

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
COUNTY CENTER 2ND FLOOR
SEPTEMBER 17, 2009
9:00 AM**

**INVOCATION AND PLEDGE OF ALLEGIANCE
APPROVAL OF CHANGES TO THE AGENDA AND REMOVAL OF CONSENT
AGENDA ITEMS FOR DISCUSSION AS REQUESTED BY BOARD MEMBERS.**

I.	<u>PUBLIC COMMENT</u>	
	Three (3) Minutes Are Allowed for Each Speaker	
II.	<u>CITIZENS' ENVIRONMENTAL ADVISORY COMMITTEE</u>	
	Report from the CEAC Chairman – David Jellerson	
III.	<u>CONSENT AGENDA</u>	
	A. Approval of Minutes: August 20, 2009	3
	B. Monthly Activity Reports	7
	C. Pollution Recovery Fund Report	19
	D. Gardinier Settlement Trust Fund Report	20
	E. Legal Case Summaries	21
	F. Request Authority to Take Appropriate Legal Action Against:	
	Charles H. Monroe and MPG Race Track, Ltd.	27
	Sean Donnelly.....	29
	Dubliner North Inc.	31
	G. Request Commission set October 15, 2009 at 9:00 a.m. as a Public Hearing to Consider an Amendment to EPC Rule 1-6 (Services-Fee Schedule), and Authorize Appropriate Public Notice	33
IV.	<u>EXECUTIVE DIRECTOR</u>	
	Annual Report	
V.	<u>WETLANDS AND WATERSHED MANAGEMENT</u>	
	A. Nitrogen Management Consortium Reasonable Assurance, Holly Greening, Tampa Bay Estuary Program	41
	B. Amendments to the Designated Uses and Classification System of Surface Water Bodies	51
VI.	<u>FINANCE AND ADMINISTRATION</u>	
	Discussion – Evaluation Process for Executive Director.....	55
VII.	<u>LEGAL DEPARTMENT</u>	
	Emergency Order for Natural Disasters.....	59

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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AUGUST 20, 2009 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, August 20, 2009, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Al Higginbotham and Commissioners Kevin Beckner, Rose Ferlita, Jim Norman, and Mark Sharpe.

The following members were absent: Commissioners Ken Hagan (schedule conflict) and Kevin White (schedule conflict).

Chairman Higginbotham called the meeting to order at 9:09 a.m., led in the pledge of allegiance to the flag, and gave the invocation.

CHANGES TO THE AGENDA

Dr. Richard Garrity, EPC Executive Director, stated there were no changes to the agenda. Chairman Higginbotham called for a motion. **Commissioner Beckner so moved, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioners Hagan and White were absent.)

PUBLIC COMMENT

Mr. Dan Jenkins, 4803 South Himes Avenue, displayed/discussed photographs of illegal truck washing, which he discussed at the last meeting; acknowledged working with the Department of Environmental Protection (DEP) and EPC to protect the environment; and requested EPC consider a way to stop illegal dumping of liquid waste.

Mr. Shad Benson, 5911 East Dr. Martin Luther King Jr. Boulevard, commented on stationary/mobile truck washing operations, the Clean Water Act, and the national pollution discharge elimination system (NPDES); noted discharging industrial wastewater was illegal; reviewed Stormwater Quality Management Ordinance 94-15 and DEP discharge requirements for stationary facilities; and said vehicle and truck washing wastewater did not meet acceptable limits.

Mr. Jerry Coe, 5911 East Dr. Martin Luther King Jr. Boulevard, described financial burdens of the regulations, waste responsibilities falling to the community, spill release requirements for hazardous materials, and environmental cleanup costs.

CONSENT AGENDA

- A. Approval of minutes: July 16, 2009.
- B. Monthly activity reports.
- C. Pollution Recovery Fund (PRF) report.

THURSDAY, AUGUST 20, 2009 - DRAFT MINUTES

- D. Gardinier Settlement Trust Fund report.
- E. Legal case summaries.
- F. Amend the NPDES permit interlocal agreement with Hillsborough County.
- G. Interlocal agreement between the EPC and Hillsborough County for provision of chemical analysis of water quality samples.

Chairman Higginbotham called for a motion to approve the Consent Agenda. **Commissioner Beckner so moved, seconded by Commissioner Sharpe, and carried four to zero.** (Commissioner Ferlita was out of the room; Commissioners Hagan and White were absent.)

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Report from the Chairman, David Jellerson - Mr. Jellerson reported the August 3, 2009, CEAC meeting, was dedicated to the review of PRF grant applications and CEAC recommendations would be presented to the EPC in September 2009.

EXECUTIVE DIRECTOR

Tanks Compliance Audit - Dr. Garrity discussed the audit conducted by DEP for the storage tank compliance verification and the air monitoring program audit by the federal government, made laudatory remarks, and read from two letters expressing gratitude.

AIR MANAGEMENT DIVISION

Revised Lead Air Quality Standard - Mr. Jerry Campbell, Director, EPC Air Management Division, displayed/reviewed the revised standard for lead, stated Enviro Focus Technologies LLC produced products from recycled lead, remarked about environmental benefits from recycling, showed an aerial of the site and the location of lead monitors, said EPC would seek new money from the Environmental Protection Agency (EPA) for additional monitor sites, and explained a graphic of lead production/monitoring, describing challenges, compliance, clean up, and expansion.

Mr. John Tapper, chief operating officer, Enviro Focus Technologies LLC, provided a presentation depicting photographs of facilities, recycling production standards, partnerships, automation, improvements/investments, clean up, expansion, site redevelopment, and increased jobs/training. Mr. Campbell concluded EPC staff would recommend to EPA the area be declared unclassified to continue clean up and collection of monitoring data.

THURSDAY, AUGUST 20, 2009 - DRAFT MINUTES

WASTE MANAGEMENT DIVISION

National Pollution Prevention Week Proclamation - Mr. Hooshang Boostani, Director, EPC Waste Management Division, reported on pollution prevention and reduction, inspections, conservation, and efficiency enhancements. Commissioner Beckner presented the proclamation proclaiming September 20-26, 2009, as Hillsborough County Pollution Prevention Week.

WATER MANAGEMENT DIVISION

Mr. Frederick Nassar, EPC, presented an overview of mobile washing activities, complaints, pollution, enforcement, differences between mobile/stationary washing, best management practices (BMP), permitting, timelines, and refining/addressing concerns; stated regulation of the industry was a statewide effort; displayed photographs; and discussed options. Responding to Commissioner Beckner, Mr. Nassar said based on the DEP the BMP were protective enough and remarked about fixed establishment requirements, mobile washing permits, regulations, and policy decisions. Commissioner Norman commented on stationary washing facility expansion to mobile washing systems.

WETLANDS AND WATERSHED MANAGEMENT DIVISION

Wetlands Quarterly Update - Ms. Debbie Sinko, EPC, presented the report contained in background material.

There being no further business, the meeting was adjourned at 10:14 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

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**FY 09 - MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION**

AUG TOTAL

A. Public Outreach/Education Assistance

1. Phone calls	120	1,875
2. Literature Distributed	-	151
3. Presentations	3	14
4. Media Contacts	1	26
5. Internet	62	672
6. Host/Sponsor Workshops, Meetings, Special Events	-	4

B. Industrial Air Pollution Permitting

1. Permit Applications received (Counted by Number of Fees Received)		
a. Operating	8	77
b. Construction	15	89
c. Amendments	-	-
d. Transfers/Extensions	1	16
e. General	-	-
f. Title V	-	35
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	78
b. Construction ^1	13	107
c. Amendments ^1	-	-
d. Transfers/Extensions ^1	2	15
e. Title V Operating ^2	-	76
f. Permit Determinations ^2	-	10
g. General	-	14
3. Intent to Deny Permit Issued	-	-

C. Administrative Enforcement

1. New cases received	-	13
2. On-going administrative cases		
a. Pending	4	4
b. Active	13	13
c. Legal	3	3
d. Tracking compliance (Administrative)	16	16
e. Inactive/Referred cases	-	-
TOTAL	36	36
3. NOIs issued	-	16
4. Citations issued	-	2
5. Consent Orders Signed	2	14
6. Contributions to the Pollution Recovery Fund	\$ 951	\$ 39,135
7. Cases Closed	5	19

**FY 09 - MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION**

AUG TOTAL

D. Inspections

1. Industrial Facilities	14	181
2. Air Toxics Facilities		
a. Asbestos Emitters	-	-
b. Area Sources (i.e. Drycleaners, Chrome Platers, etc.)	-	16
c. Major Sources	2	49
3. Asbestos Demolition/Renovation Projects	29	216

E. Open Burning Permits Issued	2	20
F. Number of Division of Forestry Permits Monitored	320	2,488
G. Total Citizen Complaints Received	54	578
H. Total Citizen Complaints Closed	44	568
I. Noise Sources Monitored	3	42
J. Air Program's Input to Development Regional Impacts	2	22
K. Test Reports Reviewed	26	654
L. Compliance		
1. Warning Notices Issued	8	86
2. Warning Notices Resolved	2	52
3. Advisory Letters Issued	-	56
M. AOR's Reviewed	9	86
N. Permits Reviewed for NESHAP Applicability	-	15
O. Planning Documents coordinated for Agency Review	-	14

**FY 09 - MONTHLY ACTIVITIES REPORT
WASTE MANAGEMENT DIVISION**

FY TO
AUG DATE

A. ENFORCEMENT

1.	New cases received	3	3
2.	On-going administrative cases	122	122
	Pending	10	10
	Active	41	41
	Legal	11	11
	Tracking Compliance (Administrative)	48	48
	Inactive/Referred Cases	12	12
3.	NOI's issued	2	14
4.	Citations issued	-	13
5.	Consent Orders and Settlement Letter Signed	-	13
6.	Civil Contributions to the Pollution Recover Fund (\$)	\$ -	\$ 37,209
7.	Enforcement Costs Collected (\$)	\$ 113	\$ 14,381
8.	Cases Closed	1	16

B. SOLID AND HAZARDOUS WASTE

1.	FDEP Permits Received	-	11
2.	FDEP Permits Reviewed	1	12
3.	EPC Authorization for Facilities NOT Requiring DEP Permit	-	4
4.	Other Permits and Reports		
	County Permits Received	5	15
	County Permits Reviewed	6	17
	Reports Received	31	340
	Reports Reviewed	25	326
5.	Inspections (Total)	250	4,067
	Complaints	20	213
	Compliance/Reinspections	7	162
	Facility Compliance	36	314
	Small Quantity Generator	187	3,370
	P2 Audits	-	8
6.	Enforcement		
	Complaints Received	29	223
	Complaints Closed	32	212
	Warning Notices Issued	4	14
	Warning Notices Closed	-	21
	Compliance Letters	65	852
	Letters of Agreement	-	6
	Agency Referrals	2	12
7.	Pamphlets, Rules and Material Distributed	111	1,729

C. STORAGE TANK COMPLIANCE

1.	Inspections		
	Compliance	99	942
	Installation	13	142
	Closure	6	131
	Compliance Re-Inspections	21	220

**FY 09 - MONTHLY ACTIVITIES REPORT
WASTE MANAGEMENT DIVISION**

	AUG	FY TO DATE
2. Installation Plans Received	14	107
3. Installation Plans Reviewed	10	104
4. Closure Plans & Reports		
Closure Plans Received	13	85
Closure Plans Reviewed	9	81
Closure Reports Received	7	78
Closure Reports Reviewed	9	99
5. Enforcement		
Non-Compliance Letters Issued	81	812
Warning Notices Issued	3	37
Warning Notices Closed	-	11
Cases Referred to Enforcement	3	13
Complaints Received	2	22
Complaints Investigated	2	20
Complaints Referred	-	1
6. Discharge Reporting Forms Received	-	29
7. Incident Notification Forms Received	15	151
8. Cleanup Notification Letters Issued	-	29
9. Public Assistance	-	-

D. STORAGE TANK CLEANUP

1. Inspections	39	412
2. Reports Received	85	1,236
3. Reports Reviewed	79	1,206
Site Assessment Received	9	117
Site Assessment Reviewed	10	108
Source Removal Received	2	32
Source Removal Reviewed	3	33
Remedial Action Plans (RAP'S) Received	11	117
Remedial Action Plans (RAP'S) Reviewed	7	105
Site Rehabilitation Completion Order/No Further Action Rec'd	1	47
Site Rehabilitation Completion Order/No Further Action Revw'd	1	51
Active Remediation/Monitoring Received	43	518
Active Remediation/Monitoring Reviewed	35	502
Others Received	19	405
Others Reviewed	23	408

E. RECORD REVIEWS

13	179
5	72
-	13

F. LEGAL PIR'S

G. PUBLIC INFORMATION PROJECTS

**FY 09 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

		<u>AUG</u>	<u>FY TO DATE</u>
A. ENFORCEMENT			
1.	New Enforcement Cases Received	3	39
2.	Enforcement Cases Closed	1	36
3.	Enforcement Cases Outstanding	49	49
4.	Enforcement Documents Issued	5	67
5.	Recovered Costs to the General Fund	\$ 3,431	\$ 9,779
6.	Contributions to the Pollution Recovery Fund	\$ 1,168	\$ 69,380
B. PERMITTING/PROJECT REVIEW - DOMESTIC			
1.	Permit Applications Received	12	177
	a. Facility Permit	-	31
	(i) Types I and II	-	5
	(ii) Type III	-	26
	b. Collection Systems - General	3	65
	c. Collection systems-Dry Line/Wet Line	9	80
	d. Residuals Disposal	-	1
2.	Permit Applications Approved	9	166
	a. Facility Permit	-	22
	b. Collection Systems - General	3	69
	c. Collection systems-Dry Line/Wet Line	6	74
	d. Residuals Disposal	-	1
3.	Permit Applications Recommended for Disapproval	-	1
	a. Facility Permit	-	-
	b. Collection Systems - General	-	1
	c. Collection systems-Dry Line/Wet Line	-	-
	d. Residuals Disposal	-	-
4.	Permit Applications (Non-Delegated)	-	2
	a. Recommended for Approval	-	2
5.	Permits Withdrawn	-	-
	a. Facility Permit	-	-
	b. Collection Systems - General	-	-
	c. Collection systems-Dry Line/Wet Line	-	-
	d. Residuals Disposal	-	-
6.	Permit Applications Outstanding	41	41
	a. Facility Permit	17	17
	b. Collection Systems - General	4	4
	c. Collection systems-Dry Line/Wet Line	20	20
	d. Residuals Disposal	-	-
7.	Permit Determination	-	25

**FY 09 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

	AUG	FY TO DATE
8. Special Project Reviews	-	1
a. Reuse	-	-
b. Residuals/AUPs	-	1
c. Others	-	-

