

COMMISSION

Pat Kemp, *Chair*
Lesley "Les" Miller, Jr., *Vice Chair*
Ken Hagan
Sandra L. Murman
Kimberly Overman
Mariella Smith
Stacy White



Executive Director

Janet L. Dougherty

General Counsel

Richard Tschantz

Meeting time
9:00 a.m.

COMMISSION AGENDA
February 21, 2019

Location
601 E. Kennedy Blvd., Tampa
County Center, 2nd Floor

- 1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, and INVOCATION**
- 2. CHANGES TO THE AGENDA**
- 3. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, or SEPARATE VOTE**
- 4. RECOGNITIONS** – *None*
- 5. PUBLIC COMMENT** - *Each speaker is allowed 3 minutes unless the Commission directs differently.*
- 6. APPROVAL OF CONSENT AGENDA**

AGENDA ITEMS

A. CONSENT AGENDA

- 1. Approval of EPC Meeting Minutes – January 17, 2019..... 2
- 2. Monthly Activity Report..... 6
- 3. FY2019 Pollution Recovery Fund Budget 8
- 4. Legal Case Summary 10
- 5. Hearing Officer Agreements..... 14

B. PUBLIC HEARING

None

C. REGULAR AGENDA

- 1. Agency Action Plans 22
- 2. Water Quality Index and Red Tide Update 23
- 3. Legislative Update 24
- 4. Executive Director’s Report

ADJOURN

Any person who might wish to appeal any decision made by the EPC 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.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # A1

Date of EPC Meeting: February 21, 2019

Subject: Approval of January 17, 2019 EPC meeting minutes

Agenda Section: Consent Agenda

Division: Legal and Administrative Services Division

Recommendation: Approve the January 17, 2019 EPC meeting minutes.

Brief Summary: Staff requests the Commission approve the meeting minutes from the Commission meeting held on January 17, 2019.

Financial Impact: No Financial Impact

List of Attachments: Draft copy of the January 17, 2019 EPC meeting minutes.

Background: None.

JANUARY 17, 2019 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, January 17, 2019, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Pat Kemp and Commissioners Ken Hagan, Lesley Miller Jr., Sandra Murman, Kimberly Overman, Mariella Smith, and Stacy White.

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND INVOCATION

▶ Chairman Kemp called the meeting to order at 9:00 a.m. Commissioner White led in the pledge of allegiance to the flag and gave the invocation.

2. CHANGES TO THE AGENDA

▶ Ms. Janet Dougherty, EPC Executive Director, stated there were no changes to the agenda.

3. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, OR SEPARATE VOTE - ▶
None.

4. RECOGNITIONS

Retirement of Mr. Dewitt Bruce, EPC Waste Management Division

▶ Ms. Dougherty and Mr. Hooshang Boostani, EPC, recognized Mr. Bruce, who made appreciative remarks. Ms. Alex Bruce and EPC members congratulated Mr. Bruce on his retirement.

World Wetlands Day Proclamation

▶ Ms. Dougherty spoke on the item. Chairman Kemp, on behalf of the Board of County Commissioners, proclaimed February 2, 2019, World Wetlands Day in the County.

5. PUBLIC COMMENT - ▶ None.

6. APPROVAL OF CONSENT AGENDA

AGENDA ITEMS

A. CONSENT AGENDA

1. Approval of EPC Meeting Minutes - November 15, 2018
2. Monthly Activity Report

THURSDAY, JANUARY 17, 2019

3. Fiscal Year 2019 Pollution Recovery Fund Budget
4. Legal Case Summary
5. Action Plans Quarterly Update
6. Select Performance Measure Goals Quarterly Update

▶ Chairman Kemp called for a motion to approve the Consent Agenda. ▶
Commissioner Miller moved approval, seconded by Commissioner Smith, and carried seven to zero.

B. PUBLIC HEARING - None.

C. REGULAR AGENDA

1. 2019 EPC Strategic Plan

▶ Mr. Jeffrey Sims, EPC, gave a presentation. ▶ **Commissioner White moved approval, seconded by Commissioner Murman.** Commissioner Smith noted the difficulty of quantifying the total impact of the EPC. Chairman Kemp wondered about future improvements. Commissioner Overman was grateful for the EPC resource protections. ▶ **The motion carried seven to zero.**

2. National Sustainability Summit Update

▶ Ms. Michelle Jenkins, EPC, shared a presentation.

3. Red Tide Update

▶ Ms. Dougherty deferred to Mr. Thomas Ash, EPC, who explained background material. ▶ Commissioner Miller asked if cold weather would help mitigate the red tide event. Commissioner Murman thanked staff and requested continued updates. Citing heavy rains, Commissioner Overman inquired about the effects of salinity levels on red tide.

4. Executive Director's Report

▶ Attorney Richard Tschantz, EPC General Counsel, introduced the EPC legal intern, Ms. Jennifer Nguyen. Ms. Dougherty distributed information and expounded on background material.

THURSDAY, JANUARY 17, 2019

ADJOURN

▶ There being no further business, the meeting was adjourned at 9:58 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

ag

DRAFT



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # A2

Date of EPC Meeting: February 21, 2019

Subject: Agency Monthly Activity Report

Agenda Section: Consent Agenda

Division: All five EPC Divisions

Recommendation: None. Informational report.

Brief Summary: The Agency-wide report represents the total number of select divisional activities that were tracked within a specific month.

Financial Impact: No financial impact.

List of Attachments: Monthly report for January FY19

Background: Select data that is associated with the EPC's five core functions is tracked by each Division (i.e. outreach events, monitoring, compliance inspections, permits issued, etc.) Monthly activity tracking reports from each Division are tallied to generate one final Agency-wide report.

