used in Transportation allow any agent of the County having proof of identification of such agency, or any uniformed law enforcement officer, to stop and inspect the Vehicle at any time without prior notice and without warrant or probable cause in order to:

a) inspect the copy of the permit carried by the Driver;

b) inspect the other written documents required to be carried by the Driver by this ordinance; and

c) inspect and sample the contents of the cargo load carried by the Vehicle.

6.5. Duration and Extension of Permit. Biosolids Hauling Permits are valid for one (1) year.

7. Notwithstanding the foregoing, AWS or Hollingsworths may conduct Land Application pursuant to the grandfathered use approval recognized in Sections 20 and 21 as follows:

a) The documents which are required for permitting under the Ordinances and which have already been furnished by AWS and Hollingsworths as part of earlier applications for variances, temporary Land Spreading Permits and Non-Conforming Use Determinations shall be sufficient to satisfy the documentary requirements of the Ordinances.

b) The Reports required by LDR 14550 F. (1)(d)(vii) shall be submitted weekly, not daily, by Hollingsworths and AWS.

c) No Land Spreading Permit application, variance, special exception or other annual review or application process set forth in the Ordinances shall be required of AWS and Hollingsworths during the term of this Agreement.

8.6. Noncompliance. Upon discovery of the failure of a Biosolids Hauling Permit holder to comply with the terms of these regulations, including the failure to adhere to all approved conditions or requirement of the permit, the following actions shall be taken:
a) The County Administrator shall notify the permit holder/Transporter via telephone of the extent and nature of noncompliance and determine whether, in the County Administrator's discretion, the noncompliance can be remedied without resort to the formal procedures set forth in this ordinance Section G. If the County Administrator decides that noncompliance can be remedied informally he or she shall take whatever measures he or she deems are reasonably necessary or appropriate to effect compliance.

b) If the County Administrator determines that formal procedures are necessary, or if the permit holder/Transporter fails to come into compliance after being given an opportunity to do so, then a notice from the County Administrator shall be sent by U.S. mail to the permit holder/Transporter advising him/her/Transporter with reasonable specificity of the details of the noncompliance. The notice shall give the permit holder/Transporter ten (10) calendar days in which to correct the violation or submit a schedule to achieve compliance.

9.7. If the permit holder/Transporter fails to respond to the notice, or if an acceptable schedule for compliance cannot be worked out, a hearing shall be scheduled before the Desoto County Board of County Commissioners or a Special Master. Reasonable notice of the hearing shall be sent via U.S. mail to the permit holder/Transporter. The hearing shall be quasi-judicial in nature, and shall be in accordance with Sections 12804 through 12811 of the Land Development Regulations. The County Official and the Transporter shall have the right to be present, to be represented by legal counsel and to present evidence and testimony under oath, and cross-examine any witness called by the other.

10.8. If the Board or Special Master finds that there has been continuing failure to comply with the terms of these regulations and that the holder of a Biosolids Hauling Permit has failed to correct the noncompliance, the Board may suspend the Biosolids Hauling Permit or allow additional time for the Transporter to achieve compliance. If additional time for compliance is granted, the hearing shall be continued until a future meeting at which the Special Master/Board, shall take final action on the matter and the Board may revoke the permit for noncompliance. Issuance of a new Biosolids Hauling Permit or reinstatement of such permit, subsequent to the respective suspension or revocation of a Biosolids Hauling Permit held by the same permit holder/Transporter, shall be conditioned upon such permit holder/Transporter's having taken remedial measures reasonably acceptable to the County to cure the conditions responsible for the prior permit's suspension or revocation and to prevent their recurrence.
11.9. **Violations and Penalties.** Violations of this ordinance, including violations of any condition or requirement of a Permit shall be punishable as set forth in Section 125.69, Florida Statutes, and Section 12809-12910 of these of the Land Development Regulations. Nothing herein shall prevent the County from taking such lawful action as is necessary to prevent or remedy any violation, including but not limited to the resort to equitable action for injunction or use of the Special Master proceedings authorized by Sections 11700, et seq., of these Land Development Regulations.

SECTION 17.

Omitted intentionally.

SECTION 18.

The County determines that:

1. **The written materials which have been submitted by AWS, Hollingsworths and others in support of applications for land spreading permits, variances and Non-Conforming Use Determinations for Western Property and the Eastern Properties satisfy the documentary requirements of Section 14550 of the County LDR’s for the issuance of the Land Spreading Permit approvals, and the land use determinations and other requirements which may be conditions precedent to the issuance of said Land Spreading Permits.**

2. **Long-term contractual obligations, reasonable investment backed expectations and patterns of historical use have created certain legal rights which are vested in AWS and Hollingsworths and which are specified in Sections 20 and 21 of this ordinance.**

3. **No land spreading permit application, variance, special exception or other annual review or application process set forth in the Ordinances shall be required for the use of the Western Property or the Eastern Properties for the purposes authorized by this ordinance for the period of time during which the uses of those properties as authorized herein is considered grandfathered under Sections 20 and 21 of this ordinance.**

SECTION 19.

The following specific provisions apply only to the Western Property

1. **Only Class AA Biosolids processed at Nutri-Cycle may be applied on VCH West Properties.**
SECTION 20.

Vested rights are determined to exist for the use of the portion of Western Property areas highlighted in yellow on Exhibit B hereto for land spreading of Class AA Biosolids covered within the scope of Section 14550 of the Land Development Regulations, provided that that use and such vested rights shall exist only for the period of time for which such uses are considered grandfathered as provided herein; and that the use of the Western Property during that period of time for the land spreading of Biosolids or Biosolids shall be limited to only Class AA Biosolids and such use of the Western Property shall be subject to the setbacks provided for in Section 23 of this ordinance.

SECTION 21.

Vested rights are determined to exist for the use of the Eastern Properties for land spreading of Biosolids covered within the scope of Section 14550 of the Land Development Regulations; provided that that use and such vested rights shall exist only for the period of time for which such uses are considered grandfathered as provided herein; and for that period of time during which those rights are considered grandfathered as provided herein, the use of those Eastern Properties for land spreading of Biosolids or Biosolids shall be subject only to the setbacks provided for in Section 24 of this Ordinance.

SECTION 22.

It is determined that the vested rights referred to in Sections 20 and 21 herein shall be considered grandfathered so that they terminate within the minimum period of time necessary to amortize the investment of the owners of such properties and to allow existing contracts for land spreading of Biosolids to be honored. Based on the certification of the owners of such properties, it is determined that the appropriate period of time for termination of such grandfathered status and vested rights is December 31, 2009, whereupon, the said properties must come into conformance with all provisions of the County Land Development Regulations.

SECTION 23.

The setbacks for the use granted by this ordinance for the Western Property to operate in conjunction with all other provisions of Section 14550 ("Land Spreading of Biosolids, Septage and Other Related Material") of the DeSoto County Land Development Regulations shall be as follows:

1. Setbacks for Class AA Biosolids shall be:

   a. A minimum of five hundred (500) feet from the main branch of Horse Creek as depicted on the Map attached hereto as Exhibit B.

   b. A minimum of five hundred (500) feet from any potable water supply well as depicted on the Map attached hereto as Exhibit B.
e. A minimum of thirteen hundred (1,300) feet from a residence or any structure occupied by the general public. These setbacks are conclusively shown on Exhibit B except to the extent that there are residences or structures located outside of the Western Property which are not shown on Exhibit B, in which case the setbacks set forth above shall be applicable with respect to such structures.

SECTION 24.

The setbacks for the Eastern Properties to operate in conjunction with all other provisions of Section 14550 ("Land Spreading of Biosolids, Septage and Other Related Material") of the DeSoto County Land Development Regulations shall be as follows:

1. Setbacks for all classes of Biosolids shall be those prescribed by the Florida Department of Environmental Protection in Chapter 62-640, F.A.C.

SECTION 25.

The vested rights recognized by this ordinance are considered grandfathered uses which shall terminate on December 31, 2009, whereupon the uses will be subject to all of the County's ordinances and LDR's.

SECTION 1326. SEVERABILITY

In the event that any portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 1427. EFFECTIVE DATE

This ordinance shall be effective immediately upon filing with the Secretary of State in accordance with law.
LAND SPREADING AND HAULING OF BIOSOLIDS

SECTION 1. REPEAL OF PRIOR ORDINANCES

If on the effective date of this ordinance any ordinance or DeSoto County is found to be in conflict herewith, including but not limited to Ordinances 2001-05, 2002-10, 2002-11, 2002-14, 2003-08, 2003-09 or 2004-10 and resolution 2003-20, such ordinance and resolution is hereby superseded to the extent of such conflict.

SECTION 2. INTENT

It is the intention of the County to conform its ordinances and resolutions to the requirements of the Department of Environmental Protection’s Rule Chapter 62-640, Florida Administrative Code, in the interest of the public health and welfare.

SECTION 3. DEFINITIONS

The definitions contained in County Land Development Regulation and Rule Chapter 62-640 shall apply to this ordinance unless the context clearly indicates otherwise.

SECTION 4. GENERAL PROVISIONS – LAND SPREADING

The following general provisions shall apply to any person, business or other entity (the Applicator”) seeking to engage in the land spreading of Biosolids in DeSoto County, Florida.

1. An Applicator seeking to engage in land spreading of Biosolids must comply with all relevant federal, state and local regulations pertaining to the land spreading of Biosolids and other related material.

2. Copies of all permits required by federal or state authorities must be provided to the DeSoto County Development Department as part of the application for a Land Spreading Permit.

3. Only Class A, AA or B Biosolids may be used for land spreading

4. Land spreading shall be permitted only in Agricultural Five (A-5), Agricultural Ten (A-10) and Phosphate Mining-Industrial (PM-I) zoning districts. Land spreading is prohibited in all other zoning districts.

5. Land Application of Biosolids shall be permitted only during hours from sunrise to sunset (as those times are published by the Weather Bureau for the part of Florida in which Desoto County is located.

6. It shall be a condition of the Land Spreading Permit that County employees or inspectors designated by the County Administrator shall be permitted to enter upon any private property used for Land Application of
Biosolids for the purpose of conducting an inspection to ensure compliance with this ordinance. The property owner must grant consent to such access as a condition of said permit. Loads of Biosolids may be sampled by the County to provide independent verification of the type of Biosolids and level of treatment achieved. The County may set a fee for said sampling.

7. The Applicator shall be responsible to repair road and bridge damage caused by the hauling of biosolids. Such damage does not include normal wear and maintenance of the roads or bridges. The Applicator shall submit information on the estimated number and weight of trucks, and truck routes to the DeSoto County Road and Bridge Department and County Engineer. If it is determined that increased maintenance is likely to be required as a result of the truck traffic hauling biosolids, the Board may require the Applicator to enter into a road maintenance agreement to reimburse cost to the County for such increased maintenance.

8. Biosolids shall be created and/or processed in such a manner that they will be free from litter prior to land application.

9. The Applicator shall contribute a fee for each acre that is applied with biosolids into a fund designated for the continuing study of odors, pathogen transmissions, environmental effects and other concerns relating to land application of biosolids, and/or establishment of educational information pertaining to the land application of biosolids. The fee shall be set annually by the Board of County Commissioners.

