

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
COMMISSIONER'S BOARD ROOM**

**JULY 17, 2008  
9:00 AM**

**AGENDA**

**INVOCATION AND PLEDGE OF ALLEGIANCE**

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

- I. PUBLIC COMMENT**  
Three (3) Minutes Are Allowed for Each Speaker
- II. CITIZENS' ENVIRONMENTAL ADVISORY COMMITTEE**  
Report from the Chair – David Jellerson
- III. CONSENT AGENDA**
- |   |    |
|---|----|
| A. Approval of Minutes: June 19, 2008   | 2  |
| B. Monthly Activity Reports   | 5  |
| C. Pollution Recovery Trust Fund Report   | 22 |
| D. Gardinier Settlement Trust Fund Report   | 23 |
| E. Legal Case Summary – July 2008   | 24 |
| F. Request for Authority to Take Appropriate Legal Action Against:<br>Pedro Olivera | 29 |
- IV. PUBLIC HEARING** 30  
Consider Amendments to Chapter 1-11, Wetlands Rule, including adoption of a local Basis of Review; and consider Amendments to Chapter 1-13, Delegation Rule, allowing for delegation of portion of state ERP program.

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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JUNE 19, 2008 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for June 19, 2008, at 9:00 a.m., in the 26th Floor Conference Room, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Al Higginbotham and Commissioners Brian Blair, Rose Ferlita (arrived at 9:13 a.m.), Jim Norman, and Mark Sharpe.

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

Chairman Higginbotham called the meeting to order at 9:09 a.m. Commissioner Blair 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. EPC General Counsel Richard Tschantz would present the Citizens Environmental Advisory Committee (CEAC) report. **Commissioner Blair moved to approve, seconded by Commissioner Sharpe, and carried four to zero by oral vote.** (Commissioner Ferlita had not arrived; Commissioners Hagan and White were absent.)

PUBLIC COMMENT

Captain Gus Muench, 3031 Manatee Avenue, distributed information, requested to make Cockroach Bay an aquatic preserve area, discussed making the sea grass area a marine sanctuary, and perceived a better management program was needed. Chairman Higginbotham asked Dr. Garrity to direct the issue to the technical advisory group and come back with a report at the September 2008 EPC meeting. Dr. Garrity agreed.

CEAC

Report from the Chairman - David Jellerson - Attorney Tschantz reviewed the report, as provided in background material. Commissioner Blair inquired about government-owned property and perceived there should be certain regulations to secure those properties. Chairman Higginbotham said the request could be presented to Mr. Jellerson who could provide a report at the next meeting. Attorney Tschantz agreed to speak with Mr. Jellerson.

CONSENT AGENDA

- A. Approval of minutes: May 15, 2008.
- B. Monthly activity reports.

THURSDAY, JUNE 19, 2008 - DRAFT MINUTES

- C. Pollution Recovery Fund (PRF) report.
- D. Gardinier Settlement Trust Fund report.
- E. Legal case summary: June 2008.
- F. Request authority to take appropriate legal action against Grace Poole-Yeager and Michael Rissell, doing business as, MC Trucking.
- G. Authorize staff to file for party status regarding Progress Energy Florida Incorporated transmission line.

Chairman Higginbotham called for a motion to approve the Consent Agenda. **Commissioner Ferlita moved approval, seconded by Commissioner Blair, and carried five to zero by oral vote.** (Commissioners Hagan and White were absent.)

EXECUTIVE DIRECTOR

Annual State of the Environment Report and Presentation - Dr. Garrity highlighted the report, as provided in background material, and available at [www.epchc.org](http://www.epchc.org). Dr. Garrity and Mr. Jerry Campbell, EPC staff, responded to queries from Commissioner Blair regarding standards to measure how often the air quality changed and whether the internal performance auditor agreed with the data that had been provided. Dr. Garrity responded to Commissioner Norman regarding the tests used to locate pipe leakage.

FINANCE AND ADMINISTRATION

Budget Presentation and Staff Recommendations to Meet Target Reductions Proposed by the County Administrator - Mr. Tom Koulianos, Director, EPC Finance and Administration, stated the County Administrator presented the fiscal year (FY) 2009 recommended budget to the Board of County Commissioners on June 4, 2008, which included a reduction for EPC of \$821,999 and a proposal to eliminate 11 positions. Mr. Koulianos reviewed the FY 2009 requested budget and the FY 2009 recommended budget and efficiencies.

Commissioner Norman discussed the reduction in construction activity and perceived the section of EPC dealing with development and construction should be reduced. Mr. Koulianos stated the agency consisted of 165 employees; 70 percent were employed to work on contracts and grants from the Environmental Protection Agency or the Department of Environmental Protection and were not affected by the slowdown in development. The Wetlands Management Division would be most affected, noting a 40 percent decrease in the work load; however, 25 percent of the employees were eliminated last year. Mr. Koulianos

THURSDAY, JUNE 19, 2008 - DRAFT MINUTES

perceived the reduction had been met and reviewed the positions eliminated and services impacted. Discussion ensued regarding the development industry and employee growth. Chairman Higginbotham understood the report would explain where budget cuts would be made. Commissioner Norman asked if the senior management market equity increases had been frozen. Mr. Koulianos responded in the affirmative and requested authorization to decide where budget cuts were most appropriate for the agency. He reviewed proposed reductions in personnel costs and operating costs totaling \$821,999. Mr. Koulianos requested the Board approve the staff recommended budget. Dr. Garrity clarified there would be no market equity or merit increases for senior staff. Mr. Koulianos requested a motion to approve the recommended budget proposal to meet the reduction proposed by the County Administrator. **Commissioner Blair moved that, seconded by Commissioner Ferlita, and carried five to zero by oral vote.** (Commissioners Hagan and White were absent.)

Discussion ensued regarding development activity and budget cuts in the Wetlands Management Division. Commissioner Ferlita requested the number of employees on a graph, from beginning to end, and the increase. Mr. Koulianos and Dr. Garrity agreed to provide that information. Commissioner Norman questioned the activity level in the market when Mr. Koulianos was hired versus at present.

OFF-THE-AGENDA ITEM - Reserve of Old Tampa Bay

Commissioner Ferlita stated the residents at the Reserve of Old Tampa Bay had problems with trimming the mangroves and needed assistance. Dr. Garrity clarified EPC was given approval to trim the mangroves in October 2007 and the issue was the responsibility of the Army Corps of Engineers. Commissioner Ferlita requested Dr. Garrity serve as the liaison. Dr. Garrity agreed.

There being no further business, the meeting was adjourned at 10:21 a.m.

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

CHAIRMAN

ATTEST:

PAT FRANK, CLERK

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

ssg

MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION

June FY 2008

A. Public Outreach/Education Assistance:		
1. Phone Calls:		137
2. Literature Distributed:		0
3. Presentations:		1
4. Media Contacts:		0
5. Internet:		60
6. Host/Sponsor Workshops, Meetings, Special Events		0
B. Industrial Air Pollution Permitting		
1. Permit Applications Received (Counted by Number of Fees Received):		
a. Operating:		4
b. Construction:		2
c. Amendments:		0
d. Transfers/Extensions:		0
e. General:		4
f. Title V:		43
2. Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval (Counted by Number of Fees Collected) - (Counted by Number of Emission Units affected by the Review):		
a. Operating <sup>1</sup> :		22
b. Construction <sup>1</sup> :		5
c. Amendments <sup>1</sup> :		2
d. Transfers/Extensions <sup>1</sup> :		1
e. Title V Operating <sup>2</sup> :		1
f. Permit Determinations <sup>2</sup> :		1
g. General:		3
3. Intent to Deny Permit Issued:		0
C. Administrative Enforcement		
1. New cases received:		0
2. On-going administrative cases:		
a. Pending:		4
b. Active:		17
c. Legal:		3
d. Tracking compliance (Administrative):		13
e. Inactive/Referred cases:		37
	Total	74
3. NOIs issued:		0
4. Citations issued:		0

5.	Consent Orders Signed:	<u>2</u>
6.	Contributions to the Pollution Recovery Fund:	<u>\$13,500.00</u>
7.	Cases Closed:	<u>7</u>
D.	Inspections:	
1.	Industrial Facilities:	<u>10</u>
2.	Air Toxics Facilities:	
a.	Asbestos Emitters	<u>0</u>
b.	Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>3</u>
c.	Major Sources	<u>1</u>
3.	Asbestos Demolition/Renovation Projects:	<u>14</u>
E.	Open Burning Permits Issued:	<u>0</u>
F.	Number of Division of Forestry Permits Monitored:	<u>285</u>
G.	Total Citizen Complaints Received:	<u>46</u>
H.	Total Citizen Complaints Closed:	<u>31</u>
I.	Noise Sources Monitored:	<u>5</u>
J.	Air Program's Input to Development Regional Impacts:	<u>2</u>
K.	Test Reports Reviewed:	<u>104</u>
L.	Compliance:	
1.	Warning Notices Issued:	<u>4</u>
2.	Warning Notices Resolved:	<u>4</u>
3.	Advisory Letters Issued:	<u>4</u>
M.	AOR's Reviewed:	<u>1</u>
N.	Permits Reviewed for NESHAP Applicability:	<u>2</u>
O.	Planning Documents coordinated for Agency review.	<u>3</u>