EPC STAFF ACTIVITIES - AGENCY-WIDE

Monthly Activity Report

FY19

		January	FISCAL YEAR TO DATE
A.	<u>Core Function: Citizen Support & Outreach</u>		
1	Environmental Complaints Received	139	455
2	Number of Presentations/Outreach Events	4	22
3	Citizen Support (walk-ins, file reviews, email/letter correspondence, etc.)	458	1813
B.	<u>Core Function: Air & Water Monitoring</u>		
1	Air Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	91.7%	N/A
2	Water Quality Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	100.0%	N/A
3	Number of Noise Monitoring Events	1	9
C.	<u>Core Function: Environmental Permitting</u>		
1	Permit/Authorization Applications Received	141	550
2	Applications In-house >180 days	8	N/A
3	Permits/Authorizations Issued	125	504
4	Petroleum Cleanup Cases	98	475
D.	<u>Core Function: Compliance Assurance</u>		
1	Compliance Inspections	335	1111
2	Compliance Test Reviews (NOTE: Wetlands reviews included under D.1)	137	419
3	Compliance Assistance Letters Issued	222	1908
4	Warning Notices Issued	10	41
E.	<u>Core Function: Enforcement</u>		
1	New Cases Initiated	3	15
2	Active Cases	35	N/A
3	Tracking Cases	47	N/A



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # A3

Date of EPC Meeting: February 21, 2019

Subject: Pollution Recovery Fund Budget

Agenda Section: Consent Agenda

Division: Legal and Administrative Services Division

Recommendation: Informational Report Only

Brief Summary: The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund.

Financial Impact: No Financial Impact

List of Attachments: PRF Budget Spreadsheet

Background: The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund (PRF). The PRF funds are generated by monetary judgments and civil settlements collected by the EPC staff. The funds are then allocated by the Commission for restoration, education, monitoring, the Artificial Reef Program, and other approved uses.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 19 POLLUTION RECOVERY FUND
10/1/2018 through 1/31/2019**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 752,608	Artificial Reef	\$ 33,339	Minimum Balance	\$ 120,000	
Interest	\$ 6,389	Open Projects	\$ 273,801	Est. FY 20 Budget	\$ 33,339	
Deposits	\$ 25,310			Asbestos Removal	\$ 5,000	
Total	\$ 784,306	Total	\$ 307,140	Total	\$ 158,339	\$ 318,827

PROJECT		Project Amount	Project Balance
FY 16 Projects			
TBW McKay Bay South Oyster Reef	10131.102063.582990.5370.1267	\$ 48,010	\$ 9,894
USF Fecal Pollution in Tampa Bay	10131.102063.581990.5370.1271	\$ 50,000	\$ 6,269
		\$ 98,010	\$ 16,163
FY 17 Projects			
Sun City Ctr Audubon Nature Trail Prop	10131.102063.582990.5370.1279	\$ 20,000	\$ 4,050
H.C. Conservation Bahia Bch Invasive	10131.102063.581990.5370.1280	\$ 31,500	\$ 4,703
FL Aquarium Watershed Invest	10131.102063.582990.5370.1282	\$ 55,477	\$ 7,948
		\$ 106,977	\$ 16,701
FY18 Projects			
Ecosphere Restoration Ignacio Haya Park	10131.102063.582990.5370.1292	\$ 47,000	\$ 19,883
Audubon Florida Invasive Removal	10131.102063.582990.5370.1293	\$ 50,000	\$ 50,000
Keep T.B. Beautiful Trash Free Waters	10131.102063.582990.5370.1296	\$ 20,000	\$ 20,000
TBW MacDill AFB Living Shoreline	10131.102063.582990.5370.1294	\$ 49,324	\$ 49,324
UF Small Farms For Clean Water	10131.102063.581990.5370.1295	\$ 15,750	\$ 15,750
		\$ 182,074	\$ 154,957



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # A4

Date of EPC Meeting: February 21, 2019

Subject: Legal Case Summary update

Agenda Section: Consent Agenda

Division: Legal and Administrative Services Division

Recommendation: None. Informational update only.

Brief Summary: The EPC Legal Department provides an updated summary of its ongoing civil, appellate and administrative matters.

Financial Impact: No financial impact anticipated. Informational update.

List of Attachments: Legal Case Summary

Background: In an effort to provide the Commission with timely information regarding legal challenges, the EPC staff provides this summary. The update serves not only to inform the Commission of current litigation but may also be used as a tool to check for any conflicts they may have in the event a legal matter is discussed by the Commission. The summary provides general details as to the status of the civil and administrative cases.

EPC LEGAL DEPARTMENT
SUMMARY REPORT OF LEGAL CASES
February 21, 2019

I. ADMINISTRATIVE CASES

Tanima Srivastava vs. EPC [19-EPC-003]: On February 8, 2019, the Appellant filed a notice of appeal to challenge the EPC denial of an application to impact additional wetlands(#63720). The Appeal will be processed in accordance with Chapter 1-2, Rules of the EPC.

RJG Real Estate, LLC vs. EPC [19-EPC-002]: On February 7, 2019, the Appellant file a request for an extension of time to file an appeal to challenge the EPC's Notice of Cancellation of an inactive application for a Minor Work Permit to construct a dock(#65476). The permit was recently issued on February 8, 2019. Appellant withdrew their request and the case has been closed.

Leo Caruso vs. EPC [19-EPC-001]: On January 30, 2019, Appellant filed a request for an extension of time to file an appeal to challenge EPC's denial of an application for a Minor Work Permit to construct a boatlift (#61541[R1]). The request was granted and the Appellant has until May 3, 2019 to file an appeal in this matter.

Christina Hendry vs. Robert Greene and EPC [18-EPC-030]: On December 17, 2018 Appellant Hendry filed a request for an extension of time to file an appeal to challenge EPC's issuance of MWP #66069 allowing Appellee Greene to construct a dock and covered boatlift. Two extensions of time were granted and the Appellant had until February 7, 2019 to file an appeal in this matter. Appellant Hendry and Appellee Greene came to a resolution. on February 6, 2019, a permit issued and Appellant withdrew her request and the case has been closed.