SECTION 5. PROHIBITED ACTS – LAND SPREADING

The following land spreading acts are prohibited:

1. Land spreading or disposal of untreated domestic or industrial wastewater, Chemical/Portable Toilet Sludge, Treated Domestic Septage, Industrial Sludge, Food Establishment Sludge, Hazardous Waste, or Holding Tank Sludge;

2. Land spreading of wastewater that is not Class A, Class AA or Class B Biosolids, and disposal or land spreading of any form of wastewater or sludge not specifically permitted by this ordinance.

3. Land spreading of Biosolids in the special water resource protection zone in Township 39S, Range 23E, Sections 7 through 23 and Sections 26 through 35, inclusive.

4. Land spreading of Biosolids in violation of this ordinance.
5. Land spreading, managing or handling Biosolids in any manner that causes, continues or contributes to a Public Nuisance.

6. Land spreading of Biosolids on any land that is water soaked by recent rain or where there is standing water from rain or flooding.

7. Land spreading of Biosolids during any period of an emergency declared by the Governor of Florida or the Board of County Commissioners if such emergency is caused by extreme wet weather conditions.

SECTION 6. LAND SPREADING PERMIT

A Land Spreading Permit is required as follows:

1. Any Applicator intending to land spread Biosolids in DeSoto County shall obtain a Land Spreading Permit for such activity prior to the commencement of any land spreading activities. In order to obtain such Land Spreading Permit, the Applicator must submit the following:

   a) A $1,000.00 application fee;

   b) The names and addresses of each Generator that will provide Biosolids for land spreading; the quantities and types (A, AA or B) of Biosolids to be land spread on the property owner’s Site, copies of the contract(s) between the Generator(s) and the hauler(s) for the transportation of Biosolids to the Site, and the contract(s) and/or approval(s) between the hauler(s) and the property owner for the land spreading of the Biosolids;

   c) An estimate of the number of trucks that will deliver Biosolids to the Site each day;

   d) A management plan which shall contain:

      i. Hours and days of operation;
      ii. Location of land spreading, identifying each individually numbered Field on a map of each Site that will be used for Land Spreading;
      iii. Methodology for land spreading;
      iv. List of contact people and telephone numbers where they may be reached 24 hours a day, seven days a week;
      v. Method of reporting land spreading activities to the County;
      vi. Provision for 24 hour advance notice to the County of land
spreading on each Field;

vii. Provision for reporting to the County of the next day’s land spreading, including the following information: the number of loads of Biosolids that are going to be land spread, the source of the Biosolids, the Generator thereof, whether the Biosolids are AA, A or B Biosolids, and whether the Biosolids are liquid or cake Biosolids.

e) A copy of each Florida Department of Environment Protection Nutrient Management Plan for each proposed Field within the Site.

f) A map or schematic with the names and mailing addresses of the owners and occupants (or their authorized agents) of all structures located within one-half mile of the perimeter property line of the proposed Site.

g) A map or schematic of each proposed Field within the overall Site, identifying all areas subject to minimum setbacks.

h) A copy of the Biosolids Hauling Permit or permits required by Desoto County for transportation of Biosolids to the Site for land spreading or application(s) for such permit(s).

i) A performance bond in an amount sufficient to protect the County against loss due to spills of Biosolids or due to environmental contamination and to provide for cleanup of such spills the minimum amount of such performance bond shall be $100,000 and may be set higher at the County Administrator’s discretion. If such bond is utilized to remedy such events, the bond shall be immediately restored to its full original amount.

j) A Certificate of Pollution Liability Insurance indicating insurance in an amount no less than $1,000,000 (One Million Dollars).

2. All submittals must satisfactorily demonstrate compliance with Chapter 62-640, Florida Administrative Code.

3. Land Spreading Permits are valid for one (1) year. Annual extensions shall be considered by the Board, based upon the same criteria as an initial application. If grounds for revocation of the permit exist, revocation of the permit shall be considered and resolved before the County acts on the application for extension. All extension requests must be filed at least ninety (90) days prior to the expiration of the current Land Spreading Permit.
SECTION 7. REPORTING AND ADDITIONAL DATA REQUIREMENTS

All persons, businesses or other entities that have been issued permits under this ordinance shall comply with the monitoring, record keeping, reporting and notification requirements set forth in Rule Chapter 62-640, Florida Administrative Code, and shall make those records available to the County for inspection and verification upon request.

SECTION 8. ENFORCEMENT – LAND SPREADING

1. Noncompliance. Upon discovery of the failure of a Land Spreading Permit holder to strictly comply with the terms of these regulations and/or the Land Spreading Permit, the following action shall be taken:

   a) The permit holder shall be provided with a cease and desist order issued by the County Administrator by electronic mail, facsimile or hand delivery. Upon delivery of such cease and desist order, the permit holder shall immediately cease all land spreading on those Fields designated in the cease and desist order and shall not recommence land spreading in those Fields until the County authorizes the recommencement of land spreading. The Fields designated in the cease and desist order shall be those Fields on which the violation has occurred. Authorization to recommence land spreading shall be immediately provided to the permit holder at such time as the alleged violation shall have been determined by the Board or the Special Master to have not occurred or at such time as the County concludes that Remedial Measures have been completed.

   b) A notice shall be sent to the permit holder by U.S. mail, giving notice of the noncompliance and delivery of the cease and desist order. The notice shall give ten (10) calendar days to correct the violation or submit a satisfactory schedule to achieve compliance. The property owner shall be sent a courtesy copy of the cease and desist order and the notice.

   c) If the permit holder fails to respond to the notice, or if an acceptable schedule for compliance or Remedial Measures cannot be established, or upon request of the property owner, a hearing shall be scheduled before the Board. A notice of the hearing shall be sent via U.S. mail, hand delivery, electronic mail or facsimile transmission to the permit holder and property owner. The hearing shall be quasi-judicial and shall be conducted by the DeSoto County Special Master.
d) If the Special Master finds that there has been a failure to comply
with the terms of this ordinance and/or the Land Spreading Permit,
and has failed to correct the noncompliance, the Special Master
may suspend the Land Spreading Permit, order Remedial Measures
or grant additional time to achieve compliance. If additional time
for compliance is granted, the hearing shall be continued until a
future time at which the Special Master shall take final action on
the matter.

e) Special Masters shall operate pursuant to the provisions of
Sections 12804 through 12811 of the DeSoto County LDR's
except to the extent that the same are inconsistent with this
ordinance, and pursuant to such other rules as may be provided by
the Board of County Commissions by resolution or ordinance.

2. Violations and Penalties. Violations of this ordinance or Land
Spreading Permit shall be punishable as set forth in Section 125.69, Florida
Statutes, and Section 12809 of the Land Development Regulations. Nothing
herein shall prevent the County from taking any other lawful action necessary to
prevent or remedy any violation.

SECTION 9. GENERAL PROVISIONS – BIOSOLIDS HAULING

The following general provisions shall apply to any person, business or other entity seeking to
engage in the transportation of Biosolids in DeSoto County, Florida for land spreading on an
approved Land Spreading Site.

1. The person, business or other entity must have obtained and possess a
valid Biosolids Hauling Permit. Compliance with the conditions of a
Biosolids Hauling Permit does not relieve the Transporter of Biosolids
from having to comply with all relevant federal and state regulations
pertaining to the Transportation of Biosolids and other related material.

2. The applicant for a Biosolids Hauling Permit must provide the County
Administrator with copies of all permits required by federal or state
authorities for the hauling and/or the land application of Biosolids in
DeSoto County as a required condition precedent to obtaining a Biosolids
Hauling Permit.

3. Transportation of only Class A, AA or B Biosolids to an approved Land
Spreading Site is permitted.

4. The hauling of treated Biosolids from a point of origin to a designated
Land Spreading Site within DeSoto County shall be permitted only in
accordance with the hauler's approved Operations Plan.
5. Each hauler shall store or park vehicles (except as described in Section 6 herein) which are used in hauling of Biosolids and which contain Biosolids only on an approved Land Spreading Site and then only during the times in which land spreading on the Land Spreading Site is specified in the hauler’s Operations Plan.

6. Any vehicle which is hauling Biosolids in DeSoto County may not be parked or stopped for any period of time exceeding thirty (30) minutes, except to change flat tires, to effect emergency roadside repairs, to await towing after breakdown, to render assistance or comply with traffic laws involving vehicular or pedestrian accidents, or when otherwise required by any other law or unavoidable traffic condition.

7. Any vehicle engaged in hauling of Biosolids to a Land Spreading Site shall be thoroughly cleaned at the site after delivery of the Biosolids and prior to entering upon the public roads of DeSoto County so that Biosolids do not fall off of the vehicle onto the road.

SECTION 10. PROHIBITED ACTS – BIOSOLIDS HAULING

The following acts concerning hauling of Biosolids are prohibited:

1. Hauling of Biosolids to an approved Land Spreading Site except when done pursuant to an approved Operations Plan and pursuant to a valid Biosolids Hauling Permit.

2. Hauling of Biosolids from a point of origin to a designated land spreading site within DeSoto County except during hours from sunrise to sunset (as those times are published by the Weather Bureau for the part of Florida in which Desoto County is located), Monday through Friday.

3. Hauling of Biosolids except to a site where such land spreading may lawfully occur.

4. Any activity inconsistent with the permit submittals, including but not limited to storing or parking, temporarily or permanently, trucks containing Biosolids on or at sites not approved for such storage or parking by the permit.

5. Violation of any provision of this ordinance, including but not limited to failure to adhere to all of the provisions thereof.

6. Hauling for land spreading of any form of sludge or Biosolids not specifically permitted by this ordinance.
SECTION 11. **BIOSOLIDS HAULING PERMIT REQUIRED**

Any hauler who intends to haul Biosolids to a Land Spreading Site in DeSoto County shall first obtain a Biosolids Hauling Permit for such activity from the Board of County Commissioners. The Board of County Commissioners shall not approve the permit unless the hauler provides the following information:

1. A site map showing the location of the Land Spreading Site(s). The Sites shall be shown on a U.S. Geological Survey Quad Sheet or other type of map clearly depicting topography, surface features of the site and distances; and

2. Zoning classifications of the Site(s), according to the DeSoto County Zoning Atlas; and

3. Proof of permission from the property owner or the owner’s authorized agent to accept Biosolids for land spreading on each Land Spreading Site; and

4. An Operations Plan; and

5. The permanent location, address, the daytime telephone number, and the weekends, holidays and nighttime telephone numbers of the business where hauling operations will originate and where vehicles and ancillary equipment used for land spreading are stored when not in use; and

6. Proof that the hauler has at least $500,000 in commercial liability insurance, in form satisfactory to DeSoto County. The applicant shall submit a certificate of insurance when applying for the permit, when insurance is changed, or when the insurance policy is renewed. A current insurance policy is required throughout the life of the permit and the permittee shall ensure that a copy of such policy is maintained as part of the County’s records. If the hauler is a governmental entity, the governmental entity may submit a certificate of self-insurance to fulfill this requirement; and

7. Performance security in the amount of $250,000 to ensure that any environmental damage, damage to the public roads or public health threat caused by the hauler may be adequately remedied. Such performance security shall comply with the requirements of law and shall be reasonably satisfactory to the County as to form and manner of execution. In lieu of requiring this security, the County Administrator may permit governmental units to submit a certified resolution, ordinance or other written assurance from the governing body agreeing to reimburse and indemnify DeSoto County for any funds expended to remedy
environmental damage or injury to the roads of the County or the public health caused by that hauler, governmental entity, or by anyone employed by, or subcontracted to, that hauler.