**FEES COLLECTED FOR AIR MANAGEMENT DIVISION**  
**June FY 2008**

	<b>Total Revenue</b>
1. Non-delegated construction permit for an air pollution source	
(a) New Source Review or Prevention of Significant Deterioration sources	\$0.00
(b) all others	\$0.00
2. Non-delegated operation permit for an air pollution source	
(a) class B or smaller facility - 5 year permit	\$0.00
(b) class A2 facility - 5 year permit	\$0.00
(c) class A1 facility - 5 year permit	\$0.00
3. (a) Delegated Construction Permit for air pollution source (20% of the amount collected is forwarded to the DEP and not included here)	\$2,400.00
(b) Delegated operation permit for an air pollution source (20% of the amount collected is forwarded to the DEP and not included here)	\$10,000.00
(c) Delegated General Permit (20% is forwarded to DEP and not included here)	\$240.00
4. Non-delegated permit revision for an air	\$0.00
5. Non-delegated permit transfer of ownership, name change or extension	\$0.00
6. Notification for commercial demolition	
(a) for structure less than 50,000 sq ft	\$2,200.00
(b) for structure greater than 50,000 sq ft	\$0.00
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	\$600.00
(b) renovation greater than 1000 linear feet or 1000 sq ft	\$500.00
8. Open burning authorization	\$1,200.00
9. Enforcement Costs	\$379.15

**ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION  
JUNE, 2008**

**A. ENFORCEMENT**

1. New Enforcement Cases Received:	3
2. Enforcement Cases Closed:	5
3. Enforcement Cases Outstanding:	52
4. Enforcement Documents Issued:	7
5. Recovered costs to the General Fund:	\$ 2,960.00
6. Contributions to the Pollution Recovery Fund:	\$14,150.00

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. Bay Hills Village	Expired permit	\$ 350.00
b. Camelot MHP	Modification w/o Permit	\$ 200.00
c. M & B Products	Modification w/o Permit	\$ 2,000.00
d. Madison Square	Construction w/o Permit; Placement of C/S in service without acceptance letter	\$ 1,500.00
e. Scott Grantham	Improper Operation/Failure to maintain	\$ 100.00
f. South Bay Corp.	Expired permit; Violation of permit conditions; Operation w/out a permit	\$ 6,000.00
g. Summerfield Square	Construction w/o Permit	\$ 2,500.00
h. Town & Country SDA Church	Construction w/o Permit; Placement of C/S in service without acceptance letter	\$ 1,500.00

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

1. Permit Applications Received:	22
a. Facility Permit:	5
(i) Types I and II	1
(ii) Types III	4
b. Collection Systems-General	10
c. Collection Systems-Dry Line/Wet Line:	7
d. Residuals Disposal:	0
2. Permit Applications Approved:	19
a. Facility Permit:	1
b. Collection Systems-General:	10
c. Collection Systems-Dry Line/Wet Line:	8
d. Residuals Disposal:	0



3. Permit Applications Recommended for Disapproval:	0
a. Facility Permit:	0
b. Collection Systems-General:	0
c. Collection Systems-Dry Line/Wet Line:	0
d. Residuals Disposal:	0
4. Permit Applications (Non-Delegated):	0
a. Recommended for Approval:	0
5. Permits Withdrawn:	1
a. Facility Permit:	0
b. Collection Systems-General:	1
c. Collection Systems-Dry Line/Wet Line:	0
d. Residuals Disposal:	0
6. Permit Applications Outstanding:	32
a. Facility Permit:	12
b. Collection Systems-General:	5
c. Collection Systems-Dry Line/Wet Line:	15
d. Residuals Disposal:	0
7. Permit Determination:	4
8. Special Project Reviews:	0
a. Reuse:	0
b. Residuals/AUPs:	0
c. Others:	0
<b>C. INSPECTIONS - DOMESTIC</b>	<b>103</b>
1. Compliance Evaluation:	14
a. Inspection (CEI):	4
b. Sampling Inspection (CSI):	10
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	0
2. Reconnaissance:	55
a. Inspection (RI):	16
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	35
d. Enforcement Inspection (ERI):	4

3.	Engineering Inspections:	34
a.	Reconnaissance Inspection (RI):	2
b.	Sample Reconnaissance Inspection (SRI):	0
c.	Residual Site Inspection (RSI):	0
d.	Preconstruction Inspection (PCI):	5
e.	Post Construction Inspection (XCI):	27
f.	On-site Engineering Evaluation:	1
g.	Enforcement Reconnaissance Inspection (ERI):	0
<b>D.</b>	<b>PERMITTING/PROJECT REVIEW - INDUSTRIAL</b>	<b>46</b>
1.	Permit Applications Received:	5
a.	Facility Permit:	4
(i)	Types I and II	2
(ii)	Type III with Groundwater Monitoring:	2
(iii)	Type III w/o Groundwater Monitoring:	0
b.	General Permit:	1
c.	Preliminary Design Report:	0
(i)	Types I and II	0
(ii)	Type III with Groundwater Monitoring:	0
(iii)	Type III w/o Groundwater Monitoring:	0
2.	Permits Recommended to DEP for Approval:	1
3.	Special:	0
a.	Facility Permits:	0
b.	General Permits:	0
4.	Permitting Determination:	0
5.	Special Project Reviews:	40
a.	Phosphate:	6
b.	Industrial Wastewater:	16
c.	Others:	18
<b>E.</b>	<b>INSPECTIONS - INDUSTRIAL</b>	<b>28</b>
1.	Compliance Evaluation:	7
a.	Inspection (CEI):	7
b.	Sampling Inspection (CSI):	0
c.	Toxics Sampling Inspection (XSI):	0
d.	Performance Audit Inspection (PAI):	0
2.	Reconnaissance:	17
a.	Inspection (RI):	10
b.	Sample Inspection (SRI):	0
c.	Complaint Inspection (CRI):	7
d.	Enforcement Reconnaissance Inspections (ERI):	0

3. Engineering Inspections:	4
a. Compliance Evaluation (CEI):	4
b. Sampling Inspection (CSI):	0
c. Performance Audit Inspection (PAI):	0
d. Complaint Inspection (CRI):	0
e. Enforcement Reconnaissance Inspections (ERI):	0
<b>F. INVESTIGATION/COMPLIANCE</b>	
1. Citizen Complaints:	32
a. Domestic:	23
(i) Received:	11
(ii) Closed:	12
b. Industrial:	9
(i) Received:	4
(ii) Closed:	5
2. Warning Notices:	25
a. Domestic:	19
(i) Received:	7
(ii) Closed:	12
b. Industrial:	6
(i) Received:	2
(ii) Closed:	4
3. Non-Compliance Advisory Letters:	22
4. Environmental Compliance Reviews:	151
a. Industrial:	21
b. Domestic:	130
5. Special Project Reviews:	0
<b>G. RECORD REVIEWS</b>	2
1. Permitting:	2
2. Enforcement:	0
<b>H. ENVIRONMENTAL SAMPLES ANALYZED/REPORTS REVIEWED FOR:</b>	
1. Air Division:	87
2. Waste Division:	0
3. Water Division:	28
4. Wetlands Division:	0
5. ERM Division:	154
6. Biomonitoring Reports:	5
7. Outside Agency:	28

<b>I. SPECIAL PROJECT REVIEWS:</b>	10
1. DRIs:	1
2. ARs:	1
3. Technical Support:	5
4. Other:	4

COMMISSION  
Brian Blair  
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:** July 9, 2008

**TO:** Tom Koulianos, Director of Finance and Administration

**FROM:** Mary Jo Howell, Executive Secretary, Waste Management Division  
through Hooshang Boostani, Director of Waste Management

**SUBJECT:** WASTE MANAGEMENT'S JUNE 2008 AGENDA INFORMATION

## WASTE MANAGEMENT'S JUNE 2008 AGENDA INFORMATION

New cases received	6
On-going administrative cases	111
Pending	6
Active	45
Legal	12
Tracking Compliance (Administrative)	33
Inactive/Referred Cases	15
NOI's issued	2
Citations issued	4
Consent Orders and Settlement Letters Signed	3
Civil Contributions to the Pollution Recovery Fund (\$)	\$4,900
Enforcement Costs collected (\$)	\$1,607
Cases Closed	3

### SOLID AND HAZARDOUS WASTE

FDEP Permits received	1
FDEP Permits reviewed	0
EPC Authorization for Fac.'s NOT requiring DEP permit	2
Other Permits and Reports	
County Permits received	3
County Permits reviewed	5
Reports received	20
Reports reviewed	27
Inspections (Total)	198
Complaints	20
Compliance/Reinspections	23
Facility Compliance	29
Small Quantity Generator	125
P2 Audits	1
Enforcement	
Complaints Received	24
Complaints Closed	21
Warning Notices Issued	6
Warning Notices Closed	1
Compliance letters	63
Letters of Agreement	0
Agency Referrals	1
Pamphlets, Rules and Material Distributed	128

**STORAGE TANK COMPLIANCE**

Inspections	
Compliance	60
Installation	18
Closure	12
Compliance Re-Inspections	22
Installation Plans Received	18
Installation Plans Reviewed	18
Closure Plans & Reports	
Closure Plans Received	9
Closure Plans Reviewed	9
Closure Reports Received	10
Closure Reports Reviewed	5
Enforcement	
Non-compliance Letters Issued	63
Non-compliance Letters Closed	
Warning Notices Issued	2
Warning Notices Closed	0
Cases referred to Enforcement	0
Complaints Received	0
Complaints Investigated	0
Complaints Referred	0
Discharge Reporting Forms Received	3
Incident Notification Forms Received	15
Cleanup Notification Letters Issued	3
Public Assistance	19

**STORAGE TANK CLEANUP**

Inspections	32
Reports Received	111
Reports Reviewed	112
Site Assessment received	8
Site Assessment reviewed	4
Source Removal received	3
Source Removal reviewed	1
Remedial Action Plans (RAP's) received	13
Remedial Action Plans (RAP's) reviewed	18
Site Rehab. Completion Order/No Further Action	3
Site Rehab. Completion Order/No Further Action	4
Active Remediation/Monitoring received	52
Active Remediation/Monitoring reviewed	46
Others received	32
Others reviewed	39

<b>RECORD REVIEWS</b>	<b>19</b>
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<b>PUBLIC INFORMATION PROJECTS</b>	<b>0</b>
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**EPC Wetlands Management Division  
Backup AGENDA  
June, 2008**