C. INSPECTIONS - DOMESTIC

1. Compliance Evaluation	10	139
a. Inspection (CEI)	5	56
b. Sampling Inspection (CSI)	1	79
c. Toxics Sampling Inspection (XSI)	4	4
d. Performance Audit Inspection (PAI)	-	-
2. Reconnaissance	69	619
a. Inspection (RI)	8	116
b. Sample Inspection (SRI)	2	7
c. Complaint Inspection (CRI)	58	488
d. Enforcement Inspection (ERI)	1	8
3. Engineering Inspections	23	338
a. Reconnaissance Inspection (RI)	3	15
b. Sample Reconnaissance Inspection (SRI)	-	-
c. Residual Site Inspection (RSI)	-	4
d. Preconstruction Inspection (PCI)	2	39
e. Post Construction Inspection (XCI)	18	280
f. On-site Engineering Evaluation	-	-
g. Enforcement Reconnaissance Inspection (ERI)	-	-

D. PERMITTING/PROJECT REVIEW - INDUSTRIAL

1. Permit Applications Received	1	27
a. Facility Permit	1	21
(i) Types I and II	-	-
(ii) Type III with Groundwater Monitoring	-	-
(iii) Type III w/o Groundwater Monitoring	1	21
b. General Permit	-	1
c. Preliminary Design Report	-	5
(i) Types I and II	-	-
(ii) Type III with Groundwater Monitoring	-	-
(iii) Type III w/o Groundwater Monitoring	-	5
2. Permits Recommended to DEP for Approval	-	-

**FY 09 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

	<u>AUG</u>	<u>FY TO DATE</u>
3. Special Project Reviews	3	17
a. Facility Permit	3	16
b. General Permit	-	1
4. Permitting Determination	-	-
5. Special Project Reviews	42	402
a. Phosphate	9	71
b. Industrial Wastewater	16	152
c. Others	17	179

E. INSPECTIONS - INDUSTRIAL

1. Compliance Evaluation (Total)	10	116
a. Inspection (CEI)	10	116
b. Sampling Inspection (CSI)	-	-
c. Toxics Sampling Inspection (XSI)	-	-
d. Performance Audit Inspection (PAI)	-	-
2. Reconnaissance (Total)	13	158
a. Inspection (RI)	8	71
b. Sample Inspection (SRI)	-	-
c. Complaint Inspection (CRI)	5	87
d. Enforcement Inspection (ERI)	-	-
3. Engineering Inspections (Total)	16	67
a. Compliance Evaluation (CEI)	15	64
b. Sampling Inspection (CSI)	-	-
c. Performance Audit Inspection (PAI)	-	-
d. Complaint Inspection (CRI)	1	3
e. Enforcement Reconnaissance Inspections (ERI)	-	-

F. INVESTIGATION/COMPLIANCE

1. Citizen Complaints	41	611
a. Domestic	33	490
(i) Received	12	214
(ii) Closed	21	276
b. Industrial	8	121
(i) Received	3	61
(ii) Closed	5	60

**FY 09 - MONTHLY ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

	<u>AUG</u>	<u>FY TO DATE</u>
2. Warning Notices	18	176
a. Domestic	15	144
(i) Received	12	87
(ii) Closed	3	57
b. Industrial	3	32
(i) Received	2	19
(ii) Closed	1	13
3. Non-Compliance Advisory Letters	16	184
4. Environmental Compliance Reviews	160	1,842
a. Industrial	50	565
b. Domestic	110	1,277
5. Special Project Reviews	1	9

G. RECORD REVIEWS

1. Permitting Determination	7	59
2. Enforcement	1	8

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

1. Air division	34	595
2. Waste Division	-	1
3. Water Division	29	234
4. Wetlands Division	-	1
5. ERM Division	155	1,660
6. Biomonitoring Reports	10	71
7. Outside Agency	28	301

I. SPECIAL PROJECT REVIEWS

		81
1. DRIs	2	27
2. ARs	-	8
3. Technical Support	7	38
4. Other	-	8

**FY 09 - MONTHLY ACTIVITIES REPORT
WETLANDS MANAGEMENT DIVISION**

**FY TO
AUG DATE**

ASSESSMENT REPORT

Agriculture Exemption Report

# Agricultural Exemptions Reviews	-	1
# Isolated Wetlands Impacted	-	3
# Acres of Isolated Wetlands Impacted	-	0.34
# Isolated Wetlands qualify for Mitigation Exemption	-	3
# Acres of Wetlands qualify for Mitigation Exemption	-	0.34

PGMD Reviews Performance Report

# of Reviews	53	942
Timeframes Met	98%	99%
Year to Date	99%	99%

Formal Wetland Delineation Surveys

Projects	13	122
Total Acres	240	1,857
Total Wetland Acres	107	377
# Isolated Wetlands < 1/2 Acre	9	45
Isolated Wetland Acreage	0.54	9.14

Construction Plans Approved

Projects	15	188
Total Wetland Acres	5	534
#Isolated Wetlands < 1/2 Acre	-	64
Isolated Wetland Acreage	0	13.86
Impacts Approved Acreage	0	5.91
Impacts Exempt Acreage	0	5.86

Mitigation Sites in Compliance

Ratio	196/206	196/206
Percentage	95%	95%

Compliance Actions

Acreage of Unauthorized Wetland Impacts	2.05	13.18
Acreage of Wtaer Quality Impacts	1.70	2.70
Acreage Restored	0.00	12.20

General

Telephone Conferences	788	7,019
Scheduled Meetings	251	2,135
Unscheduled Citizen Assistance	440	1,883

REVIEW TIMES

# of Reviews	206	2,829
% On Time	98%	98%
% Late	2%	2%

**FY 09 - MONTHLY ACTIVITIES REPORT
WETLANDS MANAGEMENT DIVISION**

		<u>AUG</u>	<u>FY TO DATE</u>
A. General			
1.	Telephone conferences	788	7,449
2.	Unscheduled Citizen Assistance	440	1,928
3.	Scheduled Meetings	251	2,326
4.	Correspondence	1,373	8,298
1/ 5.	Intergency Coordination	42	213
1/ 6.	Trainings	10	102
1/ 7.	Public Outreach/Education	-	6
1/ 8.	Quality Control	13	81
B. Assessment Reviews			
1.	Wetland Delineations	16	205
2.	Surveys	11	177
3.	Miscellaneous Activities in Wetland	13	284
4.	Mangrove	1	56
5.	Notice of Exemption	1	24
6.	Impact/Mitigation Proposal	10	185
7.	Tampa Port Authority Permit Applications	30	478
8.	Wastewater Treatment Plants (FDEP)	1	3
9.	Development Reg'n'l Impact (DRI) Annual Report	2	27
10.	On-Site Visits	99	1,072
11.	Phosphate Mining	2	33
12.	Comp Plan Amendment (CPA)	1	16
1/ 13.	AG SWM		4
	Sub-Total	187	2,564
Planning and Growth Management Review			
14.	Land Alteration/Landscaping	-	22
15.	Land Excavation	2	6
16.	Rezoning Reviews	4	148
17.	Site Development	22	311
18.	Subdivision	2	147
19.	Wetland Setback Encroachment	-	42
20.	Easement/Access-Vacating	9	13
21.	Pre-Applications	-	181
1/ 22.	Agriculture Exemption	-	6
	Sub-Total	39	876
	Total Assessment Review Activities	226	3,440

**FY 09 - MONTHLY ACTIVITIES REPORT
WETLANDS MANAGEMENT DIVISION**

**FY TO
AUG DATE**

C. Investigation and Compliance

	1. Warning Notices Issued	14	103
	2. Warning Notices Closed	4	53
1/	3. Complaints Closed	35	158
	4. Complaint Inspections	53	458
	5. Return Compliance Inspections for Open Cases	55	359
	6. Mitigation Monitoring Reports	43	369
	7. Mitigation Compliance Inspections	47	322
	8. Erosion Control Inspections	10	252
	9. MAIW Compliance Site Inspections	7	176
	10. TPA Compliance Site Inspections	-	24
2/	11. Mangrove Compliance Site Inspections	-	2
1/	12. Conservation Easement Inspection	1	6

D. Enforcement

	1. Active Cases	21	21
	2. Legal Cases	-	-
	3. Number of "Notice of Intent to Initiate Enforcement"	-	15
	4. Number of Citations Issued	-	2
	5. Number of Consent Orders Signed	4	38
	6. Administrative - Civil Cases Closed	5	41
	7. Cases Referred to Legal Department	-	3
	8. Contributions to Pollution Recovery	\$ 3,150	\$ 101,371
	9. Enforcement Costs Collected	\$ 493	\$ 12,474

E. Ombudsman

	1. Agriculture	8	40
	2. Permitting Process & Rule Assistance	3	13
	3. Staff Assistance	9	91
	4. Citizen Assistance	1	10

1/ Reported activity beginning with April 2009.

2/ Reported activity beginning with May 2009.

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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
POLLUTION RECOVERY TRUST FUND
AS OF 08/30/09**

	As of 8/30/09
Beginning Fund Balance, 10/01/08	\$ 908,910
Interest Accrued	46,468
Deposits	251,466
Disbursements	(220,052)
Intrafund Budget Transfers to Project Fund	(443,301)
Intrafund Budget Transfers from Project Fund	34,233
Pollution Recovery Fund Balance	\$ 577,724
 Encumbrances:	
Pollution Prevention/Waste Reduction (101)	\$ 2,263
Artificial Reef Program	40,030
PRF Project Outreach	30,186
PRF Project Monitoring	3,657
Total Encumbrances	\$ 76,136
 Minimum Balance (Reserves)	 \$ 120,000
 Balance Available 08/30/09	 \$ 381,588

PROJECT FUND

	Project Amount	Project Balance
Open Projects		
FY 06 Projects		
COT Parks Dept/Cypress Point (97)	\$ 100,000	\$ 100,000
Bahia Beach Restoration (contract 04-03)	150,000	55,657
Field Measurement for Wave Energy	125,000	-
Port of Tampa Stormwater Improvement	45,000	-
	\$ 450,000	\$ 155,657
FY 07 Projects		
Tank Removal	\$ 25,000	\$ 1,570
Agriculture Best Management Practice Impl	150,000	100,857
Lake Thonotosassa Assessment	75,000	75,000
Natures Classroom Cap, PH III	188,000	-
Pollution Monitoring Appl Pilot Project	45,150	6,773
Seagrass & Longshore Bar Recovery	75,000	30
Seawall Removal Cotanchobee Ft Brooke Park	100,000	100,000
Knights Preserve	35,235	-
Oyster Reef Shore/Stab & Enhance	30,000	35
Nitrogen Emission/Deposition Ratios, Air Pollution	40,906	5,867
Erosion Control/Oyster Bar Habitat Creation	75,000	62,500
Remediation of Illegally Dumped Asbestos	4,486	4,486
	\$ 843,777	\$ 357,118
FY 08 Projects		
Australian Pine Removal E.G. Simmons Park	\$ 80,000	\$ 80,000
Restoration of MOSI	125,000	65,208
Invasive Plant Removal Egmont Key	133,000	12,415
Lake Magdalene Special Disposition District	66,954	27,330
Testing Reduction of TMDL in Surface Water Flow	19,694	13,149
Assessing Bacteria Lake Carroll	101,962	11,080
	\$ 526,610	\$ 209,182
FY 09 Projects		
Agriculture Pesticide Collection & Education Day	\$ 24,000	\$ 8,860
Agriscience, Food & Natural Resources Department	2,275	2,275
Great American Cleanup 2009	12,830	12,830
MacDill Phase 2 Seagrass Transplanting	79,196	79,196
McKay Bay Sediment Quality	55,000	55,000
Mini FARMS BMP Implementation	50,000	50,000
Petrol Mart, Inc Tank Removal	75,000	75,000
Site Assessment & Removal of Contaminated Soils	25,000	25,000
Wetland Restoration on County Owned Lands	120,000	120,000
	\$ 443,301	\$ 428,161

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
ANALYSIS OF GARDINIER SETTLEMENT TRUST FUND
AS OF 08/30/09

Fund Balance as of 10/1/08	\$ 241,187
Interest Accrued	5,020
Disbursements FY 09	-
	\$ 246,207
Encumbrances Against Fund Balance:	
SP634 Cockroach Bay ELAPP Restoration	246,207
	\$ 246,207
	\$ -



EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Legal Case Summary for September 2009

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

Division: Legal Department

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: September 2009 EPC Legal Case Summary

EPC LEGAL DEPARTMENT MONTHLY REPORT
September 2009

A. ADMINISTRATIVE CASES

NEW ADMINISTRATIVE CASES [0]

EXISTING ADMINISTRATIVE CASES [5]

Florida Gas Transmission Co., LLC [LEPC08-029]: On October 31, 2008 Florida Gas Transmission Company, LLC filed an application for an order granting a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline and compression facilities and to acquire pipeline facilities. On November 13, 2008 the EPC Board granted the Legal Dept. authority to intervene in the FERC certification process to protect the interests of Hillsborough County's environment. The EPC filed its motion to intervene on November 26, 2008. A draft Environmental Impact Statement (EIS) was issued by FERC and the EPC provided comments on the draft in early June 2009. The final EIS should be issued by September 18. (RT/RM).