8. The applicable permit fee to be set by Resolution of the DeSoto County Board of County Commissioners. The fee shall be in such amount as will compensate the County for the anticipated cost of administering this ordinance and shall not be established at such level as to either produce revenue in excess of expenses or to result in a deficiency of revenue to cover expenses. The fee amount will be reestablished annually based upon experience and anticipated costs of the regulation in order to assure that the fee is established at the proper level.

9. The location of each site or road upon which trucks will be stored or parked in accordance with this ordinance while containing Biosolids en route to a land spreading site. The sites shall be shown on a U.S. Geological Survey Quad Sheet or other type of map clearly depicting topography, surface features of the site and distances.

SECTION 12. BIOSOLIDS HAULING PERMIT ISSUANCE AND CONDITIONS

If all of the requirements set forth above have been met and if there is an approved Land Spreading Permit for land spreading of Biosolids on the Land Spreading Site listed in the application, the Biosolids Hauling Permit shall issue, subject to the following conditions:

1. Transferability. The permit shall not be transferable.

2. Display of the Permit. When a permit is issued, the number of the permit, together with the name of the hauler, its address, phone number, empty weight of the vehicle and vehicle capacity (stated in gallons and tons) shall be permanently applied and prominently displayed on both sides of each vehicle used for hauling in three (3) inch or larger letters or numbers.

3. Required documentation. It shall be a condition of the permit that each driver of each permitted vehicle carry with him or her at all times the following documentation: (a) a complete copy of the permit issued pursuant to this ordinance; (b) a trip manifest which shall identify: (1) the point of origin of the materials being carried in the vehicle, the Generator of the Biosolids, and (2) the specific class of Biosolids being carried and (3) the name and location of the wastewater treatment plant (Generator) that produced the materials; and (4) the date and time when the materials were loaded, and the location where the Biosolids are to be land applied, this location to correspond with the location identification system used in the Biosolids Hauling Permit application and the approved Operations Plan.
4. Right of Inspection. It shall be a condition of the Biosolids Hauling Permit that all drivers of vehicles operating under the Permit allow any agent of the County having proof of identification, or any uniformed law enforcement officer, to stop and inspect the vehicle at any time without prior notice and without warrant or probable cause in order to:

a) inspect the copy of the permit carried by the driver;

b) inspect the other written documents required to be carried by the driver by this ordinance; and

c) inspect and sample the contents of the cargo load carried by the vehicle.

5. Duration and Extension of Permit. Biosolids Hauling Permits are valid for one (1) year.

6. Noncompliance. Upon discovery of the failure of a Biosolids Hauling Permit holder to comply with the terms of these regulations, including the failure to adhere to all approved conditions or requirement of the permit, the following actions shall be taken:

a) The County Administrator shall notify the permit holder via telephone of the extent and nature of noncompliance and determine whether, in the County Administrator's discretion, the noncompliance can be remedied without resort to the formal procedures set forth in this ordinance. If the County Administrator decides that noncompliance can be remedied informally he or she shall take whatever measures he or she deems are reasonably necessary or appropriate to effect compliance.

b) If the County Administrator determines that formal procedures are necessary, or if the permit holder fails to come into compliance after being given an opportunity to do so, then a notice from the County Administrator shall be sent by U.S. mail to the permit holder advising him/her with reasonable specificity of the details of the noncompliance. The notice shall give the permit holder ten (10) calendar days in which to correct the violation or submit a schedule to achieve compliance.

7. If the permit holder fails to respond to the notice, or if an acceptable schedule for compliance cannot be worked out, a hearing shall be scheduled before the Desoto County Special Master. Reasonable notice of the hearing shall be sent via U.S. mail to the permit holder. The hearing shall be quasi judicial in nature, and shall be in accordance with Sections
12804 through 12811 of the Land Development Regulations.

8. If the Special Master finds that there has been continuing failure to comply with the terms of these regulations and that the holder of a Biosolids Hauling Permit has failed to correct the noncompliance, the Board may suspend the Biosolids Hauling Permit or allow additional time for the Transporter to achieve compliance. If additional time for compliance is granted, the hearing shall be continued until a future meeting at which the Special Master shall take final action on the matter and the Board may revoke the permit for noncompliance. Issuance of a new Biosolids Hauling Permit or reinstatement of such permit, subsequent to the respective suspension or revocation of a Biosolids Hauling Permit held by the same permit holder, shall be conditioned upon such permit holder’s having taken remedial measures reasonably acceptable to the County to cure the conditions responsible for the prior permit’s suspension or revocation and to prevent their recurrence.

9. Violations and Penalties. Violations of this ordinance, including violations of any condition or requirement of a Permit shall be punishable as set forth in Section 125.69, Florida Statutes, and Section 12809 of the Land Development Regulations. Nothing herein shall prevent the County from taking such lawful action as is necessary to prevent or remedy any violation.

SECTION 13. SEVERABILITY

In the event that any portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 14. EFFECTIVE DATE

This ordinance shall be effective immediately upon filing with the Secretary of State in accordance with law.
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Section 1 PHOSPHATE MINING AND RECLAMATION ACTIVITIES

A. Purpose and Intent.

The purpose of the provisions of this ordinance is to protect the health, safety and general welfare of the citizens of the county. These provisions are intended to:

1. Implement the goals, policies and objectives of the county comprehensive plan;

2. Ensure the orderly development of mineral resources in a manner compatible with the overall development of the county;

3. Ensure consideration of the cumulative effects of phosphate mining activities;

4. Protect and conserve natural resources and the environment for present and future generations;

5. Assure the use of best management practices and the development of technology for maximum control of the adverse effects of phosphate mining activities;

6. Ensure that phosphate mining activities and reclamation will not preclude future beneficial uses of mined-out lands;

7. Protect and preserve legally existing vested rights; and

8. To the extent necessary to give meaning an effect to this ordinance, the definitions in Article 13 of the Land Development Regulations apply to the terms used in this ordinance unless the context clearly indicates otherwise.

B. Applicability.

The provisions of this ordinance shall apply to all applications for Phosphate Mining Master Plans or Operating Permits for phosphate mining activities conducted within the boundaries of DeSoto County. All requirements of this Ordinance shall apply to applications for amendments or transfers, whether or not such amendments or transfers apply to a Phosphate Mining Master Plan or Operating Permit issued before the effective date hereof. To the extent allowed by law, the requirements of this Ordinance shall apply to phosphate mining activities conducted by applicants under valid Operating Permits issued before the effective date hereof.
C. Administration.

Except as hereinafter provided, the provisions of this ordinance shall be administered, implemented and enforced by the County Administrator, or his designee, who shall coordinate the activities of all appropriate County agencies concerning the processing, review, monitoring and inspection of phosphate mining activities within the boundaries of the County. Wherever the term County Administrator is used in this ordinance it is meant to include his designee. The provisions of this ordinance shall not limit the lawful authority of the Board or any County agency to enforce or monitor compliance with other applicable statutes, ordinances, resolutions, regulations or permit conditions. In order to ensure compliance with the Phosphate Mining Master Plan, the operating permit, and the reclamation plans for various phases, the County Administrator shall contract with or employ qualified professional engineers and scientists to inspect and review compliance with the Master Plan, the operating permit, and the progress on the various reclamation plans.

D. Review and Approval.

An applicant shall obtain separate approvals for a Phosphate Mining Master Plan and an Operating Permit from the Board prior to commencement of phosphate mining activities. An Operating Permit may not be issued until approval of a Phosphate Mining Master Plan. The Operating Permit may be issued contingent upon receipt of necessary federal, state and appropriate local development approvals. No phosphate mining activities may be conducted within the County except those for which Phosphate Mining Master Plan and Operating Permit approvals have been issued by the Board. Where these regulations conflict or overlap with other regulations, whichever imposes the more stringent restrictions shall prevail.

E. Fee Requirements for Phosphate Mining Master Plan, Operating Permit, Annual Review, Inspection.

The Board of County Commissioners shall by resolution adopt, and may amend from time to time as deemed necessary by the Board, a fee schedule setting forth fees for review of applications for Phosphate Mining Master Plan, Operating Permits, Annual Reviews, Inspections and all other fees and cost provided for in this Ordinance.

F. Waivers.

Except where the provision of this ordinance expressly provide otherwise, the Board may, by express written instrument, waive any of the requirements of this ordinance if the applicant demonstrates that:
1. The strict enforcement of such requirement or requirements would impose an unreasonable restriction on the use of the property.

2. Such waiver will not adversely affect the health, safety and welfare of the public.

3. Such waiver is consistent with the County's Comprehensive Plan.

In order to obtain such a waiver, the applicant shall apply in writing to the Director, describing the requirement sought to be waived, the environmental impacts of the requested waiver, and any proposed innovative techniques or alternative procedures. The Board's decision on the application for waiver shall be made after receiving recommendations from appropriate County departments, and after notice and public hearing. Notice of request, hearings and waivers shall also be sent to the appropriate regulatory state agencies.

Section 2 Phosphate Mining Master Plan

A. Application for Approval.

An applicant shall submit ten (10) copies of a Phosphate Mining Master Plan application to the County Administrator. In preparing the Phosphate Mining Master Plan application, the applicant shall be mindful that a final decision on the Operating Permit will be based upon the information contained in the Phosphate Mining Master Plan, and the criteria for Operating Permits in Section 2 referred to in preparing the Phosphate Mining Master Plan application.

B. Required Content.

The Phosphate Mining Master Plan shall include the following information:

1. The name, address and telephone number of the authorized agent of the applicant and, if different, of the owner of the property within the area of the Phosphate Mining Master Plan. If the applicant and/or property owner are not individual natural persons or individual business entities, the application shall fully identify each person or entity having any interest in the mining activities or ownership of the land, and shall specifically identify the nature of such interests.

2. The name, address and telephone number of the applicant's agent upon whom service of legal papers may be made and who may be contacted in case of need.

3. The legal description of all lands in or contiguous to the phosphate mine site upon which any phosphate mining activities are proposed, indicating whether owned, leased or under option by the applicant; and where
ownership is not held by the applicant, a letter of agreement to mine, between the owner and applicant, shall be provided.

4. If the applicant requests to undertake construction of a beneficiation plant or water reticulation facility, the applicant shall also provide a conceptual flow diagram of beneficiation plant processes illustrating the general material flow between major equipment components, and a conceptual site plan and flow diagram showing the relationship between the beneficiation plant and water reticulation facilities.

5. The materials to be mined; estimated yearly production of ore, product and by-product; and a map of the locations of the proposed units to be mined.