**Assessment Report**

**Agriculture Exemption Report**

	# Agricultural exemptions reviewed	# isolated wetlands impacted	# acres of isolated wetlands impacted	# isolated wetlands qualify for mitigation exemption	# acres of wetlands qualify for mitigation exemption
June 2008	1	1	0.05	0	0
Year to Date	2	2	0.11	1	0.06

**PGMD Reviews Performance Report**

# of Reviews	Timeframes met	Year to Date
156	98%	99%

**Formal Wetland Delineation Surveys**

	Projects	Total Acres	Total Wetland Acres	# isolated wetlands < ½ acre	Isolated wetland acreage
June 2008	15	297.36	70.54	7	1.61
Since April 2008	45	690.82	119.76	20	5.49

**Construction Plans Approved**

	Projects	Total Wetland Acres	# isolated wetlands < ½ acre	Isolated Wetland Acreage	Impacts Approved	Impacts Exempt
June 2008	21	32.1	12	3.04	0.47	1.32
Since April 2008	64	69.67	27	5.76	13.93	13.21

**Mitigation Sites in Compliance**

190/203	94%
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## Enforcement Report

Measures taken to ensure the restoration or mitigation of wetland areas/surface waters damaged due to violations of environmental laws and regulations

### Enforcement Actions

Acreage of Unauthorized Wetland Impacts	Acres Restored	Acres Mitigated	<i>Mitigation Sites in Compliance</i>
1.00	1.14	2.0	15/18 (83%)

### Compliance Actions

Acreage of Unauthorized Wetland Impacts	Acreage of Water Quality Impacts	Acreage Restored
1.0	0	1.5

### General

Telephone Conferences	Scheduled Meetings	Unscheduled Citizen Assistance
682	212	64

**EPC WETLANDS MANAGEMENT DIVISION  
BACKUP AGENDA  
June 2008**

A. General	Totals
1. Telephone Conferences	682
2. Unscheduled Citizen Assistance	64
3. Scheduled Meetings	212
4. Correspondence	369
B. Assessment Reviews	
1. Wetland Delineations	26
2. Surveys	18
3. Miscellaneous Activities in Wetland	21
4. Mangrove	3
5. Notice of Exemption	2
6. Impact/ Mitigation Proposal	12
7. Tampa Port Authority Permit Applications	20
8. Wastewater Treatment Plants (FDEP)	0
9. DRI Annual Report	2
10. On-Site Visits	120
11. Phosphate Mining	0
12. CPA	2
<b>Planning Growth Management Review</b>	
13. Land Alteration/Landscaping	4
14. Land Excavation	1
15. Rezoning Reviews	13
16. Site Development	33
17. Subdivision	31
18. Wetland Setback Encroachment	5
19. Easement/Access-Vacating	0
20. Pre-Applications	46
C. Investigation and Compliance	
1. Complaints Received	28
2. Warning Notices Issued	5
3. Warning Notices Closed	12
4. Complaint Inspections	53
5. Return Compliance Inspections	43
6. Mitigation Monitoring Reports	29
7. Mitigation Compliance Inspections	29
8. Erosion Control Inspections	28
9. MAIW Compliance Site Inspections	0
10. TPA Compliance Site Inspections	0
D. Enforcement	
1. Active Cases	26
2. Legal Cases	1
3. Number of "Notice of Intent to Initiate Enforcement"	0
4. Number of Citations Issued	0
5. Number of Consent Orders Signed	4
6. Administrative - Civil Cases Closed	6
7. Cases Referred to Legal Department	1
8. Contributions to Pollution Recovery	\$5,427.00
9. Enforcement Costs Collected	\$1,147.00
E. Ombudsman	
1. Agriculture	6
2. Permitting Process	0
3. Rule Assistance	1
4. Staff Assistance	1
5. Miscellaneous/Other	0

## WETLAND REPORT FOR REVIEW TIME 2008

<b>Month</b>	<b># Of Reviews</b>	<b>% On Time</b>	<b>% Late</b>
December			
November			
October			
September			
August			
July			
June	339	96%	4%
May	328	95%	5%
April	311	98%	2%
March	341	97%	3%
February	461	98%	2%
January	582	99%	1%

## EPC WETLANDS MONTHLY WORKSHEET

General	Enforcement	Compliance	Assessment	Engineering	Admin	Totals
Telephone Conferences			381	7	294	682
Unscheduled Citizen Assistance			45		19	64
Scheduled Meetings			111	50	51	212
Correspondence		25	343	1		369
<b>Assessment Reviews</b>						
Wetland Delineations			26			26
Surveys			18			18
Miscellaneous Activities in Wetland			21			21
Mangrove			3			3
Notice of Exemption			2			2
Impact/ Mitigation Proposal			12			12
Tampa Port Authority Permit Applications			20			20
Wastewater Treatment Plants (FDEP)						0
DRI Annual Report			2			2
On-Site Visits		16	100	4		120
Phosphate Mining						0
CPA			2			2
<b>Planning Growth Management Review</b>						
Land Alteration/Landscaping			4			4
Land Excavation			1			1
Rezoning Reviews			13			13
Site Development			33			33
Subdivision			31			31
Wetland Setback Encroachment			5			5
Easement/Access-Vacating						0
Pre-Applications			46			46
						0
<b>Investigation and Compliance</b>						
Complaints Received		28				28
Warning Notices Issued		5				5
Warning Notices Closed		12				12
Complaint Inspections		51	2			53
Return Compliance Inspections for open cases		43				43
Mitigation Monitoring Reports		27	1	1		29
Mitigation Compliance Inspections		20	9			29
Erosion Control Inspections		28				28
MAIW Compliance Site Inspections						0
TPA Compliance Site Inspections						0
<b>Enforcement</b>						
Active Cases	26					26
Legal Cases	1					1
Number of "Notice of Intent to Initiate Enforcement"						0
Number of Citations Issued						0
Number of Consent Orders Signed	4					4
Administrative - Civil Cases Closed	6					6
Cases Referred to Legal Department	1					1
Contributions to Pollution Recovery	5427					\$5,427
Enforcement Costs Collected	1147					\$1,147
<b>Ombudsman</b>						
Agriculture				6		6
Permitting Process						0
Rule Assistance				1		1
Staff Assistance				1		1
Miscellaneous/Other						0

ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
POLLUTION RECOVERY TRUST FUND  
AS OF 06/30/08

	As of 6/30/08
Beginning Fund Balance, 10/01/07	\$ 1,112,615
Interest Accrued	78,469
Deposits	369,935
Disbursements	(136,305)
Intrafund Budget Transfers to Project Fund	(531,610)
Pollution Recovery Fund Balance	<u>\$ 893,104</u>
Encumbrances:	
Pollution Prevention/Waste Reduction (101)	\$ 7,162
Artificial Reef Program	59,613
PRF Project Monitoring	22,375
Total Encumbrances	<u>\$ 89,150</u>
Minimum Balance (Reserves)	\$ 120,000
Balance Available, 06/30/08	<u>\$ 683,954</u>

**PROJECT FUND**

	Project Amount	Project Balance
<b>Open Projects</b>		
<b>FY 06 Projects</b>		
COT Parks Dept/Cypress Point (97)	100,000	\$ 100,000
Bahia Beach Restoration (contract 04-03)	150,000	94,978
Tampa Shoreline Restoration	30,000	1,746
Field Measurement for Wave Energy	125,000	27,884
Port of Tampa Stormwater Improvement	45,000	45,000
	<u>\$450,000</u>	<u>\$269,608</u>
<b>FY 07 Projects</b>		
Agr Pesticide Collection & Education Day	24,000	\$ 2,075
Tank Removal	25,000	7,593
Industrial Facility Stormwater Inspection Prg	28,885	28,885
Agriculture Best Management Practice Impl	150,000	150,000
Lake Thonotosassa Assessment	75,000	75,000
Natures Classroom Cap, PH III	188,000	188,000
Pollution Monitoring Appl Pilot Project	45,150	45,150
Exper Land-Based Seagrass Nursery	20,000	1,316
Seagrass & Longshore Bar Recovery	75,000	15,613
Seawall Removal Cotanchobee Ft Brooke Park	100,000	100,000
Analysis of Bacteria & Beach Closures	125,000	10
Knights Preserve	35,235	30,002
Oyster Reef Shore/Stub & Enhance	30,000	10,040
Nitrogen Emission/Deposition Ratios, Air Pollution	40,906	5,867
Erosion Control/Oyster Bar Habitat Creation	75,000	75,000
Remediation of Illegally Dumped Asbestos	4,486	4,486
	<u>\$1,041,662</u>	<u>\$733,193</u>
<b>FY 08 Projects</b>		
Australian Pine Removal E.G. Simmons Park	80,000	80,000
Restoration of MOSI	125,000	125,000
Invasive Plant Removal Egmont Key	133,000	72,707
Lake Magdalene's Management Plan	66,954	66,954
Testing Reduction of TMDL in Surface Water Flow	19,694	16,859
Assessing Bacteria Lake Carroll	101,962	101,962
Tampa Bay Nitrogen Consortium	5,000	200
	<u>\$531,610</u>	<u>\$463,655</u>

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
ANALYSIS OF GARDINIER SETTLEMENT TRUST FUND  
AS OF JUNE 30, 2008**

Fund Balance as of 10/1/07	\$ 248,370		
Interest Accrued	7,741		
Disbursements FY 08	(14,854)		
	<u>\$ 241,257</u>		
Fund Balance			
Encumbrances Against Fund Balance:		Start Date	Expiration Date
SP627 Tampa Bay Scallop Restoration	\$ 113	8/29/03	12/31/07
SP636 Fantasy Island	8	1/20/05	12/31/07
SP634 Cockroach Bay ELAPP Restoration	241,136	3/10/05	1/31/08
	<u>\$ 241,257</u>		
Total Encumbrances			
Fund Balance Available 6/30/08	<u><u>\$ -</u></u>		