Starlite MHP, LLC vs. EPC [18-EPC-029]: On November 26, 2018 Petitioner Starlite MHP, LLC filed a request for an extension of time to file an appeal to challenge EPC's issuance of Permit Denial for Permit #FLA012163-008-DW3P/NRL. The extension was granted and the Petitioner had until January 18, 2019 to file a petition in this matter. A request for a second extension of time was granted and the Petitioner has until April 18, 2019 to file a petition in this matter.

Mosaic Fertilizer, LLC Variance Request [18-EPC-012]: On September 6, 2018, Mosaic Fertilizer, LLC filed a request for a variance to allow them to establish a wetland conservation easement in an alternate location. EPC filed a request for additional information.

Ronald Buchbaum vs. Leo Caruso and EPC [17-EPC-011]: On December 5, 2017, Appellant Ronald Buchbaum filed a Notice of Appeal to challenge the issuance of Minor Work Permit #61541 (R1) for construction of a boatlift. The matter has been transferred a Hearing Officer to conduct an administrative hearing. On November 27, 2018, the Agency filed a Notice of Change of Agency Action to deny the boatlift and on January 18, 2019 the Hearing Officer issued an Order Relinquishing Jurisdiction back to the EPC and the case has been closed.

J.E. McLean, III and RaceTrac Petroleum, Inc. [12-EPC-014]: On October 24, 2012, the Appellants, RaceTrac Petroleum, Inc. and the property owner filed a request for an extension of time to file an Appeal challenging the Executive Director's denial for wetland impacts on the corner of Lumsden and Kings Avenue. The extension was granted and the Appellants filed an appeal in this matter on December 7, 2012. A Hearing Officer has been assigned and conducted a case management conference. This matter was placed in abeyance as the parties discussed options. A conceptual wetland impact approval letter was sent to the applicant on December 8, 2015 after a modification to the application was submitted. The Appellants have not filed a dismissal as they are waiting for final approval of the proposed project by Hillsborough County.

II. CIVIL CASES

Petrol Mart, Inc. [LEPC07-018]: On December 29, 2017 EPC filed a motion to reopen Civil Court Case #07-CA-012545 for the purpose of filing a motion for the appointment of a Receiver for the Defendant Petrol Mart,

Inc. On January 26, 2018, the EPC filed a Motion for Appointment of a Receiver. On February 16, 2018 a Notice of Action in the matter was issued by the Clerk of Court for service of process by publication. The Court appointed a Receiver for the dissolved judgement debtor on April 17, 2018. The Receiver and the EPC are researching options to address the environmental conditions at the subject property. The plan is for the property to be conveyed to the city of Plant City who will conduct any assessment and remediation.

David A. Stumbo [17-EPC-013]: On October 19, 2017, the EPC authorized staff to take appropriate legal action against David A. Stumbo for failure to close unmaintained underground storage tanks. Daniel A. Stumbo owns real property located at 1102 East Laura Street, Plant City. The property includes four underground storage tanks of unknown capacity or type and which are currently in violation of the underground storage tank rules adopted in Chapter 1-12, Rules of the EPC. The EPC Legal Department filed a civil lawsuit and is attempting to serve the Defendant.

Mouhammed Z. Al-Samkari [17-EPC-012]: On October 19, 2017, the EPC authorized staff to take appropriate legal action against Mouhammed Z. Al-Samkari. Mr. Al-Samkari owns real property and operates a gasoline station known as Hope Food Store located at 4002 North 22nd Street in Tampa. The underground petroleum storage tank system is currently in violation of the storage tank rules adopted in Chapter 1-12, Rules of the EPC. On September 21, 2018 the EPC Legal Department filed a Civil lawsuit in this matter and no responsive pleading has been filed. The Clerk entered a Default on January 3, 2019 and the action will be set for trial.

Volkswagen AG, et al. [16-EPC-002]: On March 24, 2016, the EPC filed a complaint against Volkswagen AG, et al. for activities that violate the EPC Enabling Act and the rules promulgated thereunder. On April 16, 2018, the EPC's complaint was dismissed. The EPC appealed the order granting the motion to dismiss.

Janet Layer [15-EPC-009]: In December of 2015 the EPC Commission authorized staff to take appropriate legal action against Ms. Janet Layer for failure to comply with various wastewater regulations regarding her operation of the domestic wastewater treatment plant and disposal system at Little Manatee Isles Mobile Home Park in Ruskin. The EPC and the estate of Ms. Layer settled the matter via a Consent Final Judgment entered on September 5, 2018.

U.S. Bankruptcy Court in re Jerry A. Lewis Adversary Proceeding [15-EPC-007]: An Adversary Proceeding pertaining to the ongoing Chapter 13 Bankruptcy Case regarding Jerry A. Lewis (see EPC Case No. LEPC09-011) was entered on October 9, 2013, in the U.S. Bankruptcy Court Middle District of Florida. EPC is defendant in the matter and will seek to protect a monetary judgment awarded to us by the Circuit Court.

Thomas Jennings and Lorene Hall-Jennings [14-EPC-011]: On October 7, 2014, the EPC was served with a Declaratory Action challenging the validity of a conservation easement conveyed to the EPC on September 16, 1997. The EPC Legal Department has responded to the lawsuit with an Answer and Affirmative Defenses on October 27, 2014 and the case will move forward as appropriate. On October 12, 2015 the Plaintiff filed a Motion for Judgment on the Pleadings. The EPC responded to the Motion on October 21, 2015. The parties conducted a hearing on the Motion on November 14, 2016. On the January 4, 2017 the Judge denied the Plaintiff's motion and the case will continue. On December 11, 2017 the Plaintiff filed a Motion for Summary Judgment and the EPC responded on January 18, 2018 and the parties are waiting for a hearing to be set. On October 12, 2018 the Court referred the parties to non-binding Arbitration. The Arbitration hearing is set for February 14, 2019.

