

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
COMMISSIONER'S BOARD ROOM  
APRIL 19, 2007  
10 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. CITIZEN'S COMMENTS**
- II. CITIZEN'S ENVIRONMENTAL ADVISORY COMMITTEE**  
Report from the Chair – David Jellerson
- III. CONSENT AGENDA**
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- VI. EXECUTIVE DIRECTOR**  
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Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

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MARCH 7, 2007 - ENVIRONMENTAL PROTECTION COMMISSION SPECIAL MEETING -  
DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Special Meeting to Consider Arbitration of the Tampa Bay Water (TBW) Proposed Fiscal Year (FY) 2006 Optimized Regional Operations Plan (OROP), scheduled for Wednesday, March 7, 2007, at 2:00 p.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Brian Blair and Commissioners Rose Ferlita, Ken Hagan, Al Higginbotham, Jim Norman, Mark Sharpe, and Kevin White.

Chairman Blair called the meeting to order at 2:05 p.m.

Mr. Gordon Leslie, EPC staff, recommended to not arbitrate. Some recovery had been realized due to cutbacks in wellfield pumping, but impacts would continue even under 90 million gallons per day. Maximizing the use of alternative sources was contentious with the OROP, while minimizing the use of groundwater in the central system would be a big benefit in coming years. Staff was hopeful communications would continue with the Southwest Florida Water Management District to help make the OROP better. **Commissioner Sharpe moved the item, seconded by Commissioner Ferlita.** Chairman Blair clarified the motion was to direct staff to not arbitrate the TBW proposed FY 2006 OROP. **The motion carried seven to zero.**

There being no further business, the meeting was adjourned at 2:07 p.m.

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

ATTEST:  
PAT FRANK, CLERK

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

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MARCH 15, 2007 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, March 15, 2007, at 10:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

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

The following member was absent: Commissioner Ken Hagan (schedule conflict).

Chairman Blair called the meeting to order at 10:05 a.m., led in the pledge of allegiance to the flag, and gave the invocation.

CITIZENS COMMENTS

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

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Report from the Chairman, David Jellerson - Mr. Jellerson stated the March 5, 2007, CEAC meeting included a review of sunshine laws, discussion on EPC procedures for dealing with community complaints and EPC role in the County building permit process, a presentation on historic landfills in the County, a briefing on wetland setbacks and buffers, and discussion on creation of a technical manual. He noted pollution recovery fund (PRF) applications were posted on the EPC website and applications were due by May 1, 2007.

Presentation of Award to Ms. Ann Paul - Chairman Blair presented a plaque to Ms. Paul for service on CEAC from February 7, 2005, through January 10, 2007. Ms. Paul offered appreciative comments.

CONSENT AGENDA

- A. Approval of minutes: February 15, 2007.
- B. Monthly activity reports.
- C. PRF report.
- D. Gardinier Settlement Trust Fund report.
- E. Legal case summary.
- F. Grant authority to pursue appropriate legal action against Mohammad F. and Donice A. Bhadelia and Dwayne Gillespie.

Chairman Blair called for approval of the minutes. Commissioner Sharpe so moved, seconded by Commissioner Ferlita. (The motion was not voted on.) In response to EPC General Counsel Richard Tschantz, Chairman Blair suggested

THURSDAY, MARCH 15, 2007 - DRAFT MINUTES

approving each item separately. Attorney Tschantz explained the Consent Agenda was usually approved as a whole. **Commissioner Norman moved the Consent Agenda, seconded by Commissioner Ferlita, and carried six to zero.** (Commissioner Hagan was absent.)

SPECIAL PRESENTATION

Presentation by Mr. Wilson Rogers, Live Nation, Regarding Ford Amphitheatre - Dr. Richard Garrity, EPC Executive Director, recalled noise issues relating to the Ford Amphitheatre, which resulted in civil action taken by EPC, and reviewed requirements of a settlement agreement requiring construction of a permanent noise wall, which was completed in February 2007. Mr. Rogers discussed the settlement agreement; provided background information on the Ford Amphitheatre building, including the opening date, concerts, economic impacts, community involvement, construction efforts, and interim measures; noted a reduction in noise complaints; referenced a citizens advisory task force; showed photographs of the noise wall; highlighted local suppliers involved in creating the wall; thanked those involved in the project; covered costs of the project; and perceived Live Nation had fulfilled obligations under the settlement agreement.

Commissioner Sharpe offered laudatory comments regarding efforts to meet obligations and the facility. Commissioner Higginbotham expressed pleasure that efforts were made to keep funds within the local economy, opined requirements were met, and asked about monitoring and if procedures were in writing. Dr. Garrity stated concerts were monitored and referenced efforts to create a manual. In response to Commissioner Higginbotham, Mr. Rogers noted another concert was scheduled for March 25, 2007. Attorney Tschantz stated obligations had been met, and the settlement agreement required measurement and monitoring of sound, which had been done. Responding to Commissioner Higginbotham, Attorney Tschantz said written standards had not been provided to Live Nation; the manual was in the final stages and would be provided to Live Nation for comments before finalization.

Commissioner Norman was impressed by efforts and commitments made by Live Nation. Commissioner White valued detailed reports showing the level of noise complaints; he left the meeting at 10:30 a.m. to attend a funeral. Commissioner Ferlita appreciated efforts, expressed concern regarding comments from Commissioner Higginbotham wanting the manual completed in two weeks, and noted she did not see requirements in the settlement agreement for EPC staff to develop a standard operating procedure (SOP). Dr. Garrity confirmed EPC was following standards, and the manual would dictate SOP for measuring noise

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countywide. Commissioner Ferlita perceived putting pressure on EPC to finalize the manual was counterproductive and referenced criteria used for monitoring. Commissioner Sharpe wanted to ensure Live Nation received information quickly. Dr. Garrity referenced meetings with Live Nation. Mr. Rogers discussed sound measurement and suggested using something that removed all doubt from the process. At the request of Dr. Garrity, Mr. Jerry Campbell, Director, EPC Air Management Division, discussed the purpose of the technical manual. Commissioner Sharpe wanted to ensure everyone was treated fairly. Dr. Garrity referenced procedures to measure ambient sound to ensure Live Nation was not blamed for sounds for which they were not responsible. Commissioner Higginbotham was glad EPC was meeting with Live Nation and perceived the issue was fairness. Chairman Blair thanked current and former EPC Board members for leadership on the issue and commented on the use of local businesses.

EXECUTIVE DIRECTOR'S REPORT

Recalling reports on Hillsborough River minimum flow levels, Dr. Garrity stated the Southwest Florida Water Management District (SWFWMD) had recommended an increase in flows, noted EPC staff reports opining the SWFWMD recommendation was not high enough, stated the SWFWMD report was sent to a peer review group who recommended a 20 percent increase in what SWFWMD had recommended, explained EPC perceived that was a positive sign of where things were going with minimum flows, and said staff was reviewing and would transmit technical comments to SWFWMD and keep the EPC Board apprised. Commissioner Norman referenced e-mails regarding minimum flow levels and asked how to get water to the recommended levels. Dr. Garrity expressed hope that all parties would come together on that.

ADMINISTRATION

Recommended EPC Board Policies for Adoption - Mr. Tom Koulianos, Director, EPC Finance and Administration, noted adopted policies would be posted on the EPC intranet. Referencing policy language, Mr. Koulianos stated references to the Board of County Commissioners (BOCC) would be substituted with EPC and references to the County Administrator would be substituted with Executive Director. He explained the basis for recommendations and referenced background material showing policies recommended for adoption. EPC staff recommended adoption of the highlighted policies. Regarding Policy .04.03.00, revised fee schedule of the Planning and Growth Management Department (PGMD), Commissioner Norman asked if the time frames for permit reviews were being adopted. Mr. Koulianos noted that item would be discussed

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in a later agenda item. Chairman Blair commended the efforts of Mr. Koulianos. **Commissioner Ferlita moved approval as recommended, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioner White had left the meeting; Commissioner Hagan was absent.)

EPC Fiscal Year (FY) 2008-2009 Budget Submittal Summary - Mr. Koulianos stated the budget had been submitted to the County Administrator, noted no additional positions were requested, and reviewed the budget summary, including capital requests for replacement computer equipment and equipment for the new lab to be opened in FY 2008. He confirmed guidelines established by the BOCC and the County Administrator were followed. Chairman Blair asked about participation in the computers for kids program. Mr. Koulianos stated EPC followed County guidelines, which were to turn surplus property over to the County. He referenced enhancements requested for continuation of the capital improvement project for the build-out of the second floor of the EPC building at Sabal Park and a \$10,000 request to come from the PRF for a study on social/economic impacts of artificial reefs. In response to Chairman Blair, Mr. Koulianos recalled funds saved on art. Chairman Blair called for a motion to adopt the budget. **Commissioner Sharpe so moved, seconded by Commissioner Ferlita, and carried five to zero.** (Commissioner White had left the meeting; Commissioner Hagan was absent.) Mr. Koulianos recognized staff who worked on the budget.

LEGAL DEPARTMENT

Alafia River Reclassification Process - Attorney Tschantz referenced a Comprehensive (Comp) Plan proposal related to reclassification of the Alafia River and Tampa Bypass Canal to Class I waters, reviewed proposed language and existing surface water classifications in Hillsborough County, and discussed the reclassification process. Mr. Bob Stetler, EPC staff, highlighted extra protections afforded and what demands would be made on surrounding communities by reclassification. Attorney Tschantz stated information would be reviewed by the Department of Environmental Protection (DEP), and the matter would be considered at a public hearing on April 19, 2007. Commissioner Sharpe asked if there was an explanation of public benefit. Chairman Blair said no scientific data was provided on whether a 30-foot buffer was better than a 15-foot buffer for preserving water.

Tampa Bay Water (TBW) General Counsel Richard Lotspeich stated TBW was already treating water from the Alafia River, noted water in the Alafia River currently met Class I water quality standards except for a few parameters, perceived issues surrounding those few parameters could be addressed and achieved, discussed future protection and the importance of gaining control of

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land uses that would be in the watershed contributing to a water body, reported TBW wanted to ensure Class I standards continued to be met, noted TBW had a state-of-the-art water treatment plant, referenced problems with water quality parameters TBW could not treat without huge costs, said the goal was to keep those parameters out of the water, reported TBW had secured services to begin providing supporting documentation to be filed with the DEP petition, recalled a land use survey showing 80 percent of land along the Alafia River was in the Environmental Lands Acquisition and Protection Program (ELAPP), opined making the designation correspond with ELAPP lands would support ELAPP goals, explained TBW was in the process of establishing a timetable to meet with stakeholders, and perceived the proposed classification change would not have adverse impacts on existing land uses and dischargers.

In response to Commissioner Sharpe, Attorney Lotspeich highlighted parameters that currently did not meet Class I standards. Responding to Commissioner Norman, Dr. Garrity explained no action was requested. Attorney Tschantz relayed language would be included in the Comp Plan if approved at the April 9, 2007, public hearing. Commissioner Norman asked if the information would be taken to the study committee formulated regarding buffers. Attorney Tschantz stated those were two separate processes. Dr. Garrity agreed taking the issue to the study committee would be a good idea.

Attorney Lotspeich stated the process would start when TBW filed the petition with DEP and expressed hope to have that filed after a scheduled stakeholders meeting. Commissioner Sharpe wanted to ensure stakeholders were informed and did not want standards included in the process if that would be too expensive or damaging. Chairman Blair agreed. Commissioner Ferlita supported the process. Attorney Lotspeich said the issue would be brought back to the TBW board of directors before the petition was filed. Commissioner Norman was trying to have local people have a say in the process before things were mandated and there was a conflict. Attorney Lotspeich understood the County was under separate time constraints related to the Comp Plan. Attorney Tschantz explained there was a separate Comp Plan issue related to development of a technical manual for buffers around waterways, which would also be considered at the April 19, 2007, public hearing. Attorney Lotspeich reported stakeholder meetings would not be completed until the end of May 2007. Responding to Commissioner Sharpe, Attorney Tschantz reviewed proposed language. At the request of Chairman Blair, Dr. Garrity agreed to meet with W and other stakeholders before the April 19, 2007, public hearing.

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Review of EPC Legislative Strategy and Process - Attorney Tschantz recalled previous approval of guidelines for staff regarding commenting on bills as they moved through the legislature, reviewed the old policy, and summarized the new policy. **Commissioner Norman moved staff recommendation, seconded by Commissioner Sharpe.** Chairman Blair referenced concerns with weakening the process. **The motion carried five to zero.** (Commissioner White had left the meeting; Commissioner Hagan was absent.)

Dr. Garrity noted Item IX, crematories discussion, and Item X, discussion on fertilizer education program, could be tabled for the next meeting. **Commissioner Norman moved to continue Items IX and X, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioner White had left the meeting; Commissioner Hagan was absent.)

COMMISSIONERS' REQUESTS

Wetlands Program Time Frames - Ms. Jadell Kerr, Director, EPC Wetlands Management Division, reviewed the EPC role in the permitting process and the development community perception that integration into the local jurisdictions would provide a more streamlined process; stated the EPC review was incorporated into ongoing review processes throughout all County jurisdictions and time frames prescribed within the Land Development Code were followed by EPC; highlighted time frames and requirements for PGMD, EPC wetland permitting, State and federal wetland permitting; and discussed future goals and staff recommendation that if time frames were adopted they would be broad to allow EPC to continue working with individual jurisdictions.