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** July 17, 2008

**Subject:** Legal Case Summary for July 2008

**Consent Agenda**  **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:** July 2008 EPC Legal Case Summary



**EPC LEGAL DEPARTMENT MONTHLY REPORT**  
**July 2008**

**A. ADMINISTRATIVE CASES**

**NEW ADMINISTRATIVE CASES [ 0 ]**

**EXISTING ADMINISTRATIVE CASES [ 4 ]**

**Carolina Holdings, Inc. v. EPC** [LCHP04-008]: A proposed final agency action letter denying an application for authorization to impact wetlands was sent on May 7, 2004. Carolina Holdings, Inc. requested an extension of time to file an appeal. The EPC entered an Order Granting the Request for Extension of Time on June 3, 2004 and the deadline for filing an appeal was July 2, 2004. On July 2, 2004, Carolina Holdings, Inc. filed an appeal challenging the decision denying the proposed wetland impacts. The parties have conducted mediation to attempt to resolve the matter without a hearing. The applicant re-submitted the new final site plan for re-zoning determination. Hillsborough County denied the re-zoning application. The applicant has filed a Chapter 70, F.S. dispute resolution challenge of the County's re-zoning decision. On October 4, 2006 the parties jointly responded to the Hearing Officer that the matter would continue to be held in abeyance until at least January 8, 2007. The parties responded to the Hearing Officer again stating the proposed development is still under dispute with Hillsborough County. A status report was due on December 28, 2007. The parties conducted a status conference on February 27, 2008. The Hearing Officer entered an order holding the case in abeyance until August 1, 2008 but no later. (AZ)

**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. (RM)

**SWATI, Inc.** [LEPC07-036]: On December 21, 2007, the Appellant SWATI, Inc. filed a request for an extension of time to file a notice of appeal to challenge a Citation of Violation and Order to Correct issued on December 3, 2007, regarding a petroleum cleanup matter. The Legal Dept. granted the request and the Appellant had until January 31, 2008 to file an appeal in this matter. The Appellant filed two subsequent requests for extensions of time which were granted and the Appellant had until May 5, 2008 to file an appeal. On May 5, 2008 Appellant SWATI, Inc. filed a Notice of Appeal challenging the Citation of Violation and Order to Correct. The Legal Dept. will set the matter for hearing. (AZ)

**Michael and Jemimah Ruhala v. DEP and EPC** [LEPC08-012]: 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 placed the case in a brief abeyance in an effort to seek settlement. (RM)

**RECENTLY RESOLVED ADMINISTRATIVE CASES [ 2 ]**

**Irshaid Oil, Inc.** [LEPC06-006]: On March 15, 2006, Mr. Nasser Irshaid filed a request for extension of time to file an appeal to challenge a Citation of Violation and Order to Correct issued by EPC on February 28, 2006, regarding waste issues. The Legal Dept. granted the request and provided the Appellant with a deadline of June 19, 2006 in which to file an appeal. On June 8, 2006 Appellant filed a second request for extension of time. It was determined that the request did not show good cause and the request was denied. Mr. Irshaid had until July 19, 2006 to file an appeal. On July 10, 2006 Mr. Irshaid filed an insufficient Notice of Appeal which was dismissed with leave to amend. Mr. Irshaid filed an appeal on July 18, 2006. A Hearing Officer was appointed on August 14, 2006. The Case Management Conference was held on Sept. 6, 2006. The Case was held in abeyance until May 24, 2007, and a status conference was scheduled for July 31, 2007 but was cancelled pending settlement discussions. On June 26, 2008 EPC filed a Notice of Change of Agency Action withdrawing the Citation and filed a Joint Motion to Dismiss based on the corrective actions being completed. The Hearing Officer issued an order relinquishing jurisdiction back to the EPC and the file has been closed. (AZ)

**Daniel A. and Celina Jozsi** [LEPC06-031]: On October 17, 2006, the Jozsis filed a Notice of Appeal and Objection to an Amended Consent Order entered on September 27, 2006. The Legal Department has issued a letter acknowledging the appeal. A mediation was conducted on February 27, 2007. The mediation resulted in an impasse. The parties conducted a final hearing on the week of April 2, 2007. The Hearing Officer's Recommended Order was entered on May 31, 2007. The Jozsis filed exceptions to the Hearing Officer's recommendation and responses were also filed. The matter was transferred

back to the Commission for adoption of a Final Order at the September 20, 2007 regular board meeting. On September 20, 2007 a Public Hearing was held before the Commission to consider the Hearing Officer's recommendation and render a Final Order in this case. The Commission upheld the Hearing Officer's recommendation and a Final Order was executed on October 1, 2007. On October 29, 2007, Appellants filed a Notice of Appeal of the Final Order in the Second District Court. On June 18, 2008 the Second District Court of Appeal filed a Per Curium Affirmed opinion, the Appellants had until July 3, 2008 to request a rehearing. The decision affirms the Commission's and Executive Director's entry of the Amended Consent Order and the matter is closed. (See below civil case) (AZ)

## B. CIVIL CASES

### NEW CIVIL CASES [ 1 ]

**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)

### EXISTING CIVIL CASES [ 16 ]

**Letty Cueva and Patricia Vaca (Causeway Station)** [LEPC08-005]: Authority to take appropriate legal action against Letty Cueva and Patricia Vaca for failure to comply with the terms of the Consent Order entered on December 21, 2004 was granted on March 20, 2008. The Consent Order required the Defendants to submit and complete a Post Active Remediation Monitoring Plan (PARMP) or to submit and complete a Remedial Action Plan (RAP) and submit a \$500.00 penalty to the EPC. The EPC is attempting to re-negotiate a settlement to resolve the matter. (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)

**Site Development & Asphalt Paving, Inc.** [LEPC08-007]: Authority to take appropriate legal action against Site Development & Asphalt Paving, Inc. for failure to comply with the terms of Consent Order #2005-2223E which the Defendant entered into to resolve a violation of EPC Wetland Rule Chapter 1-11 was granted on March 20, 2008. The Respondent failed to make the agreed upon payment of \$1,500 in penalties and \$982 in costs to the EPC. The EPC is attempting to recover the money. On June 19, 2008, the EPC Legal Department filed a civil lawsuit in small claims court seeking a judgment to recover the money. (AZ)

**Cee Jay Holdings, LLC d/b/a/ Coquina Blue Bar & Grill** [LEPC08-008]: Authority to take appropriate legal action against Cee Jay Holdings, LLC for violations of the EPC Noise Rule, Chapter 1-10 was granted on March 20, 2008. On January 28, 2008 the EPC issued the Defendant a Citation to Cease and Order to Correct Violation. The Defendant failed to respond to the Citation and therefore it has become a Final Order of the EPC enforceable in Circuit Court. (RM)

**Julsar, Inc.** [LEPC04-014]: Authority to take appropriate action against Julsar, Inc. for illegally removing over 11,400 square feet of regulated asbestos-containing ceiling material was granted on May 20, 2004. A Notice of Violation has issued and was received in early 2007. A Final Order was issued on June 1, 2007, and it was not appealed. The EPC filed a lawsuit to compel compliance on October 9<sup>th</sup> and subsequently filed an amended complaint on February 12, 2008. The Defendant did not timely respond to the amended complaint and the Legal Dept. filed a Motion for Default which was entered by the Court on March 17, 2008. (RM)

**U-Haul Company of Florida** [LEPC04-016]: Authority to take appropriate action against U-Haul Company of Florida for failure to conduct a landfill gas investigation and remediation plan was granted September 18, 2003. The EPC Legal Department filed a lawsuit on September 3, 2004 and the case is progressing through discovery. The parties attended a court ordered mediation on May 15, 2007. The parties are in settlement discussions concerning the preparation and implementation of a Remedial Action Plan to address the landfill gas danger at the facility. (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)

**Bayside Home Builders, Inc** [LEPC07-008]: Authority to take appropriate action against the parties was granted by the Commission on February 15, 2007, for failure to comply with a Consent Order payment schedule for asbestos violations. The EPC filed a lawsuit to compel compliance on October 9th and subsequently filed an amended complaint on February 12, 2008. The Defendant has not timely responded to the amended complaint, thus the Legal Dept. filed a Motion for Default which was entered by the Court on March 17, 2008. (RM)

**Kenneth Fisher v. EPC and Ahmed Lakhani** [LEPC07-014]: Kenneth Fisher filed a civil lawsuit seeking to foreclose on a property that the EPC has a judgment lien. The Legal Department filed its answer on June 8, 2007 responding to the lawsuit by stating its lien is superior to the Plaintiffs. (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. (AZ)

**Gas Mart, Inc.** [LEPC07-029]: Authority to take appropriate action against Gas Mart, Inc. and G.W. Partners, Ltd. 2 for failure to properly assess and remediate petroleum contamination at their property was granted on August 16, 2007. The EPC staff is attempting to negotiate an amicable settlement with the parties prior to filing the civil lawsuit. The Defendant's failure to respond to staff's repeated attempts to negotiate a settlement resulted in the Legal Dept. filing a Complaint/Petition for Enforcement with the Court on April 9, 2008. (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)

**Chase Home Finance, LLC** [LEPC08-001]: Chase Home Finance LLC filed a civil lawsuit seeking to foreclose on a property that the EPC has a judgment lien. The Legal Department filed its answer on January 24, 2008 responding to the lawsuit. (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. (RM)

**D.J.P. Investments, Inc.** [LEPC08-011]: On May 15, 2008 the EPC Board granted authority to take appropriate legal action against Defendant D.J.P. Investments, Inc. for failure to initiate and complete site rehabilitation activities in accordance with EPC and State regulations for petroleum contamination at the facility owned and operated by the Defendant. The EPC is attempting to obtain appropriate corrective actions. (AZ)

**Mary Elizabeth Lewis and Jerry Arrien Lewis** [LEPC08-014]: EPC, a creditor in this Chapter 13 Bankruptcy action,

received an Order from the Court dated May 22, 2008, providing the procedures of adequate protection payments to secured creditors. In response, to the order, EPC filed a Proof of Claim on June 6, 2008. A creditor's hearing was scheduled for June 13, 2008 and a second one on July 8, 2008. (AZ)