Boyce E. Slusmeyer [LEPC10-019]: On Sept 20, 2001, the EPC staff received authority to take legal action for failure to comply with an Executive Director's Citation and Order to Correct Violation for the failure to initiate a cleanup of a petroleum-contaminated property. The Court entered a Consent Final Judgment on March 13, 2003. The Defendant has failed to perform the appropriate remedial actions for petroleum contamination on the property. The EPC filed a lawsuit on October 7, 2010 seeking injunctive relief and recovery of costs and penalties. The property ownership is currently owned by a family member. The EPC staff were in negotiations with the representative of the property owner regarding eligibility to utilize a state petroleum cleanup program to resolve the case. The eligibility was denied for the site and the EPC will take appropriate action.

U.S. Bankruptcy Court in re Jerry A. Lewis [LEPC09-011]: On May 1, 2009, the U.S. Bankruptcy Court Middle District of Florida filed a Notice of Chapter 13 Bankruptcy Case regarding Jerry A. Lewis. On May 26,

2009, the EPC filed a Proof of Claim with the Court. The EPC's basis for the claim is a recorded judgment lien awarded in Civil Court against Mr. Lewis concerning unauthorized disposal of solid waste. The EPC obtained an award of stipulated penalties from the state court. The site remains out of compliance with applicable EPC solid waste regulations and no liens have been paid. The bankruptcy case is ongoing.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # A5

Date of EPC Meeting: February 21, 2019

Subject: Hearing Officer Agreements for Patricia A. Petruff, Esq., Thomas A. Thanas, Esq. and Shannon M. LaFrance, Esq.

Agenda Section: Consent Agenda

Division: Legal and Administrative Services Division

Recommendation: Approve three new Hearing Officer Agreements with P. Petruff, Esq., T. Thanas, Esq., and S. LaFrance, Esq. Continue to authorize the Chair to appoint hearing officers to specific cases on a rotation basis as needed. Additionally, delegate to the Chair to execute the agreements and future minor modifications.

Brief Summary: The Commission authorized the appointment of three hearing officers to serve on an as needed basis to hear administrative appeals to permits and other agency actions. Recently a hearing officer resigned creating a vacancy in the rotation and a second hearing officer may retire soon. The Legal Department has conducted interviews and recommends the three candidates listed above.

Financial Impact: Hearing Officers are paid hourly on an as needed basis out of existing funds. No additional funds required.

List of Attachments: Three draft agreements with P. Petruff, Esq., T. Thanas, Esq., and S. LaFrance, Esq.

Background: Pursuant to Section 9 of the EPC enabling act Chapter 84-446, Laws of Florida, as amended (EPC Act) an aggrieved party can challenge a decision of the Executive Director to the Commission who then appoints a hearing officer to conduct an administrative hearing. In accordance with Section 1-2.07, Rules of the EPC, “[u]pon recommendation of the Executive Director, the Commission will appoint as many Hearing Officers as needed to hear appeals pursuant to section 9 of the EPC Act, and such other matters as designated by the Commission.” The Commission authorized the appointment of three hearing officers decades ago. The hearing officers serve on an as needed basis to conduct evidentiary hearings on administrative challenges to agency decisions which affect substantial interest, such as: permits; permit denials; Citations; or rulemaking challenges. Upon execution of a contract with the hearing officers, the EPC Chair then appoints the hearing officers to new administrative appeals by means of a rotation schedule.

In 2018, Hearing Officer Stephen Pfeiffer, Esq. no longer could devote time to being an EPC hearing officer, thus the agency has a vacancy. The EPC currently has two hearing officers (John Voelpel, Esq. and Vanessa Cohn, Esq.). The Legal Department anticipates that another hearing officer may retire in the

near future. The Legal Department advertised the EPC's vacant hearing officer position and conducted interviews with several candidates to provide a recommendation to the Commission.

Payment for hearing officer services is provided for in the existing budget and, as this appointment is to fill a vacant position and services are only as needed, these contracts will not require any additional funding. The EPC staff will continue to coordinate case specific appointment of hearing officers with the EPC Chair, who traditionally appoints hearing officers.

Staff's recommendation is to approve three new Hearing Officer Agreements with Patricia A. Petruff, Esq., Thomas A. Thanas, Esq., and Shannon M. LaFrance, Esq. This provides for a five hearing officer rotation and in anticipation that it may soon reduce to four. Staff also recommends that the Commission continue to authorize the Chair to appoint hearing officers to specific cases on a rotation basis as needed. Additionally, staff requests the Commission delegate to the Chair to execute the agreements and future minor modifications (including but not limited to amendments needed if a hearing officer changes employment and still desires to be an EPC hearing officer).



AGREEMENT FOR HEARING OFFICER SERVICES
Between Dye, Harrison, Kirkland, Petruff, Pratt & St. Paul, LLC, Patricia A. Petruff, Esq. and
the Environmental Protection Commission of Hillsborough County

THIS AGREEMENT, made and entered into on this 4th day of February, 2019 by and between the **Environmental Protection Commission of Hillsborough County** (hereinafter referred to as "Commission"), **Dye, Harrison, Kirkland, Petruff, Pratt & St. Paul, LLC** (hereinafter referred to as the "Firm") and **Patricia A. Petruff, Esq.** (hereinafter referred to as "Hearing Officer"),

W I T N E S S E T H:

WHEREAS, the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495, (hereinafter referred to as the "Act"), authorizes the Commission to appoint a Hearing Officer to hear appeals from actions or decisions of the Executive Director and such other matters relating to the Act as referred by the Commission, and

WHEREAS, pursuant to Section 9 of the Act an EPC Hearing Officer must be an active member of the Florida Bar and should have some experience in or a working knowledge of environmental law, and

WHEREAS, the above-named Hearing Officer has demonstrated to the Commission's satisfaction her qualifications to act in such a capacity,

NOW, THEREFORE, for and in consideration of the foregoing, of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Commission does appoint and employ the Hearing Officer as a member of the Firm as one of its hearing officers under the Hillsborough County Environmental Protection Act for a term of two (2) years commencing upon the above written date. The Firm acknowledges that this agreement is to utilize the specific services of the above-named Hearing Officer and that no substitution of persons is acceptable.

