

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
COUNTY CENTER 2ND FLOOR
APRIL 19, 2012
9:00 AM**

AGENDA

INVOCATION AND PLEDGE OF ALLEGIANCE

**APPROVAL OF CHANGES TO THE AGENDA AND REMOVAL OF CONSENT
AGENDA ITEMS WITH QUESTIONS, AS REQUESTED BY BOARD MEMBERS**

I. <u>PUBLIC COMMENT</u>	
Three (3) Minutes Are Allowed for Each Speaker (unless the Commission directs differently)	
II. <u>CITIZENS' ENVIRONMENTAL ADVISORY COMMITTEE</u>	
Report from the CEAC Chairman – Janet Dougherty	
III. <u>CONSENT AGENDA</u>	
A. Approval of Minutes: March 22, 2012	3
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C. Pollution Recovery Fund Report	19
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E. Legal Case Summary, April 2012	23
IV. <u>PUBLIC HEARING</u>	
Carmen Smith Barkett's Request for a Wetland Rule Waiver	27
V. <u>WATER MANAGEMENT DIVISION</u>	
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B. Tampa Bay Environmental Fund: Presenters, Holly Greening and Dave Moore	37
C. Staff Response to Citizen Concern from Mr. John Vogel	39
VI. <u>WASTE MANAGEMENT DIVISION</u>	
A. Update on the Brownfields Mapping Project by the Tampa Hillsborough Economic Development Corporation (EDC).....	41
B. Update on Residential Drywall Disposal Issue.....	43
VII. <u>EXECUTIVE DIRECTOR REPORT</u>	
A. 2012 First Quarter Action Plan Updates	45
B. EPC Celebrating May as Clean Air Month	63

Any person who might wish to appeal any decision made by the Environmental Protection Commission 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.

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MARCH 22, 2012 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES.

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, March 22, 2012, 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, Ken Hagan, Al Higginbotham, Sandra Murman, and Mark Sharpe.

The following member was absent: 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, read the changes and asked Item III.F., request for authority to take appropriate legal action against Akshar Dham Incorporated, be removed from the Consent Agenda. Chairman Beckner sought a motion to accept the changes. **Commissioner Murman so moved, seconded by Commissioner Higginbotham, and carried five to zero.** (Commissioner Hagan was out of the room; Commissioner Miller was absent.)

I. PUBLIC COMMENT

▶ Chairman Beckner sought public comment. ▶ Mr. Joseph and Ms. Julie Mraz, 14367 Sweat Loop Road, requested the EPC Board address issues relative to poisonous domestic drywall disposal. ▶ Commissioner Murman asked for a report from staff on the applied drywall standards. Dr. Garrity agreed.

II. CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

▶ Chairman Janet Dougherty, CEAC, gave the report.

III. CONSENT AGENDA

- A. Approval of Minutes: February 16, 2012.
- B. Monthly Activity Reports.
- C. Pollution Recovery Fund Report.

THURSDAY, MARCH 22, 2012 - DRAFT MINUTES

- D. Gardinier Settlement Trust Fund Report.
- E. Legal Case Summary - March 2012.
- F. Request for Authority to Take Appropriate Legal Action Against Akshar Dham Incorporated **Deleted from the agenda**

▶ Chairman Beckner asked for a motion to approve the Consent Agenda with the removal of Item III.F., as requested by staff. **Commissioner Murman so moved, seconded by Commissioner Sharpe, and carried six to zero.** (Commissioner Miller was absent.)

IV. EPC PUBLIC INFORMATION AND EDUCATION/OUTREACH COMMITTEE

2012 Regional Science Fair Winners

▶ Dr. Garrity introduced Ms. Jessica Lopez, chairman, Public Information and Education Outreach Committee, who gave a presentation on the programs and talked about the science fair winners. ▶ Ms. Megan Birnholz and Mr. Joshua Glow submitted information and detailed their projects. After Chairman Beckner presented awards, dialogue took place.

V. PUBLIC HEARING

Carmen Smith Barkett's Request for a Wetland Rule Waiver

▶ Chairman Beckner sought a motion to open the public hearing. **Commissioner Higginbotham so moved, seconded by Commissioner Murman, and carried six to zero.** (Commissioner Miller was absent.) ▶ EPC General Counsel Richard Tschantz spoke on the item and noted staff recommendation to continue the item. ▶ Chairman Beckner called for public comment. Attorney Vincent Marchetti, P.O. Box 3099, Tampa, supported a continuance but wanted the application thoroughly vetted. Dr. Garrity commented on the request. ▶ Mr. Todd Amaden, 1309 Providence Road, representing the Ekonomous, echoed Attorney Marchetti's comments. ▶ **Commissioner Murman moved to open and close, and continue the hearing until the April 19, 2012, EPC hearing, seconded by Commissioner Higginbotham, and carried six to zero.** (Commissioner Miller was absent.)

VI. PUBLIC HEARING

Public Hearing to amend Section 1-6 (Services - Fee Schedule) to include a fee transfer and fee waiver provision for permit applications for activities under the State Environmental Resource Permitting program delegation

▶ Chairman Beckner sought a motion to open the public hearing. **Commissioner Higginbotham so moved, seconded by Commissioner Murman, and carried six to zero.** (Commissioner Miller was absent.) Attorney Tschantz distributed information and addressed the item, as shown in background material. ▶ Attorney Andrew Zodrow, EPC Legal Department, gave a presentation. ▶ After Chairman Beckner called for public comment, **Commissioner Murman moved to approve, seconded by Commissioner Sharpe, and carried six to zero.** (Commissioner Miller was absent.)

VII. EXECUTIVE DIRECTOR REPORT

▶ Dr. Garrity highlighted the report.

VIII. WETLANDS DIVISION

Potential Issues Concerning Lakes, Rivers, Springs, and Estuaries in Hillsborough County

▶ Dr. Scott Emery, Director, EPC Wetlands Management Division, detailed the presentation, as furnished in background material. ▶ Chairman Beckner wanted a plan to address the overpumping of wells.

IX. LEGAL AND ADMINISTRATIVE SERVICES DIVISION

2012 Florida Legislative Session Final Summary of Environmental Legislation

▶ Attorney Tschantz summarized the report, as supplied in background material. ▶ Dr. Garrity thanked staff for efforts.

THURSDAY, MARCH 22, 2012 - DRAFT MINUTES

▶ There being no further business, the meeting was adjourned at 10:01 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

jh

DRAFT

**FY 12 - MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION**

MAR

A. Public Outreach/Education Assistance

1.	Phone calls	252
2.	Literature Distributed	0
3.	Presentations	2
4.	Media Contacts	2
5.	Internet	65
6.	Host/Sponsor Workshops, Meetings, Special Events	0

B. Industrial Air Pollution Permitting

1.	Permit Applications received (Counted by Number of Fees Received)	
	a. Operating	0
	b. Construction	2
	c. Amendments / Transfers / Extensions	0
	d. Title V Operating:	0
	e. Permit Determinations	2
	f. General	2
2.	Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval ^1 (Counted by Number of Fees Collected) - ^2 Counted by Number of emission Units affected by the Review)	
	a. Operating ^1	1
	b. Construction ^1	11
	c. Amendments / Transfers / Extensions^1	0
	d. Title V Operating ^2	1
	e. Permit Determinations	1
	f. General	3
3.	Intent to Deny Permit Issued	0

C. Administrative Enforcement

1.	New cases received	0
2.	On-going administrative cases	
	a. Pending	0
	b. Active	6
	c. Legal	2
	d. Tracking compliance (Administrative)	9
	e. Inactive/Referred cases	0
	TOTAL	17
3.	NOIs issued	0
4.	Citations issued	0
5.	Consent Orders Signed	0
6.	Contributions to the Pollution Recovery Fund	\$0.00
7.	Cases Closed	0

**FY 12 - MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION**

MAR

D. Inspections

1. Industrial Facilities	22
2. Air Toxics Facilities	
a. Area Sources (i.e. Drycleaners, Chrome Platers, etc.)	5
b. Major Sources	6
3. Asbestos Demolition/Renovation Projects	20

E. Open Burning Permits Issued

2

F. Number of Division of Forestry Permits Monitored

169

G. Total Citizen Complaints Received

50

H. Total Citizen Complaints Closed

33

I. Noise Sources Monitored

1

J. Air Program's Input to Development of Regional Impacts

3

K. Test Reports Reviewed

38

L. Compliance

1. Warning Notices Issued	6
2. Warning Notices Resolved	3
3. Advisory Letters Issued	2

M. AOR's Reviewed

0

N. Permits Reviewed for NESHAP Applicability

2

O. Planning Documents coordinated for Agency Review

6

**FY 12 - MONTHLY ACTIVITIES REPORT
WASTE MANAGEMENT DIVISION**

MAR

A. ENFORCEMENT

1.	New cases received	-
2.	On-going administrative cases	85
	Pending	2
	Active	29
	Legal	9
	Tracking Compliance (Administrative)	44
	Inactive/Referred Cases	1
3.	NOI's issued	-
4.	Citations issued	-
5.	Consent Orders and Settlement Letter Signed	-
6.	Civil Contributions to the Pollution Recover Fund (\$)	\$ 1,410
7.	Enforcement Costs Collected (\$)	\$ -
8.	Cases Closed	1