Martini Island Land Co. [LEPC07-023]: On August 29, 2007, the Appellant filed a request for an extension of time to file an appeal to challenge a Citation to Cease and Order to Correct that was issued by the Water Mgmt Division. The request was granted and the Appellant had until September 21, 2007 to file an appeal. On Sept. 21, 2007 the Appellant did file an Appeal challenging the Citation to Cease and Order to Correct. The parties are negotiating and the facility is going through foreclosure. (RM)

Michael and Jemimah Ruhala v. DEP and EPC [LEPC08-012]: On May 16, 2008, the Ruhalas filed Chp. 120 petitions against two wastewater treatment permits the DEP Parks Department requested and received modifications on for an expanded effluent sprayfield system at the Hillsborough River State Park. The parties conducted settlement negotiations twice in June and the DEP is investigating reasonable modifications. The parties placed the case in a brief abeyance in an effort to seek settlement. (RM)

Evelyn Romano et al. v. EPC and City of Tampa [LEPC09-005]: On March 7, 2009 the Appellant filed a request for an extension of time to file a Notice of Appeal to challenge a wetland impact approval and mitigation agreement. The Legal Department granted the request and the Appellant has until April 30, 2009 to file an appeal in this matter. On April 27, 2009 the Appellant filed a Notice of Appeal and the matter has been transferred to a Hearing Officer to conduct an administrative hearing. The parties conducted a case management conference and set the final hearing date in this matter for December 10, 2009. The parties are proceeding through discovery but are still attempting to negotiate a settlement. (AZ)

Vertis, Inc. [LEPC09-009]: On April 22, 2009 Vertis, Inc. filed a Petition for Administrative Hearing to challenge Operating Permit #0570254-022-AF for its facility located at 4646 S. Grady Avenue in Tampa. The parties are negotiating. (RM)

RECENTLY RESOLVED ADMINISTRATIVE CASES [0]

B. CIVIL CASES

NEW CIVIL CASES [0]

EXISTING CIVIL CASES [14]

Phillips & Munzel Oil Co., Inc. Robert G. Phillips, Individually, and Clyde W. Munzel Individually [LEPC09-003]: On February 19, 2009 the EPC Board granted authority to take legal action against the Respondents for violations of the EPC Act, Chapter 1-7, EPC Rules and Chapter 62-770, FAC. Citations of Violation were issued on June 25, 2008, the Respondents failed to appeal the citations and they became final orders of the Agency enforceable in Court. The violations have not been corrected. (AZ)

Michael Robilotta [LEPC08-032]: On December 18, 2008 the EPC Board granted authority to take legal action against Respondent Michael Robilotta, owner and operator of the Old Estates Mobile Home Park, for violations of the EPC Act and EPC Rules Chapter 1-1, General Rules and Chapter 1-5, Water Pollution. Respondent failed to respond to the Citation issued on September 15, 2008 and also failed to respond to the Consent Order offered on November 3, 2008. The Citation became final and is enforceable in Circuit Court. One February 18, 2009 the EPC filed a Complaint in Circuit Court for civil penalties and injunctive relief. Due to lack of response the Clerk's office entered a default against Robilotta on May 7, 2009. (RM)

Fuego Churrascaria Steakhouse Corp. [LEPC08-027]: On November 13, 2008, the EPC Board granted authority to take legal action against Respondent Fuego Churrascaria Steakhouse Corp. for violations of the Noise Rule, Chapter 1-10. On March 18, 2008 staff hand delivered a Citation to Cease and Order to Correct Violation. Respondent failed to respond and the Citation became final and is enforceable in Circuit Court. On February 18, 2009 the EPC filed a Complaint in Circuit Court for civil penalties and injunctive relief. On April 24, 2009, the Clerk of Court granted the EPC's motion for default. The owner has recently entered negotiations with the EPC. (RM)

Realty Group, LLC., SRJ Enterprises, LLC and Surinder Joshi [LEPC08-028]: On November 13, 2008, the EPC Board granted authority to take legal action against the Defendants for unresolved violations of several EPC Rules including the Waste Management Rule, Chapter 1-7, the Storage Tank Rule, Chapter 1-12, and the Water Quality Rule, Chapter 1-5 at the 301 Truck Stop. On April 23, 2009, the EPC Legal Department filed a lawsuit seeking all corrective actions as well as assessment of civil penalties and costs in the matter. The parties are in negotiations concerning a settlement of the matter (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)

Ecoventure New Port I, LLC [LEPC08-006]: Authority to take appropriate legal action against Ecoventure New Port I, LLC for failure to assess petroleum contamination in accordance with EPC and State regulations was granted on March 20, 2008. The property owner is 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)

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. (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)

Medallion Convenience Stores, Inc. and MDC6, LLC [LEPC07-034]: The Commission granted authority to take appropriate action against Medallion Convenience Stores, Inc. and MDC6, LLC on December 13, 2007 for failure to comply with a consent order. The consent order required the facility to submit a Discharge Report Form for petroleum discharge and submit proof of an N.P.D.E.S. permit for de-watering activities at the site. The EPC is attempting to negotiate a settlement in this matter. (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. The Defendants have only partially complied with the CFJ, thus the case has been re-opened in the Circuit Court in order to enforce the CFJ and hold the Defendants in contempt. A hearing was held on April 28, 2008, wherein the judge awarded the EPC additional penalties. The Legal Dept. filed a proposed Supplemental Judgment with the Court. The Court entered the Order on May 15, 2008, and the Defendants have yet to pay any supplemental costs or penalties. The EPC intends to pursue contempt proceedings for ongoing violations of the CFJ. (RM)

Spencer Farms, Inc. [LEPC09-004]: On March 19, 2009 the EPC Board granted authority to take legal action against the Respondent for violations of the EPC Act, Chapter 1-7 EPC Rules and Chapter 62-770, F.A.C. A Citation of Violation was issued on June 27, 2006, the Respondent failed to appeal the citation and it became a final order of the Agency enforceable in Court. The violations have not been corrected. (AZ)

2601 Hillsborough, LLC and Charlie Mavros [LEPC09-006]: On March 19, 2009 the EPC Board granted authority to take legal action against the Respondents for violations of various wastewater regulations in Chapters 62-620, 62-660, and 62-4, F.A.C. A Citation of Violation was issued on November 25, 2008, the Respondents failed to appeal the citation and it became a final order of the Agency enforceable in Court. The violations have not been corrected and a lawsuit will be filed. (RM)

Hindu Religious Center, Inc. [LEPC09-008] : On April 16, 2009 the EPC Board granted authority to take legal action against the Respondent for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise Pollution). In September 2008 Respondent and EPC staff entered into a Consent Order to address the violations. Respondent has failed to comply with the corrective measures contained therein and, as a result, continues to violate the EPC noise standards. The Center has begun to modify the facility in an effort to comply with the Consent Order and EPC will evaluate the recent upgrades. The lawsuit will not be filed if the remedies are effective. (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. (AZ)

RECENTLY RESOLVED CIVIL CASES [0]

C. OTHER OPEN CASES [7]

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.

Notice of Intent to Initiate Litigation Against EPC, Billy Williams, Claimant [LEPC05-013]: On April 29, 2005 McCurdy and McCurdy, LLP submitted to EPC a Notice of Intent to Initiate Litigation Against Governmental Entity Re: Hillsborough County Environmental Protection Commission on behalf of Mr. Billy Williams, Claimant, for damages sustained on or about December 15-18, 2003. The Notice alleges that Mr. Williams sustained serious bodily injuries and property damage as the result of EPC's actions and inactions with regard to alleged fugitive emissions released into the air by Coronet Industries. The suit could have been filed October 2005 but has not yet been filed. (RT)

Tandum Holdings Corp. [LEPC08-020]: On July 29, 2008 the Petitioner filed a request for an extension of time to file a Petition for Administrative Hearing to challenge a Notice of Violation (NOV) issued on July 3, 2008 for unauthorized discharge of domestic and industrial wastewater to the ground and failure to comply with monitoring requirements. The Legal Dept. granted the request and the Petitioner has until September 29, 2008 to file a petition in this matter. The Petitioner failed to file a timely petition to challenge the NOV, thus the EPC issued a Final Order on December 5, 2008. The parties entered into a settlement (Short Form Consent Order) on March 19, 2009. (RM)

TRANSFLO Terminal Services, Inc. [LEPC09-001]: On January 22, 2009 the Petitioner filed a request for an extension of time to file a Petition for Administrative Hearing to challenge a draft Air Operating Permit. The Legal Department has granted subsequent requests for extension of time and the Petitioner has until November 25, 2009 to file a petition in this matter. (RM)

GI Entertainment & Restaurant Group LLC [LEPC09-002]: On February 13, 2009 the Appellant (Green Iguana) filed a request for an extension of time to file a Notice of Appeal to challenge a Citation to Cease and Order to Correct Violation issued on February 9, 2009, regarding noise violations. The request was denied and the party has until March 26, 2009, to file an appeal. An appeal was filed on March 13, 2009 and the parties are negotiating. (RM)

OneSteel [LEPC09-010]: On April 30, 2009 the Petitioner (OneSteel) filed a request for an extension of time to challenge draft Air Construction Permit #0571400-001-AC. The request was granted and the Petitioner has until July 14, 2009 to file a petition for administrative hearing. . Subsequently, the Petitioner requested and was granted two additional extensions of time. Currently, the Petitioner has until September 14, 2009 to file a petition in this matter. (RM)

OneSteel [LEPC09-013]: On August 27, 2009 Petitioner OneSteel filed a request for an extension of time to challenge the draft Air Construction Permit #0571404-001-AC. (RM)

Patco Transport, Inc. [LEPC09-012]: On July 2, 2009 the Appellant filed a request for an extension of time to file an Appeal regarding a Citation of Violation that was issued by the EPC on June 9, 2009. The request was granted and the Appellant has until August 31, 2009 to file an appeal in this matter. (AZ)

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Request for authority to take appropriate legal action against Charles H. Monroe and MPG Race Track, Ltd.

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

Division: Wetlands Management Division

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

Brief Summary: On August 28, 2006, Charles Monroe and MPG Race Track, Ltd., entered into a Consent Order with the EPC in resolution of a violation for failing to construct wetland mitigation areas and for causing impoundment of water in wetlands that caused extensive tree mortality. The respondents have failed to comply with the Consent Order and subsequently the EPC Executive Director issued a Citation of Violation on June 29, 2009 setting out new corrective actions. The Citation was not appealed and the corrective actions have not been completed.

Financial Impact: There is no immediate financial impact anticipated for this item. EPC will seek to recover the costs of any litigation.

Background: Charles Monroe and MPG Race Track, Ltd. owned real property located at the northeast quadrant of Hillsborough Avenue (SR 580) and Race Track Road, Tampa, Florida. Wetland impacts were approved on the property which required the applicant to construct wetland mitigation to offset the adverse impacts. On August 28, 2006, Charles Monroe and MPG Race Track, Ltd., entered into a Consent Order with the EPC to resolve the failure to construct the wetland mitigation areas per the December 2003 EPC approved plan and for causing the impoundment of water in Wetland Conservation Areas (WCA) "D" and "F" resulting in extensive wetland tree mortality. The Consent Order required the respondents to monitor and maintain the restoration areas for five years and replant trees annually if 85% survival was not achieved. Those corrective actions have not been completed.

EPC staff conducted inspections between February 12, 2007, and June 25, 2009, and observed less than the required 85% tree survival. On June 29, 2009, a Citation of Violation and Order to Correct (Citation) was issued to Charles Monroe and MPG Race Track, Ltd. The Citation was not timely appealed and now is a final order by operation of law. The violations have not been corrected and the respondents remain in violation.

List of Attachments: None

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Request for authority to take appropriate legal action against Sean Donnelly.

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

Division: Wetlands Management Division

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

Brief Summary: Sean Donnelly (respondent) owns real property located at 4812 W. Flamingo Road, Tampa, in Hillsborough County, Florida and is responsible for the unauthorized trimming and alteration of mangroves within wetlands in violation of Chapter 84-446, as amended, Laws of Florida (EPC Act) and the adopted Mangrove Trimming and Preservation Rule Chapter 1-14, Rules of the EPC. The EPC has made repeated offers to settle the matter without success. No corrective actions have been made and the violations remain unresolved.

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:

Respondent owns real property located at 4812 W. Flamingo Road, Tampa, in Hillsborough County, Florida. On May 8, 2008, EPC staff conducted an inspection from an adjacent property in response to a complaint and observed approximately 45 to 50 feet of red and white mangrove fringe had been cut to 4 to 5 feet in height. Staff also observed a pile of mangrove debris on-site. The unauthorized activities resulted in the death of some of the mangroves. These activities are prohibited under state law and the EPC's delegated mangrove trimming rule Chapter 1-14. No corrective actions have been done and the violations remain unresolved. Therefore, EPC staff is requesting authority to take appropriated legal action to compel compliance with the delegated mangrove trimming program and the EPC Act.

List of Attachments: None

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Request for authority to take appropriate legal action against Dubliner North Inc

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

Division: Air Management Division

Recommendation: Grant EPC staff authority to take appropriate legal action, including but not limited to a civil law suit, and authorization to the Executive Director to settle a civil suit.

Brief Summary: Dubliner North Inc (Dubliner) owns and operates the Dubliner Irish Pub North located at 12836 Henderson Road in Hillsborough County. Dubliner's regulated activities include playing amplified music, including live bands and recorded music, both indoors and on an outdoor patio. EPC staff has received numerous noise complaints and recorded several violations of its Noise Rule, Chapter 1-10, Rules of the EPC. As a result of Dubliner's unresponsiveness and noncompliance with the noise regulations and a citation issued to them, EPC staff requests authorization to take appropriate legal action and for settlement authority.

Financial Impact: Litigation costs can vary depending on the length and complexity of the litigation. This litigation will be handled by EPC counsel and EPC's existing budget. Any change will be reported.

Background: Respondent, Dubliner North Inc, owns and operates the Dubliner Irish Pub North located at 12836 Henderson Road, on the corner of Henderson Road and Gunn Highway in Hillsborough County. Dubliner Irish Pub North is a restaurant/pub, but there regulated activities include playing amplified music, including live bands, and recorded music, both indoors and on an outdoor patio. In March of 2009, the Dubliner Irish Pub North moved into the location previously occupied by a restaurant/bar known as Coquina Blue. The Environmental Protection Commission (EPC) formerly had an enforcement case against Coquina Blue for similar noise violations, and for a number of reasons the business shut down in March of 2008. In March of this year, EPC made contact with the Dubliner Irish Pub North to advise them of the previous concerns regarding noise. In response to complaints to the EPC by nearby citizens, on March 28, 2009, EPC staff monitored sound levels from the Dubliner Irish Pub North at receiving residential property. The monitoring period began at 11:00 p.m. March 27, 2009, and concluded

at 12:45 a.m. March 28, 2009. The equivalent sound pressure level (Leq) recorded for a 10-minute time period on the A-scale was 56 dBA, in violation of the Leq sound level limit of 55 dBA for receiving residential property after 10:00 p.m. The Leq recorded for a 10-minute time period on the octave band whose center is 63 hertz was 69 dB, in violation of the 10-minute Leq standard of 65 dB for receiving residential property from 11:00 p.m. to 7 a.m.; and the Leq was 67 dB on the individual octave band whose center is 125 hertz, in violation of the 10-minute Leq standard of 59 dB for receiving residential property from 11:00 p.m. to 7:00 a.m. These readings were in violation of the Chapter 1-10, Rules of the EPC and as a result, on April 13, 2009, EPC staff issued Dubliner Irish Pub North a *Warning Notice* (No. 2009-0121A). On June 7, 2008, EPC staff again monitored sound levels of amplified music from Dubliner Irish Pub North at receiving residential property. The monitoring was conducted between 12:45 a.m. and 2:25 a.m. The Leq recorded for a 10-minute time period on the A-scale was 57 dBA, in violation of the Leq sound level limit of 55 dBA for receiving residential property after 10:00 p.m. The Leq recorded for a 10-minute time period on the octave band whose center is 63 hertz was 66 dB, in violation of the 10-minute Leq standard of 65 dB for receiving residential property from 11:00 p.m. to 7 a.m.; the Leq was 68 dB on the individual octave band whose center is 125 hertz, in violation of the 10-minute Leq standard of 59 dB for receiving residential property from 11:00 p.m. to 7:00 a.m.; and the Leq was 59 dB on the individual octave band whose center is 250 hertz, in violation of the 10-minute Leq standard of 53 dB for receiving residential property from 11:00 p.m. to 7 a.m. These readings were also found in violation of the Chapter 1-10, Rules of the EPC and a second *Warning Notice* (No. 2009-0178A) was issued on June 10, 2009. On July 24, 2009, EPC staff issued Dubliner Irish Pub North, by hand delivery, a *Citation To Cease And Order To Correct Violation* in an attempt to obtain compliance and settle the case. EPC staff has made numerous attempts to communicate with Dubliner Irish Pub North by phone and email, and EPC staff has spoken with the pub owners, however staff has been unsuccessful in obtaining any productive written or verbal response from Dubliner Irish Pub North to address compliance and resolve the enforcement case. The Citation was never challenged and thus became final and binding on Dubliner North Inc on August 13, 2009. As a result of Dubliner Irish Pub North's unresponsiveness and failure to comply with the Citation, and the fact that EPC staff continues to receive noise complaints regarding activities at Dubliner Irish Pub North on an on-going basis, EPC staff requests authority to file a civil suit and also authorization for the Executive Director to enter into any appropriate settlement.