Commissioner Norman clarified questions regarding fee levels and asked if EPC had worked with customers and if those customers supported what was being presented. Ms. Kerr referenced work with PGMD, city of Tampa (Tampa), and other jurisdictions; understood there was no attempt to change time frames in the immediate future; and stated the EPC had an independent fee schedule for review. Commissioner Norman relayed complaints about EPC time frames and perceived individuals would pay more to speed up the process. Dr. Garrity agreed, recalled previous fee increases to hire additional staff, and said EPC was currently meeting 93 percent of all time frames. In response to Commissioner Norman, Ms. Kerr noted EPC was involved in an ongoing process with the Tampa Bay Builders Association (Builders Association) and PGMD, stated she did not know whether time frames were completely addressed, reported the Builders Association recognized responsibility in the permit review process and how applications were submitted, stated the County was trying to put together check lists to know what was received and that



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applications were processed timely, and mentioned difficulty in keeping staff. Dr. Garrity opined the development community was happy with time frames as long as those were met.

Commissioner Norman suggested giving answers in a shorter time frame even if that meant charging more. Dr. Garrity referenced a meeting scheduled with the development community. In response to Chairman Blair, Dr. Garrity explained EPC was 93 percent on time according to PGMD time frames. Commissioner Higginbotham asked if EPC had met with other municipalities besides Tampa. Ms. Kerr stated the other municipalities were involved in the process. Commissioner Ferlita perceived the item was a work in progress. Ms. Kerr highlighted permits reviewed and staff involved. Chairman Blair opined the County could always do better, wanted to know standards would be met, and suggested a report in 30 days. Dr. Garrity agreed. In response to Ms. Kerr, Chairman Blair asked that the report include the standards to which EPC would adhere. Ms. Kerr confirmed the report should include time frames for the individual jurisdictions. **Commissioner Norman moved to bring back a Consent agenda item outlining what was said in a report in 30 days, seconded by Commissioner Ferlita, and carried five to zero.** (Commissioner White had left the meeting; Commissioner Hagan was absent.)

Tampa Bay Estuary Program (TBEP) Funding - After noting the TBEP budget had not received an adjustment since FY 1999-2000, a decline in federal dollars, and efforts to invest in Tampa Bay, **Commissioner Norman moved to ask the EPC Chairman to send a letter to the member governments asking each to commit to adjusting the TBEP budget by their particular population and consumer price index for the upcoming years, seconded by Commissioner Sharpe.** Commissioner Norman suggested Dr. Garrity craft the letter on making a positive investment. Commissioner Sharpe thanked Commissioner Norman for leadership on the issue. Commissioner Norman recognized TBEP members. In response to Chairman Blair, Ms. Holly Greening, TBEP, reviewed the mission statement. Dr. Garrity referenced a newspaper article on the seagrass decline. Commissioner Ferlita expressed hope that a long-term goal would be to not let that slip by again and continue adding to the TBEP budget. **The motion carried five to zero.** (Commissioner White had left the meeting; Commissioner Hagan was absent.)

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There being no further business, the meeting was adjourned at 12:03 p.m.

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

CHAIRMAN

ATTEST:

PAT FRANK, CLERK

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

kc

MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION

March FY 2007

A. Public Outreach/Education Assistance:		
1. Phone Calls:		216
2. Literature Distributed:		<u>1</u>
3. Presentations:		<u>1</u>
4. Media Contacts:		<u>4</u>
5. Internet:		<u>63</u>
6. Host/Sponsor Workshops, Meetings, Special Events		<u>0</u>
		<hr/>
B. Industrial Air Pollution Permitting		
1. Permit Applications Received (Counted by Number of Fees Received):		
a. Operating:		<u>3</u>
b. Construction:		<u>0</u>
c. Amendments:		<u>0</u>
d. Transfers/Extensions:		<u>2</u>
e. General:		<u>2</u>
f. Title V:		<u>0</u>
2. Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval ( <sup>1</sup> Counted by Number of Fees Collected) - ( <sup>2</sup> Counted by Number of Emission Units affected by the Review):		
a. Operating <sup>1</sup> :		<u>1</u>
b. Construction <sup>1</sup> :		<u>3</u>
c. Amendments <sup>1</sup> :		<u>0</u>
d. Transfers/Extensions <sup>1</sup> :		<u>3</u>
e. Title V Operating <sup>2</sup> :		<u>1</u>
f. Permit Determinations <sup>2</sup> :		<u>0</u>
g. General:		<u>4</u>
3. Intent to Deny Permit Issued:		<u>1</u>
C. Administrative Enforcement		
1. New cases received:		<u>1</u>
2. On-going administrative cases:		
a. Pending:		<u>8</u>
b. Active:		<u>12</u>
c. Legal:		<u>3</u>
d. Tracking compliance (Administrative):		<u>24</u>
e. Inactive/Referred cases:		<u>0</u>
Total		<u>47</u>

3.	NOIs issued:	<u>0</u>
4.	Citations issued:	<u>0</u>
5.	Consent Orders Signed:	<u>4</u>
6.	Contributions to the Pollution Recovery Fund:	<u>\$8,750.00</u>
7.	Cases Closed:	<u>3</u>
D.	Inspections:	
1.	Industrial Facilities:	<u>9</u>
2.	Air Toxics Facilities:	
a.	Asbestos Emitters	<u>0</u>
b.	Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>8</u>
c.	Major Sources	<u>9</u>
3.	Asbestos Demolition/Renovation Projects:	<u>18</u>
E.	Open Burning Permits Issued:	<u>7</u>
F.	Number of Division of Forestry Permits Monitored:	<u>150</u>
G.	Total Citizen Complaints Received:	<u>84</u>
H.	Total Citizen Complaints Closed:	<u>72</u>
I.	Noise Sources Monitored:	<u>7</u>
J.	Air Program's Input to Development Regional Impacts:	<u>4</u>
K.	Test Reports Reviewed:	<u>228</u>
L.	Compliance:	
1.	Warning Notices Issued:	<u>9</u>
2.	Warning Notices Resolved:	<u>5</u>
3.	Advisory Letters Issued:	<u>1</u>
M.	AOR's Reviewed:	<u>0</u>
N.	Permits Reviewed for NESHAP Applicability:	<u>4</u>

**FEES COLLECTED FOR AIR MANAGEMENT DIVISION**  
**March FY 2007**

	<b>Total Revenue</b>
1. Non-delegated construction permit for an air pollution source	
(a) New Source Review or Prevention of Significant Deterioration sources	<u>\$0.00</u>
(b) all others	<u>\$0.00</u>
2. Non-delegated operation permit for an air pollution source	
(a) class B or smaller facility - 5 year permit	<u>\$0.00</u>
(b) class A2 facility - 5 year permit	<u>\$0.00</u>
(c) class A1 facility - 5 year permit	<u>\$0.00</u>
3. (a) Delegated Construction Permit for air pollution source (20% of the amount collected is forwarded to the DEP and not included here)	
(b) Delegated operation permit for an air pollution source (20% of the amount collected is forwarded to the DEP and not included here)	<u>\$5,600.00</u>
(c) Delegated General Permit (20% is forwarded to DEP and not included here)	<u>\$160.00</u>
4. Non-delegated permit revision for an air	<u>\$0.00</u>
5. Non-delegated permit transfer of ownership, name change or extension	<u>\$40.00</u>
6. Notification for commercial demolition	
(a) for structure less than 50,000 sq ft	<u>\$2,200.00</u>
(b) for structure greater than 50,000 sq ft	<u>\$0.00</u>
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	<u>\$900.00</u>
(b) renovation greater than 1000 linear feet or 1000 sq ft	<u>\$1,500.00</u>
8. Open burning authorization	<u>\$4,400.00</u>
9. Enforcement Costs	<u>\$2,751.00</u>

## M E M O R A N D U M

**DATE:** April 11, 2007

**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 MARCH 2007  
AGENDA INFORMATION**

### A. ADMINISTRATIVE ENFORCEMENT

1. New cases received	1
2. On-going administrative cases	114
a. Pending	7
b. Active	53
c. Legal	6
d. Tracking Compliance (Administrative)	33
e. Inactive/Referred Cases	15
3. NOI's issued	3
4. Citations issued	2
5. Consent Orders and Settlement Letters Signed	1
6. Civil Contributions to the Pollution Recovery Fund	\$11,175.00
7. Enforcement Costs collected	\$3,950.00
9. Cases Closed	5

**B. SOLID AND HAZARDOUS WASTE**

1. FDEP Permits (received/reviewed)	2/2
2. EPC Authorization for Facilities NOT requiring DEP permit	1/2
3. Other Permits and Reports	
a. County Permits	5/6
b. Reports	48/42
4. Inspections (Total)	293
a. Complaints	23
b. Compliance/Reinspections	22
c. Facility Compliance	31
d. Small Quantity Generator	217
e. P2 Audits	2
5. Enforcement	
a. Complaints Received/Closed	24/27
b. Warning Notices Issued/Closed	3/2
c. Compliance letters	78
d. Letters of Agreement	0
e. Agency Referrals	0
6. Pamphlets, Rules and Material Distributed	276

**C. STORAGE TANK COMPLIANCE**

1. Inspections	
a. Compliance	118
b. Installation	12
c. Closure	09
d. Compliance Re-Inspections	22
2. Installation Plans Received/Reviewed	04/03
3. Closure Plans & Reports	
a. Closure Plans Received/ Reviewed	05/03
b. Closure Reports Received/Reviewed	02/06
4. Enforcement	
a. Non-compliance Letters Issued/Closed	64/41
b. Warning Notices Issued/Closed	00/00
c. Cases referred to Enforcement	00
d. Complaints Received/Investigated	01/01
e. Complaints Referred	00
5. Discharge Reporting Forms Received	03
6. Incident Notification Forms Received	03
7. Cleanup Notification Letters Issued	03
8. Public Assistance	200+

**D. STORAGE TANK CLEANUP**

1. Inspections	30
2. Reports Received/Reviewed	88/109
a. Site Assessment	12/19
b. Source Removal	2/3
c. Remedial Action Plans (RAP's)	8/15
d. Site Rehabilitation Completion Order/ No Further Action Order	03/01
e. Active Remediation/Monitoring	44/51
f. Others	19/20
3. State Cleanup	
a. Active Sites	NO LONGER ADMINISTERED
b. Funds Dispersed	

**E. RECORD REVIEWS - 23**

**F. PUBLIC INFORMATION PROJECTS - 3**



**ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION  
MARCH, 2007**

**A. ENFORCEMENT**

1. New Enforcement Cases Received:	5
2. Enforcement Cases Closed:	1
3. Enforcement Cases Outstanding:	65
4. Enforcement Documents Issued:	7
5. Recovered costs to the General Fund:	\$ 800.00
6. Contributions to the Pollution Recovery Fund:	\$ -

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

1. Permit Applications Received:	34
a. Facility Permit:	3
(i) Types I and II	0
(ii) Types III	3
b. Collection Systems-General	11
c. Collection Systems-Dry Line/Wet Line:	17
d. Residuals Disposal:	0
2. Permit Applications Approved:	52
a. Facility Permit:	5
b. Collection Systems-General:	23
c. Collection Systems-Dry Line/Wet Line:	24
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):	2
a. Recommended for Approval:	2
5. Permits Withdrawn:	0
a. Facility Permit:	0
b. Collection Systems-General:	0
c. Collection Systems-Dry Line/Wet Line:	0
d. Residuals Disposal:	0

6. Permit Applications Outstanding:	77
a. Facility Permit:	11
b. Collection Systems-General:	38
c. Collection Systems-Dry Line/Wet Line:	28
d. Residuals Disposal:	0
7. Permit Determination:	2
8. Special Project Reviews:	0
a. Reuse:	0
b. Residuals/AUPs:	0
c. Others:	0
<b>C. INSPECTIONS - DOMESTIC</b>	
1. Compliance Evaluation:	11
a. Inspection (CEI):	1
b. Sampling Inspection (CSI):	7
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	3
2. Reconnaissance:	46
a. Inspection (RI):	7
b. Sample Inspection (SRI):	3
c. Complaint Inspection (CRI):	36
d. Enforcement Inspection (ERI):	0
3. Engineering Inspections:	52
a. Reconnaissance Inspection (RI):	3
b. Sample Reconnaissance Inspection (SRI):	0
c. Residual Site Inspection (RSI):	0
d. Preconstruction Inspection (PCI):	10
e. Post Construction Inspection (XCI):	39
f. On-site Engineering Evaluation:	0
g. Enforcement Reconnaissance Inspection (ERI):	0
<b>D. PERMITTING/PROJECT REVIEW - INDUSTRIAL</b>	
1. Permit Applications Received:	1
a. Facility Permit:	0
(i) Types I and II	0
(ii) Type III with Groundwater Monitoring:	1
(iii) Type III w/o Groundwater Monitoring:	0
b. General Permit:	0

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:	2
3. Special:	2
a. Facility Permits:	1
b. General Permits:	1
4. Permitting Determination:	0
5. Special Project Reviews:	50
a. Phosphate:	5
b. Industrial Wastewater:	28
c. Others:	17
<b>E. INSPECTIONS - INDUSTRIAL</b>	
1. Compliance Evaluation:	15
a. Inspection (CEI):	14
b. Sampling Inspection (CSI):	0
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	1
2. Reconnaissance:	19
a. Inspection (RI):	6
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	13
d. Enforcement Reconnaissance Inspections (ERI):	0
3. Engineering Inspections:	0
a. Compliance Evaluation (CEI):	0
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:	
a. Domestic:	30
(i) Received:	20
(ii) Closed:	10
b. Industrial:	18
(i) Received:	10
(ii) Closed:	8

