

EPC REGULAR

2/17/00

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
FEBRUARY 17, 2000
10 AM - 12 NOON**

AGENDA

- | | | |
|-------------|---|----|
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NOTICE: The March 16, 2000 EPC Meeting will begin at 10:30am instead of 10:00am

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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ADDENDUM

III. CONSENT AGENDA

A. Approval of Minutes: October 20, 21, 1999, January 20, 2000 A1

IV. LEGAL DEPARTMENT

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OCTOBER 20, 1999 - ENVIRONMENTAL PROTECTION COMMISSION SPECIAL MEETING -
DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Special Meeting to discuss Arbitration of the Tampa Bay Water (TBW) Environmental Monitoring Program (EMP), scheduled for Wednesday, October 20, 1999, at 4:15 p.m., in the Boardroom, County Center, Tampa, Florida.

The following members were present: Chairman Pat Frank and Commissioners Chris Hart, Jim Norman, Jan Platt, Thomas Scott, Ronda Storms, and Ben Wacksman.

Chairman Frank called the meeting to order at 5:04 p.m.

Mr. Tony D'Aquila, EPC staff, said that at the October 6 Board of County Commissioners (BOCC) meeting, the water team had briefed the BOCC on the TBW environmental management plan for the consolidated water use permit for the central system wellfield. The BOCC had approved the staff recommendation, which was the EMP met rule criteria, and arbitration was not necessary. Mr. D'Aquila asked the EPC to endorse the BOCC position.

Chairman Frank noted that position was consistent with prior BOCC decisions to not arbitrate. Commissioner Hart recommended approval, seconded by Commissioner Wacksman, and carried seven to zero.

There being no further business, the meeting was adjourned at 5:07 p.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
RICHARD AKE, CLERK

By: _____
Deputy Clerk

jp

OCTOBER 21, 1999 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, October 21, 1999, at 10:00 a.m., in the Boardroom, County Center, Tampa, Florida.

The following members were present: Chairman Pat Frank and Commissioners Chris Hart, Jim Norman, Jan Platt, Thomas Scott, Ronda Storms, and Ben Wacksman.

Chairman Frank called the meeting to order at 10:06 a.m.

CITIZENS WISHING TO APPEAR

Ms. Cheryl Bradford, 11215 McMullen Loop, Riverview, spoke about the International Gypsum Company issue. She thought residents in that area would like to have a clean industry. Jobs were needed but not at the expense of the environment or other users. The availability of water was tied to economic issues. Ms. Bradford did not support additional limits and urged the EPC to obtain a deadline on when reclaimed water would be available. Ms. Bradford noted that Tampa Bay Water (TBW) would run water lines to Big Bend and suggested also running reclaimed water lines.

Commissioner Hart wanted the Board of County Commissioners (BOCC) Chairman to send a letter to TBW and Southwest Florida Water Management District outlining EPC's position on pumpage. Chairman Frank said the BOCC could address that issue. Commissioner Norman had looked for options to provide reclaimed water, and he opined Ms. Bradford's suggestion should be considered. Chairman Frank thought the pipelines could run in the same areas as desalination lines.

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Ms. Lynn McGarvey, Chairman, CEAC, reported CEAC had continued discussion of air quality to its next meeting, to further discuss the issue before making a recommendation. All water issues, including new resources, water quality, and wetlands were ongoing projects. In response to Commissioner Storms, Ms. McGarvey confirmed CEAC voted on issues before an opinion was represented.

Chairman Frank explained EPC would not have a meeting in December because that date had been chosen for a joint meeting of the Legislative Delegation and the BOCC.

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CONSENT AGENDA

- A. Approval of Minutes: July 29, August 19, and September 16, 1999
- B. Monthly Activity Report
- C. Legal Department Monthly Reports
- D. Pollution Recovery Fund
- E. Gardinier Settlement Fund

Commissioner Platt moved approval of the Consent Agenda, seconded by Commissioner Wacksman, and carried seven to zero.

LEGAL DEPARTMENT

Authorize the Executive Director to File All Legal Proceedings Necessary to Protect the County's Environmental Interests Regarding Water Resources and Supply Matters, Subject to EPC Ratification - Attorney Vernon P. Wagner, EPC Chief Counsel, said the request would be in effect until November 20, 1999, at 5:00 p.m., and subject to ratification. The item paralleled BOCC item related to the County Administrator, which was approved on October 20, 1999. Commissioner Hart moved approval, seconded by Commissioner Wacksman, and carried seven to zero.

WETLANDS MANAGEMENT DIVISION

Cockroach Bay Aquatic Preserve - Provided Backup for Report on Cockroach Bay Recovery Area II - Mr. Darrell Howton, Director, Wetlands Management Division, explained the item dealt with opening Recovery Area II to boating. He explained Dr. Nick Ehringer, Professor of Ecology, Hillsborough Community College, and Dr. Clinton Dawes, Professor of Biology, University of South Florida, had reported on the condition of Tampa Bay in May. Dr. Ehringer had recommended opening the recovery area for boating. EPC did not take action then because Cockroach Bay Aquatic Preserve Management Advisory Team (CAPMAT) had not reviewed the request. Since then, CAPMAT had reviewed the request and its recommendations were included in agenda material. Staff recommended EPC accept CAPMAT recommendations 1, 2, 4, 5, and 6. Recommendation 3 would be presented to the EPC at a later date because it dealt with an extension of the monitoring contracts of Drs. Ehringer and Dawes, pollution recovery funds, and how monitoring would be funded.

In response to Commissioner Platt, Dr. Ehringer explained how a motors-up requirement for boaters in that area would be accomplished. That requirement

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included signs, aerial photography, and monitoring. Commissioner Platt said signs had to be specific about what boaters could not do. Based on assurances for appropriate signage, Commissioner Platt moved approval, seconded by Commissioner Storms, and carried seven to zero.

Preservation of Uplands in Lieu of Wetlands Compensation for Wetlands Impacts - Phil Dunn Property - Mr. Howton said the project proposed impacts to previously disturbed, altered wetlands in the Turkey Creek drainage area. The purpose for the impact was to access upland parcels on the property. The road would be at grade; no fill would occur within the wetland. Since there was no place to conduct mitigation creation, staff recommended EPC accept preservation of uplands in lieu of creating mitigation on the property. Commissioner Storms moved staff recommendation, seconded by Commissioner Wacksman. In response to Commissioner Platt, Mr. Howton explained the impact would allow access on the property to build a single family home, and it was preferable to destroying significant uplands. Preservation could be considered if altered disturbed systems would be impacted. EPC Executive Director Roger Stewart explained the value of pristine uplands exceeded the value of a recreated or degraded wetland. Chairman Frank suggested the EPC consider that when monitoring the Planning and Growth Management Department (PGMD), because PGMD, not EPC, had the authority to determine whether uplands would be preserved. Commissioner Storms spoke about the importance of uplands for otters. The motion carried seven to zero.

WATER MANAGEMENT DIVISION

Presentation - Artificial Reef Program - Mr. Tom Ash, EPC staff, gave the history of the reef program. He discussed the goal to add diversity and increase fishery in Tampa Bay. Hillsborough County had more than 36,000 registered boaters. A videotape of the reef program showed a reef habitat area. Tampa Bay was a place to fish and enjoy recreation. Ten artificial reefs, using 30,000 tons of mostly concrete material, were provided at no cost to citizens. The program was financed by the pollution recovery trust fund and, at times, federal aid and sport fish restoration funds funneled through the Florida Fish and Wildlife Conservation Commission. Fifty acres of hard-bottom habitat had been created in Tampa Bay that did not exist prior to 1987, which did not include two oyster bar projects in the Alafia River or the Cockroach Bay restoration project. Commissioner Platt complimented Mr. Ash as a steward of the reef program.

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WETLANDS MANAGEMENT DIVISION

TBW's Restitution Policy - Mr. Stewart said staff asked to defer the item to the next EPC meeting. Commissioner Storms so moved, seconded by Commissioner Wacksman, and carried seven to zero.

Report on Folio Numbers in Conservation Areas - Mr. Howton said Ms. Denise Layne, president, Lutz Civic Association, had expressed concern that folio numbers were being created in conservation areas in Tampa Palms with eminent development for a park system. Staff had investigated the issue. Folio numbers had been created in that area; however, that did not provide any reliance or assurance that development would occur. Furthermore, in a settlement agreement with Tampa Palms, the subject area had been designated as a conservation area held jointly with EPC and Tampa Palms. The conservation area covered the uplands and wetlands. The city of Tampa was not aware of plans for development. Mr. Howton would provide information to Ms. Layne and, as requested by Commissioner Norman, other concerns expressed by Ms. Layne would be incorporated in the follow-up report.

AIR MANAGEMENT DIVISION

Update on Clean Air Month Activities - Mr. Jerry Campbell, Director, Air Management Division, introduced Ms. Barbara Mott, EPC staff, who discussed efforts put forth on the clean air month celebrated in May. Mr. Thomas Tamanini, EPC staff, briefed EPC on local air monitoring. He explained The Tampa Tribune had posted the air quality index for the prior day in its Metro section. EPC had its own index telephone number; information was updated twice daily at a minimum. Mr. Tamanini spoke about a pilot program with the American Lung Association and Bay News 9, where EPC reported air quality daily and Bay News 9 gave an update on Weather on the Nines. The pilot program would be in effect through November. After that, the National Weather Service, Ruskin, was anticipated to put that information on the wire service. Mr. Tamanini outlined Air Now, an ozone mapping program available on the Internet. The website address was www.epa.gov/airnow. Mr. Campbell explained yesterday's air quality was provided in the newspaper; EPC provided air quality for that day; and EPC wanted to eventually forecast next-day air quality. Commissioner Platt suggested asking The Tampa Tribune to attribute EPC as the source of air quality information. Mr. Tamanini reported the web page and the Air Now program was a federally funded impact program.

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Ms. Phyllis Pacyna, Director, Transportation Management, Tampa Downtown Partnership, encouraged participation in Alternative Transportation Week, October 18-22, 1999. Commissioner Platt had attended a conference in Los Angeles, California, on clean air and alternative energy sources. April 2000 would be the 30th anniversary of Earth Day and would center on clean air and reducing energy usage. Commissioner Platt suggested staff consider how that time could be used to alert the public in ways they could individually reduce electrical usage. Mr. Stewart spoke about a report by Mr. Reggie Sanford, EPC staff, to encourage the adoption of alternative fuels in Florida in place of the inspection program.

Chairman Frank had attended the presentation of the Justice Department, U. S. Attorney's Office, and citizens who were involved in the Bay Drum situation that recognized EPC for its work. Mr. Stewart said Attorney Gary Donaldson, who had been behind the federal attorney's effort in that issue locally, would be the chief counsel for the Department of Environmental Protection.

Chairman Frank initiated discussion on the wetlands mitigation legislative issue and asked if it were more appropriate to address that first at the EPC or BOCC. Mr. Howton wanted to speak with the Department of Public Works on that issue before making a presentation to the BOCC.

There being no further business, the meeting was adjourned at 11:00 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
RICHARD AKE, CLERK

By: _____
Deputy Clerk

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JANUARY 20, 2000 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, January 20, 2000, at 10:00 a.m., in the Boardroom, County Center, Tampa, Florida.

The following members were present: Chairman Jan Platt and Commissioners Pat Frank, Chris Hart, Jim Norman, Thomas Scott, Ronda Storms, and Ben Wacksman (arrived at 10:12 a.m.)

Chairman Platt called the meeting to order at 10:02 a.m. Commissioner Scott led in the pledge of allegiance to the flag and gave the invocation.

OFF-THE-AGENDA ITEM

Chairman Platt presented plaques to EPC Chief Legal Counsel Vernon Wagner and EPC Attorney Patrick Courtney, who were leaving EPC for private practice.

CHANGES TO THE AGENDA

Mr. Roger Stewart, Executive Director, EPC, said two items, EPC counsel and special counsel services for EPC and the Water Resource Team, were the only changes to the agenda. Commissioner Norman moved the changes. Commissioner Scott seconded the motion, which carried six to zero. (Commissioner Wacksman had not arrived.)

CITIZENS WISHING TO APPEAR

Ms. Marilyn Smith, County resident, commented on methyl tert butyl ether (MTBE) pollution and pollution from Tampa Electric Company's (TECO) Big Bend power plant. She asked what measures could be used to remove the plastic scrubbers, also called pigs, from the outflow at the Big Bend plant. Mr. Chris Dunn, Director, Water Management Division, EPC, would submit a written report at the next EPC meeting.

Commissioner Norman commented on ineffective emissions control efforts in the Miami area, as referenced by Ms. Smith. Commissioner Norman wanted information about discontinuing the automobile emissions inspection fee if it did not affect air quality. Mr. Stewart said EPC had long advocated stopping motor vehicle emissions testing and using low-sulphur fuel, which would have a greater effect and for which support was growing nationwide. He would report at another EPC meeting on approaches to achieve that. At the request of Commissioner Frank, Mr. Dunn would report at the next EPC meeting on water pollution caused by gasoline additives, ongoing negotiations on air pollution, and follow-up with TECO regarding the air scrubbers. She wanted the information before plans for the desalination plant were finalized.

Commissioner Storms was concerned about waiting a month for the information. In response, Mr. Stewart gave a brief report on work to inspect and refit gasoline stations and measure gasoline pollution migrating to the ground. He explained that the Southwest Florida Water Management District (SWFWMD) was required to do routine wide-range groundwater monitoring. EPC staff would find out if SWFWMD was measuring MTBE. Mr. Hooshang Boostani, Director, Waste Management Division, EPC, said there had been no evidence of MTBE in the County thus far in cleanup of petroleum contamination sites. Mr. Jerry Campbell, Director, Air Management Division, EPC, said 1990 amendments to the Clean Air Act had induced the gasoline industry to use MTBE, which had been in gasoline since the late 1970s as a lead substitute. The situation was worse in California where reformulated gasoline was required, unlike Florida.

Commissioner Storms asked what the cost would be to provide an option to use low-sulfur gasoline and to give incentives to gasoline providers. Mr. Stewart said some members of the Legislative Delegation had been interested in EPC's strong support of the issue. A rough estimate of the cost was between three to five cents per gallon. There was an ongoing federal effort to require cleaner fuels, and there was good public support of discontinuing emission inspections in favor of cleaner fuels; resistance would come from refiners. Mr. Campbell said the EPC had already taken action via

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a letter from Chairman Platt to the Legislative Delegation supporting low-sulfur fuel. Commissioner Hart questioned using MTBE in any percentage if it was ultimately deadly and observed that federal efforts were remedial and were not addressing elimination of the pollution. Mr. Stewart explained how the tanks program was designed to prevent environmental impacts. EPC staff would find out if SWFWMD had any information.

Regarding the air scrubbers, Commissioner Frank thought the Board of County Commissioner (BOCC) representatives to Tampa Bay Water (TBW) needed information before the next TBW meeting, because the desalination plant was being prioritized in TBW decisions. Mr. Dunn said the information could be provided earlier, although EPC viewed release of the air scrubbers as a separate issue. It was possible TECO could contain the air scrubbers on its own property. Commissioner Frank thought one issue was the problem with air scrubbers, and the other issue was the possibility of outflow killing marine life in waterways. Mr. Dunn said EPC was working with the Department of Environmental Protection (DEP), which had issued an incompleteness letter to the applicant and was awaiting the response to the request for additional information.

Ms. Denise Layne, P.O. Box 1, Lutz, thanked Mr. Stewart for his long-time efforts to protect the environment. Ms. Layne displayed an air scrubber and explained those devices circumvented the barrier wall meant to channel outflow to Tampa Bay, resulting in large numbers landing on private beaches. Regarding the desalination plant, she asked for a letter from Chairman Platt to Mr. David Struhs, DEP, requesting rearrangement of some projects and a policy mandating an environmental impact study (EIS) prior to permitting. Also, because there was no policy at the State level mandating an independent cumulative EIS on water plants, she thought there should be an independent EIS as soon as a plan for regional water supplies was adopted that seemed likely to affect a body of water.

Ms. Layne stressed the 1998 cumulative impact study conducted by a consultant for West Coast Regional Water Supply Authority was not independent and did not include the lack of water flow into Tampa Bay as salinity increased. Ms. Layne requested a letter to Mr. Struhs about conducting studies regarding regional water supplies at the start of the process. Chairman Platt said the Agency on Bay Management and the National Estuary Program had repeatedly requested a cumulative impact study on all TBW projects. Commissioner Hart reported Senator Tom Lee had asked Mr. Struhs to address the issue at a State level, and Mr. Struhs would hold public meetings in Tampa in February. Commissioner Hart suggested contacting Mr. Struhs's office, offering staff help, and ensuring the EPC was not at cross purposes. Mr. Dunn gave an update on unsuccessful attempts by EPC to address the EIS with DEP and his understanding there was no legal requirement for an EIS for the desalination project. The State of Florida could press that issue, perhaps at the upcoming February meeting with the new administrator for the DEP Southwest District office. The local DEP representatives had not been receptive. Regarding permitting and responsibility for conducting the cumulative impact study, Mr. Dunn suggested speaking with Mr. Struhs at the February meeting.

