

**EPC COMMISSIONERS**

Kevin Beckner, *Chair*  
Lesley “Les” Miller, Jr., *Vice Chair*  
Victor D. Crist  
Ken Hagan  
Al Higginbotham  
Sandra L. Murman  
Mark Sharpe



Richard Garrity, Ph.D.  
*Executive Director*

Richard Tschantz, Esq.  
*General Counsel*

**EPC MEETING AGENDA**  
**AUGUST 15, 2013**

*Meetings commence at 9:00 a.m.*

*601 East Kennedy Boulevard, Tampa, FL*

*County Center Board Room 2<sup>nd</sup> Floor*

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**APPROVAL OF CHANGES TO THE AGENDA**

**REMOVAL OF CONSENT AGENDA ITEMS FOR QUESTIONS, COMMENTS, or SEPARATE VOTE**

**I. PUBLIC COMMENT**

Three (3) Minutes Are Allowed for Each Speaker (unless the Commission directs differently)

**II. CITIZENS’ ENVIRONMENTAL ADVISORY COMMITTEE**

Summary of recent CEAC meeting by CEAC Chair

**III. CONSENT AGENDA**

A. Approval of Minutes: June 20, 2013 .....	3
B. Monthly Activity Reports – June & July 2013 .....	7
C. Pollution Recovery Fund Report – June & July 2013 .....	19
D. Gardinier Settlement Trust Fund Report – June & July 2013.....	21
E. Legal Case Summary, July & August 2013.....	23
F. 2013 Second Quarter Action Plan Updates .....	27
G. Select Performance Measure Goals for 2013.....	43

**IV. FINAL ORDER HEARING**

Baldor vs EPC Boatlift Permitting Appeal (EPC Case No. 12-EPC-015).....	45
---	----

**V. WASTE MANAGEMENT DIVISION**

A. Update on Superfund Sites in Hillsborough County.....	97
B. Brownfields Redevelopment Annual Report Presentation .....	103
C. Presentation of Green Star Certifications .....	105

**VI. AIR MANAGEMENT DIVISION**

A. New Tampa I-75 Corridor Noise Update .....	107
---	-----

**VII. EXECUTIVE DIRECTOR REPORT**

Any person who might wish to appeal any decision made by the EPC regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

**This Page Intentionally Left Blank**

JUNE 20, 2013 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, June 20, 2013, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Kevin Beckner and Commissioners Victor Crist (arrived at 9:07 a.m.), Al Higginbotham, Sandra Murman, and Mark Sharpe.

The following members were absent: Commissioners Ken Hagan and Lesley Miller Jr.

▶ Chairman Beckner called the meeting to order at 9:06 a.m.

▶ INVOCATION AND PLEDGE OF ALLEGIANCE

CHANGES TO THE AGENDA

▶ Dr. Richard Garrity, EPC Executive Director, wanted to speak about the July 2013 EPC meeting following the Regular Agenda. **Commissioner Murman moved approval, seconded by Commissioner Crist, and carried five to zero.** (Commissioners Hagan and Miller were absent.)

I. PUBLIC COMMENT - ▶ None.

II. CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Summary of recent CEAC meeting by CEAC Chairman

▶ Dr. Garrity gave the report.

III. CONSENT AGENDA

- A. Approval of Minutes: April 18, 2013.
- B. Monthly Activity Reports - April and May 2013.
- C. Pollution Recovery Fund (PRF) Report - April and May 2013.
- D. Gardinier Settlement Trust Fund Report - April and May 2013.
- E. Legal Case Summary, May and June 2013.

▶ Chairman Beckner sought a motion to approve the Consent Agenda. **Commissioner Murman so moved, seconded by Commissioner Higginbotham, and carried five to zero.** (Commissioners Hagan and Miller were absent.)

IV. WASTE MANAGEMENT DIVISION

Presentation of Green Star Certifications

↳ Mr. Hooshang Boostani, Director, EPC Waste Management Division, summarized the item, as included in background material, and introduced the Green Star Certification recipients, Ms. Julie Gale, owner, At Home Auto Care Incorporated; Mr. Erik Vogel, Brandon Honda LLC; and Mr. Ian Waterman, The Pepsi Bottling Group. ↳ Chairman Beckner offered congratulatory comments and presented the certifications.

V. AIR MANAGEMENT DIVISION

A. Reducing Sulfur Dioxide Readings in the Riverview-Gibsonston Area

↳ Messrs. Jerry Campbell, Director, EPC Air Management Division, and ↳ Jeff Stewart, Mosaic Fertilizer LLC (Mosaic), shared presentations regarding remedial efforts, as shown in background material. Chairman Beckner praised Mosaic for being a proactive corporate citizen.

B. PRF Monies for Community Partner Minigrants

↳ Mr. Campbell detailed the item, as contained in background material, and sought a vote to approve the expenditure of \$15,000 from the EPC's PRF for the purpose of funding minigrants through the community partner program and authorize the Executive Director to approve awards for minigrants and execute the PRF agreements. ↳ **Commissioner Crist motioned, seconded by Commissioner Murman, and carried five to zero.** (Commissioners Hagan and Miller were absent.)

C. Clean Air Month Update

↳ Mr. Jeff Sims, EPC, highlighted the 2013 Clean Air Fair, as provided in background material; showed a video; and appreciated community support.

VI. ACTION PLAN PRESENTATIONS

A. Partnership between the EPC and Tampa Bay Work Force Alliance Incorporated

↳ Ms. Joyce Moore, EPC, reviewed the item, as presented in background material. ↳ Dr. Garrity recognized Ms. Christina Bryant, EPC.

THURSDAY, JUNE 20, 2013 - DRAFT MINUTES

B. Compliance Assistance Improvement Initiative

↳ Mr. Jason Waters, EPC, detailed the item, as displayed in background material. Chairman Beckner commended the effort.

VII. WETLANDS MANAGEMENT DIVISION

A. Southwest Florida Water Management District proposed Minimum Flows and Levels for Lakes Rogers and Raleigh

↳ Dr. Scott Emery, Director, EPC Wetlands Management Division, reviewed a presentation, as shown in background material. Commissioner Murman was pleased with the project outcome.

B. Authorization to Administer Standard Programmatic General Permitting Pending Agreement with U.S. Army Corps of Engineers

↳ Dr. Emery explained the consolidation of residential dock/seawall permitting and acknowledged the assistance of staff. ↳ Mr. Kevin McNamara, Bay Dock Enterprise Incorporated, remarked on the advantages of permit consolidation. Commissioner Murman asked Dr. Emery to bring back guidance on handling illegal residential dock construction and developing standards for dock installation. Commissioner Crist encouraged personal responsibility. Discussion followed.

VIII. EXECUTIVE DIRECTOR REPORT

A. Budget Update

↳ Dr. Garrity illustrated the EPC budget, as contained in background material.

B. Business/Environmental Feedback Group Report

↳ Dr. Garrity shared the item, as provided in background material.

C. Sterling Challenge Submittal

↳ Dr. Garrity explicated the item, as displayed in background material; noted the July 2013 EPC meeting was canceled; and commended the contributions of Ms. Leslie Campbell and Laura Thorne, EPC.

↳ Chairman Beckner commented on the completed Florida Department of Transportation (FDOT) noise study of Tampa Palms and requested staff provide Commissioners' offices with resources to assist

THURSDAY, JUNE 20, 2013 - DRAFT MINUTES

constituents obtain a copy of the report and give an update on the issue at the August 2013 EPC meeting. Commissioner Crist elaborated on the problem. Chairman Beckner wanted staff to explore the EPC's purview/options and how the EPC could work with the FDOT as well.

▶ There being no further business, the meeting was adjourned at 10:23 a.m.

READ AND APPROVED: \_\_\_\_\_  
CHAIRMAN

ATTEST:  
PAT FRANK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

lm

DRAFT

**FY 13 - MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION**

	<u>JUN</u>	<u>JUL</u>
<b>A. Public Outreach/Education Assistance</b>		
1 Phone calls	194	224
2 Literature Distributed	4	1
3 Presentations	3	6
4 Media Contacts	0	2
5 Internet	36	17
6 Host/Sponsor Workshops, Meetings, Special Events	0	1
<b>B. Industrial Air Pollution Permitting</b>		
1 Permit Applications received (Counted by Number of Fees Received)		
a. Operating	1	1
b. Construction	0	12
c. Amendments / Transfers / Extensions	1	1
d. Title V Operating:	4	1
e. Permit Determinations	0	0
f. General	6	6
2 Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval ( <sup>1</sup> Counted by Number of Fees Collected)-( <sup>2</sup> Counted by Number of Emission Units affected by the Review):		
a. Operating <sup>1</sup>	3	9
b. Construction <sup>1</sup>	4	1
c. Amendments / Transfers / Extensions <sup>1</sup>	0	1
d. Title V Operating <sup>2</sup>	30	0
e. Permit Determinations <sup>2</sup>	0	2
f. General	2	6
3 Intent to Deny Permit Issued	0	0
<b>C. Administrative Enforcement</b>		
1 New cases received	1	0
2 On-going administrative cases		
a. Pending	3	0
b. Active	3	3
c. Legal	2	2
d. Tracking compliance (Administrative)	10	9
e. Inactive/Referred cases		
<b>TOTAL</b>	<b>15</b>	<b>14</b>
3 NOIs issued	1	2
4 Citations issued	0	0
5 Consent Orders Signed	1	2
6 Contributions to the Pollution Recovery Fund	\$8,400.00	\$2,350.00
7 Cases Closed	1	2

**D. Inspections**

**FY 13 - MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION**

		<b>JUN</b>	<b>JUL</b>
1	Industrial Facilities	12	32
2	Air Toxics Facilities		
	a. Area Sources (i.e. Drycleaners, Chrome Platers, etc.)	1	0
	b. Major Sources	4	6
3	Asbestos Demolition/Renovation Projects	29	27
<b>E.</b>	<b>Open Burning Permits Issued</b>	4	4
<b>F.</b>	<b>Number of Division of Forestry Permits Monitored</b>	252	262
<b>G.</b>	<b>Total Citizen Complaints Received</b>	41	48
<b>H.</b>	<b>Total Citizen Complaints Closed</b>	32	52
<b>I.</b>	<b>Noise Complaints Received by EPC (Chapter 1-10)</b>	16	21
<b>J.</b>	<b>Noise Complaints Received by Sheriff's Office (County Ord. #12-12)</b>	339	462
<b>K.</b>	<b>Number of cases EPC is aware that both EPC &amp; Sheriff responded</b>	0	1
	a. World of Beers (Oct.)		
	b. Brass Mug (Dec.)		
	c. The Rack (Jan.)		
	d. Brass Mug (Feb.)		
<b>L.</b>	<b>Noise Sources Monitored:</b>	3	4
<b>M.</b>	<b>Air Program's Input to Development Regional Impacts:</b>	0	0
<b>N.</b>	<b>Test Reports Reviewed:</b>	29	51
<b>O.</b>	<b>Compliance:</b>		
1	Warning Notices Issued	5	1
2	Warning Notices Resolved	2	1
3	Advisory Letters Issued	1	1
<b>P.</b>	<b>AOR'S Reviewed</b>	27	80
<b>Q.</b>	<b>Permits Reviewed for NESHAP Applicability</b>	2	4
<b>R.</b>	<b>Planning Documents coordinated for Agency Review</b>	3	7





## ***ENVIRONMENTAL PROTECTION COMMISSION***

### ***COMMUNITY PARTNER PROGRAM***

### ***PRESENTATION SUMMARY SHEET***

The EPC has developed the **EPC Community Partner Program** directed specifically to increase public outreach and interaction with registered Hillsborough County Homeowner and Civic Associations. The following provides a summary of presentations performed to community Associations since the last EPC Board Meeting:

**Date of EPC Presentation:** July 9, 2013

**Name of Association:** Ridgewood Park Crime Prevention and Civic Association

**Presentation Topic:** General EPC Overview

**Approximate Attendance:** 14

**Citizen Concerns:** The following concerns were expressed by the attendees during the presentation:

1. Safety issues over dilapidated docks on the river
2. Availability of more public boat ramps
3. Environmental effects of dyeing the river green during St. Patrick's Day celebration
4. Condition of community's storm drains and issues with debris going directly into the river

**FY 13 - MONTHLY ACTIVITIES REPORT  
WASTE MANAGEMENT DIVISION**

**JUN      JUL**

**A. ENFORCEMENT**

1.	New cases received	1	-
2.	On-going administrative cases	62	62
	Pending	1	1
	Active	19	19
	Legal	5	5
	Tracking Compliance (Administrative)	34	34
	Inactive/Referred Cases	3	3
3.	NOI's issued	-	-
4.	Citations issued	-	1
5.	Consent Orders and Settlement Letter Signed	1	-
6.	Civil Contributions to the Pollution Recover Fund (\$)	\$ 450	\$ -
7.	Enforcement Costs Collected (\$)	\$ 529	\$ -
8.	Cases Closed	2	1

**B. SOLID AND HAZARDOUS WASTE**

1.	FDEP Permits Received	1	0
2.	FDEP Permits Reviewed	0	0
3.	EPC Authorization for Facilities NOT Requiring DEP Permit	3	0
4.	Other Permits and Reports		
	County Permits Received	2	8
	County Permits Reviewed	20	12
	Reports Received (SW/HW + SQG)	19	17
	Reports Reviewed (SW/HW + SQG)	13	17
5.	Inspections (Total)		
	Complaints (SW/HW + SQG)	13	25
	Compliance/Reinspections (SW/HW + SQG)	10	17
	Facility Compliance	22	24
	Small Quantity Generator Verifications	104	141
	P2 Audits	0	0
6.	Enforcement (SW/HW + SQG)		
	Complaints Received	13	25
	Complaints Closed	9	21
	Warning Notices Issued	0	1
	Warning Notices Closed	2	1
	Compliance Letters	51	52
	Letters of Agreement	0	0
	Agency Referrals	1	6
7.	Pamphlets, Rules and Material Distributed	20	38

**C. STORAGE TANK COMPLIANCE**

1.	Inspections		
	Compliance	117	70
	Installation	5	5
	Closure	10	3
	Compliance Re-Inspections	3	1
2.	Installation Plans Received	5	3

**FY 13 - MONTHLY ACTIVITIES REPORT  
WASTE MANAGEMENT DIVISION**

	<u>JUN</u>	<u>JUL</u>
3. Installation Plans Reviewed	2	2
4. Closure Plans & Reports		
Closure Plans Received	5	4
Closure Plans Reviewed	4	3
Closure Reports Received	1	2
Closure Reports Reviewed	2	-
5. Enforcement		
Non-Compliance Letters Issued	79	27
Warning Notices Issued	-	2
Warning Notices Closed	-	2
Cases Referred to Enforcement	-	-
Complaints Received	-	-
Complaints Investigated	-	-
Complaints Referred	-	-
6. Discharge Reporting Forms Received	2	-
7. Incident Notification Forms Received	4	3
8. Cleanup Notification Letters Issued	2	-

**D. STORAGE TANK CLEANUP**

1. Inspections	23	24
2. Reports Received	52	76
3. Reports Reviewed	59	112
Site Assessment Received	8	11
Site Assessment Reviewed	11	16
Source Removal Received	2	-
Source Removal Reviewed	-	2
Remedial Action Plans (RAP'S) Received	2	4
Remedial Action Plans (RAP'S) Reviewed	3	3
Site Rehabilitation Completion Order/No Further Action Rec'd	-	3
Site Rehabilitation Completion Order/No Further Action Revw'd	-	3
Active Remediation/Monitoring Received	16	34
Active Remediation/Monitoring Reviewed	22	56
Others Received	24	24
Others Reviewed	23	32

**E. RECORD REVIEWS**

21	17
21	20

**F. LEGAL PIR'S**

**FY 13 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

		<u>JUN</u>	<u>JUL</u>
<b>A. ENFORCEMENT</b>			
1.	New Enforcement Cases Received	-	-
2.	Enforcement Cases Closed	2	2
3.	Enforcement Cases Outstanding	32	30
4.	Enforcement Documents Issued		1
5.	Recovered Costs to the General Fund	\$ 13,435	\$ 3,085
6.	Contributions to the Pollution Recovery Fund	\$ 440	\$ 6,579
<b>B. PERMITTING/PROJECT REVIEW - DOMESTIC</b>			
1.	Permit Applications Received	21	22
	a. Facility Permit	1	4
	(i) Types I and II	-	1
	(ii) Type III	1	3
	b. Collection Systems - General	10	11
	c. Collection systems-Dry Line/Wet Line	10	7
	d. Residuals Disposal	-	-
2.	Permit Applications Approved	25	28
	a. Facility Permit	4	3
	b. Collection Systems - General	4	12
	c. Collection systems-Dry Line/Wet Line	7	7
	d. Residuals Disposal	-	-
	e. Final Construction Approval	12	6
3.	Permit Applications Recommended for Disapproval	1	-
	a. Facility Permit	-	-
	b. Collection Systems - General	1	-
	c. Collection systems-Dry Line/Wet Line	-	-
	d. Residuals Disposal	-	-
4.	Permit Applications (Non-Delegated)	-	-
	a. Recommended for Approval	-	-
5.	Permits Withdrawn	-	-
	a. Facility Permit	-	-
	b. Collection Systems - General	-	-
	c. Collection systems-Dry Line/Wet Line	-	-
	d. Residuals Disposal	-	-
6.	Permit Applications Outstanding	65	65
	a. Facility Permit	6	7
	b. Collection Systems - General	23	22
	c. Collection systems-Dry Line/Wet Line	36	36
	d. Residuals Disposal	-	-
7.	Permit Determination	2	-
8.	Special Project Reviews	-	-