6. The mining sequence of the mining units for the life of the mine shown on a year-by-year basis;

7. The schedule of mining operation and completion of each mining unit for the life of the mine shown on a year-by-year basis;

8. An abstract and interpretation of the results of exploratory drilling showing the elevation of the top and base of the ore zone, the geologic nature of the confining bed and overlying materials, and the preoperational water levels encountered in exploratory drilling (where exploratory drilling does not characterize the geologic nature of the confining bed, other available sources may be substituted);

9. A description of the beneficiation process used in the mine, including a schematic description of the process and process reagents to be used, along with their chemical composition and estimated application rate;

10. The purpose and location of any beneficiation plant, building, structure, permanent pipeline or any other nonmobile object constructed as part of the proposed phosphate mining activities;

11. The location and dimension of proposed clay settling ponds, water reticulation facilities, and other impoundments, including the heights of dams and minimum freeboard;

12. An inventory of all existing wells on the property, including locations, estimated annual extraction rates, water use and proposed disposition of wells;

13. An assessment of the impact of the proposed phosphate mining activities on surface and groundwater hydrology, including effects on peak and average stream base flow;
14. Engineering estimates certified by a registered professional engineer of the quantity, temperature, chemical and physical properties (including radiological), frequency and duration, points and methods of disposal (whether on or off the applicant’s property) of discharges of water, liquid wastes, effluents, or sewage to be created. The applicant shall also specify the proposed time schedule for such disposal and estimates of the flow rates in receiving streams at the times of wastewater discharges. Such estimates shall separately and specifically identify and quantify discharges of all substances that could be generated by phosphate mining activities for which the state has promulgated water quality standards. In addition, estimates of the amounts (volume and weight) of tailings and phosphatic clays to be created, plans for their storage or disposal, and the proposed time schedule for disposal, together with the location drawings of any treatment facilities shall be provided.

15. A copy of all applications to, or permits issued by the appropriate water management authority(s) for water use permits, waivers, denials, and any special conditions and, if issued, a copy of the permit(s). The applicant shall also provide the County a copy of the Environmental Resource Permit application to, or permit issued by the Florida Department of Environmental Protection.

16. Copy of application to, or permit issued by FDEP (Florida Department of Environmental Protection) for any air sources on the property. The permittee shall take reasonable precautions to prevent and minimize fugitive dust emissions.

17. An effective program for controlling nonpoint sources of water pollution that may originate from any areas disturbed by mining activities, the runoff from which is external to catchment areas of the water reticulation facilities.

18. An environmental monitoring program, to be developed by the applicant in accordance with Section 3 (C)(6), which shall include baseline data for at least one year preceding commencement of development. The applicant shall develop the monitoring program in conjunction with the County Administrator. If environmental monitoring is required as a condition of a state and/or federal permit, and if the applicant is in compliance with that condition, the applicant may comply with this requirement by submitting copies of all state and/or federal monitoring reports to the County.

19. A transportation analysis, to include estimates of vehicular and rail traffic and any other mode of transportation of materials and products leaving the applicant's property, and of raw materials entering the applicant's property, with emphasis given to any disruption of normal traffic movements caused
by, and any increase in rail movements, vehicular traffic and road deterioration resulting from, the proposed phosphate mining activities.

20. Composite aerial photographs of the Phosphate Mining Master Plan area that, through overlays or other graphical depictions, clearly show:

a. Ownership limits;

b. Any designated special treatment overlay districts;

c. Locations of units to be mined;

d. Locations of clay settling ponds and other impoundments and their construction schedules;

e. Locations of permanent pipelines, beneficiation plants, and other permanent structures;

f. The name, location and limits of all existing wetlands, lakes, rivers, reservoirs, streams, creeks, and other water bodies within the Phosphate Mining Master Plan area up to the one hundred-year floodplain associated with these features including a general delineation of all waters of the state as defined under Chapter 403, Florida Statutes.

g. The location of drainage and flood control features, including topographic contours at one (1)-foot intervals before, mining and after reclamation activities;

h. The location of all proposed storage and transportation means, for products and raw materials shipped to and from the site; and

i. A depiction of the final FLUCFCS (Florida Land Use Cover and Forms Classification Code System) upon completion of reclamation.

Such composites and all overlays shall be provided at a scale acceptable to the County with a minimum eight hundred (800) foot overlap and extending at least one quarter mile (1,320) feet beyond the property boundary;

21. A phosphate mine reclamation plan that shall be consistent with Chapter 378, Part II, Florida Statutes (F.S.), and administrative rules adopted thereunder, and any amendments to Chapter 378, Part II, Florida Statutes and administrative rules adopted thereunder, promulgated after adoption of this ordinance and the provisions contained in this ordinance.
a. The Board may require a more expeditious reclamation schedule than required by Chapter 378, Part II, Florida Statutes, and administrative rules adopted thereunder in order to minimize impacts to neighbors, wetlands, offsite drainage, or flood plains. Reclamation land types shall be defined by Florida Land Use Classification Code System (FLUCFCS) or Florida Department of Environmental Protection (FDEP) habitat types.

b. Agricultural lands. Land reclaimed for agricultural use shall meet the following standards:

(1) Topography. The land shall be sufficiently level and free of holes, gullies and washouts to permit safe operation of conventional farm and agricultural equipment.

(2) Stability. The land shall have settled and firmed to the extent that it will support conventional farm and agricultural equipment and that livestock will be able to walk on the surface of the land.

(3) Slope. The land surface shall be returned to the elevations approved by the County and the slope of all land, except dikes and low profile berms, shall not be steeper than 4:1.

c. South Florida flatwoods. South Florida flatwoods areas disturbed by phosphate mining shall be reclaimed with native species of trees, shrubs, forbs and grasses to re-establish the general distribution of native flora necessary to ensure suitable wildlife habitat, giving consideration to plant diversity, edge-effect and escape cover. The goal will be to achieve suitable livestock carrying capacity by utilization of low management native forages while secondary benefits such as wildlife, timber and aesthetics are maintained.

d. Wetlands. Existing wetlands subject to mining shall generally be reclaimed at an acre for acre and additional land may be reclaimed to a wetland area. However, where deemed appropriate by the County Administrator, it shall be acceptable to reclaim wetlands with smaller, high quality wetland systems and/or off-site mitigation. Reclamation or creation of a wetland shall be in accordance with the following:

(1) Soil moisture. The land area designated as recreated wetlands shall maintain the necessary soil moisture, frequency and duration of saturation as correlated to water
year, rainfall occurrence, and antecedent conditions without
the artificial manipulation of available water quantities.

(2) Soil stability. All banks and slopes shall be stabilized with
self-sustaining vegetation. No evidence of excessive
erosion shall exist. No evidence of unplanned channel
development shall exist.

(3) Native species. The applicant shall demonstrate, using
generally accepted scientific methodology, that healthy and
self-propagating native wetland grasses and forbs within
the recreated wetland shall be established and that the
reforestation of native wetland trees shall be accomplished.

e. Lakes and other water bodies. Lands reclaimed as lakes and other
water bodies shall meet the following standards, in addition to
Sections 2 (B)21(d)2 and 3:

(1) Littoral zones. For the purposes of establishing an area that
will sustain fish and wildlife, and to provide a measure of
nonstructural water quality maintenance, the applicant shall
establish a littoral zone below the mean water level along
the shoreline and within a central area of the lake. The
applicant may provide for alternative littoral zone
placement for meeting requirements herein which would
result in more beneficial environmental and wildlife
impacts than strict adherence to the requirements of Section
3 (C) would provide. Such alternative methodology shall
follow generally accepted scientific principles and must be
approved in writing by the County Administrator.

(2) Perimeter berms and swales. For the purposes of ensuring
water quality control and to provide for a measure of long-
term water quality maintenance, the applicant shall
construct a low profile perimeter berm and swale system
designed to intercept and filter overland runoff before
allowing it to discharge into the lake. In addition to this
requirement, applicant shall provide alternative
nonstructural means for meeting requirements herein which
would result in more beneficial environmental and wildlife
impacts than strict adherence to the requirements of Section
3 (C) would provide. Such alternative methodology shall
follow generally accepted U.S. Department of Agriculture
Best Management Practices for Riparian/Lacustrine Buffers
and must be approved by the Director of Public Works.
Lake depth. The requirements in the Chapter 62C-16.0051, Florida Administrative Code (F.A.C.), as it may be amended, Mandatory Phosphate Mine Reclamation Rule shall apply to lake depths.

Revegetation. To ensure timely and successful establishment of ground cover and suitable habitat diversity, the applicant shall comply with the following criteria:

(1) Diversity:

(a) Improved pasture: Not applicable.

(b) South Florida flatwoods: Timber species should consist of longleaf pine, slash pine and oak. No more than ninety (90) percent of these tree species should be planted to pines. Emphasis shall be directed toward restoration of native grasses, legumes and forbs conducive to the site for maximum soil stability with food and fiber production.

(c) Wooded wetlands: Minimum of three (3) species of trees. No more than eighty (80) percent of the total planted density in one species.

(d) Marsh: Mulch from an approved donor site or other approved techniques.

(2) Density/cover:

(a) Improved pasture: Eighty (80) percent ground cover of perennial vegetation following one complete growing season.* Bare areas shall not exceed one-fourth acre.

(b) South Florida flatwoods: Twenty (20) trees per acre with adequate native vegetative ground cover to prevent erosion after one complete growing season. Fifteen (15) trees per acre with a minimum height of one (1) meter after five (5) years. Fifty (50) percent ground cover of herbaceous flatwoods species after one complete growing season shall be established.

(c) Wooded wetlands: Two hundred (200) trees per
acre after one complete growing season.* One hundred (100) trees per acre with a minimum height of one meter after five (5) years.

(d) Marsh: Fifty (50) percent ground cover of herbaceous wetland species after one growing season.** Growing seasons shall be species-specific.

(3) Other protections:

(a) Improved pasture: Not applicable.

(b) South Florida flatwoods: Protection from grazing, mowing or other land uses to allow establishment for a minimum of three (3) years following planting.

(c) Wooded wetlands: Protection from grazing, mowing or other land uses to allow establishment for a minimum of five (5) years following planting.

(d) Marsh: Protection from grazing, mowing or other adverse land uses for a minimum of three (3) years after planting.

(4) Measurement:

a. Improved pasture: Point intercept method on ten-acre units with total number of points submitted to County Administrator for prior review and approval.

b. South Florida flatwoods: Point intercept method according to acceptable practices.

c. Wooded wetlands: Point quarter method. Shall not be planted in rows, but rather randomly.

d. Marsh: Point intercept method according to acceptable practices.

22. The signature and seal of a registered professional engineer(s) responsible for the preparation of the Phosphate Mining Master Plan and an express certification by said engineer(s) that he or she is personally familiar with the proposed mining activities, that he or she has personally reviewed all elements of the Phosphate Mining Master Plan or such elements which
said engineer is certifying, and that all engineering methods, estimates or computations comport with generally accepted engineering practices;

23. The fee required for review of a Phosphate Mining Master Plan application, as prescribed in a schedule of fees established by the Board; and

24. Each item of information in the Phosphate Mining Master Plan that the applicant is unable to furnish in detail, and upon which greater detail will be available at a later date, shall be identified by the applicant and may at the discretion of the Board and for good cause shown be furnished no later than ninety (90) days prior to final approval of Phosphate Mining Master Plan in accordance with the requirements of this Ordinance.