#### **RECENTLY RESOLVED CIVIL CASES [ 2 ]**

**South Bay Corporation & Industrial Park, Inc. and The James Group** [LEPC07-025]: Authority to take appropriate action against South Bay Corporation and the James Group for operating a wastewater treatment facility without a valid permit was granted on September 20, 2007. The James Group entered into a Consent Order on April 28, 2008; this case has been closed. (RM)

**Jozsi, Daniel A. and Celina v. EPC and Winterroth** [LEPC05-025]: Daniel A. and Celina Jozsi requested an appeal of a Consent Order entered into between James Winterroth and the EPC Executive Director. The appeal was not timely filed and the EPC dismissed the appeal. On December 8, 2005, the Jozsis appealed the order dismissing the appeal to the circuit court. The appeal was transferred to the Second District Court of Appeal (2DCA). The EPC transferred the record to the 2DCA on Aug. 24, 2006. On Sept. 27, 2006 the EPC and James Winterroth entered into an Amended Consent Order. The Jozsis were provided the right to challenge the Amended Order. The Jozsis filed an appeal of the Amended Consent Order on Oct. 17, 2006 (see related case LEPC06-031). On October 19, 2006 the EPC filed a Motion to Dismiss the Second DCA appeal. The Court denied the Motion to Dismiss the appeal. The parties have all filed briefs. Appellee James Winterroth filed a Status Report and Suggestion of Mootness. The Appellants have filed a judicial appeal in the Second District Court of Appeal of the Final Order dismissing the administrative appeal. (See above administrative case) The Court entered an order consolidating this case with the appeal case of the Final Order referenced above in the administrative cases. The Appellants have filed the initial brief and reply brief and the EPC and property owner have filed the answer briefs. The parties are waiting for the decision of the court. On June 18, 2008 the Second District Court of Appeal filed a Per Curium Affirmed opinion which affirms the Commission's and Executive Director's entry of the Amended Consent Order. The Appellants had until July 3, 2008 to request a rehearing. The matter is closed. (AZ)

#### **C. OTHER OPEN CASES [4]**

The following is a list of cases assigned to EPC Legal that are not in litigation, but the party or parties have asked for an extension of time to file for administrative litigation in the hope of negotiating a settlement or the parties have requested a waiver or variance.

**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)

**Anthony Barretto and Mini Barreto** [LEPC08-009]: On March 13, 2008 the Appellants filed a request for an extension of time to file a Notice of Appeal to challenge a Citation of Violation and Order to Correct issued on March 5, 2008 regarding a petroleum cleanup matter. The Legal Dept. granted the request and the Appellants have until July 25, 2008 to file a Notice of Appeal in this matter. (AZ)

**Melnico Corporation** [LEPC08-010]: On March 13, 2008 the Appellant filed a request for an extension of time to file a Notice of Appeal to challenge a Citation of Violation and Order to Correct issued on March 5, 2008 regarding a petroleum cleanup matter. The Legal Dept. granted the request and the Appellants have until July 25, 2008 to file a Notice of Appeal in this matter. (AZ)

**Kelly L. Wishau** [LEPC08-013]: On May 22, 2008 the Appellant 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 April 25, 2008 regarding unauthorized wetland impacts. The extension was granted and the Appellant has until July 3, 2008 to file an Appeal. The Appellant filed a second request for extension of time which the Legal Dept. granted. The Appellant has until August 4, 2008 to file an appeal in this matter. (AZ)



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** July 17, 2008

**Subject:** Request for authority to take appropriate legal action against Pedro Olivera

**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:** Pedro Olivera owns property at 4908 Troydale Road, folio number 011958.0000 in Tampa. Between August 2007 and April 2008 Mr. Olivera conducted unauthorized activities in wetlands on his property. Mr. Oliver has not entered into a settlement and the matter remains 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:** Pedro Olivera conducted unauthorized activities on his property on Troydale Road between August 2007 and April 2008. The activities included unauthorized dock and seawall construction, placement of fill and mangrove removal within wetlands; dredging in a canal, construction of a boat turning basin, and the unauthorized construction of a boat lift. These unauthorized activities constitute violations of the EPC Wetland Rule Chapter 1-11 and the EPC Mangrove Trimming and Preservation Rule Chapter 1-14. Several of the corrective actions have been completed but the violations remain unresolved. On July 3, 2008, the Executive Director issued a Citation of Violation and Order to Correct (Citation) to Mr. Olivera for the referenced violations. To date, the EPC has not entered into a settlement and the matter remains unresolved. Therefore, the EPC staff is requesting authority to take appropriated legal action to compel compliance with the adopted rules and the EPC Act.

**List of Attachments:** None



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** July 17, 2008

**Subject:** Public hearing to approve amendments to the Wetlands Rule Chapter 1-11, Rules of the EPC concerning adoption of a local Basis of Review and amendments to the existing Delegation Rule Chapter 1-13, Rules of the EPC.

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

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

**Recommendation:** Hold a public hearing and approve amendments to the Wetland Rule Chapter 1-11 and the Delegation Rule Chapter 1-13.

**Brief Summary:** Pursuant to the EPC Act, the EPC Board must hold a noticed public hearing to approve, repeal or amend a rule. At the August 16, 2007 regular EPC meeting the EPC Board approved the Hybrid Model presented by staff. In accordance with the Hybrid Model, the staff proposes amendments to the EPC Wetland Rule Chapter 1-11 and Delegation Rule Chapter 1-13 that provide for incorporation of a local Basis of Review and incorporation of state rules to allow for delegation to the EPC of portions of the State environmental resource permitting program.

**Financial Impact:** No Financial Impact.

**Background:** On August 16, 2007, the EPC Board approved the Hybrid Model, a plan to streamline and clarify the EPC's wetlands regulatory rule, Chapter 1-11, Rules of the EPC. As part of the Hybrid Model, the EPC will consider amendments to the EPC Wetland Rule including incorporating a Basis of Review for Authorization of activities pursuant to Chapter 1-11 – Wetlands. In addition, the Hybrid Model also proposed obtaining delegation of portions of the State environmental resource permitting (ERP) program. In accordance with the requirements of the state delegation rule for local governmental authority over the ERP program the EPC must adopt the relevant sections of the state ERP rules as well as adopt administrative rules substantially equivalent to the State administrative procedures found in Chapter 120, Florida Statutes. The staff has also proposed amendments to the existing Delegation Rule Chapter 1-13 that incorporates these necessary rule adoptions.

Staff held informal public workshops on June 17, 2008 and July 9, 2008. The staff has prepared a draft rule section proposed for adoption at the July 17, 2008 regular meeting. In addition, the appointed Wetlands Advisory Committee and the Citizens' Environmental Advisory Committee voted in support of the proposed rule amendments. The proposed amendments were developed in accordance with the approved Hybrid Model. Pursuant to Section 5.2 of the Hillsborough County Environmental Protection Act (EPC Act), the EPC Board must hold a noticed public hearing to approve a rule or rule amendment. The EPC staff requests that the Board approve the attached rule amendments at a public hearing at the regularly scheduled meeting on July 17, 2008.

**List of Attachments:** Proposed Wetland Rule Sections 1-11.04, 1-11.05, and 1-11.06, Rules of the EPC, the proposed Basis of Review to be incorporated into Section 1-11.06, and the Delegation Rule Chapter 1-13, Rules of the EPC.

- DRAFT RULE -

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

**CHAPTER 1-11  
WETLANDS**

**PART I**

- 1-11.01 Intent
- 1-11.02 Definitions
- 1-11.03 Identification of Wetlands
- 1-11.04 Wetland and Other Surface  
Water Delineations
- 1-11.05 Pollution Prohibited
- 1-11.06 Review of Proposed  
Development Within Wetlands  
and Other Surface Waters  
(~~Repealed and transferred in  
part~~)
- 1-11.07 Environmental Protection  
Commission Authorization
- 1-11.08 Minimum Requirements of a  
Mitigation Plan
- 1-11.09 Adequate Protection
- 1-11.10 Miscellaneous Activities in  
Wetlands
- 1-11.11 Exemptions

**PART II (Wetland Recovery Area)**

- 1-11.20 Designation of Recovery Areas
- 1-11.21 Delineation of the Recovery  
Areas
- 1-11.22 Management Plans
- 1-11.23 Monitoring and Evaluation
- 1-11.24 Termination of Recovery Area  
Restrictions

**1-11.04 DELINEATION OF WETLANDS  
AND OTHER SURFACE WATERS**

1. Sections 62-340.300, 62-340.400, 62-340.450, 62-340.500, 62-340.550, and 62-340.600, F.A.C. providing the statewide method as amended by the Legislature for delineating

wetlands in Florida, are adopted by reference. Qualified developments granted vested or grandfathered rights pursuant to Section 373.421(7), F.S. shall be delineated as provided therein.

2. Upon request of any person with a legal or equitable interest including governmental bodies, and upon payment of the appropriate fee as established in Chapter 1-6 of these Rules, a formal determination approving a certified survey, or an approximate delineation as reflected on a scaled site plan, shall be issued as to the existence and extent of any wetlands and other surface waters upon specific lands within Hillsborough County. Failure to make a wetland determination within 30 days of receipt of a complete request and payment therefore shall entitle the applicant upon appropriate notice, to a hearing before a hearing officer as provided in Section 9 of Chapter 84-446, Laws of Florida.

3. Delineations made upon interpretation of aerial photography are subject to modification by future on-site inspection.

4. Delineations pursuant to a formal determination or pursuant to a DEP or SWFWMD permit where the delineation was field-verified and specifically approved in the permit shall be binding for five years provided physical conditions on the property do not change to alter the boundaries during that time.

5. All other determinations made prior to the effective date of this rule shall be presumptively valid only.

6. This section shall not be construed as limiting the right of any citizen to register a complaint or request investigation of an alleged violation.