2. The Commission shall pay the Firm from the County general revenue fund upon periodic itemized billings, at a rate of one hundred dollars (\$100.00) for each hour spent in the service of the Commission as Hearing Officer. Out-of-pocket expenses such as reasonable reproduction expenses and office supplies shall be reimbursable to the Hearing Officer upon being supported by proper documentation. Travel mileage and meal allowance, if applicable, will be reimbursed if performed in accordance with Section 112.061, Florida Statutes and pursuant to Hillsborough County Administrative Directive AD-09. The aforementioned law and policy may be revised after execution of this agreement and any future revisions shall apply.

3. The Hearing Officer agrees to hear appeals from actions or decisions of the Executive Director in accordance with Section 9 of the Act, and the rules promulgated thereunder, as well as hold hearings on such matters relating to the Act and certain programs delegated to the EPC as may be referred by the Commission. The Hearing Officer shall operate under the EPC Administrative Procedures Rule Chapter 1-2 and shall rely on previous Commission Final Orders for interpretations of the Act and rules adopted thereunder.

It is understood that the Hearing Officer should decline acceptance of any particular case so as to avoid possible conflict of interest problems and/or to not unduly restrict the Hearing Officer in her private practice of law.

4. This Agreement is automatically renewable for successive terms of two (2) years, upon the conditions herein.

5. This Agreement will terminate thirty (30) days following written notice by any party of its intent to terminate, or such longer period as may be agreed to by the parties. In such event, the Hearing Officer shall exercise reasonable care so that the interest of any then-current appellant or any party will not be jeopardized by the transfer of her case.

6. The Commission agrees to indemnify and hold harmless the Firm and Hearing Officer for any and all claims arising out of acts performed and decisions rendered in the course of carrying out the duties of the Hearing Officer and which would be subject to the protection of Chapter 768.28, Florida Statutes. In accordance with Hillsborough BOCC policy #03.04.01.05, the Commission will provide legal defense for the Hearing Officer in the event that such legal actions are instituted against her as limited above.

7. This Agreement embodies the entire agreement and understanding between the parties and is subject to change, alteration or modification only by written agreement between the parties.

IN WITNESS WHEREOF, the Commission, Firm and the Hearing Officer have executed this Agreement on the date first above written.

DYE, HARRISON, KIRKLAND, PETRUFF, PRATT
& ST. PAUL, PLLC

By:


Authorized Representative

and

HEARING OFFICER

By:


Patricia A. Petruff, Esq.

ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY

By:

Pat Kemp, Chair

AGREEMENT FOR HEARING OFFICER SERVICES

**Between Dye, Harrison, Kirkland, Petruff, Pratt & St. Paul, LLC, Thomas A. Thanas, Esq. and
the Environmental Protection Commission of Hillsborough County**

THIS AGREEMENT, made and entered into on this _____ day of _____, 2019 by and between the **Environmental Protection Commission of Hillsborough County** (hereinafter referred to as "Commission"), **Dye, Harrison, Kirkland, Petruff, Pratt & St. Paul, LLC** (hereinafter referred to as the "Firm") and **Thomas A. Thanas, Esq.** (hereinafter referred to as "Hearing Officer"),

WITNESSETH:

WHEREAS, the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495, (hereinafter referred to as the "Act"), authorizes the Commission to appoint a Hearing Officer to hear appeals from actions or decisions of the Executive Director and such other matters relating to the Act as referred by the Commission, and

WHEREAS, pursuant to Section 9 of the Act an EPC Hearing Officer must be an active member of the Florida Bar and should have some experience in or a working knowledge of environmental law, and

WHEREAS, the above-named Hearing Officer has demonstrated to the Commission's satisfaction his qualifications to act in such a capacity,

NOW, THEREFORE, for and in consideration of the foregoing, of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Commission does appoint and employ the Hearing Officer as a member of the Firm as one of its hearing officers under the Hillsborough County Environmental Protection Act for a term of two (2) years commencing upon the above written date. The Firm acknowledges that this agreement is to utilize the specific services of the above-named Hearing Officer and that no substitution of persons is acceptable.
2. The Commission shall pay the Firm from the County general revenue fund upon periodic itemized billings, at a rate of one hundred dollars (\$100.00) for each hour spent in the service of the Commission as Hearing Officer. Out-of-pocket expenses such as reasonable reproduction expenses and office supplies shall be reimbursable to the Hearing Officer upon being supported by proper documentation. Travel mileage and meal allowance, if applicable, will be reimbursed if performed in accordance with Section 112.061, Florida Statutes and pursuant to Hillsborough County Administrative Directive AD-09. The aforementioned law and policy may be revised after execution of this agreement and any future revisions shall apply.
3. The Hearing Officer agrees to hear appeals from actions or decisions of the Executive Director in accordance with Section 9 of the Act, and the rules promulgated thereunder, as well as hold hearings on such matters relating to the Act and certain programs delegated to the EPC as may be referred by the Commission. The Hearing Officer shall operate under the EPC Administrative Procedures Rule Chapter 1-2 and shall rely on previous Commission Final Orders for interpretations of the Act and rules adopted thereunder.

It is understood that the Hearing Officer should decline acceptance of any particular case so as to avoid possible conflict of interest problems and/or to not unduly restrict the Hearing Officer in his private practice of law.