List of Attachments: None



EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Request for a Public Hearing for October 15, 2009 at 9:00 a.m. to amend Chapter 1-6 (Services – Fee Schedule) to include a fee for Tampa Port Authority minor works permits.

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

Division: Finance and Administration

Recommendation: Request Commission set a Public Hearing to consider an amendment to Chapter 1-6.05 (Services – Fee Schedule), and authorize appropriate public notice.

Brief Summary: Pursuant to the EPC Act, the EPC Board must hold a noticed public hearing to approve a rule or rule amendment. The EPC staff requests that the EPC Board approve holding a public hearing at its next regularly scheduled meeting on October 15, 2009 to adopt a fee for Tampa Port Authority minor works permit.

Financial Impact: It is estimated \$206,500 will be collected for issuance of TPA minor work permits to fully recover costs for EPC staff.

Background:

Pursuant to the Hillsborough County Environmental Protection Act (EPC Act) Section 5.2, the EPC Board must hold a noticed public hearing to approve a rule or rule amendment. The EPC staff requests that the EPC Board approve holding a public hearing at its next regularly scheduled meeting on October 15, 2009 to adopt a fee for Tampa Port Authority minor works permits to be effective November 1, 2009.

On September 30, 2007 the EPC Board authorized the Executive Director to enter into an interlocal agreement delegating the Tampa Port Authority (TPA) permitting authority over “minor work permits” to the EPC to streamline permitting and avoid confusion for applicants. The current procedure for Tampa Port Authority (TPA) “minor work permits” is TPA reviews the application and charges \$100, then forwards the application to EPC for an environmental review for an additional charge of \$150. With delegation, EPC does the entire review and issues the TPA minor work permit and collects the total \$250 fee. This eliminates the need for two stops for TPA minor work permit and any confusion by the applicants of where they need to go for a permit.

The Amended and Restated Interlocal Agreement between the TPA and EPC was signed June 23, 2009 assigning delegation for TPA minor work permits to EPC. The agreement provides “[t]he EPC shall collect both the current TPA and EPC permit fees for the EPC Permits it may issue in accordance with the existing fee schedules until such time as EPC adopts its own fee schedule under its applicable rules.” EPC has completed its own fee study and calculated appropriate fee to fully recover the cost of issuing

minor work permits to include the agency's indirect and overhead costs in addition to Hillsborough County's indirect cost recovery rate of 18.12%.

Based on an estimated 350 Tampa Port Authority permit applications per year at the proposed fee of \$590.00, total revenues for one year would be \$206,500.00. The 350 estimated permits are based generally on a nine year average of applications submitted.

Summary of Current and Proposed Fees:

	Fees	
	<u>Current</u>	<u>Proposed</u>
Tampa Port Authority		
Sovereign Land Review (Minor Work Permit)	n/a	\$440.00
Environmental Review (Minor Form)	<u>\$150.00</u>	<u>\$150.00</u>
Total	\$150.00	\$590.00

List of Attachments:

Draft Chapter 1-6.05 Wetlands Management

RULE DRAFT DATED September 2, 2009

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

**CHAPTER 1-6
SERVICES-FEE SCHEDULE**

1-6.01	Declaration and Intent
1-6.02	Air Management
1-6.03	Waste Management
1-6.04	Water Management
1-6.05	Wetlands Management
1-6.06	Other Miscellaneous Charges
1-6.07	Fee Waivers
1-6.08	Prohibitions

1-6.01 DECLARATION AND INTENT

It is the intent of the Commission to establish reasonable fees for services performed by the Environmental Protection Commission Director, and his duly authorized agents and employees in the review of applications and other technical materials, in the investigation of cases involving violation of the enabling act and rules promulgated there under, and in the conduct of inspections.

Said fees are for the purpose of defraying expenses incurred by the Environmental Protection Commission in performing professional services necessitated by the actions of others. All funds collected for said services shall become funds of Hillsborough County and shall be deposited in the General Revenue Fund.

1-6.02 AIR MANAGEMENT

A. Stationary source permitting

1. The following application and compliance fees apply to permits that are to be reviewed pursuant to the authority of Chapter 84-446, Laws of Florida, and not pursuant to full permit delegation from the Florida Department of Environmental Protection (FDEP) except as provided in subsection A.2 below. The fees for the non-delegated facilities are as follows:

(a)	Construction permit for an air pollution source	
(i)	New source review or prevention of significant deterioration	\$480
(ii)	All others	\$960
(b)	Operation permit for an air pollution source for 5 yrs	
(i)	Minor facility	\$1245
(1)	Application review	\$795
(2)	Compliance	\$450
(ii)	Synthetic minor facility	\$1645
(1)	Application review	\$795
(2)	Compliance	\$850
(iii)	Major facility	\$2645
(1)	Application review	\$795
(2)	Compliance	\$1850
(c)	Revise an air pollution source permit	\$380
(d)	Transfer of ownership, name change, and extension of expiration date for each air permit	\$45

2. Air permits being reviewed and processed pursuant to full permit delegation from FDEP shall be subject to the processing fees set forth in section 62-4.050 F.A.C., as summarized below, and shared with FDEP as agreed.

(a)	Construction permits	
(i)	Source with PSD or NAA, 100 tons/yr or more	\$750
(ii)	Source without PSD or NAA, 100 tons/yr or more	\$5000
(iii)	Source 50 tons/yr but less than 100	\$4500
(iv)	Source 25 tons/yr but less than 50	\$2000
(v)	Source 5 tons/yr but less than 25	\$1000
(vi)	Source less than 5 tons/yr	\$250
(vii)	Minor modification	\$250
(viii)	Minor modification, original permit fee less than \$30	\$50
(ix)	Transfer of ownership/permit	\$50
(x)	Time extension on permit	\$50
(b)	Operation permits	
(i)	Major source	no fee
(ii)	Minor source - stack sample	\$1500

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(iii)	Minor source - other source	\$1000
(iv)	Minor source - no sample	\$750
(v)	Minor modifications	\$250
(vi)	Transfer of permit ownership	\$50
(vii)	Time extension on permit	\$50
(viii)	Variable form permitting standards or conditions	\$2000

NOTE: Major sources will pay a Title V fee pursuant to Section 62-213 F.A.C. If EPC and DEP have an agreement to share this fee, then no additional fee will be required under this rule. However, if there is no fee sharing agreement, then fees listed in section 1-6.02 A.1. above shall apply for Title V sources.

B. Asbestos notification*

1. Notification for commercial demolition		
(a)	For structures less than 50,000 gross sq ft	\$200
(b)	For structures 50,000 gross sq ft and greater	\$300
2. Notification for asbestos abatement		
(a)	Renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	\$300
(b)	Renovation greater than 1000 linear feet or 1000 sq ft	\$500
(c)	Annual notifications for facilities where renovation of asbestos containing material is expected to exceed 160 sq ft or 260 linear feet in a calendar year	\$500

***There is no fee for courtesy notifications. Courtesy notifications are where a notification for a project is provided by the building owner or his contractor, even though it is not required by rule.**

C. Open burning authorization

1.	Two (2) acres or less	\$400
2.	Greater than two (2) acres	\$600

1-6.03 WASTE MANAGEMENT

A. Solid waste

1. Construction permits		
(a)	Class I or class II facility 5 year permit	\$3300
(i)	Application review	\$800
(ii)	Compliance	\$2500
(b)	Class III facility - 5 year permit	\$2500
(i)	Application review	\$500
(ii)	Compliance	\$2000
(c)	Resource recovery/ Incinerator - 5 years	\$2500
(i)	Application review	\$500
(ii)	Compliance	\$2000
(d)	Construction & demolition debris disposal - 5 year permit	\$2500
(i)	Application review	\$500
(ii)	Compliance	\$2000
(e)	Waste processing facility - 5 year permit	\$2000
(i)	Application review	\$500
(ii)	Compliance	\$1500
(f)	Compost facility - 5 year permit	\$2000
(i)	Application review	\$500
(ii)	Compliance	\$1500
(g)	All other solid waste management facilities - 5 years	\$2000
(i)	Application review	\$500
(ii)	Compliance	\$1500
2. Operation permits		
(a)	Class I or class II facility - 5 year permit	\$3100
(i)	Application review	\$600
(ii)	Compliance	\$2500
(b)	Class III facility - 5 year permit	\$2500
(i)	Application review	\$500
(ii)	Compliance	\$2000
(c)	Resource recovery/ Incinerator - 5 year permit	\$2500
(i)	Application review	\$500
(ii)	Compliance	\$2000

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(d) Construction & demolition debris disposal – 5 year permit		\$2500	(ii) Compliance	\$2000	
(i) Application review	\$500		(b) Recovered materials processing facility		\$2200
(ii) Compliance	\$2000		(i) Application review	\$500	
(e) Waste processing facility – 5 year permit		\$2000	(ii) Compliance	\$1700	
(i) Application review	\$500		(c) Yard trash processing facility		\$2200
(ii) Compliance	\$1500		(i) Application review	\$500	
(f) Compost facility – 5 year permit		\$2000	(ii) Compliance	\$1700	
(i) Application review	\$500		(d) One time on site disposal – residential		\$100
(ii) Compliance	\$1500		(e) All other solid waste management facilities - 5 year permit		\$2200
(g) All other solid waste management facilities – 5 years		\$2000	(i) Application review	\$500	
(i) Application review	\$500		(ii) Compliance	\$1700	
(ii) Compliance	\$1500		5. Modifications		
3. Closure/long term care permits			(a) Minor modifications		
(a) Class I or class II facilities - 5 year permit		\$1000	(i) Corrections, minor changes which will not involve new work, or new work locations, which will not alter, replace or eliminate permit requirements		\$0
(i) Application review	\$500		(ii) Transfer, time extension, minor changes which involve new work, or new work locations which will alter, replace or eliminate permit requirements.		\$100
(ii) Compliance	\$500		(b) Substantial modifications shall require the appropriate application review fee in conformance with Section 1-6.03, 1 through 4.		
(b) Class III facility - 5 year permit		\$1000	6. Small quantity hazardous waste generators**		
(i) Application review	\$500		(a) Annual notification/verification fee		\$40
(ii) Compliance	\$500		**NOTE: These Environmental Protection Commission fees will normally be collected by the Hillsborough County Tax Collector.		
(c) Construction & demolition debris disposal – 5 year permit		\$1000	B. Storage tanks		
(i) Application review	\$500		1. Storage tank installation and upgrade plan reviews		\$150
(ii) Compliance	\$500		1-6.04 WATER MANAGEMENT		
(d) All other solid waste management facilities - 5 year permit		\$1000	A. The following application and compliance fees apply		
(i) Application review	\$500				
(ii) Compliance	\$500				
4. Director’s Authorization – facilities not otherwise requiring a solid waste permit issued by the FDEP					
(a) Old landfill development–5 year permit		\$2800			
(i) Application review	\$800				

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to permits that are to be reviewed pursuant to the authority of Chapter 84-446, Laws of Florida, and not pursuant to permit delegation from the FDEP:

1. Domestic wastewater source permits	
(a) Preliminary design report review	\$2500
(b) Facility permit for 5 years	
(i) Types I & II	\$2940
(a) Application review	\$1850
(b) Compliance activities	\$1090
(ii) Type III	\$930
(a) Application review	\$380
(b) Compliance activities	\$550
(c) Permit modifications	
(i) Minor modification involving construction activity	\$750
(ii) Substantial modification	\$1750
(d) Residual site application	\$1445
2. Collection systems	
(a) General permit	
(i) Less than 10 EDU	\$230
(ii) 10 or more EDU	\$460
(a) Application review	\$230
(b) Compliance (10 or more EDU)	\$230
(b) Standard permit	
(i) Less than 10 EDU	\$270
(ii) 10 or more EDU	\$500
(a) Application review	\$270
(b) Compliance	\$230
3. Industrial wastewater source permits	
(a) Preliminary design report	
(i) Major facility	\$2500
(ii) Minor facility	\$1000
(b) Facility permit for 5 years	
(i) Minor facility	\$1000

(ii) Major facility	\$3000
(a) Application review	\$2455
(b) Compliance activities	\$545
(c) General permits	\$275
(d) Permit modifications	
(i) Minor modification involving construction activity	\$750
(ii) Substantial modification	\$1750
4. EPC authorization for facilities not requiring a FDEP permit which may discharge pollutants or contaminants into waters of the county	\$2200

B. Water permits being reviewed and processed by the Commission pursuant to permit delegation from the FDEP shall be subject to the processing fees set forth in section 62-4.050 F.A.C., although the compliance fees above may also apply as appropriate.