**FY 13 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

		<u>JUN</u>	<u>JUL</u>
	a. Reuse	-	-
	b. Residuals/AUPs	-	-
	c. Others	-	-
<b>C. INSPECTIONS - DOMESTIC</b>			
1.	Compliance Evaluation	8	18
	a. Inspection (CEI)	4	10
	b. Sampling Inspection (CSI)	4	8
	c. Toxics Sampling Inspection (XSI)	-	-
	d. Performance Audit Inspection (PAI)	-	-
2.	Reconnaissance	37	37
	a. Inspection (RI)	6	10
	b. Sample Inspection (SRI)	-	-
	c. Complaint Inspection (CRI)	30	22
	d. Enforcement Inspection (ERI)	1	5
3.	Engineering Inspections	22	15
	a. Reconnaissance Inspection (RI)	1	-
	b. Sample Reconnaissance Inspection (SRI)	-	-
	c. Residual Site Inspection (RSI)	-	-
	d. Preconstruction Inspection (PCI)	-	1
	e. Post Construction Inspection (XCI)	19	12
	f. On-site Engineering Evaluation	1	2
	g. Enforcement Reconnaissance Inspection (ERI)	1	-
<b>D. PERMITTING/PROJECT REVIEW - INDUSTRIAL</b>			
1.	Permit Applications Received	2	1
	a. Facility Permit	2	-
	(i) Types I and II	-	-
	(ii) Type III with Groundwater Monitoring	1	-
	(iii) Type III w/o Groundwater Monitoring	1	1
	b. General Permit	-	-
	c. Preliminary Design Report	-	-
	(i) Types I and II	-	-
	(ii) Type III with Groundwater Monitoring	-	-
	(iii) Type III w/o Groundwater Monitoring	-	-
2.	Permits Recommended to DEP for Approval	3	1
3.	Special Project Reviews	-	2
	a. Facility Permit	-	2
	b. General Permit	-	-
4.	Permitting Determination	1	1
5.	Special Project Reviews	41	39

**FY 13 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

		<u>JUN</u>	<u>JUL</u>
	a. Phosphate	9	13
	b. Industrial Wastewater	10	11
	c. Others	22	15
<b>E. INSPECTIONS - INDUSTRIAL</b>			
1.	Compliance Evaluation (Total)	9	15
	a. Inspection (CEI)	9	14
	b. Sampling Inspection (CSI)	-	1
	c. Toxics Sampling Inspection (XSI)	-	-
	d. Performance Audit Inspection (PAI)	-	-
2.	Reconnaissance (Total)	11	10
	a. Inspection (RI)	1	7
	b. Sample Inspection (SRI)	-	-
	c. Complaint Inspection (CRI)	10	3
	d. Enforcement Inspection (ERI)		
3.	Engineering Inspections (Total)	6	11
	a. Compliance Evaluation (CEI)	6	11
	b. Sampling Inspection (CSI)	-	-
	c. Performance Audit Inspection (PAI)	-	-
	d. Complaint Inspection (CRI)	-	-
	e. Enforcement Reconnaissance Inspections (ERI)	-	-
<b>F. INVESTIGATION/COMPLIANCE</b>			
1.	Citizen Complaints		
	a. Domestic	29	33
	(i) Received	18	15
	(ii) Closed	11	18
	b. Industrial	18	6
	(i) Received	9	3
	(ii) Closed	9	3
2.	Warning Notices		8
	a. Domestic	1	4
	(i) Issued	1	4
	(ii) Closed	-	-
	b. Industrial	1	-
	(i) Issued	1	-
	(ii) Closed	-	-
3.	Non-Compliance Advisory Letters	8	11
4.	Environmental Compliance Reviews		
	a. Industrial	32	34
	b. Domestic	97	11

**FY 13 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

		<u>JUN</u>	<u>JUL</u>
	5. Special Project Reviews	5	5
<b>G. RECORD REVIEWS</b>			
	1. Permitting Determination	3	4
	2. Enforcement	-	-
<b>H. ENVIRONMENTAL SAMPLES ANALYZED/REPORTS REVIEWED (LAB)</b>			
	1. Air division	60	57
	2. Waste Division	-	-
	3. Water Division	16	15
	4. Wetlands Division	-	-
	5. ERM Division	170	177
	6. Biomonitoring Reports	-	2
	7. Outside Agency	23	14
<b>I. SPECIAL PROJECT REVIEWS</b>			
	1. DRIs	-	-
	2. ARs	-	-
	3. Technical Support	-	1
	4. Other	3	6

**FY 13 - MONTHLY ACTIVITIES REPORT  
WETLANDS MANAGEMENT DIVISION**

**JUN      JUL**

**ASSESSMENT REPORT**

**Agriculture Exemption Report**

# Agricultural Exemptions Reviews	-	-
# Isolated Wetlands Impacted	-	-
# Acres of Isolated Wetlands Impacted	-	-
# Isolated Wetlands qualify for Mitigation Exemption	-	-
# Acres of Wetlands qualify for Mitigation Exemption	-	-

**Development Services Reviews Performance Report**

# of Reviews	77	63
Timeframes Met	99%	99%
Year to Date	98%	98%

**Formal Wetland Delineation Surveys**

Projects	10	11
Total Acres	327	194
Total Wetland Acres	263	17
# Isolated Wetlands < 1/2 Acre	4	2
Isolated Wetland Acreage	2	0.43

**Construction Plans Approved**

Projects	12	8
Total Wetland Acres	4	7
#Isolated Wetlands < 1/2 Acre	2	0
Isolated Wetland Acreage	0.24	0
Impacts Approved Acreage	0.35	0.44
Impacts Exempt Acreage	0.1	0.25

**Mitigation Sites in Compliance**

Ratio	13/14	26/29
Percentage	93%	90%

**Compliance Actions**

Acreage of Unauthorized Wetland Impacts	0.90	0.05
Acreage of Water Quality Impacts	0.10	0.00
Acreage Restored	0.30	0.60

**TPA Minor Work Permit**

Permit Issued	13	13
Permits Issued Fiscal Year 2013	151	164
Cumulative Permits Issue Since TPA Delegation (07/09)	747	760

**REVIEW TIMES**

# of Reviews	228	299
% On Time	97%	92%
% Late	3%	8%



**FY 13 - MONTHLY ACTIVITIES REPORT  
WETLANDS MANAGEMENT DIVISION**

JUN      JUL

**A. General**

1.	Telephone conferences	686	761
2.	Unscheduled Citizen Assistance	345	334
3.	Scheduled Meetings	390	379
4.	Correspondence	2,086	2,276
1/ 5.	Intergency Coordination	127	353
1/ 6.	Trainings	17	20
1/ 7.	Public Outreach/Education	5	8
1/ 8.	Quality Control	93	102

**B. Assessment Reviews**

1.	Wetland Delineations	11	28
2.	Surveys	9	16
3.	Miscellaneous Activities in Wetland	11	22
4.	Mangrove	9	11
5.	Notice of Exemption	3	2
6.	Impact/Mitigation Proposal	4	3
7.	Tampa Port Authority Reviews	59	72
8.	Wastewater Treatment Plants (FDEP)	-	-
9.	Development Regn'l Impact (DRI) Annual Report	-	-
10.	On-Site Visits	139	108
11.	Phosphate Mining	-	-
12.	Comp Plan Amendment (CPA)	-	-
1/ 13.	AG SWM	-	-
	Sub-Total		

**Planning and Growth Management Review**

14.	Land Alteration/Landscaping	3	-
15.	Land Excavation	-	-
16.	Rezoning Reviews	16	3
17.	Site Development	22	21
18.	Subdivision	31	31
19.	Wetland Setback Encroachment	3	3
20.	Easement/Access-Vacating	-	-
21.	Pre-Applications	21	55
1/ 22.	Agriculture Exemption	-	1
	Sub-Total		
	<b>Total Assessment Review Activities</b>		

**C. Investigation and Compliance**

1.	Warning Notices Issued	10	5
2.	Warning Notices Closed	3	6
1/ 3.	Complaints Closed	34	31
4.	Complaint Inspections	35	31
5.	Return Compliance Inspections for Open Cases	55	38

**FY 13 - MONTHLY ACTIVITIES REPORT  
WETLANDS MANAGEMENT DIVISION**

		<u>JUN</u>	<u>JUL</u>
6.	Mitigation Monitoring Reports	10	12
7.	Mitigation Compliance Inspections	19	38
8.	Erosion Control Inspections	3	6
9.	MAIW Compliance Site Inspections	11	11
10.	TPA Compliance Site Inspections	9	28
2/ 11	Mangrove Compliance Site Inspections	-	-
1/ 12	Conservation Easement Inspection	5	2

**D. Enforcement**

1.	Active Cases	8	9
2.	Legal Cases	4	5
3.	Number of "Notice of Intent to Initiate Enforcement"	1	2
4.	Number of Citations Issued	-	-
5.	Number of Consent Orders Signed	-	1
6.	Administrative - Civil Cases Closed	-	3
7.	Cases Referred to Legal Department	4	5
8.	Contributions to Pollution Recovery	\$ 550	\$ 550
9.	Enforcement Costs Collected	\$ 200	\$ 311

**E. Ombudsman**

1.	Agriculture	4	2
2.	Permitting Process & Rule Assistance	3	1
3.	Staff Assistance	5	3
4.	Citizen Assistance	2	4

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
FY 13 POLLUTION RECOVERY FUND  
10/1/2012 through 6/30/2013**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 542,334	Artificial Reef	\$ 146,828	Minimum Balance	\$ 120,000	
Interest	\$ 1,345	Project Monitoring	\$ 32,514	PROJ. FY 14 Budgets	\$ 179,342	
Deposits	\$ 88,355	FY 13 Projects	\$ 25,000	Asbestos Removal	\$ 5,000	
Refunds	\$ 10,903					
Total	\$ 642,937	Total	\$ 204,342	Total	\$ 304,342	\$ 134,253



PROJECT		Project Amount	Project Balance
<b>FY 10 Projects</b>			
#09-02 - Effects of Restoration on Use of Habitat	EPE30443	\$ 84,081	\$ 16,725
		\$ 84,081	\$ 16,725
<b>FY 12 Projects</b>			
Bahia Beach Mangrove Enhancement	EPE30449	\$ 56,700	\$ 56,700
Fertilizer Rule Implementation	EPE40206	\$ 50,000	\$ 30,007
USGS Partnership	EPE30450	\$ 25,000	\$ 18,750
		\$ 131,700	\$ 105,457
<b>FY 13 Project</b>			
USF Fertilizer Study Peer Review	EPE40207	\$ 25,000	\$ 25,000
		\$ 25,000	\$ 25,000
			\$ 147,182

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
FY 13 POLLUTION RECOVERY FUND  
10/1/2012 through 7/31/2013**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 542,334	Artificial Reef	\$ 146,828	Minimum Balance	\$ 120,000	
Interest	\$ 1,572	Project Monitoring	\$ 32,514	PROJ. FY 14 Budgets	\$ 179,342	
Deposits	\$ 97,834	FY 13 Projects	\$ 40,000	Asbestos Removal	\$ 5,000	
Refunds	\$ 10,903					
Total	\$ 652,643	Total	\$ 219,342	Total	\$ 304,342	\$ 128,959



PROJECT		Project Amount	Project Balance
<b>FY 10 Projects</b>			
#09-02 - Effects of Restoration on Use of Habitat	EPE30443	\$ 84,081	\$ 23
		\$ 84,081	\$ 23
<b>FY 12 Projects</b>			
Bahia Beach Mangrove Enhancement	EPE30449	\$ 56,700	\$ 56,700
Fertilizer Rule Implementation	EPE40206	\$ 50,000	\$ 30,007
USGS Partnership	EPE30450	\$ 25,000	\$ 18,750
		\$ 131,700	\$ 105,457
<b>FY 13 Project</b>			
USF Fertilizer Study Peer Review	EPE40207	\$ 25,000	\$ 25,000
Community Partnering Program	EPE06019	\$ 15,000	\$ 15,000
		\$ 40,000	\$ 40,000
			\$ 145,480

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
FY 13 GARDINIER SETTLEMENT TRUST FUND  
10/1/2012 - 6/30/2013**

Fund Balance as of 10/1/12	\$ 61,274
Interest Accrued	115
Disbursements FY 13	-
Fund Balance	<u>\$ 61,389</u>
Encumbrances Against Fund Balance:	
SP634 Cockroach Bay ELAPP Restoration	\$ 61,389
Total Encumbrances	<u>\$ 61,389</u>
Fund Balance Available	<u><u>\$ -</u></u>

**ENVIRONMENTAL PROTECTION COMMISSION**  
**OF HILLSBOROUGH COUNTY**  
**FY 13 GARDINIER SETTLEMENT TRUST FUND**  
**10/1/2012 - 7/31/2013**

Fund Balance as of 10/1/12	\$ 61,274
Interest Accrued	135
Disbursements FY 13	-
Fund Balance	\$ 61,409
Encumbrances Against Fund Balance:	
SP634 Cockroach Bay ELAPP Restoration	\$ 61,409
Total Encumbrances	\$ 61,409
Fund Balance Available	\$ -



## *ENVIRONMENTAL PROTECTION COMMISSION*

### *AGENDA ITEM COVER SHEET*

**Date of EPC Meeting:** August 15, 2013

**Subject:** Monthly Legal Case Summary

**Agenda Section:** Consent Agenda

**Division:** Legal and Administrative Services Division

**Recommendation:** None, informational update.

**Brief Summary:** The EPC Legal Department provides a monthly summary of its ongoing civil, appellate, and administrative matters.

**Financial Impact:** No Financial Impact anticipated; information update only.

**Background:** In an effort to provide the Commission with timely information regarding legal challenges, the EPC staff provides this monthly summary. The update serves not only to inform the Commission of current litigation but may also be used as a tool to check for any conflicts they may have. The summary provides general details as to the status of the civil and administrative cases. There is also a listing of cases where parties have asked for additional time in order to allow them to decide whether they will file an administrative challenge to an agency action (e.g. – permit or enforcement order), while concurrently attempting to seek resolution of the agency action.

## EPC LEGAL DEPARTMENT MONTHLY REPORT

*July and August 2013*

### I. ADMINISTRATIVE CASES

James Baldor [12-EPC-015]: On October 24, 2012, the Appellant, James Baldor, filed a request for an extension of time to file an Appeal challenging the Denial of Application for Minor Work Permit #53790. The extension has been granted and the Appellant filed an appeal in this matter on December 28, 2012. The appeal was transferred to a Hearing Officer on January 15, 2013, EPC filed a Motion for Summary Recommended Order and on February 20, 2013, the Hearing Officer ruled in favor of the EPC. The matter will be heard at the August 15 2013 regular EPC meeting for consideration of a Final Order. (AZ)

J.E. McLean, III and RaceTrac Petroleum, Inc. [12-EPC-014]: On October 24, 2012, the Appellants, RaceTrac Petroleum, Inc. and the property owner, filed a request for an extension of time to file an Appeal challenging the Executive Director's denial for wetland impacts on the corner of Lumsden and Kings Avenue. The extension was granted and the Appellants filed an appeal in this matter on December 7, 2012. A Hearing Officer has been assigned and conducted a case management conference. The parties are preparing for a hearing in this matter. (AZ)

Tampa Electric Company, Polk Power Station, Polk 2-5 Combined Cycle Conversion Project: [12-EPC-016]: EPC is a commenting agency and potential administrative party to this DEP power station siting certification permit application and hearing.