Commissioner Frank wanted to indicate support for DEP involvement in the EIS. Mr. Dunn said there were triggers other than environmental impacts for an EIS; if those criteria were not met, the federal government could not require an EIS. Commissioner Frank said the BOCC was promoting that the Legislative Delegation support funding for projects connected with TBW. No project identified environmental impacts. She thought federal dollars that could be given to the State should be promoted first. Mr. Dunn would put that on the agenda for the February meeting with the new DEP administrator. Commissioner Scott left the meeting at 10:45 a.m.

Commissioner Storms wanted to put in writing the EPC Board's desire for an EIS for the reasons given by Commissioner Frank and also because several citizens had advised her an EIS regarding the desalination plant would be important. Even if success seemed unlikely, making written requests often provoked activity. Commissioner Storms moved that the EPC Board make a formal request to pursue an EIS for the desalination plant, for reasons she had enumerated. Mr. Stewart recalled one instance in which he had invoked a seldom-used provision regarding County issuance of building permits. EPC legal staff would review the possibility of using that provision. Commissioner Frank seconded the motion. (The motion was not voted on.)

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Commissioner Norman wanted to understand the big picture and to ensure there would be no negative effect on other TBW projects, such as Cone Ranch and the Brandon wellfields. Board comments followed about changes TBW was making and the need to protect the County's resources. Chairman Platt said she would abstain, because the issue involved desalination plants and could ultimately impact property her husband owned. After observing no information had been given and the item was not on the agenda, Commissioner Wacksman moved to continue so backup information and a staff recommendation could be provided. Commissioner Norman seconded the motion. Commissioner Hart wanted to specify the information to be returned about the EIS. The motion failed two to three; Commissioners Frank, Hart, and Storms voted no; Chairman Platt abstained. (Commissioner Scott had left the meeting.)

Mr. Stewart advised Commissioner Hart an EIS, which was a major and expensive study, was beyond EPC staff capabilities. The EPC supported scientifically-based decisions. He would return with information as to whether EPC staff or the EPC Board could require an EIS. An EIS was to be hard science upon which lay people and elected officials could make decisions. Mr. Darrell Howton, Director, Wetlands Management Division, EPC, believed EPC would participate in review and analysis of an EIS, which he thought would be a more comprehensive study of desalination plant impacts. There was no standard cost, and a study of that kind would be costly. Commissioner Hart talked about public distrust of government and wanted to request the information and take positive action.

Commissioner Wacksman wanted to know the cost, the scientific recommendation, and the chance of success. Regarding taking action in the meeting, he requested the same deference given to other members who requested delay of items for more information. Commissioner Frank reiterated her position supporting expediency and asked Mr. Stewart about a peer review by EPC regarding the desalination plant.

Chairman Platt said that differed from the motion on the floor, which was for an EIS for the desalination plant permitting. Commissioner Storms thought cumulative impacts to Tampa Bay were part of the same issue, and she advised Chairman Platt she and Commissioner Frank would advocate that the EIS also address the other projects. Commissioner Frank thought the total impact to Tampa Bay would have to be considered. Commissioner Norman said the issues raised could not be addressed in the meeting, and legal authority as well as federal funding were lacking. He thought the motion would accomplish little, and the item, which was not on the agenda, should be returned with more information. Commissioner Storms made a substitute motion to address the issue at the next BOCC meeting as a special EPC meeting. Commissioner Frank seconded the motion so long as there would be no unreasonable delay. Commissioner Hart suggested Chairman Platt meet with the DEP secretary after the special EPC meeting. The motion carried five to zero; Chairman Platt abstained. (Commissioner Scott had left the meeting.) Chairman Platt asked Commissioners to place items on the agenda whenever possible. Commissioner Hart suggested adding a Commissioners' section to the EPC agenda, so issues surfacing between meetings could be addressed.

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Ms. Lynn McGarvey, Chairman, CEAC, said the January CEAC meeting had addressed pollution recovery fund requests. Most of CEAC's concerns regarding air quality seemed to be covered. Ms. McGarvey thanked Commissioner Platt for the information on low-sulphur gas.

CONSENT AGENDA

- A. Approval of Minutes: November 16 and 18 and December 15, 1999
- B. Monthly Activity Reports
- C. Legal Department Monthly Reports
- D. Pollution Recovery Fund
- E. Gardinier Settlement Fund
- F. Appointment of EPC Representative for purposes of testimony in the pending challenge of SWFWMD's minimum flows and levels rules for northern Tampa Bay.

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Commissioner Norman moved approval of the Consent Agenda. Commissioner Wacksman seconded the motion, which carried six to zero. (Commissioner Scott had left the meeting.)

LEGAL DEPARTMENT

Ratification of EPC's Request for Rule Adoption Hearing - Attorney Wagner said a rule adoption proceeding was scheduled for January 25 and 26 after which it might be necessary to file a formal rule challenge. The deadline was ten days from the conclusion of the requested rule adoption hearing, which would be prior to the next EPC meeting. The request was to ratify filing of the requested rule adoption proceeding and to continue the authorization already granted the EPC Executive Director to initiate a rule challenge or other appropriate proceedings if the proposed rules were inconsistent with prior EPC Board direction and if EPC's point of entry would be lost prior to the next EPC meeting. Those actions would be subject to EPC Board ratification. Commissioner Storms so moved. Commissioner Hart seconded the motion, which carried six to zero. (Commissioner Scott had left the meeting.)

Authorize Chairman to Enter into a Legal Services Agreement - Mr. Stewart requested ratification of the reappointment of Attorney Sara Fotopulos as EPC General Counsel. Commissioner Norman so moved. Commissioner Hart seconded the motion, which carried six to zero. (Commissioner Scott had left the meeting.)

Off-the-Agenda Item: Special Counsel Services for EPC and Water Resource Team - Attorney Fotopulos said Attorney Courtney's legal services on the Water Resource Team had been productive, and EPC wanted to contract with him for continued representation of EPC in ongoing litigation. The agenda item cover sheet included three areas in the scope of services that would be added to the draft agreement distributed January 19. Efforts to minimize expenses through oversight and accountability were included in the contract. Assistant County Attorney David Forziano had provided draft language incorporated in the agreement. Attorney Fotopulos recommended EPC authorize the Chairman to sign the agreement for legal services, with payment to be made through the Water Resource Team budget. She understood the County did not object to that. Because Attorney Courtney was familiar with many of the issues and continuity was needed, Commissioner Frank moved approval. Commissioner Hart seconded the motion, which carried six to zero. (Commissioner Scott had left the meeting.)

Discussion of Process for Hiring Executive Environmental Director - Attorney Fotopulos reviewed how she had prepared the draft executive director job description, notice of position availability, and the suggested hiring process using information from the County Human Resources Department. The first action needed was to accept Mr. Stewart's retirement, effective July 1, 2000. With appreciation and deep regret, Commissioner Wacksman moved to accept Mr. Stewart's resignation letter, effective July 1, 2000. Commissioner Hart seconded the motion, which carried six to zero. (Commissioner Scott had left the meeting.)

Commissioner Frank moved approval of the job description. Commissioner Storms seconded the motion. Attorney Fotopulos said the language was taken from the Special Act. Commissioner Norman thought the minimum qualifications might unintentionally eliminate some qualified persons. Discussion ensued about whether some items should be in the job description. Attorney Fotopulos said the standard job description form included a minimum qualifications section. She clarified that the third item--training and experience as necessary to manage a staff of 160--was not the same as requiring actual experience. Commissioner Norman thought that might be open to interpretation. Attorney Fotopulos said that would be the EPC Board's determination.

Ms. Sharon Wall, Director, Human Resources Department, suggested the words training and experience to manage a large staff. Attorney Fotopulos advised Chairman Platt the requirement for a bachelor's degree was a legal requirement. Regarding the budget oversight criterion, Attorney Fotopulos suggested the words oversee a large budget. If the Board advertised nationally, Chairman Platt thought people in other states would use that information in determining their interest in applying. Ms. Wall suggested putting the requirement about overseeing a large budget in the job

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responsibilities section, rather than in the requirements section; there was consensus to do that and to move the criterion about managing a staff of 160 to the responsibilities section as well. Commissioner Hart explained his desire to avoid excluding people of various backgrounds.

Mr. Stewart emphasized the hiring decision would be the EPC Board's, but applicants needed to know what their responsibilities would be. In the essential functions section, Chairman Platt suggested the second criterion be changed to employ a staff of over 160 and manage a budget of approximately \$10 million. With that change, those two criteria could be removed from the requirements section. Chairman Platt restated the motion to approve the job description with the two changes. The motion carried six to zero. (Commissioner Scott had left the meeting.)

Regarding the notice of position availability, Commissioner Hart wanted to change the third paragraph with the words "at least five year's experience" rather than "five to ten years experience." He also thought the words environmental regulations restricted applicants to those with public sector experience. He suggested using . . . the ability to administratively manage environmental regulatory programs. . . and . . . public and private experience welcome . . . or words to that effect. Commissioner Norman moved approval with those changes. Commissioner Wacksman seconded the motion. Attorney Fotopulos said a salary range study was being updated with Civil Service. When she had prepared the draft, she did not know Mr. Stewart's salary was above \$100,000 and changing the range to from \$90,000 to \$110,000 would not be inappropriate. There was consensus to do so. The motion carried six to zero. (Commissioner Scott had left the meeting.)

Commissioner Norman moved approval of the hiring process presented on page 51 of agenda backup. Commissioner Wacksman seconded the motion. Commissioner Frank explained why she thought it inappropriate for the EPC General Counsel and DEP district director to be on the panel. Commissioner Frank offered an amendment to replace the EPC General Counsel with someone involved in human resources and requested input about whether that would be Civil Service or County staff. Ms. Wall said it was an unclassified position, for which the Human Resources Department recruited, so she was able to participate. Commissioner Norman supported having the County Human Resources Department Director replace the EPC General Counsel. Commissioner Frank suggested the position for a DEP representative be replaced with the director of the Tampa Bay Estuary Program. Commissioner Hart obtained consensus to add the city of Tampa (City) director of personnel, who had been helpful in executive recruitment.

Commissioner Wacksman questioned if a delicate situation would be created with EPC regulating both the County and the City and having those entities on a screening committee for the EPC director. Commissioner Hart compared that to Board members voting as well as being taxpayers and emphasized the Board would make the decision. The screening committee would present a recommendation. Chairman Platt suggested adding Mr. Gene Gardner, Director, Civil Service Board, who had extensive experience. Commissioner Hart said Mr. Gardner worked with employment of classified persons. Commissioner Hart suggested the screening committee be composed of five individuals: the County Human Resources Department Director, the director of personnel for the City or its representative, if the City so desired, the Tampa Bay Estuary Program director, CEAC chairman, and EPC Chairman. The motion carried six to zero. (Commissioner Scott had left the meeting.) Chairman Platt thanked Attorney Fotopulos and Ms. Wall for their work in preparing the recommendation.

AIR MANAGEMENT DIVISION

Report: Clean Air Policy Goals Proposed by Commissioner Joe McClash, Manatee County - Mr. Campbell reviewed EPC staff recommendation to accept the report and take no further action on the remaining five items about which CEAC had made recommendations. Commissioner Norman so moved. Commissioner Wacksman seconded the motion, which carried five to zero. (Commissioner Hart was out of the room; Commissioner Scott had left the meeting.)

WATER MANAGEMENT DIVISION

Report: Sunnydale Mobile Home Park (Referral from January 5, 2000, BOCC Meeting) - Mr. Dunn said EPC

THURSDAY, JANUARY 20, 2000 - DRAFT MINUTES

had an agreement with the Hillsborough County Health Department since 1991. All violations regarding mobile home parks with septic tanks were referred to the Health Department for investigation and potential enforcement. EPC followed up on water quality violations. Regarding the Sunnydale Mobile Home Park, EPC had received some complaints that had been investigated and forwarded to the Health Department. EPC had concluded follow-up by the Health Department was adequate.

Mr. John Craig, 4542 Village Drive, displayed photographs of various problems relating to septic tanks that he said were still not corrected and emphasized the pollution from the ditch went into Tampa Bay. Mr. Craig asserted someone was taking out the dye used as a testing method, and nothing had been done for over 200 low-income residents. He asked EPC members to visit the site.

Mr. Jordan Lewis, Director, Florida Department of Health, had been to the site numerous times since the incident had been referred by the EPC, and he said there was no apparent significant public health problem. Notices had been issued, and corrections had been made. The Health Department was monitoring the situation regularly. In reply to Chairman Platt, Mr. Lewis said the problems depicted in the photographs had been corrected. The Health Department would continue to work with the residents and enforce the law. Chairman Platt asked Mr. Lewis as well as Mr. Craig to return at the next EPC meeting, because Mr. Craig asserted the problems had not been resolved. Mr. Craig advised Commissioner Norman he was friends with, not an official representative of, residents. Mr. Dunn advised Chairman Platt samples taken by EPC for the three complaints had shown no conclusive results about sewage leakage on the site. That was why the case had been referred to the Health Department.

There being no further business, the meeting was adjourned at 12:05 p.m.

READ AND APPROVED: _____ CHAIRMAN

ATTEST:
RICHARD AKE, CLERK

By: _____
Deputy Clerk

fw

Addendum for 2/17/00

EPC
AGENDA ITEM COVER SHEET

Date: February 14, 2000

Agenda Item: Update on status of MFL Rule for Lower Hillsborough River

Description/Summary:

Last month, upon staff recommendation, EPC determined to not challenge the SWFWMD rules for the Lower Hillsborough River: Chapter 40D-8 which established Minimum Flows, and Chapter 40D-80, the regulatory portion of the Recovery Strategy.

Attached for your information, is a newspaper article regarding two challenges that were subsequently filed by other parties.

Commission Action Recommended:

None

Swiftmud's lower Hillsborough River

■ One side says it doesn't go far enough to restore the brackish stretch of river; the other says it's a "sneaky" way to block water pumping permits.

By STEVE HUETTEL
Times Staff Writer

TAMPA — A plan to increase the flow of water in the lower Hillsborough River is being challenged by people at opposite ends of the debate over the river's future.

A group of residents living on the river sued last week, charging the proposal by the Southwest Florida Water Management District, or Swiftmud, doesn't do enough to restore a brackish stretch of river below the city's drinking water reservoir.

Also suing is ranch owner Robert M. Thomas, who contends that waters south of the Hillsborough River Dam are a lost cause. He says the plan is a back-door attempt to cut off new ground pumping or removal of spring water from the river.

Last month, Swiftmud approved a rule setting a minimum flow on the river to assure fish and other wildlife south of the dam have enough fresh water to survive.

Swiftmud began hearings on the issue more than three years ago, and officials at Tampa City Hall have been among the keenest observers. The reservoir created by the dam is the primary source of drinking water for 440,000 people in Tampa and unincorporated Hillsborough County. City officials argued they would have to buy water to replace any released over the dam. Swiftmud agreed instead to let the city pump 6-million gallons of water a day to the base of the dam from Sulphur Springs, 2½ miles downstream.

But environmentalists and residents along the river say the plan does little to help the lower Hillsborough. The slightly salty Sulphur Springs water won't dilute brackish water at the base of the dam enough to make a difference, said Philip Compton, spokesman for civic group Friends of the River. Simply recycling water below the dam also won't add to the overall freshwater flow, he said.

Water spilled over the dam almost daily until

plan challenged on two fronts

about 1970. But as city water consumption increased, water flowed over less and less frequently. It now happens fewer than half the days of the year, city officials say.

Their stretch of the river became increasingly brackish, Compton and his neighbors say, and they see fewer freshwater plants, fish and the birds that feed off them. They blame Swiftmud for not forcing the city to send reservoir water down the river.

"This is the only opportunity we'll have in our lifetime to restore the river to its condition before 1970," Compton said.

City officials call the plan a fair compromise.

The dam has existed in one form or another for a century, said Assistant City Attorney Kathy Fry, and residents need to recognize the river will never be fully restored. Water to replace flow over the dam would come from well fields, blamed for drying up wetlands and lakes to the north, she said.

"What is more valuable — 2½ miles of river that was changed 100 years ago or lakes and pristine wetlands yet to be altered?" Fry asks.

The lawsuits filed last week put the city in the odd

position of suing to challenge the very compromise it hammered out with Swiftmud. But the city couldn't live with the deal if one part, like the Sulphur Springs pumping, was stuck down by a judge, Fry said.

Thomas, president of Two Rivers Ranch, sued because the proposed rule states that Swiftmud likely won't issue any more water permits that affect the flow of the Hillsborough River.

He has applied to pump 16-million gallons a day from the ranch and has talked about making a deal with area's public water supplier, Tampa Bay Water.

Thomas also owns Crystal Springs on the river in Pasco County. Zephyrhills Spring Water — a subsidiary of Nestle Corp.'s Perrier division — applied to increase the amount of water it could draw from the spring from 301,000 gallons to 1.8-million gallons.

Swiftmud denied the request, and the decision was upheld by an administrative law judge last month.

Thomas said the agency put language in the minimum flow rule to keep any more water permits from being issued in the Hillsborough River basin without attracting attention. "This is a sneaky way to curtail all further (permits for) water," he said.