4. This Agreement is automatically renewable for successive terms of two (2) years, upon the conditions herein.

5. This Agreement will terminate thirty (30) days following written notice by any party of its intent to terminate, or such longer period as may be agreed to by the parties. In such event, the Hearing Officer shall exercise reasonable care so that the interest of any then-current appellant or any party will not be jeopardized by the transfer of his case.

6. The Commission agrees to indemnify and hold harmless the Firm and Hearing Officer for any and all claims arising out of acts performed and decisions rendered in the course of carrying out the duties of the Hearing Officer and which would be subject to the protection of Chapter 768.28, Florida Statutes. In accordance with Hillsborough BOCC policy #03.04.01.05, the Commission will provide legal defense for the Hearing Officer in the event that such legal actions are instituted against him as limited above.

7. This Agreement embodies the entire agreement and understanding between the parties and is subject to change, alteration or modification only by written agreement between the parties.

IN WITNESS WHEREOF, the Commission, Firm and the Hearing Officer have executed this Agreement on the date first above written.

DYE, HARRISON, KIRKLAND, PETRUFF, PRATT
& ST. PAUL, PLLC

By: Thomas A. Thanas
Authorized Representative

and

HEARING OFFICER

By: Thomas A. Thanas
Thomas A. Thanas, Esq.

ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY

By: _____
Pat Kemp, Chair

AGREEMENT FOR HEARING OFFICER SERVICES
Between Shannon M. LaFrance, Esq. and
the Environmental Protection Commission of Hillsborough County

THIS AGREEMENT, made and entered into on this _____ day of _____, 2019 by and between the **Environmental Protection Commission of Hillsborough County** (hereinafter referred to as "Commission"), and **Shannon M. LaFrance, Esq.** (hereinafter referred to as "Hearing Officer"),

W I T N E S S E T H:

WHEREAS, the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495, (hereinafter referred to as the "Act") authorizes the Commission to appoint a Hearing Officer to hear appeals from actions or decisions of the Executive Director and such other matters relating to the Act as referred by the Commission, and

WHEREAS, pursuant to Section 9 of the Act an EPC Hearing Officer must be an active member of the Florida Bar and should have some experience in or a working knowledge of environmental law, and

WHEREAS, the above-named Hearing Officer has demonstrated to the Commission's satisfaction her qualifications to act in such a capacity,

NOW, THEREFORE, for and in consideration of the foregoing, of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Commission does appoint and employ the Hearing Officer as one of its hearing officers under the Hillsborough County Environmental Protection Act for a term of two (2) years commencing upon the above written date.
2. The Commission shall pay the Hearing Officer from the County general revenue fund upon periodic itemized billings, at the rate of one hundred dollars (\$100.00) for each hour spent in the service of the Commission as Hearing Officer. Out-of-pocket expenses such as reasonable reproduction expenses and office supplies shall be reimbursable to the Hearing Officer upon being supported by proper documentation. Travel mileage and meal allowance, if applicable, will be reimbursed if performed in accordance with Section 112.061, Florida Statutes and pursuant to Hillsborough County Administrative Directive AD-09. The aforementioned law and policy may be revised after execution of this agreement and any future revisions shall apply.
3. The Hearing Officer agrees to hear appeals from actions or decisions of the Executive Director in accordance with Section 9 of the Act, and the rules promulgated thereunder, as well as hold hearings on such matters relating to the Act and certain programs delegated to the EPC as may be referred by the Commission. The Hearing Officer shall operate under the EPC Administrative Procedures Rule Chapter 1-2 and shall rely on previous Commission Final Orders for interpretations of the Act and rules adopted thereunder.

It is understood that the Hearing Officer should decline acceptance of any particular case so as to avoid possible conflict of interest problems and/or to not unduly restrict the Hearing Officer in her private practice of law.

4. This Agreement is automatically renewable for successive terms of two (2) years, upon the conditions herein.

5. This Agreement will terminate thirty (30) days following written notice by either party of its intent to terminate, or such longer period as may be agreed to by the parties. In such event, the Hearing Officer shall exercise reasonable care so that the interest of any then-current appellant or any party will not be jeopardized by the transfer of her case.

6. The Commission agrees to indemnify and hold harmless the Hearing Officer for any and all claims arising out of acts performed and decisions rendered in the course of carrying out the duties of the Hearing Officer and which would be subject to the protection of Chapter 768.28, Florida Statutes. In accordance with Hillsborough BOCC policy #03.04.01.05, the Commission will provide legal defense for the Hearing Officer in the event that such legal actions are instituted against her as limited above.

7. This Agreement embodies the entire agreement and understanding between the parties and is subject to change, alteration or modification only by written agreement between the parties.

IN WITNESS WHEREOF, the Commission and the Hearing Officer have executed this Agreement on the date first above written.

HEARING OFFICER

By: 
Shannon M. LaFrance, Esq.

ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY

By: _____
Pat Kemp, Chair



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # C1

Date of EPC Meeting: February 21, 2019

Subject: 2019 Action Plans

Agenda Section: Regular Agenda

Division: Legal and Administrative Services Division

Recommendation: Have Commission provide input to staff on the proposed action plans for 2019 and then vote to accept them.

Brief Summary: For the past eight years, EPC staff has developed a series of action plans each year. These measurable action plans address various initiatives which support the Agency's strategic priorities and seek to improve EPC's efficiency and services. Staff will give a brief informational presentation on the development of action plans as part of the strategic planning process and seek input on the three proposed action plans for 2019.

Financial Impact: No additional funds required at this time. Monies for the individual action plans will be sought from the current budget, or will be brought to the Board and requested separately as needed.

List of Attachments: None.