**Section History** – Amended December 18, 1997; Amended July 17, 2008  
Effective date: \_\_\_\_\_

**1-11.05 POLLUTION PROHIBITED**

1. Development within wetlands and other surface waters of Hillsborough County which destroys, reduces or impairs the wetland and / or

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

Updated July 1, 2008

other waters or which contributes to the present or potential future destruction, reduction or impairment of the environmental benefits provided by the wetland and / or other surface waters or a portion thereof constitutes pollution as defined by Chapter 84-446, Laws of Florida, as amended, and is prohibited except to the extent as may be specifically authorized in writing by the Executive Director or his authorized agent.

2. The intentional or knowing destruction of marine wetlands and / or other surface waters by filling, excavation, dredging, prop-dredging, contamination, or other development as defined herein, except as provided in section 1-11.24, is a violation of this rule; ordinary fishing practices (such as casting a line, using tackle or nets, anchoring, etc.) shall not be construed as destruction of marine wetlands when conducted outside of designated Marine Recovery Areas.

3. Knowing failure to comply with the restrictions of a management plan within a designated Recovery Area is a violation of this rule.

**Section History** – Amended December 18, 1997; Amended July 17, 2008  
Effective date: \_\_\_\_\_

**1-11.06 REVIEW OF PROPOSED  
DEVELOPMENT WITHIN  
WETLANDS AND OTHER  
SURFACE WATERS**

(1) Upon request to the Executive Director or authorized agent to review a proposed development within wetlands or other surface water, an applicant must demonstrate reasonable assurance that the activity will comply with the adopted rules of the Commission.

(2) The Executive Director will review any application for wetland and other surface water impacts based on the standards in this rule and those provided in the currently adopted Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands.

**Section History** - Repealed ~~and transferred in part~~  
July 22, 2004.; Re-Adopted July 17, 2008  
Effective date: \_\_\_\_\_

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**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**BASIS OF REVIEW**

**For**

**AUTHORIZATION OF ACTIVITIES PURSUANT TO  
CHAPTER 1-11 - WETLANDS**

**- EPC Wetlands Management Division -**

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## I. CHAPTER I - INTRODUCTION

### 1.1 Intent and History:

The Environmental Protection Commission of Hillsborough County (EPC) was created in 1967 by a special act of the Florida Legislature (Chapter 67-1504, Laws of Florida). The current enabling act, the Environmental Protection Act of Hillsborough County Chapter 84-446, Laws of Florida, as amended, (EPC Act) authorizes the EPC to adopt appropriate rules and regulations reasonably necessary to provide for the effective and continuing control and regulation of water pollution in Hillsborough County. The EPC enabling act further defines water pollution in Section 3(15) as any contamination, destruction, or other alteration, or any activity which contributes to such contamination, destruction, or other alteration, of any physical, chemical, or biological feature or property of any waters of Hillsborough County. It is the purpose of this Basis of Review to provide guidelines and standards for the Executive Director's issuance or denial of an authorization to impact wetlands or other surface waters subject to jurisdiction under Section 1-11.04 of the EPC Wetland Rule.

The EPC recognizes the environmental benefits provided by wetlands and other surface waters in Hillsborough County. Pursuant to the EPC Rule Section 1-11.05, development within wetlands and other waters of Hillsborough County which destroys, reduces or impairs the wetland or other waters or which contributes to the present or potential future destruction, reduction or impairment of the environmental benefits provided by the wetland or other waters, constitutes pollution as defined by the EPC Act, and is prohibited except to the extent as may be specifically authorized in writing by the Executive Director or authorized agent. Development is defined under Section 1-11.02(2)(b) as "any manmade change to real property, including but not limited to dredging, filling, grading, paving, excavating, clearing, timbering, ditching or draining." Any activity interfering with the integrity of a wetland or other surface water, such as clearing, excavating, draining or filling, without written authorization from the Executive Director of the EPC or authorized agent, pursuant to Sections 1-11.06 and 1-11.07, Rules of the EPC, would be a violation of Section 17 of the EPC Act and Chapter 1-11, Rules of the EPC.

### 1.2 Application and Review Process

The EPC Wetlands staff comments on different types of land development activities by reviewing applications submitted to other governmental agencies such as Hillsborough County, the Tampa Port Authority, and the municipalities; which are then forwarded to the EPC for comment. The applications include, but are not limited to, re-zonings, parcel subdivisions, land alteration and landscaping, land excavation, phosphate mining, and site development reviews for commercial sites and residential subdivisions. On occasion, the EPC is requested to comment on other County or municipal permits. These include, but are not limited to, building permits for single family homes, the siting of septic tanks and septic systems, and right-of-way use permits. The EPC has entered into agreements with other agencies to perform some reviews on behalf of those agencies. The EPC Wetland Division also performs reviews under the EPC Mangrove Trimming and

Alteration Rule Chapter 1-14 pursuant to an Order of Delegation and Operating Agreement dated October 19, 2006 with the Florida Department of Environmental Protection. This Basis of Review is not intended to address mangrove permitting or exemptions, and information on that subject should be reviewed specifically in Chapter 1-14.

Independently the EPC reviews wetland or surface water impact proposals through noticed exemptions, Miscellaneous Activities in Wetlands applications, or wetland impact and mitigation proposals. This Basis of Review is intended to clarify and further define the standards provided in the EPC Wetland Rule Chapter 1-11, for these reviews.

## Chapter II - JURISDICTIONAL DELINEATIONS / BOUNDARY DETERMINATIONS

### 2.1 Purpose:

Pursuant to Section 1-11.04, the EPC has adopted the statewide methodology used for determining the landward extent of wetlands and other surface waters to establish the applicable EPC jurisdiction for impacts prohibited under Section 1-11.05. This methodology is used to identify the interface between surface waters, including wetlands, and uplands to review and verify the avoidance of direct and secondary impacts to wetlands or other surface waters.

### 2.2 Description:

Wetland delineations are often referred to as wetland jurisdictional determinations. In Hillsborough County, wetlands and other surface waters are regulated by the EPC, pursuant to Chapter 1-11, Rules of the EPC. Wetlands are specifically identified in the state and EPC rules as a subset of surface waters. Wetland delineations are performed in accordance with the unified wetland delineation methodology described in Chapter 62-340, F.A.C., *Delineation of the Landward Extent of Wetlands and Surface Waters*.

Wetland delineations are conducted during a field assessment of the property at the request of the property owner or authorized agent. Using the delineation methodology described in Chapter 62-340 F.A.C., an EPC staff Environmental Scientist establishes points in the field, or reviews the points established by the applicant, at the landward extent of the wetland and other surface waters. These points are established by using consecutively numbered flagging, staking, or other similar means of marking. After the EPC staff delineates the landward extent of surface waters or wetland line it is the responsibility of the applicant to have the line surveyed.

### 2.3 Formal Determinations:

To obtain a formal binding 62-340, F.A.C. determination an applicant must provide a certified survey of the wetland and other surface water limits to be reviewed and approved by the EPC staff. This survey must meet the requirements of Chapter 61G17-6, F.A.C., pursuant to Chapter 472.027, Florida Statutes. The Specific Purpose Survey

shall include the surveyed property boundaries with the surveyed wetland or surface water points identified thereon. The surveys must depict the appropriate State Plane Coordinates or bearings and distances, the wetland points labeled as flagged in the field, wetland line labeled as "wetland line", wetland labeled as "Wetland Area" or "Wetland" and / or other surface waters labeled as "Other Surface Waters (OSW)." The EPC staff formal approval of a certified survey, pursuant to a signatory delegation from the Executive Director, shall be binding for a period of five (5) years from the date of approval provided physical conditions on the property do not change.

#### **2.4 Informal Determinations:**

Pursuant to Section 1-11.04(2), Rules of the EPC, an approximate delineation as reflected on a scaled site plan may be accepted as to the existence and extent of any wetlands and other surface waters upon any lands within Hillsborough County. An informal wetland determination is only valid for the purpose of reviewing a specific project and is not binding on the parties. Informal jurisdictional determinations are generally only to be used when no impact to wetlands or other surface waters on the property is proposed.

### **CHAPTER III - CONDITIONS FOR ISSUANCE OR DENIAL**

#### **3.1 Criteria for issuance of approval or denial of Executive Director Authorization to impact wetlands or other surface waters:**

**3.1.1 Reasonable Use** - Pursuant to Section 1-11.07, a wetland or other surface water shall not be authorized to be impacted if the impact to the wetland or surface water is not necessary for the reasonable use of a parcel of property. Any impacts authorized under this rule shall be reduced to the minimum amount necessary. Reasonable use is further addressed and defined in Section 3.2 below.

**3.1.2 Adequate Protection** - Pursuant to Section 1-11.07, a wetland or other surface water shall not be authorized to be impacted if the environmental benefits provided by the affected wetland are not adequately protected by specified conditions which would be imposed upon approval of the impact. Conditions for adequate protection of environmental benefits are addressed in Section 1-11.09 and are further addressed and defined in Section 3.3 below.

