

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
COMMISSIONER'S BOARD ROOM  
COUNTY CENTER 2<sup>ND</sup> FLOOR  
NOVEMBER 17, 2011  
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. PUBLIC COMMENT**

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

**II. CITIZENS' ENVIRONMENTAL ADVISORY COMMITTEE**

**III. CONSENT AGENDA**

A. Approval of Minutes: October 20, 2011 .....	3
B. Monthly Activity Reports - October 2011 .....	7
C. Pollution Recovery Fund Report .....	19
D. Gardinier Settlement Trust Fund Report .....	20
E. Legal Case Summary, November 2011 .....	21
F. Request for Authority to Take Appropriate Legal Action Against Yahya M. Chaudhry, Shafiq M. Chaudhry, and Seven Star Food and Video Stores, Inc. ....	25

**IV. WETLANDS & LEGAL DIVISIONS**

Steven Scott Stephens' Dock Construction Rule Waiver Request.....	27
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**V. WASTE MANAGEMENT DIVISION**

EPC Green Team Report.....	41
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**VI. WATER MANAGEMENT DIVISION**

Alafia River Report .....	43
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**VII. AIR MANAGEMENT DIVISION**

EPC Permit Tracking Update .....	45
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**VIII. EXECUTIVE DIRECTOR REPORT**

- A. Introduction of Dr. Scott Emery – Wetlands Management Div. Director
- B. Update on Delegation

**IX. LEGAL & ADMINISTRATIVE SERVICES DIVISION**

A. Executive Director Evaluation .....	47
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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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OCTOBER 20, 2011 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, October 20, 2011, 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 (arrived at 9:11 a.m.), Al Higginbotham (arrived at 9:43 a.m.), Lesley Miller Jr., Sandra Murman, and Mark Sharpe (arrived at 9:16 a.m.).

Chairman Beckner called the meeting to order at 9:04 a.m. Commissioner Miller led in the pledge of allegiance to the flag and gave the invocation.

CHANGES TO THE AGENDA

Dr. Richard Garrity, EPC Executive Director, noted staff would discuss the Army Corps of Engineers report of possible Pam Callahan nature preserve contamination. **Commissioner Murman moved the changes, seconded by Commissioner Crist, and carried four to zero.** (Commissioners Hagan, Higginbotham, and Sharpe had not arrived.)

PUBLIC COMMENT

Chairman Beckner called for public comment; there was no response.

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Report from the Chairman, Daniel Alberdi Jr. - Mr. Alberdi reported on the September 2011 and October 2011 CEAC meetings and discussed the proposed bylaw amendments, as furnished as background material. Following acknowledgements, **Commissioner Murman moved to approve the changes, seconded by Commissioner Miller, and carried four to zero.** (Commissioners Hagan, Higginbotham, and Sharpe had not arrived.)

CONSENT AGENDA

- A. Approval of minutes: August 18, 2011.
- B. Monthly activity reports, August and September 2011.
- C. Pollution Recovery Fund (PRF) report.
- D. Gardinier Settlement Trust Fund report.
- E. Legal case summary, September 2011 and October 2011.

Chairman Beckner called for a motion to approve the Consent Agenda. **Commissioner Miller so moved, seconded by Commissioner Murman, and carried**

THURSDAY, OCTOBER 20, 2011 - DRAFT MINUTES

**four to zero.** (Commissioners Hagan, Higginbotham, and Sharpe had not arrived.)

#### EXECUTIVE DIRECTOR

State of the Environment - Dr. Garrity gave the report, as furnished in background material, acknowledged comments from Commissioner Crist, and addressed Chairman Beckner's questions about water quality and Sterling management progress. After dialogue on business community outreach and passing the gavel to Vice Chairman Miller, Chairman Beckner moved to direct staff to come back and look at an approach to work with the private sector to build best practices, to do outreach with the private sector, and to come back with an overall comprehensive plan to promote more green through the private sector. The motion died for lack of a second. Responding to Commissioner Murman, Mr. Sam Elrabi, Director, EPC Water Management Division, shed light on runoff issues with the Alafia River. Commissioner Crist opined on opportunities to build environmental awareness in the community.

Chinese Delegation Visit - Dr. Garrity summarized the event, as provided in background material.

Permit Tracking - Dr. Garrity reported the permit tracking system had become operational and welcomed staff involvement with finding improvements.

#### AIR AND WASTE MANAGEMENT DIVISIONS

State Contracts for Air and Waste Management Divisions - Mr. Jerry Campbell, Director, EPC Air Management Division, outlined the information, as presented in background material, and addressed concerns with State contracts. Mr. Hooshang Boostani, Director, EPC Waste Management Division, expounded on questions posed by Commissioner Crist on the causes of leaking underground petroleum tanks, requested the EPC Board ratify the letter to the Hillsborough County Legislative Delegation (Delegation) asking for their support to have the State fund the EPC underground tanks programs at last year's funding level, authorize the EPC Chairman to send a second letter to the Delegation for their support to have the State fund the EPC air monitoring and Title V programs also at last year's funding level, and request the Intergovernmental Relations County Manager and their contractor to support the above mentioned State-EPC contracts in their dealings with the legislature in the upcoming 2012 session. Commissioner Higginbotham praised EPC staff efforts. Discussion took place on community relationships, statewide issues with compliance contracts, and recent contract examples. Commissioner Murman stressed the importance of economic development. Following talks on sending a letter to the Florida

THURSDAY, OCTOBER 20, 2011 - DRAFT MINUTES

Association of Counties (FAC), **Commissioner Miller moved to send the letter to the Delegation chairman with the exception of changing the name of the Delegation chairman on the letter, seconded by Commissioner Hagan.** Chairman Beckner suggested amending the motion to include the Economic Development Corporation, FAC, and other appropriate agencies and organizations. **Commissioner Miller agreed with the amendment.** Crist suggested an EPC member meet with legislators. Following comments, relative to coordinating with staff, Chairman Beckner referred the issue to Intergovernmental Relations staff. After further comments, **the motion carried six to zero.** (Commissioner Sharpe was out of the room.)

#### WASTE MANAGEMENT DIVISION

Brownfields Program - Redevelopment Opportunities in Hillsborough County - Mr. Boostani expounded on the report, as reflected in background material. Dialogue ensued on expansion efforts, educating the public and developers on the advantages of development, and the economic potential of the program.

Pam Callahan Nature Preserve Update - Mr. Boostani gave a status report on the site. In reference to the preserve closing after a news article based on a draft report issued by the Army Corps of Engineers, Mr. Boostani stated nothing alarming had been found on-site and further investigation would be needed. Discussion followed on contamination concerns, reopening the preserve, and water sampling. Responding to Commissioner Murman, Dr. Garrity said staff would meet with residents. Mr. Boostani remarked on the advanced leadership mentoring program.

#### WATER MANAGEMENT DIVISION

Annual Fertilizer and Landscape Management Rule Update and PRF Allocation - Mr. Tom Ash, EPC, presented the report, as referenced in background material, and cited staff recommendation to approve the use of \$50,000 of PRF money to keep the study moving forward. After inquiring about the study completion date and the locations studied and passing the gavel to Vice Chairman Miller, **Chairman Beckner moved to allocate \$50,000 from the PRF to put into the pot to study the impacts of the fertilizer ordinance that had been in place, seconded by Commissioner Crist, and carried six to zero.** (Commissioner Sharpe was out of the room.)

#### LEGAL AND ADMINISTRATIVE SERVICES DIVISION

Executive Director Evaluation Forms - EPC General Counsel Richard Tschantz explained the revised assessment form and announced the deadline of November

THURSDAY, OCTOBER 20, 2011 - DRAFT MINUTES

7, 2011, to submit the completed form to Chairman Beckner. Following dialogue on extending the deadline, Attorney Tschantz changed the date to November 14, 2011.