B. SOLID AND HAZARDOUS WASTE

1.	FDEP Permits Received	2
2.	FDEP Permits Reviewed	1
3.	EPC Authorization for Facilities NOT Requiring DEP Permit	1
4.	Other Permits and Reports	94
	County Permits Received	25
	County Permits Reviewed	30
	Reports Received (SW/HW + SQG)	18
	Reports Reviewed (SW/HW + SQG)	21
5.	Inspections (Total)	221
	Complaints (SW/HW + SQG)	24
	Compliance/Reinspections (SW/HW + SQG)	6
	Facility Compliance	16
	Small Quantity Generator Verifications	175
	P2 Audits	0
6.	Enforcement (SW/HW + SQG)	151
	Complaints Received	24
	Complaints Closed	23
	Warning Notices Issued	4
	Warning Notices Closed	1
	Compliance Letters	90
	Letters of Agreement	0
	Agency Referrals	9
7.	Pamphlets, Rules and Material Distributed	107

C. STORAGE TANK COMPLIANCE

1.	Inspections	
	Compliance	72
	Installation	6
	Closure	5
	Compliance Re-Inspections	6
2.	Installation Plans Received	5

**FY 12 - MONTHLY ACTIVITIES REPORT
WASTE MANAGEMENT DIVISION**

MAR

3.	Installation Plans Reviewed	8
4.	Closure Plans & Reports	
	Closure Plans Received	1
	Closure Plans Reviewed	4
	Closure Reports Received	3
	Closure Reports Reviewed	5
5.	Enforcement	
	Non-Compliance Letters Issued	23
	Warning Notices Issued	-
	Warning Notices Closed	-
	Cases Referred to Enforcement	-
	Complaints Received	1
	Complaints Investigated	1
	Complaints Referred	-
6.	Discharge Reporting Forms Received	1
7.	Incident Notification Forms Received	1
8.	Cleanup Notification Letters Issued	1

D. STORAGE TANK CLEANUP

1.	Inspections	22
2.	Reports Received	88
3.	Reports Reviewed	89
	Site Assessment Received	11
	Site Assessment Reviewed	16
	Source Removal Received	2
	Source Removal Reviewed	2
	Remedial Action Plans (RAP'S) Received	5
	Remedial Action Plans (RAP'S) Reviewed	6
	Site Rehabilitation Completion Order/No Further Action Rec'd	5
	Site Rehabilitation Completion Order/No Further Action Revw'd	6
	Active Remediation/Monitoring Received	44
	Active Remediation/Monitoring Reviewed	39
	Others Received	21
	Others Reviewed	20

E. RECORD REVIEWS

21

F. LEGAL PIR'S

13

**FY 12 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

MAR

A. ENFORCEMENT

1.	New Enforcement Cases Received	-
2.	Enforcement Cases Closed	2
3.	Enforcement Cases Outstanding	39
4.	Enforcement Documents Issued	1
5.	Recovered Costs to the General Fund	\$ -
6.	Contributions to the Pollution Recovery Fund	\$ 1,500

B. PERMITTING/PROJECT REVIEW - DOMESTIC

1.	Permit Applications Received	11
	a. Facility Permit	2
	(i) Types I and II	-
	(ii) Type III	2
	b. Collection Systems - General	6
	c. Collection systems-Dry Line/Wet Line	3
	d. Residuals Disposal	-
2.	Permit Applications Approved	30
	a. Facility Permit	2
	b. Collection Systems - General	9
	c. Collection systems-Dry Line/Wet Line	5
	d. Residuals Disposal	-
3.	Permit Applications Recommended for Disapproval	14
	a. Facility Permit	-
	b. Collection Systems - General	-
	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	38
	a. Facility Permit	11
	b. Collection Systems - General	9
	c. Collection systems-Dry Line/Wet Line	18
	d. Residuals Disposal	-
7.	Permit Determination	4
8.	Special Project Reviews	1
	a. Reuse	-

**FY 12 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

MAR

b. Residuals/AUPs	1
c. Others	-

C. INSPECTIONS - DOMESTIC

1. Compliance Evaluation	11
a. Inspection (CEI)	4
b. Sampling Inspection (CSI)	7
c. Toxics Sampling Inspection (XSI)	-
d. Performance Audit Inspection (PAI)	-
2. Reconnaissance	54
a. Inspection (RI)	13
b. Sample Inspection (SRI)	2
c. Complaint Inspection (CRI)	38
d. Enforcement Inspection (ERI)	1
3. Engineering Inspections	22
a. Reconnaissance Inspection (RI)	4
b. Sample Reconnaissance Inspection (SRI)	-
c. Residual Site Inspection (RSI)	1
d. Preconstruction Inspection (PCI)	-
e. Post Construction Inspection (XCI)	17
f. On-site Engineering Evaluation	-
g. Enforcement Reconnaissance Inspection (ERI)	-

D. PERMITTING/PROJECT REVIEW - INDUSTRIAL

1. Permit Applications Received	4
a. Facility Permit	2
(i) Types I and II	1
(ii) Type III with Groundwater Monitoring	-
(iii) Type III w/o Groundwater Monitoring	1
b. General Permit	1
c. Preliminary Design Report	1
(i) Types I and II	-
(ii) Type III with Groundwater Monitoring	-
(iii) Type III w/o Groundwater Monitoring	1
2. Permits Recommended to DEP for Approval	-
3. Special Project Reviews	4
a. Facility Permit	3
b. General Permit	1
4. Permitting Determination	-
5. Special Project Reviews	48
a. Phosphate	8

**FY 12 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

MAR

b. Industrial Wastewater	11
c. Others	29

E. INSPECTIONS - INDUSTRIAL

1. Compliance Evaluation (Total)	14
a. Inspection (CEI)	13
b. Sampling Inspection (CSI)	1
c. Toxics Sampling Inspection (XSI)	-
d. Performance Audit Inspection (PAI)	-
2. Reconnaissance (Total)	16
a. Inspection (RI)	4
b. Sample Inspection (SRI)	-
c. Complaint Inspection (CRI)	12
d. Enforcement Inspection (ERI)	-
3. Engineering Inspections (Total)	7
a. Compliance Evaluation (CEI)	7
b. Sampling Inspection (CSI)	-
c. Performance Audit Inspection (PAI)	-
d. Complaint Inspection (CRI)	-
e. Enforcement Reconnaissance Inspections (ERI)	-

F. INVESTIGATION/COMPLIANCE

1. Citizen Complaints	
a. Domestic	30
(i) Received	19
(ii) Closed	11
b. Industrial	15
(i) Received	9
(ii) Closed	6
2. Warning Notices	
a. Domestic	23
(i) Issued	15
(ii) Closed	8
b. Industrial	4
(i) Issued	3
(ii) Closed	1
3. Non-Compliance Advisory Letters	7
4. Environmental Compliance Reviews	179
a. Industrial	59
b. Domestic	110
5. Special Project Reviews	17

**FY 12 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

MAR

G. RECORD REVIEWS

1.	Permitting Determination	12
2.	Enforcement	2

**H. ENVIRONMENTAL SAMPLES ANALYZED/REPORTS
REVIEWED (LAB)**

1.	Air division	51
2.	Waste Division	-
3.	Water Division	17
4.	Wetlands Division	-
5.	ERM Division	159
6.	Biomonitoring Reports	2
7.	Outside Agency	17

I. SPECIAL PROJECT REVIEWS

1.	DRIs	1
2.	ARs	-
3.	Technical Support	3
4.	Other	1

**FY 12 - MONTHLY ACTIVITIES REPORT
WETLANDS MANAGEMENT DIVISION**

MAR

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	52
Timeframes Met	100%
Year to Date	99%

Formal Wetland Delineation Surveys

Projects	14
Total Acres	163
Total Wetland Acres	41
# Isolated Wetlands < 1/2 Acre	5
Isolated Wetland Acreage	0.82

Construction Plans Approved

Projects	17
Total Wetland Acres	21
#Isolated Wetlands < 1/2 Acre	1
Isolated Wetland Acreage	0.2
Impacts Approved Acreage	0.01
Impacts Exempt Acreage	0.01

Mitigation Sites in Compliance

Ratio	174/183
Percentage	95%

Compliance Actions

Acreage of Unauthorized Wetland Impacts	0.50
Acreage of Wtaer Quality Impacts	0.00
Acreage Restored	0.70

TPA Minor Work Permit

Permit Issued	11
Permits Issued Fiscal Year 2011	96
Cumulative Permits Issue Since TPA Delegation (07/09)	525

REVIEW TIMES

# of Reviews	288
% On Time	98%
% Late	2%

WETLANDS MANAGEMENT DIVISION

MAR**A. General**

1.	Telephone conferences	760
2.	Unscheduled Citizen Assistance	422
3.	Scheduled Meetings	406
4.	Correspondence	2,084
1/ 5.	Intergency Coordination	339
1/ 6.	Trainings	17
1/ 7.	Public Outreach/Education	8
1/ 8.	Quality Control	46

B. Assessment Reviews

1.	Wetland Delineations	21
2.	Surveys	14
3.	Miscellaneous Activities in Wetland	31
4.	Mangrove	2
5.	Notice of Exemption	-
6.	Impact/Mitigation Proposal	18
7.	Tampa Port Authority Reviews	67
8.	Wastewater Treatment Plants (FDEP)	-
9.	Development Regn'l Impact (DRI) Annual Report	3
10.	On-Site Visits	88
11.	Phosphate Mining	1
12.	Comp Plan Amendment (CPA)	2
1/ 13.	AG SWM	4
	Sub-Total	