Joseph and Jennifer Ferrante [12-EPC-006]: On May 7, 2012 the EPC received a Request for Variance or Waiver from Joseph and Jennifer Ferrante. The Applicant is requesting a waiver from a provision within the Submerged Lands Management Rules of the Tampa Port Authority regarding setback encroachments. A public hearing is scheduled for September 20, 2012 to consider the variance. The hearing was continued until further notice. (AZ)

### II. CIVIL CASES

Gregory Hart and Karin Hart vs. EPC [2DCA Appeal # ; EPC Case #13-EPC-005]: On June 4, 2013, the Appellants filed a Notice of Appeal to the Second District Court of Appeal to Appeal an Order issued by the lower tribunal. The Appellate Court Dismissed the Hart's appeal on July 17, 2013. (RM)

Oak Hammock Ranch, LLC, James P. Gill, III, as Custodian [12-EPC-018]: On December 28, 2012 EPC was served a lawsuit regarding the Upper Tampa Bay Trail Wetland Impact Approval. The EPC has filed it Answer and affirmative defenses to the lawsuit. (AZ)

Peter L. Kadyk/Eco Wood Systems, Inc. [11-EPC-007]: On August 18, 2011, the Commission granted authority to pursue appropriate legal action against Defendant Peter L. Kadyk/Eco Wood Systems, Inc. for failure to comply with the terms of a signed Consent Order to resolve Chapter 1-11 wetlands violations. A small claims action was filed but is still pending based on the failure to timely serve the respondent. The balance has been substantially paid and the case has been closed. (AZ)

6503 US Highway 301, LLC [LEPC10-021]: On November 4, 2010, the EPC Legal Department filed a Complaint for Civil Penalties and Injunctive Relief against the new owner Defendant 6503 US Highway 301, LLC. This case is a continuation of the previous action against SJ Realty for environmental violations at the former 301 Truckstop site on Highway 301. The parties are in negotiation to settle the matter. A Consent Order was executed and penalty payments were submitted at the end of July. (AZ)

Greg and Karin Hart [LEPC10-004]: On March 18, 2010 the Commission granted authority to take legal action against the Defendants Mr. and Mrs. Greg Hart for various impacts to wetlands that are violations of the EPC Act, Chapter 1-11 (Wetland Rule), and a conservation easement encumbering the Defendants' property. On March 29, 2010, the EPC filed a civil lawsuit in Circuit Court. The case was consolidated with a related Hillsborough County case seeking an injunction to remove fill from a drainage canal. A second mediation on January 21, 2011, resulted in a very limited partial settlement with EPC and full settlement with the County. A jury trial was held the week of September 19, 2011. The jury returned a verdict in favor of the EPC. Defendants filed a motion for new trial and an appeal of the jury verdict. The appeal was dismissed as premature and the request for a new trial was denied. The Defendants then appealed the denial of a new trial, which was dismissed. A hearing was held on February 13 and 23, 2012, to impose corrective actions and penalties. A Final Judgment Against Defendants was entered on March 5, 2012, requiring Defendants to restore the wetland and pay penalties. Defendants filed a Motion for Relief from Judgment dated May 22, 2012 and the court denied the motion on July 30, 2012. On July 31, 2012, the court awarded the EPC reasonable trial costs. The Harts moved for re-consideration of the Motion for Relief from Judgment denial and it was denied. The denial is under appeal. The EPC moved for contempt, but the Court ordered the EPC to conduct the wetland remediation and charge the Harts. (RM)



**Charles H. Monroe, individually, and MPG Race Track LTD** [LEPC09-017]: On September 17, 2009 the EPC Board granted authority to take legal action against Respondents for violations of the EPC Act and EPC Rule Chapter 1-11. A Citation was issued on June 29, 2009, the Respondent failed to appeal the citation and it became a final order of the Agency enforceable in Court. (AZ)

**Dubliner North, Inc.** [LEPC09-015]: On September 17, 2009 the Commission granted authority to take legal action against Respondent for violations of the EPC Act and EPC Rules, Chapter 1-10 (Noise). A Citation to Cease and Order to Correct Violation was issued on July 24, 2009, the Respondent failed to appeal the citation and it became a final order of the Agency enforceable in court. On May 5, 2010 the EPC filed a civil lawsuit in Circuit Court. The Defendant did not respond to the complaint, thus a default was issued on September 30, 2010. A trial was set for the week of May 9, 2011. The parties attended court-ordered mediation on April 22, 2011. A Mediation Settlement Agreement was entered on April 22, 2011. On August 8, 2011, the EPC filed a Notice of Voluntary Dismissal. Defendant has not complied with the terms of the settlement, EPC filed a motion to enforce the Settlement and a hearing was held on August 2, 2012 and a Judgment Against Defendant was entered. The Defendant paid the negotiated penalty, but corrective actions are pending. (RM)

**U.S. Bankruptcy Court in re Jerry A. Lewis** [LEPC09-011]: On May 1, 2009 the U.S. Bankruptcy Court Middle District of Florida filed a Notice of Chapter 13 Bankruptcy Case regarding Jerry A. Lewis. On May 26, 2009, the EPC filed a Proof of Claim with the Court. The EPC's basis for the claim is a recorded judgment lien awarded in Civil Court against Mr. Lewis concerning unauthorized disposal of solid waste. The EPC is preparing to seek relief from the bankruptcy stay to get an award of stipulated penalties from the state court. The site remains out of compliance with applicable EPC solid waste regulations. (AZ)

**Grace E. Poole and Michael Rissell** [LEPC08-015]: Authority to take appropriate legal action against Grace E. Poole and Michael Rissell for failure to properly assess petroleum contamination in accordance with EPC and State regulations was granted on June 19, 2008. The property owner and/or other responsible party are required to initiate a site assessment and submit a Site Assessment Report. They have failed to do the required work and the EPC is attempting to obtain appropriate corrective actions. (AZ)

**Petrol Mart, Inc.** [LEPC07-018]: Authority to take appropriate action against Petrol Mart, Inc. to seek corrective action, appropriate penalties and recover administrative costs for improperly abandoned underground storage tanks and failure to address petroleum contamination was granted on June 21, 2007. The owner of the property is insolvent and the corporation inactive; however, the Waste Management Division intends on obtaining a judgment and lien on the property for the appropriate corrective actions. The Legal Department filed a civil lawsuit on September 26, 2007. The defendant was served with the lawsuit on October 12, 2007. The Court entered a default on November 9, 2007 for the Defendant's failure to respond. The EPC Legal Department set this matter for trial on March 26, 2008. The Court ruled in favor of EPC and entered a Default Judgment against the Defendant awarding all corrective actions, penalties of \$116,000 and costs of \$1,780. In the event the corrective actions are not completed the court also authorized the EPC to contract to have the site cleaned and to add those costs to the lien on the property. PRF monies were allocated in November 2008 to assist in remediating the site. (AZ)

**Tranzparts, Inc. and Scott Yaslow** [LEPC06-012]: Authority was granted on April 20, 2006 to pursue appropriate legal action against Tranzparts, Inc., Scott Yaslow, and Ernesto and Judith Baizan to enforce the agency requirement that various corrective actions and a Preliminary Contamination Assessment Plan be conducted on the property for discharges of oil/transmission fluid to the environment. The EPC entered a judicial settlement (consent final judgment [CFJ]) with Tranzparts and Yaslow only on February 16, 2007 (no suit was filed against the Baizans). The Defendants have only partially complied with the CFJ, thus a hearing was held on April 28, 2008, wherein the judge awarded the EPC additional penalties. A second hearing was held on January 25, 2010, for a second contempt proceeding and additional penalties. The Judge found the Defendants in contempt and levied stipulated penalties/costs, and a contempt order was executed by the judge on March 15, 2010 requiring the facility to temporarily shut down until the facility is remediated. On January 7, 2013 the EPC deemed the facility had met the CFJ-required remediation requirements, but other obligations are still due as are penalties and costs. (RM)

**Boyce E. Slusmeyer** [LEPC10-019]: On Sept 20, 2001 the EPC staff received authority to take legal action for failure to comply with an Executive Director's Citation and Order to Correct Violation for the failure to initiate a cleanup of a petroleum-contaminated property. The Court entered a Consent Final Judgment on March 13, 2003. The Defendant has failed to perform the appropriate remedial actions for petroleum contamination on the property. The EPC filed a lawsuit on October 7, 2010 seeking injunctive relief and recovery of costs and penalties. The EPC is waiting for the lawsuit to be served. (AZ)

**Brass Mug and He Il Cho** [LEPC13-02]: On March 5, 2013, the Commission authorized the EPC to file suit against Brass Mug and He Il Cho for violations of Chapter 1-10 (EPC Noise Rule). The parties have met multiple times in an effort to resolve the matter. (RM)

### III. PENDING ADMINISTRATIVE CHALLENGES

The following is a list of cases assigned to the EPC Legal Department that are not in litigation, but a party has asked for an extension of time to file for administrative litigation in an effort to negotiate a settlement prior to forwarding the case to a Hearing Officer. The below list may also include waiver or variance requests.

Sun Communities, Inc. [12-EPC-012]: On August 2, 2012, the Petitioner filed a request for an extension of time to file a Petition for Administrative Hearing to challenge a Notice of Permit Denial. The request was granted and the Petitioner was initially granted until November 15, 2012 to file a petition in this matter, subsequently, three additional requests for extensions were filed by the Petitioner and the current deadline to file a petition in this matter is August 12, 2013. (RM)



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** August 15, 2013

**Subject:** 2013 Second Quarter Action Plan Updates

**Agenda Section:** Consent Agenda

**Division:** Executive Director

**Recommendation:** None – Informational Only

**Brief Summary:** In March 2013, EPC staff brought the finalized versions of the Agency's 2013 action plans to the Board for approval. These measurable action plans are divided into twelve individual initiatives which support the Agency's strategic priorities for calendar year 2013. The second quarter status reports are listed for all twelve.


**Financial Impact:** No Financial Impact

**Background:** As part of the Agency's Sterling Management planning process and philosophy of continuous improvement, staff held a strategic planning retreat in December 2012. This included input from the Board and a broad range of EPC staff. Besides reviewing the priorities and guiding mission statements, staff also prepared a slate of new initiatives to improve the EPC's efficiency. Since the Agency started this formal procedure in 2010, they have completed some thirty-four of these initiatives.

The narrative descriptions of the proposed action plans for 2013 were brought to the Board in January 2013 and approved. The twelve detailed action plans reflecting the Agency's strategic objectives for 2013 were then finalized and formally launched. The finalized versions of the action plans were approved in the Consent Agenda at the March meeting.

Each Agency initiative is described in an individual action plan with measurable goals. The attachment reflects the update on the status of each action plan as of the end of the second quarter of 2013. The owners of select action plans are scheduled to present an overview of their project to the Board at regularly scheduled EPC Board meetings throughout the year.

## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
<p>1.2 Protection of Surface Waters</p> 	<p>Nutrient Management Initiative</p>	<p>Monitored 100% of water quality stations in Tampa Bay and tributaries.</p>	<p>Meet water quality goals for all four major bay segments.</p>
		<p>Work with County Stormwater staff to renew water quality monitoring agreements as part of their MS4 and NPDES permits.</p>	<p>Have new environmental services agreement in place and continue our cooperative approach to stormwater related nutrient management.</p>
		<p>Collaborate and attend meetings to stay apprised of state and federal TMDL and Numeric Nutrient</p>	<p>Continue progress made with local partners in helping FDEP and USEPA</p>




Criteria development & implementation.

develop Numeric Nutrient Criteria for the Tampa Bay area.

Explore fertilizer rule opportunities for partnering on educational messages consistent with our rule.

Have in place at least one new media campaign that promotes responsible fertilizer use consistent with Chapter 1-15.

## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
1.4 Protection of Wetlands	Enhanced Delegation Responsibilities for Development Reviews	Met with County Representative and consultant to review current status.  Currently in the process of finalizing procurement of consultant.	Complete Coordination Agreement with ACOE.  Submit application to FDEP for additional ERP delegation.
		Coordination agreement with ACOE has been completed and signed.	

## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
1.5 Promote Environmental Stewardship	Energy Star Certification/Green Business Recognition/Green Procurement Policy	County Energy Manager is currently collecting data needed for application.  Currently meeting with UT representative to perhaps join their sustainable business recognition program.	Submit Energy Star Certification application by June 2013.  Add five additional Green Business Recognitions to the Green Hillsborough Website by the end of the year.
		Researching policy on Agency purchases of paper and other supply items. Draft not yet ready.	Prepare Green Procurement Policy draft by May 2013 and final policy by Dec. 2013.



## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
1.6 Improve Regulatory Compliance	Compliance Assistance Improvement Initiative for Minor Non-Compliance and Small Businesses	<p>Met with Workgroup on April 16, 2013.</p> <p>Workgroup members have finalized version of Draft SOP.</p> <p>Draft Advisory Letter created for compliance assistance Presentation to EPC Board on 6/20/2013.</p> <p>Database Meeting on 7/11/2013 includes discussion of quote for Advisory Letter SQL update.</p>	<p>Revise Agency Complaint &amp; Warning Notice SOP to include Compliance Assistance Letter.</p> <p>Utilize the customer survey to receive business feedback.</p> <p>Track future compliance rate for participating businesses to determine effectiveness.</p>





## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
2.3 Employee Empowerment	Prepare Sterling Challenge Application	Sterling Coordinator Group has met to facilitate the application.	Submit Sterling Challenge application by mid-summer and complete Examiner review by end of August.
		The Sterling Challenge Application has been completed and was submitted in June, 2013.	
		A site visit by Sterling Examiners is set for the last week in August.	



## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
3.1 Customer Satisfaction	Neighborhood Outreach Initiative	<p>Created EPC Community Partner Program including web-based connection.</p> <p>Launched EPC Advisory/Notification System on website in April to register interested citizens.</p> <p>Promoted both programs at Neighborhood Conference, Earth Day and Clean Air Fair outreach events from March through May.</p> <p>Presentation to EPC Board on 4/18/2013.</p>	<p>Develop EPC Community Partner Program, similar to a neighborhood watch program, and obtain at least 3 communities as official members.</p> <p>Develop EPC Advisory/Notification System and get at least 75 individuals to sign on.</p> <p>Produce updated Open Burn outreach material.</p>



## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
3.2 Improve Partnering Relationships	EPC Intern Program	<p>Committee established with participant members identified and verified.</p> <p>Interns continue to be accepted at EPC through informal process.</p> <p>Meetings planned to achieve goals.</p>	<p>Revise Agency policy on Volunteer Training.</p> <p>Establish operating procedures to formalize process.</p> <p>Identify and formalize relationships with University partners.</p> <p>Implement program.</p> <p>Have at least two interns at EPC this fall.</p>



## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	Year End Goal
3.3 Stakeholder Relationships	Permitting Enhancements	<p>Met with the County's Economic Development Department.</p> <p>Met with the County's Planning and Growth Management Department</p> <p>Contacted Cities of Tampa and Temple Terrace and discussed continuing efforts regarding environmental assistance and permitting of small businesses.</p>	<p>Increase permitting outreach to small businesses (goal of 10 in 2013).</p> <p>Expand Priority Permitting to DEP and SWFWMD.</p> <p>Obtain an overall satisfaction rating of 3.6 or better 100% of the time.</p> <p>Process 95% of applications in less than half the statutory time.</p>



-36-

Coordinating upcoming meeting with the Economic Development Corporation.

Coordinating upcoming meetings with the City of Tampa, City of Temple Terrace, and with the County and the City Accela project officers.

## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	Year End Goal
3.3 Stakeholder Relationships	Permitting Enhancements	<p>Met with the County's Economic Development Department.</p> <p>Met with the County's Planning and Growth Management Department</p> <p>Contacted Cities of Tampa and Temple Terrace and discussed continuing efforts regarding environmental assistance and permitting of small businesses.</p>	<p>Increase permitting outreach to small businesses (goal of 10 in 2013).</p> <p>Expand Priority Permitting to DEP and SWFWMD.</p> <p>Obtain an overall satisfaction rating of 3.6 or better 100% of the time.</p> <p>Process 95% of applications in less than half the statutory time.</p>



Coordinating upcoming meeting with the Economic Development Corporation.

Coordinating upcoming meetings with the City of Tampa, City of Temple Terrace, and with the County and the City Accela project officers.


## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
---------------------	--------------	--------	--------------------

5.2 Use of Technology	Online Applications & E-Pay	Have been working with E-Payment processor but unable to implement successful system for EPC. Working with the County and BOA to come up with working e-payment system.	The system will be successful if the public is able to submit and pay for an application from the EPC website.
-----------------------	-----------------------------	---	--

Goal is to have 10% of the applications submitted in the fourth quarter of 2013 done so on-line.

Application Form - First draft form (PRF Application) created and brought online. Senior Staff approval pending.



**ROGER P. STEWART CENTER**  
3629 Queen Palm Dr. Tampa, FL 33619  
Ph: (813) 627-2600 · Fax: (813) 627-2630  
www.epchc.org

**WDR30 - APPLICATION TO PERFORM  
DELINEATION OF WETLANDS AND OTHER  
SURFACE WATERS**

This Environmental Protection Commission application is for delineation of wetlands and other surface waters as provided in Chapter 1-11.04 Wetlands, Rules of the EPC and adopted Basis of Review. The delineation will be performed in accordance with the methodology described in Chapter 62-340, Florida Administrative Code. The fee for this application is \$150. Return completed applications and the \$150 application fee to EPC Wetlands Management Division, 3629 Queen Palm Drive, Tampa, FL 33619.

**1. PROPERTY OWNER INFORMATION:**

Request to be present at site inspection

First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Company Name/Title \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_



## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
5.2 Use of Technology	Virtual Desktop System	<p>Configured the Network, Servers, and Storage Area Network (SAN) hardware.</p> <p>Purchased Virtual Clients from IOCorp.</p> <p>Began deployment of Clients.</p> <p>Continuous and ongoing configuration updates based on user feedback.</p>	<p>To deploy 80 Virtual Desktop Infrastructure (VDI) Clients and increase system uptime &gt;96%</p>



## Quarterly Update for 2013 Action Plans

Strategic Objective	Action Plans	Status	2013 Year End Goal
5.2 Use of Technology	Common Agency Database Feasibility Study	<p>Conducting ongoing meetings with Database users group to decide and agree on which databases should be interconnected.</p> <p>Requested meetings with database administration firms to discuss options for database connectivity.</p>	<p>Documenting all the Agency's databases and developing a proposal with requirements, costs and timelines to implement a common agency database.</p>





## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** August 15, 2013

**Subject:** Select Performance Measure Goals for 2013

**Agenda Section:** Consent Agenda

**Division:** Executive Director

**Recommendation:** Informational Only

**Brief Summary:** As part of the Sterling Management process, the Agency measures key activities and has set goals for 2013. These are tabulated and presented quarterly to the Board in the consent agenda.

**Financial Impact:** No Financial Impact

**Background:** The Agency measures performance for all five of its core functions. These core functions include permitting, compliance, complaint investigations, enforcement and environmental monitoring. As part of the Agency's annual evaluation, staff sets goals for select activities and reports them quarterly to the Board. This is an integral part of the continuous improvement required by Sterling.