LMJ Investments LLLP, et.al. Versus EPC - Joint Motion for Order Relinquishing Jurisdiction - Attorney Rick Muratti, EPC Legal Department, shed light on the jurisdiction process in permitting challenges, highlighted the case history, and announced the staff recommendation to ask for a 60-day relinquishment of jurisdiction to Dr. Garrity to work out a settlement, with the condition of a status report near the end of the 60 days. **Commissioner Higginbotham moved the recommendation, seconded by Commissioner Miller, and carried six to zero.** (Commissioner Sharpe was out of the room.)

There being no further business, the meeting was adjourned at 11:02 a.m.

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

CHAIRMAN

ATTEST:

PAT FRANK, CLERK

By: \_\_\_\_\_

Deputy Clerk

jh

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

**OCT**

**A. Public Outreach/Education Assistance**

1.	Phone calls	139
2.	Literature Distributed	0
3.	Presentations	1
4.	Media Contacts	0
5.	Internet	69
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	6
	b. Construction	0
	c. Amendments / Transfers / Extensions	1
	d. Title V Operating:	0
	e. Permit Determinations	5
	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	3
	b. Construction ^1	7
	c. Amendments / Transfers / Extensions^1	0
	d. Title V Operating ^2	45
	e. Permit Determinations	45
	f. General	1
3.	Intent to Deny Permit Issued	0

**C. Administrative Enforcement**

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

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

**OCT**

**D. Inspections**

1.	Industrial Facilities	11
2.	Air Toxics Facilities	
	a. Area Sources (i.e. Drycleaners, Chrome Platers, etc.)	2
	b. Major Sources	2
3.	Asbestos Demolition/Renovation Projects	21

**E. Open Burning Permits Issued**

1

**F. Number of Division of Forestry Permits Monitored**

242

**G. Total Citizen Complaints Received**

30

**H. Total Citizen Complaints Closed**

36

**I. Noise Sources Monitored**

1

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

3

**K. Test Reports Reviewed**

60

**L. Compliance**

1.	Warning Notices Issued	6
2.	Warning Notices Resolved	5
3.	Advisory Letters Issued	0

**M. AOR's Reviewed**

5

**N. Permits Reviewed for NESHAP Applicability**

0

**O. Planning Documents coordinated for Agency Review**

9



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

OCT

**A. ENFORCEMENT**

1.	New cases received	-
2.	On-going administrative cases	95
	Pending	2
	Active	40
	Legal	9
	Tracking Compliance (Administrative)	43
	Inactive/Referred Cases	1
3.	NOI's issued	-
4.	Citations issued	-
5.	Consent Orders and Settlement Letter Signed	3
6.	Civil Contributions to the Pollution Recover Fund (\$)	\$ 1,605
7.	Enforcement Costs Collected (\$)	\$ 1,016
8.	Cases Closed	2

**B. SOLID AND HAZARDOUS WASTE**

1.	FDEP Permits Received	
2.	FDEP Permits Reviewed	
3.	EPC Authorization for Facilities NOT Requiring DEP Permit	
4.	Other Permits and Reports	
	County Permits Received	
	County Permits Reviewed	
	Reports Received (SW/HW + SQG)	
	Reports Reviewed (SW/HW + SQG)	
5.	Inspections (Total)	
	Complaints (SW/HW + SQG)	
	Compliance/Reinspections (SW/HW + SQG)	
	Facility Compliance	
	Small Quantity Generator Verifications	
	P2 Audits	
6.	Enforcement (SW/HW + SQG)	
	Complaints Received	
	Complaints Closed	
	Warning Notices Issued	
	Warning Notices Closed	
	Compliance Letters	
	Letters of Agreement	
	Agency Referrals	
7.	Pamphlets, Rules and Material Distributed	

**C. STORAGE TANK COMPLIANCE**

1.	Inspections	
	Compliance	73
	Installation	9
	Closure	4
	Compliance Re-Inspections	5
2.	Installation Plans Received	1

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

**OCT**

3.	Installation Plans Reviewed	6
4.	Closure Plans & Reports	
	Closure Plans Received	6
	Closure Plans Reviewed	7
	Closure Reports Received	6
	Closure Reports Reviewed	5
5.	Enforcement	
	Non-Compliance Letters Issued	41
	Warning Notices Issued	2
	Warning Notices Closed	3
	Cases Referred to Enforcement	1
	Complaints Received	-
	Complaints Investigated	-
	Complaints Referred	-
6.	Discharge Reporting Forms Received	3
7.	Incident Notification Forms Received	2
8.	Cleanup Notification Letters Issued	3

**D. STORAGE TANK CLEANUP**

1.	Inspections	33
2.	Reports Received	72
3.	Reports Reviewed	72
	Site Assessment Received	6
	Site Assessment Reviewed	9
	Source Removal Received	1
	Source Removal Reviewed	2
	Remedial Action Plans (RAP'S) Received	4
	Remedial Action Plans (RAP'S) Reviewed	5
	Site Rehabilitation Completion Order/No Further Action Rec'd	5
	Site Rehabilitation Completion Order/No Further Action Revw'd	3
	Active Remediation/Monitoring Received	39
	Active Remediation/Monitoring Reviewed	41
	Others Received	17
	Others Reviewed	12

**E. RECORD REVIEWS**

13
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**F. LEGAL PIR'S**

18
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**FY 12 - MONTHLY ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION**

**OCT**

**A. ENFORCEMENT**

1.	New Enforcement Cases Received	2
2.	Enforcement Cases Closed	2
3.	Enforcement Cases Outstanding	41
4.	Enforcement Documents Issued	4
5.	Recovered Costs to the General Fund	\$ 4,343
6.	Contributions to the Pollution Recovery Fund	\$ 13,790

**B. PERMITTING/PROJECT REVIEW - DOMESTIC**

1.	Permit Applications Received	8
a.	Facility Permit	2
	(i) Types I and II	-
	(ii) Type III	2
b.	Collection Systems - General	4
c.	Collection systems-Dry Line/Wet Line	2
d.	Residuals Disposal	-
2.	Permit Applications Approved	15
a.	Facility Permit	3
b.	Collection Systems - General	6
c.	Collection systems-Dry Line/Wet Line	6
d.	Residuals Disposal	-
3.	Permit Applications Recommended for Disapproval	-
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	26
a.	Facility Permit	6
b.	Collection Systems - General	6
c.	Collection systems-Dry Line/Wet Line	14
d.	Residuals Disposal	-
7.	Permit Determination	1
8.	Special Project Reviews	-
a.	Reuse	-

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

**OCT**

b. Residuals/AUPs	-
c. Others	-

**C. INSPECTIONS - DOMESTIC**

1. Compliance Evaluation	23
a. Inspection (CEI)	-
b. Sampling Inspection (CSI)	-
c. Toxics Sampling Inspection (XSI)	-
d. Performance Audit Inspection (PAD)	-
2. Reconnaissance	4
a. Inspection (RI)	4
b. Sample Inspection (SRI)	-
c. Complaint Inspection (CRI)	-
d. Enforcement Inspection (ERI)	-
3. Engineering Inspections	19
a. Reconnaissance Inspection (RI)	-
b. Sample Reconnaissance Inspection (SRI)	-
c. Residual Site Inspection (RSI)	-
d. Preconstruction Inspection (PCI)	2
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	
a. Facility Permit	8
(i) Types I and II	1
(ii) Type III with Groundwater Monitoring	-
(iii) Type III w/o Groundwater Monitoring	5
b. General Permit	2
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	2
3. Special Project Reviews	4
a. Facility Permit	3
b. General Permit	1
4. Permitting Determination	-
5. Special Project Reviews	62
a. Phosphate	17