Planning and Growth Management Review

14.	Land Alteration/Landscaping	-
15.	Land Excavation	1
16.	Rezoning Reviews	13
17.	Site Development	27
18.	Subdivision	19
19.	Wetland Setback Encroachment	1
20.	Easement/Access-Vacating	-
21.	Pre-Applications	33
1/ 22.	Agriculture Exemption	-
	Sub-Total	
	Total Assessment Review Activities	

C. Investigation and Compliance

1.	Warning Notices Issued	5
2.	Warning Notices Closed	8
1/ 3.	Complaints Closed	21
4.	Complaint Inspections	24
5.	Return Compliance Inspections for Open Cases	23

WETLANDS MANAGEMENT DIVISION

MAR

6.	Mitigation Monitoring Reports	21
7.	Mitigation Compliance Inspections	30
8.	Erosion Control Inspections	23
9.	MAIW Compliance Site Inspections	21
10.	TPA Compliance Site Inspections	25
2/ 11	Mangrove Compliance Site Inspections	-
1/ 12	Conservation Easement Inspection	18

D. Enforcement

1.	Active Cases	8
2.	Legal Cases	3
3.	Number of "Notice of Intent to Initiate Enforcement"	4
4.	Number of Citations Issued	-
5.	Number of Consent Orders Signed	1
6.	Administrative - Civil Cases Closed	5
7.	Cases Referred to Legal Department	3
8.	Contributions to Pollution Recovery	\$ 350
9.	Enforcement Costs Collected	\$ -

E. Ombudsman

1.	Agriculture	7
2.	Permitting Process & Rule Assistance	8
3.	Staff Assistance	7
4.	Citizen Assistance	12

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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 12 POLLUTION RECOVERY TRUST FUND
10/1/2011 through 3/31/2012**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 641,781	Artificial Reef	\$ 136,652	Minimum Balance	\$ 120,000	
Interest	\$ 3,184	Project Monitoring	\$ 123,507	PROJ. FY 13 Budgets	\$ 203,459	
Deposits	\$ 53,326	FY 12 Projects	\$ 106,700	Asbestos Removal	\$ 5,000	
Refunds	\$ 52,884					
Total	\$ 751,175	Total	\$ 366,859	Total	\$ 328,459	\$ 55,857



PROJECT		Project Amount	Project Balance
FY 09 Projects			
#08-03 - Wetland Restoration on County Owned Lands	EPE30441	120,000	-
		\$ 120,000	\$ -
FY 10 Projects			
#09-01 - Basis of Review for Borrow Pit Applications	EPE30442	\$ 68,160	\$ 3,369
#09-02 - Effects of Restoration on Use of Habitat	EPE30443	84,081	43,621
#09-03 - Artificial Wetland Cells	EPE30444	5,500	2,169
#09-04 - Pilot Project for Outfall Water Quality Lake Mag	EPE30446	92,000	81,213
		\$ 249,741	\$ 130,372
FY 12 Projects			
Bahia Beach Mangrove Enhancement	EPE30449	\$ 56,700	\$ 56,700
Fertilizer Rule Implementation	EPE40206	\$ 50,000	\$ 50,000
		\$ 106,700	\$ 106,700
			\$ 237,072

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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 12 GARDINIER SETTLEMENT TRUST FUND
10/1/2011 - 3/31/2012**

Fund Balance as of 10/1/11	\$ 254,131
Interest Accrued	694
Disbursements FY 12	(90,602)
Fund Balance	<u>\$ 164,223</u>
Encumbrances Against Fund Balance:	
SP634 Cockroach Bay ELAPP Restoration	\$ 164,223
Total Encumbrances	<u>\$ 164,223</u>
Fund Balance Available	<u><u>\$ -</u></u>

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 19, 2012

Subject: Legal Case Summary for April 2012

Consent Agenda **Regular Agenda** **Public Hearing**

Division: Legal and Administrative Services

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; informational 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 wish to file an administrative challenge to an agency action (e.g. – permit or enforcement order), while concurrently attempting to seek resolution of the agency action.

List of Attachments: April 2012 EPC Legal Case Summary

EPC LEGAL DEPARTMENT MONTHLY REPORT
April 2012

I. ADMINISTRATIVE CASES

Michael Williams [12-EPC-003]: On March 20, 2012, the EPC received a Request for a Waiver from Mr. Michael Williams. The Applicant is requesting a waiver to the Conservation Easement requirement for mitigation areas in excess of 0.5 acres, Section 1-11.08(6)(e), Rules of the EPC. Upon completion of the staff review, the request will be scheduled for a public hearing. (AZ)

Carmen Smith Barkett [11-EPC-012]: On November 21, 2011, the EPC received a Request for Variance or Waiver from Carmen Smith Barkett. The Applicant is requesting a Variance or Waiver to allow for the filling in of a portion of an artificially created pond partially located on the Applicant's property. Upon completion of the staff review, the request will be scheduled to be heard at a noticed public hearing on March 22, 2012. The Public Hearing was opened on March 22, 2012 and at the request of the adjacent property owner was continued to April 19, 2012 with the concurrence of the Applicant and Staff. (AZ)

John T. Keenan [11-EPC-013]: On November 28, 2011 the Appellant, John T. Keenan, filed a request for an extension of time to file an Appeal to challenge EPC's issuance of a Minor Work Permit for modifications to an existing dock. The request was granted and the Appellant ultimately filed a Notice of Appeal on January 12, 2012. Based on the filing of the administrative appeal and based on an additional review of the proposed structure the EPC Executive Director has amended the permit decision requiring the applicant to modify the structure. The applicant has until June 21, 2012 to modify the dock structure or the permit application will be denied. (AZ)

II. CIVIL CASES

Gregory Hart and Karin Hart [12-EPC-002]: On January 25, 2012, the Appellants, Gregory and Karin Hart, filed a Notice of Appeal with the Second District Court of Appeals challenging an order issued by the Circuit Court denying Harts' motion for new trial. The EPC has filed a motion to dismiss as the appeal is premature. The appeal was dismissed March 21, 2012 and this appellate matter will be closed. (RM)

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 violations. (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. (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. (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. Defendants appear to be in violation of the settlement (early 2012), thus EPC may re-open the case to enforce the Mediated Settlement Agreement. (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. (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)

III. PENDING 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 the hope of negotiating a settlement prior to forwarding the case to a Hearing Officer. The below list may also include waiver or variance requests.

Cordoba-Ranch Development, LLC [11-EPC-008]: On September 9, 2011 the Appellant, Cordoba-Ranch Development, LLC, filed a request for an extension of time to file an Appeal challenging the Citation to Cease and Order to Correct Violation that was issued on August 25, 2011. The extension was granted and the Appellant has until September 10, 2012 to file a Notice of Appeal in this matter. (AZ)

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 19, 2012

Subject: Public Hearing regarding Carmen Smith Barkett's Wetland Rule Waiver Request

Consent Agenda _____ **Regular Agenda:** _____ **Public Hearing:** X

Division: Wetlands Management Division and Legal Department

Recommendation: Hold a public hearing; approve staff's recommendation authorizing a waiver of the Wetland Rule Section 1-11.11(1)(b)(ii) for the subject wetland and other surface water; and authorize the Chair to execute the Final Order granting the waiver.

Brief Summary: In accordance with Section 1-2.50, Rules of the EPC, Carmen Smith Barkett filed a request for a variance or waiver of a portion of the EPC Wetland Rule Section 1-11.11(1)(b)(ii), Rules of the EPC. The public hearing was opened on March 22, 2012 and continued to April 19, 2012. The subject rule requires that an artificial surface water less than one acre in size be wholly owned to qualify for an exemption under the Wetland Rule. The subject surface water extends onto the neighboring property. To obtain a waiver, pursuant to Section 1-2.50, Rules of the EPC, the applicant must demonstrate, among several other factors, that the purpose of the underlying rule can be, or has been, achieved by other means and a substantial hardship or that a violation of the principles of fairness would occur. The staff recommends that a waiver be granted for the entire surface water removing the requirement that it be wholly owned by one individual.

Financial Impact: No financial impact anticipated.

Background: On November 18, 2011 and March 8, 2012, the applicant Carmen Smith Barkett (hereinafter "the Applicant") submitted a waiver request to the Environmental Protection Commission of Hillsborough County (EPC) pursuant to Section 1-2.50, Rules of the EPC. The Applicant requested a waiver of Section 1-11.11(1)(b)(ii), Rules of the EPC. This rule provides the following exemption:

[T]he following activities in wetlands and other surface waters shall be exempt from the application of Chapter 1-11 provided the activity is reviewed and approved by other appropriate agencies as necessary. (ii) Development within *wholly owned* artificially created wetlands or other wholly owned surface waters less than

one (1) acre in surface area . . . which were constructed entirely in historic uplands. (emphasis added)

Within the Applicant's property boundary is a jurisdictional surface water that has been determined to be an artificially created surface water with a wetland component along its edge. The entire area of the surface water is less than one tenth (1/10) acre in surface area. The surface water, however, extends into the property of an adjacent property owner. The Applicant now seeks a waiver from the EPC Wetland Rule exemption requirement that the artificially created surface water must be "wholly owned" by the Applicant. The Applicant requests a waiver of the above rule section for a proposed wetland and other surface water impact based on an alleged substantial hardship as identified in Section 1-2.50, Rules of the EPC and based on their assertion that the underlying purpose of the "wholly owned" rule requirement is still met. This waiver is requested pursuant to section 1-2.50, Rules of the EPC and states as follows:

1-2.50 REQUEST FOR VARIANCE OR WAIVER

(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to Chapter 84-446, where the applicant demonstrates:

(1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

(2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

(b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation summarizing the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

(d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a public hearing during a Commission meeting. The Commission shall grant, in whole or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

The Applicant asserts in her application that she qualifies for the waiver request because the topography in the area has been modified by the adjoining property owners. In addition, the Applicant suggests that the purpose of the rule is still being achieved as the wetland is severed by a concrete wall; the surface water has been previously impacted and the current rule would constitute a hardship on the Applicant as it causes a small area of stagnant water creating potential harm to humans, among other hardships, set forth in the request.