#### **3.2 Guidelines for determining reasonable use pursuant to Section 1-11.07:**

**3.2.1 "Reasonable use of the land."** For purposes of this Basis of Review and the EPC Wetland Rule, "reasonable use" shall mean an actual, present use or activity on a parcel of real property or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject parcel of property, and which are compatible with adjacent land uses. Reasonable use of the property does not mean the highest and best use of the property. In determining whether the impact is necessary for reasonable use of a parcel of property each of the following factors may be considered:

a.) The current zoning of the parcel of property, at the time of submittal of the application, on which the wetland or other surface water is located;

- b.) Whether the denial of the impact would result in a loss of all or substantially all economic value of the property;
- c.) Existing development on or use of the property (including the applicable zoning, permitting and subdivision history of that parcel);
- d.) The buildable area of a parcel as shown by a survey or drawing of the parcel of property (to scale) accurately depicting the location of the wetland or other surface water including the minimum setbacks required by any applicable municipal or Hillsborough County codes, or homeowners' association or deed restrictions adopted prior to the adoption of the EPC Wetland Rule;
- e.) Whether the impact is for the purpose of accessing available buildable uplands where no alternative legal means of access is available and reasonable use of the entire property would otherwise be unattainable;
- f.) Documented efforts by the applicant to design or redesign the proposed development, structure or use in a manner that retains or preserves the wetland or other surface water;
- g.) The wetland or other surface water regulations in effect at the time the property owner acquired title to the parcel of property and / or whether the property was subdivided, separated from its parent tract, or developed in such a way as to result in a self imposed hardship;
- h.) Whether the impacts ~~are~~ is solely for the purpose of environmental restoration projects or solely for the purpose of conducting an environmentally beneficial project;
- i.) Documented efforts by the applicant to seek waivers or variances from any other development restrictions that would result in or necessitate impacts;
- j.) Whether the impacts ~~are~~ is necessary for the protection of public health and safety; and
- k.) Any other pertinent information or special circumstances affecting the development of the parcel of property, including but not limited to, any unusual topography and fill requirements, or unique engineering requirements.

The EPC recognizes that each property in Hillsborough County is unique and that any one or more of these factors in itself will not necessarily constitute reasonable use.

**3.2.2 Definition of the "Land."** Determination of what constitutes the "land" as provided in Section 1-11.07 for purposes of this Basis of Review and the EPC Wetland Rule is a question involving the consideration of three factors: physical contiguity; unity of ownership; and unity of use. The land shall be defined as the entire parcel or property under common ownership.

**3.3 Adequate Protection:** For purposes of Chapter 1-11, adequate protection shall be determined using the provisions available under Section 1-11.09. Adequate protection is the review of the proposed adverse impacts to the environmental benefits provided by the wetland or other surface water and how those adverse impacts will be addressed. Typically adverse impacts will be addressed through mitigation as provided in Section 1-11.08. However, the rule also allows consideration of temporary impacts and nominal wetland impacts which do not require the same mitigation. Temporary impacts are addressed in Section 1-11.09(1)(a). Wetland or other surface water impacts that are of

nominal consequence are addressed in Section 1-11.10 as "Miscellaneous Activities in Wetlands" and are addressed under Chapter V below.

Pursuant to Section 1-11.09(2), adequate protection also requires consideration of cumulative impacts. A cumulative impacts review is done by considering other developments or activities which have been or may be proposed in the same drainage basin.

## CHAPTER IV - MITIGATION

**4.1 Mitigation:** Unless otherwise noted, pursuant to Sections 1-11.09(1), adequate protection of the environmental benefits provided by wetlands or other surface water will be addressed through mitigation of an approved impact as provided in Section 1-11.08. Section 1-11.08 adopts by reference Rule 62-345.200 -900, F.A.C., the Unified Mitigation Assessment Method (UMAM). The UMAM is designed to assess any type of impact and the proposed mitigation, including the preservation, enhancement, restoration, and creation of wetlands and preservation and enhancement of uplands, as well as the evaluation and use of mitigation banks, and provides a framework for statewide standardized wetland assessment.

The assessment area is evaluated based on two main parts, a qualitative and quantification description. For the quantification description, sites are evaluated in three categories and scored numerically on a scale from 0 to 10. The first category, Location and Landscape Support, examines the ecological context within which the system operates. The second examines the Water Environment, including hydrologic alteration and water quality impairment. The third focuses on Community Structure and more specifically, vegetation and structural habitat for areas with plant cover.

For some projects, off-site mitigation areas may be preferable to on-site mitigation areas. The applicant is encouraged to explore all mitigation options available on the project site and within the County, such as mitigation banks, offsite regional mitigation areas, and other areas that could utilize the UMAM to offset approved wetland impacts.

## CHAPTER V - MISCELLANEOUS ACTIVITIES IN WETLANDS

### 5.1 Introduction

Pursuant to Section 1-11.09(1)(c), Rules of the EPC, Miscellaneous Activities in Wetlands (MAIW) are those activities that constitute development under Section 1-11.02(2)(b) yet are considered to have minor impact on wetland or other surface water functions. Applications for authorization of these types of impacts will be reviewed pursuant to Section 1-11.10, Rules of the EPC. Applicants do not need to demonstrate that the impact is necessary for reasonable use of a property but the impacts must be minimized to the greatest extent practicable and shall be conducted, located, designed and/or constructed so that they cause the least environmentally adverse impact possible. Mitigation pursuant to Section 1-11.08 is not necessary for activities that qualify but the

approval may include conditions to offset adverse impacts, such as replanting to ensure erosion control or ensure the area is properly re-vegetated. Eligible MAIW impacts include but are not limited to the following activities:

## **5.2 Non-Construction Related Activities**

The EPC Wetland Rule identifies development in wetlands or other surface waters as "any manmade change to real property, including but not limited to dredging, filling, grading, paving, excavating, clearing, timbering, ditching or draining." Several types of development are characterized as non-construction related activities. The following non-construction related activities will be reviewed under MAIW eligibility. A scaled site drawing must accompany the application for each of the following:

### **5.2.1 Nuisance Vegetation Control**

The EPC encourages property owners to remove or control nuisance and exotic plant species from wetlands and other surface waters on their property. An application listing the proposed activities must be submitted for review and approval by the EPC staff. The application must list the plant species proposed for removal or control and the method to be used. Re-planting with native species may be required.

### **5.2.2 Swimming Access**

A maximum 25 foot wide vegetation clearing zone may be maintained from the shoreline to open water for swimming access. This 25 foot area is considered the encumbered area of the shoreline and locating all facilities such as docks and boat ramps in this area is encouraged. If the facilities cannot be located in this area, the widths of any docks or boat ramps must be subtracted from the 25 foot encumbered area.

### **5.2.3 Mulched Paths**

Mulched paths of no more than four feet wide and six inches deep may be allowed through wetlands. The paths must be located to avoid impacts to existing trees and to minimize impacts to existing native herbaceous wetland vegetation. Slope and path design shall be taken into consideration as part of the review.

### **5.2.4 Mowing**

Wetland mowing may only be conducted in those areas dominated by nuisance herbaceous species and only in areas where the activity will not cause harm to native tree and shrub species. No mowing or cutting of vegetation growing in standing water or wet soils shall take place.

## **5.3 Construction Related Activities**

The following MAIW eligible impacts are construction related activities and may be



authorized in accordance with the guidelines described for each activity. A scaled site drawing must accompany the application for each of the following. Fences, docks, boat ramps, rip-rap, and boardwalks located along floodways may require a Federal Emergency Management Agency "No-Rise Study." Any activity subject to the regulatory authority of the Tampa Port Authority (TPA) shall not qualify for a MAIW authorization. These proposed activities will require a separate TPA permit.

### 5.3.1 Boat Ramps

Single family residential boat ramps deemed eligible under the MAIW provisions shall be limited to a width of no greater than ~~40~~ 12 feet and shall also be minimized to the greatest extent practicable. The above water portion of the ramp must be located landward of the mean or ordinary high water line. Excavation shall be limited to that amount of material necessary to construct the ramp. The ramp must be situated on the property so as avoid impacts to trees and to cause the least environmental impact. The installation and maintenance of appropriate erosion controls will be required. The width of the ramp will be subtracted from the maximum 25 foot encumbered area allowed per property.

### 5.3.2 Fences

All proposals to construct fences within wetlands will be evaluated on a case-by-case basis. Impacts from fence installations ~~Fences~~ shall be minimized to ~~any~~ the greatest extent practicable. Several types of fence, including hog wire, wrought iron slats, split rail, 3-5 strand wire, wood privacy and chain link fence with the bottom elevated off the substrate at least four inches may be considered appropriate for construction within wetlands and other surface waters. Fences shall not be constructed to confine livestock or other animals solely within the wetland and shall not unreasonably impede the movement of wildlife. Fences shall not block navigation, create a navigational hazard, or impede the natural flow of water by itself or through the accumulation of debris.

### 5.3.3 Elevated Boardwalks

Boardwalks shall be elevated above the surface water substrate at least three and a half feet and all attempts shall be made to route the boardwalk ~~must be routed~~ to avoid impacts to existing trees. Boardwalks approved under this section shall be limited to a width no greater than four feet for single family residences, five feet where the applicant requires ADA access, and six feet for commercial facilities. No excavation is permitted within the wetland or surface water except for the placement of the support posts. Temporary disturbance to wetland vegetation during installation is limited to an area of two feet on either side of the boardwalk.

### 5.3.4 Docks

Proposals to construct docks are reviewed under the same standards as elevated boardwalks referenced above and shall be reviewed under the following additional

criteria and conditions: A dock review will entail a detailed assessment of existing wetland and aquatic vegetation and benthic community at the proposed site. If the proposed location results in wetland impacts, the site shall be assessed for alternate locations which would minimize ~~wetland~~ environmental impacts. Construction of the structure shall attempt to avoid the removal of any trees and shall be located to minimize vegetation disturbance or removal. All proposed vessel mooring slips or areas, including boatlifts, boathouses, and davits, must be located so that a minimum of two feet of water depth exists under the slip area during Mean Low, Ordinary Low or Low Guidance Level elevation water conditions, whichever is appropriate. The structure's terminal platform must be located waterward of or beyond the vegetative littoral fringe. No part of the structure shall be enclosed by walls or doors. No dredging, filling, clearing or scouring shall be allowed except for the setting of pilings. During construction activities, the area of temporary disturbance to vegetation shall be limited to two feet on either side of the structure. No fish cleaning facilities, boat repair facilities or equipment, or fueling facilities on any structure shall be authorized through the MAIW. The structure shall be for recreational use only; with no more than one structure per single-family residence and shall be located within the applicant's area of submerged land ownership (within their property boundaries) or riparian limits. The applicant may construct a dock on property they do not own provided they obtain written authorization from the property owner.