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

**OCT**

b. Industrial Wastewater	19
c. Others	26

**E. INSPECTIONS - INDUSTRIAL**

1. Compliance Evaluation (Total)	15
a. Inspection (CEI)	14
b. Sampling Inspection (CSI)	1
c. Toxics Sampling Inspection (XSI)	-
d. Performance Audit Inspection (PAI)	-
2. Reconnaissance (Total)	32
a. Inspection (RI)	6
b. Sample Inspection (SRI)	-
c. Complaint Inspection (CRI)	23
d. Enforcement Inspection (ERI)	3
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	27
(i) Received	12
(ii) Closed	15
b. Industrial	23
(i) Received	13
(ii) Closed	10
2. Warning Notices	
a. Domestic	4
(i) Issued	2
(ii) Closed	2
b. Industrial	4
(i) Issued	2
(ii) Closed	2
3. Non-Compliance Advisory Letters	11
4. Environmental Compliance Reviews	
a. Industrial	109
b. Domestic	83
5. Special Project Reviews	7

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

OCT

**G. RECORD REVIEWS**

1.	Permitting Determination	7
2.	Enforcement	2

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

1.	Air division	60
2.	Waste Division	-
3.	Water Division	14
4.	Wetlands Division	-
5.	ERM Division	173
6.	Biomonitoring Reports	4
7.	Outside Agency	30

**I. SPECIAL PROJECT REVIEWS**

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

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

**OCT**

**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	42
Timeframes Met	100%
Year to Date	99%

**Formal Wetland Delineation Surveys**

Projects	8
Total Acres	109
Total Wetland Acres	13
# Isolated Wetlands < 1/2 Acre	2
Isolated Wetland Acreage	0.34

**Construction Plans Approved**

Projects	9
Total Wetland Acres	1
# Isolated Wetlands < 1/2 Acre	-
Isolated Wetland Acreage	0
Impacts Approved Acreage	0.05
Impacts Exempt Acreage	0.2

**Mitigation Sites in Compliance**

Ratio	173/181
Percentage	96%

**Compliance Actions**

Acreage of Unauthorized Wetland Impacts	0.30
Acreage of Water Quality Impacts	0.00
Acreage Restored	0.50

**TPA Minor Work Permit**

Permit Issued	12
Permits Issued Fiscal Year 2011	12
Cumulative Permits Issue Since TPA Delegation (07/09)	442

**REVIEW TIMES**

# of Reviews	224
% On Time	99%
% Late	1%

**WETLANDS MANAGEMENT DIVISION**

**OCT**

**A. General**

1.	Telephone conferences	536
2.	Unscheduled Citizen Assistance	291
3.	Scheduled Meetings	339
4.	Correspondence	1,502
1/ 5.	Intergency Coordination	239
1/ 6.	Trainings	19
1/ 7.	Public Outreach/Education	3
1/ 8.	Quality Control	50

**B. Assessment Reviews**

1.	Wetland Delineations	19
2.	Surveys	6
3.	Miscellaneous Activities in Wetland	23
4.	Mangrove	1
5.	Notice of Exemption	1
6.	Impact/Mitigation Proposal	10
7.	Tampa Port Authority Reviews	52
8.	Wastewater Treatment Plants (FDEP)	-
9.	Development Regn'l Impact (DRI) Annual Report	2
10.	On-Site Visits	73
11.	Phosphate Mining	1
12.	Comp Plan Amendment (CPA)	-
1/ 13.	AG SWM	-
	Sub-Total	

**Planning and Growth Management Review**

14.	Land Alteration/Landscaping	-
15.	Land Excavation	-
16.	Rezoning Reviews	9
17.	Site Development	17
18.	Subdivision	13
19.	Wetland Setback Encroachment	1
20.	Easement/Access-Vacating	-
21.	Pre-Applications	36
1/ 22.	Agriculture Exemption	-
	Sub-Total	
	<b>Total Assessment Review Activities</b>	

**C. Investigation and Compliance**

1.	Warning Notices Issued	3
2.	Warning Notices Closed	1
1/ 3.	Complaints Closed	31
4.	Complaint Inspections	32
5.	Return Compliance Inspections for Open Cases	25



8

**WETLANDS MANAGEMENT DIVISION**

OCT

6.	Mitigation Monitoring Reports	28
7.	Mitigation Compliance Inspections	32
8.	Erosion Control Inspections	29
9.	MAIW Compliance Site Inspections	37
10.	TPA Compliance Site Inspections	17
2/ 11	Mangrove Compliance Site Inspections	3
1/ 12	Conservation Easement Inspection	9

**D. Enforcement**

1.	Active Cases	
2.	Legal Cases	8
3.	Number of "Notice of Intent to Initiate Enforcement"	3
4.	Number of Citations Issued	1
5.	Number of Consent Orders Signed	3
6.	Administrative - Civil Cases Closed	3
7.	Cases Referred to Legal Department	3
8.	Contributions to Pollution Recovery	\$ 1,300
9.	Enforcement Costs Collected	\$ 1,495

**E. Ombudsman**

1.	Agriculture	5
2.	Permitting Process & Rule Assistance	1
3.	Staff Assistance	4
4.	Citizen Assistance	8

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

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 869,141	Artificial Reef	\$ 136,652	Minimum Balance	\$ 120,000	
Interest	\$ -	Project Monitoring	\$ 123,507	PROJ. FY 12 Budgets	\$ 260,159	
Deposits	\$ 10,245	FY 12 Projects	\$ -	Asbestos Removal	\$ 5,000	
Refunds	\$ 100					
Total	\$ 879,486	Total	\$ 260,159	Total	\$ 385,159	\$ 234,168

PROJECT	Project Amount	Project Balance
<b>FY 06 Projects</b>		
#04-03 - Bahia Beach Restoration	150,000	303
	\$ 150,000	\$ 303
<b>FY 08 Projects</b>		
#07-03 - Invasive Plant Removal Egmont Key	133,000	10,065
	\$ 133,000	\$ 10,065
<b>FY 09 Projects</b>		
#08-05 - MacDill Phase 2 Seagrass Transplanting	79,196	2,090
#08-04 - Mini FARMS BMP Implementation	50,000	28,819
#08-08 - Site Assessment & Removal of Contaminated Soils	25,000	700
#08-03 - Wetland Restoration on County Owned Lands	120,000	54,220
	\$ 274,196	\$ 85,829
<b>FY 10 Projects</b>		
#09-01 - Basis of Review for Borrow Pit Applications	\$ 68,160	\$ 3,369
#09-02 - Effects of Restoration on Use of Habitat	84,081	43,621
#09-03 - Artificial Wetland Cells	5,500	5,500
#09-05 - East Lake Watershed	46,300	27,291
#09-04 - Pilot Project for Outfall Water Quality Lake Mag	92,000	92,000
#09-06 - Greenhouse Gas Inventory	75,000	10,751
	\$ 371,041	\$ 182,532
		\$ 278,729

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

Fund Balance as of 10/1/11	\$ 254,243
Interest Accrued	-
Disbursements FY 12	-
Fund Balance	<u>\$ 254,243</u>
Encumbrances Against Fund Balance:	
SP634 Cockroach Bay ELAPP Restoration	\$ 254,243
Total Encumbrances	<u>\$ 254,243</u>
Fund Balance Available	<u><u>\$ -</u></u>



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2011

**Subject:** Legal Case Summary for November 2011

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

**Division:** Legal and Administrative Services

**Recommendation:** None, informational update.

**Brief Summary:** The EPC Legal Department provides a monthly list of all its pending civil matters, administrative matters, and cases that parties have asked for additional time to file an administrative challenge.