The past recent unauthorized wetland filling activities of the adjoining property owners indicate that they will not be adversely affected by activities on the Applicant's property provided those activities still meet the conditions provided in the exemption rule section, specifically Rule Sections 1-11.11(2)(b),(c), (e) and (h), Rules of the EPC. Those unauthorized activities of the neighbors demonstrate that the purpose of the wholly owned requirement is moot provided the activities still meet the conditions and limitations in the rule.

EPC staff asserts that with the specific condition detailed in the proposed Final Order attached hereto, the Applicant has demonstrated that a substantial hardship would occur if she were not granted a waiver in this specific situation. The Applicant has also demonstrated the underlying purpose of the rule will be achieved or is otherwise moot. The Applicant has also demonstrated that the waiver being sought is not one that only State agencies have jurisdiction over. Thus, EPC staff recommends granting a waiver to the "wholly owned" requirement and, to ensure that the neighbors are protected from adverse impacts, conditioning that any activities to the subject surface water meet all of the other requirements in Section 1-11.11(1)(b)(ii) and 1-11.11(2), Rules of the EPC. The staff's recommendation on the findings and conclusions are applicable to the entire surface water and staff recommends that this waiver be approved for both property owners. Additionally, the staff requests that the Chair be authorized to execute the Final Order granting the waiver.

List of Attachments: 1) Updated draft Proposed Waiver Order

**BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY**

In re: CARMEN SMITH BARKETT
Application for Waiver.

Case No. 11-EPC-012

**FINAL ORDER ON APPLICATION FOR WAIVER
OF PROVISION IN SECTION 1-11.11(1)(b)(ii), RULES OF THE
ENVIRONMENTAL PROTECTION COMMISSION**

BACKGROUND

On November 18, 2011, the applicant Carmen Smith Barkett (hereinafter “the Applicant”) submitted a waiver request to the Environmental Protection Commission of Hillsborough County (EPC) pursuant to Section 1-2.50, Rules of the EPC. The Applicant requested a waiver of Section 1-11.11(1)(b)(ii), Rules of the EPC. This rule provides the following exemption:

[T]he following activities in wetlands and other surface waters shall be exempt from the application of Chapter 1-11 provided the activity is reviewed and approved by other appropriate agencies as necessary. (ii) Development within *wholly owned* artificially created wetlands or other wholly owned surface waters less than one (1) acre in surface area . . . which were constructed entirely in historic uplands. (emphasis added)

Within the Applicant’s property boundary is a jurisdictional surface water that has been determined to be an artificially created surface water with a wetland component along its edge. The entire area of the surface water is less than one tenth (1/10) acre in surface area. The surface water, however, extends into the property of an adjacent property owner. The Applicant now seeks a waiver from the EPC Wetland Rule exemption requirement that the artificially created surface water must be “wholly owned” by the Applicant. In addition, the Applicant’s waiver request seeks authorization to fill in the area without further EPC review. The Applicant requests a waiver of the above rule section for a proposed wetland and other surface water impact based on an alleged substantial hardship as identified in Section 1-2.50, Rules of the EPC and based on their assertion that the underlying purpose of the “wholly owned” rule requirement is still met.

FINDINGS OF FACT

1. The Applicant's property is located at 909 Oak Hollow Place, Brandon in Hillsborough County, Florida.

2. Within the Applicant's property is a jurisdictional surface water regulated pursuant to the EPC Wetland Rule Chapter 1-11, Rules of the EPC. The surface water extends over and onto the adjoining property and is not wholly owned by the Applicant. The total area of the surface water is less than one tenth (1/10) acre and is characterized as a small "pond" with a small wetland fringe along the boundary. The EPC records indicate that the surface water was artificially created or, at least, is not located on historically wetland soils.

3. A concrete wall was constructed across the pond pursuant to an EPC Executive Director "Miscellaneous Activities in Wetlands" impact authorization under Section 1-11.10, Rules of the EPC. The wall crosses the entire pond at approximately six inches from the property line of the adjacent property owned by Anthony Ekonomou and Diana Ekonomou (collectively referred to as "the adjoining property owners") located at 907 Oak Hollow Place, Brandon in Hillsborough County, Florida. The pond extends an estimated 80 feet along the property boundary and approximately only three to five feet of surface water extends into the adjacent property owned by the adjoining property owners.

4. The Applicant seeks a waiver to eliminate the requirement that the surface water be "wholly owned" to qualify for an exemption in Section 1-11.11(1)(b)(ii), Rules of the EPC.

5. The EPC received the waiver application on or around November 18, 2011, from the Applicant and subsequently received a supplement to the waiver request on March 9, 2012. The Applicant requested a waiver of Section 1-11.11(1)(b)(ii), Rules of the EPC. This rule requires that an artificial surface water less than one acre in size be wholly owned to qualify for an exemption from the Wetland Rule.

6. Pursuant to section 1-2.50(3), Rules of the EPC, the Applicant published notice of the waiver application and the March 22, 2012 public hearing in the Tampa Tribune on Monday March 12, 2012. The public hearing was opened in March 22, 2012 and continued to April 19, 2012.

7. Pursuant to Section 1-2.50(4), the Commissioners considered the application, the Executive Director's recommendation, and the comments of the public at the regular meetings of the EPC on March 22, 2012 and April 19, 2012.

8. The Applicant stated, in part, that she qualifies for the waiver request because the topography in the area has been modified by the adjoining property owners. In addition, the Applicant asserts that the pond is severed by a concrete wall; the surface water has been previously impacted and the current rule would constitute a hardship on the Applicant as it causes a small area of stagnant water creating potential harm to humans, among other hardships set forth in the request.

9. The concrete wall was designed and permitted to ensure the hydrology of the surface water would not be adversely impacted. The concrete wall, however, has essentially severed the surface water into two separate areas.

10. In addition, the past recent unauthorized wetland impact activities of the adjoining property owners indicate that they will not be adversely affected by activities on the Applicant's property provided those activities still meet the conditions provided in the exemption rule section, specifically Rule Sections 1-11.11(2)(b),(c), (e) and (h), Rules of the EPC.

CONCLUSIONS OF LAW

11. This variance is requested pursuant to section 1-2.50, Rules of the EPC, which states as follows:

1-2.50 REQUEST FOR VARIANCE OR WAIVER

(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to Chapter 84-446, where the applicant demonstrates:

(1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

(2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

(b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation summarizing the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

(d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the

public at a public hearing during a Commission meeting. The Commission shall grant, in whole or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

12. Section 1-2.50, Rules of the EPC, requires that the applicant show that "purpose of the underlying rule can be, or has been, achieved by other means" and "a substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur." While section 120.542, F.S. is not the enabling legislation for the EPC variance provision, it is persuasive and the EPC adopted the statute's definitions for hardship and fairness. Section 120.542, F.S. provides that before an agency can grant a variance, the petitioner must demonstrate that the purpose of the underlying statute will be or has been achieved by other means and that either the application of the rule would create a substantial hardship or that it would violate principles of fairness or constitute a hardship.

13. Chapter 1-11, Rule of the EPC was established to avoid and/or minimize impacts to wetlands and other surface waters and to require that the environmental benefits provided by an impacted wetland are adequately protected through mitigation. The provision in Rule Section 1-11.11(1)(b)(ii), Rules of the EPC, regarding a surface water being "wholly owned" was established so that adjacent property owners would not be adversely affected by otherwise exempt activities in the surface waters and that they could continue to use and enjoy those surface waters without impairment by activities on the neighboring property. Among other assertions, the Applicant asserts the concrete wall has severed the surface water and that allowable activities under the exemption will not adversely affect the neighboring property.

14. The Florida State Law Review, Winter 1997 (LEXSEE 24 FLA. ST. U.L. REV. 353. 361) explains the fairness exception as follows: "Fairness exceptions. These are used when application of a rule would cost one entity or person substantially more than those similarly situated, when application of a rule would unintentionally penalize an entity's or person's recent good-faith activities, or when regulatory costs to an entity or person are simply not worth the minimal social benefits that compliance with the rule would produce." The law review article explains that the variance (or waiver) provision in Chapter 120, F.S. was created to acknowledge "that an agency's means of accomplishing a statutory directive may not be the only acceptable approach." The Applicant asserts that the exemption should be applicable to their pond based on the entirety of the facts as identified in the Waiver request and the Amended Waiver request, and thus the enforcement of the "wholly owned" requirement provides "minimal social benefit" to the residents of Hillsborough County, including the adjoining property owners.