Addendum for 2/17/00

EPC
AGENDA ITEM COVER SHEET

Date: February 10, 2000

Agenda Item: Response to concerns of County Line Coalition, Inc.
Letter from Gaye Townsend

Description/Summary:

See attached.

Commission Action Recommended:

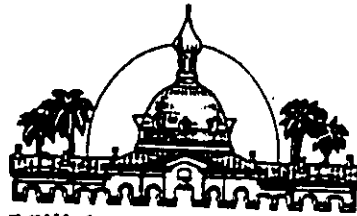
N/A

BOARD OF COUNTY COMMISSIONERS

Chairman
Pat Frank, District 7

Vice Chairman
Chris Harr, District 5

Ben Wacksman, District 1
Jim Norman, District 2
Thomas Scott, District 3
Ronda Storms, District 4
Jan K. Platt, District 6



Hillsborough County
Florida

P.O. Box 1110
Tampa, Florida 33601
(813) 272-5660

Daniel A. Kleman
County Administrator

MEMORANDUM

RECEIVED

FEB 09 2000

EPC OF H.C.
WETLANDS

TO: Roger Stewart, Executive Director, EPC

FROM: Jan Platt, Commissioner *JLP*

RE: Pasco-Hillsborough County Line Road

DATE: February 8, 2000

Please refer to the attached letter from Gaye Townsend and place this item on the EPC February 17, 2000, agenda in order that these concerns may be addressed at that time. Thank you.

February 1, 2000

County Line Coalition, Inc.
PO Box 1732
Lutz, FL 33548 · 1732

Phone/Fax (813) 949 · 6398
e mail ~ eoltown@gte.net

Gaye M. Townsend
19905 Long Leaf Drive
Lutz, FL 33549

Commissioner Jan Platt
Chair, Environmental Protection Commission
PO Box 1110
Tampa, FL 33601

RE: Pasco-Hillsborough County Line Road/Request for Additional
Extension of EPC Wetland Impact Authorization, Received 1/13/00
STR 1-27-18

Dear Chair Jan Platt,

The Hillsborough County Board of County Commissioners, as you are aware of have been involved with County Line Road for several years. Without success we all have tried to work with Pasco County.

Our additional concerns are as follows:

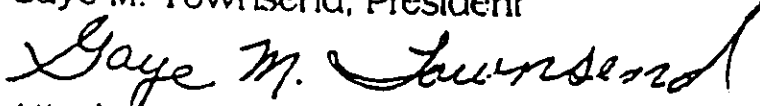
- * The EPC should contact affected property owners and organizations involved in the project.
- * The EPC should not issue a permit for projects that do not meet Hillsborough County's Comprehensive Plan.
- * The wetland impacts in the referenced permit are in Hillsborough County. The HCBOCC is not aware of any impacts to their county. It has been the understanding of the HCBOCC that the road will be in Pasco County. Hillsborough County several times has tried to cooperate with Pasco County on the County Line Road Project/Willow Bend Parkway with no avail. We agree that the mitigation should be done on site.

However, we do not believe Hillsborough County's EPC can enforce the permit conditions as they do not have jurisdiction in Pasco County. We question what kind of precedence the EPC is setting.

We are requesting that this issue be placed on the agenda for the next scheduled EPC meeting.

Sincerely,

Gaye M. Townsend, President

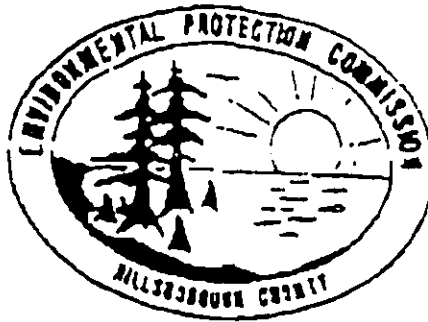


Attachment: one/EPC/1-19-2000/ Mark A. Howard/Environmental Scientist

CC: HCBOCC

COMMISSION

FRANK
 CHRISTIART
 NORMAN
 J. P. KITT
 THOMAS SCOTT
 DONDA STORMS
 BEN WACKSMAN



ADMINISTRATIVE OFFICES, LEGAL &
 WATER MANAGEMENT DIVISION
 1906 27TH AVENUE
 TAMPA, FLORIDA 33604
 TELEPHONE (813) 272-5960

AIR MANAGEMENT DIVISION
 TELEPHONE (813) 272-5930

WASTE MANAGEMENT DIVISION
 TELEPHONE (813) 272-5983

WETLANDS MANAGEMENT DIVISION
 TELEPHONE (813) 272-7104

EXECUTIVE DIRECTOR

GER P. STEWART

January 19, 2001

Mr. Randall C. Maciuszek
 Engineering Services, Design
 West Pasco Govt. Center S-230
 7530 Little Road
 New Port Richey, FL 34654

**SUBJECT: PASCO-HILLSBOROUGH COUNTY LINE ROAD / REQUEST FOR
 ADDITIONAL EXTENSION OF EPC WETLAND IMPACT
 AUTHORIZATION, RECEIVED 1/13/00 / STR 1-27-18.**

Dear Mr. Maciuszek:

EPC staff has completed its review of your request to extend the wetland impact authorization for the subject project until 3/1/2001. The request is approved, with the following conditions:

1. Submit written notification to this office within 7 days of commencement of initial wetland impact associated with this project.
2. Submit a wetland mitigation completion report to this office within 30 days of completion of the wetland mitigation area(s) associated with this project. This report must include species planted, numbers, and dates planted.

Please call me if you have any questions or require further information.

Sincerely,

Mark A. Howard
 Environmental Scientist

MAH/SIM/mjc



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

Lori Towe
6512 King Palm Way
Apollo Beach, FL 33572

DEC 21 1999

Dear Mrs. Towe:

Thank you for your recent letter to Assistant Administrator J. Charles Fox concerning a proposed desalination plant at Apollo Beach that would discharge to Tampa Bay. Your letter was forwarded to my branch chief, Doug Mundrick, who then referred it to me for a response. I apologize for the delay in replying. We appreciate your concern for the environment and the health of Tampa Bay.

Please know that the Environmental Protection Agency (EPA) has no authority in the siting or construction of this proposed facility or to mandate specific wastewater disposal methods. Before any new facility such as this begins to discharge its wastewater to surface waters, it must first obtain a National Pollutant Discharge Elimination System (NPDES) permit. The Florida Department of Environmental Protection (FDEP) in Tallahassee will be the NPDES permitting authority for this discharge. Any issues which you have with the desalination plant discharge should be addressed to that office, through the permitting process.

Because this proposed facility would be a new discharge, the permittee is responsible for demonstrating that Florida's antidegradation requirements are met. That demonstration must include: 1) an assessment of the water quality impacts expected; 2) that best available wastewater treatment technology is being provided; 3) an analysis of alternate wastewater disposal methods; and 4) a showing that any lowering of water quality by the proposed project is necessary to accommodate important economic or social development in the area in which the waters are located. Typically, this documentation is submitted to the FDEP at the time of the wastewater discharge permit application. The FDEP is responsible for making the antidegradation determination, prior to issuance of any wastewater discharge permit. The EPA will carefully review any draft NPDES discharge permit for the desalination facility as part of our oversight of the State's administration of the NPDES program to ensure that all Florida water quality standards and antidegradation requirements are met.

We appreciate your desire to protect and preserve the environment and hope you find this information useful. Please feel free to contact me at (404) 562-9304 if I can be of further assistance.

Sincerely,

Marshall Hyatt
Marshall Hyatt
Environmental Scientist
Permits, Grants, and Technical Assistance Branch
Water Management Division



Florida House of Representatives

JD Alexander
Representative, District 66

Reply To:

- 391 Avenue A, SW
Winter Haven, FL 33880
(941) 298-7677
- 214 House Office Building
Tallahassee, FL 32399-1300
(850) 488-9465

Committees
Water & Resource Management, Chair
Education Innovation
Education Appropriations
Joint Legislative Committee on Everglades Oversight
Resource & Land Management Council
Reapportionment

February 4, 2000

Mr. David Struhs
Secretary
Florida Department of Environmental Protection
3900 Commonwealth Blvd
Tallahassee, FL 32399-3000

Dear Secretary Struhs:

In our efforts to expand precious water resources, it is essential that we move methodically and thoughtfully together in our approach. Certainly, as we advance our mission it is imperative that we do not degrade other natural systems for the sake of one project's success. I believe we are heading in the right direction, with your Department as a partner, and I have great confidence in your ability to help us remain mindful of our goals.

Having said that, a group of citizens around Tampa Bay are expressing growing concerns about potential cumulative impacts surrounding the proposed seawater desalination project to be located on the bay as part of Tampa Bay Water's master water plan. Their concerns center around what environmental consequences may occur as a result of additional water withdrawals from the bay for desalination and the subsequent discharge of brine, particularly in light of other water withdrawal projects proposed in the plan that may affect Tampa Bay.

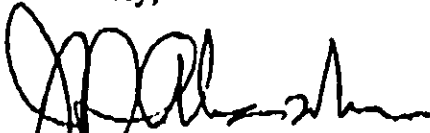
Although Tampa Bay Water has completed cumulative impact studies in the past, the over all objective of Tampa Bay Water is to implement a master water plan for its member counties. As such, the agency fights the perception that studies contracted by Tampa Bay Water may contain a bias toward the very desalination plant which would move Tampa Bay Water closer to its goal. Whether that is or is not the case, your Department's execution of an independent cumulative impact study would be viewed with more confidence. The missions of Tampa Bay Water and the Florida Department of Environmental Protection clearly compliment one another, however DEP must view the aggregate goal while Tampa Bay Water is focused on one area.

In short, I respectfully ask that you consider conducting an independent cumulative impact study on Tampa Bay relative to proposed desalination projects to assess the effects on Tampa Bay's natural ecosystems.

Alexander/page 2

Thank you for your timely attention to this request. As always, my office stands ready to assist in any manner necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD Alexander', written in a cursive style.

JD Alexander
Chairman

House Committee on Water and Resource Management

cc: Mike Joyner
Joyce Pugh

JDA:srs

**MANATEE'S
AND
BATTERY ACID**

Big Bend Area Sediment Chemical Analysis (EPC data)

Sediments with a contaminant above the "Predicted Effects Level" have a high probability of being toxic to aquatic life. If the measured level is divided by the "Predicted Effects Level" and the resultant quotient is between 0.1 and 1.0 then the contaminat level represents a moderate probability of toxicity. The follow table represents data for sediment samples in the Big Bend Area.

Sediment Analysis		
Date/Location	Moderate Probability of Toxicity	High Probability of Toxicity
1998 Hillsborough Bay 245, 237, 030	Nickel, Zinc	
1997 Hillsborough Bay 54, 55, 56	Chromium, Cadmium, Silver Pesticides	
1996 Hillsborough Bay 56	Copper, Nickel, Lead, Zinc, Silver, Arsenic, Cadmium Pesticides	Chromium
1995 Hillsborough Bay 56	Chromium, Copper, Lead, Zinc, Silver, Arsenic, Cadmium Pesticides, Polychlorinated biphenyls (PCB)	Nickel
1997 Middle Tampa Bay 15, 07	Pesticides	
1996 Middle Tampa Bay 15, 13, 07	Chromium, Pesticides	
1995 Middle Tampa Bay 07	Chromium, Nickel, Zinc, Polychlorinated biphenyls (PCB), pesticides	

C:\MyFiles\SOBAC.sediment.tab.wpd

The standards for dissolved oxygen levels are based on water usage classification, but generally state that dissolved oxygen should not average less than 5.0 mg/l during a 24 hour period and should never be less than 4.0 mg/l.

When dissolved oxygen levels are depressed (hypoxia), or depleted (anoxia), even for a short time, detrimental effects occur in the aquatic ecosystem. An entire community of aquatic organisms can be decimated after only a few hours of anoxia. Population shifts may occur after periods of oxygen stress, favoring facultative anaerobes or pioneer species. Hypoxia (DO less than 2.0 mg/l)

Measurements at Station #9 Apollo Beach (EPC)				
Year	Number of Bottom Measurements	# measurements below 5.0 mg/l	# measurements below 4.0 mg/l	# measurements below 2.0 mg/l
1999	12	4	1	-
1998	12	5	3	1
1997	12	5	2	1
1996	12	4	1	-
1995	12	3	1	-
1994	12	6	2	-
1993	12	5	2	-
1992	12	4	1	-
1991	12	3	1	-
1990	12	5	3	-
1989	12	6	4	1
1988	12	4	2	1
1987	9	4	1	1
1986	12	6	3	1
1985	8	4	2	-
1984	10	6	1	-
1983	11	4	3	-
1982	12	3	2	1
1981	12	2	1	-
1980	12	-	-	-

(ADDING TO THE WATER PROBLEMS)

**DESALINIZATION INJECTED CHEMICALS
INTO TAMPA BAY ESTUARY WATER.....**

AS REPORTED BY STONE AND WEBSTER REPRESENTATIVES

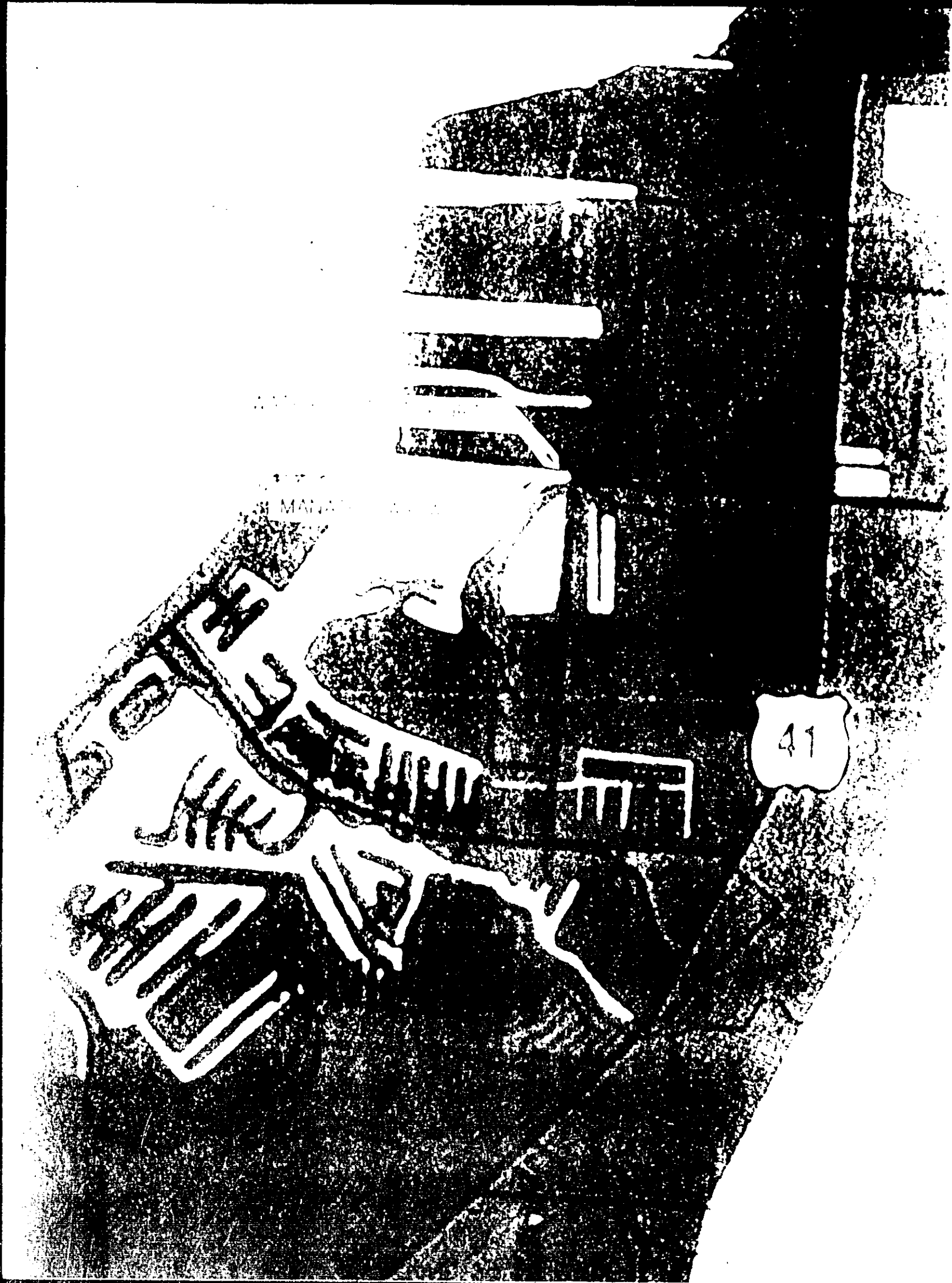
- * 1. SURFURIC ACID (BATTERY ACID) 12,145 POUNDS PER DAY
 - 2. FERRIC SULFATE/CHLORIDE 10,460 POUNDS PER DAY
 - 3. SODIUM BISULFATE 90 POUNDS PER DAY
 - 4. CHLORINE 100% 30 POUNDS PER DAY
 - 5. POLYMER - UNKNOWN CHEMICAL SPEC , NOT REPORTED
 - 6. SODIUM HYDROXIDE
 - 7. SODIUM TRIPOLYPHOSPHATE
 - 8. SODIUM DODECYLBENZENE
 - 9. CITRIC ACID
- } 30,200 GALLONS PER DAY
- * EQUAL TO QUANTITY OF 4000 CAR BATTERIES DUMPED INTO THE BAY EACH DAY. TOTALING 4,400,000 (FOUR MILLION) POUNDS OF ACID PER YEAR

**ADDING TO THE EAST TAMPA BAY SHORE LINE CONTAMINATION
DECAYING THE TOXIC HUMAN AND AQUATIC LIFE , DESTROYING
THE 20 YEAR STRUGGLE TO SAVE THE TAMPA BAY ECO-SYSTEM**

THE 2 MILLION POUNDS OF ACID WILL BE EXOSTING FROM THE TECO BIG BEND POWER PLANT WATER SYSTEM AT ITS HIGHEST CONCENTRATION DIRECTLY INTO THE MANATEE AREA DURING THEIR WINTER STAY.