**Financial Impact:** No financial impact anticipated; informational update only.

**Background:** In an effort to provide the Commission a timely list of legal challenges, the EPC staff provides monthly updates. The updates not only can inform the Commission of pending litigation, but may be a tool to check for any conflicts they may have. The summaries generally detail civil and administrative cases where one party has initiated some form of civil or administrative litigation, as opposed to other Legal Department cases that have not risen to that level. 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 while we concurrently are attempting to negotiate a settlement.

**List of Attachments:**    November 2011 EPC Legal Case Summary

**EPC LEGAL DEPARTMENT MONTHLY REPORT**  
**November 2011**

**ADMINISTRATIVE CASES**

**Louise Nolan** [11-EPC-009]: On October 3, 2011, the EPC received from Appellant, Louise Nolan, a document that appeared to be a Notice of Appeal challenging EPC's issuance of a Minor Work Permit for the construction of a dock. The Notice of Appeal was found to be legally insufficient and was dismissed with leave to amend. The Appellant had until October 31, 2011 to file an amended appeal correcting the deficiencies. An Amended Notice of Appeal was not filed by the Appellant and the case is closed. (AZ).

**LMJ Investments, LLP, Monique M. Agia, Lisa Agia Individually and as Trustees of the Agia Children Irrevocable Trust** [LEPC10-016]: On September 8, 2010 the Appellant filed a request for an extension of time to file an Appeal of a denial of a wetland impact. The request was granted and the Appellant has until October 4, 2010 to file an Appeal in this matter. On October 4, 2010, the Appellant filed a second request for an extension of time until October 8, 2010. The request was granted and on October 8, 2010 an Appeal was filed. The case has been assigned to a Hearing Officer and the administrative hearing began on July 7 and concluded on July 13, 2011. The Recommended Order has been filed in accordance with Chapter 1-2, Rules of the EPC. The parties are in negotiations regarding a settlement. (AZ)

**CIVIL CASES**

**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)

**PATCO and Chip Investment 2** [11-EPC-005]: On July 28, 2011, the EPC staff received authority to take legal action for various solid waste/landfill violations. The parties settled the matter with a Consent Order 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. (AZ)

**Lambert Marine Construction, LLC**, [LEPC10-017]: On September 16, 2010 the Commission granted authority to take legal action against Defendant Lambert Marine Construction, Inc. for failure to comply with the terms of an agreed upon Settlement Letter. (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 ditch. An initial mediation occurred on July 16, 2010, but resulted in an impasse. The 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. EPC filed a motion for final judgment to establish penalties and corrective actions. No hearings can be held at the trial court level until the appellate court relinquishes jurisdiction. (RM)

**Greg and Karin Hart**: The Harts filed a notice of appeal to the Second District Court of Appeals on October 11, 2011. The EPC filed a motion to dismiss as the appeal was filed prematurely. (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)

**Dublinter 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. 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 against the Defendant. The Defendant did not respond to the complaint. On August 27, 2010, the EPC filed a Motion for a Court ordered default. The Default was issued on September 30, 2010. On January 14, 2011, EPC filed a Motion to Set Cause for Trial. EPC's Motion was heard on February 3, 2011 and a Trial has been set for the week of May 9, 2011. In compliance with the Court's Order, the parties conducted a mediation conference on April 22, 2011. A Mediation Settlement Agreement was entered on April 22, 2011 and executed by the parties. On August 8, 2011, the EPC filed a Notice of Voluntary Dismissal but will continue to monitor compliance with 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)

**Miley's Radiator Shop** [LEPC06-011]: Authority was granted on April 20, 2006 to pursue appropriate legal action against Miley's Radiator Shop, Calvin Miley, Jr., Calvin Miley, Sr., and Brenda Joyce Miley Tyner for waste management violations for improper storage and handling of car repair related wastes on the subject property. In addition, a citation was entered against the respondents on October 28, 2005 requiring specific corrective actions. The Respondents have not complied with the citation. The EPC is preparing to file a lawsuit for the referenced violations. Due to PRF expenditures to help correct violations, this case may be resolved soon. The enforcement case is being closed based on the corrective actions being performed at the site. (AZ)

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)

## 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)

Motiva Enterprises LLC [11-EPC-004]: On July 25, 2011 the Petitioner filed a request for an extension of time to file a petition to challenge the concurrent draft Construction/Title V Operating Permit and the Title V Air Operation Permit for the Port Tampa terminal. The extension was granted and the Petitioner has until October 31, 2011 to file a petition in this matter. A second extension request was filed and EPC granted Motiva until December 30, 2011 to file a petition in this matter. (RM)





## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2011

**Subject:** Request for authority to take appropriate legal action against Yahya M. Chaudhry, Shafiq M. Chaudhry, and Seven Star Food and Video Stores, Inc.

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

**Division:** Waste Management

**Recommendation:** Grant authority to pursue appropriate legal action and grant Executive Director settlement authority.

**Brief Summary:** Yahya M. Chaudhry and Shafiq M. Chaudhry are the owners of real property located at 15634 Martin Luther King Blvd., Dover, Florida (Property). Seven Star Food and Video Stores, Inc. (SSFVS), owns and operates a retail automotive vehicular refueling facility on the Property. On July 24, 2006, a petroleum discharge was confirmed during closure of spill buckets at the facility. On May 1, 2007, a complete Limited Site Assessment Report was received by EPC. A Remedial Action Plan was then required within ninety days. On October 9, 2008, Citations of Violation and Orders to Correct were issued to Yahya M. Chaudhry, Shafiq M. Chaudhry, and SSFVS for failure to adhere to Sections 12 and 17 of the EPC Act as well as Sections 1-1.04.3, 1-7.401, 1-7.402, and 1-7.102, Rules of the EPC. Although the site is currently in compliance, the parties remain in violation for failure to timely provide a complete Remedial Action Plan.

**Financial Impact:** There is no immediate financial impact anticipated for this item. Funding is budgeted within the general fund monies. EPC will seek to recover the costs of any litigation.

### Background:

On September 5, 2006, EPC staff received a Discharge Report Form for a petroleum discharge confirmed on July 24, 2006, during closure of spill buckets at the Property. The closure report indicated petroleum contaminant concentrations exceeding soil cleanup target levels pursuant to Chapter 62-777, F.A.C.

On October 9, 2008, EPC issued Citations of Violation and Orders to Correct to Yahya M. Chaudhry, Shafiq M. Chaudhry, and SSFVS for violations of Sections 12 and 17 of the EPC Act as well as Sections 1-1.04.3, 1-7.401, 1-7.402, and 1-7.102, Rules of the EPC for failing to remediate the site. The Orders to Correct directed the parties to (1) submit RAP Addendum #3 addressing the

outstanding issues in EPC's June 25, 2008, letter within sixty days of the citation, (2) submit any additional information required by EPC staff within sixty days of written request, (3) complete and submit any further site rehabilitation activities recommended in the Remedial Action Plan, and (4) submit notice of field activities in writing at least three days prior to performing them. The required deadlines were not timely met.

Finally on March 23, 2011, and April 6, 2011, EPC received the Site Rehabilitation Completion Report (SRCR) and No Further Action Proposal (NFAP). On September 7, 2011, the state Department of Environmental Protection sent a Site Rehabilitation Completion Order (SRCO) to Shafiq and Yahya Chaudhry indicating that the cleanup for that 2006 discharge was finally completed.

However, to date, Yahya M. Chaudhry, Shafiq M. Chaudhry, and SSFVS have not agreed to a settlement for the payment administrative costs and penalties under the EPC enabling act as a result of noncompliance with the Citations of Violation and Orders to Correct and the underlying rule violations. These costs and penalties remain unresolved. Staff recommends initiation of appropriate legal action to compel Yahya M. Chaudhry, Shafiq M. Chaudhry, and SSFVS to make payment for costs and penalties.