15. With the specific condition as detailed in the Order below, the Applicant has demonstrated that a substantial hardship and a violation of the principles of fairness would occur if they were not granted a waiver in this specific situation.

16. With the specific condition as detailed in the Order below, the Applicant has also demonstrated the underlying purpose of the rule will still be achieved by eliminating the "wholly owned" requirement.

17. The provision from which the waiver is being sought, Rule Section 1-11.11(1)(b)(ii), Rules of the EPC, did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. and that the waiver does not need to be considered by the DEP or the SWFWMD pursuant to Chapter 120, F.S.

18. These findings and conclusions are also applicable to the entire surface water and are applicable to both property owners. The following conditions to this waiver apply to the entire subject surface water and this order is enforceable under the EPC Act and rules: the Applicant and/or neighbor's activities must meet all other provisions of Section 1-11.11(1)(b) and Section 1-11.11(2)(a) – (h), Rules of the EPC.

ORDER

19. For the foregoing reasons, the requested waiver from the "wholly owned" requirement in Section 1-11.11(1)(b)(ii), Rules of the EPC is granted for the entire subject surface water. Compliance with the conditions and limitations noted within Section 1-11.11(1)(b) and Section 1-11.11(2)(a) – (h), Rules of the EPC shall still be required for any future activities constituting development under the EPC Wetland rule Section 1-11.02(2)(b) in the subject surface water.

20. No express or implied grant of authority has been provided by this Order or under any exemption, permit or other authorization for any person to enter or impact any other person's private property by any means whatsoever. It is the responsibility of the property owner or agent to ensure that any activities authorized under this Order do not constitute a trespass or encroachment onto private property of another person.

NOTICE OF RIGHTS

The EPC's proposed action on this waiver shall become final unless a timely appeal via writ of certiorari to the 13th Judicial Circuit is filed with any appropriate fee. A copy of the appeal must be provided to the EPC Legal Department, 3629 Queen Palm Dr., Tampa, Florida 33619.

DONE AND ORDERED this _____ of _____, 2012 in Tampa, Florida.

Kevin Beckner, Chairman

Environmental Protection Commission
of Hillsborough County
3629 Queen Palm Drive
Tampa, Florida 33619
(813) 627-2600



EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 19, 2012

Subject: 10 Year Summary of Water Quality in Hillsborough County

Consent Agenda _____ **Regular Agenda** XX **Public Hearing** _____

Division: Water Management Division

Recommendation: Informational Report

Brief Summary: EPC maintains a comprehensive monitoring program of the surface waters of Hillsborough County

Financial Impact: No Financial Impact

Background:

As mandated under Section 5.3 of the Enabling Act, EPC is required to “make continuing studies and periodic reports and recommendations for the improvement of air, water and noise in the county, and to work in cooperation with the Department of Environmental Regulation² and other appropriate agencies and groups interested in the field of air, water and noise pollution.”

To this end, EPC maintains a comprehensive monitoring program of the surface waters of Hillsborough County. All work, collection and analysis, is performed in-house by EPC staff. This work is based in rigorous scientific principles and comply with EPA and DEP QA/QC protocols. The data collected is transmitted to the Florida Department of Environmental Protection (FDEP) and to the Federal STORET Water Quality System maintained by the U.S. Environmental Protection Agency and locally to the Southwest Florida Water Management District (SWFWMD) and Tampa Bay Estuary Program. In addition, the data is posted to the EPC website and the Water Atlas (USF) so that it is readily available to the provided to the public, other agencies and interested parties.

Staff has prepared a 2000 -2010 summary report of Water Quality in Hillsborough County. This report to the Commission will highlight the important finds of this report and illustrate how these findings have been utilized by the Commission, Hillsborough County and others to make sound resource management decisions, comply with regulatory requirements and support scientific research.

List of Attachments: None

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 19, 2012

Subject: Presentation on the Tampa Bay Environmental Fund

Consent Agenda _____ **Regular Agenda** X **Public Hearing** _____

Division: Water Management

Recommendation: Informational Report on the Tampa Bay Environmental Fund by Ms. Holly Greening, Executive Director of the Tampa Bay Estuary Program and Mr. Dave Moore, TBEP staff. No Commission Action is Required.

Brief Summary: Ms. Greening and Mr. Moore will give a brief overview of the history and formation of the Tampa Bay Environmental Fund. This fund is a cooperative partnership of several entities that funds, promotes, and coordinates environmental restoration projects throughout the Tampa Bay area. The TBEP will be asking the EPC Board to consider opening a discussion between the County and EPC on how we can best contribute to the success of this effort.

Financial Impact: No Financial Impact

Background: Ms. Greening and Mr. Moore will give a brief overview of the history and formation of the Tampa Bay Environmental Fund. This fund is a cooperative partnership of several entities that funds, promotes, and coordinates environmental restoration projects throughout the Tampa Bay area. There have been several restoration projects within Hillsborough County that have been funded via the Tampa Bay Environmental Fund (fka Pinellas County Environmental Fund) as well as many that EPC has participated in using Pollution Recovery Funds to leverage additional state and federal dollars.

List of Attachments: No Attachments

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 19, 2012

Subject: Staff Response to Citizen Complaint from Mr. John Vogel

Consent Agenda _____ **Regular Agenda** X **Public Hearing** _____

Division: Water Management

Recommendation: Informational Report and Follow-up of Citizen Complaint and Staff Investigation Regarding Water Quality Issues in Bullfrog Creek / Hillsborough Bay. No Commission Action is Required.

Brief Summary: Staff has been working with Mr. John Vogel and Commissioner Murman's office to address water quality concerns in the Bullfrog Creek area of Hillsborough Bay. Mr. Vogel's reports to staff range from alleged illicit discharges from a county-owned wastewater treatment plant to large macroalgae blooms and fish-kills in the area. Staff will report on its investigative efforts and findings to date.

Financial Impact: No Financial Impact

Background: Beginning in September 2011, staff began receiving complaints of strange, white-colored water, large blooms of macroalgae, fish-kills, and associated water quality problems in and around the Bullfrog Creek area of Hillsborough Bay. Staff has been working with Mr. John Vogel and Commissioner Murman's office during its investigation of these complaints since September 2011. Staff will present a brief summary of what measures have been taken to address Mr. Vogel's concerns, what has been done to investigate these complaints, and a summary of findings to date.

List of Attachments: No Attachments

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 19, 2012

Subject: Update on the Brownfields Mapping Project by the Tampa Hillsborough Economic Development Corporation (EDC).

Consent Agenda _____ **Regular Agenda** X **Public Hearing** _____

Division: Waste Management Division

Recommendation: Informational Report

Brief Summary: The Board requested that the Brownfield Areas be mapped for public use. The Hillsborough County Economic Development Division was working with the EDC on a mapping project to which a Brownfield Layer was added.

Financial Impact: No Financial Impact

Background: The Board requested that the Brownfield Areas be mapped for public use. The Hillsborough County Economic Development Division was working with the EDC on a mapping project to which a Brownfield Layer was added. EPC and EDC will jointly provide a progress report.

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: 4/19/12

Subject: Update On Residential Drywall Disposal Issue

Consent Agenda _____ **Regular Agenda** X **Public Hearing** _____

Division: Waste Management

Recommendation: Informational Report

Brief Summary: This informational report updates the Board with regard to the steps taken to provide assistance to Mr. and Mrs. Mraz of Wimauma, FL, regarding the resolution of an issue associated with disposal of problematic drywall.

Financial Impact: No Financial Impact

Background: At a previous EPC Board meeting, Mr. and Mrs. Mraz of Wimauma, FL., appeared before the Board explaining complications and asking for assistance associated with their need to dispose of a volume of drywall previously removed from their home.

The Board instructed staff to assist the citizens and report back to the Board.

List of Attachments: None

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 19, 2012

Subject: 2012 First Quarter Action Plan Updates

Consent Agenda _____ **Regular Agenda** X **Public Hearing** _____

Division: Executive Director's Report

Recommendation: Informational Report

Brief Summary: In January 2012, EPC staff brought the Agency's Strategic Plan to the Board for approval. It included some sixteen individual initiatives which are detailed in measureable action plans. The first quarter status reports will be listed for all sixteen plans in the agenda backup and a few will be highlighted for discussion during a brief informational report.

Financial Impact: No Financial Impact

Background: As part of the Agency's Sterling Management planning process, staff held a strategic planning retreat in December 2011. This included input from the Board and a broad range of EPC staff. Also taken into consideration were the most recent Employee and Customer Surveys.

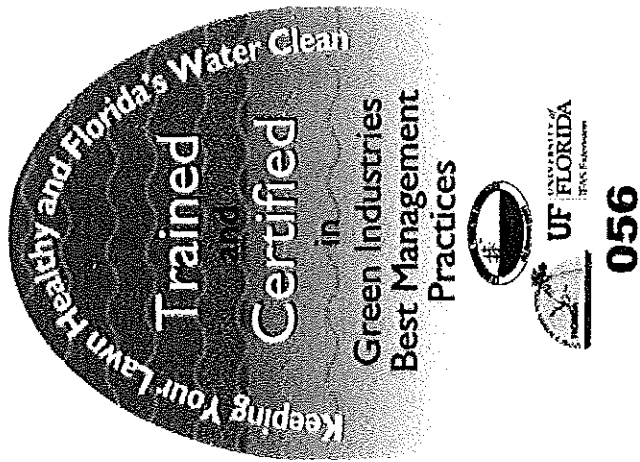
Following the retreat, staff drafted a Strategic Plan for 2012 and brought it to the Board at the regular EPC meeting. It was approved and sixteen initiatives reflecting the Agency's strategic objectives were launched. Each initiative is described in an individual Action Plan with measurable goals.