1-6.05 WETLANDS AND WATERSHED MANAGEMENT

*1. Land excavation permits	
(a) New and expansion	\$870
(b) Extension and renewal	\$650
*2. Rezoning application	\$300
*3. Subdivision applications	
(a) Preliminary	\$370
(b) Master plan	\$750
(c) Construction	\$490
(d) Final plat	\$200
(e) Minor subdivision plans	\$230
(f) As-build verification	\$300
*4 Tampa Port Authority	
(a) Minor <u>Work Permit form</u>	<u>\$590-\$150</u>
(i) <u>EPC Minor Work permit</u>	<u>\$440</u>
(ii) <u>TPA Environmental and Compliance Review</u>	<u>\$150</u>
(b) Standard <u>Permit form</u>	\$300

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*5. Phosphate mining		(f) Amendment to mitigation plan	
(a) Annual review and inspection	\$375	(i) Changes in configuration/ location	\$500
(b) Unit review and reclamation	\$3500	(ii) Changes in elevations/ planting scheme	\$100
(c) Bimonthly inspections (6 per year)	\$310	(g) Phosphate mining within a previously approved mitigation application	
(d) Administrative Review	\$100	(i) Addition of adjacent area or additional wetland impact request	****
(e) Land Alteration	\$500		
(f) Amendments to Mining/ Reclamation			
(i) Changes within the mining unit	\$1000		
(ii) Addition of adjacent acreage	***		
*6. Development of regional impact	\$1200		
*7. Commercial site development application	\$500	12. Mangrove Trimming and Alteration	
*8. Natural Resources	\$270	(a) Trimming permit per Ch. 1-14.06	\$225
*9. Miscellaneous activities in wetlands		(b) Compliance / monitoring fee for staged trimming for each trim event	\$50
(a) Nuisance species removal	No fee	(c) Other Trimming and Alteration permit Single family	\$1,050
(b) Dock, boardwalks, riprap, etc.	\$150	(i) Review	\$500
10. Wetland delineation		(ii) 11 monitoring reports	\$550
(a) Less than 250 L.F	\$150	(d) Other Trimming and Alteration permit Commercial / subdivision	\$4,975
(b) 250 L.F. or greater	\$150 + .20 L.F	(i) Review	\$2500
11. Wetland mitigation		(ii) 11 monitoring reports	\$2475
(a) Single family homes (review and monitoring reports)	\$850	(e) Professional Mangrove Trimmer fee per Ch. 1-14.08	
(i) Review	\$500	First time registration fee	\$50
(ii) 7 monitoring reports	\$350	Annual renewal fee	\$25
** (b) Commercial/subdivision-forested	\$4975		
(i) Review	\$2500	*Denotes EPC Fees collected by the Planning and Growth Management Department for EPC.	
(ii) 11 monitoring reports	\$2475	**Only this subsection of Rule 1-6.05.11 applies if the application contains a request for authorization to impact both forested and herbaceous wetlands.	
(c) Commercial/subdivision - herbaceous	\$4075	***Minimum \$500 or Straight Line Pro-Rata Fee whichever is greater calculated using the following formula: the number of acres of land to be added to an approved mining unit divided by 2500, multiplied by the fee required by Rule 1-6.05.5(b)	
(i) Review	\$2500	****Minimum \$700 or Straight Line Pro-Rata Fee whichever is greater calculated using the following formula: the number of acres of land to be added to an approved mitigation application divided by 2500, multiplied by the fee required by Rule 1-6.05.11(b) or (c),	
(ii) 7 monitoring reports	\$1575		
(d) Agricultural - Forested	\$1050		
(i) Review	\$500		
(ii) Monitoring	\$550		
(e) Agricultural - Herbaceous	\$850		
(i) Review	\$500		
(ii) Monitoring	\$350		

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as applicable.

Definitions:

1.6.05 (5)(d) Administrative Review - shall include applications that, regardless of whether the proposed activity is within an approved Mining Unit, do not (1) request authorization for wetland impacts; (2) require a field inspection; (3) necessitate an engineering review within the Wetlands Division; or (4) request any substantive modifications to an existing approval. For the purposes of this rule, non-substantive modifications shall include the following: modification of an approved mining schedule; modification of an approved reclamation schedule; transfer of permits; and transportation related modifications.

1.6.05 (5)(e) Land Alteration - shall include applications that, regardless of whether the proposed activity is within an approved Mining Unit: (1) do not request authorization for wetland impacts; and (2) may necessitate an engineering review within the Wetlands Division. This type of application shall include, but not limited to, the following: authorization to construct or expand access and utility corridors; applications to site settling ponds.

Section History - amended February 16, 2006

1-6.06 OTHER MISCELLANEOUS CHARGES

- 1. Enforcement Costs \$50/hr
- 2. Data Processing Data Analysis \$50/hr
- 3. Certification of Copies \$1/pg
- 4. Copies .15/pg

1-6.07 FEE WAIVERS

- 1. Executive Director may waive the appropriate application fee in cases of financial hardship.

- 2. The Executive Director may modify or waive an application fee in circumstances where unfairness would otherwise be the result.

1-6.08 PROHIBITIONS

The fees listed in Sections 1-6.02 through 1-6.05 are due and payable upon submission of a request, application or notification. Whenever a request application or notification is submitted without the required fee, receipt shall be acknowledged and the request, application or notification shall be immediately returned with attachments; no further action shall be taken until the appropriate fees are submitted along with the supporting documents. It shall be a violation to fail to pay a required fee.

[**Publisher's Note:** EPC charges for development and rezoning applications may be submitted to appropriate governmental entities where the review process has been coordinated with EPC]

ADOPTED 2/28/85
 Effective 03/15/85
 Amended 02/28/86
 Amended 12/11/86
 Amended 01/13/88
 Amended 02/28/90
 Effective 04/01/90
 Amended 07/10/90
 Amended 08/22/90
 Effective 10/01/90
 Amended 05/22/91
 Amended 09/25/91
 Amended 11/05/91
 Amended 3/24/93
 Amended 5/26/93
 Amended 1/25/95
 Amended 8/21/97
 Amended 9/17/98
 Amended 6/12/03
 Effective 10/01/03
 Amended 2/16/06
 Effective 2/24/06

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Nitrogen Management Consortium Reasonable Assurance Plan for Tampa Bay

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

Division: Environmental Resources Management

Recommendation: Informational Report

Brief Summary: Holly Greening, Executive Director of the Tampa Bay Estuary Program, will provide an overview of the Nitrogen Management Consortium's 2009 Reasonable Assurance Plan for Tampa Bay. The NMC developed a "Reasonable Assurance" approach to managing nitrogen loading to Tampa Bay. This approach has been accepted by FDEP *in lieu* of listing Tampa Bay as an impaired body of water. The 2009 Reasonable Assurance document also satisfies the federal TMDL for Tampa Bay as established by EPA in 2008. Participants in the Tampa Bay Nitrogen Management Consortium will be asked to declare their intent to implement the 2009 Tampa Bay Reasonable Assurance Addendum to ensure continuing recovery of the Tampa Bay.

Financial Impact: No Immediate Financial Impact resulting from this report

Background:

Holly Greening, Executive Director of the Tampa Bay Estuary Program (TBEP) will provide an overview of the Nitrogen Management Consortium's Reasonable Assurance Plan for Tampa Bay. The Nitrogen Management Consortium (NMC) is an *ad hoc* committee of the Tampa Bay Estuary Program; formed in 1998 to address the issue of nitrogen loading to Tampa Bay. The NMC developed a "Reasonable Assurance" approach to managing nitrogen loading to Tampa Bay. In accordance with State law, this approach has been accepted by the Florida Department of Environmental Regulation (FDEP) *in lieu* of listing Tampa Bay as an impaired body of water. The Reasonable Assurance approach is a regionally based, equitable cost sharing mechanism to meet mandates of the federal Clean Water Act (CWA). Participants in the Tampa Bay Nitrogen Management Consortium will be asked to declare their intent to implement the 2009 Tampa Bay Reasonable Assurance Addendum to ensure continuing recovery of the Tampa Bay estuary.

The 2009 Reasonable Assurance (RA) document has been finalized; it is scheduled for an acceptance vote by the NMC in early September and will be submitted to the Florida Department

of Environmental Regulation (FDEP) before the end of September, 2009. The nature and structure of the 2009 RA is such that it also satisfies the federal Total Maximum Daily Load (TMDL) for Tampa Bay as established by the Environmental Protection Agency (EPA) in 2008. The federal TMDL sets nitrogen loading limits consistent with the targets set in the TBEP's "hold the line strategy".

In the early 1990s, the Tampa Bay Estuary Program (TBEP) adopted a "hold the line strategy", with respect to nitrogen inputs into the Bay, i.e. the bay was responding well at 1992-95 nitrogen loading rates, so how do we maintain that level of loading, (prevent additional nitrogen loading to the bay) given that growth in the region with a concomitant nitrogen load increase was likely to continue? To address this fundamental management issue, the TBEP initiated formation of Nitrogen Management Consortium (NMC).

The NMC was convened in 1998; it is comprised of government agencies (State and local – regulatory and non-regulatory) and non-governmental entities including the phosphate industry, agricultural interests and electric utilities. The NMC accepted responsibility for collectively meeting nitrogen load reduction goals, using a "one for all and all for one" approach. The "hold the line strategy", requires a reduction of 17 ton of nitrogen per year of nitrogen loading throughout the Tampa Bay watershed. Success of the NMC has been measured two ways. First, is the Bay meeting water quality targets for chlorophyll *a* and light penetration sufficient to allow seagrasses to grow and expand coverage? Secondly, an Action Plan Database was setup to answer the question: Are we reducing nitrogen loading by 17 tons per year? The Action Plan Database identifies and quantifies nitrogen load reductions associated with projects implemented in the watershed by NMC members

This approach was documented in the TBEP Tampa Bay Nitrogen Management Plan and in 2002, presented to FDEP as a Reasonable Assurance (RA) Document to meet state water quality criteria. FDEP accepted the RA document and Tampa Bay was removed from the State's Impaired Waters list for 2002-2007. Consequently, TMDL was not required for Tampa Bay. Listing of impaired waters is on a five year cycle. In 2007, a new RA document needed to be submitted to FDEP to address the period 2007 to 2012. FDEP has granted an extension for submitting the RA document to October 1, 2009 due to requirements imposed by EPA.

The CWA has no legal mechanism for accepting an RA document. So, in 2008, as required by law, EPA established a federal TMDL for Tampa Bay. The federal TMDL sets nitrogen loading limits consistent with the targets set by the TBEP in the "hold the line strategy". Accordingly, EPA required any new National Pollution Discharge Elimination System (NPDES) permits issued by FDEP to set discharge limits that comply with (support) the federal TMDL – the FDEP accepted Reasonable Assurance Document notwithstanding. The consequence to the EPA action has "morphed" the NMC approach ("one for all and all for one") into a different process that will carve-up the "nitrogen loading pie" among the NMC entities, i.e. a nitrogen loading allocation is an NPDES permit compliance condition.

Since the fall of 2008, the NMC has been engaged in an on-going discussion of how to fairly and equitably allocate the annual nitrogen load as defined by the federal TMDL among the permitted entities. Consensus on the process has been reached and each entity has received a nitrogen load allocation for all their facilities and sources. NPDES permits are issued to point source dischargers, i.e. waste water treatment facilities, and to non point sources, i.e. stormwater runoff. The annual allocation to a point source is based on that facility's annual load for the period 2003-

2007. The nitrogen loading allocation to a non-point source, i.e. MS4 permit holder, will be based on the amount land and the type of land use associated with a given MS4 permit.

It is important to recognize, that as written and submitted to FDEP, the RA document is not legally binding and has no regulatory authority. The allocations set forth in the RA document are actually only recommendations to FDEP. However, if FDEP approves the RA document, they intend to adopt it by Secretarial Order; at that point the RA document will become legally binding. Once adopted, implementation of the provisions in the RA document, specifically nitrogen load allocations and compliance is the responsibility of the FDEP.

List of Attachments:

Tampa Bay Nitrogen Management Consortium - Declaration of the Tampa Bay Nitrogen Management Consortium

Tampa Bay Nitrogen Management Consortium - Background and Summary in Support of Declaration

Tampa Bay Nitrogen Management Consortium - 2009 Reasonable Assurance Update Summary

2009 Reasonable Assurance Addendum Document (Link - Document is lengthy)

http://www.tbepetech.org/NitrogenMgmtConsort/Report/DRAFT_2009_RA_Addendum_090809_Final_Clean_Version.pdf

DECLARATION OF THE TAMPA BAY NITROGEN MANAGEMENT CONSORTIUM

PARTICIPANTS IN THE TAMPA BAY NITROGEN MANAGEMENT CONSORTIUM
DECLARE THEIR INTENT TO IMPLEMENT THE 2009 TAMPA BAY REASONABLE
ASSURANCE ADDENDUM AS FOLLOWS TO ENSURE CONTINUING RECOVERY OF THE
TAMPA BAY ESTUARY:

The undersigned Consortium participant hereby accepts the 2009 Tampa Bay Reasonable Assurance Addendum and agrees with the undersigned Consortium participant's nitrogen load allocations established by the Consortium for the 2008-2012 Reasonable Assurance period (as described in Exhibit "A").

This Declaration shall take effect as to the undersigned Consortium participant executing this document upon its date of execution

The [Consortium participant entity] hereby approves the TAMPA BAY NITROGEN MANAGEMENT CONSORTIUM Declaration and attachments.

Attested this date _____

Authorized by _____

Signature: _____

Title: _____

Witnessed by _____

Seal (if appropriate)

EXHIBIT "A"

[The 2009 Reasonable Assurance Addendum: Allocation & Assessment Report will be inserted here.]

http://www.tbepetech.org/NitrogenMgmtConsort/Report/DRAFT_2009_RA_Addendum_090809_Final_Clean_Version.pdf

DRAFT FINAL -Tampa Bay Nitrogen Management Consortium Declaration 8/6/09

TAMPA BAY NITROGEN MANAGEMENT CONSORTIUM

BACKGROUND AND SUMMARY IN SUPPORT OF DECLARATION

SUSTAINING THE RECOVERY OF THE TAMPA BAY ESTUARY

From the uppermost reaches of Old Tampa Bay and Hillsborough Bay to the mouth of the bay at Egmont Key, the Tampa Bay estuary is made up of a variety of habitats where fish and other wildlife find shelter and food. They range from lush underwater beds of seagrasses, to tidal marshes and mangrove swamps. Abundant and healthy habitats are critical to the health of the bay. Without them, Tampa Bay would lack the diversity of fish, birds and other wildlife that contribute to the natural wonder of the region and is essential to its economic vitality.

Submerged seagrass is among the most important habitats because it serves as shelter, nursery, and food source for a diverse variety of species and stabilizes the bay bottom. Restoration of seagrass habitat is a priority environmental goal of local government and agency partners of the Tampa Bay Estuary Program. The key to restoring seagrass is improving and then maintaining adequate water clarity that allows light to penetrate into the shallow waters of the bay where seagrasses grow. And the key to maintaining water clarity is preventing excessive nitrogen – a nutrient necessary for plant growth – from entering the bay and stimulating the growth of microscopic algae that cloud the water and prevent light from reaching the seagrasses.

Water clarity in Tampa Bay declined markedly in the 1950s, 60s, and 70s as rapid population growth led to increased discharges of partially treated sewage with large amounts of nitrogen. Algae blooms and fish kills were common and almost 50% of seagrass in the bay died off as a result of insufficient light. Unregulated dredge and fill operations contributed to the problem by further clouding the water.

The year 1979 marked a turning point in the condition of the bay when the City of Tampa upgraded the Howard F. Curren Plant at Hookers Point to advanced wastewater treatment, which increased nutrient removal and sharply reduced the amount of nitrogen being discharged into the bay. Across the bay, the City of St. Petersburg pioneered the country's first large-scale reclaimed wastewater program, reclaiming water for irrigation of lawns and golf courses rather than discharging it into the bay.