# 2013 Goals

Core Function	Measure	Pre-Sterling Year (2009)	2011	2012	2013 YTD (2 <sup>nd</sup> Qtr)	2013 Goal
Permitting	Average Time State Construction Permits were In- house	57 days	36 days	36 days	34 days	Less Than or Equal to 36 days
	Average Time Tampa Port Authority Permits were In-house	56 days	53 days	43 days	44 days	N/A
	Average Time EPC Permits were In-house	21 days	20 days	16 days	18 days	Less Than or Equal to 20 days
Compliance	Timely Resolution of Lower Level Non-Compliance Cases	92%	90%	91%	94%	Greater Than 90%
Environmental Complaints	Timely Initiation of Investigation	99%	99%	99+%	100%	Maintain 99%
Enforcement	Timely Initiation of Enforcement	73%	81 %	76 %	92%	85%



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** August 15, 2013

**Subject:** Final Order Hearing regarding the Baldor vs EPC boatlift permitting appeal (EPC Case No. 12-EPC-015)

**Agenda Section:** Regular Agenda

**Division:** Legal and Administrative Services Division

**Recommendation:** Conduct a Final Order Hearing to consider and take action on the Hearing Officer's Recommended Order.

**Brief Summary:** Appellant Javier Baldor resides on a canal in Tampa and applied to the EPC for a boatlift permit. The application to construct the boatlift was denied based on Tampa Port Authority rules (administered by the EPC) due to the structure encroaching an undisputed seventeen (17) feet into the neighbor's setback and Baldor failing to obtain an "affidavit of no objection" from the neighbor. Mr. Baldor challenged the denial and a Summary Hearing was conducted on February 20, 2013. The presiding Hearing Officer issued a Recommended Order on March 1, 2013, upholding the denial of a Minor Work Permit for the construction of a boatlift and pilings on Sovereignty Lands within the neighbor's setback. Mr. Baldor has filed Exceptions to the Recommended Order based on grounds that the original structure was "grandfathered", and under the rules, can be replaced without requiring an affidavit of no objection from the neighbor. The EPC has filed a Response to Baldor's Exceptions. The Commission must now sit in a quasi-judicial capacity to affirm, reverse, or modify the Hearing Officer's Recommended Order through either the issuance of a Final Order or a remand back to the Hearing Officer for additional findings. The EPC Executive Director's legal counsel will present argument as to why the Commission should uphold the Recommended Order and deny the application. Mr. Baldor's counsel will present argument as to why the Commission should reverse or modify the Recommended Order and approve the application. Each side has ten minutes to argue their case.

**Financial Impact:** No Financial Impact

**Background:** The Environmental Protection Commission was delegated the marine construction permitting authority from the Tampa Port Authority (TPA) and the EPC routinely processes dock permit applications on behalf of the TPA and the Florida Department of Environmental Protection as part of its streamlined permitting program. Appellant Javier Baldor lives on a canal in Tampa and applied to the EPC for authorization (a/k/a Minor Work Permit) to construct a boatlift and pilings adjacent to his existing dock on his property.

The Minor Work Permit application was denied based on the TPA Submerged Land Management Rules that address minimum setback requirements from neighbor's property unless an affidavit of no objection is obtained from the neighbor. In this case, the neighbor objected to Mr. Baldor's boatlift encroaching into the setback an undisputed 17 feet. Mr. Baldor challenged the denial on grounds that the rule allowed his boatlift, which had been removed for a period of approximately two years, to be "grandfathered" and rebuilt without the need to obtain an affidavit of no objection from the neighbor. The case was assigned to an EPC hearing officer and the Parties agreed to hold a Summary Hearing before the Hearing Officer. In accordance with sections 1-2.32 (i), Rules of the EPC,

the summary hearing was conducted on February 20, 2013, and a Recommended Order (attached) was issued by the Hearing Officer on March 1, 2013, upholding the denial to construct the boatlift as requested by Mr. Baldor.

Mr. Baldor, through his counsel, has filed Exceptions to the Recommended Order (attached) asking the Commission to reverse the Recommended Order based on grounds that the previous boatlift structure was grandfathered under the rules. The Executive Director has filed a Response (attached) to the Baldor exceptions, asking the Commission to affirm the Recommended Order. Pursuant to Section 9 of the EPC Act and Section 1-2.35, Rules of the EPC, the Commission must now sit in a quasi-judicial capacity to affirm, reverse, or modify the Hearing Officer's Recommended Order through issuance of a Final Order or remand the case back to the Hearing Officer for additional findings. The Commission has been provided in this agenda item the Hearing Officer's Recommended Order, the Baldor Exceptions to the Recommended Order, and the Executive Director's Response to the Exceptions. The Commission should only consider documents in the hearing file and legal arguments presented to them at the Commission's Final Order hearing. No new evidence may be introduced or considered.

The EPC Executive Director's legal counsel will present argument as to why the Commission should affirm the Recommended Order and deny the application. Mr. Baldor will present argument as to why the Commission should reverse the Recommended Order and grant the application. Each side has ten minutes to argue their case before the Commission. In the conduct of the hearing, prior to issuing a Final Order, the Commission will have an opportunity to ask questions of the parties and receive legal advice from the Commission attorney.

**This Page Intentionally Left Blank**

**This Page Intentionally Left Blank**



**BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL  
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

**JAVIER BALDOR,**

**Appellant,**

**EPC Case No: 12-EPC-015**

**vs.**

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,**

**Appellee.**

---

**RECOMMENDED ORDER  
WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Upon filing of individual Motions for Summary Recommended Order and for Summary Final Order, and the Hearing Officer having heard the argument of counsel and taken evidence and being otherwise fully advised in the premises, the Hearing Officer has made this recommendation on Appellant's Notice of Appeal of the Environmental Protection Commission of Hillsborough County (hereinafter "EPC") Executive Director's denial of an application for a Minor Work Permit for the construction of a boatlift on jurisdictional surface waters (hereinafter "Sovereignty Lands") in Hillsborough County, Florida. The Appellant Javier Baldor (hereinafter "Appellant") asserted that the EPC Executive Director erred in denying the Minor Work Permit for the construction of a boatlift adjacent to the Appellants' property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "the Property"). The EPC Executive Director asserts that the denial issued on October 9, 2012 should be upheld by the Hearing Officer based on the applicable standards of the Tampa Port Authority Enabling Act, Chapter 95-488, Laws of Florida, (hereinafter "TPA Enabling Act") and the Tampa Port Authority Submerged Lands Management Rules (hereinafter "SLM Rules") adopted thereunder.

**APPEARANCES**

For Appellant:	Anthony Cuva, Esq. Bajo Cuva Cohen & Turkel, P.A. 100 N. Tampa St., Suite 1900 Tampa, FL 33602
For EPC Executive Director:	T. Andrew Zodrow, Esq. Florida Bar No. 80055 Environmental Protection Commission of Hillsborough County 3629 Queen Palm Dr. Tampa, FL 33619

**STATEMENT OF THE ISSUE**

The issue to be determined in this appeal is whether the Appellant has demonstrated reasonable assurance that the proposed boatlift structure complies with the SLM Rules. More specifically, does the proposed boatlift structure comply with Rule Subsection II.I.3, SLM Rules, wherein “[w]ater dependant structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules.” The ultimate question is whether a structure that has been removed for over two years can still be considered grandfathered under the rules so as to allow it to be rebuilt in the same location where it otherwise would not be allowed under the applicable rules.

**PRELIMINARY STATEMENT**

On March 20, 2012, the Appellant submitted to the EPC Executive Director, pursuant to the “Amended and Restated Interlocal agreement between the Tampa Port Authority (‘TPA’) and the Environmental Protection Commission of Hillsborough County (‘EPC’) dated June 23, 2009” (hereinafter “TPA Delegation Agreement”), an application for a Minor Work Permit for the

construction of boatlift pilings and a boatlift on Sovereignty Lands adjacent to the Appellant's Property.

Based on the structure encroaching an undisputed seventeen (17) feet into the neighbor's setback and the Appellant's failure to obtain an "affidavit of no objection" from the neighbor, the application was denied. The Appellant then filed this appeal challenging the denial of the application. This proceeding is designed to formulate final agency action on the Appellant's application for marine construction activities in Sovereignty Lands under the Tampa Port Authority Submerged Lands Management Rules (hereinafter "SLM Rules") and the EPC Wetland Rule Chapter 1-11 and the Basis of Review adopted thereunder. No controversy exists in this matter under the EPC's Wetland Rule Chapter 1-11 and the Basis of Review. The applicable regulations in controversy include only the Tampa Port Authority Enabling Act and the adopted SLM Rules, specifically the *grandfathering* language in the SLM Rules.

### **FINDINGS OF FACTS**

**(Based on Stipulated Facts of the parties agreed on February 16, 2013)**

1. The Appellee Environmental Protection Commission of Hillsborough County (hereinafter "EPC") is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495 (the "EPC Act"), and the rules promulgated thereunder (the "EPC Rules"). The EPC also has authority to implement the Tampa Port Authority (hereinafter "TPA") Submerged Lands Management Rules (hereinafter "SLM Rules") and issue Minor Work permits on behalf of the TPA pursuant to the "Amended and Restated Interlocal agreement

between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County ('EPC') dated June 23, 2009."

2. Appellant Javier Baldor owns property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "Property").

3. Mr. Baldor purchased the Property in October 2005.

4. The Property is located on a canal identified as "Sovereignty Lands" owned by the Tampa Port Authority (hereinafter "TPA") and under its marine construction regulatory authority.

5. The Appellant has standing in this proceeding.

6. A dock currently exists at the Property.

7. The dock was originally permitted by the TPA in 1987 under a Minor Work permit. The 1987 TPA permit, identified as #87-161, was issued on June 4, 1987 and authorized the original construction of the dock.

8. On March 1, 1994, a revision to the 1987 permit was issued, identified as permit #94-043 which authorized the addition of a boatlift to the existing structure. The dock and boatlift that existed on Mr. Baldor's property were constructed pursuant to valid permits from the Authority.

9. Since 1992, the parcel of property to the east of the Property (and closest to the boatlift) has been owned Mr. Paul Byrum. At the time the boatlift was constructed in 1994, Mr. Byrum owned the adjacent property and presumably did not object to the construction of the boatlift.

10. The boatlift was constructed and existed on the Property until Mr. Baldor removed it in mid-December 2009 or early January 2010.

11. Mr. Baldor removed the boatlift because it was dilapidated and intended to replace it.

12. The boatlift was not removed because of any particular emergency or storm event.

13. The total length of the Appellant's shoreline is 122.5 feet.

14. On March 20, 2012, Mr. Baldor submitted an application to the EPC for a Minor Work permit to "replace boatlift pilings and lift."

15. The proposed boatlift would be constructed in the exact location as the original permitted structure was located. The proposed boatlift would be located within approximately eight (8) feet of the neighboring property to the east's (hereinafter referred to as "Neighboring Property") riparian line.

16. The riparian line at the shoreline between the Appellant's Property and the Neighboring Property extends straight out from the true property line and runs approximately 90 degrees off the shoreline heading due north at 0 degrees.

17. The adjacent property owner, Mr. Byrum, objected to the application and has not submitted an affidavit of no objection.

### **CONCLUSIONS OF LAW**

1. The assigned Hearing Officer has jurisdiction over the parties and the subject matter of this proceeding pursuant to Section 9 of the EPC Enabling Act, Chapter 84-446, Laws of Florida, as amended (hereinafter "EPC Act") and the "Amended and Restated Interlocal agreement between the Tampa Port Authority ('TPA') and the Environmental Protection

Commission of Hillsborough County ('EPC') dated June 23, 2009" (hereinafter "TPA Delegation Agreement").

2. The EPC has jurisdiction over the Tampa Port Authority Enabling Act, Chapter 95-488, Laws of Florida, and the SLM Rules pursuant to the TPA Delegation Agreement.

3. Pursuant to Section 1-2.33(d), Rules of the EPC, "[t]he burden of proof shall be on the Appellant to establish entitlement to a permit, order, authorization or exception allowed by the rules. Fact issues not raised by the Notice of Appeal shall be accepted as undisputed."

4. Subsection V.A.3.a.(2)(c), SLM rules provides that structures located on properties with a shoreline frontage of greater than 80 feet must maintain a minimum structural setback distance of 25 feet from the neighboring riparian lines. Exceptions to the setback requirements set forth above may be granted if the affected adjacent property owner provides an affidavit of no objection (AONO) or if the proposed structure is a subaqueous utility line.

5. Subsection II.I.3, SLM Rules, provides that wherein "[w]ater dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules." For the structure to be eligible for grandfathering under this section, the structure must presently exist at the time of the first EPC staff site visit after submittal of an application so as to verify the exact location and size of the structure.

6. The proposed boatlift cannot be permitted under Subsection V.A.3.a.(2)(c), SLM Rules, because the proposed boatlift is intended to be 17 feet inside of the 25 foot setback and the neighbor has not signed the AONO.

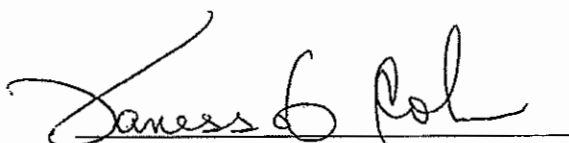
7. The proposed boatlift and its location cannot be considered grandfathered under Subsection II.I.3, SLM Rules, because the boatlift is not presently there and has been removed from the area for over two years prior to the application being submitted.

### RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order upholding the October 9, 2012 denial of a Minor Work Permit for the construction of a boatlift and pilings on Sovereignty Lands within the neighbor's 25 foot setback.

Respectfully submitted,

Dated: March 1, 2013



Vanessa N. Cohn, Esq.  
Hearing Officer for  
Environmental Protection Commission of  
Hillsborough County  
Arnstein & Lehr, L.L. P.  
302 Knights Run Avenue, Suite 1100  
Tampa, FL 33602-5962  
813-254-1400  
Fax: 813-254-5324  
vncohn@arnstein.com

cc: Anthony J. Cuva  
*Counsel for Appellant Mr. Baldor*

cc: Andrew Zodrow  
*Counsel for Appellee EPC of Hillsborough County*

**This Page Intentionally Left Blank**



BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL  
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

JAVIER BALDOR,

Appellant,

EPC Case No: 12-EPC-015

vs.

ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,

Appellee.

---

EXCEPTIONS TO RECOMMENDED ORDER

Appellant Mr. Javier Baldor files the following exceptions to the Recommended Order signed by Hearing Officer Vanessa Cohn on March 1, 2013 (hereinafter "Recommended Order") and respectfully requests that the Environmental Protection Commission of Hillsborough County ("EPC") reject the Recommended Order as proposed by the hearing officer. As grounds Baldor states:

Appellant Mr. Javier Baldor appeals the Denial of Application for Minor Work Permit # 53790 to replace a boatlift. The sole issue in this appeal is whether Mr. Baldor's boatlift is considered a grandfathered structure under the Submerged Lands Management Rules ("SLM Rules"). Mr. Baldor's boatlift meets the plain language definition of a "Grandfathered Structure" under the SLM Rules, and therefore, must be considered grandfathered. The SML Rules section I.(3) provides:

GRANDFATHERED STRUCTURES: Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

It is undisputed that Mr. Baldor's boatlift is a water dependent structure as defined by the SLM Rules and was constructed pursuant to valid work permits from the Authority in 1987 and 1994 respectively. (Stipulated Facts ¶ 8 at Tab 2). The rules governing statutory construction mandate that a Court apply the "plain" meaning of a statute.

The Recommended Order must be rejected because it injects specific language (see detail in section titled Exceptions to the Recommended Order section below) into the definition of grandfathered structures which is not present within the SLM Rules.

### **I. Factual Background**

Following is a brief summary of the historical background for the case being appealed herein:

- Mr. Baldor is the owner of property located on a canal at 4923 Lyford Cay Road, Tampa, Florida.
- At the time Mr. Baldor purchased the property in 2005, a dock and boatlift existed on the property. There is no dispute that the dock and boatlift were constructed pursuant to a valid permit.
- In December 2009, Mr. Baldor hired a marine contractor to remove and replace the boatlift. The marine contractor removed the boatlift sometime in late December 2009 or early January 2010. Notably, the marine contractor left two (2) of the four (4) poles remaining from the boatlift. In December of 2011, Mr. Baldor undertook to replace his boatlift.
- On January 16, 2012, Mr. Baldor's marine contractor contacted the EPC and advised them in writing that the boatlift had been removed and inquired whether it could be replaced.
- The EPC confirmed in writing on March 16, 2012 to the Mr. Baldor, the following statement after having consulted with the Tampa Port Authority:

We consulted with the Port on this matter and we all agree that as long as the dock was previously permitted, it can be replaced in-kind without the Affidavit of No Objection sign-off. We will simply notice the neighbors

with the standard adjacent property owner (APO) letter, which will allow them to comment but does not give them the power to stop the project as the [Affidavit of No Objection] sign off does. Let me know if you need anything else.

- Mr. Baldor and his marine contractor submitted an application for Minor Work Permit. Thereafter, the EPC advised Mr. Baldor that he could not go forward with replacing the boatlift because the adjacent property owner objected to the permit. Worth noting, the adjacent property owner objecting in this case is the same owner that approved this boatlift structure in 1994 according to the valid permit.
- On October 9, 2012, the EPC issued a Denial of the Application for Minor Work Permit and this appeal ensued.