These Action Plans will be reported in more detail at the Agency's annual report to the EPC in the fall.

List of Attachments: First Quarter Updates for the 2012 Action Plans

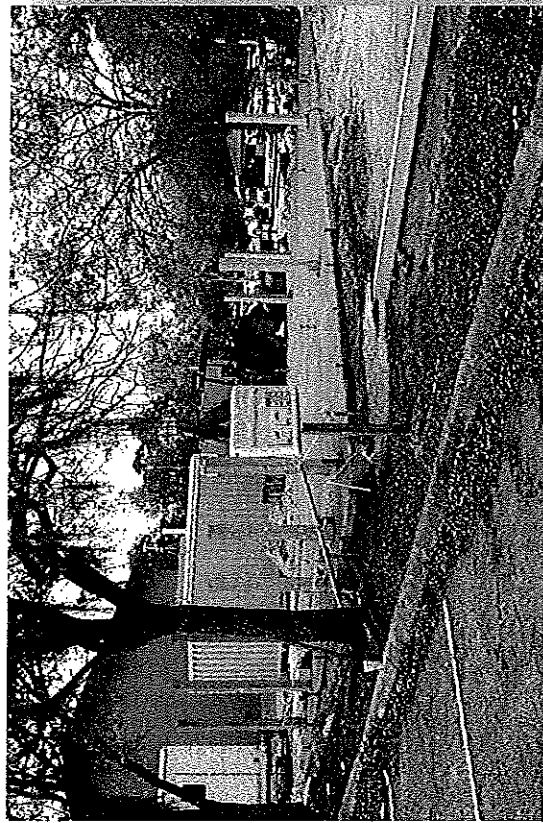
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Protect & Enhance Water Quality	1.1 Nutrient Management	Public Education Materials are posted on EPC website	Continue to develop new innovative materials and information/distribution outlets.
		Passed EPC Fertilizer Rule (Ch 1-15) and initiated a regional study.	Ensure all licensed commercial applicators have an IFAS decal.
		Established database for commercial applicators and working with IFAS.	
		Study of rule effectiveness has been developed and data collection will commence this year.	Review year-one data and evaluate any issues or changes in methodology as needed.
		Collaborate and attend meetings and stay apprised of state and federal TMDL and Numeric Nutrient Criteria development & implementation.	Continue tracking issues and partner with stakeholders providing EPC technical support and field work.



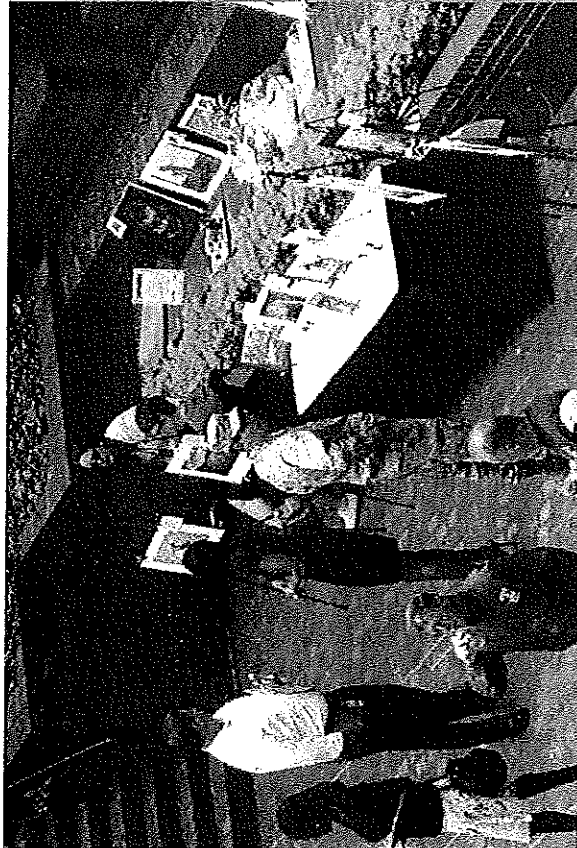
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Promote Environmental Stewardship	1.2b Green Initiatives II	Agency's Green Team is changing employee behavior and electric consumption is down by greater than 10% in the first quarter.	Reducing electricity consumption at RPS Center by 5% from 2011.
		Construction of Chiller Plant has begun.	Working with Facilities to have new Chiller Plant in operation at RPS Center.
			Evaluate RPS Center for Energy Star application.



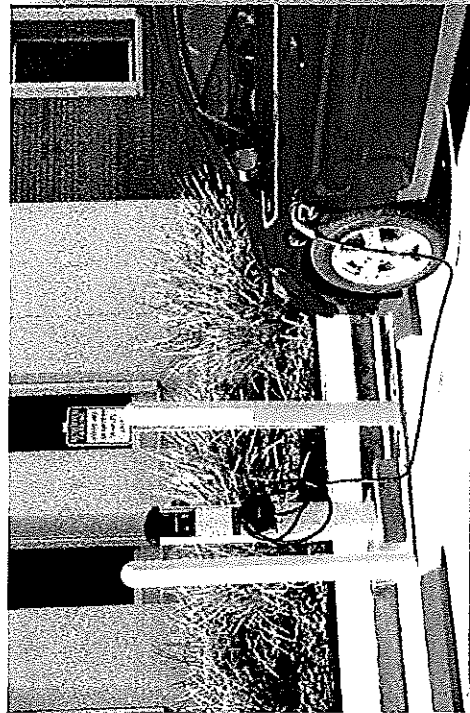
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Promote Environmental Stewardship	1.2c School Outreach	Formed Outreach Team with County Communications, EPC, and School District Officials.	Obtain School District approval to rotate student's environmental art display to designated schools and have it displayed 3 times by year's end.
		Developing program outline to include types of material, standards, and logistics of moving any displays.	



Quarterly Update for 2012 Action Plans

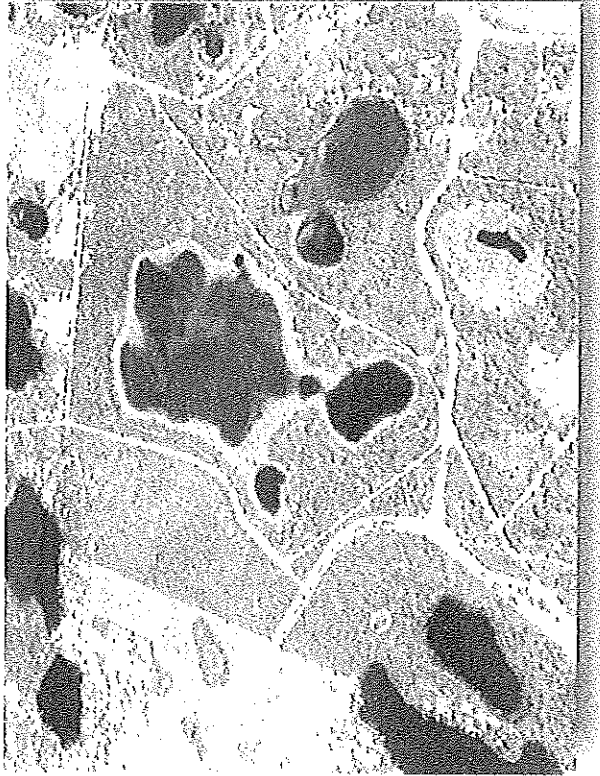
Strategic Objective	Action Plans	Status	2012 Year End Goal
Promote Environmental Stewardship	1.2d Develop Office of Sustainability	Secured funding for FY 12 and coordinator's position filled. Completed Energy & Sustainability Plan for the County.	Start Energy Management teams in various departments throughout the County.
		Received grant for 7 electric vehicle (EV) recharge stations and 5 have been installed.	Have all 7 EV stations operational.
		Compressed Natural Gas (CNG) Committee has met with 3 suppliers and given progress report to full workgroup.	Make final recommendations to workgroup on CNG.



Green website is under development.	Launch Green Hillsborough website in final form.
Met with several organizations to start a Clean Cities Coalition in Tampa Bay.	Complete Clean Cities Coalition application for DOE.
In collaboration with Fleet submitted a requisition for an electric vehicle for EPC	Take delivery of electric vehicle as part of alternative fuels pilot program.