**List of Attachments:** None



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2011

**Subject:** Steven Scott Stephens' dock construction rule waiver request

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

**Division:** Wetlands Management Division and Legal Department

**Recommendation:** Hold a public hearing and approve Steven Scott Stephens' waiver request.

**Brief Summary:** Pursuant to Section 1-2.50, Rules of the EPC and Paragraph 5.b.2. of the Amended Interlocal Agreement between the Tampa Port Authority and the Environmental Protection Commission of Hillsborough County dated June 23, 2009, the applicant seeks a waiver of a delegated minor work permit rule. The applicants seeks a waiver of the ten foot setback requirement contained within Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority with respect to construction of a boatlift over submerged sovereignty lands. Specifically, the applicant requests a reduction of the required setback to seven feet from the riparian lines on the north side of their property requirement. The dock was accidentally constructed within approximately 0.3 feet of the neighbor's riparian line setback according to the current survey. The EPC staff recommends granting the waiver based on the hardship of relocating the dock and the minimal interference with the neighbor's property rights.

**Financial Impact:** No financial impact anticipated.

**Background:** Steven Scott Stephens applied for and received a permit to construct a dock under EPC and Tampa Port Authority permitting jurisdiction through the minor works permit delegated program. The dock was constructed, however, during the construction it was noted that it extended into the neighbor's riparian line setback a small distance. Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority provides the dock must be setback from the neighbor's riparian line by ten feet. Although it is unclear from the record, the dock appears to extend approximately 0.3 feet into the neighbor's setback but in an abundance of caution, the applicant seeks to reduce the setback to seven feet. The Interlocal Agreement between the Tampa Port Authority and the EPC provides that variances and waivers for permits that qualify under the delegated minor work permits be addressed by the EPC's variance process.

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.*

Steven Scott Stephens asserts in his application that there is both an economic and legal hardship for re-locating the dock pilings and/or re-establishing riparian lines through a civil action. In addition, waiver of the ten foot setback down to seven feet still meets the underlying purpose of the rule because the current dock construction does not have adverse impacts on the neighbor's use and enjoyment of that property.

EPC staff asserts that Steven Scott Stephens has demonstrated that there exists a substantial hardship if he were not granted a waiver in this specific situation and that the underlying purpose of the rule will be achieved. The waiver will meet the principles of fairness as required by section 1-2.50, Rules of the EPC. Finally, the waiver being sought is not one that State agencies have jurisdiction over. Thus, EPC staff recommends granting the waiver from ten feet down to seven feet to this specific project.

**List of Attachments:**

- 1) Steven Scott Stephens Waiver Request
- 2) Proposed Waiver Order

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

**In re: STEVEN SCOTT STEPHENS,**

**Petition for Waiver**

**Case No. \_\_\_\_\_**

\_\_\_\_\_ /

**Request for Variance or Waiver of TPA Rule Subsection V.A.3.a.(2)**

Now Come Steven Scott Stephens and Heidi Multhopp Stephens and petition the Commission, pursuant to Section 1-2.50, Rules of the EPC and Paragraph 5.b.2. of the Amended Interlocal Agreement between the Tampa Port Authority and the Environmental Protection Commission of Hillsborough County dated June 23, 2009, for a variance or waiver of the 10 foot setback requirement contained within Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority with respect to construction of a boatlift over submerged sovereignty lands. Specifically, the petitioners request a reduction of the required setback to 7 feet from the riparian lines on the north side of their property, as more fully stated:

Facts

1. The petitioners own property at [protected address] in Hillsborough County which was purchased in April of 2009. The property includes seawalled waterfront measuring 45 feet of frontage, on a waterway known as Coquimba Channel.
  
2. In seeking to avail themselves of the riparian rights to use the waterfront, the petitioners began planning a dock and boatlift shortly after buying the property. They originally sought to erect a single boat lift adjacent to the dock that was existing at the seawall. The lift would have extended to a point within eight feet of the riparian line on the north, and the neighbors to

the north declined to consent to the setback, indicating they intended to use the petitioners' desire to build a boat lift as "leverage" in some unrelated dispute.

3. The petitioners accordingly formulated a plan, at expense in excess of \$20,000, to build a new dock and boatlift combination that would not require the consent of the neighbors to the north, but would instead comply with all building requirements and limits, including the setback to the north. The design did encroach into the setback to the south, but the neighbors to the south readily provided consent.
4. The Commission granted a permit based on the plans, as did the City of Tampa. The drawing that was approved is attached as exhibit 1.
5. In reliance on the approved drawings, the contractor built the dock itself 22 feet from the northern neighbor's property line. As built, the dock is located as shown on the attached survey, exhibit 2.
6. The approved plans called for the dock to be built 23 feet from the property line, with a boat lift 13 feet in width, thus complying with the setback.
7. The survey indicates that the boat lift is within 9.7 feet of the riparian line at its *closest* point. Petitioners aver that the correct riparian line is determined as shown on the survey, determined by extending outward bearing S88° 53' 24''W (268° 53.400') from the intersection of the petitioners' property lines with the shoreline, squared with the construction of house and parallel to the southern property line. Any other measure of riparian lines would deprive the petitioners of the use of a 45 foot riparian zone consistent with their ownership of 45 feet of frontage.
8. It is recognized that riparian lines have not been definitely established. The frontage and seawall are curved, with radius 543.58 feet. Using the implied

angles<sup>1</sup> of 87.63° would result in a reduction of approximately 0.5 feet of riparian zone on each side of the property for each ten feet of extension into the water. If this approach were used a variance reducing the riparian setback by 2 feet would be sufficient to alleviate the hardships described below. Similarly, if the riparian line were drawn by turning a 90 degree angle from the shoreline, not a simple proposition because of the curvature of the seawall, a variance of less than two feet would be sufficient.

9. The neighbor to the north has declined to consent to an amendment to the permit to allow the as-built dock and boat lift to remain in place, but rather has indicated that he desires the contractor to physically move the boatlift. He apparently insists that the oblique property line operates to impose an oblique riparian line. While the petitioner considers this legally incorrect, if the property line were projected across the water it would result in a riparian line bearing N 83° 41' 00" E (263°41.00') a difference of 5°12' from the line shown on the survey. The cosine of 5.2° is .0906 so for every foot into the water, the line extending the property line would extend into the petitioners' riparian rights line by an additional 0.9 feet. At a seaward distance of 31', the line would be 2.79 feet closer than shown on the survey. While the petitioners do not agree that the extension of the property line has any relevance whatsoever, it is noted that a variance reducing the setback requirement by 3 feet beginning at a seaward distance of 20 feet would be sufficient to alleviate the hardships stated below without having to adjudicate the actual riparian line.

#### Hardship

10. The petitioners have expended substantial sums to remove the old dock and erect a new, much smaller one, in a good faith effort to comply with the setback and other building requirements.

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<sup>1</sup> For an arc of length  $x$  on a circle of radius  $r$  the included angle of the isosceles triangle formed between the center and the endpoints of the arc are given by  $(x/2\pi r)*360^\circ$ . With  $r=543.58$  and  $x=45$ , the included angle is 4.743° so the other two angles are 87.63°. By the law of sines, the length of the chord should be 45.53'. Similarly, at a distance 30' seaward, the length of the chord would be 42.05'.