AT THE MASSIVE VOLUMNS OF CHEMICALS (NOTE I CANNOT THINK OF ANOTHER LOCATION IN ALL OF FLORIDA) THE MANITEES WELL BEING IS IN DANGER. THIS BATTERY ACID WILL DAMAGE THEIR SKIN AND THE EYE MUCUS, IN TIME MAKING THEM BLIND.

THIS IS THE LAST PLACE THIS FACITILY SHOULD EVER BE PLACED.



MEETING NOTICE



SAVE OUR BAYS AND CANALS **Dedicated to Protecting Our Environment**

P.O. Box 3668, Apollo Beach, FL 33572
WEBSITE: <http://sobac.fl-gulfcoast.com>
PHONE: 813-852-6020

- ***MOST IMPORTANT SOBAC MEETING SO FAR***
- **MONDAY, FEBRUARY 28, 2000, 6:30 P.M.**
- **EAST BAY HIGH SCHOOL AUDITORIUM**
7710 Big Bend Road, Gibsonton, FL (At I75 & Exit 47 or from Hwy. 41 go East on Big Bend Road)

ATTENDEES:

- MEMBERS OF THE STATE OF FLORIDA LEGISLATURE
- SECRETARY OF DEPT. OF ENVIRONMENTAL PROTECTION, DAVID STRUHS
- HILLSBOROUGH COUNTY COMMISSIONERS
- HILLSBOROUGH COUNTY WATER TEAM
- ENVIRONMENTAL PROTECTION COMMISSION REPRESENTATIVES (LOCAL & STATE)
- GUEST SPEAKER:
FRANK SARGEANT, AUTHOR & OUTDOORS EDITOR OF THE TAMPA TRIBUNE
- **YOU**, THE CONCERNED RESIDENTS OF THE TAMPA BAY AREA

THIS IS OUR CHANCE TO SHOW EVERYONE THAT WE, THE RESIDENTS OF TAMPA BAY, CARE ABOUT OUR ENVIRONMENT. WE NEED TO LET THEM KNOW THAT WE WILL NOT ALLOW ANYONE TO DO A WORLD CLASS DESALINATION EXPERIMENT WITH OUR FRAGILE TAMPA BAY ESTUARY WATERS. WE DON'T WANT BRINE AND OTHER HAZARDOUS WASTE DUMPED INTO OUR BAY.

WE HAVE EVERYONE'S INTEREST AND WE ARE MAKING TREMENDOUS PROGRESS TOWARDS STOPPING THIS IMPENDING TRAGEDY.

WE NEED TO FILL THE EAST BAY HIGH SCHOOL AUDITORIUM SO IT'S STANDING ROOM ONLY! WEAR YOUR YELLOW SOBAC T-SHIRTS. THE ONLY WAY WE CAN WIN IS FOR EVERYONE TO GET INVOLVED. ***THIS IS DEMOCRACY IN ACTION!***

PLEASE ATTEND THIS MEETING AND BRING SEVERAL FRIENDS AND NEIGHBORS WITH YOU.

THANK YOU FOR YOUR SUPPORT!

Public Comment
Jones

AGENDA ITEM COVER SHEET

Date: February 17, 2000

Agenda Item: Pollution Recovery Fund Recommendations

Description/Summary:

There are eight requests for Pollution Recovery Funds on the agenda. Each of the projects has undergone both a legal and technical review by EPC staff and a review by CEAC. The back up contains descriptions of each. Of the eight projects, three are recommended for funding. The projects are:

1. Upper Tampa Bay Trail - Requested \$87,000; staff recommends \$87,000; CEAC recommends \$77,300.
2. Cockroach Bay Turtle Grass Monitoring - Requested \$82,110; staff recommends \$5,180; CEAC recommends \$15,540.
3. Charlie Walker Conservation Center - Requested \$35,000; staff recommends \$2,791; CEAC recommends \$5,000.
4. Seagrass Restoration in Tampa Bay - Requested \$113,180; not recommended.
5. "Fantasy Island" Restoration - Requested \$153,000; not recommended.
6. Lutz Nature Park - Requested \$33,000; not recommended.
7. Benthic and Chemical Study of Bell, Rice and Fishhawk Creek - Requested \$129,350; not recommended.
8. Paspalum Sod Shoreline Stabilization - Requested \$18,550; not recommended.

The current available balance in the Pollution Recovery Fund is \$150,000. Projects recommended by staff total \$94,971. Projects recommended by CEAC total \$97,840.

Commission Action Recommended:

Make a final decision on the allocation of Pollution Recovery Funds.

PRF REQUEST #90
Upper Tampa Bay Trail

Who: Hillsborough Greenways Program

What: In conjunction with the development of the Upper Tampa Bay trailhead facility, a section of Channel "A" will be restored. The current distance from the top-of-bank to water level is approximately 20 feet. A significant amount of slope re-grading and native plantings will result in the re-creation of a natural wetland habitat, which will improve water quality by treating urban runoff and enhance wildlife habitat. The project has the potential to attract future commitments for similar projects along the length of the channel.

Where: North side of Channel "A", between Sheldon Road and Waters Avenue.

Amount: Total project cost = \$273,000

PRF request = \$87,000

Staff Comment: This is a good urban restoration effort on a waterway in need of much attention. It is a great educational opportunity with good public exposure. Erosion control methods and monitoring and maintenance of the wetland creation need to be specified. Staff would like to review the educational component.

Staff Recommendation: Award \$87,000.

CEAC Recommendation: Reduce the funding to \$77,300 by eliminating the component for signage.

PRF REQUEST #84
Cockroach Bay Turtle Grass Monitoring

Who: Dr. Clinton Dawes (USF) and Dr. Nicholas Ehringer (HCC)

What: Since 1993, PRF has contributed funding to this ongoing study of seagrasses in Cockroach Bay. Activities have included determining damage and recovery rates (prop scars), experiments on growth and monitoring of seagrass beds (including aerial photography). The current proposal is for an additional three year study with three basic components: 1) continued monitoring of seagrass status through aerial photography, 2) turtle grass restoration experiments designed to identify techniques that will increase survival and growth rates and 3) testing the effectiveness of Jim Anderson's seagrass planting machine.

Where: Cockroach Bay Aquatic Preserve

Amount: Total project cost = \$116,610

PRF request = \$82,110

Staff Comment: There are numerous seagrass research/restoration projects being conducted in Tampa Bay by various groups and individuals. Many have received funds from PRF and GSTF in the past. Staff is concerned that there does not appear to be a coordinated effort among the parties to share information, avoid duplication, and conserve limited available financial resources. Before recommending further funding, staff would like to have a better idea of "the big picture". This issue is scheduled for discussion at the upcoming meeting of the Tampa Bay Estuary Program Technical Advisory Committee.

Staff Recommendation: Staff feels that the continued aerial monitoring of the seagrass beds is important. However, due to limited funds, it is recommended to grant one year, in the amount of \$5180, with the option to return next year for additional funds.

CEAC Recommendation: After staff recommendations were made, additional funds were deposited to the PRF which would allow for funding the aerial monitoring for the requested three year period. CEAC recommends granting \$15,540 for that purpose.

PRF REQUEST #87
Charlie Walker Conservation Center

Who: School Board of Hillsborough County

What: The Walker Middle School property includes the northern shore of Horse Lake. This project will combine efforts of students, teachers and members of the community to restore a section of the lakeshore by removing solid waste and exotic species and planting appropriate native species. The ultimate goal of the school is to create an ecological and conservation leaning center to be used by students and the community.

Where: 8282 N. Mobley Road

Amount: Total project cost = \$35,000

PRF request = \$16,106

Staff Comment: This is a good "hands on" educational tool for the students and may encourage other property owners on the lake to join the restoration efforts.

Staff Recommendation: Staff recommends partial funding in the amount of \$2791, to cover equipment, removal of exotics, new plant material and Garlon (herbicide).

CEAC Recommendation: Increase the amount to \$5,000 to cover any described project activities other than construction of the boardwalk and dock.

PRF REQUEST #88
Seagrass Restoration in Tampa Bay

Who: Susan S. Bell, PhD (USF)

What: This project will focus on restoration of seagrass in lower Tampa Bay where seagrasses have been able to survive in the past but presently are represented by sparse or no cover, due to pollution impacts. Seagrass will be planted in selected sites using different techniques to battle bioturbation (uprooting of plants by crabs and rays).

Where: Lower Tampa Bay

Amount: Total project cost = \$113,180

PRF request = \$72,612

Staff Comment: There are numerous seagrass research/restoration projects being conducted in Tampa Bay by various groups and individuals. Many have received funds from PRF and GSTF in the past. Staff is concerned that there does not appear to be a coordinated effort among the parties to share information, avoid duplication, and conserve limited available financial resources. Before recommending further funding, staff would like to have a better idea of "the big picture". This issue is scheduled for discussion at the upcoming meeting of the Tampa Bay Estuary Program Technical Advisory Committee.

Staff Recommendation: Funding not recommended at this time.

CEAC Recommendation: Concur with staff.

PRF REQUEST #89
"Fantasy Island" Restoration

Who: The Florida Aquarium and the Tampa Port Authority

What: This project is designed to restore, enhance and provide a mechanism for ongoing studies of restoration processes on a small (three acre) man-made island owned by the Port Authority. Exotic species will be removed, the site will be re-graded and planted with appropriate vegetation. It will then be developed for educational use by school groups and the general public through use of signage, trails and boardwalks.

Where: A small spoil island in Hillsborough Bay adjacent to the two large spoil islands.

Amount: Total project cost = \$214,000

PRF request = \$153,000

Staff Comment: Staff had recommended partial funding for this project to cover a portion of the restoration. However, GSTF funding has been recommended for a larger portion of the project (\$50,000) and includes the activities contemplated for funding by PRF.

Staff Recommendation: No funding from PRF at this time.

CEAC Recommendation: Concur with staff.

** also applied for GSTF*

PRF REQUEST #68
Lutz Nature Park

Who: Lutz Nature Park and Hillsborough County Parks and Recreation Department

What: This is an ongoing project to develop a community park that will include a pond restoration and an outdoor environmental learning center for school children. The current request is to construct gazebo classrooms and to provide large trees and shrubs.

Where: County owned property on Lutz Lake Fern Road

Amount: Total project cost = \$131,000

PRF request = \$33,000

Staff Comment: The Hillsborough County Parks Department is in the process of signing a PRF contract for \$16,000 for restoration of the pond. This funding was approved last June.

Staff Recommendation: Staff recommends that the current phase of the project be completed prior to the granting of any more funds. If funding is still required, a new, more specific application should be submitted next year.

CEAC Recommendation: Concur with staff.

PRF REQUEST #85
Benthic and Chemical Study of Bell, Rice and Fishhawk Creek

Who: Jim Stidham and Associates

What: This project covers a four year period in two phases, consisting of sampling for benthic and chemical analysis, before and after the intake structure for the Alafia River surface withdrawal becomes active in September 2002. Phase I will provide data regarding the existing benthic and chemical conditions in the present stream complex and provide historical data. Phase II will focus on the effects of growth and the intake structure at Bell Shoals Road.

Where: Bell, Rice and Fishhawk Creek, approximately 5 to 12 miles east of the mouth of the Alafia River.

Amount: Total project cost = \$129,350

PRF request = \$129,350

Staff Comment: If done correctly, this study could yield valuable information and compliments the Hydro Biological Monitoring Program (HBMP) being carried out by Tampa Bay Water.

Staff Recommendation: Tampa Bay Water would be a more appropriate funding source for this project. No PRF funding recommended.

CEAC Recommendation: Concur with staff.

** also applied for GSTF*

PRF REQUEST #86
Paspalum Sod Shoreline Stabilization

Who: Jim Anderson

What: This is a demonstration project to show the beneficial use of a newly developed salt tolerant sod in erosion control and soil stabilization. It would also provide some filtration for runoff from roads and parking areas.

Where: Four different locations owned by Hillsborough County: 1) Sun City Heritage Park and Boat Ramp, 2) Commongood Park and Boat Ramp, 3) Ruskin AB Park, and 4) the Ruskin Library.

Amount: Total project cost = \$18,550

PRF request = \$18,550

Staff Comment: The proposed sites do not appear appropriate and there are concerns over long term viability. If used in wetland areas, sod creates a mono-culture and does not promote suitable habitat.

Staff Recommendation: No funding recommended.

CEAC Recommendation: Concur with staff.

** also applied for GSTF*

AGENDA ITEM COVER SHEET

Date: February 17, 2000

Agenda Item: Gardinier Settlement Trust Fund Recommendations

Description/Summary:

There are seven requests for Gardinier Settlement Trust Funds on the agenda. Each of the projects has undergone joint legal and technical review by EPC and DEP staff and a review by CEAC. The back up contains descriptions of each. Of the seven projects, three are recommended for funding. The projects are:

1. **Apollo Beach Habitat Restoration** - Requested \$100,000; EPC and DEP recommend \$100,000; CEAC concurs.
2. **"Fantasy Island" Restoration** - Requested \$153,000; EPC and DEP recommend \$50,000; CEAC concurs.
3. **Mechanical Seagrass Planting Technology** - Requested \$50,000; EPC and DEP recommend \$50,000; CEAC concurs.
4. **Benthic and Chemical Study of Bell, Rice and Fishhawk Creek** - Requested \$129,350; not recommended.
5. **Benthic Microalgal Community in Restoration Monitoring Plans** - Requested \$23,506; not recommended.
6. **Camp Bayou Environmental Education Boardwalk Trail** - Requested \$60,000; not recommended.
7. **Paspalum Sod Shoreline Stabilization** - Requested \$18,550; not recommended.

The current available balance in the Gardinier Settlement Trust Fund is **\$652,033**. Recommended projects total \$200,000.

Commission Action Recommended:

Make a final decision on the allocation of Gardinier Settlement Trust Funds.

GSTF REQUEST
Apollo Beach Habitat Restoration Project

Who: Surface Water Improvement and Management (SWIM)

What: In 1955, the entire Apollo Beach peninsula was created out of sand dredged from Tampa Bay. In cooperation with Hillsborough County, 45 acres of the peninsula will be restored as estuarine and transitional wetlands more closely resembling the natural habitats of the bay. The project will also include habitats favorable for use by manatees, construction of tidal platform and creeks to improve habitat for native fishes and invertebrates, and removal of exotic species. The Apollo Beach Community Association and local school groups will be encouraged to participate.

Where: County owned land on the northern end of the Apollo Beach Peninsula, just south of the Big Bend power plant.

Amount: Total project cost = \$702,900

GSTF request = \$100,000

Staff Comment: SWIM has developed a very successful approach to habitat restoration and has a good history of projects funded by GSTF. This project will restore wetlands in a highly favorable location.

Staff Recommendation: Staff recommends full funding, in the amount of \$100,000.

CEAC Recommendation: Concur with staff.

GSTF REQUEST
"Fantasy Island" Restoration

Who: The Florida Aquarium and the Tampa Port Authority

What: This project is designed to restore, enhance and provide a mechanism for ongoing studies of restoration processes on a small (three acre) man-made island owned by the Port Authority. Exotic species will be removed, the site will be re-graded and planted with appropriate vegetation. It will then be developed for educational use by school groups and the general public through use of signage, trails and boardwalks.

Where: A small spoil island in Hillsborough Bay adjacent to the two large spoil islands

Amount: Total project cost = \$214,000

GSTF request = \$153,000

Staff Comment: This project has the potential of being incorporated into a much larger, beneficial project being contemplated by the Tampa Port Authority Spoil Management Group.

Staff Recommendation: Staff recommends partial funding of the restoration activities, including equipment rental, plant materials and labor, in the amount of \$50,000.

CEAC Recommendation: Concur with staff.

** also applied for PRF*

GSTF REQUEST
Mechanical Seagrass Planting Restoration Technology

Who: Jim Anderson

What: This project will use newly developed technology in the form of a boat that has been modified to mechanically plant seagrass on a large scale. One-acre seagrass beds will be planted in Tampa Bay and monitored for success.

Where: Tampa Bay

Amount: Total project cost = \$50,000

GSTF request = \$50,000

Staff Comment: This project has potential applicability for further large scale restoration and mitigation projects and directly addresses one of the goals of the Comprehensive Conservation and Management Plan for Tampa Bay.