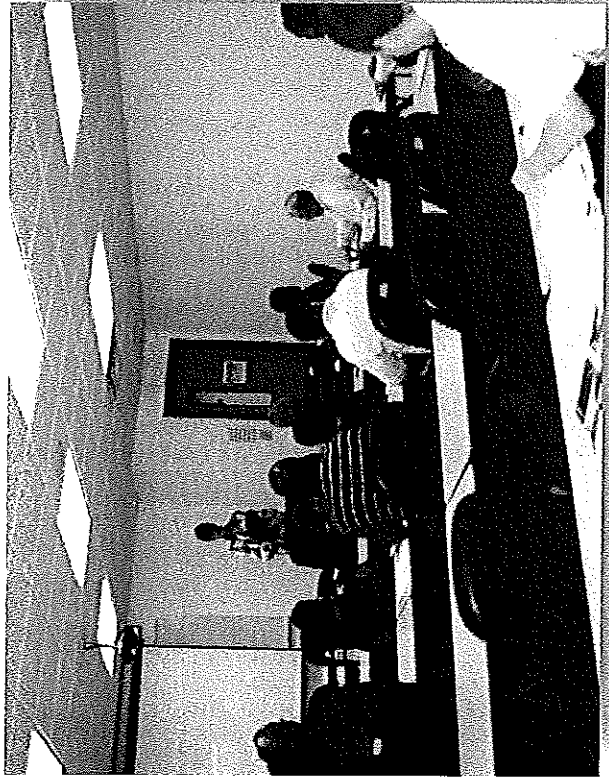
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Improve Regulatory Compliance	1.3 Lakes Initiative	Developed template; made first 2 Board Presentations; provided information matrix; and participated in annual HOA event at HCC.	Make up to 4 Board presentations and reach out to 8 HOAs. See a 5% drop in observed wetland violations on freshwater lakes in Hillsborough County per number of citizen complaints.

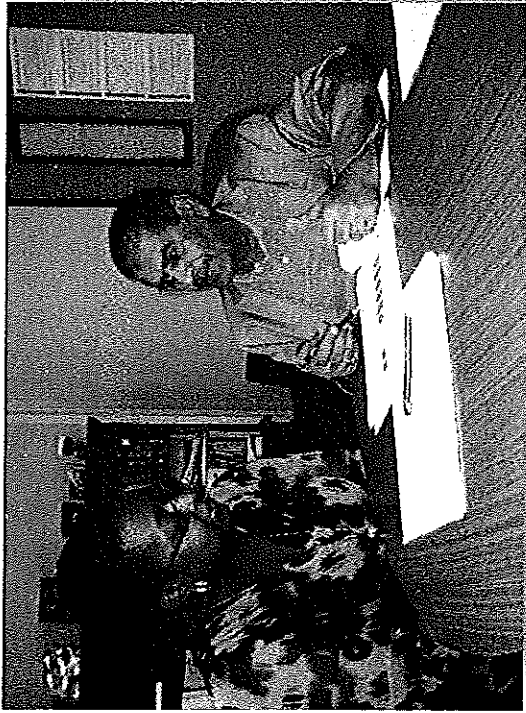


Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Ensure employees receive ongoing training and development	2.1a Increase Staff Training Opportunities	Formed a training committee and conducted a staff training survey.	Establish a formal Agency training program to include a budget, course roster, and a committee to oversee it.
		Created a Training Resource Intranet Page for staff.	



Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Improve Employee Satisfaction	2.2a Develop Incentive Pay Programs	Extraordinary Performance Increase Policy signed 2-3-12 and effective immediately.	Begin implementing the policy.
		Drafted EPC specific annual lump sum performance incentive policy to replace longevity bonus, but waiting for the County's policy to come out to avoid any inconsistencies.	Have annual lump sum performance incentive policy executed by December.

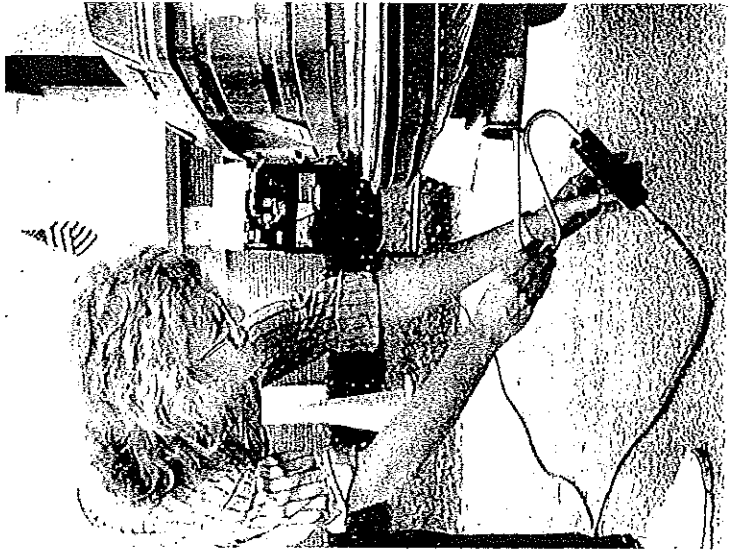
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Improve Employee Participation and Involvement	2.3a Prepare Sterling Challenge Application	Completed Strategic Plan for the Agency including Priorities & Objectives; Organizational Profile; Action Plans; and Performance Measures. Finished two of the seven sections for the Sterling Challenge Application (Category 1 – Leadership & Category 2 – Strategic Planning).	To complete narrative of all 7 Sterling Categories and make a decision on a Sterling Challenge submittal by December 2012.



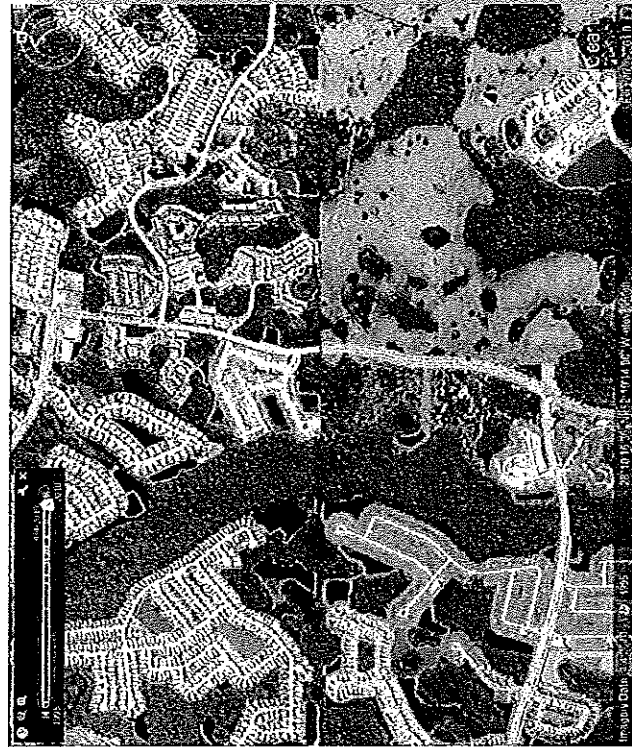
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Improve Customer Satisfaction	3.1d Rule Efficiency Initiative	Completed efficiencies review of EPC Rules 1-1 through 1-15. Produced a list of sections and rules for deletion, modification, and updating.	Eliminate obsolete rules and update others. Bring revised rules to the Board for a Public Hearing by September 2012.



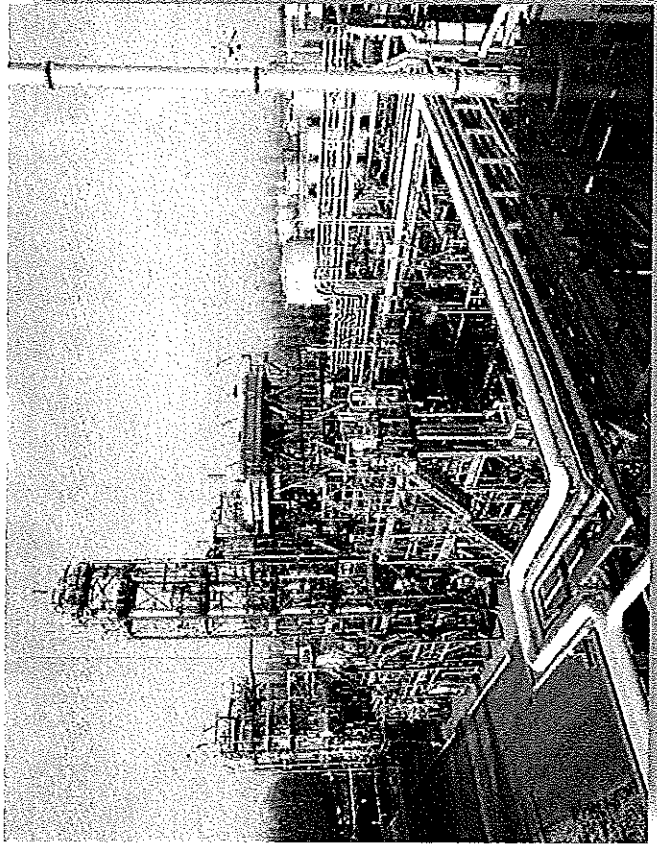
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Improve Partnering Relationships	3.2a One Stop Permitting	Forming Environmental Resource Permitting (ERP) delegation application team with County Stormwater to approach State DEP.	Start preparing application for full delegation of ERP from DEP.
		Identified potential projects to partner with other organizations.	Enter agreements with: Parks Department for ELAPP wetlands restoration; Property Appraiser's Office on wetland lines; County on upland habitat designs; and Public Utilities on Water Use Permitting and reclaimed water advice.