The quality of bay waters responded quickly to the sharp reduction in nitrogen loading. Concentrations of chlorophyll – an indicator of the amount of algae suspended in the water – dropped dramatically in all major segments of the bay between 1982 and 1984. In Hillsborough Bay alone, the average chlorophyll concentrations fell from 37 units of chlorophyll in 1982 to 13 units in 1984. Seagrasses responded more slowly to the improving water clarity, but expanded to 25,200 acres by 1990 from a low point of 21,600 acres in 1982. Seagrass recovery has continued, and seagrasses in 2008 covered 29,650 acres baywide. The Tampa Bay National Estuary Program (NEP) was

established in 1991 to help local governments, agencies, and other stakeholders in the Tampa Bay area develop a plan to sustain the recovery of Tampa Bay. The NEP partners adopted a Comprehensive Conservation and Management Plan in December 1996 that included measurable goals for restoring seagrasses and related targets for reducing nitrogen discharges to the bay. The parties unanimously adopted a “hold the line” target on nitrogen discharges that capped the load at a level that would ensure adequate water clarity and light to sustain seagrass recovery. Local government and agency partners in the NEP reinforced their commitment to achieving the goals through an Interlocal Agreement adopted in 1998.

In August 1996, the NEP’s governmental partners joined with key industries in the Tampa Bay region to create a unique ad-hoc public/private partnership known as the Tampa Bay Nitrogen Management Consortium for the express purpose of developing a Consortium Action Plan to meet the “hold the line” target. The original Action Plan consisted of more than 100 projects that collectively reduced or precluded nitrogen discharges to the bay by an estimated 134 tons/year between 1995 and 1999. The Action Plan, entitled *Partnership for Progress*, was the core of a larger nitrogen management strategy that included: the baywide seagrass restoration/preservation goal; chlorophyll and nitrogen reduction targets for each major bay segment; apportionment of responsibility for meeting the nitrogen reduction targets; and a process to track whether the targets were being met.

In November 2002, the Florida Department of Environmental Protection (FDEP) concluded that the Tampa Bay Nitrogen Management Consortium’s nitrogen management strategy provided reasonable assurance that the state water quality criteria for nutrients would be met. The U.S. Environmental Protection Agency (EPA) in the meantime continues to recognize a 1998 action by FDEP that proposed a total maximum load (“federally-recognized TMDL”) of nitrogen that could be discharged to the bay annually and still meet state water quality standards related to nutrients. Both FDEP’s reasonable assurance determination and the total maximum nitrogen loading recognized by EPA are based on statistical modeling and data analyses done by the Tampa Bay Estuary Program and its partners.

In 2007, additional local governments, industries and agencies located within the Tampa Bay watershed were invited to become participants in the Consortium, to help develop and implement a collaborative watershed approach to nitrogen management for Tampa Bay and to meet regulatory requirements of FDEP and EPA. A total of 49 entities now actively participate in the Consortium. Additional background on the history of the Tampa Bay nitrogen management strategy can be found in 2009 Tampa Bay Reasonable Assurance Addendum”.

The remarkable recovery of the Tampa Bay ecosystem after decades of decline is unprecedented among urban estuaries worldwide. The rebound in water quality and ecological health of the bay is even more remarkable in light of the strong population growth during the recovery period. FDEP, EPA, and the Consortium want to continue the success of the collaborative nitrogen management strategy spearheaded by the Consortium. At the same time the regulated members of the Consortium recognize the duties of FDEP and EPA to administer the environmental regulations for which they

are responsible and that FDEP and EPA have indicated they may not issue discharge permits without limitations that ensure compliance with the total maximum nitrogen load recognized by EPA.

In 1998, USEPA approved a Total Maximum Daily Load (TMDL) for nitrogen for Tampa Bay as is required by Section 303(d) of the federal Clean Water Act. In 2007, USEPA and FDEP advised the Nitrogen Management Consortium that existing and future surface water discharge permit limits for entities discharging to Tampa Bay must not cumulatively exceed the federally-recognized TMDL for nitrogen loading, and that no new or renewed permits would be approved until facility-specific allocations consistent with the TMDL were developed. In December 2007, the Nitrogen Management Consortium proactively committed to develop an equitable process and define suggested allocations to all sources through the 2009 Tampa Bay Reasonable Assurance Addendum.

To help ensure continued recovery of vital seagrass habitat and the successful nitrogen management strategy that makes it possible, local governments, agencies, and industry participants of the Nitrogen Management Consortium worked together over 18 months to provide FDEP with an updated reasonable assurance document, ensuring that state water quality criteria for nutrients will continue to be met in the bay. The participants developed a set of nitrogen wasteload allocations that attempts to equitably distribute the burden of nitrogen management across all sectors and sources of nitrogen loading within the basin, as well as the total maximum loading of nitrogen to each major bay segment.

Tampa Bay Nitrogen Management Consortium 2009 Reasonable Assurance Update Summary

BACKGROUND

- In 1998, USEPA approved a Total Maximum Daily Load (TMDL) for nitrogen for Tampa Bay required by Section 303(d) of the federal Clean Water Act, based on management targets developed by TBEP partners to support seagrass recovery.
- In 2007, USEPA and FDEP advised the Nitrogen Management Consortium that existing and future surface water discharge permit limits for entities discharging to Tampa Bay must not cumulatively exceed the federally-recognized TMDL for nitrogen loading, and that no new or renewed permits would be approved until facility-specific allocations consistent with the TMDL were developed.
- In December 2007, the Nitrogen Management Consortium proactively committed to develop an equitable process and define suggested allocations to all sources through the 2009 Tampa Bay Reasonable Assurance Addendum.
- The Consortium participants developed a set of nitrogen wasteload allocations that attempts to equitably distribute the burden of nitrogen management across all sectors and sources of nitrogen loading within the basin, as well as the total maximum loading of nitrogen to each major bay segment.

SUMMARY POINTS

1. **ALLOCATIONS ARE REQUIRED** consistent with the federally-recognized nitrogen TMDLs for existing NPDES permits to be renewed or new permits to be issued.
2. **SOUND TECHNICAL BASIS** is consistent with meeting water quality (chlorophyll-*a* thresholds) to support seagrass recovery in Tampa Bay.
3. **STANDARDIZED EQUITABLE ALLOCATIONS** have been developed for all entities and sources within the Tampa Bay watershed.
4. **PROCESS AND ALLOCATIONS WERE DEVELOPED BY CONSORTIUM PARTICIPANTS** proactively, thus precluding the need for FDEP or EPA to do so. EPA and FDEP have concurred with the Consortium's approach at each step of the process.
5. **COLLECTIVE COST-EFFECTIVE** analyses and allocations, at a much reduced cost per entity than if conducted individually, reflect consensus of over 50 participants.
6. **PROVEN RESULTS.** Since 1996 when the Consortium was initiated, annual water quality targets (chlorophyll-*a* thresholds) have been met 86.5% of the time. During this same period, seagrass coverage expanded by almost 10% (2,730 acres) to a baywide total of 29,647 acres.

KEY ELEMENTS OF PROPOSED ALLOCATIONS

The Consortium participants developed the following standard allocation protocol:

- All nitrogen sources, permitted and unpermitted, receive nitrogen load allocations. The cumulative allocated load is equal to the 1998 federally-recognized TMDL load for each segment.
- The five-year (2008-2012) average annual RA allocation for each source is equal to the 5-year annual average nitrogen load estimated for the years 2003-2007. Any exception to the standard allocation protocol is documented in the RA Addendum.
- The 2008-2012 RA nitrogen load allocation for each bay segment is completely distributed to existing sources. In the future new or expanded sources will be required to offset additional nitrogen loads, through documented load reduction actions, projects, or transfers.
- For the purpose of assessing the RA allocations, the annual nitrogen loads that can be received by each bay segment are adjusted to reflect the amount of water delivered during the year relative to that estimated for 1992-1994. Annual loads are thus normalized ('hydrologically normalized') to the TMDL hydrologic conditions.
- These annual hydrologic normalizations are not applied to surface water discharges from domestic wastewater treatment plans (WWTPs) or to material losses from industrial facilities, which have a fixed annual allocation (tons of nitrogen/year) that does not fluctuate with rainfall.
- Other sources, which are primarily rainfall driven, are provided a set percentage of the remaining total (hydrologically normalized) allocation for each year. In this manner, these rainfall-driven sources are assessed on a "sliding scale" related to the amount of water delivered, allowing higher nitrogen loads during wetter years and requiring lower loads during dryer years.

In the future, any major changes to these suggested allocations would be to address the following conditions:

- Chlorophyll-*a* conditions deteriorate in the bay as a result of changes in nitrogen loads;
- The federally-recognized TMDL is revised to account for the assimilative capacity of the bay; or
- FDEP-approved transfers occur among permitted entities on a case-by-case basis, as indicated in resulting permit modifications.

IMPORTANT CONSIDERATIONS

EPA defines a TMDL as the maximum amount of contaminant that a waterbody can receive and still maintain water quality standards. This maximum amount is considered the waterbody's "assimilative capacity" for the specific water quality parameter.

- The TBEP management targets for nitrogen loading were not developed as the nitrogen assimilative capacity for Tampa Bay. Subsequent annual observations show that water quality targets are met in most years when estimated nitrogen loads are higher than the 1992-1994 estimates, indicating that the existing federally-recognized nitrogen TMDL may not reflect the current assimilative capacity of Tampa Bay.
- Although the Consortium participants recognize that the existing federally-recognized TMDL may not reflect Tampa Bay's assimilative capacity, participants also wish to allow permits to be issued with equitable allocations while the assimilative capacity for nitrogen is evaluated.

DECLARATION

The Declaration language, for consideration by Boards, Councils and private entity authorities, is as follows. Exhibit "A" is the technical document describing the process and allocations developed by the Consortium participants.

DECLARATION OF THE TAMPA BAY NITROGEN MANAGEMENT CONSORTIUM

**PARTICIPANTS IN THE TAMPA BAY NITROGEN MANAGEMENT
CONSORTIUM DECLARE THEIR INTENT TO IMPLEMENT THE 2009 TAMPA
BAY REASONABLE ASSURANCE ADDENDUM AS FOLLOWS TO ENSURE
CONTINUING RECOVERY OF THE TAMPA BAY ESTUARY:**

The undersigned Consortium participant hereby accepts the 2009 Tampa Bay Reasonable Assurance Addendum and agrees with the undersigned Consortium participant's nitrogen load allocations established by the Consortium for the 2008-2012 Reasonable Assurance period (as described in Exhibit "A").



EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Amendments to the Designated Uses and Classification System of Surface Water Bodies

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

Division: Wetlands and Watershed Management

Recommendation: Informational Report

Brief Summary: In July, Florida Stormwater Association filed a petition with the Environmental Regulation Commission asking that rulemaking be initiated to refine Florida's system of classifying waterbodies and determining their use. Accordingly, FDEP has initiated the rulemaking process. The suggested revisions add several new classes of waters to the system; however, no waters would be moved to a different class upon adoption of the revisions.

Financial Impact: No additional funds required

Background: In July, Florida Stormwater Association (FSA) filed a petition with the Environmental Regulation Commission (ERC) asking that rulemaking be initiated to refine Florida's system of classifying waterbodies and determining their use. They petitioned FDEP accept the classification system a proposed by an *ad hoc* technical committee which add several new classes of waters to the system based on human use need (criteria) and aquatic life needs (criteria).

FDEP initiated rulemaking shortly thereafter. It is important to note that any revisions to the current classification system would require public workshops and formal rulemaking which would appear before the Environmental Regulation Commission for approval at an advertised public meeting. In addition, the federal Environmental Protection Agency would also need to authorize final approval.

The Clean Water Act requires that the surface waters of each state be classified according to designated uses. Florida has five classes with associated designated uses, which are arranged in order of degree of protection required:

Class I - Potable Water Supplies

Fourteen general areas throughout the state including: impoundments and associated tributaries, certain lakes, rivers, or portions of rivers, used as a drinking water supply.

Class II - Shellfish Propagation or Harvesting

Generally coastal waters where shellfish harvesting occurs.

Class III - Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife

The surface waters of the state are Class III unless described in rule 62-302.400 F.A.C.

Class IV - Agricultural Water Supplies

Generally located in agriculture areas around Lake Okeechobee.

Class V - Navigation, Utility and Industrial Use.

Currently, there are not any designated Class V bodies of water.

This classification system, used over the past 30 years, has been successful in addressing regulatory actions needed to reduce pollutants, but does not effectively address watershed restoration projects.

By far, most of waters in the state are classified as “Class III” waters – meaning the waterbody is expected to support recreation including full human contact and a healthy, well-balanced fish and wildlife population. Class III designation broadly applies to springs, pristine lakes or rivers, man-made canals or concrete-lined, urban stormwater conveyances. This includes drainage ditches, upland cut canals and other man-made features.

The Class III designation brings with it the requirement to meet certain minimum water quality standards. In many cases, due to the manmade nature of the waters, such standards are not attainable and are unnecessary to support the practical use of those artificial waters. Conversely, waters, such as springs, require much more stringent protection than is currently required within our classification system to ensure that their fragile biological systems are protected.

In 2006, FDEP established a technical advisory committee to review the range of waters in the state and make recommendations on how to more accurately characterize and protect them. The technical advisory group, which included independent experts from local governments, other state agencies, industries and the U.S. Environmental Protection Agency recommended two concurrent categories each varying level of use expectations be applied to a body of water to accurately characterize and protect it. These two categories are Human Uses (HU) and a Aquatic Life (AL) which are subdivided as follows:

HU 1 Protection of potable water supply suitable for human consumption (following conventional drinking water treatment methods), fish consumption, and full body contact.

HU 2 Protection of shellfish harvesting for human consumption, fish consumption, and full body contact.

HU 3 Protection of fish consumption and full body contact. (Default)

HU 4 Protection of fish consumption and incidental human contact.

HU 5 Protection of fish consumption, but human contact limited or restricted due to unsafe physical conditions.

HU 6 Protection of waters for crop irrigation or consumption by livestock.

HU 7 Utility and industrial uses

Proposed Aquatic Life (AL) Uses

AL -1 Propagation and maintenance of aquatic communities that approximate the biological structure and function of natural background.

AL -2 Propagation and maintenance of a healthy, well-balanced aquatic community with minimal deviation of biological structure and function relative to natural background. (Default)

AL -3 Protection of an aquatic community with moderate deviation of biological structure and function relative to natural background (habitat and hydrology limitations)

AL -4 Protection of an aquatic community with substantial deviation of biological structure and function relative to natural background (severe habitat and hydrology limitations)

Though the suggested revisions add several new classes of waters to the system, no waters would be moved to a different class upon adoption of the revisions. If the new the classification system is adopted, all water currently classified as Class III will default to HU-3 and AL-2. Class I and Class II waters will default to HU-1 and HU2 , respectively – their direct analog under the new classification system. In order to move a water body to one of the new sub-classification, a petitions to reclassify would be required and be considered on a case-by-case basis by the ERC and eventually the EPA.