11. The contractor in good faith sought to build the dock according to the plans that had been approved by both this Commission and the City of Tampa, and only made small and immaterial deviations from the plans in placing the structure.
12. The primary substantial hardship is thus economic.<sup>2</sup> Moving the outer poles of the boatlift away from the riparian line would be expensive in itself, and would result in a lift too narrow for the petitioners' boat. Moving the entire dock, or enough of it to permit the placement of a boatlift able to accommodate petitioners' boat, would be financially disastrous to the contractor and hence to the petitioners.
13. An additional hardship is legal in nature.<sup>3</sup> The petitioners are aware they would have a right to seek a declaration of the riparian lines by the circuit court, but such a proceeding would be quite expensive and time consuming, and in any event the Commission has the authority to grant a variance that would alleviate the hardships even under the neighbor's restrictive view of where the riparian lines are. Thus, if granted, the requested variance would render moot any legal controversy about the riparian lines.

#### Principles of Fairness

14. The riparian right includes the right to make reasonable use of the waterfront adjacent to one's property, subject of course to reasonable

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<sup>2</sup> An economic hardship is specifically recognized as sufficient by Florida Statutes §120.542(2), which is referenced in Commission Rule 1-2.50(a)(1). Section 120.542(2) reads as follows:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

<sup>3</sup> Legal hardships are also recognized grounds for variances under the governing statute. See Note 2 above.



regulation by governmental authority.<sup>4</sup> But the governmental establishment of building setbacks does not create property rights in the adjacent landholders. Without an easement, deed restriction, or other covenant, an adjacent property owner has no vested property right to prevent construction within his neighbor's own property or riparian zone. Under the analogous setback provisions applicable statewide, the first district court of appeal has held "exceptions are routinely granted under this provision if the lot is too narrow and if the dock and related structures do not extend over the line extending from the boundary of the adjacent lot into the water." *Parlato v. Secret Oaks Owners Ass'n*, 793 So. 2d 1158, 1164 (Fla. 1st DCA 2001). In this case, the petitioners' lot is narrow and the related structures remain at least 8 feet from the adjacent lot's riparian line. Your petitioners would be treated differently than other similarly situated landowners throughout the state if the minimal variance being requested were not granted.

#### Consistency with Purpose of Setback Requirements

15. The purpose of setback requirements is to ensure that one neighbor's use of his own riparian rights does not impair other neighbors' exercise of their rights. The proposed variance would not impair the neighbors' use of the waterfront in any way.
16. The construction is well within the petitioners' riparian lines, and is at least 7 feet from the neighbor's riparian line. Petitioners are seeking to enjoy their own riparian rights and in no way propose to encroach on either neighbor's.
17. The boat lifts are perpendicular to shore. They are entered and exited directly into the main channel, without any travel through the water adjacent to the northern neighbor's property.
18. The northern neighbors have not built a dock for their own use, instead they have in place the ruins of an old dock, and according to the for sale signs,

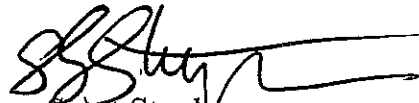
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<sup>4</sup> The governmental authority to regulate use of privately held riparian rights emanates from the state's sovereign ownership of submerged lands. *Graham v. Edwards*, 472 So. 2d 803, 807 (Fla. 3d DCA 1985).

they intend to sell and presumably have no intent to develop the waterfront for their own use. Should the neighbor, or his successor in title, choose to build a dock in the future there is ample space for that to be accomplished with no interference from the petitioners' dock or from his neighbor to the north.

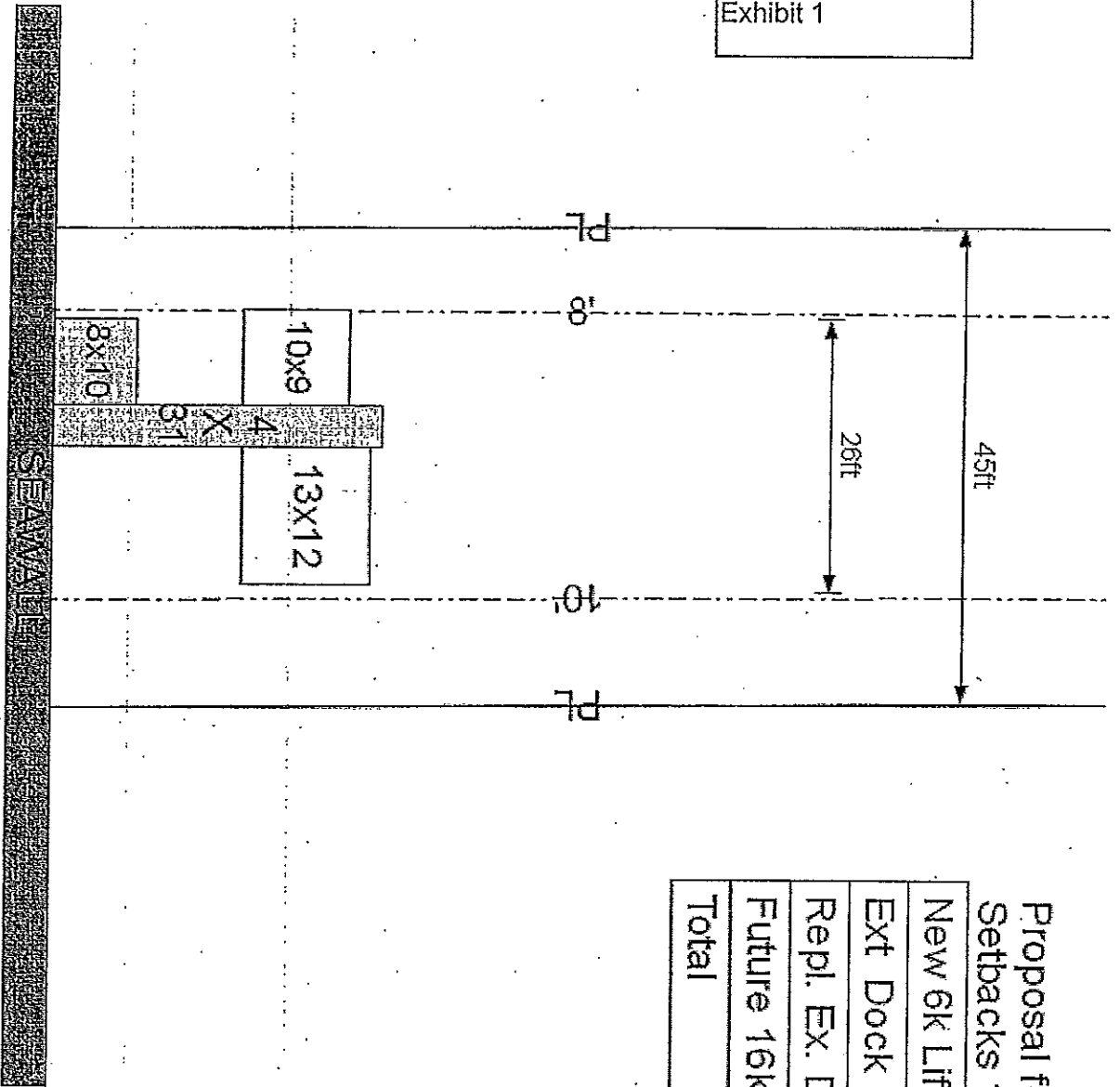
19. One could understand the objection to building a dock up close to their riparian lines might be that it could impair the sale value of a house, but not in this case. This project on balance dramatically improves the look of the waterfront and its proximity to the neighbor's ample frontage is minimal.

Wherefore, the petitioners respectfully request that the Environmental Protection Commission of Hillsborough County enter a Final Order granting a variance of Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority regarding the riparian setback on the north side of their property where it extends into Coquimba Channel so that the setback be reduced from ten feet to seven feet.