C. Standards for Phosphate Mining Master Plan Approval.

Prior to issuance of Phosphate Mining Master Plan approval, the Board must determine that the phosphate mining activities reflected in the Phosphate Mining Master Plan application:

1. Are consistent with the DeSoto County Comprehensive Plan;

2. Would provide for the orderly development of mineral resources in a manner compatible with the overall development of the County; considering the cumulative effects of other mining activities;

3. Would provide reasonable protection and conservation of natural and environmental resources; infrastructure, and right-of-ways.

4. Would provide for the use of best management practices and the development of technology for maximum control of adverse effects of mining activities; and

5. Would not preclude future uses of mined-out lands for residential, commercial, industrial, agricultural, preservation, public, utility facilities and other uses identified in the DeSoto County Comprehensive Plan.

6. Meets the requirements of DeSoto County flood control and management ordinances, and Section 3(C)(5) herein.

D. Effect of Phosphate Mining Master Plan Approval.

Upon approval of a Phosphate Mining Master Plan, the Board may consider approval of an Operating Permit. Approval of the Phosphate Mining Master Plan constitutes notice that the applicant has provided reasonable assurance that DeSoto County's standards for approval of the Phosphate Mining Master Plan
have been satisfied and that an Operating Permit may be subsequently issued provided the applicant satisfies all requirements for an Operating Permit as set forth in Section 3. Approval of the Phosphate Mining Master Plan shall not vest the applicant with any rights to issuance of said Operating Permit, nor shall it entitle him to initiate mining activities except as hereinafter provided.

1. Expiration of Phosphate Mining Master Plan. If an Operating Permit application has not been submitted after a three (3) year period following approval of the Phosphate Mining Master Plan, the Phosphate Mining Master Plan approval shall automatically terminate unless the Board at its discretion extends the time limit.

2. No pre-mining construction activities. No pre-mining construction activities preparatory to actual mining or beneficiation may be undertaken prior to the issuance of an Operating Permit.

**Section 3** Operating Permit

A. Application.

Any person contemplating phosphate mining activities in the County shall submit ten (10) copies of an Operating Permit application to the County Administrator. The Operating Permit application may be filed concurrently with the Phosphate Mining Master Plan.

B. Required Content.

An application for an Operating Permit shall consist of:

1. All new or additional information obtained by the applicant since submission of the Phosphate Mining Master Plan application that is reasonably necessary for the evaluation of an Operating Permit application under the provisions of the ordinance in effect at the time the Operating Permit application is submitted.

2. Copies of necessary applications to, and all legally required permits and approvals (including waivers, denials, and any special conditions) from, federal, state and regional agencies.

3. A detailed description of changes, if any, to the environmental monitoring program of the approved Phosphate Mining Master Plan submitted in accordance with Section 3 C(6).

4. Effective plans for a spill notification, containment, and safety plan for the clay settling ponds, water reticulation systems, and reagent storage areas addressing such issues as inspection schedules, spill notification...
procedures, maintenance of warning systems, auxiliary water supply sources, water treatment procedures, hurricane preparedness procedures, and clean-up responsibilities. A site security plan including necessary access restrictions shall also be provided.

5. Evidence of financial responsibility meeting the requirements of Section 3 C(18).

6. Information, documentation or studies necessary to affirmatively show compliance with the Operating Permit criteria of this section (as listed in Section C. Criteria for Operating Permit Issuance).

7. The fee required for review of an Operating Permit application, as prescribed in a schedule of fees established by the Board.

8. The applicant shall have a continuing obligation to supplement its permit application with all new pertinent information until permit issuance.

C. Criteria for Operating Permit Issuance.

1. Minimum protection. The applicant shall use best management practices and shall conduct mining activities in a manner that will minimize undesirable effects of mining activities and maximize protection of public facilities, natural resources and the environment.

2. Setback requirements. All mining activities shall be subject to the following setback limitations. Reductions of these setback restrictions may be requested by the applicant under subsection (d), below.

a. Setback for excavation activities. No excavation activities, except as hereinafter provided, shall be performed within:

(1) Five Hundred (500) feet from the property line of a church, public park boundary, or cemetery.

(2) One thousand (1,000) feet from the property line of any school.

(3) One thousand (1,000) feet from the closest portion of a permitted dwelling unit existing at the time of the Phosphate Mining Master Plan approval, or two hundred (200) feet from the property line of that portion of the adjacent property whose property tax folio number’s legal description contains the dwelling unit, whichever is the greater setback distance.
(4) Two hundred (200) feet from any existing public right-of-way, or public easement for drainage, utility or public road purposes.

(5) Five hundred (500) feet from the boundary or survey line of an officially designated historical site which is not located within the mine boundary.

(6) Two hundred (200) feet from the property line in areas not controlled by C.2.a.1-5 above, including agricultural use.

b. Setback for settling ponds and beneficiation facilities. No settling pond or beneficiation facility shall be constructed or operated within:

(1) No settling ponds shall be constructed within five hundred (500) feet of the property of a church, public park boundary or cemetery.

(2) No settling ponds shall be constructed within one thousand (1,000) feet from the property line of any school.

(3) No settling ponds shall be constructed within one thousand (1,000) feet from the closest portion of a permitted dwelling unit existing at the time of the Phosphate Mining Master Plan approval, or two hundred (200) feet from the property line of that portion of the adjacent property whose property tax folio number’s legal description contains the dwelling unit, whichever is the greater setback distance.

(4) No settling pond shall be constructed within five hundred (500) feet from any existing public right-of-way, or public easement for drainage, utility or public road purposes.

(5) No settling pond shall be constructed within five hundred (500) feet from the boundary or survey line of an officially designated historical site, which is not located within the mine boundary.

(6) No settling pond shall be constructed within two hundred (200) feet from the property line in areas not controlled by C.2.b.1-5 above, including agricultural use.

(7) No beneficiation plant shall be constructed within one thousand (1,000) feet of the applicant’s property line.
c. Setback for stockpiles. No excavated material or stockpile shall be left on applicant's property longer than sixty (60) days within:

(1) Five hundred (500) feet of the property of a church, public park boundary or cemetery.

(2) One thousand (1,000) feet from the property line of any school.

(3) One thousand (1,000) feet from the closest portion of a permitted dwelling unit existing at the time of the Phosphate Mining Master Plan approval, or two hundred (200) feet from the property line of that portion of the adjacent property whose property tax folio number's legal description contains the dwelling unit, whichever is the greater setback distance.

(4) Two hundred (200) feet from any existing public right-of-way, or public easement for drainage, utility or public road purposes.

(5) Five hundred (500) feet from the boundary or survey line of an officially designated historical site which is not located within the mine boundary.

(6) Two hundred (200) feet from the property line in areas not controlled by C.2.c.1-5 above, including agricultural use.

d. Reduction to setbacks authorized.

(1) Consent of adjoining owners. The above setback requirements shall not apply where owners of the land protected by said restrictions have expressly consented to a reduction thereof by written instrument executed with the formality of a deed and recorded in the public records of the County. Such consent and recordation must occur prior to any mining activities by applicant in areas protected by this setback provision. Certified copies of said recorded instrument shall be furnished to the County Administrator, who shall acknowledge receipt in writing.

(2) Reduction of setbacks may be granted by the Board in the following cases:

(a) With consent of owners of properties within the setbacks specified in Section 3. The above setback
requirements shall not apply where all owners of the land protected by said restrictions have expressly consented to a reduction thereof by written instrument executed with the formality of a deed and recorded in the Public Records of DeSoto County, Florida. Such consent and recordation must occur prior to any mining activities within the setback areas within the mining unit. Certified copies of the recorded instrument shall be furnished to the County Administrator. If the Board determines that the applicant has provided competent and substantial evidence that the requested setback will not adversely affect offsite wetlands, drainage and floodplains, then a waiver may be granted by the Board.

(b) Without consent of owners of properties within the setbacks listed in Section 3. If the Board determines that the applicant has demonstrated that the applicable setback requirements are unreasonable, and has provided competent and substantial evidence that a lesser requirement would not adversely affect the public health, safety and welfare, then a waiver may be granted by the Board. The applicant shall provide competent and substantial evidence that:

(1) A lesser setback would not adversely affect the public health, safety and welfare, and:

(2) The waiver, if granted, would not affect off-site properties with respect to impacts on water quality, water quantity, air quality, vibration, noise, esthetics, environmental impacts to wetlands (including secondary impacts to the habitat functions of wetlands), offsite drainage, and floodplains ["reduction" would not reduce groundwater levels in the intermediate aquifer on adjoining private property by more than three (3) feet and would not reduce the groundwater levels in the surficial aquifer on adjoining private property by more than one (1) foot].

3. Variance. If the applicant affirmatively demonstrates that any applicable setback requirement is unreasonable under the circumstances and would create undue hardship, and that a lesser requirement would not adversely affect the public health, safety, and welfare in the particular circumstances, the Board of County Commissioners may allow a lesser
setback requirement after notice and public hearing. Such notice and hearing shall be held as part of the public hearing for Operating Permit or Phosphate Mining Master Plan approval. Notices for such combined public hearings shall be by individual and separate publication.

4. Height Requirements of stockpiles, excavated materials, but not overburden. No excavated material (ore) sand tailings or stockpile shall be higher than a slope-line of 35' vertical to 500' horizontal projected from the nearest point on the permittee's property line, except as approved by the Board at a duly noticed public hearing. Overburden is excluded from the requirements of this section. Overburden may be stockpiled in setback areas upon approval of the Board. Such approval will be based on the applicant's submission of proposed mitigation measures or competent and substantial evidence that the placement of overburden in setback areas will not adversely affect the adjacent property based on slope of overburden stockpile, height of overburden stockpile, duration of placement of overburden stockpile, distance of overburden stockpile from property line of adjacent property, and adjacent land use.

5. Floodplain – As set forth in and in accordance with the approved Mining Master Plan:

a. No mining or construction of permanent buildings or other structures will be permitted below the 25-year floodplain elevation. Flood elevations will be those established by the County, the Southwest Florida Water Management District, and the U.S. Geological Survey.

b. No mining, placement of fill, construction of permanent buildings or other structures inside the 100-year floodplain elevation shall be permitted unless the applicant can demonstrate, in accordance with the Environmental Resource Permit (ERP) Rules of the Southwest Florida Water Management District and the Florida Department of Environmental Protection, that subject activities will cause no net encroachment of the floodplain resulting in adverse impacts to conveyance, storage, water quality, or adjacent lands. In addition, conveyance restriction of historical flow regimes which will adversely affect adjacent land owners, are prohibited. Dragline crossings will be approved pursuant to the Master Mining Plan and appropriate state and federal permits.

c. Nothing herein is intended to prevent or preclude temporary crossings to access mine infrastructure.