Background: As part of EPC's Strategic Plan, staff meets on numerous occasions to carry out a ten step planning process to develop new initiatives for the next calendar year. Starting with the Mission, Vision and Values; EPC reviews input from their many feedback groups and customer surveys to look for ways to improve how we do business. These ideas for improvement are packaged into action plans and vetted through senior staff before going to the Commission. Once Commission input is received, staff finalizes the action plans and puts together a schedule which is memorialized in the 2019 Strategic Plan. Since the Agency started this formal procedure in 2010, they have completed over sixty of these initiatives.

During the most recent strategic planning session, EPC staff proposed three new action plans for 2019. The action plans are entitled: 1) Cross-training/Interdivisional Education, 2) Technology Modernization Plan, and 3) Multi Media Emission Reduction Initiative. Staff is seeking Commission input and a vote to accept the action plans. There may be some costs associated with the action plans. For the most part these costs are expected to be minimal and absorbed in the existing budget. If some require more significant expenditures, then those will be included in the regular budget cycle at a later date.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # C2

Date of EPC Meeting: February 21, 2019

Subject: 2018 Water Quality Summary Report & Red Tide Update

Agenda Section: Regular Agenda

Division: Water Management Division

Recommendation: Informational Report

Brief Summary: Staff will provide a summary of the 2018 Water Quality monitoring results for Tampa Bay and its tributaries as well as a brief report on the current status of Red Tide in Tampa Bay.

Financial Impact: No Financial Impacts

List of Attachments: None

Background: The results of EPC's 2018 water quality monitoring for Tampa Bay and its tributaries have been analyzed and the annual Water Quality Index (WQI) has been developed for distribution to the public and to Bay area scientists and resource managers. Staff will present this 2018 "Report Card" for the Bay and explain what it means and how it is developed. Staff will also present a brief report on the current status of red tide monitoring results.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # C3

Date of EPC Meeting: February 21, 2019

Subject: 2019 Florida Legislative Update on Proposed Environmental Legislation

Agenda Section: Regular Agenda

Division: Legal and Administrative Services Division

Recommendation: Informational Report.

Brief Summary: The regular session of the Florida Legislature convenes on March 5, 2019 and should adjourn on May 3, 2019. While the 60-day session has not begun, Legislators have filed many environmental bills and committees have already begun to discuss them. EPC staff will provide updates on various environmental and administrative bills.

Financial Impact: No Financial Impact

List of Attachments: None

Background:

The regular session of the Florida Legislature convenes on Tuesday, March 5, 2019. The deadline for filing bills for introduction is March 5, 2019 and April 23, 2019 (50th day) is the last day for regularly scheduled committee meetings. The 60-day regular session should adjourn on May 3, 2019. While the session has not begun, Legislators have filed many environmental bills and committees have already begun to discuss them. EPC staff reviews environmental and administrative bills to determine if they may impact the EPC's functions and budget. The Commission approved a basic legislative strategy (EPC Policy No. 2007-02) on March 15, 2007, that gives staff and the Chair continuing direction to monitor, comment on, and lobby for, among other things, bills that impact the functions of the EPC.

EPC is tracking numerous bills. Below is a summary of some relevant bills:

WETLAND MITIGATION

- SB 532** - by Senator Lee
- HB 521** - by Representative McClure

In accordance with State law, the adverse impacts of wetland destruction may be offset by the creation, maintenance, and use of wetland mitigation banks. Proposals [House Bill 521](#) by Representative McClure and [Senate Bill 532](#) by Senator Lee allow governmental entities more flexibility in selling wetland mitigation bank credits if no private wetland mitigation bank credits are

available. Currently, Section 373.4135, Florida Statutes (F.S.) prohibits governmental entities from creating wetland mitigation banks for projects (other than their own) on lands purchased for conservation. The existing law favors the use of private mitigation banks. Currently governments can establish mitigation banks (on non-conservation land) and offer those credits to third parties if the same financial assurance required of private companies is acquired. There are eight limited exceptions to the main prohibition that allow government mitigation banks on conservation land.

Senate Bill 532 proposes to change the current law to allow governmental entities the ability to create on any land a wetland mitigation bank and then provide it to third parties where the Florida Department of Environmental Protection (DEP) or a Water Management District (WMD) determines no alternative private mitigation credits are available for the third party's proposed project.

House Bill 521 differs from SB 532 in that it proposes to repeal the current prohibition on governmental entities entirely, thus allowing governments to offer wetland bank credits to others without limitation. In other words, the DEP does not have to determine that no private banks are available for the government to offer banking credits. The House bill also states that the wetland mitigation law does not affect state or federal "wetland mitigation sequencing" policies or laws. The wetland mitigation sequencing is related to the hierarchy of determining what type of mitigation option will be selected first for a particular project or when wetland impacts will be approved utilizing the current standard for "elimination and reduction" or "avoidance and minimization" of impacts. The inclusion of the proposed sequencing language is only a clarification and does not substantively change any existing laws or processes.

These two bills give local governments more ability to conduct mitigation for third parties. A benefit of that language is that it provides more opportunities for applicants to obtain mitigation credit for wetland impacts. The bills do not increase or decrease the EPC's regulatory authority.

STATE SHARED REVENUES (Commerce)

SB 594 - by Senator Hutson

[Senate Bill 594](#) by Senator Hutson states that upon a request by any State Legislator, the "Attorney General shall investigate any ordinance, regulation, order or other official action adopted or taken by the governing body of a county or municipality which impacts commerce and which [Legislative] member . . . allege[s] violates state law or the State Constitution." If the Attorney General (AG) finds that a violation occurred or likely (i.e. commerce has been impeded in violation of State law or the Constitution), the AG must initiate a civil action for declaratory or injunctive relief. If the Circuit Court finds a violation occurred, the City or County has 30 days to remedy the violation. If the City or County fails to remedy the violation, the AG shall petition for and the circuit court shall issue an order directing the Department of Revenue to withhold a share of revenues apportioned to the subject government. In the event the government remedies the violation in the future, the government can seek an order to restore those amounts. The proposed law also identifies how any funds withheld would be apportioned to other county or city governments.