Mr. Baldor's boatlift is considered a "Grandfathered Structure" under the existing definition found in the Submerged Lands Management Rules ("SLMR"), and therefore, Mr. Baldor is entitled to replace it.

## **II. Exceptions to the Recommended Order**

Mr. Baldor takes exception to the Recommended Order in the following respects:

1. The Statement of the Issue states that the ultimate question in this appeal is "whether a structure that has been removed for over two years can still be considered grandfathered." There is simply no language within the definition of grandfathered structure that requires a partially removed grandfathered structure to be replaced within a period of time. The structure was partially removed. Moreover, the issue in this appeal should be simply reading the plain language of the definition of grandfathered structures and determining whether Mr. Baldor's boatlift should be considered grandfathered for the purpose of replacing it in the exact location that it had existed for sixteen (16) years.

2. Mr. Baldor takes exception to paragraph 4 of the conclusions of law because it enumerates exceptions to the setback requirements but fails to state that grandfathered structures are excepted from the setback requirements.

3. Under the conclusion of law, Mr. Baldor takes exception to paragraph 5, in that the conclusion improperly injects very specific language into the definition of grandfathered structure that is not contained within the SLM rule. The conclusion of law states:

For the structure to be eligible for grandfathering under this section, the structure must presently exist at the time of the first EPC staff site visit after submittal of an application so as to verify the exact location and size of the structure.

4. This language is not found anywhere within the SLM Rules and imposes a restriction on grandfathered structures that is not within the plain meaning of that statute. “[I]t is a basic principle of statutory construction that courts ‘are not at liberty to add words to statutes that were not placed there by the Legislature.’” *L.G. v. State*, 939 So. 2d 1141, 1143 (Fla. Dist. Ct. App. 2006) *citing*, *Seagrave v. State*, 802 So.2d 281, 287 (Fla.2001) (quoting *Hayes v. State*, 750 So.2d 1, 4 (Fla.1999)). Mr. Baldor takes exception to paragraph 6 of the conclusions of law, because the adjacent property owner does not have the right to sign an Affidavit of No Objection (AONO) if the boatlift is considered a grandfathered structure which was confirmed in writing by the EPC to Mr. Baldor on March 16, 2012.

5. Mr. Baldor takes exception to paragraph 7, because like paragraph 5, it improperly and arbitrarily adds words to the definition of grandfathered structure.

### **III. Nature of Relief Sought**

Accordingly, Mr. Baldor seeks to have the boatlift deemed a “Grandfathered Structure,” Denial of the Minor Work Permit reversed and the Minor Work Permit reinstated so he can replace his boatlift in the exact location that it had existed for sixteen (16) years.

IV. Memorandum of Law

- a. **There is No Time Provision in the Grandfathered Structures Provision that requires Replacement of the Grandfathered Structure within a Specified Period of Time.**

The sole issue in this appeal is whether Mr. Baldor's boatlift was a "Grandfathered Structure" within the meaning of the SML Rules. The SML Rules section I.(3) provides:

GRANDFATHERED STRUCTURES: Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

In the present case, it is undisputed that Mr. Baldor's boatlift is a water dependent structure as defined by the SLM Rules and was constructed pursuant to a valid permit from the Authority. (Stipulated Facts ¶ 8 at Tab 2). The rules governing statutory construction mandate that a Court (the EPC here) apply the "plain" meaning of a statute. There is simply no time limit that requires removed grandfathered structured to be replaced within a certain time frame. Thus, the EPC must apply the plain and unambiguous language of the Rule. Moreover, Courts (the EPC here) are not at liberty to add words to statutes that were not placed there by the legislature. *See L.G. v. State*, 939 So.2d 1141, 1143 (Fla. 1st DCA 2006).

The United States Supreme Court held in *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450, 122 S. Ct. 941, 950, 151 L. Ed. 2d 908 (2002):

As in all statutory construction cases, we begin with the language of the statute. The first step "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." (*citations omitted*). The inquiry ceases "if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" (*Citations omitted*).

In *Connecticut Nat. Bank v. Germain*, 503 U.S. 249 (1992), the Supreme Court stated:

[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says

there. (*Citations omitted*). When the words of a statute are unambiguous, then, this first canon is also the last: “judicial inquiry is complete.”

Florida Courts apply the same rule:

We conclude we are bound by the plain wording of the statute. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.

*Dolly Bolding Bail Bonds v. State*, 787 So. 2d 73, 74 (Fla. 2d DCA 2001).

In this case, the plain and unambiguous language of the grandfathered structures provision in the SML Rules provides that “structures constructed pursuant to valid permits . . . shall be exempt from these Rules.” Mr. Baldor’s boatlift is a Grandfathered Structure that is exempt from the setback requirements of the Rules. Accordingly, the Denial must be reversed and the Minor Work Permit reinstated.

**b. Under the EPC’s own interpretation of the Grandfathered Structures Provision, Mr. Baldor’s boatlift presently exists.**

Here, Appellant Mr. Baldor has two (2) of the four (4) pilings existing from the boat lift. (See Exhibit 3(e)). One day after the adjacent property owner in this case notified the EPC of his objection, the EPC added further confusion by attempting to clarify what type of work does not require a permit. In an e-mail dated April 26, 2012 addressed to marine contractors, the EPC advised that the structure has to be existing at the time of the application (despite the fact that the SLM Rules do not contain such language). The EPC further stated that if “50% of boatlift pilings (usually 2)” exist then a Minor Work Permit is not required. (See Exhibit 3(f)). Thus, under the EPC’s arbitrary guidelines, Mr. Baldor’s boatlift exists and is considered grandfathered because two of the four pilings are present.

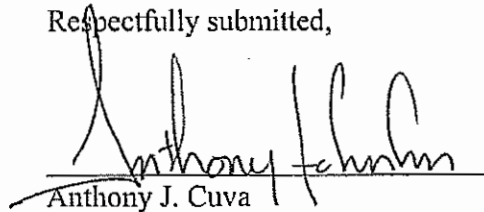
- c. **Should the EPC adopt the Recommended Order, it would lead to unjust results.**

The Recommended Order states at paragraph 5 that grandfathered “structures must presently exist at the time of the first EPC staff site visit after submittal of an application so as to verify the exact location and size of the structure.” This language is improperly added into the Rule by the hearing officer and is not contained anywhere within the SLM Rules. The EPC arbitrarily adds such language and arbitrarily applies such language. The rationale as put forth by the EPC is that EPC staff must verify the exact location and size of the structure. Here, the exact location of the boatlift can be easily verified through Google Earth and the previously existing permit. To accept the arbitrary and retroactive amendment of legal statutes such as the SLM rules in this case would establish a haphazard and unfair precedent. Accordingly, the EPC should permit Mr. Baldor to replace his grandfathered boat lift. Lastly, for the record, there has never been a documented adverse impact on the adjacent objecting property owner. The boatlift existed in the same location for over sixteen (16) years without any documented complaint or issue by the adjacent property owner originally approved the same boatlift structure in 1994.

V. Conclusion

Appellant submits its Motion for Summary Disposition which was to the hearing officer for further clarification and review by the EPC Commissioners. Because the Appellant Mr. Baldor's boatlift is a Grandfathered Structure as defined by the Submerged Lands Management Rules and the EPC's own interpretation of the Grandfathered Structures Provision, the Application for Minor Work Permit to replace the pilings and boatlift must be reversed.

Respectfully submitted,



Anthony J. Cuva  
Florida Bar No. 896251  
BAJO CUVA COHEN TURKEL, P.A.  
100 North Tampa Street, Suite 1900  
Tampa, Florida 33602  
Telephone: (813) 443-2199  
Facsimile: (813) 443-2193  
Email: [anthony.cuva@bajocuva.com](mailto:anthony.cuva@bajocuva.com)

*Attorney for Appellant, Javier Baldor*



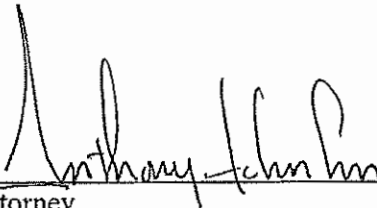
**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail this 7th day of March, 2013, to:

Assistant Counsel, Andrew Zodrow, Esq.  
c/o Environmental Protection Commission of Hillsborough County  
Roger P. Stewart Center  
3629 Queen Palm Drive  
Tampa, FL 33619  
[zodrow@epchc.org](mailto:zodrow@epchc.org)

Kevin Beckner, EPC Commissioner  
Hillsborough County  
601 East Kennedy Blvd.  
Tampa, FL 33602

Richard Tschantz  
c/o Environmental Protection Commission of Hillsborough County  
Roger P. Stewart Center  
3629 Queen Palm Drive  
Tampa, FL 33619

  
\_\_\_\_\_  
Attorney

cc: Mr. Javier Baldor

**This Page Intentionally Left Blank**

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**JAVIER BALDOR,**

Appellant,

EPC Case No: 12-EPC-015

vs.

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,**

Appellee.

---

**APPELLEE ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY'S RESPONSE TO APPELLANT'S EXCEPTIONS  
TO THE RECOMMENDED ORDER OF THE ASSIGNED HEARING OFFICER**

The Appellee Executive Director for the ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPC) by and through his undersigned attorney, pursuant to Section 1-2.35, Rules of the EPC, hereby files this response to the Appellant's exceptions to the Hearing Officer's Recommended Order dated March 1, 2013 and states as follows:

On March 1, 2013, the assigned Hearing Officer entered a Recommended Order in this case recommending that a Final Order be entered upholding the October 9, 2012 denial of a Minor Work Permit for the construction of a boatlift and pilings on Sovereignty Lands located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "the Property"). The proposed construction lies within the adjacent neighbor's 25 foot setback from the riparian line and property.

The appropriate scope of review for a Hearing Officer's recommended findings of fact and conclusions of law is well established. Section 1-2.35, Rules of the EPC, provides that exceptions shall be limited to challenge of the Hearing Officer's determination of facts with specific reference to evidence in the record or to challenge the Hearing Officer's application of the existing rules to the

facts as found. The EPC shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the EPC shall not take any action which conflicts with or nullifies any provision of Chapter 84-446 or the rules adopted pursuant to the enabling act. This rule would also be applicable for Tampa Port Authority Submerged Lands Management Rules (hereinafter "SLM Rules") pursuant to Paragraph 7 of the "Amended and Restated Interlocal agreement between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County ('EPC')" dated June 23, 2009.

In the Appellant's Exceptions to the Recommended Order dated March 7, 2013 there are several mischaracterizations of the facts and certain facts left out of the argument that would be relevant if the facts alleged by the Appellant are accepted. These alleged facts regarding e-mail correspondences, however, are not relevant to the decision at hand. The sole question is whether a structure that has been removed, as identified in paragraphs 10 and 12 of the Stipulated Facts, attached hereto as Exhibit 1, is considered *grandfathered* under the rules. This case does not involve an estoppel argument and any allegations regarding what the Appellant may have thought or heard from EPC staff is irrelevant to the entry of this Recommended Order and Final Order.

*Response to Exceptions directed to Conclusions of Law*

Section 1-2.35, Rules of the EPC, provides that exceptions to Conclusions of Law are to be limited to the Hearing Officer's application of the existing rules to the facts as found. In addition, Section 1-2.35, Rules of the EPC, states the Commission shall not take any action in making its final order which conflicts with or nullifies any provision of Chapter 84-446 or the rules adopted pursuant to the Act. Again, this rule would also be applicable for Tampa Port Authority SLM Rules pursuant

to Paragraph 7 of the “Amended and Restated Interlocal agreement between the Tampa Port Authority (‘TPA’) and the Environmental Protection Commission of Hillsborough County (‘EPC’)” dated June 23, 2009.

The Hearing Officer correctly made the appropriate Conclusions of Law in this case. The Hearing Officer’s Conclusions of Law in paragraph #5 and #7 of the Hearing Officer’s Recommended Order are supported by the Tampa Port Authority’s governing rules and Legislative Act and should be upheld by the Commission. The Hearing Officer’s ultimate conclusion that the proposed boatlift and its location cannot be considered grandfathered under Subsection II.I.3, SLM Rules, because the boatlift is not presently there and has been removed from the area for over two years prior to the application being submitted, is supported by Florida law.

The question presented in the Appellant’s Exceptions and addressed in this response is whether the structure must presently be in existence for it to be eligible for grandfathering under the setback rules. In this particular case, the Appellant concedes that the proposed structure does not meet the current TPA SLM Rule Subsection V.A.3.a.(2)(c). This rule requires that structures located on Sovereignty Lands adjacent to properties with a shoreline frontage of greater than 80 feet must maintain a minimum structural setback distance of 25 feet from the neighboring riparian lines. Exceptions to the setback requirements set forth above may be granted if the affected adjacent property owner provides an “affidavit of no objection” (AONO) or if the proposed structure is a subaqueous utility line. The boatlift structure does not meet this rule as it is proposed to be located within the neighbor’s setback and the neighbor is objecting to its placement there.

The Appellant alleges in the Exceptions that the plain meaning of the grandfather clause should be considered when interpreting the language. It is important to closely read the language in

the rule relied upon by the Appellant. Subsection II.I.3, SLM Rules, states “[w]ater dependant structures which *are* non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules.” (emphasis added) By using the word “*are*”, the rule is written clearly to be present tense in nature rather than past tense. The plain meaning of the grandfather clause requires that the structure must presently exist at the time the application is submitted. Further, Black’s Law Dictionary, Sixth Edition, defines “grandfather clause” as a “[p]rovision in a new law or regulation exempting those *already in* or a part of the *existing system* which is being regulated.” (emphasis added). Again, the plain meaning of grandfathering language requires the structure to exist at the time of the application submittal. The Hearing Officer correctly identified that for a particular structure to be grandfathered it must be presently in existence rather than having existed two years ago.

The Appellant takes exception to Conclusion of Law paragraph #4. This Conclusion of Law is simply the verbatim language taken directly from Subsection V.A.3.a.(2)(c), SLM Rules. This Conclusion of Law may not be overturned in the Final Order.

The Appellant takes exception to paragraphs #5 and #7 as the Appellant alleges those conclusions add language or words that are not presently in the grandfather clause. The Appellant is incorrect, however, as the language in the rule is written in the present tense wherein the drafters of the language inserted the phrase “[w]ater dependant structures which *are* non-revenue generating structures constructed . . .” (emphasis added). The language in the Appellant’s Exceptions clearly shows the mischaracterization and misinterpretation of the language in the rule. On page 5, eleven lines down from the top, the Appellant states “[i]n the present case, it is undisputed that Mr. Baldor’s boatlift *is* a water dependant structure as defined in the SLM Rules . . .” (emphasis added) The

correct language in that sentence should have been “[i]n the present case, it is undisputed that Mr. Baldor’s boatlift *was* a water dependant structure as defined in the SLM Rules” (emphasis added) because the boatlift does not presently exist and has not existed for over two years. The plain meaning of the rule has been met by the clear use of the word “are.” There is nothing ambiguous about the present tense of the verb “are” in the rule language.

The Appellant also mischaracterizes the “no permit required” language regarding being allowed to remove two pilings without a permit as reflected in the e-mail dated April 26, 2012. It is true that a permit is not required under the TPA SLM rules to replace two pilings on an existing boatlift. This case is not about replacing two pilings on an existing boatlift but is about whether the boatlift must presently exist for it to be grandfathered. Two pilings left in the water does not constitute a boatlift and does not authorize replacement of the entire structure without a permit or, if an application is submitted, without an “affidavit of no objection” from the neighbor. The Appellant’s statement in the exceptions “[t]he EPC further stated that if ‘50% of boatlift pilings (usually 2)’ exist then a Minor Work Permit is not required” is incorrect. This language contradicts the language in the e-mail and totally mischaracterizes the actual language regarding when a permit is required. The April 26, 2012 e-mail states “[t]he structure *has to be existing at the time of the application request.*” (emphasis added) and the language “50% of boatlift pilings (usually 2)” means that 50% of the boatlift pilings may be replaced without a permit on an **existing** boatlift. The Appellant acknowledges the boatlift was removed over two years prior to submittal of the application. The stipulated fact that the boatlift was removed two years ago clearly conflicts with the “no permit required” language in the e-mail dated April 26, 2012. A copy of the e-mail is attached hereto as Exhibit 2. This argument is irrelevant to the decision about the grandfathering of a boatlift

but rather is related solely to minor repairs that do not need a permit.

### **Legal Argument in Support**

Again, this case is about whether the structure must presently exist at the time of the submittal of the application for it to qualify as a grandfathered structure. The Appellant alleges that the structure and the proposed location are grandfathered, and that it is merely a replacement of the pre-existing boatlift. Although presumably the Neighboring Property Owner previously accepted the location of the boatlift in 1994, the Neighboring Property Owner, Mr. Byrum, is now objecting to the replacement of the structure in its proposed location. This case and decision are important as the Conclusions of Law in the Final Order will become precedent for future structures in Hillsborough County. The decision to allow structures to be rebuilt in areas, where they are otherwise prohibited, based on grandfathering of structures that no longer exist (and may have been removed as long as 29 years ago), would create significant problems for the agency and the TPA in implementing the SLM Rules. The training received from the TPA and guidance in the past has been that for structures to be eligible for grandfathering under Rule Subsection III.3, SLM Rules, the structures must be in existence at the time of the first inspection after the submittal of a TPA Minor Work Permit application. In addition, pursuant to TPA policy an expiration date is included in each Minor Work Permit issued. Each Minor Work Permit expires one year after issuance, which deadline can be extended up to, but no more than, two additional years upon written request submitted prior to the original expiration date. That is important as the original 1994 Minor Work Permit, issued almost 20 years ago, has expired and the applicant cannot rely on that permit for grandfathering.