2. Warning Notices:	
a. Domestic:	19
(i) Received:	7
(ii) Closed:	12
b. Industrial:	7
(i) Received:	2
(ii) Closed:	5
3. Non-Compliance Advisory Letters:	19
4. Environmental Compliance Reviews:	169
a. Industrial:	61
b. Domestic:	108
5. Special Project Reviews:	0
<b>G. RECORD REVIEWS</b>	
1. Permitting:	5
2. Enforcement:	2
<b>H. ENVIRONMENTAL SAMPLES ANALYZED/REPORTS REVIEWED FOR:</b>	
1. Air Division:	80
2. Waste Division:	0
3. Water Division:	14
4. Wetlands Division:	0
5. ERM Division:	152
6. Biomonitoring Reports:	3
7. Outside Agency:	26
<b>I. SPECIAL PROJECT REVIEWS:</b>	
1. DRIs:	4
2. ARs:	1
3. Technical Support:	5
4. Other:	2

**EPC WETLANDS MANAGEMENT DIVISION  
BACKUP AGENDA  
March 2007**

A. General	Totals
1. Telephone Conferences	891
2. Unscheduled Citizen Assistance	99
3. Scheduled Meetings	187
4. Correspondence	563
B. Assessment Reviews	
1. Wetland Delineations	71
2. Surveys	44
3. Miscellaneous Activities in Wetland	31
4. Impact/ Mitigation Proposal	41
5. Tampa Port Authority Permit Applications	39
6. Wastewater Treatment Plants (FDEP)	3
7. DRI Annual Report	5
8. Land Alteration/Landscaping	3
9. Land Excavation	0
10. Phosphate Mining	7
11. Rezoning Reviews	52
12. CPA	3
13. Site Development	58
14. Subdivision	110
15. Wetland Setback Encroachment	9
16. Easement/Access-Vacating	0
17. Pre-Applications	48
18. On-Site Visits	203
C. Investigation and Compliance	
1. Complaints Received	52
2. Complaints Closed	0
3. Warning Notices Issued	19
4. Warning Notices Closed	19
5. Complaint Inspections	65
6. Return Compliance Inspections	52
7. Mitigation Monitoring Reports	17
8. Mitigation Compliance Inspections	34
9. Erosion Control Inspections	46
D. Enforcement	
1. Active Cases	21
2. Legal Cases	2
3. Number of "Notice of Intent to Initiate Enforcement"	4
4. Number of Citations Issued	0
5. Number of Consent Orders Signed	4
6. Administrative - Civil Cases Closed	5
7. Cases Referred to Legal Department	2
8. Contributions to Pollution Recovery	10725
9. Enforcement Costs Collected	1420

**WETLAND REPORT FOR REVIEW TIMES 2007**

<b>MONTH</b>	<b># OF REVIEWS</b>	<b>% On Time</b>	<b>% Late</b>	<b>% Early</b>
MARCH	443	42%	3%	55%
FEBRUARY	373	35%	7%	58%
JANUARY	490	43%	15%	42%

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
POLLUTION RECOVERY TRUST FUND  
AS OF 03/31/07**

Balance as of 10/01/06	*		\$1,933,214
Interest Accrued		50,035	
Deposits	FY07	177,196	
Disbursements	FY07	(\$155,568)	
Intrafund Transfer 910		(\$1,041,903)	
Total			\$962,974
Water & Coastal Area Restoration & Maint.		2,808	
 Pollution Recovery Fund Balance			 \$960,166
 <b>Old Encumbrances</b>			
Remedial Illegal Dump Asbestos (66)		4,486	
USF Seagrass Restoration (99)		26	
HCC Seagrass Restoration		3,319	
Agr Pesticide Collection (100)		18,355	
Riverview Library Invasive Plant Removal		103	
Simmons Park Invasive Plant Removal		3,364	
Water Drop Patch/Girl Scouts		3,023	
Artificial Reef Program		98,784	
Pollution Prevention/Waste Reduction (101)		21,752	
PRF Project Monitoring		26,932	
Total		180,144	
 <b>FY2006 Approved Projects</b>			
HCC Land Based Sea Grass Nursery		20,000	
Seagrass Restoration & Longshore Bar Recovery		75,000	
Nature's Classroom Phase III		188,000	
2005 State of the River		4,727	
Seawall Removal Fort Brooke Park		100,000	
Analysis of Sources of Fecal Indicator Bacteria		125,000	
Pollution Monitoring Pilot Project		45,150	
Industrial Facilities Stormwater Inspection Program		28,885	
Agriculture Pesticide Collection		24,000	
Knights Preserve		35,235	
Agriculture Best Mgmt Practice Implementation		150,000	
Oyster Reef Shoreline		30,000	
Nitrogen Emission/Deposition		40,906	
Lake Thonotosassa Muck Removal		75,000	
Erosion Control/Oyster Bar Habitat Creation		75,000	
Tank Removal		25,000	
Total		1,041,903	
 <b>Total of Encumbrances</b>			 \$ 180,144
 <b>Minimum Balance</b>			 120,000
 <b>Balance Available 03/31/07</b>			 \$660,022
<hr/>			
* 10-002-910 Projects included in 10/01/06 Balance			
Brazilian Pepper (92)		\$ 26,717	
COT Parks Dept/Cypress Point (97)		100,000	
Bahia Beach Restoration (contract 04-03)		150,000	
Tampa Shoreline Restoration		30,000	
Field Measurement for Wave Energy		51,251	
Water & Coastal Area Restoration & Maint.		5,285	
Port of Tampa Stormwater Improvement		45,000	
Natures Classroom Capital Campaign		44,000	
Total		\$ 452,253	

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



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 3629 Queen Palm Dr. • Tampa, FL 33619  
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 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.

ENVIRONMENTAL PROTECTION COMMISSION  
 OF HILLSBOROUGH COUNTY  
 ANALYSIS OF GARDINIER SETTLEMENT TRUST FUND  
 AS OF MARCH 31, 2007

Fund Balance as of 10/01/06	\$ 280,512
Interest Accrued	5,898
Disbursements FY07	34,707

Fund Balance	\$ 251,703
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Encumbrances Against Fund Balance:

SP625 Marsh Creek/Ruskin Inlet	\$ 25,900
SP627 Tampa Bay Scallop Restoration	22,613
SP630 E.G. Simmons Park	100
SP636 Fantasy Island	4,208
SP634 Cockroach Bay ELAPP Restoration	198,882

Total of Encumbrances	\$ 251,703
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Fund Balance Available March 31, 2007	\$ - 0 -
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## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Legal Case Summary for April 2007

**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 pending 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 pending 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:** April 2007 EPC Legal Case Summary

**EPC LEGAL DEPARTMENT MONTHLY REPORT**  
**April 2007**

**A. ADMINISTRATIVE CASES**

**NEW ADMINISTRATIVE CASES [ 1 ]**

**Martin Marietta Aggregates vs. EPC** [LEPC07-005]: On March 9, 2007 Martin Marietta Aggregates filed a Petition for Administrative Hearing challenging the EPC's Notice of Denial regarding air construction permit number 0571214-005-AC. (RM)

**EXISTING ADMINISTRATIVE CASES [ 5 ]**

**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 current 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 are still in negotiations. A pre-hearing conference was conducted on September 22, 2004 to discuss the case. The parties have conducted mediation to attempt to resolve the matter without a hearing. The applicant has re-submitted the new final site plan for re-zoning determination and the EPC is waiting for the decision. Hillsborough County denied the re-zoning application and the EPC staff is waiting to see what new action the applicant takes. The applicant has filed a Chapter 70, F.S. dispute resolution challenge of the County's re-zoning decision. The parties have agreed to wait until at least June 9, 2006 for resolution of the dispute resolution proceeding before moving this case forward. 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. (AZ)

**EPC vs. USACOE and Florida Department of Environmental Protection** [LEPC05-005]: On February 11, 2005 EPC requested additional time to file an appeal of the FDEP's intent to issue an Environmental Resource Permit (ERP) permitting the dredging and deepening of the Alafia River Channel. The FDEP provided the EPC until March 16, 2005 to file the appeal. On February 17, 2005, the EPC board authorized the EPC Legal Department to file the appeal challenging the proposed FDEP permit. The EPC filed its request for a Chapter 120, F.S. administrative hearing challenging the conditions imposed in the permit on March 16, 2005. The parties have sought an additional extension of time to continue negotiations. The parties are in negotiations to resolve the case. (AZ)

**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 had until July 28, 2006 to file an amended appeal. 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 is in abeyance until April 2, 2007. No final hearing has been set pending possible settlement. (AZ)

**Mantua Manufacturing Company** [LEPC06-027]: On September 27, 2006 Mantua Manufacturing Co., a metal coating operation that emits air pollutants, filed a petition for administrative hearing challenging the Notice of Permit Denial that was issued to them on September 19, 2006. The parties are negotiating. (RM)

**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. The Hearing Officer has been assigned. The EPC has sent the Appellant interrogatories and requests for production of documents. The final hearing date has been scheduled for April 2, 2007. The parties are conducting discovery and are preparing for the final hearing. 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 is due no later than May 16, 2007. The matter will then be transferred back to the Commission for adoption of a Final Order at the June 2007 regular meeting. (AZ)

## RECENTLY RESOLVED ADMINISTRATIVE CASES [ 1 ]

**Envirofocus Technologies, LLC (f/k/a Gulf Coast Recycling) v. EPC and DEP** [LCHP06-002]: On January 4, 2006, the EPC received a petition for hearing from Gulf Coast Recycling regarding certain conditions in a draft air operations permit the EPC issued to them. The parties are meeting to try to agree upon appropriate conditions to minimize the release of lead to the environment. On June 1, 2006, Gulf Coast Recycling transferred the facility to a new owner, Envirofocus Technologies, LLC, who has indicated a willingness to improve the facility but the case remains open until resolution of the application. The permit, the renewal application, and the petition against the permit have all been transferred into Envirofocus Technologies name and the EPC is processing the permit renewal request. The parties have agreed upon permit language and the petitions were withdrawn on February 27, 2007. (RM)

## **B. CIVIL CASES**

### NEW CIVIL CASES [ 2 ]

**Dwayne Gillispie and Donice and Mohammad F. Bhadelia** [LEPC07-007]: Authority to take appropriate action against the parties was granted by the Commission on March 15, 2007 for unresolved chapter 1-11 wetland violations. The parties are in settlement discussions. See below case. (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. (RM)

### EXISTING CIVIL CASES [ 10 ]

**Integrated Health Services** [LIHSF00-005]: IHS, a Delaware corporation, filed for bankruptcy and noticed EPC as a potential creditor. IHS is a holding company that acquired a local nursing home, which operation includes a domestic wastewater treatment plant that is not in compliance. The Debtor filed a motion requesting that utility companies be required to continue service so that their residents can continue without relocation. (RT)

**Tampa Bay Shipbuilding** [LEPC04-011]: Authority to take appropriate action against Tampa Bay Shipbuilding for violations of permit conditions regarding spray painting and grit blasting operations, exceeding the 12 month rolling total for interior coating usage and failure to conduct visible emission testing was granted on March 18, 2004. The parties are currently in negotiations. (RT)

**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 on or about April 5, 2007. (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. (AZ)

**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 Oct. 19, 2006 the EPC filed a Motion to Dismiss the 2DCA appeal. The Court denied the Motion to Dismiss the appeal and the Appellants' brief was due in March 2007. The Appellants filed the initial brief and the Appellees EPC and James Winterroth requested additional time to file their answer brief. The request for additional time was based on the Court's order requiring the record be supplemented. (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)

**Ryaid Suleiman, et al. (Kings Food Mart)** [LEPC06-026]: Authority was granted on September 26, 2006 to pursue appropriate legal action against Respondents Ryaid Suleiman,, Siham Jaber, Nader Jaber, Nina Jaber, Maher Jaber and Thaer Jaber for violations of the EPC Storage Tank Rule. Citations were entered against the respondents on March 29, 2005. No appeal of the citations was filed and they became final orders of the Commission. The EPC Legal Dept. is preparing to file a lawsuit to compel compliance with the Final Orders. (AZ)

**Dwayne Gillispie and Donice Bhadelia** [LEPC06-032]: On November 13, 2006 the Plaintiffs filed and served a lawsuit against three EPC employees for alleged violations of federal civil rights. Plaintiffs are also seeking a declaratory judgment in federal court concerning EPC wetland regulations. The EPC Legal Department filed motions to dismiss each EPC employee defendant on December 8, 2006. On December 18, 2006 the Plaintiffs amended their lawsuit to include the EPC as a defendant. The Legal Department re-filed the motions to dismiss the individual lawsuits and the EPC is waiting for the court to respond. The three employee defendants also requested the court sanction the Plaintiffs for the frivolous lawsuits. The Plaintiffs did not serve the lawsuit against the EPC until March 1, 2007. The EPC filed a motion to dismiss the case in March 2007. The parties are in negotiations to settle the matter. (AZ / RT)

**Hendry Corporation** [LEPC06-033]: On November 16, 2006, the EPC Board authorized the EPC to file a lawsuit against the Hendry Corporation for multiple violations of state air pollution regulations and for failure to comply with a Consent Order regarding ship repair facility operation and maintenance. The parties are negotiating a settlement. (RM)

**Phillips & Munzel Oil Co., Inc.** [LEPC06-034] Authority to take appropriate action including filing a civil lawsuit was granted by the Commission on December 14, 2006. The Respondent is currently not in compliance with underground storage tank regulations. The EPC is attempting to negotiate a settlement in this matter. (AZ)