6. Environmental monitoring program. The monitoring program shall be developed in accordance with the following:
a. Monitoring programs for mining activities in the County shall be used to establish baseline conditions prior to mining activities, and subsequently shall be used to continually evaluate compliance with applicable standards established by local, regional, state and federal agencies over the life of the mine until reclamation approval has been received from the County Administrator. The program shall consist of monitoring the following areas:

(1) Surface water quality
(2) Surface water quantity;
(3) Groundwater quality;
(4) Groundwater quantity monitoring shall be in accordance with the laws governing and the rules and regulations of the water management agency regulating such withdrawals;
(5) Rainfall; The permittee shall monitor rainfall on his property on a daily basis. Historical data shall be made available to the county upon request, and shall be provided in the annual report.
(6) Air quality. Mitigated wetlands in coordination with monitoring requirements of FDEP Specific requirements of the above-mentioned components of the monitoring program shall be developed by the applicant, and approved by the County Administrator in conjunction with the Board of County Commissioners, on a site-specific basis according to the features of the site and the projected environmental impacts of mining activities.

b. Each component of the environmental monitoring program shall consist of the following descriptive elements:

(1) Sampling location;
(2) Parameters and standards;
(3) Sampling schedule;
(4) Sampling and analysis methods;
(5) Quality assurance; and
(6) Data reduction and reporting.

The program shall additionally contain an introductory section describing the site and the proposed activities.

c. The applicant shall submit copies of all environmental monitoring reports and data required by outside agencies for the permitted mine (including reports for those portions of the permitted mine that occur in adjacent counties). The data reports shall be submitted concurrently with the submission to the requiring agency.

d. Modification of monitoring requirements may be made during the annual progress report process. The purpose of such modification is to add or delete sampling to reflect new developments in mining and sampling technology, which may improve both sampling and environmental quality.

(1) Requests by the applicant for changes in the monitoring program shall be submitted to the County Administrator not less than ninety (90) days prior to the twelve-month period to which they apply. Proposed changes must be approved or denied by the County Administrator in conjunction with the Board of County Commissioners within thirty (30) days from the date of submission.

(2) Changes in the monitoring program may be proposed by the County not less than ninety (90) days prior to the twelve-month period to which they apply. The applicant shall comment on said changes in writing within thirty (30) days after receipt of said proposed changes. Final decision on proposed changes shall be made by the County Administrator in conjunction with the Board of County Commissioners within thirty (30) days of receiving the comments. If written comments by the applicant are not received on time, the proposed changes will automatically take effect at the beginning of the next monitoring year.

(3) In the event of either a natural or man-made disaster or accident the County reserves the right to declare an emergency and may require immediate changes or additions to the environmental monitoring program.

(4) Changes in the monitoring program as required by state or federal agencies shall be implemented according to schedules prescribed by law or agency permit.
6. Radiation.

a. Standards. The applicant shall conduct mining and reclamation activities in such a manner as to ensure that upon completion of reclamation, all disturbed lands within the Operating Permit area have radiation levels that do not exceed applicable state requirements.

7. Reclamation. The applicant shall affirmatively demonstrate by generally accepted scientific methodology that reclamation will proceed in accordance with the approved Phosphate Mining Master Plan and the following criteria:

a. Revegetation site plans. A revegetation plan shall be provided identifying the planting density, species, general planting site plan, and maintenance provisions required to ensure successful revegetation of disturbed lands in accordance with the requirements of Section 2 (B)21(f).

b. Revegetation monitoring. The applicant shall be responsible for monitoring the reclamation program for the period of time specified within this ordinance for successful establishment of vegetation by land use type. This monitoring shall ensure that at the end of the specified time period the diversity, density and other protections for the revegetated plant species are at least as proposed in the approved reclamation plan.

If after the specified time period the density and/or diversity are not as proposed, additional plantings will be required and a monitoring program shall be reinstituted so that the reclaimed land will meet the minimum standards set forth in the revegetation program. Deviations from the approved revegetation plan which are the result of natural disasters or catastrophic events not resulting from the action or negligence of the applicant, will not retrigger a planting and monitoring program.

c. Lake design.

(1) Littoral zones. Littoral zones provided to meet the requirements of Section 2 (B)21(e)1 shall meet the following design criteria:

(a) The total area of the zones shall be equivalent to a minimum of fifteen (15) percent of the total surface
area at the mean water level. Not more than sixty (60) percent of the total area requirement shall be met along the shoreline.

(b) The littoral zone along the shoreline shall be clustered over areas not exceeding fifty (50) percent of the shoreline perimeter to ensure adequate access for maintenance and other land use purposes. The littoral zone(s) shall be sloped at a 4:1 ratio or greater below the water line to a depth not to exceed six (6) feet.

(c) The littoral zones within a central area of the lake, not connected to any shoreline littoral area, shall be constructed at depths below the mean low water line not to exceed three (3) feet with side slopes at the perimeter of the littoral zone of approximately 4:1.

(d) All other portions of the lake perimeter not sloped to meet littoral zone requirements shall be shaped to 4:1 slope from water edge to a minimum depth of six (6) feet.

(2) Perimeter berms and swales. Perimeter berms and swales provided to meet the requirements of Section 2 (B)21(e)2 shall be constructed to meet the following requirements, unless otherwise agreed to by the County Administrator or his designee and the permittee based on particular facts and circumstances concerning a specific reclamation site.

(a) The perimeter swale shall have a minimum slope of three (3) percent.

(b) Side slopes on the swale shall be no less than 4:1.

(c) Spreader spillways to the lake from the berm and swale system shall be provided at regular intervals not to exceed two hundred (200) feet and shall be protected against erosion.

(d) Perimeter berm and swale systems need not be required along shorelines where such lake systems adjoin wetland areas and where the unrestricted water movement from one water body to another is necessary to promote proper hydroperiods and biological integrity.
(e) A perimeter greenbelt of vegetation consisting of tree and shrub species indigenous to the area may be constructed in addition to ground cover. The greenbelt shall be at least one hundred twenty (120) feet wide and shall have a slope no steeper than thirty (30) feet horizontal to one (1) foot vertical.

(f) Sequence and Schedule of Reclamation. The Reclamation Plan shall include:

i. The reclamation sequence of the reclamation units for the life of the mine shown on a year-by-year basis;

ii. The schedule of reclamation operation and completion of the reclamation units for the life of the mine shown on a year-by-year basis.

8. Nonpoint source pollution control. The applicant shall control nonpoint sources of pollution of air and water resources in accordance with applicable state and local requirements.

9. Settling pond disposal. Waste materials or other materials with high contents of clay shall be disposed of only within settling ponds or sand/clay reclamation sites. The sand/clay reclamation sites shall be posted and enclosed within a fence unless otherwise approved by the County Administrator or his designee.

10. Settling ponds. All dams containing settling and thickening ponds will be located, designed, constructed, and maintained in compliance with the applicable rules and regulations of the Department of Environmental Protection of the State of Florida, and in accordance with sound engineering practice. Outlet structures from settling ponds will be designed and constructed according to accepted, sound engineering practice.

11. Pipelines. The applicant shall provide positive protection, such as alarms and containment systems, against any significant discharge, leak or other release of materials from pipelines that are external to the rainfall catchment area of the water reticulation system.

12. Roadway impacts, improvements and repairs. Where the transportation analysis of the applicant's approved Phosphate Mining Master Plan indicates that the safety, circulation capacity or stability of county-maintained roads or rights-of-way must be improved to allow utilization of
such roads or rights-of-way by an Operating Permit, such applicant(s) shall reimburse the County for the actual cost of the improvements necessary to allow utilization of such roads or right-of-way by the applicant. Such reimbursement shall not exceed the applicant's proportionate share of the improvement necessary to allow utilization by the applicant. An applicant shall not be required to pay for improvements relating to preexisting conditions as established in said transportation analysis or conditions unrelated to its activities, except when such improvements are an integral part of the work necessary to ensure the safety, circulation capacity or stability of the affected roads or rights-of-way. The County Administrator shall administer any construction required under this section. The applicant shall reimburse the County for the actual cost of all necessary improvements as said improvements are constructed. Prior to any construction required under this section, the applicant shall furnish a performance bond sufficient to indemnify the County against failure of the applicant to reimburse the County. All monies received by the County under this provision shall be segregated in separate accounts and disbursed only for improvements necessitated by the particular applicant's utilization of County-maintained roads or rights-of-way. In the alternative the applicant may propose to undertake and complete the required road or right-of-way improvements with County reimbursing the applicant for any costs that exceed the applicant's proportionate share of the improvements that are necessary to allow utilization by the applicant.

13. Roadway crossings. No crossings of County roads, easements or rights-of-way by mining equipment, which by crossing could damage same, shall be permitted without the prior written approval of the Director of Public Works.

14. Sale of borrow material. If any material other than that proposed to be mined in the Phosphate Mining Master Plan is excavated on the property and is to be marketed for use off the mine site, the applicant shall apply for approval of all required earth moving or mining permits prior to the hauling of any such material on county right-of-way.

15. Noise. Increases to ambient noise resulting from mining activities shall not exceed the levels established by the County, as measured at the applicant's property line, nor shall mining activities generate noise in excess of that allowed by regulations of federal, state or local agencies.

16. Blasting. No blasting or other use of explosives shall be performed without the prior written approval of the County Administrator, who may issue appropriate orders for the public safety and control of nuisances. There shall be notice to the public in the newspaper one (1) week prior to the blasting and notice shall be mailed to property owners within 2,400 feet of the blasting site.
17. Vibrations. All mining activities shall be performed in a manner that will prevent vibrations of the soil from reaching a magnitude sufficient to cause damage to a person’s property outside the applicant's property.


   a. Prior to the commencement of actual mining operations, every Applicant shall furnish to the Board evidence of financial responsibility in an amount based upon the total number of acres to be mined or excavated and utilized as settling pond areas during the first year of actual mining operations under the approved mining and reclamation plan according to the following schedules:

      (1) For each acre of land to be mined or excavated, five thousand dollars ($5,000);

      (2) For each acre-foot of the maximum above grade storage of the largest settling pond, sand/clay mix settling area or thickening pond approved during the first year of actual mining one thousand dollars ($1,000).

   b. Such evidence of financial responsibility shall be by:

      1. Evidence of insurance, surety bonds, letters of credit, or other financial instruments acceptable to DeSoto County, where a payee is required it shall be payable to DeSoto County to cover all costs and expenses of completion of reclamation of any areas which are not reclaimed as required by the approved Master Mining and Reclamation Plan and the costs of cleanups of any pollutants released by failure of any settling or thickening pond, dam, spillway or other outlet structure and damages to public lands and waters caused thereby; or

      2. A financial statement which has been audited and certified without qualification by a certified public accountant giving indication of ability to respond to liability in the amounts determined according to the above schedule. If the statement reflects the financial position of the Applicant as of a date more than sixty (60) days prior to the date of filing of the application it shall be accompanied by copies of all interim balance sheets, if any, of the Applicant certified by the chief financial officer to be true and correct; and if the latest interim balance sheet reflects the Applicant's financial position as of a date more than sixty
(60) days prior to filing of the application, by a certification of the chief financial officer of the Applicant dated no earlier than sixty (60) days prior to filing that no material adverse changes have occurred to the Applicant's financial condition in the interim. Applicant shall be responsible for payment of all reasonable costs incurred by the County, including but not limited to the fees of any accountant or financial consultant, in the review of such financial statement. The above notwithstanding, if at any time the Board should determine that the Applicant is of doubtful ability to respond to liability in the amount determined according to the schedule in subsection a. above, the Board may require the Applicant to provide evidence of financial responsibility in the manner provided in subsection b(1).