It is also important to note, in extraordinary circumstances such as an emergency or major storm damage, the previously permitted structures can be rebuilt, with written approval from the



TPA or EPC, so long as the reconstruction occurs within a reasonable period of time. In this case the Appellant concedes the structure was voluntarily removed and the removal was not necessitated upon any specific major storm damage or emergency. No emergency caused the involuntary removal of the structure and even if an emergency had occurred, the period of time that transpired before a new application was submitted was not within reason to maintain the grandfathering status of the structure.

“Being an exception to a general prohibition, any such statutory provision is normally construed strictly against the one who attempts to take advantage of the exception.” State v. Nourse, 340 So. 2d 966, 969 (Fla. 3d DCA 1976). “And, unless the right to the exception is clearly apparent in the statute, no benefits thereunder will be permitted.” Id. “Any ambiguity in an exception statute is normally construed in a manner that restricts the use of the exception.” Id. The grandfathering language in Subsection II.I.3, SLM Rules is an exception to the general prohibition of installing structures within the 25 foot riparian line setback. Without conceding there is any ambiguity in the grandfathering language of the rule, the Appellant should not be entitled to the exception as the grandfathering language is to be strictly construed against the Appellant.

The interpretation that the boatlift must be in existence at the time of application submittal is supported by Florida case law. In the case of Cowart v. Kalif, 123 So. 2d 468, 470 (Fla. 3d DCA 1960), the Court discussed the grandfathering provision in a statute regarding certificates of competency. The statute provided that for a plumber to be eligible for a County Certificate of Competency, without first passing a written examination, the applicant must have "actively, continuously and properly engaged in the trade concerned...for a period of five years immediately prior to the effective date" of the statute, and then the applicant must apply within six months of the

effective date of the statute. Id. Where one of the applicants “did not apply until after the time limit in the ‘grandfather clause’ had expired,” the court emphasized that this time period was not contested as “unreasonable.” Id. The basis for the court’s emphasis was a reasonable “time limitation... is an integral part of the operation of the provision and may not be disregarded or waived by the administrative authority. To grant such exceptions would be to extend the right indefinitely at the unlimited discretion of the administrator of the law. Since the provision containing the time limit did not work an undue hardship, it will be upheld. This limitation must be observed.” Id. at 470-471. Conversely, a ruling upholding the Appellant’s argument would give the Executive Director unlimited discretion to accept structures as grandfathered that were permitted and removed over 25 years ago.

The Third DCA’s interpretation of the language “actively” and “continuously” for maintaining employment would similarly apply to interpreting the word “are” for existing structures, rather than also encompassing those that *were*. Cowart at 470. Any interpretation accepting anything less than an “existing structure,” such as a boatlift that had not existed for over two years previously, would extend the right indefinitely at the unlimited discretion of the administrator of the law. This interpretation raised by the Appellant is not supported by Florida law.

Another Florida case further supports that the voluntary removal of the boatlift two years before the application to re-install the boatlift removes any grandfathering available for the applicant. In the case Chancellor Media Whiteco Outdoor Corp. v. State, Dept. of Transp., 796 So.2d 547, 548 (Fla. 1st DCA 2001), the Court held that the grandfathering of a state highway sign is lost once the sign is “destroyed by noncriminal, nontortious acts.” The court’s decision was based on a federal statute that stated that highway “signs which do not conform to size, lighting, and spacing

requirements are generally prohibited and must be removed. However, in accordance with a federal regulation, a state administrative rule, and the grandfather clause of the federal-state agreement, an exception has been carved out for nonconforming signs which pre-existed the federal-state agreement. So long as a grandfathered sign remains in substantially the same condition as it existed when it became nonconforming, the prohibition will not apply. And the federal regulation further provides in relevant part as follows: the [grandfathered] sign may continue as long as it is not destroyed.... (and) if permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.” *Id.* Therefore, “grandfathered” signs lose their exemption once they are “destroyed by noncriminal, nontortious acts...” *Id.* at 549. Therefore, the Court found that signs destroyed by inclement weather were not even protected under this statute, since this did not meet the grandfather exception language. *Id.* This court's decision illustrates that a statute's language is to be strictly interpreted, even if another interpretation may otherwise seem permissible.

Grandfather clauses are where “non-conforming uses are...permitted by zoning ordinances to continue even though similar uses are not permitted in area in which they are located.” *Dowd v. Monroe County*, 557 So.2d 63, 65 (Fla. 3d DCA 1990). For instance, “under the [Sarasota] County's zoning ordinance, nonconforming uses that continue to operate after the effective date of the regulation are subject to the following discontinuance provision: Discontinuance - If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 365 consecutive days, any subsequent use of such land shall conform to the regulations specified by these zoning regulations for the district in which such land is located. A policy rationale for this regulation is that “nonconforming uses may be gradually

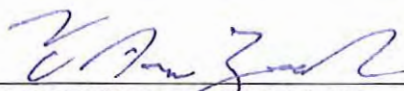
eliminated over the course of time. Other methods include attrition, destruction, and obsolescence.” Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431, 432 (Fla. 2d DCA 2007). While there was a suspension of a motel's operation for sixteen months (over the 365 days) this did not constitute a discontinuance of the nonconforming use because ongoing necessary repairs and renovations were occurring during this time.” Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431, 433 (Fla. 2d DCA 2007). The instant case can be distinguished because there is no record of repairs, and under no circumstances would a boatlift's repairs require such a substantial duration of time.

Finally, pursuant to Section 1-2.33(d), Rules of the EPC, “[t]he burden of proof shall be on the Appellant to establish entitlement to a permit, order, authorization or exception allowed by the rules.” Although there are no relevant facts in dispute, the evidence in the case demonstrates that the Appellant has not established that he can obtain a grandfathering exemption for a boatlift that was removed over two years prior to submittal of an application to rebuild the structure. The language in the applicable rules clearly identifies the present tense for structures, meaning the structures must be presently existing to be grandfathered. A conclusion of law that finds that structures removed over two years previous to the submittal of an application would be considered grandfathered is not consistent with the SLM Rules and would cause significant future problems for the agency in implementing the rules.

The Appellee is also attaching to this Response to the Appellant’s Exceptions to the Recommended Order its Motion for Summary Recommended Order which is attached hereto as Exhibit 3 in further support of this argument. The Appellant also has submitted its Motion that was initially filed with the Hearing Officer in support of the Exceptions to the Recommended Order.

WHEREFORE, the Appellee Executive Director of the EPC requests the Commission enter a Final Order, adopting the Hearing Officer's Recommended Order with the stipulated finding of facts and conclusions of law.

Respectfully submitted this 8th day of March 2013.

  
\_\_\_\_\_  
**T. ANDREW ZODROW, ESQ.**  
Environmental Protection Commission  
of Hillsborough County

**CERTIFICATE OF SERVICE**

I CERTIFY that a true copy of the foregoing was sent to via e-mail to **Anthony J. Cuva, Esq.** at [Anthony.Cuva@bajocuva.com](mailto:Anthony.Cuva@bajocuva.com) on this 8th day of March 2013.

  
\_\_\_\_\_  
T. Andrew Zodrow, Esquire  
Environmental Protection Commission  
3629 Queen Palm Drive  
Tampa, FL 33619  
Telephone: (813) 627-2600  
Facsimile: (813) 627-2602  
E-mail: [zodrowa@epchc.org](mailto:zodrowa@epchc.org)  
Florida Bar No.: 0080055

**BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL  
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

**JAVIER BALDOR,**

Appellant,

EPC Case No: 12-EPC-015

vs.

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,**

Appellee.

---

**STIPULATED FACTS**

The parties stipulate to the following facts without waiving objections as to their relevance:

1. The Appellee Environmental Protection Commission of Hillsborough County (hereinafter "EPC") is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495 (the "EPC Act"), and the rules promulgated thereunder (the "EPC Rules"). The EPC also has authority to implement the Tampa Port Authority (hereinafter "TPA") Submerged Lands Management Rules (hereinafter "SLM Rules") and issue Minor Work permits on behalf of the TPA pursuant to the "Amended and Restated Interlocal agreement between the Tampa Port Authority ("TPA") and the Environmental Protection Commission of Hillsborough County ("EPC") dated June 23, 2009."
2. Appellant Javier Baldor owns property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "Property").
3. Mr. Baldor purchased the Property in October 2005.

**EXHIBIT**

-78-

4. The Property is located on a canal identified as "Sovereignty Lands" owned by the Tampa Port Authority (hereinafter "TPA") and under its marine construction regulatory authority.

5. The Appellant has standing in this proceeding.

6. A dock currently exists at the Property.

7. The dock was originally permitted by the TPA in 1987 under a Minor Work permit. The 1987 TPA permit, identified as #87-161, was issued on June 4, 1987 and authorized the original construction of the dock.

8. On March 1, 1994, a revision to the 1987 permit was issued, identified as permit #94-043 which authorized the addition of a boatlift to the existing structure. The dock and boatlift that existed on Mr. Baldor's property were constructed pursuant to valid permits from the Authority.

9. Since 1992, the parcel of property to the east of the Property (and closest to the boatlift) has been owned Mr. Paul Byrum. At the time the boatlift was constructed in 1994, Mr. Byrum owned the adjacent property and presumably did not object to the construction of the boatlift.

10. The boatlift was constructed and existed on the Property until it was removed in mid-December 2009 or early January 2010

11. Mr. Baldor removed the boatlift because it was dilapidated and intended to replace it.

12. The boatlift was not removed because of any particular emergency or storm event.

13. The total length of the Appellant's shoreline is 122.5 feet.

14. On January 16, 2012, Mr. Baldor's marine contractor and agent contacted the EPC to determine whether the "boatlift could be replaced within the same footprint as the original." Mr. Baldor's marine contractor advised the EPC in writing that the boatlift had been removed: "(a picture of the existing boatlift, which has since been removed, is attached). The new boatlift will be installed within the same footprint as the original."

15. On March 16, 2012, the EPC advised Mr. Baldor in writing that:

We consulted with the Port on this matter and we all agree that as long as the dock was previously permitted, it can be replaced in-kind without the Affidavit of No Objection sign-off. We will simply notice the neighbors with the standard adjacent property owner (APO) letter, which will allow them to comment but does not give them the power to stop the project as the AONO sign off does.

16. The EPC staff relied on the statement by the contractor regarding the *replacement* of the boatlift when the EPC staff identified the boatlift could be *replaced in-kind*. No EPC site visit had been done to verify whether or not the structure was in existence at that time

17. On March 20, 2012, Mr. Baldor submitted an application to the EPC for a Minor Work permit to "replace boatlift pilings and lift."

18. The proposed boatlift would be constructed in the exact location as the original permitted structure was located. The proposed boatlift would be located within approximately eight (8) feet of the neighboring property to the east's (hereinafter referred to as "Neighboring Property") riparian line.

19. The riparian line at the shoreline between the Appellant's Property and the Neighboring Property extends straight out from the true property line and runs approximately 90 degrees off the shoreline heading due north at 0 degrees.

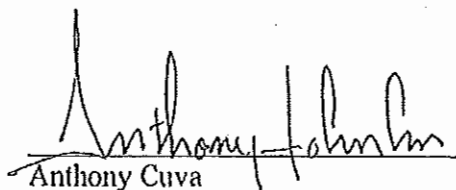
20. The adjacent property owner, Mr. Byrum, objected to the application and has not submitted an affidavit of no objection.



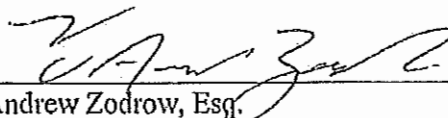
21. The parties agree that the issue in this appeal is the interpretation of the Submerged Lands Management Rules (SLM Rules), in particular, the Grandfathered Structures provision:

Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

Respectfully submitted this 16<sup>TH</sup> day of February 2013.



Anthony Cuva  
Bajo Cuva Cohen Turkel, P.A.  
100 N. Tampa St., Suite 1900  
Tampa, FL 33602  
E-mail: Anthony.Cuva@bajocuva.com



T. Andrew Zodrow, Esq.  
Environmental Protection Commission  
of Hillsborough County  
3629 Queen Palm Drive  
Tampa, FL 33619  
E-mail: zodrow@epchc.org

-----Original Message-----

From: Holland, Kelly <[HollandK@epchc.org](mailto:HollandK@epchc.org)>

To: Adams Design <[jbadams@gatordredging.com](mailto:jbadams@gatordredging.com)>; Anchor Marine and Boatlift <[jgres@tampabay.rr.com](mailto:jgres@tampabay.rr.com)>; Apollo Marine Construction <[jj@apollodocks.com](mailto:jj@apollodocks.com)>; Bay Dock Enterprise <[robinc@baydock.com](mailto:robinc@baydock.com)>; Docks By Mike <[newellruskin@gmail.com](mailto:newellruskin@gmail.com)>; Gibson Marine Construction <[mike@gibson-marine.com](mailto:mike@gibson-marine.com)>; Hecker Construction Company <[heckercompany@aol.com](mailto:heckercompany@aol.com)>; Lambert Marine <[b.lambertmarine1@yahoo.com](mailto:b.lambertmarine1@yahoo.com)>; Land and Sea Masters <[perry@645dock.com](mailto:perry@645dock.com)>; Priority Marine <[jason@prioritymarine.com](mailto:jason@prioritymarine.com)>; Spectrum Marine <[calescibetta@verizon.net](mailto:calescibetta@verizon.net)>; Stellar Marine Service <[stellarservices@yahoo.com](mailto:stellarservices@yahoo.com)>; Tampa Bay Marine <[tbm@tampabaymarineinc.com](mailto:tbm@tampabaymarineinc.com)>; Tampa Dock & Seawall <[cjuneau@jwrcontracting.com](mailto:cjuneau@jwrcontracting.com)>; Waterfront Engineering <[myseawall@aol.com](mailto:myseawall@aol.com)>; Waterline Construction <[daisy@1waterline.com](mailto:daisy@1waterline.com)>

Cc: Owens, Pete <[OwensP@epchc.org](mailto:OwensP@epchc.org)>

Sent: Thu, Apr 26, 2012 2:19 pm

I have previously been asked to put these in writing, so I thought for consistency I would pass them on to you.

The following is predicated on the proposed activity having been previously permitted. If the dock or rip-rap was not previously permitted, a permit is now required to legitimize the activity. The structure has to be existing at the time of the application request.

1. Re-decking a dock, anything from the stringers up.
2. 50% of boatlift pilings (usually 2)
3. 25% of the dock pilings
4. Renourishment of existing rip-rap. A photo of the rip-rap is required to document presence / absence of mangroves
5. In-Kind replacement of a dock destroyed or damaged during the current storm season due to a major storm
6. Removal only of an existing structure
7. In-Kind replacement of boatlift hardware, no enlargement of lift area allowed.

If you have any questions, please do not hesitate to contact me.

Thanx,

Kelly M. Holland

Wetlands Management Division

Environmental Protection Commission

of Hillsborough County

An agency with values of environmental stewardship, integrity, honesty, and a culture of fairness and cooperation

3629 Queen Palm Drive

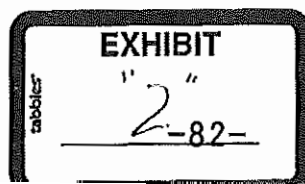
Tampa, FL 33619

Ph. (813) 627-2600 ext. 1222

FAX (813) 627-2630

*Treat the earth well. It was not given to you by your parents, it was loaned to you by your children.*

*Native American Proverb*



**BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL  
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

**JAVIER BALDOR,**

Appellant,

EPC Case No: 12-EPC-015

vs.

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY,**

Appellee.

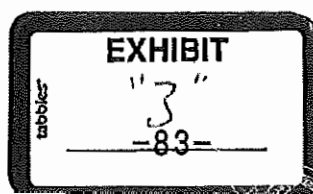
---

**MOTION FOR SUMMARY RECOMMENDED ORDER**

Appellee ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPC), by and through its undersigned counsel, pursuant to Rule 1-2.32(i), Rules of the EPC, moves the assigned Hearing Officer to enter a Summary Recommended Order on the grounds that there are no genuine issues as to any material fact and the EPC Executive Director is entitled to a Recommended Order based on adopted rules of the Tampa Port Authority. In support thereof the Appellee states the following:

**PRELIMINARY STATEMENT**

On March 20, 2012, the Appellant submitted to the EPC Executive Director, pursuant to the "Amended and Restated Interlocal agreement between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County ('EPC') dated June 23, 2009" (hereinafter "TPA Delegation Agreement"), an application for a Minor Work Permit for the construction of boatlift pilings and a boatlift on jurisdictional surface waters (hereinafter



“Sovereignty Lands”) adjacent to the Appellant’s property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter “Property”).