#### **RECENTLY RESOLVED CIVIL CASES [ 1 ]**

**Transpartz, Inc., Scott Yaslow, and Ernesto and Judith Baizan** [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 a Preliminary Contamination Assessment Plan be conducted on the property for discharges of oil/transmission fluid to the environment. On July 21, 2006 the responsible parties entered into a settlement that required them to perform all the necessary corrective actions and to pay \$15,000 in penalties and \$2,400.00 in administrative costs. The case was closed in August 2006. The responsible parties have not performed any corrective actions and continue to operate the facility in violation of the applicable rules. On October 20, 2006 the Legal Department filed a lawsuit seeing injunctive relief and requesting civil penalties and costs. The parties are in negotiations to resolve the case, nonetheless the EPC filed for a default judgment as the Defendants failed to answer the Complaint and the Clerk issued a default in the matter. A consent final judgment was agreed upon and executed on February 16, 2007. (RM)

#### **C. OTHER OPEN CASES [10]**

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)

**Alcoa Extrusions, Inc.** [LEPC06-007]: On March 20, 2006, Alcoa Extrusions, Inc. filed a request for an extension of time to file a petition for an administrative hearing concerning a Title V draft Air permit. The Legal Dept. granted the extension request and the Petitioner has until May 22, 2006 to file a petition. On May 10, 2006, the petitioner filed a second request for an extension of time, the request was granted and the petitioner had until August 21, 2006 to file a petition in this matter. On August 10, 2006, Petitioner filed a third request for an extension of time. The request was granted and the Petitioner had until November 20, 2006 to file a petition. A fourth request for an extension of time was entered on November 10, 2006. The request was granted and petitioner has until February 19, 2007 to file a petition. The Petitioner filed a fifth request for extension of time. The request was granted and Petitioner has until March 21, 2007 to file a petition regarding this matter. (RT)

**James Hardie Building Products, Inc.** [LEPC06-018]: One June 1, 2006, James Hardie Building Products, Inc. filed a request for an extension of time to file a Petition for Administrative Hearing regarding a combined Air operation and Construction permit. The request was granted and the Petitioner has until August 4, 2006 to file a petition in this matter. Due to ongoing settlement talks, a extensions has been approved through February 23, 2007. Petitioner filed a request for an additional extension of time to respond to a recently issued draft permit. The request was granted and Petitioner has until March 30, 2007 to file a petition in this matter. (RM)

**Sun Tampa East, LLC d/b/a Tampa East RV Resort** [LEPC06-029]: On October 2, 2006 Tampa East RV Resort filed a request for an extension of time to file a petition for administrative hearing with regard to a Notice of Permit Denial. Petitioner has until February 12, 2007 to file a petition in this matter and the parties are negotiating a settlement. Petitioner has filed a request for an additional extension of time. The request was granted and Petitioner has until March 29, 2007 to file a petition in this matter. Petitioner filed an additional request for extension of time to provide an opportunity to review comments and resolve any remaining issues with the draft permit. The request was granted and Petitioner has until May 14, 2007 to file a petition in this matter. (RM)

**Hendry Corporation** [LEPC06-035]: On December 1, 2006, the EPC issued a Notice of Violation to Hendry Corporation for multiple violations of state air pollution regulations at their ship repair facility. Hendy requested an extension of time and the EPC has granted extensions through March 5, 2007. The parties are negotiating a settlement. (RM)

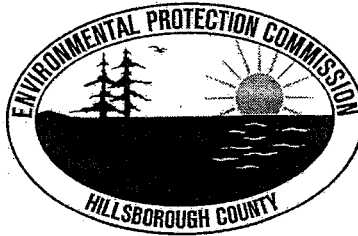
**Gulf Sulphur Services** [LEPC07-001]: On January 2, 2007 Gulf Sulphur Services filed a request for an extension of time to file a petition for administrative hearing with regard to a draft air permit #0570082-012-AO. An extension of time was granted through February 7, 2007. Petitioner filed a second request for an extension of time. The request was granted and Petitioner shall have until March 19, 2007. A permit has been issued and the case has been closed. (RM)

**Gulf Sulphur Services** [LEPC07-002]: On January 2, 2007 Gulf Sulphur Services filed a request for an extension of time to file a petition for administrative hearing with regard to a draft air permit #0570100-012-AO. An extension of time was granted through February 7, 2007. Petitioner filed a second request for an extension of time. The request was granted and Petitioner shall have until March 19, 2007. A permit has been issued and the case has been closed. (RM)

**Kinder Morgan Operating LP "C"** [LEPC07-003]: On January 19, 2007 Kinder Morgan Operating LP "C" filed a request for an extension of time with regard to draft air permit #0570024-013-AC. An extension of time was granted through March 26, 2007. (RM)

**Separation Technologies** [LEPC07-004]: On February 1, 2007, Separation Technologies LLC filed a request for an extension of time to file a petition for administrative hearing with regard to draft air permit #0571326-001-AC. An extension of time was granted through March 7, 2007. A final permit issued and the case is closed. (RM)

**In re: SWFWMD Waiver Request** [LEPC07-006]: In accordance with Chapter 1-11, Rules of the EPC, the Southwest Florida Water Management District (SWFWMD) filed a permit application to impact wetlands at the Flatwoods Recreation Site and Lower Hillsborough Oak Ridge Wet Crossings Projects. SWFWMD must mitigate for its impacts, but they do not want to place a conservation easement on the mitigation. On February 14, 2007 SWFWMD requested a waiver of section 1-11.08(6)(e), Rules of the EPC. This rule requires a permanent conservation easement for a mitigation area which alone or cumulatively exceeds 0.5 acres. A public hearing will be held April 19 to consider granting the waiver as the land is maintained as conservation lands by the SWFWMD



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Crematory Permitting Update

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

**Division:** Air Management

**Recommendation:** Accept this staff update on environmental regulation of crematories.

**Brief Summary:** Recent changes in the State's environmental rules streamlined the authorization process for certain businesses to construct and operate air pollution sources including crematories. As a result, crematory operators no longer have to get construction permits or go through a public notice prior to operating. Two facilities have announced their intention to set up in the Ybor City area and some residents have expressed their concerns to the Agency. This was discussed at a Board of County Commissioners' meeting on April 4, 2007.

The BOCC passed a motion directing EPC staff to look at the air rules governing crematory emissions and report back to the EPC Board in 60 days. Staff is currently working to meet that deadline and this is simply to serve as an update.

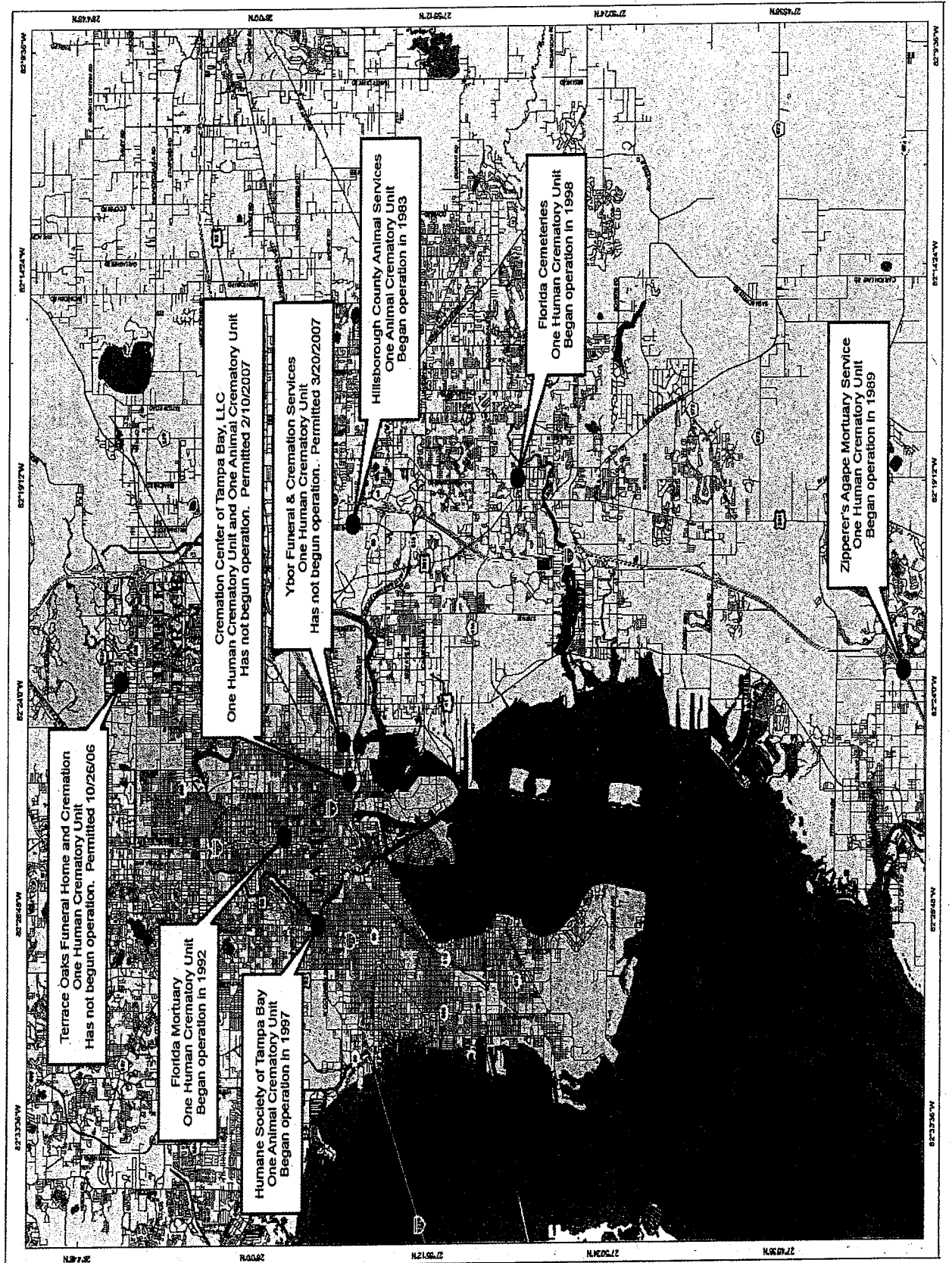
**Background:** As part of a legislative initiative, the Florida Department of Environmental Protection revised the State permitting process to eliminate the requirement for crematories and other minor air pollution sources to obtain a public noticed construction permit. They now go straight to what is called a general permit. As a result, these facilities now construct and operate with just a 30 day notice to the EPC staff. In effect they are simply advising us they feel they are eligible to construct/operate at the location of their choosing under the State's revised procedures, and neither staff nor the public have the opportunity to consider additional precautions. EPC's local noticing rule does provide a notification mechanism for affected neighborhoods, but it does not provide a legal point of entry.

EPC staff received two notifications since the beginning of the year for crematories to operate in the Ybor City area. The first was Cremation Center of Tampa Bay at 1410 N. 26<sup>th</sup> St. and the second is Ybor Funeral and Cremation Center at 3822 East 7<sup>th</sup> Avenue. Both are now final.

The citizens and the BOCC have asked staff to look at the existing rules and see if they can be improved. Staff intends to work with citizens and the crematory operators and report back with recommendations. The land use agencies will be encouraged to participate as well.

**List of Attachments:** None

# Crematories In Hillsborough County





## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Wetland Permitting Timeframes

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

**Division:** Wetlands Management Division

**Recommendation:** The Commission adopts by policy the wetland review timeframes of the EPC Executive Director Authorizations as attached hereto, and of the various land development jurisdictions within Hillsborough County. The Commission also authorizes future adjustment of timeframes when necessary to comply with adjustments made by the individual land development jurisdictions.

**Brief Summary:** The Wetlands Management Division reviews land development applications in concert with the development review sections of the various jurisdictions that occur within Hillsborough County. As such, review timeframes targeted by the Division are reflective of the timeframes codified in the land development codes of or implemented by the individual jurisdictions. For those applications where the wetland limits are to be determined or where wetland impacts are sought, a separate review process through EPC is required. Although the Wetland Rule does not specifically speak to a timeframe for reviewing these EPC-specific actions, an internal clock of 30 calendar days has been established and is provided for in the Division's operating guidelines.

**Background:** Since the adoption of Chapter 1-11, Wetlands, Rules of the EPC, the Wetlands Management Division has been providing comments pertaining to land development applications pending with Hillsborough County Planning and Growth Management, the City of Tampa, the City of Temple Terrace, the City of Plant City and the Tampa Port Authority. The Wetlands Management Division staff welcomes the opportunity to be involved in the earliest stages of project review as we have found that in most cases, projects can be guided such that they are designed around existing wetlands, thereby avoiding wetland impacts all together.

Upon adoption of the Wetland Rule in 1985, the EPC and representatives from the development community determined that a concurrent review with the various jurisdictions would streamline and increase the efficiency of the permitting process. By working through the land development review sections of the various jurisdictions, there was the added benefit of preventing avoidable wetland impacts during the earliest stages of design. As a result, EPC review is a requirement of the various land development jurisdictions and, therefore, EPC comments are provided pursuant to the timeframes prescribed thereby.