3. Subsequent Proofs: At the time of submission of the Annual Report the Applicant shall provide updated financial information and proof of financial responsibility applicable to each prospective unit.

19. Financial Responsibility; Annual Review

a. Each year at the time of Annual Review the Applicant shall furnish to the Board evidence of financial responsibility updated to the anniversary date. The amount shall be based upon the following schedule:

(1) For each acre of land to be mined in the year following the anniversary date, five thousand dollars ($5,000);

(2) For each acre of land mined or previously covered by a settling pond, sand clay mix area, or thickening pond but not reclaimed in compliance with this Ordinance and the Operating Permit as of the anniversary date, five thousand dollars ($5,000), which amount shall be reduced to two thousand dollars ($2,000) per acre upon completion of the initial revegetation;

(3) For each acre-foot of the maximum above grade storage of the largest settling pond, sand/clay mix settling area or thickening pond in the year following the anniversary date, one thousand dollars ($1,000);

b. At the Annual Review when the last mining unit of the Master Mining Plan is presented, the Operator shall demonstrate to the Board adequate financial ability to ensure the completion of all
land reclamation in adherence to the Master Mining Plan. Such evidence shall be by:

(1) Evidence of insurance, surety bonds, letters of credit, or other financial instruments acceptable by DeSoto County, where a payee is required it shall be payable to DeSoto County, to cover all costs and expenses of completion of reclamation of any areas which are not reclaimed as required by the approved Master Mining and Reclamation Plan and the costs of cleanups of any pollutants released by failure of any settling or thickening pond, dam, spillway or other outlet structure and damages to public lands and waters caused hereby; or

(2) A financial statement which has been audited and certified without qualification by a certified public accountant giving indication of ability to respond to liability in the amounts determined according to the above schedule. If the statement reflects the financial position of the Applicant as of a date more than sixty (60) days prior to the date of submission of the Annual Unit Review and the Annual Operating Report it shall be accompanied by copies of all interim balance sheets if any, of the Applicant certified by the chief financial officer to be true and correct; and if the latest interim balance sheet reflects the Applicant's financial position as of a date more than sixty (60) days prior to submission of the Annual Unit Review and Annual Operating Report, by a certification of the chief financial officer of the Applicant dated no earlier than sixty (60) days prior to filing that no material adverse changes have occurred to the Applicant's financial condition in the interim. Applicant shall be responsible for payment of all reasonable costs incurred by the County, including but not limited to the fees of any accountant or financial consultant, in the review of such financial statement. The above notwithstanding, if at any time the Board should determine that the Applicant is of doubtful ability to respond to liability in the amount determined according to schedule in subsection a. above, the Board may require the Applicant to provide evidence of financial responsibility in the manner provided in subsection b(1).

c. Insurance. The applicant shall provide certificates of insurance showing that the applicant has liability insurance policies issued by an insurance company authorized to do business in the state covering:
(1) Personal injury, including death, in an amount not less than five million dollars ($5,000,000.00) per occurrence;

(2) Property damage in an amount not less than five million dollars ($5,000,000.00) per occurrence and

(3) Environmental damage, for the removal, neutralizing or cleaning up outside the mine site of any substance released or escaped which caused environmental impairment, or which could cause environmental impairment if not removed, neutralized, or cleaned up, in an amount not less than twenty million dollars ($20,000,000.00) Such coverage shall be applicable over the term of the Operating Permit.

D. Standards for Operating Permit Issuance. If review of the Operating Permit application shows that the proposed mining activities will not result in substantial, adverse environmental impacts, the applicant shall affirmatively demonstrate that it has met all requirements for Operating Permits, and that the proposed mining activities are consistent with the purposes of this ordinance and with the approved Phosphate Mining Master Plan.

E. Effect of Operating Permit Issuance.

Issuance of an Operating Permit shall entitle the applicant to begin mining activities. An operating permit shall be valid for a period of five years unless suspended or revoked prior to that time. If the annual reviews demonstrate compliance with the terms of the Phosphate Mining Master Plan and the Operating Permit then the Board may at its discretion extend the term of the Operating Permit for an additional five year period without requiring a new application by the applicant. An applicant shall have five (5) years from the date the Operating Permit is issued to commence mining activities; if mining activities are not commenced within said time, the Operating Permit, shall be void, unless the Board in its discretion grants an extension for good cause.

Section 4 Procedures for Processing Applications

A. Initial Application.

1. Completeness. Within thirty (30) days after receipt of an application, the County Administrator shall examine the application and notify the applicant in writing that the application is complete or alternatively notify the applicant in writing of any apparent errors or omissions, and request any required additional information. If additional information is required, the applicant shall provide it within thirty (30) days, except that additional
time may be allowed in writing if the applicant demonstrates that such extension is necessary to prepare the requested information. The County Administrator shall have fifteen (15) days to review the additional information to determine completeness and shall advise the applicant in writing of such determination. If an applicant decides that the additional information cannot be furnished, the applicant shall advise the County Administrator of its position and reasons therefore in writing; and the application shall then be processed as if it were complete. The Board may, by resolution, deny an application if the applicant, after receiving timely notice, fails to correct the errors or omissions or to supply additional information, if such failure results in the requirements of this chapter not being met. Applications that are denied shall be returned to the applicant, who may reapply ninety (90) days thereafter.

2. Compliance.

a. After the County Administrator has determined the application is complete, the applicant shall be notified of such in writing. The application shall be reviewed by appropriate County departments and shall be referred to the Board as expeditiously as possible. The compliance review shall be completed, and notice of public hearing regarding the application shall be issued, within ninety (90) days after notification of application completeness, except that a larger period of time may be allowed upon written agreement of the applicant and the County Administrator.

b. Because of the extensive time requirements for reviewing mining permits, if two (2) or more applications for permits or approvals have been submitted to the County so that simultaneous processing and review are necessary, the Board may enlarge the time limits set for compliance determination by a reasonable period of time, not to exceed ninety (90) days.

3. Notice and public hearing. Upon completion of the compliance review, the county shall cause notice of a public hearing concerning the application to be issued as soon as practical. In addition, notice of the time and place of the public hearings by the Board of County Commissioners shall be sent at least fifteen days in advance of the first hearing by mail to all owners of property within two hundred (200) feet of the land for which the operating permit is sought. For the purposes of this requirement, the names and addresses of property owners shall be deemed those appearing on the latest tax rolls of DeSoto County. The applicant will pay for the cost of this notice.

4. Final decision. Final decision shall be rendered by the Board within fifteen (15) days of termination of the public hearing. Said final decision
shall be supported by specific factual findings and shall be in one of the following forms:

a. Approval of the application as filed;

b. Approval of the application with conditions; or

c. Denial of the application, which denial shall include the factual and legal bases for such denial. No permit shall be issued by the Board if there is found information set forth in the application or otherwise that the applicant cannot comply with the requirements of this ordinance; or that the applicant has had any other permit issued hereunder revoked, or instrument of financial security posted to comply with this chapter forfeited, and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the Board.

B. Amendment.

1. If an applicant proposes to change, or actually changes, its mining activities from those approved in a Phosphate Mining Master Plan or Operating Permit, it shall promptly file with the County Administrator a written request for an amendment thereto, signed by the applicant's authorized agent. Upon receipt of a request for amendment, the County Administrator shall determine whether or not the requested amendment is significant. Significant changes require notice and a public hearing before the Board. Significant changes shall also include, but are not limited to, any change in the location or manner of construction of a settling pond, water reticulation structures, or discharge points; permanent roads or other transportation facilities; and any other change that might reasonably result in substantially increased adverse impacts.

2. Any request for approval of a significant amendment shall comply with the procedures outlined for the original application as to the specific item(s) to be amended.

3. Changes determined not to be significant shall be reviewed by the County Administrator. The time schedule for the review will be the same as that given in Section 4 (A)(1). Procedures for processing new applications shall apply, except that no Board action is required.

4. Final Decision. A final decision on changes not determined significant under this section shall be rendered by the County Administrator within fifteen (15) days of completion of review of the proposed amendment and shall be in one of the following forms:
a. Approval of the amendment application as filed.

b. Approval of the amendment application with conditions.

c. Denial of the amendment application, which denial shall include the factual and legal basis for such denial.

5. Amendment applications denied by the County Administrator may be appealed to the Board of County Commissioners.

C. Transfer.

1. An Operating Permit (or rights acquired thereby), may be wholly or partially transferred if, prior to such transfer, the transferee furnishes satisfactory evidence of financial responsibility as is then required to be maintained on account of the lands or interest therein to be transferred. The transfer shall be accomplished by the issuance of a transfer permit (or partial transfer permit) to the transferee. Upon approval by the Board, the County Administrator shall issue such transfer permit at the request of the transferee or his authorized agent. Upon acceptance of the transfer permit, the transferee assumes the responsibility of compliance with all requirements of this ordinance effective on the date of transfer, with all terms and conditions of the approve Phosphate Mining Master Plan, and if applicable, the operating permit.

2. An application for transfer shall be approved by the Board, unless it determines that the prospective transferee has not fulfilled the above requirements. Failure to comply with the terms of this section shall be grounds for suspension or revocation of the Phosphate Mining Master Plan and/or Operating Permit and will result in both the original applicant and the transferee being liable for performance in accordance with this ordinance until full compliance is established.

D. Subsequent Permit Procedures.

At least six (6) months prior to the expiration of the Operating Permit, the applicant shall apply for a new Operating Permit under the provisions of the ordinance that was in effect at the time of the original Operating Permit approval. The procedures for processing an application for a new Operating Permit shall follow those prescribed for obtaining an original Operating Permit. The then-current Operating Permit shall continue in existence until final decision on the new permit is rendered by the Board. Upon issuance, new permits shall be valid for a period of five (5) years; except that the Board may prescribe a shorter permit term if a previous permit was revoked or suspended. The application for obtaining new Operating Permits shall be accompanied by an appropriate fee, as prescribed in a schedule of fees established by the Board.
E. Annual Progress Reports and Reclamation Approval.