Staff Recommendation: Staff recommends funding two one-acre sites, at \$25,000 each, for a total of \$50,000. DEP and EPC will participate in the site selection process.

CEAC Recommendation: Concur with staff.

GSTF REQUEST
Benthic and Chemical Study of Bell, Rice and Fishhawk Creek

Who: Jim Stidham and Associates

What: This project covers a four year period in two phases, consisting of sampling for benthic and chemical analysis, before and after the intake structure for the Alafia River surface withdrawal becomes active in September 2002. Phase I will provide data regarding the existing benthic and chemical conditions in the present stream complex and provide historical data. Phase II will focus on the effects of growth and the intake structure at Bell Shoals Road.

Where: Bell, Rice and Fishhawk Creek, approximately 5 to 12 miles east of the mouth of the Alafia River.

Amount: Total project cost = \$129,350

GSTF request = \$129,350

Staff Comment: Mainly a research project and, as such, does not qualify for GSTF funding.

Staff Recommendation: No GSTF funding recommended.

CEAC Recommendation: Concur with staff.

** also applied for PRF*

GSTF REQUEST
Benthic Microalgal Community in Restoration Monitoring Plans

Who: Department of Marine Sciences, University of South Florida

What: This project is designed to determine if benthic microalgal communities can be utilized as an indicator of short term recovery in saltmarsh/estuarine restoration projects. It will determine the time of substrate restoration by sediment characteristics, nutrient profiles, productivity and biomass in newly restored vs. controlled habitats. From this information, recommendations for simple design modifications can be made to improve reestablishment of the benthic microalgal communities.

Where: Tampa Bay and the Alafia River, adjacent to restoration sites

Amount: Total project cost = \$36,509

GSTF request = \$23,506

Staff Comment: This is largely a research project and only marginally qualifies for GSTF funding, if at all.

Staff Recommendation: No funding recommended.

CEAC Recommendation: Concur with staff.

GSTF REQUEST
Camp Bayou Environmental Education Boardwalk Trail

Who: Ruskin Community Development Foundation, Inc.

What: Construction of two half mile boardwalks on two trails in Camp Bayou, to allow visitors to explore and learn about fragile wetland areas without adversely impacting them. Interpretive signage and corresponding trail map will provide information about the watershed and it's habitat, providing a means of perpetuating the idea of stewardship.

Where: County owned ELAPP site on the north side of the Little Manatee River at the end of 24th Street SE.

Amount: Total project cost = \$65,200

GSTF request = \$60,000

Staff Comment: This is a public access and education project and, as such, does not qualify for GSTF funding. An identical request was denied last year.

Staff Recommendation: No funding recommended.

CEAC Recommendation: Concur with staff.

GSTF REQUEST
Paspalum Sod Shoreline Stabilization

Who: Jim Anderson

What: This is a demonstration project to show the beneficial use of a newly developed salt tolerant sod in erosion control and soil stabilization. It would also provide some filtration for runoff from roads and parking areas.

Where: Four different locations owned by Hillsborough County: 1) Sun City Heritage Park and Boat Ramp, 2) Commongood Park and Boat Ramp, 3) Ruskin AB Park, and 4) the Ruskin Library.

Amount: Total project cost = \$18,550

GSTF request = \$18,550

Staff Comment: This project deals with maintenance issues as opposed to restoration. If used in wetland areas, sod creates a mono-culture and does not promote suitable habitat.

Staff Recommendation: No funding recommended.

CEAC Recommendation: Concur with staff.

** also applied for PRF*

MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION
January

A.	Public Outreach/Education Assistance:	<u>23</u>
B.	Industrial Air Pollution Permitting	
1.	Permit Applications Received (Counted by Number of Fees Received):	
	a. Operating:	<u>1</u>
	b. Construction:	<u>9</u>
	c. Amendments:	<u>0</u>
	d. Transfers/Extensions:	<u>2</u>
2.	Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval (¹ Counted by Number of Fees Collected - ² Except for Title V Facilities where it is Counted by Number of Emission Units affected by the Applicant's Request):	
	a. Operating ¹ :	<u>6</u>
	b. Construction ¹ :	<u>4</u>
	c. Amendments ¹ :	<u>3</u>
	d. Transfers/Extensions ¹ :	<u>3</u>
	e. Title V Operating ² :	<u>0</u>
	f. Permit Determinations ² :	<u>1</u>
3.	Intent to Deny Permit Issued	<u>0</u>
4.	General Permits	<u>1</u>
C.	Administrative Enforcement	
1.	Documents Issued:	
	a. Notice of Intent to Initiate Enforcement	<u>3</u>
	b. Citation	<u>0</u>
	c. Emergency Order	<u>0</u>
2.	Total Cases Initiated:	<u>5</u>
3.	Cases Resolved:	<u>1</u>
4.	Cases Referred to Legal Department:	<u>0</u>
5.	Consent Orders Signed:	<u>0</u>
6.	Contributions to the Pollution Recovery Fund: <u>\$1,500.00</u>	
	<u>Organization Name</u>	<u>Violation</u>
		<u>Amount</u>
a.	Tampa Steel Erecting Grit Blasting Violation	\$1,500.00

D. Inspections:	
1. Industrial Facilities:	<u>7</u>
2. Air Toxics Facilities:	
a. Asbestos Emitters	<u>0</u>
b. Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>22</u>
c. Major Sources	<u>0</u>
3. Asbestos Demolition/Renovation Projects:	<u>54</u>
E. Open Burning Permits Issued:	<u>8</u>
F. Number of DOF Permits Monitored:	<u>214</u>
G. Total Citizen Complaints Received:	<u>78</u>
H. Total Citizen Complaints Closed:	<u>69</u>
I. Noise Sources Monitored:	<u>4</u>
J. Air Program's Input to DRI's:	<u>0</u>
K. Test Reports Reviewed:	<u>22</u>
L. Compliance:	
1. Warning Notices Issued:	<u>13</u>
2. Warning Notices Resolved:	<u>15</u>
3. Advisory Letters Issued:	<u>13</u>
M. AOR's Reviewed	<u>0</u>

FEES COLLECTED FOR AIR MANAGEMENT DIVISION
January

	Total Revenue
1. Non-delegated construction permit for an air pollution source	
(a) New Source Review or Prevention of Significant Deterioration sources	\$ -0-
(b) all others	<u>\$ -0-</u>
2. Non-delegated operation permit for an air pollution source	
(a) class B or smaller facility - 5 year permit	\$ -0-
(b) class A2 facility - 5 year permit	<u>\$ -0-</u>
(c) class A1 facility - 5 year permit	<u>\$ -0-</u>
3. (a) Delegated Construction Permit for air pollution source (20% of the amount collected is forwarded to the DEP and not included here)	<u>\$9,280.00</u>
(b) Delegated operation permit for an air pollution source (20% of the amount collected is forwarded to the DEP and not included here)	<u>\$ 800.00</u>
(c) Delegated General Permit	<u>\$ -0-</u>
4. Non-delegated permit revision for an air pollution source	<u>\$ -0-</u>
5. Non-delegated permit transfer of ownership, name change or extension	<u>\$ -0-</u>
6. Notification for commercial demolition	
(a) for structure less than 50,000 sq ft	<u>\$5,175.00</u>
(b) for structure greater than 50,000 sq ft	<u>\$ -0-</u>
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	<u>\$ 435.00</u>
(b) renovation greater than 1000 linear feet or 1000 sq ft	<u>\$ 600.00</u>
8. Open burning authorization	<u>\$3,400.00</u>
9. Enforcement Costs	<u>\$ -0-</u>

COMMISSION
PAT FRANK
CHRIS HART
JIM NORMAN
JAN PLATT
THOMAS SCOTT
RONDA STORMS
BEN WACKSMAN



ADMINISTRATIVE OFFICES, LEGAL &
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TELEPHONE (813) 272 - 5530

WASTE MANAGEMENT DIVISION
TELEPHONE (813) 272 - 5788

WETLANDS MANAGEMENT DIVISION
TELEPHONE (813) 272 - 7104

EXECUTIVE DIRECTOR
ROGER P. STEWART

MEMORANDUM

DATE: February 8, 2000

TO: Tom Koulianos, Director of Finance and Administration

FROM: Sheila Luce, Senior Environmental Enforcement Specialist through Hooshang Boostani, Director of Waste Management *HLB*

SUBJECT: WASTE MANAGEMENT'S JANUARY 2000 AGENDA INFORMATION

A. ADMINISTRATIVE ENFORCEMENT

1. New cases received	05
2. On-going administrative cases	
a. Pending	08
b. Active	55
c. Legal	10
d. Tracking Compliance (Administrative)	18
e. Inactive/Referred cases	24
f. Criminal Compliance tracking	02
3. NOI's issued	05
4. Citations issued	00
5. Consent Orders signed	01
6. Civil Contributions to the Pollution Recovery Fund	\$0.00
7. Criminal Contributions to the Pollution Recovery Fund	\$0.00
8. Enforcement Costs collected	\$720.00
9. Cases referred to Legal Dept.	00
10. Cases Closed	01

B. SOLID AND HAZARDOUS WASTE

1. Permits (received/reviewed)	01/01
2. EPC Authorization for Facilities NOT requiring DEP permit	03/03
3. Other Permits and Reports	
a. County Permits	00/00
b. Reports	47/41
4. Inspections (Total)	249

a. Complaints	39
b. Compliance/Reinspections	27
c. Facility Compliance	14
d. Small Quantity Generator	169
5. Enforcement	
a. Complaints Received/Closed	40/30
b. Warning Notices Issued/Closed	01/06
c. Compliance letters	21
d. Letters of Agreement	00
e. DEP Referrals	00
6. Pamphlets, Rules and Material Distributed	535
C. STORAGE TANK COMPLIANCE	
1. Inspections	
a. UST Compliance	40
b. AST Compliance	27
c. UST Installation	06
d. AST Installation	04
e. UST Closure	03
f. AST Closure	02
g. Compliance Re-Inspections	17
2. Installation Plans Reviewed	04
3. Closure Plans & Reports	
a. Closure Plans Received/ Reviewed	05/05
b. Closure Reports Received/Reviewed	06/05
4. Enforcement	
a. Non-compliance Letters	29
b. Warning Notices Issued/Closed	08/01
c. Cases referred to Enforcement	04
d. Complaints Received/Investigated	00/00
e. Complaints Referred	00
5. Discharge Reporting Forms Received	01
6. Incident Notification Forms Received	00
7. Cleanup Notification Letters Issued	03
8. Public Assistance	200+
D. STORAGE TANK CLEANUP	
1. Inspections	41
2. Reports Received/Reviewed	52/48
a. Site Assessment	17/15
b. Source Removal	05/01
c. Remedial Action Plans (RAP's)	05/06
d. Site Rehabilitation Completion Order/No Further Action Order	02/00

e. Others	23/26
3. State Cleanup	
a. Active Sites	03
b. Funds Dispersed	\$00.00
E. RECORD REVIEWS	39
F. PUBLIC INFORMATION PROJECTS	00

ACTIVITIES REPORT
WATER MANAGEMENT DIVISION
JANUARY, 2000

A. ENFORCEMENT

1. New Enforcement Cases Received:	<u>0</u>	
2. Enforcement Cases Closed:	<u>0</u>	
3. Enforcement Cases Outstanding:	<u>34</u>	
4. Enforcement Documents Issued:	<u>0</u>	
5. Warning Notices:	<u>9</u>	
a. Issued:	<u>6</u>	
b. Resolved:	<u>3</u>	
6. Recovered costs to the General Fund:	\$ <u>0</u>	
7. Contributions to the Pollution Recovery Fund:	<u>\$533.33</u>	

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. Country Road MHP	Operation without a valid permit	\$200.00
b. Hughes Hard Chrome	Industrial wastewater discharge	\$333.33

B. PERMITTING - DOMESTIC

1. Permit Applications Received:	<u>27</u>	
a. Facility Permit:	<u>6</u>	
(i) Types I and II	<u>0</u>	
(ii) Type III	<u>6</u>	
b. Collection Systems-General:	<u>9</u>	
c. Collection Systems-Dry Line/Wet Line:	<u>12</u>	
d. Residuals Disposal:	<u>0</u>	
2. Permit Applications Approved:	<u>35</u>	
a. Facility Permit:	<u>11</u>	
b. Collection Systems-General:	<u>16</u>	
c. Collection Systems-Dry Line/Wet Line:	<u>8</u>	
d. Residuals Disposal:	<u>0</u>	
3. Permit Applications Recommended for Disapproval:	<u>0</u>	
a. Facility Permit:	<u>0</u>	
b. Collection Systems-General:	<u>0</u>	
c. Collection Systems-Dry Line/Wet Line:	<u>0</u>	
d. Residuals Disposal:	<u>0</u>	
4. Permit Applications (Non-Delegated) Recommended for Approval:	<u>0</u>	
5. Permits Withdrawn:	<u>0</u>	
6. Permit Applications Outstanding:	<u>23</u>	
a. Facility Permit:	<u>21</u>	
b. Collection Systems-General:	<u>2</u>	
c. Collection Systems-Dry Line/Wet Line:	<u>4</u>	
d. Residuals Disposal:	<u>0</u>	

C. INSPECTIONS - DOMESTIC	<u>83</u>
1. Compliance Evaluation:	<u>8</u>
a. Inspection (CEI):	<u>1</u>
b. Sampling inspection (CSI):	<u>7</u>
c. Toxics Sampling Inspection (XSI):	<u>0</u>
d. Performance Audit Inspection (PAI):	<u>0</u>
2. Reconnaissance:	<u>45</u>
a. Inspection (RI):	<u>29</u>
b. Sample Inspection (SRI):	<u>3</u>
c. Complaint Inspection (CRI):	<u>11</u>
d. Enforcement Inspection (ERI):	<u>2</u>
3. Special:	<u>30</u>
a. Diagnostic Inspection (DI):	<u>0</u>
b. Residual Site Inspection (RSI):	<u>0</u>
c. Preconstruction Inspection (PCI):	<u>9</u>
d. Post Construction Inspection (XCI):	<u>21</u>
D. PERMITTING - INDUSTRIAL	
1. Permit Applications Received:	<u>1</u>
a. Facility Permit:	<u>0</u>
(i) Types I and II	<u>0</u>
(ii) Type III with groundwater monitoring	<u>0</u>
(iii) Type III w/o groundwater monitoring	<u>0</u>
b. General Permit:	<u>1</u>
c. Preliminary Design Report:	<u>0</u>
(i) Types I and II	<u>0</u>
(ii) Type III with groundwater monitoring	<u>0</u>
(iii) Type III w/o groundwater monitoring	<u>0</u>
2. Permits Recommended to DEP for Approval:	<u>1</u>
3. Permit Applications Outstanding:	<u>30</u>
a. Facility Permits:	<u>29</u>
b. General Permits:	<u>1</u>
E. INSPECTIONS - INDUSTRIAL	<u>23</u>
1. Compliance Evaluation:	<u>8</u>
a. Inspection (CEI):	<u>6</u>
b. Sampling Inspection (CSI):	<u>2</u>
c. Toxics Sampling Inspection (XSI):	<u>0</u>
d. Performance Audit Inspection (PAI):	<u>0</u>
2. Reconnaissance:	<u>15</u>
a. Inspection (RI):	<u>13</u>
b. Sample inspection (SRI):	<u>0</u>
c. Complaint Inspection (CRI):	<u>12</u>
F. CITIZEN COMPLAINTS	
1. Domestic:	<u>18</u>
a. Received:	<u>11</u>

b. Closed:	<u>7</u>
2. Industrial:	
a. Received:	<u>11</u>
b. Closed:	<u>6</u>
	<u>5</u>
3. Water Pollution:	
a. Received:	<u>5</u>
b. Closed:	<u>2</u>
	<u>3</u>
G. RECORD REVIEWS	
1. Permitting:	<u>3</u>
2. Enforcement:	<u>0</u>
H. ENVIRONMENTAL SAMPLES ANALYSED FOR:	
1. Air Division:	<u>134</u>
2. Waste Division:	<u>3</u>
3. Water Division:	<u>143</u>
4. Wetlands Division:	<u>0</u>
I. SPECIAL PROJECT REVIEWS	
1. DRI's:	<u>0</u>
2. Permitting:	<u>0</u>
3. Enforcement:	<u>0</u>
4. Other:	<u>0</u>
J. WATER QUALITY MONITORING SPECIAL PROJECTS	
1. Data Review	<u>0</u>
2. Special Sampling	<u>0</u>
3. Biomonitoring/Toxicity Reviews (DW)	<u>1</u>
4. Biomonitoring/Toxicity Reviews (IW)	<u>3</u>
5. Other	<u>0</u>
K. TAMPA PORT AUTHORITY/DEP DREDGE & FILL	<u>24</u>

AR01.00

ASSESSMENT SECTION

A. EPC Wetlands Reviews

1. Wetland Delineations

a. Wetland Delineations (\$120)	24
b. Wetland Delineation Dispute	0
c. Wetland Line Survey Reviews	38
d. Additional Footage Fees	\$3,583.80