Steven Scott Stephens  
617A Criminal Courthouse Annex  
401 N. Jefferson St. Tampa FL 33602  
813 272 6879  
financedoc@yahoo.com

Exhibit 1



Proposal for 514 Lucerne  
Setbacks 10' right, 9' left

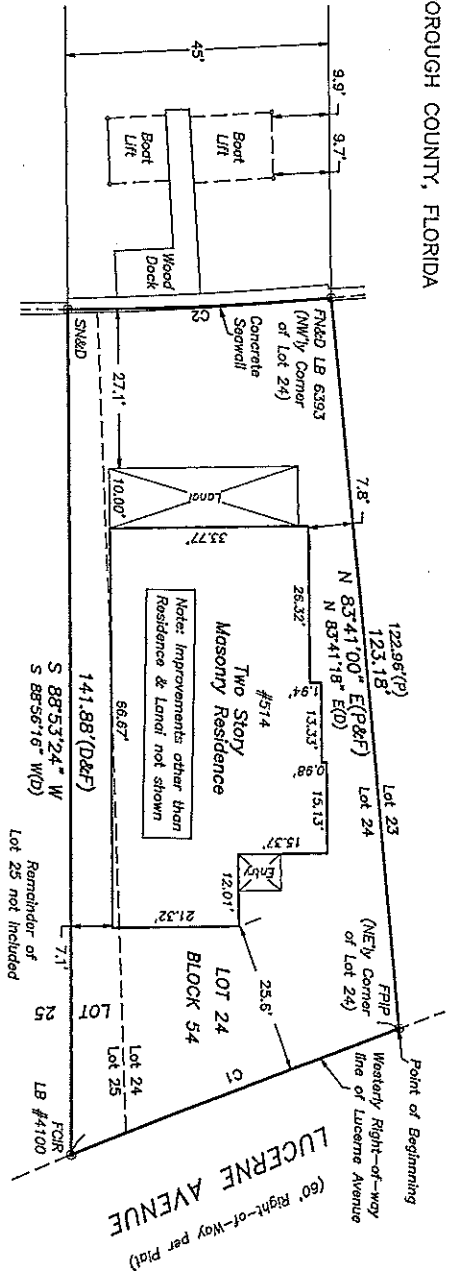
New 6k Lift	10x9	90
Ext Dock	4x31	124
Repl. Ex. Dock	8x10	80
Future 16k Lift	13x12	156
Total		450

RECEIVED

DEC 21 2010

EPC OF H.C.  
WETLANDS

SECTION 36, TOWNSHIP 29 SOUTH, RANGE 18 EAST  
HILLSBOROUGH COUNTY, FLORIDA



LEGEND:

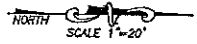
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1560.00'	59.35'	59.85'	S 21°22'44" E	02°11'54"
C2	543.58'	45.00'	44.99'	S 03°03'21" E	04°44'37"
C1(D)	1560.00'	60.02'	60.02'	S 21°35'05" E	
C2(D)	543.58'	45.00'	44.98'	N 03°06'09" W	

(1) FIELD DATA  
(2) DEED DATA  
(3) LEGAL DESCRIPTION  
(4) FOUND NAIL AND DISK  
(5) FOUND FINCHED IRON PIPE  
(6) SET NAIL AND DISK  
(7) SURVEYOR NO. 5523

DESCRIPTION: (Per Warranty Deed)

Lot 24 and part of Lot 25, Block 54, DAVIS ISLANDS, THE SOUTH WESTSHORE SECTION, according to the plat thereof as recorded in Plat Book 17, Page 8, of the Public Records of Hillsborough County, Florida, more particularly described as follows:

For a Point of Beginning, begin at the Northwesterly corner of said Lot 24, said point also being on the westerly right-of-way line of Lucerne Avenue and also being a point on a curve, concave to the Northwesterly on said right of way line; thence run along the arc of said curve 60.02 Feet (Radius 1560.0 Feet, Chord 60.02, CB S21°35'05"E); thence run S88°56'16"W 141.88 Feet to a point on a curve, concave to the Southwesterly; thence run along the arc of said curve 45.0 Feet (Radius 543.58 Feet, Chord 44.99 Feet, CB N03°06'09"W) to the Northwesterly Corner of Said Lot 24; thence run N83°41'00"E, along the Common Lot Line of Lots 23 and 24, Block 54 of said DAVIS ISLANDS, THE SOUTH WESTSHORE SECTION, a distance of 122.95 Feet to the Point of Beginning.



SURVEYOR'S NOTES:

- 1) This is to certify that a survey has been made under my supervision of the property described herein and that this drawing is a true and accurate representation thereof.
- 2) Bearings are based on the North Boundary of subject property bearing N83°41'00"E.
- 3) This survey was conducted for the purpose as stated herein only, and is not intended to be a legal description of any Federal, state, regional or local agency, board, commission or other similar entity.
- 4) This survey was conducted without the benefit of an abstract of title, therefore, there may be other encumbrances, rights-of-way, setback, lines, agreements, reservations, restrictions, or other similar matters of public record, not depicted on this survey.
- 5) No underground utilities, underground encroachments, building foundations were observed as a part of this survey, unless otherwise shown, shown, if any, were not located.
- 6) This survey not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.
- 7) The property shown herein falls within Flood Zone "AE", per Federal Emergency Management Agency Flood Map No. 12014-0382 H, dated 8-26-08 (Base Flood Elevation 10').
- 8) Bearings and distances are from the field unless noted otherwise.

\* NOTE: AS-BUILT SURVEY IS LIMITED TO ESTABLISHING THE PROPERTY LINES AND LOCATING THE RESIDENCE, REAR LANAI, THE SEAWALL, AND THE DOCK/LIFTS.

CERTIFIED TO:  
TAMPA DOCK & SEAWALL  
Steven & Heidi Stephens

Registered Land Surveyor and Mapper  
State of Florida No. 5523  
Date Signed: \_\_\_\_\_  
Last Date of Field Survey: 8-28-11

AS-BUILT SURVEY \*  
514 LUCERNE AVE - FOLIO NO. 195687.0000  
TAMPA, FLORIDA 33606-36-

Select Surveying, Inc.  
Licensed Business Number 7318  
315 S. Delaware Ave. #2  
Tampa, Florida 33605  
PH. (813) 258-3210

REVISIONS:

NO.	DATE	DESCRIPTION
1	9-30-11	FIELD BOOK: 1
2		PARTY CHECK: SB
3		SCALE: 1"=20'
4		DRAWN BY: SJB
5		DATE: 9-30-11
6		PARTY CHECK: SB
7		FIELD BOOK: 1
8		DATE: 9-30-11
9		DRAWN BY: SJB
10		SCALE: 1"=20'

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

**In re: STEVEN SCOTT STEPHENS,**

**Petition for Waiver**

**Case No. 11-EPC-010**

**FINAL ORDER ON APPLICATION FOR SECTION 1-2.50 RULE OF THE  
ENVIRONMENTAL PROTECTION COMMISSION WAIVER**

**BACKGROUND**

On November 2, 2011, Steven Scott Stephens (hereinafter "applicant") submitted a waiver request to the Environmental Protection Commission of Hillsborough County (EPC) under section 1-2.50, Rules of the EPC. The applicant requested a waiver of Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority with respect to construction of a boatlift over sovereign submerged lands. This rule requires a setback of ten feet for marine construction activities from the neighbor's riparian lines. Specifically, the applicant requests a reduction of the required ten foot setback to seven feet from the riparian lines on the north side of his property.

The applicant requests a waiver of the above rule section for the dock construction based on a hardship and asserts the underlying purpose of the rule is still achieved by the three foot reduction.

**FINDINGS OF FACT**

1. The applicant owns property at [protected address] in Hillsborough County which was purchased in April of 2009. The property includes a seawall waterfront measuring 45 feet on a waterway known as Coquimba Channel.