The proposal is problematic for local governments in that the mere allegation of a violation requires a mandatory AG investigation. The AG's finding of a violation or even a "likely" but inconclusive violation then requires a mandatory circuit court action. This mandatory investigation and the

resulting mandatory litigation may result in a significant increase in legal expenses for governments for legitimate but debatable regulations.

PREEMPTION OF LOCAL REGULATIONS

HB 3 - by Representative Michael Grant

[House Bill 3](#) by Representative Michael Grant prohibits local governments from adopting new regulations on businesses after July 1, 2019, unless the regulation meets very detailed criteria including but not limited to showing that is required for public health and safety or a minimal use of police power, performing a cost analysis, adopting the lowest cost method, requiring a two-thirds vote by the local legislative body, and requiring the regulation to sunset within two years unless renewed. Any existing regulation of a business adopted before July 1, 2019, expires on July 1, 2021, and may only be re-adopted or continue to be imposed after meeting the new criteria described above. The bill also preempts the regulation of licensing and professions to the State. This is a strong attack on local rule. It will lead to much debate as to whether a regulation impacts a business or person or both (e.g. – does a city ordinance regulating loud car stereos impact the car owner, dealer, or stereo installer?).

PREEMPTION OF RECYCLABLE AND POLYSTYRENE MATERIALS

(Plastic Bags and Styrofoam)

SB 88 - by Senator Stewart

Currently, no government can enact any law “regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.” This bill deletes that prohibition. Similarly, the bill repeals the preemption of local laws regarding the use or sale of polystyrene products (Styrofoam) to the Florida Department of Agriculture and Consumer Services. Thus, [Senate Bill 88](#) repeals prohibitions (pre-emption) of local regulation of plastic bags and Styrofoam.

SINGLE-USE PLASTIC STRAWS (SB 502 also includes Plastic Bags)

SB 588 - by Senators Hutson and Bradley

HB 603 - by Representatives Sabatini, Fine, Hill, McClure, Perez, and Roach

SB 502 - by Senator Rader

[Senate Bill 588](#) provides that a food service establishment (e.g. - restaurant, convenience store, grocery store) may distribute a single-use plastic straw to a customer only if requested to do so by the customer. This limitation would not apply to take-out orders, off-site delivery, pre-packaged containers (juice box), and health care / rehabilitation facilities. Also, these establishments may make single-use plastic straws available through self-serve straw dispensers.

While a good step to minimize plastic trash, the bill does have a local preemption. It states, “The regulation of single-use plastic straws is preempted to the state. A municipality, county, or other local

governmental entity may not adopt, enforce, or implement any ordinance, rule, or law that would further restrict a food service establishment from distributing single-use plastic straws to customers.”

[House Bill 603](#) is identical to SB 588.

[Senate Bill 502](#) prohibits a store (e.g. – pharmacy, convenience store, retail, etc.) or food service business (e.g. – restaurant, grocery store, food truck, etc.) from providing a carryout bag made of plastic film less than 10 mils thick to a customer. It does not prohibit plastic bags without handles for fruits, meat, etc. It also prohibits a food service business from selling or providing a single-use plastic straw to a customer, unless medically necessary. It does not contain a provision which allows for a customer to request a straw such as the two bills above. It provides fines of \$500 for the first time and \$1000 for subsequent times. This bill is more stringent than SB 588 and HB 603.

COASTAL MANAGEMENT

SB 446 - by Senators Mayfield, Hutson, Wright, and Book

Current law contains a program to protect Florida’s sandy beaches and directs beach erosion control appropriations to the State’s most severely eroded beaches. [Senate Bill 446](#) contains various proposals regarding coastal management, such as:

- Requiring the FL DEP to implement a new evaluation system with expanded criteria in determining and assigning annual funding priorities for beach management and erosion control projects.
- Revising the ranking criteria to be used by the DEP to establish certain funding priorities for certain inlet-caused beach erosion projects
- Revising requirements for the comprehensive long-term management plan and requiring the plan to include a strategic beach management plan, a critically eroded beaches report, and a statewide long-range budget plan.

This bill has no impact on the EPC functions.

FRACKING BAN

PCB-ARNS-19-01

Hydraulic fracturing, “well stimulation,” or “fracking” is a method of extracting oil or gas by injecting high volumes of fluids into a rock formation in order to propagate fractures that release trapped oil or gas. The Florida DEP currently regulates well stimulation but lacks a detailed law or rule to give the DEP staff guidance on how to regulate it. In 2016 and 2017, bills failed that attempted to further regulate it. In 2018, there were many bills proposing a ban on fracking, but all failed. The House Agriculture & Natural Resources Subcommittee released a proposed committee bill, [PCB-ANRS-19-01](#), which bans fracking. The proposed committee bill prohibits fracking in the state and specifies that a permit for drilling or operating a well does not authorize fracking. The Florida Local Environmental Resource Agencies (FLERA) representative noted that the House Subcommittee is expected to approve this legislation as a committee bill next week. It will then receive a bill number and committee references.

GOVERNOR'S ENVIRONMENTAL BUDGET

The FLERA representative summarized environmental sections of the Governor's budget, as follows:

Governor DeSantis' environmental budget includes \$625 million for Everglades Restoration and protection of Florida's valuable water resources. The Governor is projecting the investment of \$625 million each year, for a total of more than \$2.5 billion by the end of his first term. His budget recommends a \$154 million investment for land acquisition and parks, including \$100 million for Florida Forever, with a focus on protecting water resources, and \$54 million to improve Florida's state park system. Governor DeSantis established a Chief Resiliency Officer that will be housed in the Executive Office of the Governor. In addition, the budget recommends \$6 million for DEP's Florida Resilient Coastline Program to help Florida's communities prepare for these impacts.