2. Misc. Activities in Wetlands
(\$0 or \$100 as applicable)

a. Nuisance Vegetation	9
b. Other	1

3. Impact/Mitigation Proposal (\$775) 3

4. Mitigation Agreements Recorded 4

5. FDOT Reviews 0

B. EPC Delegation/Reviews from State/
Regional/ Federal Authorities

1. Tampa Port Authority Permit Apps.
(\$50 or \$150 as applicable) 38

2. Wastewater Treatment Plants (FDEP) 17

3. FDEP Wetland Resource Apps. 0

4. FDEP Grandfathered Delineation 0

5. SWFWMD Wetland Resource Apps. 0

6. Army Corps of Engineers 0

EPC Wetlands Management Division
 Agenda Backup for January 2000
 Page 2

	TOTALS
7. Interagency Clearinghouse Reviews	0
8. DRI Annual Report	1
C. Hills. County/ Municipality Permit Application Reviews	
1. Land Alteration/Landscaping (\$100)	1
2. Land Excavation (\$785 or \$650 as applicable)	1
3. Phosphate Mining	
a. Unit Review/Reclamation (\$760)	0
b. Annual Review/Inspection (\$375)	0
4. Rezoning	
a. Reviews (\$85)	20
b. Hearings	0
c. Hearing Prep (hours)	0.5
5. Site Development/Commercial (\$360)	
a. Preliminary	6
b. Construction	15
6. Subdivision	
a. Preliminary Plat (\$140)	4
b. Master Plan (\$550)	0
c. Construction Plans (\$250)	11
d. Final Plat (\$90)	8
e. Waiver of Regulations (\$100)	0
f. Platted, No-Improvements (\$100)	3
g. Minor - Certified Parcel (\$100)	11
7. As-Builts (\$255)	5

TOTALS

8. Miscellaneous Reviews (no fees)	
a. Wetland Setback Encroachment	0
b. Easement /Vacating	0
c. NRCS Review	0
9. Preapplications (no fees)	
a. Review preparation (hours)	9.5
b. Meetings/Reports	4
10. Development Review Committee (no fees)	
a. Review preparation (hours)	1.5
b. Meetings	0
D. Other Activities	
1. Unscheduled meetings with members of the public (walk-ins)	61
2. Other Meetings	69
3. Telephone conferences	678
4. Presentations	0
5. Correspondence	168
6. Correspondence Review (hours)	14.4
7. Special Projects (hours)	57
8. On-site visits	78
9. Appeals	0

ADMINISTRATIVE ENFORCEMENT	TOTALS
A. NEW CASES RECEIVED	6
B. ACTIVITIES	
1. Ongoing Cases	
a. Active	59
b. Legal	3
2. Number of "Notice of Intent to Initiate Enforcement"	1
3. Number of Citation Issued	0
4. Number of "Emergency Order of the Director"	0
5. Number of Consent Orders Signed	5
C. CASES CLOSED	
1. Administrative / Civil Cases Closed	3
2. Criminal Cases Closed	0
3. Cases Referred to Legal Dept.	0
D. CONTRIBUTIONS TO POLLUTION RECOVERY	\$6,450.00
E. ENFORCEMENT COSTS COLLECTED	\$607.98

INVESTIGATIONS / COMPLIANCE SECTION

A. COMPLAINTS	TOTALS
1. Received	66
2. Return Inspections	85
3. Closed	45
B. WARNING NOTICES	
1. Issued	41
2. Return Inspections	128
3. Closed	13
C. MITIGATION	
1. Compliance/Monitoring Reviews	19
2. Compliance Inspections	12
D. OTHER ACTIVITIES	
1. Case Meetings	4
2. Other Meetings	32
3. Telephone Calls	427
4. File Reviews	26
5. Cases Referred to Enforcement Coordinator	6
6. Letters	64

ADMINISTRATIVE / TECHNICAL SECTIONS

A. SOIL SCIENTIST

- | | |
|--|---|
| 1. Case Reviews (Soils) | 3 |
| 2. Field Soil Investigations | 3 |
| 3. Reports or Notes of Soil Investigations | 3 |
| 4. Special Projects | |
| - Brandon Urban Dispersed Wells | |
| - Hillsborough River / TBC and Alafia River
Withdrawal Projects | |
| - TBW Offsite Wetland Mitigation | |
| - Study and provide soil information to
County PGMD | |

B. ADMINISTRATIVE SUPPORT STAFF

- | | |
|---|----------|
| 1. File Reviews | 4 |
| 2. Telephone Assistance | 1798 |
| 3. Letters | 173 |
| 4. Incoming Projects | 107 |
| 5. Additional Info / Additional Footage | 11 / 26 |
| 6. Resubmittals / Revisions | 7 / 8 |
| 7. Surveys / Data Entry | 35 / 447 |

C. ENGINEERING STAFF

- | | |
|-------------------------------|----|
| 1. Meetings | 39 |
| 2. Reviews | 38 |
| 3. Aerial Reviews | 3 |
| 4. Telephone Inquiries | 17 |
| 5. Field Visits / Conferences | 3 |

LEGAL DEPARTMENT MONTHLY REPORT
February 9, 2000

A. ADMINISTRATIVE CASES

NEW CASES [2]

Putney: Appeal of Director's denial of request to impact wetlands. Matter has been referred to Hearing Officer Vanessa Cohn and pre-hearing conference is scheduled for February 16.

Alafia River Intake Structure Arbitration: Upon the Commission's authorization later ratified, the Executive Director filed a request to arbitrate the proposed Tampa Bay Water permit. Arbitrators have been selected. Patrick Courtney is lead attorney for EPC.

EXISTING CASES [10]

FIBA/Bridge Realty: EPC issued a citation to the owner, Bridge Realty, and former tenant, FIBA Corp., for various unlawful waste management practices, and ordered that a contamination assessment must be conducted, a report submitted and contaminated material appropriately handled. Bridge Realty and FIBA appealed. Bridge Realty initiated a limited assessment; staff requested additional information only a portion of which was delivered. However, an alternate remedial plan has been approved and memorialized in a letter. We have been advised that the required corrective actions have been completed and a final report is due.

672 Recovery, Inc.: Under 84-446, Laws of Florida, respondent appealed EPC citation for unauthorized burning and waste disposal problems. The facility has implemented some corrections and has provided a plan for avoiding and handling similar situations in the future. Staff is continuing to monitor the facility. Regarding the underlying operation permit, respondent has requested a formal Chapter 120 Fla. Statutes administrative hearing on DEP's intent to deny. If requested, EPC staff will assist in supporting DEP's position.

Woodcock: Mediation, requested under EPC rule 1-2, of a dispute relating to installation of an unpermitted vertical seawall along a portion of the Alafia River. An agreement in concept has been reached.

Kinman: The Kinmans have requested an 84-446 administrative review of the EPC Director's Decision upholding the delineation of wetlands on their property. Amended appeal received in December 1998. The Hearing Officer agreed with the parties to hold the administrative process in abeyance to petitioner an opportunity to apply for impacts and for the agency to respond.

City of Tampa: Appeal of EPC Citation for the improper disposal of street sweeping debris. Parties agreed in June 99 to abate the proceeding for 90 days to develop a plan for the proper disposal of the material. The plan has been reviewed and comments relayed to COT. Respondent has submitted additional information and we await DEP's comments.

Cone Constructors, Inc.: Appeal of EPC Citation for nuisance and Noise Rule violations during the construction of the Sun Coast Parkway (*see, FDOT & Cone Constructors, Inc. - litigation cases*)

Starlight MHP WWTS: Applicant requested formal administrative hearing of an EPC denial of a permit for a domestic wastewater treatment system. As a delegated permit process, this matter was referred to the States Department of Administrative Hearings (DOAH) for processing. A third party intervened in the proceeding and the final hearing was continued to pursue settlement discussions. Settlement has been reached in concept and request for additional 60 days has been made to prepare the necessary documents.

Presto Food Stores Inc.: Appeal of a citation regarding out of compliance Underground Storage Tanks. The landowner has requested an administrative hearing, asserting a lack of ownership of the UST system. The tenants also claim no ownership. The Hearing Officer has continued the prehearing conference pending the property owner's efforts to properly close the system. Tanks have been emptied of product.

Watermark: Appeal of a citation for out-of-compliance Underground Storage Tanks (UST's) at the Kings Point Golf Course. The regulatory deadline for upgrading or properly closing the UST's is passed. The landowner requested a administrative hearing, asserting that extenuating circumstances should be considered. Efforts to resolve this matter without having to refer to a hearing officer continue.

SWFWMD Minimum Flows and Level Rules – Northern Tampa Bay: EPC and Hillsborough County requested an independent scientific peer review regarding the District's proposed Minimum Flows and Levels Rules for Northern Tampa Bay. Following the Final Report, SWFWMD separated those portions relating to the Tampa Bypass Canal and proceeded with adoption of the remaining rule. Both Hillsborough County and EPC filed a Chapter 120 challenge to the rule. Discovery is proceeding. Roger Sims is lead attorney for EPC and the County.

RESOLVED CASES [1]

SWFWMD Minimum Flows and Level Rule - Lower Hillsborough River Peer Review: EPC requested in March 1999 an independent scientific peer review regarding the District's proposed Minimum Flows and Levels Rules for the lower Hillsborough River. The Final Report was presented to the SWFWMD Governing Board at its December 1999 meeting and the District adopted the rule at its January 2000 meeting. EPC determined to not challenge the MFL rule for the lower Hillsborough River.

B. CIVIL CASES

NEW CASES [0]

EXISTING CASES [11]

Holley, Raymond, et al.: Suit filed to compel proper closure for an abandoned underground storage tank, and to obtain civil penalties and costs. The Defendants defaulted and filed bankruptcy. The property was thereafter auctioned to a third party who did not follow through with the purchase. The bankruptcy case closed in April, 1998. EPC will renew its previously filed Motion for Judgment after Default.

Slusmeyer: Defendant failed to comply with a prior judgment and injunction requiring proper closure of underground storage tanks. Discovery is proceeding to obtain injunctive relief.

Kings Food Mart: Authority granted to compel assessment of reported contamination at a retail gasoline facility, and to compel compliance with leak detection regulations for an existing the Underground Storage Tank system. Complaint is being drafted.

Mulberry Phosphate: Authority granted January 1998, to proceed against Mulberry to recover environmental damages as result of a process water spill from an impoundment system failure. The spill impacted the Alafia River and Tampa Bay. EPC is also seeking recovery of costs of enforcement and civil penalties. In cooperation with DEP and NOAA, EPC conducted a damage assessment and evaluation of appropriate restoration. Currently, several mitigation projects, in both Hillsborough and Pasco, are being reviewed and considered as possible settlement options.

Stasiak v. EPC: Mortgage holder attempted foreclosure of EPC's interest in certain real property held by virtue of a recorded settlement agreement against the property owner U.S.H. & B. EPC consented to foreclosure as long as our rights to proceeds were protected. U.S.H.&B. filed Chapter 11 Bankruptcy and a plan must be provided by February 29.

672 Recovery, Inc.: EPC provided authority in March 1999 to compel compliance with EPC rules requiring a Director's Authorization for operation of a wood waste processing facility. 672 Recovery, Inc. currently operates such a facility without authorization. In addition, DEP denied 672 Recovery, Inc. a permit, and they appealed.

FDOT & Cone Constructors, Inc.: Authority granted in March 1999, to take appropriate legal action to enforce the agency's nuisance prohibition and Noise Rule violated during the construction of the SunCoast Parkway.

Quasem J. v. EPC, et al.: In foreclosing a mortgage on a UST facility, Plaintiff named EPC as a Defendant because of our recorded judgment against the former owner/operator, a relative of the current Plaintiff (EPC case against Emad Qasem). EPC has asserted the priority of our judgment lien. The current operator appears to be in compliance.

Acevedo v. EPC: EPC has been named as Defendant in suit filed to recover damages for injuries allegedly sustained as a result of an auto accident. EPC's Response to the Complaint has been filed. The County Attorney's office is representing the Commission in this matter.

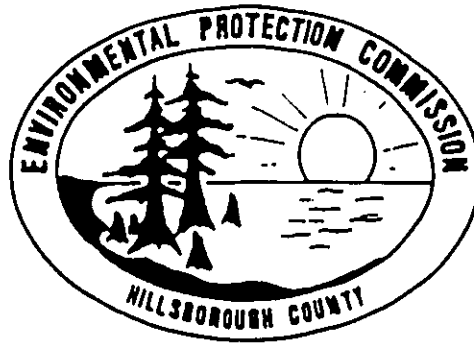
Georgia and Hubert Maynard: Authority to take appropriate action against the Maynards as owners and operators of an underground storage tank facility was granted, August 1999. A prior Consent Order required certain actions be taken to bring the facility into compliance, including the proper closure of out-of-compliance tank systems. The requirements of the agreement have not been met. Respondents have asserted willingness to comply, but financial inability.

Tampa Scrap Processors, Inc.: Authority granted in August of 1998 to proceed against all responsible parties for violations relating to the management of solid waste, used oil and hazardous waste and to compel a site assessment and a report of the findings. A meeting with the property owner before suit was filed produced a Consent Order signed October 19, 1998. Tampa Scrap has failed to comply with the terms of the Consent Order; the Tampa Port Authority is willing to perform the requirements of the settlement. However, we will file suit in the meantime to protect our rights to legal enforcement of the specific terms of the Consent Order.

RESOLVED CASES [0]

COMMISSION

PAT FRANK
CHRIS HART
JIM NORMAN
JAN PLATT
THOMAS SCOTT
RONDA STORMS
BEN WACKSMAN



ADMINISTRATIVE OFFICES, LEGAL &
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FAX (813) 272-5157

AIR MANAGEMENT DIVISION
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WASTE MANAGEMENT DIVISION
TELEPHONE (813) 272-5788

WETLANDS MANAGEMENT DIVISION
TELEPHONE (813) 272-7104

EXECUTIVE DIRECTOR

ROGER P. STEWART

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
POLLUTION RECOVERY TRUST FUND
AS OF FEBRUARY 10, 2000

Fund Balance as of 10/01/99		\$1,024,661
Interest Accrued	FY00	12,108
Deposits	FY00	86,645
Disbursements	FY00	19,132
Fund Balance		\$1,104,282
Encumbrances Against Fund Balance:		
(57a)	Cypress Head Swamp	8,967
(14)	Wetland Surveys	1,781
	Seagrass Study/Sheriff	27,500
	Art. Reef FY00	41,959
(53)	Clayton Lake	6,007
(54)	Mosi Restoration	963
(56)	Oakview Utilities	74,925
(55)	Riverview Civic Center	39,525
(61)	Thalassea Study	19,790
(63)	McKay Bay	15,000
(64)	Hughes Hard Chrome	3,373
(71)	Seagrass Recovery	8,566
(66)	Asbestos Abatement	5,000
(72)	Brooker Creek	1,266
(75)	Adopt A Pond	50,000
(78)	River Crest Restoration	15,000
(79)	Epps Park Restoration	10,000
(68)	Lutz Nature Park	16,000
(73)	Balm Road Scrub	300,000
(81)	Oil Boom Prepositioning	50,000
(82)	Hill. Co. Env. Network	50,000
	Waste Reduction/Tampa	98,657
Total of Encumbrances		<u>844,279</u>
Minimum Balance		100,000
Fund Balance Available February 10, 2000		<u>\$160,003</u>



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EXECUTIVE DIRECTOR

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ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
ANALYSIS OF GARDINIER SETTLEMENT TRUST FUND
AS OF FEBRUARY 10, 2000

Fund Balance as of 10/01/99	\$1,579,471
Interest Accrued FY00	15,126
Disbursements FY00	- 0 -
Fund Balance	\$1,594,597

Encumbrances Against Fund Balance:

Alafia River, Add. (SWIM/DEP)	8,948	
Cockroach Bay Exotic Con. (HCC)	8,618	
Alafia River/Wolf Branch	300,000	
Ballast Point Seawall Phase II	25,000	
Audubon Society Riverview CC	50,000	
Oakview Utilities	50,000	
Port Redwing	300,000	
Davis Tract	200,000	
Total of Encumbrances		\$ 942,564

Fund Balance Available February 10, 2000	\$ 652,033
---	-------------------



COMMISSION

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MEMORANDUM

DATE: January 26, 2000

TO: EPC of Hillsborough County Board Members

FROM: Roger P. Stewart, Executive Director, EPC

SUBJECT: **QUARTERLY STATUS REPORT ON NATIONAL PRIORITIES
LIST SITES IN HILLSBOROUGH COUNTY**

This memorandum serves as the quarterly status report concerning the United States Environmental Protection Agency's (USEPA) identified National Priorities List (NPL) sites that are located in Hillsborough County. The NPL sites are also known as Superfund sites. The previous status memorandum was submitted to you on October 18, 1999.

SCHUYLKILL METALS CORPORATION SITE

The USEPA is waiting for a response from the Florida Department of Environmental Protection (FDEP) in regard to the USEPA's proposal to delete the site from the NPL. The USEPA has awaited the FDEP's response for about a year.

SYDNEY MINE SLUDGE POND SITE

The Phase II intrinsic bioremediation study is expected to be concluded in February 2000.