2. In seeking to avail himself of the riparian rights to use the waterfront, the applicant began planning a dock and boatlift shortly after buying the property. He originally sought to erect a single boat lift adjacent to the dock that existed at the seawall. The lift would have extended to a point within eight feet of the riparian line on the north and the neighbors to the north declined to consent to that setback encroachment.

3. The applicant accordingly formulated a plan, at expense in excess of \$20,000, to build a new dock and boatlift combination that would not require the consent of the neighbors to the north, but would instead comply with all building requirements and limits, including the setback to the north. The design did encroach into the setback to the south, but the neighbors to the south provided consent.

4. The EPC Executive Director granted a permit based on the plans, as did the City of Tampa.

5. The approved plans called for the dock to be built 23 feet from the property line with a boat lift 13 feet in width, thus complying with the setback requirement. For unknown reasons, the dock construction extended within approximately 9.7 feet of the riparian line on the north side of the applicant's property.

6. In addition, the concave shape of the seawall results in a narrowing of riparian lines for all properties, such that the applicant believes the outermost piling of the boat lift as built could be as close as 8.5 feet to the riparian line.

7. The neighbor to the north has declined to consent to an amendment to the permit to allow the as-built dock and boat lift to remain in place, but rather has indicated that he desires the contractor to physically move the boatlift.

8. The EPC received the waiver application on November 2, 2011 from the applicant. The applicant requested a waiver of Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority. This rule requires a ten foot setback from the neighbor's riparian lines for marine construction activities.

9. Pursuant to section 1-2.50(3), Rules of the EPC, the applicant published notice of the waiver application and the November 17, 2011 public hearing in the Tampa Tribune on November 7, 2011.

10. Pursuant to section 1-2.50(4), the Commissioners considered the application, the Executive Director's recommendation, and the comments of the public at a regular meeting of the EPC on November 17, 2011.

11. The applicant stated that he qualifies for the waiver request because the relocation of the pilings will otherwise cause a economic and legal hardship. A reduced setback to seven feet will also meet the underlying purpose of the rule. The economic and legal hardship of either relocating the dock pilings 0.3 feet or re-establishing the riparian lines is substantial. The underlying purpose of the rule is met because the distance is minor, a setback reduced to seven feet, and the dock will not interfere with the neighbors' use and enjoyment of their riparian rights.

12. The area in question is sovereign submerged lands owned by the Tampa Port Authority.

### CONCLUSIONS OF LAW

13. 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.*

14. The applicant has demonstrated that re-location of the boat lift would result in an economic and legal hardship if he were not granted a waiver in this specific situation.

15. The applicant has demonstrated the underlying purpose of the rule will be achieved.

16. The applicant has demonstrated that the provision from which the 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. and that the waiver does not need to be considered by the DEP or the SWFWMD pursuant to Chapter 120, F.S.

17. This waiver applies only to the applicant's subject dock and reduces the setback to seven feet on the north side of the property.

### ORDER

18. For the foregoing reasons, the requested waiver from Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority requiring a setback of ten feet is granted and the setback be reduced to seven feet on the north side of the applicant's property.

**NOTICE OF RIGHTS**

The EPC's proposed action on this waiver shall become final unless a timely appeal via writ of *certiorari* to the 13<sup>th</sup> 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 \_\_\_\_\_, 2011 in Tampa, Florida.

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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:** November 17, 2011

**Subject:** Green Team updated

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

**Division:** All

**Recommendation:** None

**Brief Summary:** EPC staff has been tasked by the Board to give an update on the Green Team's internal and external green initiatives.

**Financial Impact:** None

**Background:** EPC staff created a Green Team to promote environmental stewardship among the employees at the Roger P. Stewart Center one year ago. EPC staff is also engaged in green programs such as Green Star, Green Yards, pollution prevention audits and energy management and sustainability initiatives. The Green Team is in the initial stages of looking into how these efforts can help businesses and residents of Hillsborough County based on the lessons learned by the Green Team as it expands its outreach program.

**List of Attachments:** None

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## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2011

**Subject:** Alafia River Basin Management Action Plan (BMAP) Update

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

**Division:** Water Management

**Recommendation:** Informational Report on the BMAP Process for the Alafia River

**Brief Summary:** Per the request of Commissioner Murman at the last EPC meeting, staff will provide a brief summary of the Basin Management Action Plan (BMAP) process in general and update the Commission specifically on the status of the BMAP for the Alafia River and its tributaries.

**Financial Impact:** None

**Background:** At the October 20, 2011 EPC Meeting, Commissioner Murman requested an update on the Basin Management Action Plan (BMAP) process, particularly as it pertains to the Alafia River and its tributaries. Staff will provide a report on the history of the process for developing Total Maximum Daily Loads (TMDL's) and BMAPs in general and a status report on the current process underway for the Alafia River.

**List of Attachments:** No Attachments

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## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2011

**Subject:** Improving Permitting at EPC

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

**Division:** Air Management Division

**Recommendation:** Informational Report

**Brief Summary:** The Agency issues over 1000 authorization/permits in a typical year which allow impacts to the Air, Water and Soils of the County. To provide more timely and consistent decisions, EPC has undertaken a number of initiatives to be more efficient. In addition to the new Permit Tracking System brought on-line last month; EPC continues to expand their Priority Permitting program, reach out to other permitting authorities and collect feedback from applicants.

In order to keep the Board informed, staff has prepared a brief update.

**Financial Impact:** No Financial Impact

**Background:** Through the Sterling Management process, EPC has been evaluating their delivery of core services such as permitting. The Agency is looking to improve the timeliness and certainty of their permits, and has taken a number of initiatives. Some have just started and several have already been completed. This update will highlight these actions and seek Board input.

Attachments: None

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## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2011

**Subject:** EPC Executive Director's Annual Evaluation

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

**Division:** Legal and Administrative Services Division

**Recommendation:** Receive evaluation forms.

**Brief Summary:** Executive Director evaluation forms were distributed during the October 2011 EPC Board meeting. Those forms filled out by Commissioners by November 15<sup>th</sup> will be summarized and distributed at the meeting. Individual Commissioners may comment during the meeting on the Executive Director's performance during the past year.

**Financial Impact:** None.

**Background:** N/A

**List of Attachments:** Assessment Ranking Summary Sheet  
Assessment Sheet

# PERFORMANCE EVALUATION

Richard Garrity, Ph.D., Executive Director  
Environmental Protection Commission of Hillsborough County

November 17, 2011

## SUMMARY ASSESSMENT

### Ranking: Behaviors & Accomplishments

#### HIGHEST

- 5 - Behaviors/Accomplishments are outstanding and as such are obvious to others in County government and to members of the Community.
- 4 - Behaviors/Accomplishments are excellent and recognized as more than just competent in that expectations are exceeded in the area of responsibility.
- 3 - Behaviors/Accomplishments are good in that expectations are consistently met for the areas of responsibility.
- 2 - Behaviors/Accomplishments are adequate but fall below expectations for the area of responsibility.
- 1 - Behaviors/Accomplishments are below an acceptable level of expectations for the area of responsibility.

#### LOWEST



**DR. RICK GARRITY  
EXECUTIVE DIRECTOR, ENVIRONMENTAL PROTECTION COMMISSION  
ASSESSMENT  
October 2011**

<b>BEHAVIORS</b>							
Leadership	Communication	Responsiveness	Respect & Fair Treatment	Quality of Staff Work	Service to the Community	Problem Solving	Management of Organization

<b>ACCOMPLISHMENT OF GOALS</b>			
Improve Regulatory Compliance	Improve Employee Satisfaction	Improve Customer Satisfaction	Fiscal Responsibility

<b>PERFORMANCE MEASURES</b>			
Permitting	Compliance	Environmental Complaint Investigations	Enforcement

**Comments:**

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