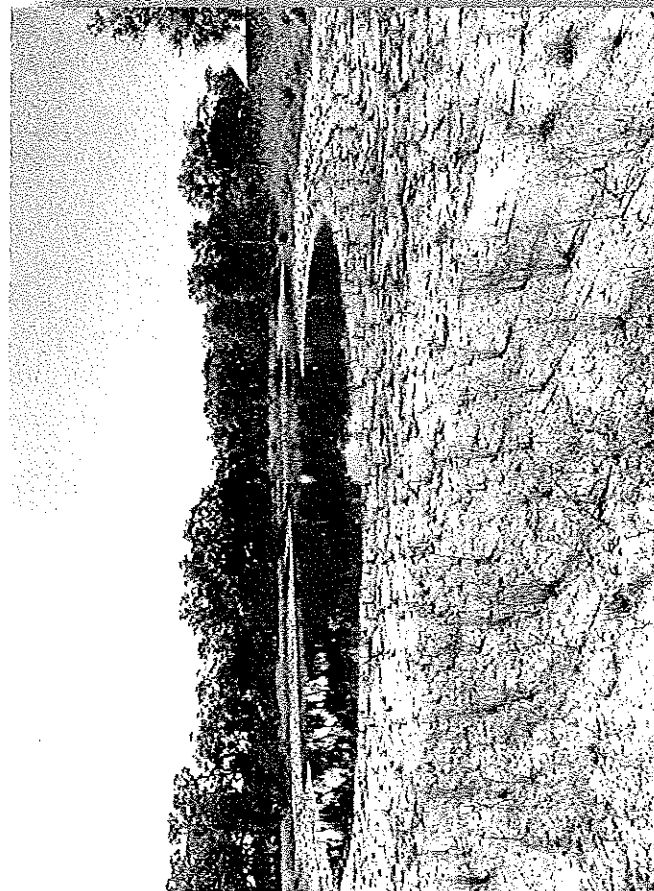
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Improve Stakeholder Relationships	3.3 Enhance Priority Permitting	Developed program and set up feedback system through surveys.	100% of applications processed in half statutory limits.
		100% of applications processed in half statutory limits.	EPC receives a 4.0 or better on 100% of applicant surveys.
		Set up video conferencing capability with the Center.	Improve communication with public on permitting matters.



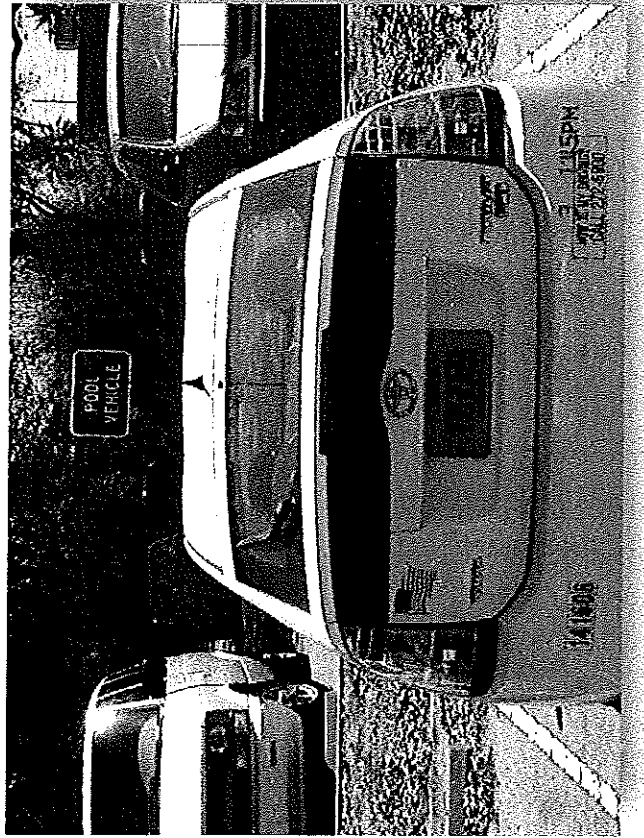
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Maximize Funding	4.1a Grant Writing Committee	Formed Agency Committee and summarized goals. Surveyed the Agency for grant needs.	Develop grant-writing SOP for Agency and apply for grants in the top three areas of need.



Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Control Expenditures	4.2a Employee Efficiency Team	Drafted policy in-house.	Form employee committee.
			Create intranet link to the Executive Director for staff to submit cost-savings ideas.
			Produce \$5,000 in savings in the first year.
			Develop a list of potential savings for the two-year budget cycle of FY 2014-2015.



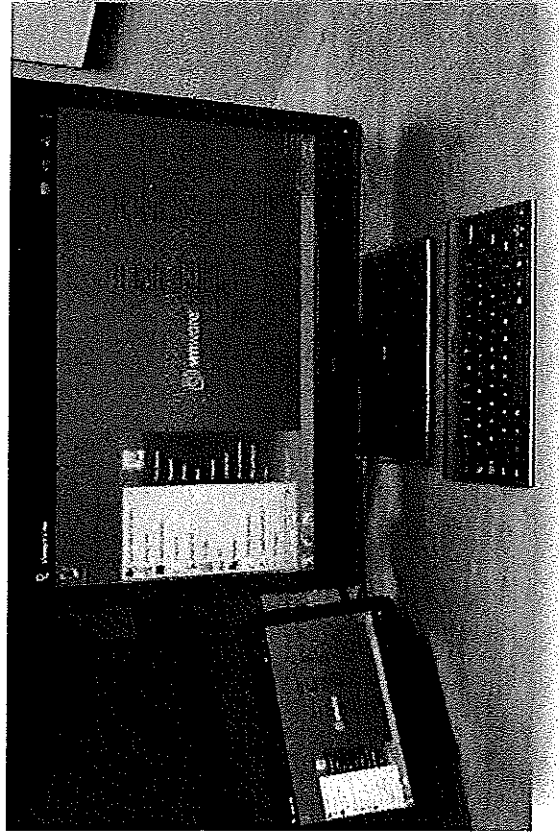
Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Improve Process Performance	5.1e Agency Performance Measures	Selected core function performance measures and determined historical trend.	
		Set goals for 2012 at EPC Board meeting.	
		First Quarter Results Delegated Permitting 42 days	< 36 days
		Local Permitting 24 days	< 28 days
		Timely Compliance 92%	90%
		Timely Complaint Inv. 99%	99%
		Timely Enf. Resolution 43%	>67%




Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Improve the Use of Technology	5.2c Upgrade Server and IT Service	Evaluated host server requirements for virtual system support. Evaluating network storage requirements for client virtual desktop.	Purchase and install server hardware.
		Determined OS/Software required.	Purchase storage hardware and install.
		Determined Client desktop hardware.	Install and conduct pilot testing in each division in the Agency.
		Evaluated remote client hardware platform.	Purchase desktop hardware and conduct pilot testing.
			Purchase mobile user hardware and conduct pilot testing.



Quarterly Update for 2012 Action Plans

Strategic Objective	Action Plans	Status	2012 Year End Goal
Ensure Effective Leadership Development and Succession Planning	5.3 Advanced Leadership Development Program (ALDP)	The first year of this effort resulted in: the formation of an ALDP Coordinating Committee, the establishment of Program with standards and responsibilities, and the selection of the first group of participants.	Completion of the first group program is expected this summer with the second group to start this Fall.
		The Program consists of training opportunities, leadership mentoring, special project completion, and Toastmaster membership.	To have fully completed the first ALDP group and survey them for program evaluation and to start second group.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 19, 2012

Subject: EPC Celebrating May as Clean Air Month

Consent Agenda _____ **Regular Agenda** X **Public Hearing** _____

Division: Executive Director's Report

Recommendation: Informational Report

Brief Summary: Once again this year, EPC is celebrating the month of May as Clean Air Month. On May 3, 2012, EPC will be hosting the *11th Annual Clean Air Fair* in downtown Tampa. The *Clean Air Fair* is the signature public outreach event annually organized by EPC, and is typically attended by over an estimated 800 visitors each year. EPC is also hosting the *11th Annual EPC Clean Air Month Photo Contest* in conjunction with the Hillsborough County School System. The contest is eligible to all Hillsborough County high school students, and the winning photographs will be displayed at the *Clean Air Fair* and are scheduled to be recognized in May during the EPC meeting.

Financial Impact: No Financial Impact

Background: EPC has recognized the national designation of the month of May as Clean Air Month since the 1970's. EPC has embraced this celebration since 2000 through the hosting of community events, environmental presentations to local schools, and promotion of environmental contests. While the activities related to Clean Air Month have been reduced in recent years, EPC is proud to continue recognition of Clean Air Month through two primary public outreach activities.

On May 3, 2012, EPC is pleased to host the *11th Annual Clean Air Fair* at Poe Plaza in downtown Tampa from 11:30am-1:30pm. EPC established this year's theme for Clean Air Month as "*Fueling Our Future for a Brighter Tomorrow*", which focuses on the use of cleaner fuels and alternative technologies to help reduce air pollution. The goal of the fair is to highlight local air quality and to promote a healthy environment through public education. Each year, the event seeks to recognize environmentally-conscious organizations and companies that contribute towards making our community a better place to live. The free lunchtime event is scheduled to include a variety of environmental and health information, complimentary refreshments and food items, giveaways, prize drawings and live music.

EPC is also currently hosting the *11th Annual EPC Clean Air Month Photo Contest* in conjunction with the Hillsborough County School System. The annual environmental photography competition is offered to high school students in an effort to recognize Clean Air Month and encourage increased awareness of the environment and air quality. The aim of the competition is to inspire the imagination

of young artists to consider environmental issues facing the community. The winning photographs are scheduled to be recognized in May during the EPC meeting. The winners and selected honorable mentions will also be displayed at the *Clean Air Fair*, and are scheduled to be showcased in the lobbies of county center and EPC.

Attachments: None