Decisions on water quality standards have huge fiscal implications for the communities that will be asked to use tax dollars to restore water bodies. Therefore, it is critical that water bodies are classified in a way that reflects the actual purpose of the water body, whether it is a ditch, a stream, or a spring – to ensure that our critical waterways are protected and our tax dollars are well spent.

List of Attachments: None

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Executive Director's Evaluation

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

Division: Finance and Administration

Recommendation: N/A

Brief Summary: Evaluation forms will be distributed during the meeting. These forms have been used in the past to evaluate the performance of the Executive Director. Dr. Garrity will be scheduling appointments with each Commissioner to discuss the accomplishments of the agency.

Please complete the evaluation forms and return them to Commissioner Higginbotham's office October 5, 2009. The results will be compiled and presented during the October 15, 2009 EPC board meeting.

Financial Impact: N/A

Background: N/A

List of Attachments:

Memorandum to EPC Board Members dated 9/17/09
Summary Assessment Ranking Cover Sheet
Assessment Sheet

COMMISSION
Kevin Beckner
Rose V. Ferlita
Ken Hagan
Al Higginbotham
Jim Norman
Mark Sharpe
Kevin White



Roger P. Stewart Center
3629 Queen Palm Dr. • Tampa, FL 33619

Ph: (813) 627-2600

Fax Numbers (813):

Admin.	627-2620	Waste	627-2640
Legal	627-2602	Wetlands	627-2630
Water	627-2670	ERM	627-2650
Air	627-2660	Lab	272-5157

Executive Director
Richard D. Garrity, Ph.D.

MEMORANDUM

DATE: September 17, 2009
TO: EPC Board Members
FROM: Joan Ohman
Director, Finance and Administration
SUBJECT: Evaluation of Executive Director

Enclosed please find an evaluation form used in the past to evaluate the performance of the Executive Director. Dr. Garrity will be scheduling appointments with each of you to discuss the agency's accomplishments.

Please complete the evaluation forms and return them to Commissioner Higginbotham's office by October 5, 2009. The results will be compiled and included in the agenda backup for the EPC meeting scheduled for October 15, 2009.

If you have any questions, please contact me at 627-2600 extension 1057.

cc: Richard D. Garrity, PhD



PERFORMANCE EVALUATION

September 17, 2009

RICHARD GARRITY, PhD

EXECUTIVE DIRECTOR

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

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

RICHARD GARRITY, PhD
EXECUTIVE DIRECTOR, ENVIRONMENTAL PROTECTION COMMISSION
EVALUATION
September 17, 2009

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

ACCOMPLISHMENT OF GOALS					
Commissioner	Regulatory Effectiveness	Regulatory Efficiency	Coordination with Regulatory Partners	Partnering for Better Compliance	Outreach

Comments:



EPC Agenda Item Cover Sheet

Date of EPC Meeting: September 17, 2009

Subject: Issuance of Emergency Final Orders in the event of disasters

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

Division: Legal Department

Recommendation: None. Accept informational report regarding Emergency Final Orders

Brief Summary: In the event of a disaster (e.g. – unnamed storm or hurricane) many facilities and properties that are regulated by the EPC may be partially or totally damaged. Additionally, storm generated debris will need to be properly disposed of. These regulated entities typically want to immediately repair certain critical infrastructure that was damaged, dispose of debris, and begin operation of pollution control facilities, but certain repairs or modifications may need new or modified environmental permits. The application review process may slow response to the emergency situation. Thus, the EPC is proposing to have the Executive Director issue, on a case by case basis, Emergency Final Orders similar to those issued by the Florida Department of Environmental Protection, to assist in responding to disasters and to facilitate cleanup and repairs.

Financial Impact: None predicted.

Background: During times of natural disaster, the State of Florida typically issues an Executive Order that declares a state of emergency and defines certain parts of the State a disaster recovery area. Additionally, the Florida Department of Environmental Protection (DEP) issues an Emergency Final Order that authorizes certain environmental regulations to be temporarily waived and/or allows for expedited field permits, temporary permits, and other relief to assist in the post-storm recovery phase. In the event of a disaster, natural or manmade, many facilities and properties that are regulated by the EPC may be partially or totally damaged. Additionally, storm generated debris will need to be stock-piled and then properly disposed of, typically by burning or delivery to certain solid waste facilities. Many regulated entities will want to immediately repair certain critical infrastructure that was damaged or remove/repair damage that may be hindering operations or that is a threat to the public or the environment, dispose of debris, and begin operation of the facility. Nonetheless, certain repairs or modifications may need new or modified permits. The permit application process may be time consuming for some complex facilities and/or EPC facilities may be damaged and thus normal permitting may be delayed; all of which may slow clean-up and response to the emergency situation. Thus, the

EPC is prepared to have the Executive Director issue, on a case by case basis, Emergency Final Orders similar to those issued by the Florida Department of Environmental Protection, to assist in responding to disasters and to facilitate cleanup and repairs. It is an omnibus order that gives blanket authorization for certain repairs and/or authorizes field staff to issue permits or temporary authorizations. Additionally, it provides guidelines for disposal of storm debris. The EPC's delegated programs will still follow the DEP Emergency Final Order, but the EPC's local programs will follow the EPC order.

The Emergency Final Order will be unique to each disaster, but a typical format will be followed. The EPC requests that the Commission accept this informational report regarding the issuance of Emergency Final Orders. Those orders will generally be in the format that will be provided as part of a supplemental agenda item, and will be issued on a case by case basis, if the State of Florida deems that any part of Hillsborough County is part of an emergency area and/or in a state of emergency. Additionally, if the order deadline needs to be extended, the Executive Director may extend the order for a reasonable amount of time.

List of Attachments: None, draft Emergency Final Order to be provided in a Supplemental Agenda item.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
COUNTY CENTER 2ND FLOOR
SEPTEMBER 17, 2009
9:00 AM**

ADDENDUM

I. CONSENT AGENDA

A. Approval of Minutes: August 20, 2009 Revised

II. LEGAL DEPARTMENT

Supplemental EPC Agenda Item Attachment to the Cover Sheet Agenda Item VII,
Emergency Order for Natural Disasters

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.

Visit our website at www.epchc.org

AUGUST 20, 2009 - ENVIRONMENTAL PROTECTION COMMISSION - REVISED DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, August 20, 2009, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Al Higginbotham and Commissioners Kevin Beckner, Rose Ferlita, Jim Norman, and Mark Sharpe.

The following members were absent: Commissioners Ken Hagan (schedule conflict) and Kevin White (schedule conflict).

Chairman Higginbotham called the meeting to order at 9:09 a.m., led in the pledge of allegiance to the flag, and gave the invocation.

CHANGES TO THE AGENDA

Dr. Richard Garrity, EPC Executive Director, stated there were no changes to the agenda. Chairman Higginbotham called for a motion. **Commissioner Beckner so moved, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioners Hagan and White were absent.)

PUBLIC COMMENT

Mr. Dan Jenkins, 4803 South Himes Avenue, displayed/discussed photographs of illegal truck washing, which he discussed at the last meeting; acknowledged working with the Department of Environmental Protection (DEP) and EPC to protect the environment; and requested EPC consider a way to stop illegal dumping of liquid waste.

Mr. Shad Benson, 5911 East Dr. Martin Luther King Jr. Boulevard, commented on stationary/mobile truck washing operations, the Clean Water Act, and the national pollution discharge elimination system (NPDES); noted discharging industrial wastewater was illegal; reviewed Stormwater Quality Management Ordinance 94-15 and DEP discharge requirements for stationary facilities; and said vehicle and truck washing wastewater did not meet acceptable limits.

Mr. Jerry Coe, 5911 East Dr. Martin Luther King Jr. Boulevard, described financial burdens of the regulations, waste responsibilities falling to the community, spill release requirements for hazardous materials, and environmental cleanup costs.

CONSENT AGENDA

- A. Approval of minutes: July 16, 2009.
- B. Monthly activity reports.
- C. Pollution Recovery Fund (PRF) report.

THURSDAY, AUGUST 20, 2009 - REVISED DRAFT MINUTES

- D. Gardinier Settlement Trust Fund report.
- E. Legal case summaries.
- F. Amend the NPDES permit interlocal agreement with Hillsborough County.
- G. Interlocal agreement between the EPC and Hillsborough County for provision of chemical analysis of water quality samples.

Chairman Higginbotham called for a motion to approve the Consent Agenda. **Commissioner Beckner so moved, seconded by Commissioner Sharpe, and carried four to zero.** (Commissioner Ferlita was out of the room; Commissioners Hagan and White were absent.)

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Report from the Chairman, David Jellerson - Mr. Jellerson reported the August 3, 2009, CEAC meeting, was dedicated to the review of PRF grant applications and CEAC recommendations would be presented to the EPC in September 2009.

EXECUTIVE DIRECTOR

Tanks Compliance Audit - Dr. Garrity discussed the audit conducted by DEP for the storage tank compliance verification and the air monitoring program audit by the federal government, made laudatory remarks, and read from two letters expressing gratitude.

AIR MANAGEMENT DIVISION

Revised Lead Air Quality Standard - Mr. Jerry Campbell, Director, EPC Air Management Division, displayed/reviewed the Environmental Protection Agency (EPA) revised lead air quality standard, stated EnviroFocus Technologies LLC produced products from recycled lead, remarked about environmental benefits from recycling, showed an aerial of the site and the location of lead monitors, said EPC would seek new money from the EPA for additional monitor sites, and explained a graphic of lead production/monitoring, describing challenges, compliance, clean up, and expansion.

Mr. John Tapper, chief operating officer, EnviroFocus Technologies LLC, provided a presentation depicting photographs of facilities, recycling production standards, partnerships, automation, improvements/investments, clean up, expansion, site redevelopment, and increased jobs/training. Mr. Campbell concluded EPC staff would recommend to EPA the area be declared unclassified to allow EnviroFocus Technologies LLC to continue the clean up plan and then collect monitoring data.

THURSDAY, AUGUST 20, 2009 - REVISED DRAFT MINUTES

WASTE MANAGEMENT DIVISION

National Pollution Prevention Week Proclamation - Mr. Hooshang Boostani, Director, EPC Waste Management Division, reported on pollution prevention and reduction, inspections, conservation, and efficiency enhancements. Commissioner Beckner presented the proclamation proclaiming September 20-26, 2009, as Hillsborough County Pollution Prevention Week.

WATER MANAGEMENT DIVISION

Mr. Frederick Nassar, EPC, presented an overview of mobile washing activities, complaints, pollution, enforcement, differences between mobile/stationary washing, best management practice (BMPs), permitting, timelines, and refining/addressing concerns; stated regulation of the mobile washing industry through implementation of BMPs was a statewide effort; displayed photographs; and discussed options. Responding to Commissioner Beckner, Mr. Nassar said based on the DEP opinion, the BMPs were protective enough and remarked about fixed establishment requirements, mobile washing permits, regulations, and policy decisions. Commissioner Norman commented on stationary washing facility expansion to include mobile washing systems.

WETLANDS AND WATERSHED MANAGEMENT DIVISION

Wetlands Quarterly Update - Ms. Debbie Sinko, EPC, presented the report contained in background material.

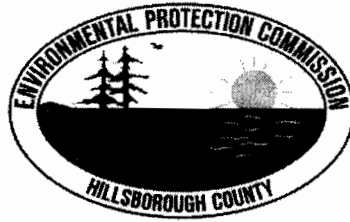
There being no further business, the meeting was adjourned at 10:14 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

lg



Supplemental EPC Agenda Item Attachment to the
Original Cover Sheet

Agenda Item VII

Emergency Order for Natural Disasters

September 17, 2009 EPC Board Meeting

[DRAFT- TO BE AMENDED CASE BY CASE]

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

In re:)
)
EMERGENCY AUTHORIZATION FOR)
REPAIRS, REPLACEMENT,)
RESTORATION, AND CERTAIN)
OTHER MEASURES MADE NECESSARY)
BY [INSERT STORM NAME].)
_____)

EMERGENCY ORDER

Under Section 8 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, (EPC Act), and upon consideration of the State of Florida Executive Order No. [insert number] and the following findings of fact, the Executive Director of the Environmental Protection Commission of Hillsborough County (EPC) enters this Emergency Order (Order), including Findings of Fact and Conclusions of Law, in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens of Hillsborough County resulting from the devastation wrought by [insert storm/hurricane name] (hereinafter "the Hurricane"[or give other name if event is not a hurricane]). This Emergency Order is unique and separate from any Emergency Order issued by the Florida Department of Environmental Protection (DEP) or any other state agency.

FINDINGS OF FACT

1. On the [insert date], the Hurricane struck Florida with reported maximum sustained winds of over [insert speed] miles per hour and a storm surge between [insert surge feet - x and y] feet. The Hurricane has caused continuing widespread damage within Hillsborough County, which shall constitute the specific area covered by this Emergency Order. This area shall herein be referred to as the "Emergency Area."
2. By State of Florida Executive Order No. [insert number], the Governor declared that a state of emergency exists throughout the State, based upon the serious threat to the public health, safety and welfare posed by the Hurricane.
3. The EPC finds that the Hurricane has created a continuing state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action by Hillsborough's citizens and governments is necessary to properly manage debris and other damage created by the Hurricane.

4. The EPC finds that an emergency authorization is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations would not result in a sufficiently timely action to address the emergency.
5. The EPC finds that immediate, strict compliance with the provisions of the statutes, rules, or orders noted within this Order would prevent, hinder, or delay necessary action in coping with the emergency, and that the actions authorized under this order are narrowly tailored to address the immediate need for action and are procedurally fair under the circumstances.

CONCLUSIONS OF LAW

1. Based on the findings recited above, it is hereby concluded that the emergency caused by the Hurricane continues to pose an immediate danger to the public health, safety, or welfare and requires an immediate order of the EPC.
2. Under Section 8(8) and (11) of the EPC Act, the Executive Director of the EPC has broad authority to cooperate with other agencies and to perform all other duties necessary to effect the purpose of the EPC Act. Thus the Executive Director is authorized to issue this Emergency Order.
3. Temporary suspension of specified statutes and rules as noted within this Order is required so as not to prevent, hinder, or delay necessary action in coping with the emergency.