**List of Attachments:** EPC Executive Director Authorization Timeframes  
Current Wetland Review Timeframes Table  
Report pertaining to Customer Outreach



**EPC EXECUTIVE DIRECTOR AUTHORIZATIONS  
WETLAND REVIEW TYPES, ACTIVITIES, AND TIMEFRAMES FOR REVIEW**

<b>Review Type</b>	<b>Field Visit Required</b>	<b>Environmental Scientist Review Required</b>	<b>Engineering Review Required</b>	<b>Time Frames for Review</b>
<b>EPC Reviews</b>				
Wetland Delineation**	X			30 calendar days
Wetland Survey Approval**		X		10 working days
Miscellaneous Activities in Wetlands** (docks, stormwater, boardwalks, transmission lines, etc.)	X	X	X	30 calendar days
Wetland Impacts/Mitigation**	X	X	X	30 calendar days

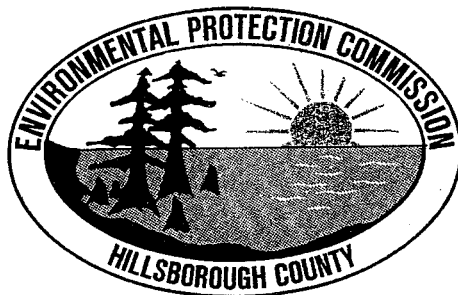
**EPC WETLAND REVIEW TYPES, ACTIVITIES, AND TIMEFRAMES FOR REVIEW**

<b>Review Type</b>	<b>Field Visit Required</b>	<b>Environmental Scientist Review Required</b>	<b>Engineering Review Required</b>	<b>Time Frames for Review</b>
<b>EPC Reviews</b>				
Wetland Delineation**	X			30 calendar days
Wetland Survey Approval**		X		10 working days
Miscellaneous Activities in Wetlands** (docks, stormwater, boardwalks, transmission lines, etc.)	X	X	X	30 calendar days
Wetland Impacts/Mitigation**	X	X	X	30 calendar days
<b>HC Planning and Growth Mgmt.</b>				
Rezoning	X	X		10 working days
Subdivision Certified Parcel	X	X		5 working days
Platted Subdivision Without Improvements	X	X		5 working days
Platted Subdivision With Improvements	X	X		5 working days
Preliminary Plat	X	X		15 working days
Subdivision Construction Plans		X	X	20 working days
Final Plat		X		10 working days
As-builts	X	X		10 working days
Commercial Site Preliminary Plan	X	X		15 working days
Commercial Site Construction Plan		X	X	20 working days
Minor Commercial Site Construction	X	X	X	10 working days
Natural Resources Other	X	X		10 working days
Natural Resources Grubbing	X	X		10 working days
Agricultural Exemption	X	X		5 working days
Land Excavation	X	X	X	20 working days
Access management	X	X		10 working days
Phosphate Mining	X	X	X	45 working days
<b>Tampa Port Authority</b>	X	X		14 calendar days
<b>DRI</b>		X		14 working days
<b>ERP</b>		X	X	30 calendar days
<b>ACOE</b>		X	X	14 calendar days

Review Type	Field Visit Required	Environmental Scientist Review Required	Engineering Review Required	Time Frames for Review
<b>City of Tampa</b>				
Preliminary	X	X		14 calendar days
Final Plat		X		14 calendar days
Construction Plans	X	X	X	30 calendar days
<b>City of Temple Terrace</b>				
Preliminary	X	X		14 calendar days
Final Site Plans	X	X	X	14 calendar days
<b>City of Plant City</b>				
Preliminary	X	X		21 calendar days
Construction Plans	X	X	X	21 calendar days
Rezoning	X	X		21 calendar days
Final Plat		X		21 calendar days

\*\* indicates EPC Authorization

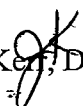
COMMISSION  
Brian Blair  
Rose V. Ferlita  
Ken Hagan  
Al Higginbotham  
Jim Norman  
Mark Sharpe  
Kevin White



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:** April 9, 2007  
**TO:** Brian Blair, EPC Chair  
**THRU:** Richard D. Garrity, Ph.D., EPC Executive Director  
**FROM:**  Jadell Keefe, Director, Wetlands Management, EPC  
**SUBJECT:** CUSTOMER OUTREACH

During the March 2007 EPC Board meeting, the staff of the Wetlands Management Division was asked whether or not we were reaching out to our customers regarding permit reviews and timeframes. The Wetlands Management Division considers outreach to be a fundamental component of our program, understanding that greater efficiencies can be gained when all parties understand the review process and appurtenant requirements.

To facilitate the process, EPC's Wetlands Management Division staff conducts approximately 320 meetings per month. These meetings are intended to provide the applicant with direction as their application progresses from conception to implementation and to apprise applicants of the environmental constraints on their properties. Discussions of applicant's review and financial deadlines are often a topic as we make every effort to assist them in fulfilling their responsibilities.

EPC Wetlands Management staff has met often with the Tampa Bay Builders Association (TBBA) to discuss positive steps to improve our interaction. At present, the Wetlands Management staff has made arrangements with the TBBA to meet whenever they feel it necessary to discuss our interactions. Likewise, in March, EPC staff met with the Tampa Bay Regional Coalition, an association of business interests whose goal is to support quality growth management. At that meeting, EPC staff discussed the wetland setback issue as part of Hillsborough County's Comprehensive Plan updates and the internal actions of Wetlands Management staff during the processing of land development applications. Please find attached the meeting agenda and follow-up correspondence.

Memo, Commissioner Brian Blair  
April 9, 2007  
Page 2 of 2

The Wetlands Management Division takes its role in the protection and regulation of wetlands very seriously. Not only does the Division see itself as a regulatory body, it also takes much pride in the care and service it provides to the average citizen applicant and members of the development community alike. It is and will continue to be the Division's priority to adopt an attitude of professionalism and service as it endeavors to protect the County's precious wetland resources.

C: Hillsborough County Commissioner, Rose V. Ferlita  
Hillsborough County Commissioner, Ken Hagan  
Hillsborough County Commissioner, Al Higginbotham  
Hillsborough County Commissioner, Jim Norman  
Hillsborough County Commissioner, Mark Sharpe  
Hillsborough County Commissioner, Kevin White

Attachment

# Tampa Bay Regional Coalition

Supporting a Regional Approach to Quality Growth

6107-B Memorial Highway  
Tampa, FL 33615  
813-885-4641

March 16, 2007  
9:00 - 10:30 a.m.  
GTAR/TBBA  
Tampa  
**Agenda**

Welcome and Self Introductions

Mike Biddle

Introduction of Dr. Richard Garrity,  
Executive Director,  
Environmental Protection Commission of Hillsborough County

Mike Peterson

Financial Report  
2007 Membership Dues - Invitations to Join

Jeff Rogo

Hillsborough Co. Comprehensive Plan

Jennifer Motsinger

Reality Check Tampa Bay, 5/18  
Mike Biddle, Kevin Fulcher, Elise Schreiner

Pasco County Transportation Impact Fee Increase

Michael Brooks

Other Issues:

Pinellas Inclusionary Zoning  
BOCC Workshop, 4/19

Andrea Baldwin, Jeff Rogo

Florida Hometown Democracy  
Foundation to Reserve Florida's Future  
Last Chance Lake Worth

Jeff Rogo

Hillsborough Co. Transportation Task Force

Next Meeting – April 20?



REC'D

MAR 20 2007

**Tampa Bay Regional Coalition**

*Supporting a Regional Approach to Quality Growth*

ENV. PROT. COMM  
OF H.C.

6107-B Memorial Highway  
Tampa, FL 33615  
813-885-4641

March 19, 2007

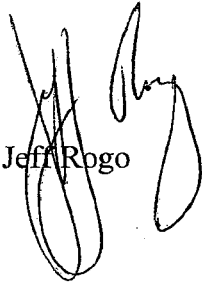
Rick Garrity, Ph.D., Executive Director  
Environmental Protection Commission of Hillsborough Co.  
3629 Queen Palm Drive  
Tampa FL 33619

Dear Dr. Garrity:

Thanks to you and Ms. Kerr for meeting with the members of the Tampa Bay Regional Coalition last Friday.

We appreciate your willingness to discuss the wetlands setback issue with us.

Sincerely,



Jeff Rogo

RECEIVED

MAR 23 2007

EPC OF H.C.  
WETLANDS





## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Request for authority to take appropriate legal action against Bengal Petroleum #112, Inc., Bengal Petroleum #111, Inc. and Mohammed Rahman.

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

**Division:** Waste Management

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

**Brief Summary:** Mohammed D. Khan is the registered agent for Bengal Petroleum #112, Inc., which owns property and operates a retail gas station located at 6101 S. Macdill Avenue, Tampa, Florida. The gas station contains one regulated 20,000 gallon underground storage tank containing gasoline that was not in compliance with the EPC Act and Rules of the EPC, Chapter 1-12. All violations have been resolved, however, EPC has been unable to obtain an appropriate settlement of the case.

In addition, Mohammed D. Khan is the President of Bengal Petroleum #111, Inc. which owns property located at 3801 S. Dale Mabry Highway, Tampa, Florida. Mohammed Rahman operates a retail gas station on the property. The gas station contains two regulated underground storage tanks containing gasoline, one 12,000 gallon and one 8,000 gallon, that are currently not in compliance with the EPC Act and Rules of the EPC, Chapter 1-12.

**Background:** Bengal Petroleum #112, Inc. A Notice of Intent to Initiate Enforcement (NOI) was sent to Mr. Mohammed Khan on April 28, 2006, and copied to Jalal Ahmed. Since that time all violations have been resolved and a proposed settlement letter was faxed to Mohammed Khan on October 27, 2006. The Respondent has failed to agree to a negotiated settlement for the previous existing violations. Therefore, we are requesting authority to take appropriate legal action to seek appropriate penalties and recovery of the administrative costs.

Bengal Petroleum #111, Inc. Due to a history of non-compliance, EPC staff issued a Citation of Violation and Order to Correct to Mohammed Khan and Mohammed Rahman with a copy sent to Jalal Ahmed. Neither Citations were appealed and have become Final Orders. The violations include failure to maintain an approved method of release detection, failure to perform monthly release detection using an approved method for double-walled tanks, failure to install and maintain an approved method of interstitial monitoring for release detection, failure to investigate the cause of sheen in the sump, failure to perform monthly visual inspections and interstitial monitoring, and failure to maintain a monthly log of all inspections, failure to remove water from the piping sump and dispenser liners, and failure to provide records for a two year period. To date, EPC has received no evidence that the violations have been corrected. Therefore, we are requesting authority to take appropriate legal action to compel compliance with the EPC Act and Rules of the EPC and to recover appropriate penalties and costs.

Both sites have had a history of non-compliance of environmental regulations. Bengal Petroleum #112 had enforcement case #03-25324 which was initiated on 4-22-03 and closed on 9-28-05. Bengal Petroleum #111 had enforcement case #03-25302 which was initiated on 4-21-03 and closed on 9-28-05.





## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Southwest Florida Water Management District Wetland Rule Waiver Request

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

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

**Recommendation:** Hold a public hearing and approve SWFWMD's waiver request.

**Brief Summary:** In accordance with Chapter 1-11, Rules of the EPC, the SWFWMD filed a permit application to impact wetlands at the Flatwoods Recreation Site and Lower Hillsborough Oak Ridge Wet Crossings Projects. As part of the requirements to obtain a wetland permit, the EPC rules require applicants to provide a conservation easement to protect mitigation that offsets the proposed impact. In lieu of recording a conservation easement, SWFWMD filed a waiver application. SWFWMD requests a waiver of section 1-11.08(6)(e), Rules of the EPC. This rule requires a permanent conservation easement for a mitigation area which alone or cumulatively exceeds 0.5 acres. EPC staff recommends granting the waiver as the land is maintained as conservation lands by the SWFWMD already, thus making the need for a conservation easement unnecessary.

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

**Background:** SWFWMD filed permit applications to impact wetlands for the Flatwoods Recreation Site Part II and Lower Hillsborough Oak Ridge Wet Crossings Projects. Wetland impacts of 0.54 acres were permitted for trail and foot bridge construction. As part of the requirements to obtain a wetland permit, SWFWMD proposed 0.78 acres of on-site mitigation to offset adverse impacts to wetlands. Section 1-11.08(6)(e), Rules of the EPC requires any mitigation in excess of 0.5 acres to be protected by a conservation easement in order to permanently protect the mitigation area. On February 14, 2007, the Southwest Florida Water Management District (SWFWMD) filed a waiver request with the Environmental Protection Commission of Hillsborough County (EPC) under section 1-2.50, Rules of the EPC. SWFWMD requested a waiver of section 1-11.08(6)(e), Rules of the EPC to avoid establishing a conservation easement for the mitigation area.

Section 1-11.08(6) states in part

*Where wetlands are or may be adversely impacted by development, an acceptable mitigation plan shall include detailed plans designed to compensate for any adverse impact to the environmental benefits and shall comply with Commission rules and Rules 62-345.200-.900, F.A.C. All such mitigation must also comply with the following:*

*e. a recorded designation in the Official Records of Hillsborough County as a permanent conservation easement as defined in section 704.06, F.S., whenever the mitigation area(s) alone or cumulatively exceed 0.5 acres.*

SWFWMD requests a waiver of the above rule section for their proposed wetland impact based on the principles of fairness. Any person may ask for a variance or waiver to a rule or a rule amendment at anytime. This waiver is requested pursuant to section 1-2.50, Rules of the EPC and states as follows:

### **1-2.50 REQUEST FOR VARIANCE OR WAIVER**

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

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

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

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

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

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

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

SWFWMD asserts in its application that “the District [SWFWMD] is unique from others who are subject to EPC rules in that the District is a special district of the state created by the Legislature and charged with protecting and managing the water resources within its 16-county area. The property over which a conservation easement would be granted to EPC is already owned by the District and is managed for conservation purposes.”

EPC staff asserts that with the specific condition detailed below, SWFWMD has demonstrated that a violation of the principles of fairness would occur if they were not granted a waiver in this specific situation. SWFWMD has demonstrated the underlying purpose of the rule will be achieved. SWFWMD has also demonstrated that the waiver being sought is not one that only State agencies have jurisdiction over. Thus, EPC staff recommends granting the waiver as to this specific project with the added condition that in the event SWFWMD ever conveys the subject land, SWFWMD must then provide written notice to the EPC of the conveyance and SWFWMD must provide some alternative mitigation or protection of an equal size.