1. Progress report. Operators holding an approved Phosphate Mining Master Plan shall file with the Board within forty-five (45) days after each anniversary date of Phosphate Mining Master Plan approval, a written report, in five (5) copies, which shall include the following information:

a. The schedule of mining operation and completion of the mining unit, including identification of lands mined during the preceding year and lands expected to be mined during the current year;

b. The schedule of reclamation operation and completion at the reclamation unit, including a discussion of the reclamation progress in each previously mined parcel except those for which reclamation has been released, and discussion of reclamation planned for the current year in said parcels;

c. Aerial photographs at a scale acceptable to the County of all areas disturbed by mining activities throughout the life of the mine, excluding those reclaimed areas which have been approved in accordance with Section 4 (E)4.

d. A summary of results of the previous year's environmental monitoring program indicating the magnitude and frequency of air and water quality parameters and mass loading of same exceeded applicable ambient or effluent emissions standards. Any significant trends in degradation of ambient air and water quality shall also be discussed along with any measures being taken to correct or improve the performance of pollution control systems;

e. A review and update of the applicant's financial responsibility in accordance with the provisions of Section 3 C(18); and

f. The applicant shall also furnish the County Administrator with copies of all inspection reports not previously furnished, which are required by state or federal regulatory agencies.

g. Emergency Response Plans: The Operator shall prepare emergency response plans to be followed in the event of a dam failure for each settling pond, sand clay mix area or thickening pond currently active or to become active in the following operational year. Each plan shall include mapping showing areas subject to downstream flooding and a notification of local and state officials. All appropriate operator employees shall be trained in the implementation of the emergency response plans. The operator
shall maintain records documenting such training.

2. Certification by engineer or geologist. A Florida-registered professional engineer or geologist employed by the applicant, commissioned by the applicant and familiar with the applicant’s mining activities, shall certify in the annual progress report that the project is being developed and operated in strict accordance with the conditions set forth in the approved Phosphate Mining Master Plan and Operating Permit and in accordance with generally accepted engineering practices.

3. Failure to file. Failure to file the required annual progress report shall be grounds for suspension of the Operating Permit. An extension of time for filing may be granted by the County Administrator upon request and for good cause shown.

4. Reclamation approval. Release of reclaimed areas shall be requested in the annual progress report by identifying the specific parcels for which approval is sought. Reclamation of disturbed lands shall be deemed completed after the applicant has demonstrated to the County Administrator that the specific parcels have been reclaimed in accordance with the approved Phosphate Mining Master Plan and Operating Permit. Certification shall only be given for completion of an entire reclamation unit after the permittee has demonstrated that viable vegetative cover has been attained at the approved densities. Specific parcels shall be approved or denied in writing by the County Administrator within sixty (60) days of receipt of the annual progress report. Specific reasons shall be cited for denial of any parcels. Upon approval of reclaimed parcels by the County Administrator, the reclamation bond(s) shall be released or applied to parcels to be disturbed in the ensuing year, as appropriate.

5. Fees. Submission of the annual progress report shall be accompanied by an appropriate fee, as prescribed in a schedule of fees established by the Board.

Section 5 Enforcement.

A. Absolute Liability.

As a condition of the issuance of any Operating Permit under this ordinance, the applicant shall be subject to absolute liability, without necessity of proof of negligence in any form or manner, to any injured party for damages resulting from failure of any dam, spillway, or other outlet structure of a settling pond, or from failure of the applicant to complete any reclamation of lands as required.

B. Inspection.
A representative of the County is authorized to enter and remain upon the premises of the applicant's mine for the purpose of inspection at any reasonable time in accordance with applicable safety guidelines, to ensure compliance with the terms and conditions of the Operating Permit, this ordinance and the approved Phosphate Mining Master Plan. Inspectors shall give the applicant reasonable notice of the proposed inspection and shall allow the applicant an opportunity to provide appropriate personnel to accompany the inspector while on the applicant's premises. A copy of the inspection report will be provided to the applicant at its request.

C. Violations.

In addition to those violations otherwise enumerated in prior sections of this ordinance, it shall be a violation of this ordinance, and it shall be prohibited:

1. To fail to fulfill any of the terms, criteria, standards or requirements of this ordinance;

2. To fail to obtain any permit or approval required by this ordinance or to violate or fail to comply with the terms of any approved Phosphate Mining Master Plan or any Operating Permit condition, or any other approval adopted or issued by the Board or Director of Public Works pursuant to lawful authority;

3. To fail to comply with the approved mining operation and completion schedule of each mining unit and/or fail to comply with the approved reclamation operation and completion schedule of each reclamation unit provided that violation of this subsection (3) shall not result in criminal sanctioned penalties as provided in Section 5 (F)(1);

4. To fail or refuse to comply with a notice of violation as described in Section 5 (D) unless an appeal is filed and the Board withdraws such notice of violation. Each day of continuing violation shall constitute a separate violation;

5. To knowingly make any false statement, representation or certification in any application, record, report, plan, map or other document filed or required to be maintained under this ordinance or to falsify, tamper with, or knowingly render inaccurate any monitoring device required to be maintained by this ordinance or by any permit or approval issued under this ordinance;

6. To fail to notify the County Administrator within five (5) business days of any changes from the approved Phosphate Mining Master Plan or Operating Permit, or changes ordered or required by federal or state agencies;
7. To fail to provide the County Administrator with copies of any notice of violation, noncompliance order, stop-work order or other written notification by any state or federal agency of any alleged violation of or failure to comply with any law, ordinance, regulation, or order, within forty-eight (48) hours of receipt of such notification by the applicant; and

8. All otherwise applicable statutes or regulatory requirements of federal, state, and local agencies are made a part of this ordinance, and a violation of any such requirement relating to the regulation of phosphate mining shall constitute a violation of this ordinance.

D. Administrative Enforcement Procedures.

1. Notice of violation. If at any time during the term of the permit the permittee fails to comply with Phosphate Mining Master Plan or the Operating Permit or the appropriate rules and regulations of other departments or agencies of the County, the County Administrator shall immediately notify the permittee in writing by certified mail and shall order corrective action. Written notification may be dispensed with in the event that circumstances establish that irreparable harm may occur if immediate action is not taken. However, the County shall make a reasonable attempt to notify the permittee by telephone or oral communication when a Board action is essential for the public health, safety, and welfare. Unless the County determines that a shorter period of time is required due to the nature of the violation, the permittee shall generally have ten (10) days to correct the violation. If the permittee has commenced corrective action but requires additional time to complete such actions, the County may allow additional time to correct the violation.

2. Appeal. The applicant may request the Board to review and withdraw a notice of violation not later than ten (10) days after receipt thereof. An appeal does not authorize the noticed activities to continue or recommence and does not stay the effect of the notice of violation. The Board will expedite the scheduling of a hearing on the appeal to the extent possible.

3. Compliance. Compliance with a notice of violation shall be reported to the Board by written confirmation from the County Administrator. Should the violation activity not be corrected within the prescribed time or any extension thereto, or should an appeal be unsuccessful or not be filed within the prescribed time, the Operating Permit shall be suspended pending proof of compliance by the applicant. Under appropriate circumstances if the public health, safety or welfare, is threatened, the Operating Permit may be revoked by the Board.
4. In addition, the Board may require the Operator to provide evidence of financial responsibility in the manner provided for in Section 3 (C)(19)(b)(1), to ensure that a violation of this Ordinance, the rules and regulations adopted hereunder, including approved mining operations and completion schedule of each mining unit and/or approved reclamation operation and completion schedule of each reclamation unit, is corrected or cured. The Board may, at any time, take such actions as it deems necessary to cure a violation. The Operator shall be liable for all costs of the County in curing a violation or completing reclamation, and the County shall have the right to proceed against any financial responsibility in order to recover such cost. The remedies provided for in this section are cumulative to remedies and penalties otherwise set forth in Section 5 (F).

E. Suspension or Revocation of Permits and Approvals.

1. The Board, by resolution, may suspend a previously issued phosphate mining approval or permit as herein provided if it determines that the applicant is in violation of the terms of this ordinance, the Phosphate Mining Master Plan or the Operating Permit.

2. The Board, by resolution, may revoke a previously issued phosphate mining approval or permit as provided herein only if it determines that the permitted activity has become a present, immediate danger to the public health, safety or welfare.

3. Prior to any suspension or revocation, the Board shall give not less than fifteen (15) days written notification thereof by certified mail to the applicant. Such notification shall contain a statement of the reasons why the approval or permit may be suspended or revoked and references to applicable ordinance provisions or permit conditions.

4. The applicant may file a written explanation no later than ten (10) days after notice of the proposed suspension or revocation is served upon it, and in such submission may request a public hearing before the Board.

5. No permit shall be suspended or revoked before the applicant is afforded notice and an opportunity for hearing before the Board, unless the Board determines that danger to the public is imminent, in which case it may order temporary suspension of specifically described activities until such time as a hearing is held.

F. Judicial Enforcement Procedures

1. Criminal penalties. Violation of this ordinance shall constitute a criminal misdemeanor offense and shall be punishable as provided by general law for misdemeanors. Each day of continued violation shall be considered a
separate offense.

2. Civil remedies. In its discretion, the Board is authorized to commence the following actions:

a. The Board may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters or property, including animal, plant and aquatic life of the County caused by such violation. If it prevails, the County shall be entitled to the award of costs and reasonable attorney's fees.

b. The Board may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty for each violation including a violation of the approved mining operations and completion schedules for each mining unit, and/or approved reclamation operations or completion schedules for each reclamation unit in an amount not to exceed one hundred thousand dollars ($100,000) per offense. Each day of continuing violation shall be deemed a separate offense for purposes of penalty assessment. In determining the severity of the penalty, the court should consider the applicant's history of permit violations; the appropriateness of such penalty to the business of the applicant; the seriousness of the violation, including any irreparable injury to the environment and any hazards to the health or safety of the public; whether the violation was willful; and the demonstrated good faith of the applicant in attempting to achieve rapid compliance after notice of the violation. If it prevails, the County shall be entitled to the award of costs and reasonable attorney's fees.

c. The Board may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this ordinance, or any regulation, permit or approval thereunder; to enjoin any violation of this ordinance, including a violation of the approved mining operations and completion schedules for each mining unit, and/or approved reclamation operations or completion schedules for each reclamation unit and to seek injunctive relief to prevent irreparable injury to the air, waters and property of the County and to protect human health, safety and welfare caused or threatened by any violation. If it prevails, the County shall be entitled to the award of costs and reasonable attorney's fees.

d. It shall not be a defense, to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the County has failed to exhaust its administrative remedies or has failed to
hold an administrative hearing prior to the institution of a civil action, or that criminal proceedings or other enforcement proceedings are pending, except that remedies to recover damages are alternative and shall preclude recovery of damages more than once by the County.

e. In addition, failure of any dam, spillway or other outlet structure or settling pond or any other cause attributable to the applicant's mining activities resulting in degradation of the existing quality of any waters outside the applicant's property which the applicant has failed to remedy, shall subject the applicant to a civil penalty to be paid to the County in an amount equal to the cost of restoration of water quality in the affected area, all costs of clean up, and administrative costs, legal costs and reasonable attorney's fees.

3. County environmental restoration fund. Any monies recovered by the Board in an action against any person who has caused damage to natural resources or the environment of the County in violation of this ordinance shall be used to restore the damaged area which was the subject of suit to its former condition. There is hereby created the County environmental restoration fund, which is to be supervised and used by the Board to restore damaged areas of the County. This fund shall consist of all monies recovered as described above. The monies shall be disbursed first to pay all amounts necessary to restore the respective damaged areas that were the subjects of County actions. Any monies remaining in the fund shall then be used by the Board, as it deems appropriate, to pay for any work needed to restore areas that required more money than the County was able to obtain by court action or otherwise, or to restore areas in which the County brought suit but was unable to recover any monies from the alleged violators.