### 5.3.5 Shoreline stabilization

The Hillsborough County Comprehensive Plan discourages hardening of shorelines in Hillsborough County. The EPC has adopted that policy and encourages property owners to plant native vegetation or use other environmentally beneficial methods to prevent shoreline erosion. No filling to obtain usable uplands shall be authorized under a MAIW authorization. Proposals to re-grade and re-plant areas of minor erosion may be reviewed under this section. The use of rip rap revetment may be permitted pursuant to this section for those areas that have demonstrated significant, ongoing shoreline erosion where natural shoreline stabilization is not feasible.

The construction of new seawalls under this section will be considered only in residential man-made canal systems where existing functioning seawalls exist on both immediately adjacent properties and where any associated filling of wetlands or other surface waters is of nominal consequence and the new wall follows the contour of the existing shoreline. The applicant must also demonstrate the new seawall is necessary to prevent shoreline erosion.

Proposals for the repair of functional seawalls or similar structures within jurisdictional limits will be reviewed in accordance with the following criteria: the wall shall be located no greater than 18 inches waterward of the previous wall unless technical documentation is provided demonstrating additional space is required to repair the wall; and where no removal of non-nuisance vegetation or no additional filling of wetlands or other surface waters is necessary for the construction of the wall.

## CHAPTER VI - ENGINEERING CRITERIA

The EPC Wetlands staff conducts engineering reviews of activities that may have an adverse effect on surface waters or ground waters of Hillsborough County. The purpose of these reviews is to protect wetland and aquifer hydrology and water quality.

The pre and post hydrology of projects associated with wetlands will be analyzed to ensure that adequate volumetric hydration in the post development condition will not be significantly altered from the existing conditions. The existing condition hydroperiod elevations for ~~Seasonal High and Normal Pool~~ of the wetlands will be analyzed to ensure they are maintained in the post development condition.

Any proposed lake, pond, sump or borrow pit excavation will be reviewed to determine if surface water and aquifer hydrology are adequately protected during construction and in the post development condition. The proposed activities shall not result in violations of surface or ground water quality standards adopted by the EPC in Chapter 1-5, Water Quality.

**Rule History:**

**Adopted: July 17, 2008**

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

**CHAPTER 1-13  
DELEGATION RULE**

- PART I (General Provisions)**  
1-13.01 **Intent**  
1-13.02 **Interpretation**  
1-13.03 **Conflicts**
- PART II (Wastewater Facility Program  
Delegation)**  
1-13.10 **SOA**  
1-13.11 **Applicable Standards**
- PART III (Environmental Resource  
Permitting – delegation)**  
**1-13.20 ERP Delegation Agreement**

It is the Commission's intent that the Director make reasonable effort to coordinate EPC's regulatory activities with other appropriate agencies, either through delegation or other written agreement.

(1) To the extent possible, implementation of activities on behalf of another agency shall be incorporated and combined with activities of the EPC to minimize duplication. Precisely how activities will be combined shall be identified within the delegation, operating agreement, contract or memorandum of understanding between the affected agencies.

(2) To the extent appropriate, where EPC implements the authority of another agency pursuant to delegation, EPC shall apply the rules, standards, and criteria of the other agency as described in the written agreement.

(3) To the extent that EPC regulations require or provide more stringent standards for the protection of the public and the environment of Hillsborough County than the standards and criteria of another agency, provision will be made in the written agreement that recognizes this

distinction, and as appropriate, sustains the more stringent standards.

**1-13.02 INTERPRETATION.**

To the extent practicable and consistent with our enabling legislation, rules and regulations of another agency shall be interpreted and applied pursuant to delegation according to the meaning given by the other agency.

(1) Where another agency rule implemented by delegation requires submission of an application, notice or other information to the other agency, that rule will be interpreted as requiring submission to the Director.

(2) Where another agency rule implemented by delegation requires that the other agency receive submissions, make a decision, issue a document or take some action, it shall be interpreted as requiring these actions from the Director as provided in the written agreement.

(3) Where another agency rule requires submission of an application fee, provision for its allocation should be reflected in the written agreement with the Commission. Obligation to pay fees under EPC's chapter 1-6 shall be modified according to the written agreement. EPC will make every effort to avoid charging a local fee in addition to the other agency fee, insisting otherwise only to the extent that EPC's expenses in providing services are not fully covered.

**1-13.03 CONFLICTS.**

The provisions of this rule shall not affect the specific provisions contained in any written agreement, contract, delegation or memorandum of understanding, and shall not be used to create ambiguity where none exists in such written agreement.

**PART II (Wastewater Facility Program  
Delegation)**

**1-13.10 SOA.**

(1) When Commission staff exercise authority delegated from the Florida Department

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of Environmental Protection pursuant to the Wastewater Facility Program Specific Operating Agreement entered into between the Secretary of the Department and the Commission, in reviewing, issuing or denying a permit or exemption, inspecting for compliance or enforcing standards and conditions within a permit issued by or on behalf of the Department, they shall use the Department rules in force at the time of the application. Said rules, generally referenced in section 1-13.11 below, are hereby adopted for the limited purpose provided by this paragraph.

(2) Notwithstanding EPC's authority to adopt more stringent standards for Hillsborough County, EPC has not elected to do so in this program as of this time. All of the standards applicable to the Wastewater Facility Program in Hillsborough County are equivalent to those of the Department.

#### 1-13.11 APPLICABLE STANDARDS.

Department rules, standards and criteria applicable to the program addressed in this part include those pertaining to water quality; industrial and domestic wastewater facilities; resource recovery and management; damage assessment; underground injection; final agency action procedures; surface waters and water quality standards; ground water classes, standards and exemptions; wellhead protection; ground water permitting and monitoring; drinking water standards, monitoring, and reporting; permitting and construction of public water systems; wastewater treatment plant monitoring; detergents; collection systems and transmission facilities; reuse of reclaimed water and land application; wetlands application; wastewater facility permitting; wastewater residuals; animal feed lots; wastewater general permits; water quality based effluent limitations; treatment plant classification and staffing; and solid waste facilities.

### PART III (Environmental Resource Permitting – delegation)

#### 1-13.20 ERP Delegation Agreement

(1) The Florida Department of Environmental Protection (Department) intends to delegate its authority under Chapters 373 and 403, Florida Statutes to regulate certain impacts to wetlands and other surface waters in Hillsborough County pursuant to Chapter 62-344, F.A.C., to the Commission, which requested such delegation and demonstrated to the Department that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated environmental resource permitting (ERP) program. This program will be limited to the activities provided in the delegation agreement between the Department and the Commission dated \_\_\_\_\_, 2008.

a) The delegation agreement dated \_\_\_\_\_, 2008 provides the Executive Director the authority to review specific activities on behalf of the Department and allows the Executive Director to issue one agency action document for a determination under the applicable state ERP program rules and the local Commission rules: Chapter 1-11 and Chapter 1-14. The standards for processing those permit applications shall be those standards approved under this rule chapter, in addition to the standards in Chapter 1-11 and Chapter 1-14. All other Commission rules, however, shall remain in full force and effect as it pertains to the regulated activities.

b) The administrative rules for processing the consolidated determinations shall be those adopted in the Commission's Administrative Procedures Rule Chapter 1-2, unless otherwise specifically provided for in this rule chapter. In the event the Commission's local administrative rules are in conflict with the procedural rules set forth in Chapters 120 and 373, Florida Statutes, the state statutes shall govern that specific

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conflict. The Executive Director shall review the activities eligible under the delegation agreement in accordance with the Commission's applicable local rules and with the following provisions:

(i) For those impacts to wetlands or other surface waters that are reviewed under Chapter 1-11 and qualify for review under the delegation agreement dated \_\_\_\_\_, 2008, the Executive Director, when deciding to authorize impacts to wetlands and other surface waters pursuant to the authority under the applicable rules, shall use the criteria in Sections 373.406, and 373.414(1), (5) and (8), Florida Statutes, as follows: (1) Whether the activity will adversely affect the public health, safety, or welfare or the property of others; (2) Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats; (3) Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling; (4) Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity; (5) Whether the activity will be of a temporary or permanent nature; (6) Whether the activity will adversely affect archaeological resources under the provisions of section 267.061, Florida Statutes; (7) The current condition and relative value of functions being performed by areas affected by the proposed activity; and (8) The cumulative impact of similar activities pursuant to section 373.414(8), Florida Statutes.

(ii) The Commission hereby adopts the Southwest Florida Water Management District "Basis of Review" for Environmental Resource Permits as adopted by the Department and Southwest Water Management District. The Water Management District "Basis of Review" is adopted by reference in this rule and shall be utilized by staff in their review under this Rule. The Commission intends that all future amendments to the Water Management District "Basis of Review" shall be automatically

adopted by this rule.

(iii) The Commission hereby adopts Sections 40D-4.301 and 40D-4.302, Florida Administrative Code for purposes of implementing the delegated state ERP program.

(iv) The Commission hereby adopts any applicable ERP exemptions or variances for purposes of implementing the delegation agreement. The ERP exemptions and variances shall not affect or apply to the Commission's local rule standards.

(2) Executive Director, when processing applications under this delegation section, shall comply with any applicable noticing or other procedural requirements that apply to activities regulated under Part IV, chapter 373, Florida Statutes that are subject to the delegation agreement.

(3) The Executive Director, when processing applications under this delegation section, shall comply with the procedural requirements set forth in Section 120.60, Florida Statutes.

(4) In the event an applicant, in writing, chooses to deem an application complete under this rule chapter, the Executive Director shall issue a decision solely based on this rule chapter. In the event an application under this rule chapter is requested to be deemed complete, the review process will be bifurcated and the Executive Director's decision will in no way affect the review under Chapter 1-11 or Chapter 1-14.

(5) As provided in Section 373.114, Florida Statutes, and if an appeal is sufficient and timely filed, a decision pursuant to delegation may be reviewed by the Florida Land and Water Adjudicatory Commission as appropriate.

Section History – adopted July 18, 2008

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

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