---

**List of Attachments:**

- 1) SWFWMD Waiver Request
- 2) Proposed Waiver Order



An Equal Opportunity Employer

# Southwest Florida Water Management District

**Bartow Service Office**  
170 Century Boulevard  
Bartow, Florida 33830-7700  
(863) 534-1448 or  
1-800-492-7862 (FL only)  
SUNCOM 572-6200

**Lecanto Service Office**  
Suite 226  
3600 West Sovereign Path  
Lecanto, Florida 34461-8070  
(352) 527-8131

2379 Broad Street, Brooksville, Florida 34604-6899  
(352) 796-7211 or 1-800-423-1476 (FL only)  
SUNCOM 628-4150 TDD only 1-800-231-6103 (FL only)  
On the Internet at: [WaterMatters.org](http://WaterMatters.org)

**Sarasota Service Office**  
6750 Fruitville Road  
Sarasota, Florida 34240-9711  
(941) 377-3722 or  
1-800-320-3503 (FL only)  
SUNCOM 531-6900

**Tampa Service Office**  
7601 Highway 301 North  
Tampa, Florida 33637-6759  
(813) 985-7481 or  
1-800-836-0797 (FL only)  
SUNCOM 578-2070

**Talmadge G. "Jerry" Rice**  
Chair, Pasco

**Judith C. Whitehead**  
Vice Chair, Hernando

**Neil Combee**  
Secretary, Polk

**Jennifer E. Closshey**  
Treasurer, Hillsborough

**Thomas G. Dabney**  
Sarasota

**Heidi B. McCree**  
Hillsborough

**Sallie Parks**  
Pinellas

**Todd Pressman**  
Pinellas

**Maritza Rovira-Forino**  
Hillsborough

**Patsy C. Symons**  
DeSoto

**David L. Moore**  
Executive Director

**William S. Bilensky**  
General Counsel

February 14, 2007

Dr. Richard D. Garrity, Executive Director  
Environmental Protection Commission of Hillsborough County  
3629 Queen Palm Drive  
Tampa, FL 33619

Dear Dr. Garrity:

The Southwest Florida Water Management District (District) is in receipt of your October 13, 2006 letter conceptually authorizing wetland impacts for the Flatwoods Recreation Site and Lower Hillsborough Oak Ridge Wet Crossings Projects. Paragraph 7 of that letter requires that the District provide the Environmental Protection Commission of Hillsborough County (EPC) with a perpetual conservation easement over the mitigation area in accordance with Section 1-11 of EPC Rules. The District is asking that EPC grant a waiver or variance of this requirement pursuant to Section 1-2.50 of EPC rules.

Section 1-2.50 allows for a variance or waiver from EPC rules where the applicant demonstrates the following: 1) A substantial hardship exists as defined by Section 120.542, Florida Statutes (F.S.) or that a violation of the principles of fairness as defined by Section 120.542, F.S., would occur; 2) the purpose of the underlying rule can be, or has been, achieved by other means; and 3) the provisions from which the variance or waiver is being sought did not originate with the Florida Department of Environmental Protection (DEP).

The first criterion which must be met to allow a variance or waiver from an EPC rule is that the applicant can demonstrate that either a substantial hardship exists or that the application of the rule would result in a violation of the principles of fairness. As defined by Section 120.542, F.S., a violation of the principles of fairness means that a literal application of the rule in question would affect the District in a manner significantly different from the way it would affect others subject to the rule. The District is unique from others who are subject to EPC rules in that the District is a special district of the state created by the Legislature and charged with protecting and managing the water resources within its 16-county area. The property over which a conservation easement would be granted to EPC is already owned by the District and is managed for conservation purposes.

Pursuant to Section 373.099, F.S., any conveyance of an interest in land owned by the District must be approved and granted by the District's Governing Board.

Dr. Richard D. Garrity  
Southwest Florida Water Management District  
Page 2  
February 14, 2007

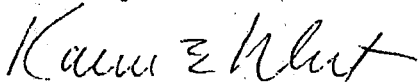
Moreover, Section 373.056(4), F.S., gives the District the authority to convey District owned lands or rights in District owned lands to other governmental entities, when those lands are no longer required for District purposes. However, the District has made no such determination with regard to the land at issue here and this area will continue to serve a District purpose as it is part of the District's Lower Hillsborough Flood Detention Area. Thus, there is some question as to whether it is even permissible for the District's Governing Board to convey a conservation easement interest over lands which will continue to be owned by the District for conservation purposes. Additionally, the granting of a conservation easement to protect property which is already protected is unnecessary and is not a wise use of public resources.

The second criterion which must be met to allow a variance or waiver is that the underlying purpose of the rule can be achieved by other means. In this case, the underlying purpose of the rule is to protect the land and forever retain it in its natural condition. Section 373.089(6)(c), F.S., states that all lands for which title has vested in the governing board of a water management district prior to July 1, 1999 shall be deemed to have been acquired for conservation purposes. The subject property was acquired by the District on or before April 23, 1991, and is therefore held by the District for conservation purposes. Because the District owns and manages the land for conservation purposes, that purpose of the EPC rule is already being achieved.

Finally, the last criterion which must be met to allow a variance or waiver is that the requirement is not a provision which originates from DEP. The EPC rule at issue requires a conservation easement whenever the mitigation area exceeds 0.5 acres. DEP environmental resource permitting rules which address wetland impacts have no similar requirement. Under DEP rules, a permittee may propose a conservation easement when using preservation as a form of mitigation for wetland impacts, but a conservation easement is not required under DEP rules.

Pursuant to the above analysis, the District respectfully requests that EPC grant a waiver or variance from the conservation easement requirement in Section 1-11 of EPC Rules. If you have questions or require additional information, you may contact me at the District's Brooksville headquarters at extension 4651.

Sincerely,



Karen E. West  
Deputy General Counsel

~~cc: Mr. Richard J. Schantz, Esq., General Counsel~~  
Environmental Protection Commission of Hillsborough County  
3629 Queen Palm Drive  
Tampa, FL 33619

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

**In re: Southwest Florida Water Management District  
Petition for Waiver**

**Case No. LEPC07-006**

**FINAL ORDER ON APPLICATION FOR CHAPTER 1-2 RULE OF THE  
ENVIRONMENTAL PROTECTION COMMISSION WAIVER**

**BACKGROUND**

On February 14, 2007, the Southwest Florida Water Management District (SWFWMD) submitted a waiver request to the Environmental Protection Commission of Hillsborough County (EPC) under section 1-2.50, Rules of the EPC. SWFWMD requested a waiver of section 1-11.08(6)(e), Rules of the EPC. This rule requires a permanent conservation easement over any mitigation area in excess of 0.5 acres proposed as compensation for a permitted wetland impact.

Section 1-11.08(6) states in part

*Where wetlands are or may be adversely impacted by development, an acceptable mitigation plan shall include detailed plans designed to compensate for any adverse impact to the environmental benefits and shall comply with Commission rules and Rules 62-345.200-.900, F.A.C. All such mitigation must also comply with the following:*

*e. a recorded designation in the Official Records of Hillsborough County as a permanent conservation easement as defined in section 704.06, F.S., whenever the mitigation area(s) alone or cumulatively exceed 0.5 acres.*

SWFWMD requests a waiver of the above rule section for their proposed wetland impact based on the principles of fairness.

**FINDINGS OF FACT**

1. Applicant SWFWMD's wetland impacts are located within SWFWMD's Lower Hillsborough Flood Detention Area, which includes Flatwoods Wilderness Park. in Hillsborough County, Florida. The mailing address for SWFWMD is Office of General Counsel, 2379 Broad Street, Brooksville, Florida 34604-6899.

2. In accordance with Chapter 1-11, Rules of the EPC, the SWFWMD filed permit applications to impact wetlands for the Flatwoods Recreation Site Part II and Lower

Hillsborough Oak Ridge Wet Crossings Projects. Wetland impacts of 0.54 acres were permitted for trail and foot bridge construction. As part of the requirements to obtain a wetland permit, SWFWMD proposed 0.78 acres of on-site mitigation to offset adverse impacts to wetlands. Chapter 1-11 requires any mitigation in excess of 0.5 acres to be protected by a conservation easement in order to permanently protect the mitigation area.

3. The EPC received the waiver application on February 15, 2007, from SWFWMD. SWFWMD requested a waiver of section 1-11.08(6)(e), Rules of the EPC. This rule requires a permanent conservation easement for mitigation areas which alone or cumulatively exceed 0.50 acres in size proposed to offset wetlands impacts.

4. Pursuant to section 1-2.50(3), Rules of the EPC, SWFWMD published notice of the waiver application and the hearing in the Tampa Tribune on Friday April 13, 2007.

5. Pursuant to section 1-2.50(4), the Commissioners considered the application, the Executive Director's recommendation, and the comments of the public at a regular meeting of the EPC on April 19, 2007.

6. SWFWMD stated that it qualifies for the waiver request because it will meet the underlying rule (Chapter 1-11) and that "a violation of the principles of fairness would occur" if the rule requirement was imposed.

7. SWFWMD asserts in its application that "the District [SWFWMD] is unique from others who are subject to EPC rules in that the District is a special district of the state created by the Legislature and charged with protecting and managing the water resources within its 16-county area. The property over which a conservation easement would be granted to EPC is already owned by the District and is managed for conservation purposes."

8. The area in question is also part of the District's Lower Hillsborough Flood Detention Area and is managed by SWFWMD for conservation purposes.

#### CONCLUSIONS OF LAW

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

#### **1-2.50 REQUEST FOR VARIANCE OR WAIVER**

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

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

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

*(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must*

*be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.*

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

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

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

10. Section 1-2.50, Rules of the EPC, among other things, requires that the applicant show that "purpose of the underlying rule can be, or has been, achieved by other means" and "that a violation of the principles of fairness as defined by section 120.542, F.S., would occur." While section 120.542, F.S. is not the enabling legislation for the EPC variance provision, it is persuasive and the EPC adopted the statute's definitions for hardship and fairness. Section 120.542, F.S. provides that before an agency can grant a variance, the petitioner must demonstrate that the purpose of the underlying statute will be or has been achieved by other means and that either the application of the rule would create a substantial hardship or that it would violate principles of fairness. Section 120.542(2) states, "For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule."

11. Chapter 1-11, Rule of the EPC was established to avoid and/or minimize impacts to wetlands and to require that the environmental benefits provided by an impacted wetland are adequately protected through mitigation. Among other assertions, SWFWMD asserts that unlike the traditional private applicant for wetland impacts, SWFWMD is already statutorily charged in Chapter 373, F.S. with protecting lands in its ownership, thus it would be redundant and unfair to require a conservation easement over those same lands.

12. The Florida State Law Review, Winter 1997 (LEXSEE 24 FLA. ST. U.L. REV. 353. 361) explains the fairness exception as follows: "Fairness exceptions. These are used when application of a rule would cost one entity or person substantially more than those similarly situated, when application of a rule would unintentionally penalize an entity's or person's recent good-faith activities, or when regulatory costs to an entity or person are simply not worth the minimal social benefits that compliance with the rule would produce." The law review article explains that the variance (or waiver) provision in Chapter 120, F.S. was created to acknowledge "that an agency's means of accomplishing a statutory directive may not be the only acceptable approach." SWFWMD asserts that requiring SWFWMD to encumber state property designated for conservation purposes with a conservation easement is not a wise use of public resources and redundant, thus providing "minimal social benefit."



13. With the specific condition detailed below, SWFWMD has demonstrated that a violation of the principles of fairness would occur if they were not granted a waiver in this specific situation.

14. SWFWMD has demonstrated the underlying purpose of the rule will be achieved.

15. SWFWMD has demonstrated that the provision from which the waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. and that the waiver does not need to be considered by the DEP or the SWFWMD pursuant to Chapter 120, F.S.

16. The following condition to this waiver applies to SWFWMD's subject application only and this order is enforceable under the EPC Act and rules: in the event SWFWMD ever conveys all or a portion of the aforementioned mitigation area, SWFWMD must then provide written notice to the EPC of the conveyance and SWFWMD must provide some alternative mitigation or protection which is acceptable to the EPC and equal to the mitigation or protection required by the EPC wetland permit.

#### **ORDER**

17. For the foregoing reasons, the requested waiver from sections 1-11.08(6)(e), Rules of the EPC is granted with the condition as noted above in paragraph 16.

#### **NOTICE OF RIGHTS**

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

DONE AND ORDERED this \_\_\_\_\_ of \_\_\_\_\_, 2007 in Tampa, Florida.

---

Brian Blair  
EPC Chairmain

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



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Clean Air Month Proclamation

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

**Division:** Air Management Division

**Recommendation:** Read the Clean Air Month proclamation and present copies to artist Taylor Ikin and to an EPC representative.

**Brief Summary:** For the past 35 years the EPC has promoted May as Clean Air Month in Hillsborough County. With the Board's approval, the staff would like to continue with this annual tradition for 2007.

The proposed proclamation would be presented artist Taylor Ikin and to EPC representative Jeff Sims. The theme for Clean Air Month 2007 will be "*Clean Air for a Healthier Hillsborough*" to promote awareness of air quality and its effect on the health and well-being of our citizens.