KASSAUF-KIMERLING SITE

The USEPA is attempting to remove the site from the NPL. The USEPA is waiting for a response from the FDEP as to whether or not the 5 years of post-remediation groundwater monitoring data meet the State's groundwater quality standards.

HELENA CHEMICAL COMPANY SITE

The site is still in the Remedial Design (RD) phase for the contaminated soil. The RD for the contaminated groundwater is on hold due to groundwater contamination from the



nearby Alaric, Inc., site. The groundwater contamination from the Alaric, Inc., site is commingling with the groundwater contamination from the Helena site. The USEPA is conducting additional groundwater contamination investigation work at the Alaric, Inc., site. The USEPA may have to fund the investigation and remediation of the Alaric, Inc., site.

STAUFFER CHEMICAL COMPANY SITE

All demolition work at the site has been completed. Construction of the temporary treatment enclosure is underway. Within a couple of months, the excavation of the contaminated soil and the construction of the groundwater recovery system will be started.

NORMANDY PARK APARTMENTS SITE

The USEPA expects to issue the proposed plan for the site remedy in February 2000. There will be a 30-day public comment period once the proposed plan is issued. The USEPA expects to issue the Record of Decision (ROD) for the site remedy in mid-April 2000.

SOUTHERN SOLVENTS, INC. SITE

The Record of Decision (ROD) for Operable Unit #1 (i.e., the contaminated soil and the contaminated surficial aquifer groundwater) was signed on September 30, 1999. The selected remedy for Operable Unit #1 is chemical oxidation. At this moment, the USEPA is in the Remedial Design (RD) phase for Operable Unit #1. Also, at this moment, the USEPA is ready to begin the Remedial Investigation/Feasibility Study (RI/FS) for Operable Unit #2 (i.e., the contaminated Floridan aquifer groundwater).

MRI CORPORATION SITE

The Record of Decision (ROD) for the contaminated soil remedy was signed on December 22, 1999. The contaminated soil remedy will consist of solidification and capping. More studies of the contaminated groundwater will be done. A second ROD will be necessary to address the contaminated groundwater remedy.

PEAK OIL/BAY DRUMS SITE

The USEPA has received the "60%" Remedial Design (RD) plans for Operable Unit #'s 1 and 3. The USEPA will provide comments on these plans by early February 2000. The USEPA expects that the RD for Operable Unit #'s 1 and 3 will be completed by Summer 2000. The potentially responsible parties (PRPs) will be conducting a chemical oxidation field pilot study for Operable Unit #2 in February 2000. Operable Unit #1 consists of the contaminated soil, sediment, and ash on the Peak Oil portion of the site. Operable Unit #2 consists of the area-wide contaminated groundwater. Operable Unit #3 consists of the contaminated soil and sediment on the Bay Drums portion of the site.

REEVES SOUTHEASTERN CORPORATION SITE

The potential responsible party (PRP) has agreed to modify the Remedial Design (RD) in order to extend the groundwater control structure beyond Queen Palm Drive (i.e., beyond

the extent of the contaminated groundwater plume). In Spring 2000, the USEPA has to make a decision as to whether or not the last 2.6 years of groundwater monitoring have shown a 50% reduction in contaminants. The decision options will be either to actively pump and treat the contaminated groundwater or to allow the groundwater contamination to naturally attenuate.

TAYLOR ROAD LANDELL SITE

Due to groundwater quality exceedences, Hillsborough County reports that it has expanded the compliance ring of groundwater monitoring wells in the area of former ring wells C-2 and C-5. Compliance ring wells C-6 and C-7 have been added to the expanded compliance ring, and the 270-foot setback line has been expanded in these locations.

The November 1999 re-sampling of compliance ring well C-6 confirmed primary drinking water standard exceedences that were detected during the October 1999 quarterly sampling event. Hillsborough County reports that it will expand the compliance ring to the north of well C-6 should these violations continue to occur during the next quarterly sampling event.

c: Hooshang Boostani, P.E., EPC
Paul A. Schipfer, E.I., EPC
Carl J. Heintz, P.G., EPC

RPS/cjh

C:\Superfund Quarterly January 2000

AGENDA ITEM COVER SHEET

Date: February 9, 2000

Agenda Item: Environmental Resource Permit Letter Modification for the Tampa Bypass Canal Intake Structure

Description/Summary:

A BOCC Agenda Item on February 16, 2000 addressed this same issue from the County perspective. This agenda item is to align EPC on the same issue.

As part of SWFWMD's Water Use Permitting (WUP) process, an ERP must be submitted simultaneously for any construction activity with direct relationship to the WUP. Regarding the Tampa Bypass Canal (TBC) Intake Structure, an ERP was submitted at the same time a WUP was filed for withdrawals of water from the TBC. The original ERP was submitted prior to the current arbitration process and thus was not considered to be a Primary Environmental Permit. The letter modification of the ERP, however, does now fall under the arbitration process and was reviewed as a Primary Environmental Permit under Governance and the Interlocal Agreement.

Modifications are proposed because a more efficient, cost-effective and less environmentally impacting alternative has been designed. The original design called for the construction of intake structures within the middle and lower pools of the TBC immediately upstream and downstream of Structure S-162. These intake structures were built into the bank of the canal and consisted of concrete headwalls and coarse bar racks. The proposed alternative is submerged, with intake screens located in the middle and lower pools of the TBC. The design would minimize the impacts to the shoreline and bank and the intake screens will help minimize damage to aquatic life. EPC staff recommend that EPC not file for binding arbitration pursuant to Governance and the Interlocal Agreement regarding this TBW permit application.

Commission Action Recommended:

Confirm staff's recommendation that EPC not file for binding arbitration regarding this permit application, but that the Water Team continue to monitor it as it proceeds through DEP's permit review process.

AGENDA ITEM COVER SHEET

Date: February 9, 2000

Agenda Item: Environmental Resource Permit for the North-Central Hillsborough Intertie Contract 1 (South Division)

Description/Summary:

A BOCC Agenda Item on February 16, 2000 addressed this same issue from the County perspective. This agenda item is to align EPC on the same issue.

One of Tampa Bay's initiatives in the development of new water supplies is the transmission of water through an interconnected system. One part of that system is the southern portion of a pipeline that will ultimately interconnect the Regional Water Treatment plant with the Morris Bridge Booster Pumping Facility at the Lower Hillsborough Wilderness Park. This is the North-Central Hillsborough Intertie (NCHI) - Contract 1 (South Division). This project will require an ERP permit, a Primary Environmental Permit under Governance and the Interlocal Agreement.

The NCHI-Contract 1 of the pipeline is an 84-inch diameter pipe that will run from the Treatment Plant to Harney Road. Since the pipeline is primarily within an existing right-of-way, the wetland impacts are minimal. Temporary impacts will be restored on site; permanent impacts will be mitigated off-site at a 2:1 ration at the Model Dairy Wetland Mitigation Project.

EPC and the Water Resource Team have reviewed the proposed plans, and through meetings and discussions with Tampa Bay Water, and review of supplemental documentation, the proposed permit application submitted to TBW Board addressed all of our concerns. EPC staff recommend that EPC not file for binding arbitration pursuant to Governance and the Interlocal Agreement regarding this TBW permit application.

Commission Action Recommended:

Confirm staff's recommendation that EPC not file for binding arbitration regarding this permit application, but that the Water Team continue to monitor it as it proceeds through DEP's permit review process.

AGENDA ITEM COVER SHEET

Date: February 9, 2000

Agenda Item: National Pollution Discharge Elimination System (NPDES) Permit to Discharge Process Wastewater from the Tampa Bay Regional Water Treatment Plant

Description/Summary:

A BOCC Agenda Item on February 16, 2000 addressed this same issue from the County perspective. This agenda item is to align EPC on the same issue.

TBW recently purchased approximately 435 acres of property near U.S. 301 and Broadway, also referred to as the Regional Facilities Site. This property is to be the location for two new ground and surface water treatment plants (RWTP), in addition to water blending, storage and high service pumping facilities. Of the total property, the treatment plant will only occupy 60 acres. The ERPs for the RWTP, Site Certification Assessment Permit and the Temporary Access Road have already been approved for submittal to SWFWMD under Governance and the Interlocal Agreement, and are in the process of application review.

During the start-up phase of the RWTP, it may become necessary to discharge water from the plant that doesn't meet the water quality standards that were agreed to by all parties in the Governance Agreement. Any potential discharge from the plant will go into an adjacent drainage ditch to the RWTP and will eventually discharge into the Canal.

EPC and the Water Team have reviewed the application and obtained clarification of their concerns from TBW. EPC staff recommend that EPC not file for binding arbitration pursuant to Governance and the Interlocal Agreement regarding this TBW permit application.

Commission Action Recommended:

Confirm staff's recommendation that EPC not file for binding arbitration regarding this permit application, but that the Water Team continue to monitor it as it proceeds through DEP's permit review process.

AGENDA ITEM COVER SHEET

Date: February 17, 2000

Agenda Item: Staff Presentation on Applicability of Environmental Impact Statement to the Tampa Bay Water "Master Water Plan"

Contact Person: Tony D'Aquila

Description/Summary:

In response to a request by the EPC Board at its January 20, 2000 meeting, EPC staff was asked to present a briefing on issues associated with the proposed desalination facility to be located at Big Bend. That briefing was to take place during a special meeting of the EPC on February 2, 2000 during the regularly scheduled BOCC meeting. That special meeting scheduled for February 2, 2000, was continued at staff request to the regularly scheduled EPC meeting on February 17, 2000.

The staff presentation will address the following:

- 1) Define the National Environmental Policy Act (NEPA) and the Environmental Impact Statement (EIS) process, and
- 2) Discuss the relationship of the EIS to Tampa Bay Water's "Master Water Plan" and projects, and
- 3) Provide background on studies and impact assessments done to date, and
- 4) Develop options and staff recommendation for EPC Board consideration.

Staff has contacted Region 4 of the USEPA in Atlanta, and requested representation at the meeting to facilitate response to EPC Board questions.

Commission Action Recommended:

Staff is seeking a motion endorsing a letter from the Chairman of the BOCC to the Regional Administrator, USEPA Region 4, requesting the initiation of a Comprehensive EIS of all Tampa Bay Water Master Water Plan projects as these may impact on Tampa Bay. This letter to be endorsed to the Tampa Bay Estuary Program and Agency on Bay Management, requesting their support of this Board action.



Environmental Impact Statement and Water Supply Projects

**EPC Staff Presentation to
Board of the Environmental Protection
Commission of Hillsborough County
February 17, 2000**

2/9/00



ISSUES

- Define the Environmental Impact Statement (EIS) and Explain the EIS Process.
- Relationship of the EIS to Water Supply Projects of TBW.
- Background on Developments and Studies to Date.
- Potential Options for BOCC with EIS, and Staff Recommendation.

2/9/00



The Environmental Impact Statement (EIS)

- National Environmental Policy Act (NEPA) of 1969
 - take environmental factors into account
 - consider alternatives
 - inform the public
- Only Federal actions are affected by EIS requirement
- Sufficient Federal involvement may trigger an EIS

2/9/00



The Environmental Impact Statement (EIS)

- Process: Categorical Exclusion (CX) *or*
Environmental Assessment (EA) → leads to
Finding of No Significant Impact (FONSI)
or
Environmental Impact Statement (EIS)
- Federal Action Defined:
 - Federal Permit Required
 - Federal Funds Involved

2/9/00



The Environmental Impact Statement (EIS)

- Scoping:
 - Identifies issues regarding a project
 - Presents best opportunity for public involvement and comment
 - Announcements and meetings must be publicized

2/9/00



The Environmental Impact Statement (EIS)

- Draft EIS:
 - Studies and analyses are conducted
 - Draft EIS prepared and noticed (FR)
 - Public review and comment period
 - Draft EIS filed with HQ EPA

2/9/00



The Environmental Impact Statement (EIS)

- Final EIS:
 - Response to comments
 - Preparation of Final EIS (FEIS)
 - FEIS issued and final public review and comment period
 - Record of Decision (ROD) and Agency action

2/9/00



The Environmental Impact Statement (EIS)

- Scope:
 - Single Project *or* Comprehensive EIS
- Comprehensive EIS applies to:
 - Closely related programmatic actions
 - Cumulative actions
 - Connected actions
- During EIS process, EPA withholds funding action under review.

2/9/00



EIS Process and TBW Master Water Plan Projects

- Federal Funding:
 - The Regional Reservoir project is Federally funded.
 - Other projects *may* be receiving Federal funds.
- Federal Permits:
 - Each Pipeline Project → ACOE permit.
 - Regional WTP → ACOE permit.
- Desal Plant → No Federal funds or Federal permits.

2/9/00



Relationship of the EIS to Water Supply Projects of TBW

- Our concern throughout has been with the **Cumulative Effect** of the numerous projects.
- TBW's "Master Water Plan" by definition is a set of **closely related, connected actions**, some Federally funded.
- A **Comprehensive EIS** is justified.

2/9/00



Background on Developments and Studies to Date

- April 30, 1998 - "Fatal Flaw Analysis"
 - Regression Analysis
 - Mechanistic Model
 - Mass Balance Box Model
- Did not include all projects
- Spatial scale too broad, not sensitive to all impacts

2/9/00



Background on Developments and Studies to Date

- November 23, 1998 - "3-D Hydrodynamic Model"
 - High Resolution
 - Circulation Model
- Did not include all projects
- Desalination not considered

2/9/00



Models versus Monitoring

- An EIS will be based upon modeling. It is **predictive** of impacts (salinity changes) expected in the environment.
- Monitoring **measures** conditions and has the potential to **detect** impacts. Monitoring, therefore, hopes to **verify** what modeling predicts.

2/9/00



Option 1 Request EIS on Desalination Facility

- Facts:
 - No Federal funding
 - No major Federal permits
 - 3 minor Federal permits
 - Single project focus
- Result:
 - No EIS will be forthcoming

2/9/00



Option 2 Request



Comprehensive EIS on TBW's Master Water Plan

- **Facts:**
 - Some Federal funding
 - Some Federal permits
 - Comprehensive, cumulative impact focus
 - EIS is forthcoming on Tampa Bay Regional Reservoir project

2/9/00



Option 3 Take



"Wait and See" Approach

- **Facts:**
 - FDEP is requiring some modeling of Desalination Facility.
 - SWFWMD is requiring the HBMP of Surface Water projects.
 - County Team is refining 3-D Hydrodynamic Model of cumulative impacts.

2/9/00



Option 4 Initiate



Legal Challenge to Compel EIS

- **Facts:**
 - Same justification as Option 2
 - Requires resourcing (time, \$\$)
 - Pre-emptive of EPA decisions

2/9/00



Recommendation:



- **Adopt Option 2:**
 - Letter from Chair, BOCC to Regional Administrator, US EPA-Region IV, supporting Comprehensive EIS of all TBW Master Water Plan projects on Tampa Bay, copy to FDEP Secretary Struhs.
 - Letter from Chair, BOCC to TBEP and Agency on Bay Management requesting support of Board action.

2/9/00

Project	Cost (1)	Cost (2)	Total Cost (3)	TBW \$	SWFWMMD \$	FEDERAL \$
Alafia River	12,222,000	168,000	12,390,000	6,195,000	6,195,000	0
TBC/HR High Water	16,549,000	260,000	16,809,000	8,405,000	8,405,000	0
Reservoir & Trans. Main	113,227,000	965,000	114,192,000	28,596,000	28,596,000	57,000,000
SW Treatment	87,158,000	8,759,000	95,917,000	47,959,000	47,959,000	0
South Central Intertie (Pipeline)	44,954,000	167,000	45,121,000	22,561,000	22,561,000	0
GW Treatment	7,362,000	795,000	8,157,000	8,157,000	0	0
GW Storage and High Wtr. Pumping	21,961,000	2,665,000	24,626,000	24,626,000	0	0
North Central Intertie (Pipeline)	46,398,000	147,000	46,545,000	23,273,000	23,273,000	0
BUDW	27,161,000	695,000	27,856,000	27,856,000	0	0
Desal Plant at Big Bend	96,009,000	18,980,000	114,989,000	11,499,000	103,490,000	0
Loop 72 Phase A (Pipeline)	38,730,000	150,000	38,880,000	19,440,000	19,440,000	0
Brandon/S. Central Connection	8,397,000	Unknown	8,397,000	4,199,000	4,199,000	0
Cypress Bridge II	1,665,000	400,000	2,065,000	2,065,000	0	0
Brackish GW Desal	17,666,000	1,770,000	19,436,000	19,436,000	0	0
Cone Ranch and Dispersed Wells	58,911,000	1,642,820	60,553,820	60,553,820	0	0
Total Costs	598,369,999	37,563,818	635,933,817	314,820,820	264,118,000	57,000,000

(1) Capital, Engineering and Permitting

(2) 1 Year O&M for the Project

(3) Sum of (1) and (2)

Table: Estimated Costs and Cost Shares on TBW Water Supply Projects

CHAPTER 5
**NATIONAL ENVIRONMENTAL
 POLICY ACT (NEPA)**

I. GENERAL INFORMATION

The National Environmental Policy Act (NEPA) is an environmental statute that emphasizes *information* rather than regulation. It requires the publication of information about the environmental effects of and *alternatives* to potential government actions. The broad policy goals of NEPA are in §101, 42 U.S.C. §4331. NEPA does not dictate environmental standards or controls.