Based on the structure encroaching an undisputed seventeen (17) feet into the neighbor’s setback and the Appellant’s failure to obtain an “affidavit of no objection” from the neighbor, the application was denied. The Appellant then filed this appeal challenging the denial of the application. This proceeding is designed to formulate final agency action on the Appellant’s application for marine construction activities in Sovereignty Lands under the Tampa Port Authority Submerged Lands Management Rules (hereinafter “SLM Rules”) and the EPC Wetland Rule Chapter 1-11 and the Basis of Review adopted thereunder. No controversy exists in this matter under the EPC’s Wetland Rule Chapter 1-11 and the Basis of Review. The applicable regulations in controversy include only the Tampa Port Authority Enabling Act and the adopted Submerged Lands Management (SLM) Rules, specifically the *grandfathering* language in the SLM Rules.

#### STATEMENT OF CONTROVERSY

The issue to be determined in this appeal is whether the Appellant has demonstrated reasonable assurance that the proposed boatlift structure complies with the SLM Rules. More specifically, does the proposed boatlift structure comply with Rule Subsection II.I.3, SLM Rules, wherein “[w]ater dependant structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules.” The ultimate question is whether a structure that has been removed for over two years can still be considered grandfathered under the rules so as to allow it to be rebuilt in the same location where it otherwise would not be allowed under the applicable rules.

**STIPULATED FACTS: Those facts that are admitted  
and that require no proof for consideration of this Motion**

The parties have stipulated to a list of facts for purposes of this Motion. The list of stipulated facts will be separately filed but those that are relevant will also be provided here below. The parties stipulate to the following facts without waiving objections as to their relevance:

1. The Appellee Environmental Protection Commission of Hillsborough County (hereinafter "EPC") is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495 (the "EPC Act"), and the rules promulgated thereunder (the "EPC Rules"). The EPC also has authority to implement the Tampa Port Authority (hereinafter "TPA") Submerged Lands Management Rules (hereinafter "SLM Rules") and issue Minor Work permits on behalf of the TPA pursuant to the "Amended and Restated Interlocal agreement between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County ('EPC') dated June 23, 2009."

2. Appellant Javier Baldor owns property located at 4923 Lyford Cay Road, Tampa, Florida (hereinafter "Property").

3. Mr. Baldor purchased the Property in October 2005.

4. The Property is located on a canal identified as "Sovereignty Lands" owned by the Tampa Port Authority (hereinafter "TPA") and under its marine construction regulatory authority.

5. The Appellant has standing in this proceeding.

6. A dock currently exists at the Property.

7. The dock was originally permitted by the TPA in 1987 under a Minor Work permit. The 1987 TPA permit, identified as #87-161, was issued on June 4, 1987 and authorized the original construction of the dock.

8. On March 1, 1994, a revision to the 1987 permit was issued, identified as permit #94-043 which authorized the addition of a boatlift to the existing structure. The dock and boatlift that existed on Mr. Baldor's property were constructed pursuant to valid permits from the Authority.

9. The boatlift was constructed and existed on the Property until it was removed in mid-December 2009 or early January 2010.

10. The boatlift was not removed because of any particular emergency or storm event.

11. The total length of the Appellant's shoreline is 122.5 feet.

12. On March 20, 2012, Mr. Baldor submitted an application to the EPC for a Minor Work permit to "replace boatlift pilings and lift."

13. The proposed boatlift would be constructed in the exact location as the original permitted structure was located. The proposed boatlift would be located within approximately eight (8) feet of the neighboring property to the east's (hereinafter referred to as "Neighboring Property") riparian line.

14. The riparian line at the shoreline between the Appellant's Property and the Neighboring Property extends straight out from the true property line and runs approximately 90 degrees off the shoreline heading due north at 0 degrees.

15. The adjacent property owner, Mr. Byrum, objected to the application and has not submitted an affidavit of no objection.

16. The parties agree that the issue in this appeal is the interpretation of the Submerged Lands Management Rules (SLM Rules), in particular, the Grandfathered Structures provision:

Water dependent structures which are non-revenue generating structures constructed pursuant to valid permits from the Authority or in existence prior to July 1, 1983 shall be considered exempt from the provisions of these Rules.

#### **FACTS NOT RELEVANT BUT RAISED BY THE APPELLANT**

17. On January 16, 2012, Mr. Baldor's marine contractor and agent contacted the EPC to determine whether the "boatlift could be replaced within the same footprint as the original." Mr. Baldor's marine contractor advised the EPC in writing that the boatlift had been removed: "(a picture of the existing boatlift, which has since been removed, is attached). The new boatlift will be installed within the same footprint as the original."

18. On March 16, 2012, the EPC advised Mr. Baldor in writing that:

We consulted with the Port on this matter and we all agree that as long as the dock was previously permitted, it can be replaced in-kind without the Affidavit of No Objection sign-off. We will simply notice the neighbors with the standard adjacent property owner (APO) letter, which will allow them to comment but does not give them the power to stop the project as the AONO sign off does.

19. The EPC staff relied on the statement by the contractor regarding the *replacement* of the boatlift when the EPC staff identified the boatlift could be *replaced in-kind*. No EPC site visit had been done to verify whether or not the structure was in existence at that time.

### **FACTS NOT STIPULATED TO BUT ALSO NOT DISPUTED BY APPELLANT**

20. Although not relevant to the argument raised in this Motion for Summary Recommended Order,<sup>1</sup> the EPC staff did not recall the January 16, 2012 statement, referenced in paragraph 14 above, about the subject boatlift being previously removed on this particular project when the EPC staff person contacted the consultant on March 16, 2012. On January 16, 2012, the EPC staff person merely advised the contractor that Mr. Baldor could replace the subject boatlift on the property but he would be required to submit a permit application. Later on March 16, 2012, when the EPC staff person responded to the request to replace the boatlift “in-kind,” the EPC staff person relied on the representation by the contractor that the boatlift was being replaced in-kind rather than being re-installed after two years of absence. The EPC staff person did not recall the previous contact on this property.

### **LEGAL ARGUMENT IN SUPPORT**

The question presented in this Motion is whether the EPC Executive Director is entitled to a Recommended Order denying the subject application as a matter of law based on the stipulated facts identified above. The issue in this case is whether the Appellant has demonstrated reasonable assurance that the proposed boatlift structure complies with the TPA Enabling Act and the SLM Rules. The Appellant concedes that the proposed structure does not meet the current TPA SLM Rule Subsection V.A.3.a.(2)(c). This rule requires that structures located on Sovereignty Lands adjacent to properties with a shoreline frontage of greater than 80 feet must maintain a minimum structural setback distance of 25 feet from the neighboring

---

<sup>1</sup> The Appellant has not raised an estoppel argument in the appeal. In addition, the Appellant is not eligible to make an estoppel argument under the undisputed facts of the case. Finally, there is



riparian lines. Exceptions to the setback requirements set forth above may be granted if the affected adjacent property owner provides an "affidavit of no objection" (AONO) or if the proposed structure is a subaqueous utility line. The boatlift structure does not meet this rule as it is proposed to be located within the neighbor's setback and the neighbor is objecting to its placement there.

The Appellant alleges in the Notice of Appeal that the structure and the proposed location are grandfathered, and that it is merely a replacement of the pre-existing boatlift. Although presumably the Neighboring Property Owner previously accepted the location of the boatlift in 1994, the Neighboring Property Owner, Mr. Byrum, is now objecting to the replacement of the structure in its proposed location. This case and decision are important as the Conclusions of Law in the Final Order will become precedent for future structures in Hillsborough County. The decision to allow structures to be rebuilt in areas, where they are otherwise prohibited, based on grandfathering of structures that no longer exist, would create significant problems for the agency and the TPA in implementing the SLM Rules. The training received from the TPA and guidance in the past has been that for structures to be eligible for grandfathering under Rule Subsection III.3, SLM Rules, the structures must be in existence at the time of the first inspection after the submittal of a TPA Minor Work Permit application. In addition, pursuant to TPA policy an expiration date is included in each Minor Work Permit issued. Each Minor Work Permit expires one year after issuance, which deadline can be extended up to, but no more than, two additional years upon written request prior to the original expiration date. That is important as the original

---

no detrimental reliance demonstrated by the Appellant which would be necessary to make an estoppel argument.

1994 Minor Work Permit, issued almost 20 years ago, is expired and the applicant cannot rely on that permit.

It is also important to note, in extraordinary circumstances such as an emergency or major storm damage, the previously permitted structures can be rebuilt, with written approval from the TPA or EPC, within a reasonable period of time. In this case the Appellant concedes the structure was voluntarily removed and the removal was not necessitated upon any specific major storm damage or emergency. No emergency caused the voluntary removal of the structure and even if an emergency had occurred, the period of time that transpired before a new application was submitted was not within reason to maintain the grandfathering status of the structure.

It is also important to closely read the language in the rule relied upon by the Appellant. Subsection II.I.3, SLM Rules, states “[w]ater dependant structures which *are* non-revenue generating structures constructed pursuant to valid permits from the Authority . . . shall be considered exempt from the provisions of these Rules.” (emphasis added) By using the word “*are*”, the rule is written clearly to be present tense in nature rather than past tense. This clearly means the structure must presently exist at the time the application is submitted. As stated above, an interpretation of the word to include previously existing structures would be inconsistent with the SLM Rules and would create significant problems for property owners in Hillsborough County in the future.

“Being an exception to a general prohibition, any such statutory provision is normally construed strictly against the one who attempts to take advantage of the exception.” State v. Nourse, 340 So. 2d 966, 969 (Fla. 3d DCA 1976). “And, unless the right to the exception is clearly apparent in the statute, no benefits thereunder will be permitted.” Id. “Any ambiguity in an exception statute is normally construed in a manner that restricts the use of the exception.” Id.

The grandfathering language in Subsection II.1.3, SLM Rules is an exception to the general prohibition of installing structures within the neighbor's setback. Without conceding there is any ambiguity in the grandfathering language of the rule, the Appellant should not be entitled to the exception as the grandfathering language is to be strictly construed against the Appellant.

The interpretation that the boatlift must be in existence at the time of application submittal is supported by Florida case law. In the case of Covart v. Kalif, 123 So. 2d 468, 470 (Fla. 3d DCA 1960), the Court discussed the grandfathering provision in a statute regarding certificates of competency. The statute provided that for a plumber to be eligible for a County Certificate of Competency, without first passing a written examination, the applicant must have "actively, continuously and properly engaged in the trade concerned...for a period of five years immediately prior to the effective date" of the statute, and then the applicant must apply within six months of the effective date of the statute. Id. Where one of the applicants "did not apply until after the time limit in the 'grandfather clause' had expired," the court emphasized that this time period was not contested as "unreasonable." Id. The basis for the court's emphasis was a reasonable "time limitation...is an integral part of the operation of the provision and may not be disregarded or waived by the administrative authority. To grant such exceptions would be to extend the right indefinitely at the unlimited discretion of the administrator of the law. Since the provision containing the time limit did not work an undue hardship, it will be upheld. This limitation must be observed." Id., at 470-471. A ruling upholding the Appellant's argument would give the Executive Director unlimited discretion to accept structures as grandfathered that were permitted and removed over 25 years ago.

The Third DCA's interpretation of the language "actively" and "continuously" for maintaining employment would similarly apply to interpreting the word "are" for existing

structures, rather than also encompassing those that *were*. Cowart at 470. Any interpretation accepting anything less than an “existing structure,” such as a boatlift that had not existed for over two years previously, would extend the right indefinitely at the unlimited discretion of the administrator of the law. This interpretation raised by the Appellant is not supported by Florida law.

Another Florida case further supports that the voluntary removal of the boatlift two years before the application to re-install the boatlift removes any grandfathering available for the applicant. In the case Chancellor Media Whiteco Outdoor Corp. v. State, Dept. of Transp., 796 So.2d 547, 548 (Fla. 1st DCA 2001), the Court held that the grandfathering of a state highway sign is lost once the sign is “destroyed by noncriminal, nontortious acts.” The court’s decision was based on a federal statute that stated that highway “signs which do not conform to size, lighting, and spacing requirements are generally prohibited and must be removed. However, in accordance with a federal regulation, a state administrative rule, and the grandfather clause of the federal-state agreement, an exception has been carved out for nonconforming signs which pre-existed the federal-state agreement. So long as a grandfathered sign remains in substantially the same condition as it existed when it became nonconforming, the prohibition will not apply. And the federal regulation further provides in relevant part as follows: the [grandfathered] sign may continue as long as it is not destroyed... (and) if permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.” Id. Therefore, “grandfathered” signs lose their exemption once they are “destroyed by noncriminal, nontortious acts...” Id. at 549. Therefore, the Court found that signs destroyed by inclement weather were not even protected under this statute, since this did not meet the

grandfather exception language. Id. This court's decision illustrates that a statute's language is to be strictly interpreted, even if another interpretation may otherwise seem permissible.

Grandfather clauses are where “non-conforming uses are...permitted by zoning ordinances to continue even though similar uses are not permitted in area in which they are located.” Dowd v. Monroe County, 557 So.2d 63, 65 (Fla. 3d DCA 1990). For instance, “under the [Sarasota] County's zoning ordinance, nonconforming uses that continue to operate after the effective date of the regulation are subject to the following discontinuance provision: Discontinuance - If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 365 consecutive days, any subsequent use of such land shall conform to the regulations specified by these zoning regulations for the district in which such land is located. A policy rationale for this regulation is that “nonconforming uses may be gradually eliminated over the course of time. Other methods include attrition, destruction, and obsolescence.” Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431, 432 (Fla. 2d DCA 2007). While there was a suspension of a motel's operation for sixteen months (over the 365 days) this did not constitute a discontinuance of the nonconforming use because ongoing necessary repairs and renovations were occurring during this time.” Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431, 433 (Fla. 2d DCA 2007). The instant case can be distinguished because there is no record of repairs, and under no circumstances would a boatlift's repairs require such a substantial duration.

Finally, pursuant to Section 1-2.33(d), Rules of the EPC, “[t]he burden of proof shall be on the Appellant to establish entitlement to a permit, order, authorization or exception allowed by the rules.” Although there are no relevant facts in dispute, the evidence in the case demonstrates

that the Appellant has not established that he can obtain a grandfathering exemption for a boatlift that was removed over two years prior to submittal of an application to rebuild the structure. The language in the applicable rules clearly identifies the present tense for structures, meaning the structures must be presently existing to be grandfathered. A conclusion of law that finds that structures removed over two years previous to the submittal of an application would be considered grandfathered is not consistent with the SLM Rules and would cause significant future problems for the agency in implementing the rules.

WHEREFORE, the Appellee Executive Director of the EPC requests the Hearing Officer enter a Recommended Order, adopting the stipulated finding of facts and making conclusions of law, and upholding the denial of the application to construct the boatlift in its proposed location.

Respectfully submitted this 17th day of February 2013.

/s/

T. Andrew Zodrow, Esq.  
Environmental Protection Commission  
of Hillsborough County  
3629 Queen Palm Drive  
Tampa, Florida 33619  
Telephone: 813/627-2600  
Facsimile: 813/627-2602  
E-mail: zodrow@epchc.org

**CERTIFICATE OF SERVICE**

I CERTIFY that a true copy of the foregoing was sent to **Anthony J. Cuva, Esq.** at Bajo Cuva Cohen and Turkel, 100 North Tampa St., Suite 1900, Tampa, FL 33602 via electronic mail; Anthony.Cuva@bajocuva.com on this 17th day of February 2013.

/s/

T. Andrew Zodrow, Esquire  
Environmental Protection Commission  
3629 Queen Palm Drive  
Tampa, FL 33619  
Telephone: (813) 627-2600  
Facsimile: (813) 627-2602  
E-mail: [zodrowa@epchc.org](mailto:zodrowa@epchc.org)  
Florida Bar No.: 0080055

**This Page Intentionally Left Blank**





## ENVIRONMENTAL PROTECTION COMMISSION

### AGENDA ITEM COVER SHEET

**Date of EPC Meeting:** August 15, 2013

**Subject:** Update on Superfund Sites in Hillsborough County

**Agenda Section:** Regular Agenda

**Division:** Waste Management Division

**Recommendation:** Informational Report

**Brief Summary:** There have been 18 sites that have been proposed and considered for the Superfund Process in Hillsborough County. Twelve (12) are current active National Priority List (NPL) sites, three of which have been listed since 2009. Prior to 2009 it had been thirteen years since an NPL site was added in Hillsborough County. There are two (2) additional NPL proposed sites being addressed alternatively by EPA, while four (4) sites have ultimately been deleted or "delisted".

**Financial Impact:** No Direct Financial Impact

**Background:** The EPA currently has 12 sites in Hillsborough County listed on the National Priority List (NPL aka: Superfund), 2 sites being addressed alternatively outside the NPL listing process, and 4 sites that have achieved sufficient remediation and cleanup to be "Delisted" from the NPL sites list. The sites are as follows:

#### NPL Listed Sites

Alaric	– NPL listed 12/01/2000
Arkla Terra	– NPL listed 04/08/2009
Helena Chemical	– NPL listed 10/14/1992
JJ Seifert Machine	– NPL listed 03/04/2010
MRI Corporation	– NPL listed 12/23/1996
Peak Oil/Bay Drum	– NPL listed 06/10/1986
Raleigh St. Dump	– NPL listed 04/09/2009
Reeves Southeast Galv.	– NPL listed 09/08/1983
Southern Solvents	– NPL listed 07/27/2000
Stauffer Chemical	– NPL listed 12/23/1996
Sydney Mine Sludge Ponds	– NPL listed 10/04/1989
Taylor Road Landfill	– NPL listed 09/08/1983

#### Superfund Alternate Sites

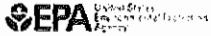
Coronet Industries	– Alternate Site 2004
Normandy Park	– Proposed 09/08/1983

#### NPL Delisted Sites

Kassauf-Kimerling	– NPL delisted 10/02/2000
Schuylkill Metals Corp	– NPL delisted 08/22/2001
Sixty-Second Street Dump	– NPL delisted 10/01/1999
Tri-City Oil Conservationist, Inc.	– NPL delisted 09/01/1988

**Attached:** Please find overviews of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA; aka: SUPERFUND), the Superfund Cleanup Process, and Frequent Questions regarding Superfund.