**Background:** None



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Update on Status of Minimum Flow Rule for Lower Hillsborough River

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

**Division:** Environmental Resources Management

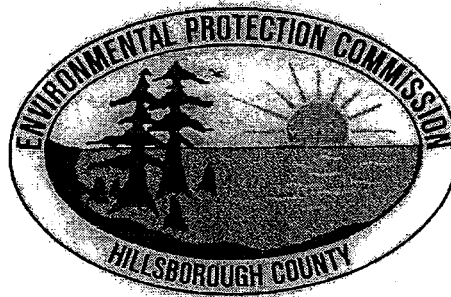
**Recommendation:** No Action Required, Receive Status Report

**Brief Summary:** EPC Staff will provide brief summary of current status of rule development for establishment of minimum flow on the Lower Hillsborough River. Briefing will summarize current Southwest Florida Water Management District (SWFWMD) staff recommendation, the recommendation of the scientific peer review panel that critiqued the SWFWMD staff work, and the recommended position of the EPC staff.

**Background:** On August 31, 2006 the SWFWMD staff released minimum flow recommendations for the lower Hillsborough River. More recently, on February 26, 2007, the independent scientific peer review panel that was convened by SWFWMD to comment on the proposed minimum flow released its report. The chairman of that peer review panel, Gary L. Powell, presented the panel findings to the Governing Board of SWFWMD on March 27, 2007. EPC staff comments to the peer review panel findings and to the basic minimum flow recommendation are enclosed with this agenda cover sheet. EPC staff will present the current status of this issue to the EPC Board.

**Enclosure:** Letter to Dr. Martin Kelly, dated March 23, 2007, Subject: EPC staff comments on February 26, 2007 peer review of proposed lower Hillsborough River minimum flows

COMMISSION  
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Rose V. Ferlita  
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Al Higginbotham  
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Mark Sharpe  
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Water 627-2670    ERM 627-2650  
Air 627-2660    Lab 272-5157

March 23, 2007

Dr. Marty Kelly  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, FL 34609-6899

Subject: EPC staff comments on February 26, 2007, peer review of proposed lower Hillsborough River minimum flows

Dear Dr. Kelly:

EPC staff reviewed the District's August 31, 2006, minimum flow recommendations for the lower Hillsborough River, and provided comments to you on November 14, 2006. At that time we identified a number of environmental concerns, which are briefly summarized in Attachment 1 to this letter. We feel that each of those concerns remains valid.

More recently, EPC staff reviewed the February 26, 2007, report prepared by the scientific peer review panel that was convened by the District to comment on the proposed minimum flows. While we do not concur with all the statements made by the panel, their report appears to provide a basis and framework for improving the 20 cfs minimum flow that was proposed by the District in 2006. Given the increased springtime flows proposed by the panel, and the environmental concerns raised by EPC staff and others in 2006, we would recommend that, at a minimum, the following additions be made to the District's August 2006 minimum flow proposals:

- In accordance with the technical alternative proposed by the peer review panel, include a provision for a minimum flow of at least 24 cfs during the spring season (e.g., between April 1 and June 30) and 20 cfs for the remaining months of the year;
- Incorporate a data monitoring and reporting program that includes real-time measurement and reporting of freshwater flow/discharge, salinity, DO, and temperature. (EPC staff would be happy to assist the District in any way we can with the water quality component of this monitoring effort.);
- Include a provision, in both the lower Hillsborough River and Sulphur Springs MFLs, requiring a full re-evaluation of those minimum flows following a five-year period of data collection;
- As part of that re-evaluation, include an assessment of the potential need for supplementary minimum flows at any time of year, whenever such a step is necessary to maintain tidal fresh (<0.5 psu) to oligohaline (<5.0 psu) salinity levels throughout the river reach that extends from the dam to Sulphur Springs; and

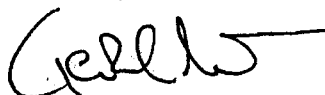
- As an additional component of the re-evaluation, assess empirical relationships between freshwater inflows, salinity, water temperature, and dissolved oxygen, and determine the degree to which the minimum flow process could assist in achieving greater compliance with state and local dissolved oxygen standards in the lower river.

Following adoption of an updated minimum flow rule for the lower river, EPC staff would also recommend that the District take whatever steps are necessary to ensure timely implementation of the recovery strategy to provide the water needed to meet the updated minimum flow.

More detailed comments, and background information on these recommendations, are attached (see Attachment 2).

Thank you once again for providing EPC staff the opportunity to participate in the MFL development process. We look forward to continuing work with you and other District staff in developing environmentally-protective minimum flows for the lower Hillsborough River.

Sincerely,



Gerold Morrison, Ph.D.  
Director, Environmental Resources Management Division

cc: Jennifer E. Closshey, Governing Board Member, Hillsborough County  
Stephen Daignault, P.E., City of Tampa  
Dick Eckenrod, Executive Director, TBEP  
Maritza Rovira-Forino, Governing Board Member, Hillsborough County  
Richard Garrity, Ph.D., Executive Director, EPCHC  
Heidi B. McCree, Governing Board Member, Hillsborough County  
David L. Moore, P.G., Executive Director, SWFWMD  
Bart Weiss, Division Director, HC WRS

## ATTACHMENT 1

In a letter dated November 14, 2006, addressed to Marty Kelly, PhD, at the Southwest Florida Water Management District, EPC staff provided detailed comments on the lower Hillsborough River minimum flow of 20 cfs that was proposed by the District on August 31, 2006. In general, EPC staff felt the proposed minimum flow was too low to provide adequate protection for the environmental resources of the lower river. Key staff concerns can be summarized as follows:

- The proposed 20 cfs minimum flow failed to meet the salinity conditions recommended by the Tampa Bay Estuary Program's minimum flow advisory group. The advisory group, which was convened at the request of the District, recommended that minimum flows should be sufficient to maintain a complete salinity gradient, ranging from polyhaline (>18 psu) to fresh (< 0.5 psu), between the estuary and the Hillsborough River dam in order to optimize fish utilization. The group also recommended that a freshwater segment (<0.5 psu) be maintained immediately downstream from the dam to provide a refuge for freshwater biota. The District's August 2006 minimum flow report chose not to follow this recommendation.
- The same advisory group recommended ecological goals for dissolved oxygen in the lower Hillsborough River as a minimum of 4.0 mg/L and a daily average of 5.0 mg/L, consistent with state standards for Class III marine waters. The District's August 2006 minimum flow report chose not to follow this recommendation, or seek to comply with the 5.0 mg/L state standard for Class III fresh waters, and argued instead that dissolved oxygen concentrations >2.5 mg/L would be acceptable as an adequate level for resource management.
- While the District, in accordance with procedures endorsed by the Instream Flow Council and the National Research Council, has sought to mimic the natural flow regime when establishing minimum flows for other rivers in the Tampa Bay region, that has not been the case with respect to the lower Hillsborough River.

## ATTACHMENT 2

Additional EPC staff comments on the District's August, 2006, minimum flows report and the peer review panel's February, 2007, summary report:

### Ensuring the year-round persistence of tidal fresh and low-salinity habitat:

The District's 2006 MFL report proposed the use of a sliding scale of minimum flow discharges to the lower Hillsborough River, based on hydrologic conditions in the upper river. This condition was expressed as the median of the annual 90% exceedance flow of Crystals Springs as measured at the USGS Zephyrhills gage, and a proportional reduction in the minimum flow as the spring discharge drops below the median. It is unclear why this approach was proposed or is needed, because the lowest flow that has ever been recorded in the upper river exceeds the proposed MFL of 20 cfs by a substantial margin.

Chapter 62-40 F.A.C. states that fish and wildlife habitat is one of the ten water resource values that MFLs should protect. In west-central Florida, low flow conditions occur most often during the spring season. This is a time of year when a sufficient amount of freshwater flow to the lower Hillsborough River is critical in providing tidal fresh and low-salinity habitat to support the survival and growth of immature fish and shellfish. For this reason, from the perspective of EPC staff, the District's proposal to use a sliding scale below 20 cfs was one of the more problematic parts of the August, 2006, MFL report. Nothing in the report attempted to show how such a sliding scale (down to values as low as 10 cfs) would serve the functions of an MFL to protect the water resources and ecology of the river system.

EPC staff note that the peer review panel shared this concern. In their report, the panel indicated that providing sufficient freshwater flows to the lower river is an extremely important environmental issue. They recommended that the District's proposed 20 cfs MFL be increased to 24 cfs during the spring months (April through June) to ensure the persistence of adequate low-salinity zones in the lower river for the immature fish and shellfish that are most abundant there at that time of year. They also note that the analyses provided by the District in the 2006 MFL report indicate that a river flow of 24 cfs or higher may be required to maintain the oligohaline zone during dry years. EPC staff concur with these points, and urge the District to adopt, at a minimum, a 24 cfs minimum flow for the spring time frame.

Because flows higher than 24 cfs may be needed to maintain the oligohaline zone during dry years, and because the immature forms of native fish and shellfish species are present in the lower river during most months of the year, EPC staff would also recommend that the District and local cooperators perform continuous real-time monitoring of freshwater inflows and their effects on salinity levels. If this monitoring began immediately, within five years the resulting data should be sufficient to allow the minimum flow to be re-evaluated. The re-evaluation could determine whether the minimum flow should be revised to ensure that that tidal fresh (<0.5 psu) to oligohaline (<5.0 psu) salinity levels are maintained throughout the river reach that extends from the dam to Sulphur Springs during the spring months. It could also determine whether such protection should be extended to other seasons of the year.

The peer review panel also discussed "drought contingency operations", but its members apparently assumed that under drought conditions sufficient water would not be available from any source to meet the proposed 20 cfs MFL, thus necessitating the sliding scale proposed by the District. The members of the peer review panel may not have been aware, however, that the City of Tampa is a member of Tampa Bay Water – the regional water supply utility – and as such has the ability to be supplied by Tampa Bay Water during low flow periods. Tampa Bay Water was created to develop drought-resistant sources of supply in order to prevent environmental impacts during such periods. In addition, Chap. 373.0421 Florida Statutes states that, in the process of establishing minimum flows, a water management district may not allow water withdrawals to cause significant ecological harm.

Compliance with water quality standards:

Water quality is also one of the ten water resource values that MFLs are intended to protect (62-40 F.A.C.). EPC has a statutory responsibility to ensure that the waters of Hillsborough County comply with the county's water quality standards, which are based on the state of Florida's standards as codified in Chap. 62-302 F.A.C. EPC staff therefore examined the proposed minimum flows for consistency with existing standards for parameters such as dissolved oxygen (DO), and their potential to cause or contribute to violations of those standards.

The reach of the lower Hillsborough River that extends from the City of Tampa Dam to Sulphur Springs is designated by the state of Florida as a Class III fresh water, which is defined as a surface water body in which the chloride concentration at the surface is less than 1,500 milligrams per liter. The designated beneficial uses of Class III waters include human recreation and the "propagation and maintenance of a healthy, well-balanced population of fish and wildlife" (Chap. 62-302, F.A.C.). In Class III fresh waters, state water quality standards require that DO concentrations remain above 5.0 mg/L at all places and times.

The District's August, 2006, MFL report examined the potential effects of varying freshwater flows on DO concentrations within the lower Hillsborough River. While the report correctly notes the improvements in DO levels that would occur if the existing 10 cfs MFL were increased to 20 cfs, it does not mention the fact that the proposed 20 cfs minimum flow would not be sufficient to achieve compliance with state standards at many times of the year. While additional freshwater flow is not the only means available to increase DO concentrations in the lower river, it is a natural and apparently effective way of doing so.

Rather than address this issue directly, the MFL and peer review reports chose to argue that the existing state standard does not need to be considered in the MFL process, and that a substantially lower minimum DO concentration, of 2.5 mg/L, is adequate as a resource management goal. However, the proposed 2.5 mg/L goal is not consistent with existing water quality standards. Guidelines published by the U.S. Environmental Protection Agency also indicate that growth rates of the immature forms of a number of tidal fresh and estuarine-dependent fish and invertebrate species are depressed at DO concentrations below 4.8 mg/L. The 2.5 mg/L value thus appears to be inappropriate as a resource management goal for the lower Hillsborough River.

EPC monitoring data, collected on a monthly basis between February 1987 and October 2001 (i.e., prior to the re-routing of a portion of the Sulphur Springs discharge to the base of the dam), at a location approximately 500m downstream from the City of Tampa Dam, indicate that minimum DO concentrations in this portion of the lower Hillsborough River are highly correlated with freshwater flow and water temperature. For the general range of flows considered in the District's minimum flow analyses (i.e., between 0 cfs and 100 cfs), minimum DO concentrations during the period were positively correlated with freshwater flow over the dam, and negatively correlated with water temperature. Statistical analyses performed by EPC staff indicate that the relationships are statistically significant and explain a high proportion (about 70%) of the variability in DO.

Based on these statistical analyses, it appears that a seasonally-variable MFL based on month-to-month changes in water temperature will be needed to comply with the 5.0 mg/L DO standard. It also appears that minimum flows substantially higher than 20 cfs will be needed to meet the 5.0 mg/L standard during months when elevated water temperatures occur (e.g., May through September). Fortunately, the months of July through September are usually a period of naturally high river flow in the Tampa Bay region, due to the abundant rainfall that usually occurs during the summer rainy season. Therefore, under these usual conditions, maintaining adequate flow to meet the 5.0 mg/L DO standard may occur as the norm. However, given the uncertainties that exist regarding future rainfall levels, and increasing demands for



water supply, it may be necessary to establish a seasonally variable minimum flow that reflects impacts of water temperature and dissolved oxygen levels.