THEREFORE, IT IS ORDERED:

Within the “Emergency Area” the following shall apply:

1. Solid Waste Management

- a. Field authorizations may be issued prior to or following a site inspection by EPC personnel for staging areas to be used for temporary storage and chipping, grinding or burning of Hurricane-generated debris. Field authorizations may be requested by providing a notice to the local office of the EPC containing a description of the staging area design and operation, the location of the staging area, and the name, address, and telephone number of the site manager. Field authorizations also may be issued by EPC staff without prior notice. Written records of all field authorizations shall be created and maintained by EPC staff. Field authorizations may include specific conditions for the operation and closure of the staging area, and may include a required closure date which extends beyond the expiration date of this Order. Staging areas shall avoid wetlands and other surface waters to the greatest extent possible; such areas that are used or affected must be fully restored upon cessation of use of the area. Staging areas must cease operation, and all Hurricane-generated debris must be removed from the site, by the expiration date of this Order, unless a different closing date or closure conditions are specified in the field authorization. Failure to comply with the conditions of the field authorization, or failure to adequately close the site by the required closure date, may result in enforcement actions by the EPC. Field authorizations issued prior to the effective date of this Order remain in effect but may be modified by the EPC to include conditions and closure dates as specified herein.

- b. Hurricane-generated vegetative debris which is managed at an authorized staging area may be disposed of in permitted lined or unlined landfills, permitted land clearing debris facilities, or permitted construction and demolition debris disposal facilities. Such vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility in accordance with the terms of the applicable rules and permit conditions.
- c. Construction and demolition debris that is mixed with other Hurricane generated debris need not be segregated from other solid waste prior to disposal in a lined landfill. Construction and demolition debris that is either source-separated or is separated from other Hurricane-generated debris at an authorized staging area, or at another area specifically authorized by the EPC, may be managed at a permitted construction and demolition debris disposal or recycling facility upon approval by the EPC of the methods and operational practices used to inspect the waste during segregation.
- d. Except as otherwise specifically provided herein, Hurricane-generated debris shall be disposed of in a Class I landfill or, except for asbestos-containing materials, in a waste-to-energy facility. Non-recyclables and residuals generated from segregation of Hurricane-generated debris shall also be disposed of in a Class I landfill or waste-to-energy facility.
- e. Ash residue from the combustion of Hurricane-generated vegetative debris may be disposed of in a permitted disposal facility, or may be land spread in any areas approved by local government officials except in wellfield protection areas, surface water protection areas, or wetlands and other surface waters.
- f. Ash from the combustion of other Hurricane-generated debris shall be disposed of in a Class I landfill. Metals or other non-combustible materials segregated from the ash residue may also be disposed of in an unlined, permitted landfill.
- g. Unsalvageable refrigerators and freezers containing solid waste such as rotting food that may create a sanitary nuisance may be disposed of in a Class I landfill; provided, however, that chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable using techniques and personnel meeting the requirements of 40 CFR Part 82.
- h. Permitted landfills, waste-to-energy facilities, and transfer stations which accept Hurricane-generated debris in accordance with the terms of this Order may accept Hurricane-generated debris for disposal or storage without the need to first modify existing permits or certifications. Operators of landfills shall seek modifications of their existing permits to address any long-term impacts of accepting Hurricane generated debris on operations and closure that are not addressed in existing permits. Long-term impacts are those, which will extend past the expiration date of this Order. The requests for modification shall be submitted as soon as possible, but no later than the expiration date of this Order. No permit fee will be required for any modifications necessitated solely by the Hurricane clean-up activities. This paragraph does not authorize the permanent lateral or vertical expansion of any facility beyond its permitted limits.

- i. Domestic wastewater residuals may be disposed of in Class I landfills even if such residuals meet the definition of a liquid waste found in section 62-701.200(72), Florida Administrative Code (F.A.C.), provided that such disposal is approved in advance by the EPC and that the material is managed to the extent practicable so as to minimize liquid content, odors and runoff.

2. Air Resource Management

- a. Air Curtain Incinerators. The EPC authorizes local governments or their agents to conduct the burning of Hurricane-generated yard trash and other vegetative debris in air curtain incinerators without prior notice to the EPC. The EPC also authorizes the burning of demolition debris in such air curtain incinerators, provided reasonable efforts are made to limit the material being burned to untreated wood. Within ten days of commencing any such burning, the local government or its agent shall notify the EPC in writing, describing the general nature of the materials burned, stating the location and method of burning, and providing the name, address, and telephone number of the representative of the local government to contact concerning the work. In operating any such air curtain incinerator, the pit width shall not exceed 12 feet, vertical side walls shall be maintained, and waste material shall not be loaded into the air curtain incinerator such that it protrudes above the level of the air curtain. Ash shall not be allowed to build up in the pit higher than one-third the pit depth or to the point where the ash begins to impede combustion, whichever level is lower. Air curtain incinerators may operate 24 hours per day provided reasonable efforts are made to prevent nuisance smoke and odors. Notwithstanding the provisions of this paragraph, the burning of asbestos containing materials or hazardous waste is prohibited.
- b. Residential Pile Burning. Only vegetative material can be burned on an open pile. Pile burning shall not occur in wetlands or other surface waters. Open pile burning shall avoid adversely affecting wetlands and other surface waters to the greatest extent possible; any wetland or other surface water areas that are used or affected must be fully restored upon cessation of use of the area in consultation with the EPC. Residential pile burning shall only be conducted if the pile is set back at least 1,000 feet from any occupied building and does not cause nuisance smoke or odors.
- c. Noise Pollution. The EPC suspends the requirement to comply with the sound level limits in Chapter 1-10, Rules of the EPC, for emergency generators operating in the Emergency Area.

3. Wetlands and Other Surface Waters

- a. The EPC provides authorization for temporary impacts to wetlands and/or other surface waters associated with the following activities, provided that the applicant submits notice to EPC within 30 days of commencing the activity:
 1. Authorization is provided for those activities in wetlands and/or other surface waters necessary to provide access for emergency vehicles and/or rescue operations;

- i. Authorize county and municipality staff to conduct operations needed for clearing of roads, providing access for emergency vehicles, and access for the purpose of maintaining utilities such as wastewater treatment plants, lift stations, etc.
 - ii. Authorize repair to driveways, including replacement of culverts, to allow access for emergency vehicles. This only authorizes replacement of culverts and driveways in the same configuration that existed prior to the storm.
2. Authorization is provided for those wetland and other surface water impacts necessary to prevent immediate damage to habitable structures and those minor ancillary structures (including utilities) associated with and necessary for occupancy of the habitable structures. Impacts to wetlands and other surface waters shall be minimized to the greatest extent possible. This authorization does not permit activities that alter the pre-existing on-site or off-site hydrology. Replacement of retaining walls, decks, and gazebos that are not necessary for occupancy of the existing habitable structure is not authorized by this Order.
3. This Order does not authorize the construction of structures that did not exist prior to the emergency.
4. Authorization is provided for removal of storm debris from wetlands and other surface waters, provided no vegetation is removed in the process and debris is disposed of as described in sections 1 (Solid Waste) and 2 (Air) above, or otherwise in accordance of law.
5. Any impacts to wetlands or other surface waters in excess of those activities authorized in this Order shall be subject to corrective actions, restoration, mitigation, or other appropriate enforcement.
- b. No new permanent wetland or other surface water impacts are authorized under this Emergency Order.
- c. Other than the above authorizations, no dredging and no placement of fill in wetlands or other surface waters is authorized for stabilization or other purposes under this Emergency Order.
- d. The above provisions do not provide authorization for reconstruction or repair of unauthorized structures and/or those which were constructed in violation of Chapter 1-11, Rules of the EPC.

4. Wastewater Facilities and Collection Systems

Owners and operators of wastewater facilities and collection systems, and their licensed engineers and contractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all structures, equipment, and appurtenances of the facilities and systems to their pre-disaster permitted or registered condition without

prior notice to the EPC. Within thirty days of commencing the work of such repair or replacement, however, the owner or operator shall notify the EPC in writing, describing the nature of the work, its location, approximate time to complete repairs/replacement, and providing the name, address, email, and telephone number of the representative of the owner or operator to contact concerning the work.

Timely reporting of wastewater abnormal events to the EPC pursuant to Chapter 1-1 of the EPC rules is suspended for the duration of this Order. Within 45 days post disaster, owners of wastewater facilities and collection systems shall provide a summary report to the EPC that provides a volume estimate of wastewater discharged to the environment as a result of the disaster, the number of abnormal events, and their location. To the extent possible, owners and operators of wastewater facilities and collection systems and their licensed engineers and contractors are authorized to respond and mitigate ongoing pollution or public health concerns as a result of damage to wastewater facilities and collection systems without prior approval of the EPC.

5. Suspension of Statutes and Rules

Within the Emergency Area, the requirements and effects of the EPC Act and the EPC rules which conflict with the provisions of this Order are temporarily suspended to the extent necessary to implement this Order. To the extent that any requirement to obtain a non-DEP delegated permit or other non-DEP delegated authorization is waived by this Order, it should also be construed that the procedural requirements for obtaining such non-DEP delegated permit or other non-DEP delegated authorization, including requirements for fees and publication of notices, are suspended for the duration of this order.

6. General Limitations

The EPC issues this Emergency Order solely to address the emergency created by the [insert disaster event, e.g.- hurricane, storm, etc]. This Order shall not be construed to authorize any activity within the jurisdiction of the EPC except in accordance with the express terms of this Order. Unless otherwise specified, the provisions of this Order apply only within the Emergency Area. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise.

7. Other Authorizations Required

This Order only provides relief from the specific regulatory and proprietary (e.g. – conservation easements) requirements addressed herein for the duration of the Order, and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies. This Order does not provide relief from any of the requirements of Chapter 471 of the Florida Statutes regarding

professional engineering. Persons must comply with all other applicable emergency orders, including but not limited to, any DEP Emergency Final Order.

8. Expiration Date

This Emergency Order shall take effect immediately upon execution by the Executive Director of the EPC, and shall expire on [insert month, day, year], unless modified or extended by further order.

9. Violation of Conditions of Emergency Order

Failure to comply with any condition set forth in this Order shall constitute a violation of an EPC Final Order under Chapter 403, Florida Statutes and the EPC Act, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

10. Applicability to Delegated Programs

The EPC's implements multiple environmental programs on behalf of and/or delegated by the Florida Department of Environmental Protection (e.g. – wastewater, air, brownfields). Those DEP delegated programs administered by the EPC shall only follow any DEP Emergency Final Order. Pursuant to section 403.1655(2), F.S. the DEP is the lead agency in Florida for all applicable environmental matters during short-term emergencies.

11. Miscellaneous Provisions

- a. All work conducted under the terms of the Emergency Order must be initiated prior to expiration of the Emergency Order.
- b. All activities conducted under this Emergency Order shall be performed using appropriate best management practices where possible. For activities conducted in or discharging to wetlands or other surface waters, best management practices include properly installed and maintained erosion and turbidity control devices to prevent erosion and shoaling, to control turbidity, and to prevent violations of state water quality standards.
- c. It is recommended that, where possible, owners of property should maintain documentation (such as photos) of the condition of the structures or lands as they existed prior to initiating any activities authorized under this Order, and should provide such documentation if requested to do so.
- d. [INSERT any language about fees or waiver of them. Section 5 currently waives fees]

DONE AND ORDERED on this _____ day of _____, 200__, in Tampa, Florida.

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH
COUNTY

Richard Garrity, PhD
Executive Director

3629 Queen Palm Drive
Tampa, Florida 33569

cc: Al Higginbotham, EPC Chairman
DEP Southwest District Office
SWFWMD

NOTICE OF RIGHTS

Pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, (EPC Act) and Rule 1-2.30, Rules of the Environmental Protection Commission of Hillsborough County (EPC), any person whose interests are protected by Chapter 84-446, Laws of Florida and who is adversely affected or otherwise aggrieved by this Emergency Order has the right to appeal this action, unless the right was previously waived. **Written Notice of Appeal for a Section 9 Administrative Hearing must be received by the Chairperson of the EPC, at 601 East Kennedy Blvd., Tampa, Florida 33602, within twenty (20) days of receipt of this notice** and pursuant to Section 1-2.30(c), Rules of the EPC, must include the following information:

- (1) The name, address, and telephone number of the Appellant; the name, address, and telephone number of the Appellant's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the Appellant will be aggrieved or how his or her interests will be adversely affected by the Executive Director's decision;
- (2) A statement of when and how the Appellant received notice of the agency decision;
- (3) A statement of all disputed issues of material fact. If there are none, the Notice of Appeal must so indicate;
- (4) The specific facts the Appellant contends warrant reversal or modification of the Executive Director's proposed action;
- (5) A statement of the specific laws or rules the Appellant contends require reversal or modification of the Executive Director's proposed action; and
- (6) A statement of the relief sought by the Appellant, stating precisely the action Appellant wishes the Commission to take with respect to the Executive Director's proposed action or decision.

A copy of the Notice of Appeal for a Section 9 Administrative Hearing must also be sent to the EPC's Legal Department, Environmental Protection Commission of Hillsborough County, 3629 Queen Palm Dr., Tampa, Florida 33619, facsimile (813) 627-2602, phone (813) 627-2600. Pursuant to Section 1-2.31, Rules of the EPC, you may request additional time to file a Notice of Appeal by filing a Request for Extension of Time to file a Notice of Appeal. The Request for Extension of Time must be sent to and received by the EPC Legal Department at the address above within twenty (20) days of receipt of this notice. This Order is final unless the party timely files, pursuant to Chapter 1-2, Part IV, Rules of the EPC, a Notice of Appeal or files a Request for Extension of Time to file a Notice of Appeal for a formal hearing. Pursuant to Section 1-2.31(e), Rules of the EPC, failure to request an administrative hearing by filing a Notice of Appeal within 20 days after receipt of this Order shall constitute a waiver thereof, and this unappealed Order shall automatically become an enforceable Order of the Commission by operation of law.

Upon receipt of a sufficient Notice of Appeal for a Section 9 Administrative Hearing an independent hearing officer will be assigned. The hearing officer will schedule the appeal hearing at the earliest reasonable date. Following an evidentiary hearing, the hearing officer will render his/her decision as a recommendation before the EPC board. Pursuant to Section 1-2.35, Rules of the EPC, the EPC board will take final agency action on the findings of fact and conclusions of law of the hearing officer. A written decision will be provided by the EPC board, which affirms, reverses or modifies the hearing officer's decision. Should this final administrative decision still not be in your favor, you may seek review in accordance with Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, and the Administrative Procedure Act, Chapter 120, part II, Florida Statutes, 1961 by filing an appeal under Rule 9.110 of the Florida Rules of Appellate Procedure, with the clerk of the Environmental Protection Commission, EPC Legal Department, 3629 Queen Palm Dr., Tampa, FL 33619, and by filing a notice of appeal accompanied by the applicable filing fee with the Second District Court of Appeal within 30 days from the date of this order becoming an Order of the Commission. Note, this judicial review appeal differs from the Section 9 Appeal.

Copies of EPC rules referenced in this Order may be examined at any EPC office, may be found on the internet site for the agency at <http://www.epchc.org>, or may be obtained by written request to the EPC Legal Department at 3629 Queen Palm Dr., Tampa, FL 33619.