**List of Attachments:** Superfund CERCLA Overview, Superfund Cleanup Process, and Superfund Frequent Questions



<http://www.epa.gov/superfund/policy/cercla.htm>

## Superfund CERCLA Overview

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress on December 11, 1980. This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Over five years, \$1.6 billion was collected and the tax went to a trust fund for cleaning up abandoned or uncontrolled hazardous waste sites. CERCLA:

- established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- provided for liability of persons responsible for releases of hazardous waste at these sites; and
- established a trust fund to provide for cleanup when no responsible party could be identified.

The law authorizes two kinds of response actions:

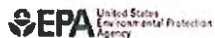
- Short-term removals, where actions may be taken to address releases or threatened releases requiring prompt response.
- Long-term remedial response actions, that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life threatening. These actions can be conducted only at sites listed on EPA's [National Priorities List](#) (NPL).

CERCLA also enabled the revision of the National Contingency Plan (NCP). The NCP provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants. The NCP also established the NPL.

CERCLA was amended by the [Superfund Amendments and Reauthorization Act](#) (SARA) on October 17, 1986.

[U.S. House of Representatives U.S. Code - Title 42](#)

[Superfund Help: Acronyms](#) | [Topics](#) | [Frequent Questions](#) | [Publications](#) | [Sitemap](#)



## Superfund Cleanup Process

The Superfund cleanup process begins with site discovery or notification to EPA of possible releases of hazardous substances. Sites are discovered by various parties, including citizens, State agencies, and EPA Regional offices. Once discovered, sites are entered into the [Comprehensive Environmental Response, Compensation, and Liability Information System \(CERCLIS\)](#), EPA's computerized inventory of potential hazardous substance release sites (search CERCLIS for hazardous waste sites). Some sites may be cleaned up under other authorities. EPA then evaluates the potential for a release of hazardous substances from the site through these steps in the Superfund cleanup process. [Community involvement](#), [enforcement](#), and [emergency response](#) can occur at any time in the process. A wide variety of [characterization](#), [monitoring](#), and [remediation technologies](#) are used through the cleanup process.

PA/SI	<p><a href="#">Preliminary Assessment/Site Inspection</a> Investigations of site conditions. If the release of hazardous substances requires immediate or short-term response actions, these are addressed under the <a href="#">Emergency Response</a> program of Superfund.</p>
NPL Listing	<p><a href="#">National Priorities List (NPL) Site Listing Process</a> A list of the most serious sites identified for possible long-term cleanup.</p>
RI/FS	<p><a href="#">Remedial Investigation/Feasibility Study</a> Determines the nature and extent of contamination. Assesses the treatability of site contamination and evaluates the potential performance and cost of treatment technologies.</p>
ROD	<p><a href="#">Records of Decision</a> Explains which cleanup alternatives will be used at NPL sites. When remedies exceed 25 million, they are reviewed by the <a href="#">National Remedy Review Board</a>.</p>
RD/RA	<p><a href="#">Remedial Design/Remedial Action</a> Preparation and implementation of plans and specifications for applying site remedies. The bulk of the cleanup usually occurs during this phase. All new fund-financed remedies are reviewed by the <a href="#">National Priorities Panel</a>.</p>
Construction Completion	<p><a href="#">Construction Completion</a> Identifies completion of physical cleanup construction, although this does not necessarily indicate whether final cleanup levels have been achieved.</p>
Post Construction Completion	<p><a href="#">Post Construction Completion</a> Ensures that Superfund response actions provide for the long-term protection of human health and the environment. Included here are Long-Term Response Actions (LTRA), Operation and Maintenance, Institutional Controls, Five-Year Reviews, <a href="#">Remedy Optimization</a>.</p>
NPL Delete	<p><a href="#">National Priorities List Deletion</a> Removes a site from the NPL once all response actions are complete and all cleanup goals have been achieved.</p>
Reuse	<p><a href="#">Site Reuse/Redevelopment</a> Information on how the Superfund program is working with communities and other partners to return hazardous waste sites to safe and productive use without adversely affecting the remedy.</p>

**EPA Cleanup**

For more information please visit [EPA's Cleanup page](#).

**Cleanup Process**

- [PA/SI](#)
- [NPL Listing](#)
- [RI/FS](#)
  - [Scoping](#)
  - [Site Characterization](#)
  - [Development and Screening of Alternatives](#)
  - [Treatability Investigations](#)
  - [Detailed Analysis](#)
- [ROD](#)
- [RD/RA](#)
- [Construction Completion](#)
- [Post Construction Completion](#)
- [NPL Delete](#)
- [Reuse](#)

Superfund Help: [Acronyms](#) | [Topics](#) | [Frequent Questions](#) | [Publications](#) | [Sitemap](#)



<http://www.epa.gov/region4/superfund/qfinder/faq.html>

## Region 4: Superfund

Last updated on Tuesday, January 03, 2012

You are here: [EPA Home](#) » [Region 4](#) » [Superfund](#) » Frequent Questions

### Frequent Questions

- [What is Superfund?](#)
- [How Does Superfund Work?](#)
- [How are Superfund Sites Discovered?](#)
- [What are Removal and Emergency Response Action?](#)
- [What are Remedial Actions?](#)
- [The National Priorities List?](#)
- [How Sites Get on to the NPL?](#)
- [Who Pays for Superfund Cleanups?](#)
- [What is Superfund Enforcement?](#)
- [How Citizens Get Involved at Superfund Sites?](#)
- [Are Superfund Sites Being Redeveloped?](#)

#### National Information

- [Superfund Frequent Questions](#)
- [Superfund Basic Information](#)

#### What is Superfund

Superfund is the Federal government's program to clean up the nation's uncontrolled hazardous waste sites. Superfund was created to pay for the cleanup of the country's worst waste disposal and hazardous substances spill sites that endangered human health and/or the environment. Years ago, hazardous materials were at times dumped onto the ground, into rivers or left out in the open. As a result, hazardous wastes accumulated in vacant lots, at factories, warehouses, landfills and dumps across the United States. Among the most pressing problems were wastes that leached down through the ground to contaminate drinking-water supplies.

Under Superfund, abandoned, accidentally spilled, or illegally dumped hazardous waste that pose a current or future threat to human health or the environment are cleaned up. Superfund is administered by EPA in cooperation with individual states and tribal governments. Superfund locates, investigates and cleans up hazardous-waste sites throughout Region 4 and the country.

#### How Does Superfund Work

Through its Superfund program, EPA Region 4 works closely with communities, Potentially Responsible Parties (PRPs), scientists, researchers, contractors, and state, local, tribal, and Federal authorities to identify hazardous waste sites, test the conditions of the sites, formulate cleanup plans, and clean up the sites. In Region 4, there are two programs that implement Superfund activities, the emergency response program and the remedial program. Emergency response and removal actions address emergencies, such as fires, train derailments, and floods, involving the release of hazardous substances. Remedial cleanup activities address long-term cleanup of the most complex contaminated sites—generally sites listed on the National Priorities List. [EPA's National Superfund website](#) provides additional information.

#### How are Superfund Sites Discovered

The release of hazardous substances may be discovered by various means, including: notifications by those handling hazardous materials, investigations by state, tribal or local governments, inventory efforts by government agencies, review of state and Federal records, formal citizen petitions, and informal community observation and notification. Sites are discovered by various stakeholders including local and state agencies, businesses, the U.S. EPA, the U.S. Coast Guard, and by citizens. Citizens can report potential hazardous waste sites to your state and local authorities or to the **National Response Center Hotline, 1-800-424-8802**, 24 hours a day, seven days a week.

#### What are Removals and Emergency Response Actions

Removal actions are immediate, short-term responses intended to protect people from immediate threats posed by hazardous waste sites. These emergency actions eliminate immediate risks to ensure your safety. Superfund personnel are always on call to respond to chemical accidents or releases. Superfund's number-one priority is to protect communities near hazardous sites, as well as their environment.

Typical chemical emergencies may include train derailments, truck accidents, or incidents at factories. Superfund responds or may help state and local authorities deal quickly with these emergencies. Hazardous materials are hauled away from the site for treatment and proper disposal, or they are treated on the site to remove risk to the community.

During an emergency action, you and your community will be kept informed of the situation and what is being done to protect your safety.

**What are Remedial Actions**

Remedial actions are long-term cleanups designed to prevent or minimize the release of hazardous substances and to reduce the risk and danger to public health and the environment.

These long-term actions can be extensive. Some sites were caused by years of pollution and may take years to clean up. This cleanup process can encompass several phases that lead to the ultimate goal of restoring the site and making it safe. Long-term actions also may include restoring ground water or taking measures to protect wetlands, estuaries and other ecological resources.

**What is the National Priorities List**

The National Priorities List is a list of the worst hazardous waste sites that have been identified by Superfund. It is a published list of U.S. hazardous waste sites that are eligible for extensive, long-term cleanup under the Superfund program.

**How Sites Get onto the NPL**

To evaluate the dangers posed by hazardous-waste sites, EPA has developed a scoring system called the [Hazard Ranking System](#) (HRS). EPA uses the information collected during the Preliminary Assessment and Site Inspection to score a site according to the danger it may pose. Using HRS, EPA assigns a numerical value based on three main factors:

- How likely it is that the site has or may release a hazardous waste;
- The amount and toxicity of the waste;
- Nearby people or sensitive environments affected by the release.

The HRS also examines the four pathways that may carry pollution: ground (underground) water; surface water; soil; and air. It scores the site on all of these factors. Sites with high enough totals (28.5+) are eligible for the National Priorities List.

To learn more, please see EPA's [Introduction to the HRS](#).

**Who Pays for Superfund Cleanups**

Superfund Cleanup is paid for either by the parties responsible for contamination or by money appropriated by Congress for cleanups. One of EPA's top priorities is to get those responsible for the contamination (PRPs) to clean up the site. If the PRP cannot be found or cannot perform or pay for the cleanup work, the Federal Government funds the cleanup.

Under the Superfund law, EPA is able to make those who are responsible for the contamination perform and pay for the cleanup. EPA negotiates to get them to pay for the plans and the work carried out under Agency supervision. EPA also may use Federal Government funds to pay cleanup costs, then attempt to recover the money through legal action.

**What is Superfund Enforcement**

One goal of the Superfund enforcement program is to make responsible parties pay for the environmental damage attributed to their on-site activities. [CERCLA](#) provides a broad range of enforcement authorities that EPA can use to meet the goals of the Superfund program. Under these authorities EPA can:

- Search a Potentially Responsible Party's (PRP) property;
- Order PRPs to clean up sites;
- Negotiate settlements with PRPs to fund or perform site cleanup; and
- Take legal action if the PRPs do not perform or pay for cleanup.

**How Citizens Get Involved at Superfund Sites**

Superfund cleanups are complex and require the skills of experts in science, engineering, public health, management, law, community relations and other fields. PRPs who contributed to the pollution are contacted and involved in the cleanup. The public also often participates formally through input at public meetings and/or hearings, or by submitting comments on plans for investigation and cleanup of a site.

The involvement of local communities and other interested stakeholders is very important. You have the opportunity and the right to be informed about and to comment on the work being done. Information is passed on through fact sheets, letters, newspaper ads, phone calls, meetings, information repositories near the site, and the Internet. During the Superfund process, EPA and/or the state develops a community relations plan to help ensure that the public's concerns and community needs are met at a site. The plan may include such activities and tools as public information meetings, personal interviews, newsletters, and special distribution to local media.

In addition, [EPA supports a variety of programs](#) to keep community members involved in Superfund cleanups.

**Redeveloping/Reusing Superfund sites**

[Superfund Redevelopment in Region 4](#) is part of EPA's coordinated national effort to facilitate the return of the nation's most hazardous waste sites to productive use by selecting cleanup remedies that are consistent with the anticipated future use of the sites. While EPA's primary mission is to protect human health and the environment, Superfund cleanups have also been instrumental in the reuse of contaminated sites. Consequently, EPA works with communities as a part of the cleanup process to determine the future use of a particular site so that the cleanup design is protective for that particular use. This enables communities to reclaim such properties as valuable resources.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** 8/15/13

**Subject:** Brownfields Redevelopment Annual Report Presentation

**Consent Agenda** \_\_\_\_\_ **Regular Agenda**  X  **Public Hearing** \_\_\_\_\_

**Division:** Waste Management

**Recommendation:** Informational Report

**Brief Summary:** EPC is required under its Delegation Agreement with the Department of Environmental Protection to provide an Annual Report listing activities associated with Brownfield sites managed by EPC. A report summary will be provided to the Commission.

**Financial Impact:** No Financial Impact

**Background:** EPC has administered the Brownfields Program since 2004 through a Delegation Agreement with the Department of Environmental Protection. The voluntary program has been very successful encouraging environmental cleanup and redevelopment of abandoned, idled, or underused properties. EPC staff will provide an overview of the 2012/2013 Annual Report that has been presented to the Florida Department of Environmental protection and will also update the Board with regard to the Brownfield Program and discuss the economic incentives that assist and encourage redevelopment of properties.

**List of Attachments:** None

**This Page Intentionally Left Blank**





## ***ENVIRONMENTAL PROTECTION COMMISSION***

### ***AGENDA ITEM COVER SHEET***

**Date of EPC Meeting:** August 15, 2013

**Subject:** Presentation of Green Star certifications

**Agenda Section:** Regular Agenda

**Division:** Waste Management Division

**Recommendation:** Present representatives of ten auto repair facilities with the Green Star Certification.

**Brief Summary:** The following representatives will be in attendance to receive their Green Star certification: Jeff Coughlin – Jarrett Scott Ford; Bill Annable – Stingray Chevrolet; Gordon Marks – Marks Air; Patrick Driscoll – Truck PM Plus; Robert Albright – Kaufman Tire; Dan White – Brandon Mitsubishi; Don Johnson – Ferman Mazda; Larry Folino – James Rivard Buick; Troy Regano – Southern Tire Company; and Chris Loomis – Southern Air Systems.

**Financial Impact:** No Financial Impact

**Background:** EPC's Green Star Program is a non-regulatory industry friendly program designed to encourage auto repair facilities to go above and beyond environmental compliance through the use of Best Management Practices (BMP) and Pollution Prevention (P2) strategies. EPC utilizes a compliance workbook and self-audit checklist developed by Florida Department of Environmental Protection specifically for the auto repair industry. Once the facility completes the checklist, it is submitted to EPC for review. After the review, a certification inspection is performed by EPC staff to ensure what is on paper is actually being implemented. Facilities that are in compliance and successfully implement the necessary BMPs and P2 elements are certified as a "Green Star" facility. Auto repair facilities who successfully meet the criteria receive a Certificate of Recognition and a "Green Star" decal that can be used to demonstrate to their customers that they achieved "green" facility status.

**This Page Intentionally Left Blank**



## ***ENVIRONMENTAL PROTECTION COMMISSION***

### ***AGENDA ITEM COVER SHEET***

**Date of EPC Meeting:** August 15, 2013

**Subject:** New Tampa I-75 Corridor Noise Update

**Agenda Section:** Regular Agenda

**Division:** Air Management Division

**Recommendation:** Informational Report.

**Brief Summary:** Residents in New Tampa in neighborhoods adjacent to I-75 have expressed concerns about traffic noise from the expanded interstate. Although this DOT project is exempt from EPC's noise rule, staff was asked to look into it and take some measurements. Staff has completed noise monitoring at several locations and met with DOT officials. As requested by the Board, staff will give a brief update on their findings.

**Financial Impact:** No Financial Impact.

**Background:** Residents have communicated to several Commissioners their concerns about noise from the expanded I-75 in the New Tampa area. DOT is adding additional lanes to accommodate traffic. At the June EPC Board meeting, staff was directed to look into the matter and report back.

Staff was given two citizens names to contact from Commissioner Beckner's office. Despite numerous attempts to contact both, we only reached the one citizen from the Buckingham neighborhood and proceeded to monitor at the times and locations he requested. In addition we monitored at a third location in the Enclave subdivision as it is also directly adjacent to the highway.

We also contacted the DOT and met with them to discuss the project. They explained their detailed noise evaluation procedures and how they applied them to the expansion of I-75 in the New Tampa area. We included in the discussions concerns about a gap in the noise abatement wall they constructed. The gap is to allow water to be channeled through the area to preclude flooding. Some were questioning whether this subjected residents in the Enclave subdivision to higher than allowed noise impacts.

Complicating the issue was the coincidental clearing of a right-of-way parallel to the interstate to lay a new 36 inch natural gas pipeline. To do this Florida Gas Transmission clear cut a thirty to fifty foot path, removing trees and vegetation, which exposed the interstate. This clearly made the road more visible and some wondered whether the lack of vegetation now made it noisier.

**List of Attachments:** None.

**This Page Intentionally Left Blank**