Given these observations, EPC staff would recommend that the updated minimum flow that is adopted by the District for the lower Hillsborough River contain a clause stating that real-time relationships between flow, DO and water temperature will be monitored for a five-year period immediately following adoption, and that at the end of the five-year period the minimum flow will be re-examined by the District – in cooperation with EPC, the City of Tampa and other interested parties – to determine whether it is providing adequate support for and compliance with state and local DO standards.

Compliance with total maximum daily load (TMDL) requirements:

The lower Hillsborough River is currently designated as an impaired water by the Florida Department of Environmental Protection and the U.S. Environmental Protection Agency. Water quality constituents that are not meeting standards include nutrients, coliform bacteria, and DO. Local actions, potentially requiring large expenditures of public funds, will be required to resolve these issues. While additional freshwater flow is not the only means available for addressing the impaired status of the lower river, additional freshwater would help to improve water quality there, and could assist Hillsborough County and the City of Tampa in meeting TMDL and other Clean Water Act requirements.

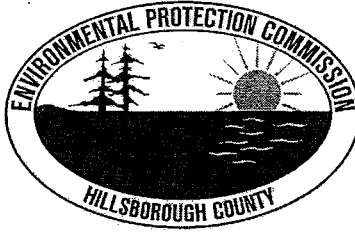
Monitoring of flows and water quality:

For MFL compliance purposes, a reliable method of measuring and reporting real-time flows will need to be developed and implemented to ensure that the lower river MFLs are being met. EPC staff recommend that the development and implementation of such a system be made part of the recovery strategy that will presumably follow the adoption of an updated MFL. As noted above, adequate monitoring of salinity and DO concentrations will also be needed, in order to evaluate the effectiveness of the MFL in meeting resource management goals and state and local water quality standards.

The implementation of an adequate, reliable monitoring program to assess the effectiveness of the proposed minimum flow for the lower Hillsborough River takes on even greater importance when considered in the context of evaluating the performance of the newly proposed minimum flow for the Sulphur Springs system, itself an important hydrologic component of the lower Hillsborough River. The peer review panel that evaluated the proposed minimum flow for Sulphur Springs emphasized that continuous data recorders for temperature, salinity, and dissolved oxygen would be necessary in order to determine if the minimum flow rule was meeting its stated management goals. Clearly these two monitoring networks need to be synchronized and integrated, and reliable real-time evaluation and monitoring of flow at both the City of Tampa dam and Sulphur Springs must be achieved as well. EPC staff would be happy to work with the District and other local partners to help implement the necessary monitoring networks.

Timely implementation of a Recovery Strategy:

The lower Hillsborough River is a critical water resource for the Tampa Bay region. Following adoption of an updated minimum flow, expedited implementation of a detailed recovery strategy will be an essential step in achieving it. Managing this river is a complex undertaking, as numerous organizations have various degrees of control or influence over it. Timely implementation of the recovery strategy presents the best opportunity to coordinate a number of actions pertinent to the recovery and protection of the resource.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Draft EPC Seagrass Management Plan

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

**Division:** Environmental Resources Management (ERM)

**Recommendation:** Accept draft Seagrass Management Plan and authorize staff to seek public comment on proposed actions.

**Brief Summary:** Using grant funds provided by the National Fish and Wildlife Foundation and the Pinellas County Environmental Fund, as approved by the EPC Board at the March 2005 Board meeting, EPC staff has worked with the Tampa Bay Estuary Program and the Southwest Florida Seagrass Working Group to develop a management plan that is focused on the issues affecting seagrass resources in Hillsborough County waters. Among other actions, the draft plan includes a proposed action to establish a pilot "Pole & Troll" zone within the Cockroach Bay Aquatic Preserve (a specified zone where boating would be permitted but the operation of internal combustion engines would be prohibited) in order to evaluate the effectiveness of such a zone for reducing rates of propeller scarring in seagrass beds. Staff recommends that a public meeting be held in the Cockroach Bay area in the near future to discuss and receive public input on this proposed action and other actions recommended in the draft plan.

### **Background:**

Staff has prepared a draft seagrass management plan (copy attached), which includes:

- background information on seagrass management, and identification of seven seagrass management areas (Sect. 1);
- an overview of local seagrass management issues (Sect. 2);
- a proposed prioritization system for the seven management areas (Sect. 3); and
- seven proposed management actions (Sect. 4).

One of the proposed actions (Action 4, Address Propeller Scarring and Seagrass Restoration) includes the establishment of a pilot "Pole & Troll" zone within the Cockroach Bay Aquatic Preserve, to evaluate the effectiveness of such a zone for reducing rates of propeller scarring in seagrass beds. Examination of recent aerial photography indicates that severe levels of propeller scarring are present in several areas within the preserve. Following discussions with several local groups – including the Tampa Bay Regional Planning Council's Agency on Bay Management (ABM) and the Manatee Awareness Coalition (MAC) which is sponsored by the Tampa Bay Estuary Program – EPC staff recommends that a test zone be considered for the Little Cockroach Bay portion of the preserve. Within the proposed Pole & Troll test zone, boating would be allowed (using push poles, electric trolling motors, paddles, etc.) but active operation of internal combustion engines would be prohibited. The test zone would be established for a five-year period, following procedures outlined in Part II of the EPC wetland rule (Chap. 1-11, Rules of the EPC), and its effectiveness in reducing prop scarring would be evaluated at the end of that period. Staff requests Board authorization to hold a public meeting in the Cockroach Bay area in the near future to discuss and receive public input on this proposed action. Information obtained from the meeting will be used to prepare a final draft of the management plan, which will be presented to the Board at a future meeting.

List of Attachments: Draft Seagrass Management Plan



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19th, 2007

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

**Division:** Environmental Resources Management

**Recommendation:** Authorize EPC staff to participate in a public education effort, in cooperation with the Florida Yards and Neighborhoods program and the Hillsborough County Public Works Department, regarding new rules from Florida Department of Agriculture & Consumer Services on slow release, controlled release and low/no phosphate fertilizers for lawn applications.

**Brief Summary:** The Florida Department of Agriculture & Consumer Services (FDACS) is currently developing a state-wide rule that will be applicable to all lawn fertilizers and their labeling. The rule will define "slow release" and "controlled release" of nutrients for lawn fertilizers and require labeling to coincide with the new criteria. Additionally, the phosphorus content of lawn fertilizers will be either very low or none depending on final rule language. The University of Florida's Institute of Food and Agricultural Sciences, through its Florida Yards and Neighborhoods (FY&N) program will produce educational aids to disseminate information to the public on these new label requirements and the benefits of using slow release and low-no phosphorus fertilizers. EPC staff can assist in making these informational packets available to the public through retail stores, citizen educational forums and internet advertising.

**Background:** During a Feb. 28, 2007, workshop on comprehensive plan amendments, a question was raised regarding the County's ability to regulate the sale or uses of lawn fertilizers and pesticides. Legally, it does appear possible to regulate the use of fertilizers for lawn applications, and a number of local governments in Florida have developed ordinances requiring the use of "slow release" fertilizers and application of fertilizers in low rainfall periods of the year. These local ordinances, while well meaning, are very difficult to enforce. No known precedent exists for disallowing the use of any particular fertilizer or pesticide product. Federal controls have significantly limited the pesticides available to the consumer and strictly monitors the sale, licensing and labeling of the more powerful, potentially environmentally dangerous chemicals to licensed & certified users only.

A state-wide fertilizer rule, which is currently in development by the FDACS, specifically adopts standards for "slow release" and "controlled release" fertilizer products. The rule will also significantly reduce the allowable phosphorus content for all lawn fertilizers. The proposed fertilizer rule criteria were developed, in part, to aid the public in identifying appropriate and more environmentally safe products. The rule may also require language warning the user of consequences of excessive fertilization to aquatic environments. Once the new rule language is finalized and formally adopted by the State, EPC staff can participate in advertising the new rule criteria through a cooperative arrangement with the Florida Yards and Neighborhoods program. The Hillsborough County Public Works Department's stormwater management and adopt-a-pond programs have also expressed an interest in participating in this educational effort, which could help the County maintain compliance with the requirements of its MS4 stormwater management permit.

**List of Attachments:** None



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** April 19, 2007

**Subject:** Alafia River and Tampa Bypass Canal Reclassification - Update

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

**Division:** Legal Division

**Recommendation:** No action recommended. Receive and file.

**Brief Summary:** At the March 15, 2007 EPC meeting, staff presented a summary of the reclassification application process for the Alafia River and Tampa Bypass Canal proposed by Tampa Bay Water. The Commission requested staff attempt to work with Tampa Bay Water to coordinate stakeholder meetings in order to work through issues prior to the application to the Florida Department of Environmental Protection (FDEP). Attached is a Tampa Bay Water summary of stakeholder meetings held and planned.

**Financial Impact:** Financial Impact has not yet been determined.

**Background:** At the March 15, 2007 EPC meeting, staff presented a summary of the reclassification application process for the Alafia River and Tampa Bypass Canal proposed by Tampa Bay Water. The Commission requested staff attempt to work with Tampa Bay Water to coordinate stakeholder meetings in order to work through issues prior to the application to the Florida Department of Environmental Protection. EPC Legal staff contacted counsel for Tampa Bay Water and Mosaic Fertilizer, L.L.C. (Mosaic) to discuss the possibility of arranging a stakeholder meeting regarding the reclassification applications. Tampa Bay Water has had preliminary input regarding the reclassification process from several entities but has not yet coordinated a full stakeholder meeting with Mosaic.

Attached is an excerpt of Tampa Bay Water Agenda Item F2 dated April 5, 2007 (pgs. 3 and 4). Outlined therein is a listing of the entities Tampa Bay Water has identified as stakeholders and a proposed schedule for meetings. According to Tampa Bay Water, stakeholder meetings will be an ongoing process until the petitions are filed this summer. Stakeholders will be provided the opportunity for additional input as the draft petitions are completed, and letters of support will be requested from stakeholders as appropriate. The FDEP process will continue taking input and culminate in a Public Hearing.

**List of Attachments:** Excerpt, April 5, 2007 Tampa Bay Water Agenda Item F2, pgs. 3 - 4.

### **Process for Reclassification of a Waterbody**

The process for potential reclassification of waters of the State requires filing a petition with the Secretary of the Florida Department of Environmental Protection (FDEP). This petition must include information to support the following:

- The reclassification will establish the present and future most beneficial use of the waters;
- The reclassification is clearly in the public interest; and,
- The proposed classification is attainable, given environmental, technological, social, economic, and institutional factors.

All state water quality standards and petitions for reclassification designation are ultimately approved by the Environmental Regulation Commission (ERC) - a seven-member citizens' body appointed by the Governor.

The ERC must make a finding that the proposed reclassification will establish the present and future most beneficial use of the waters (62-302.400(8)(a), FAC). Relevant items that need to be addressed in a petition to demonstrate the present and future most beneficial use include:

- The present and expected future use of the waters being proposed for reclassification
- The present and expected future water quality under the current classification and how it could be different in the future if the classification was changed
- The beneficial uses that would be enhanced or protected by the reclassification
- Any present beneficial uses (including adjacent and upstream users) that would be adversely affected by reclassification.

The ERC must make a finding that the proposed water quality reclassification would be "clearly in the public interest" (62-302.400(8)(b), FAC). This finding will be based upon input received from all affected parties, including the pertinent local governments and water management agencies. The petitions will need to clearly describe the attainability of the proposed designated use based "upon consideration of environmental, technological, social, economic, and institutional factors" (62-302.400(9), FAC).

### **Development of Potential Reclassification Petitions**

Tasks being completed for petition development include stakeholder meetings, analysis of applicable regulations and potential impacts to current and future land use conditions or activities, evaluation of current and future water quality conditions, assessment of permitted discharges, and evaluation of potential economic impacts. Each of these tasks is described briefly below.

#### Stakeholder Meetings

Involvement of stakeholders is a critical part of the petition process, and stakeholder input is required to identify and evaluate issues related to attainability. General stakeholders for

these petitions include: permitting agencies, local governments and utilities, developers, agricultural entities, industrial dischargers, citizens and environmental groups. For this project, focused briefing meetings are being used as an effective mechanism for stakeholder input; these meetings will be documented as part of the petition.

Preliminary input regarding the reclassification process and potential issues has been received or is anticipated prior to the April Board meeting from the following stakeholders:

- Florida Department of Environmental Protection
- Hillsborough County Board of County Commissioners, City-County Planning Commission, Planning and Growth Management, Environmental Protection Commission (EPC), Public Works, Stormwater, and Water Resources departments
- Industry: Mosaic Fertilizer, L.L.C.
- Agriculture: Farm Bureau Board, Strawberry Growers Association, Soil and Water Conservation District
- Development Community: Greater Tampa Bay Chamber Committee of 100, Tampa Bay Partnership
- Environmental Groups: Sierra Club, Audubon, Clean Water Action, Alafia River Basin Stewardship Council (ARBSC).

Follow-up activities are ongoing or planned for each of these groups prior to finalization of the draft petitions.

Input regarding the reclassification process and potential issues will be requested from additional stakeholders prior to the anticipated completion of the draft petitions in June 2007 including:

- Southwest Florida Water Management District
- Tampa Bay Regional Planning Council
- Tampa Bay Estuary Program
- Tampa Bay Water Member Governments
- Hillsborough County Citizens Environmental Advisory Council
- Environmental Groups: National Resources Defense Council, River Roundtable (Hillsborough), Friends of the River (Hillsborough), Florida Consumer Action Network, Tampa Baywatch
- City of Lakeland Utilities
- Polk County Utilities and Natural Resources Division
- Other stakeholders in industry, development, or other sectors.

All stakeholders will be provided the opportunity for additional input as the draft petitions are completed, and letters of support will be requested from stakeholders as appropriate.