- A. History:** NEPA, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. §§4321-4370(d)), was enacted in 1969 in order to *require* federal agencies to consider the *quality* of the human environment in their decision-making. It is widely considered to be the first act of the modern environmental legislation.
1. **Federal agencies prior to NEPA:** Prior to 1970 many federal agencies claimed to have *no authority* to consider the environment in their actions.
 - a. **Attitudes of the agencies:** This disregard for the environment was premised on the assumption that environmental concerns were *beyond the mission* of the agency.
 - b. **Impact on the environment:** Often the primary mission of the agency resulted in *detrimental effects* to the quality of the environment.
 2. **Changes within the federal agencies after NEPA:** The "action forcing" provisions of NEPA created an *explicit mandate* for all federal agencies requiring a specific analysis and procedures to take into consideration environmental factors.
- B. Purpose:** NEPA establishes policy, sets goals and provides the means for carrying out the policy. 40 C.F.R. §1500.1. Its emphasis is on information: both the *documentation* of environmental statistics and the *dissemination* of the documentation.
1. **NEPA requires agencies to take environmental factors into account:** NEPA requires federal agencies to consider the effects of their actions on the environment by preparing a detailed *Environmental Impact Statement (EIS)*. See *infra*, p. 37. The agency, however, does not have to elevate environmental concerns over other considerations. The agency need only consider the environ-

mental *consequences* of its actions. Once the agency has made a decision, the court may only interject to ensure that environmental consequences were indeed considered, and not to change the decision made by the agency. Where environmental consequences have been considered, no more is required by NEPA. *Strycher's Bay Neighborhood Council, Inc. v. Karlen*, 100 S.Ct. 497 (1980).

2. **NEPA requires agencies to consider alternatives:** Included in the EIS must be a discussion of the *alternative proposals* to the government action and the *environmental impact* of each. Consideration of alternatives is required even if an EIS *does not* have to be prepared. See *infra*, p. 45.
 3. **Provide information to the public:** The main purpose of the EIS is to *inform the public as well as the decision-makers* about the proposed action and the alternatives to such action.
- C. Establishment of the Council on Environmental Quality:** NEPA established the Council on Environmental Quality (CEQ) to *assist the President* with environmental concerns. NEPA §105, 42 U.S.C. §4342.
1. **Duties and functions:** Under NEPA §204 (42 U.S.C. §4344), the duties and functions of the CEQ are to:
 - a. aid the President in preparing the Environmental Quality Report;
 - b. gather information on the conditions and trends in the quality of the environment;
 - c. review the activities of the federal government in light of the purposes of NEPA and make recommendations on them;
 - d. develop and recommend to the President national environmental policies;
 - e. conduct investigations, studies, surveys, research and analyses relating to the ecological systems;
 - f. document and define changes to the natural environment and an interpretation of their underlying causes;
 - g. report at least once a year to the President on the state of the environment; and
 - h. make studies and reports as the President may wish.
 2. **Authority of the CEQ Guidelines:** Although the list of functions in NEPA is expansive, the actual role of the CEQ Guidelines is less so. The main responsibility of CEQ Guidelines is to *issue guidelines* to interpret NEPA's requirements.

- a. **Issue guidelines:** The CEQ Guidelines publishes guidelines that explain to government agencies what they must do to follow NEPA's mandate.
- b. **Decisions of Council entitled to substantial deference:** Courts owe *substantial deference* to the CEQ Guidelines interpretation of NEPA. *Andrus v. Sierra Club*, 442 U.S. 347 (1979).
- c. **No enforcement authority:** The CEQ Guidelines has no power to *alter or stop* a federal agency's actions under NEPA.

II. THE ENVIRONMENTAL IMPACT STATEMENT (EIS)

A. Process:

1. **Exemptions from EIS obligation:** Certain situations exist in which the obligations under NEPA *cannot or need not be met* by an agency.
 - a. **Conflicts with statutory obligations:** If an agency's obligations under another statute make it *impossible to fully comply* with the NEPA obligations, NEPA must give way. *Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Oklahoma*, 426 U.S. 776, 791, *reh'g denied*, 429 U.S. 875 (1976).
 - b. **Express statutory exemption:** Congress can *exempt* an agency from having to comply with NEPA duties. See, e.g., 33 U.S.C. §1371(c)(1) (exempting the EPA from having to prepare an EIS for the Clean Water Act).
 - c. **"Functional equivalence" of NEPA:** When the terms of another applicable statute require duties that are *"functionally equivalent"* to NEPA's duties, the agency may be excused. *Western Nebraska Resources Council v. EPA*, 943 F.2d 867, 871 (8th Cir. 1991).
2. **Environmental Assessment:** The Environmental Assessment (EA) is a short document which *outlines the proposal and its possible environmental impact*. It aids the agency in determining whether a full EIS is necessary. 40 C.F.R. §1508.9
3. **Finding of No Significant Impact:** With the aid of the EA, the agency decides whether to do an EIS. If it decides not to, it issues a "Finding of No Significant Impact" or FONSI. An issuance of a FONSI is *usually the last NEPA action* on a project. A FONSI *may not* be issued for activities which have a potential for disturb-

ing the environment. In such a case, an EIS must be prepared in order to fully assess the possible environmental consequences. *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983).

4. **Notice of Intent and scoping:** If an agency determines that an EIS is necessary, it will *publish a "Notice of Intent"* to prepare the EIS. The next step in the EIS process is "scoping," when the agency *defines the topics and issues* involved in the proposal. 40 C.F.R. §§1501.7 and 1508.25.
5. **Draft EIS:** Once a draft of the EIS has been completed, it must be *circulated for comment* from the public and other agencies. The agency has some discretion as to whether to hold public hearings to discuss the draft.
6. **Final EIS:** After responding to comments and incorporating the answers into the EIS, the final EIS is completed.
7. **Record of decision:** The final decision of the agency must be set forth with a *justification* for the action and the *reasons why* the alternatives were rejected.
8. **Judicial review:** Compliance with NEPA is subject to judicial review *even though* NEPA lacks a "citizen suit" provision.
 - a. **Source of jurisdiction:** NEPA cases come to the federal court system under federal question jurisdiction. The courts have taken an *active role* in ensuring NEPA compliance. See *Calvert Cliffs' Coordinating Comm., Inc. v. Atomic Energy Comm'n*, 449 F.2d 1109 (D.C. Cir. 1971). In *Calvert Cliffs*, the court held the agency to strict compliance with the procedural requirements of NEPA.
 - b. **Standard of review:** The Supreme Court has held that the decision *not to prepare* a supplemental EIS is reviewed under the "*arbitrary and capricious*" standard. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989). It is presumed that the same standard of review applies to the decision whether to prepare an EIS.
 - c. **Scope:** Courts may review an agency's decision on *whether to prepare* an EIS, the *adequacy* of an EIA or EIS, as well as *the procedures* by which such decisions are made. The usual remedy for a NEPA violation is injunctive relief.
- B. **Threshold issue — when must an EIS be prepared?:** The threshold question in deciding whether an EIS is needed is determined by §102(2)(C). Environmental Impact Statements are *only required* for "proposals for legislation and other major Federal actions significantly affecting the quality of the human environment."

1. **Proposals for legislation or action:** When do an agency's actions reach a point that there is a "proposal?" The Supreme Court has ruled that an EIS need only be prepared when an agency has *actually made a proposal*, not when it is merely contemplating some action. *Kleppe v. Sierra Club*, 427 U.S. 390 (1976); *see also* 40 C.F.R. Section 1508.23. Compare *Scientists' Institute for Public Information v. AEC*, 481 F.2d 1079 (D.C. Cir. 1973), which used a balancing test similar to that in the CEQ guidelines (late enough for meaningful analysis, early enough to make a difference) to determine whether agency action has progressed to the point at which environmental consequences should be assessed. The regulatory definition of "proposal" makes it clear that there may be a de facto proposal even if not characterized by the agency as a proposal.
2. **Federal inaction:** Federal *inaction* requires an EIS only when the agency has some decisionmaking obligation. *Defenders of Wildlife v. Andrus*, 627 F.2d 1238 (D.C. Cir. 1980) (holding that Department of Interior's decision not to stop a state plan to kill wolves is not subject to NEPA; although it had the authority to stop the hunt, it had no obligation to decide whether or not the hunt should take place. The courts have been reluctant to require an EIS for an agency's failure to act).
3. **Federal:** Only federal actions are affected by EIS requirements. State and local governmental actions, as well as private actions, are *not subject to NEPA*. If there is a sufficient amount of federal involvement in a private action, the EIS requirement may be triggered. *See also*, 40 C.F.R. Section 1508.18.

Example:When the federal government leases land for the construction of a power plant, an EIS may be required; when the federal government merely gives a right of way over navigable water for the construction of a power line, an EIS is not required. *See, e.g., Winnebago Tribe of Nebraska v. Ray*, 621 F.2d 269 (8th Cir. 1980), *cert. denied*, 449 U.S. 836 (1980).

4. **Major/significantly affecting:** According to the CEQ guidelines, "major" *reinforces but in practice has no meaning independent of "significantly affecting"*. Determining when an action significantly affects the environment has been the most contentious issue under NEPA.
 - a. **Context and intensity:** The CEQ Guidelines interpret this phrase *to require consideration of the effects in terms of context* (society as a whole, regionally, locally, etc.) *and intensity* (severity of the impact). 40 C.F.R. §1508.27.

- b. **Controversial:** These CEQ guidelines require an EIS for action *likely to be highly controversial*.
 - c. **Balancing test:** Some courts have applied a two-part test, requiring an agency to consider:
 - i. the *extent to which the action will cause adverse environmental* effects in excess of those created by existing uses in the area; and
 - ii. the *absolute quantitative adverse environmental effects* of the action itself. See *Hanly v. Kleindienst*, 471 F.2d 823 (2d Cir. 1972), *cert. denied*, 412 U.S. 908 (1973).
 - d. **Effects:** "Effects" is synonymous with impacts and includes ecological, aesthetic, historic, cultural, economic, social or health effects, *whether direct or indirect*. 40 C.F.R. §1508.8. However, psychological harm from fear of an adverse effect, such as the fear of a nuclear power accident, was held by the Supreme Court to be too attenuated to be considered by the agency. See *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983).
5. **Quality of human environment:** The human environment means the natural and physical environment and its relationship with the people of that environment. Economic and social effects are *not enough* in and of themselves to require an EIS. 40 C.F.R. §1508.14. A significant impact on the physical environment must be demonstrated.
- Example:** The possible introduction of weapons, drugs and crime into a neighborhood as a result of government action does not require an EIS because the changes are not physical but socio-economic. *Olmsted Citizens For a Better Community v. United States*, 793 F.2d 201 (8th Cir. 1986).
- C. **Scope:** The scope of an EIS can be a complex question. This is especially true when it is unclear whether a federal action is a small, discrete project or a series of actions that should be studied as a whole.
- 1. **Single project/segmentation:** An EIS may be prepared for a *single project or segment* rather than the more comprehensive action if the segment or project has independent utility. See *Daly v. Volpe*, 514 F.2d 1106 (9th Cir. 1975); *South Carolina v. O'Leary*, 64 F.3d 892 (4th Cir. 1995).
 - 2. **Comprehensive EIS:** Conversely a comprehensive EIS is required for proposals which must be considered in a *broader context* than their own completion because they are dependent upon other actions.

- a. **Programmatic actions:** A single EIS is necessary when proposals for federal actions are *so closely related* as to constitute a single course of action.
- b. **Cumulative actions:** When the agency has several proposals which may have a *cumulative effect* on the environment, an EIS covering them all is necessary. See *Kleppe v. Sierra Club*, 427 U.S. 390 (1976).
- c. **Connected actions:** The CEQ and supporting case law require "*connected actions*" to be considered together in a single EIS. 40 C.F.R. §1508.25(a); see also *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985).

Example: A Navy plan to build a battleship at a port and a plan to build housing at the port were not connected because neither was a necessary precondition to the other. *Hudson River Sloop Clearwater, Inc. v. Department of Navy*, 836 F.2d 760 (2d Cir. 1988).

Example: Proposal for a fish hatchery and a diversion of a river were connected because the water was diverted just for the hatchery and the hatchery depended on the diversion to exist. *Morgan v. Walter*, 728 F. Supp. 1483 (D. Idaho 1989).

D. Adequacy of the Environmental Impact Statement: Generally, the EIS *must include* the environmental effects of the proposed action and alternatives to the proposed actions, and the alternatives' own effects.

1. **Consideration of alternatives:** The agency must consider alternatives to the proposal and the environmental impact of those alternatives, *even if no EIS is required*. NEPA §102(2)(E), 42 U.S.C. §4332(2)(E).

a. **Council on Environmental Quality guidelines:** The CEQ has stated that the EIS must include *all reasonable alternatives*, including:

- i. those that would eliminate the need for this action;
- ii. those that would mitigate any environmental impact; and
- iii. the lack of any action in this case.

The CEQ guidelines suggest there are three types of alternatives: (1) the *no action* alternative; (2) *reasonable alternatives* to the proposed action; and (3) *mitigation measures* for the proposed action.

- b. **Primary and secondary alternatives:** A primary alternative is a course of action entirely different from the proposal. A secondary alternative is one that goes forward with the proposal, but in a different way.
 - c. **Determination of reasonable alternatives:** Agencies and interest groups often clash when deciding what is a reasonable alternative.
 - i. **No requirement to consider primary alternative:** Courts are reluctant to require an agency to *redefine the goal* of its proposal when considering the alternatives. *Citizens of Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991).

Example: Department of Defense was not required to consider alternate weapons systems when preparing an EIS on an MX missile proposal because that would be outside of the Congressional mandate for the project. *Romer v. Carlucci*, 847 F.2d 445 (8th Cir. 1988).
 - ii. **Alternatives that meet a portion of the stated goal:** NEPA requires consideration of alternatives which meet only a *portion of the stated goals* of the project, although the fact that only a part of the goals are met will be a disadvantage when weighing the alternative against the proposal. *North Buckhead Civic Ass'n v. Skinner*, 903 F.2d 1533 (11th Cir. 1990); *see also*, 40 C.F.R. §1502.14. Courts frequently say that the analyses of alternatives is the "heart" of NEPA's requirements.
 - iii. **Rule of reason:** Although an agency need not consider speculative or experimental technologies, it is required to *consider all reasonable alternatives, whether or not the alternatives are within the authority* of that agency. *NRDC v. Morton*, 458 F.2d 827 (D.C. Cir. 1972). *Morton* may have been limited by *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1978). Although affirming *Morton's* rule of reason, the Supreme Court suggested that at least some of the burden of presenting alternatives lies on the opponents of a project and not just the agency.
2. **Mitigation:** Mitigation of the environmental impact *must* be considered in the EIS.
- a. **Council on Environmental Quality guidelines:** Mitigation is *required to be discussed* in the scope of the EIS, as part of the alternatives, and in the final decision of the agency.

b. **Review:** Although the agency is required to consider mitigation and include such discussion in the EIS, it is *under no substantive obligation* under NEPA to implement any of the mitigation measures. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989).

c. **Mitigation is construed liberally:** Mitigation *does not necessarily have to affect* the particular action in question, but can rather be a separate action to offset the environmental impact.

Example: In a development affecting wetlands in land Parcel A, a company may mitigate by converting land Parcel B to wetlands. *Friends of the Earth v. Hintz*, 800 F.2d 822 (9th Cir. 1986).

3. **Lack of available information:** When relevant evidence or scientific data is inadequate or lacking, the CEQ guidelines and the courts have required that the *agency publicly note this lack of information*, or include it if it is essential and the costs of obtaining it are not exorbitant.

4. **"Worst case" analysis:** So-called "worst case" analysis refers to unobtainable information on adverse environmental impacts.

a. **Prior regulation:** The CEQ guidelines *formerly required an EIS to include a worst case analysis*, an assessment of potentially catastrophic consequences of low probability, and probability analysis even when information about the project and environment was unavailable or too costly to obtain.

b. **New regulation:** In 1986, the worst case analysis requirement was changed to require a *summary of existing credible scientific evidence* relating to environmental impacts within the rule of reason. 40 C.F.R. §1502.22. A *probability analysis is not expressly required* by the regulation, but NEPA has been *interpreted by courts to require such analysis*. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989).

c. **Not a codification of case law:** In *Robertson* the Supreme Court held that worst case analysis as mandated by the prior regulation, unlike probability analysis, was not required by NEPA.

5. **Supplemental EIS:** An agency may be required to file an *additional supplement* to either its draft or final EIS if:

a. it makes *substantial changes* in its proposed action relevant to the environmental concerns; or

- b. significant new *circumstances or information* arise that are relevant to the environment. 40 C.F.R. §1502.9(c).

Even though a supplemental EIS is not expressly addressed in NEPA, the Court has found a supplemental EIS to be necessary at times *to support the "action-forcing" purpose* of NEPA. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989). A requirement of a supplemental EIS is supported by NEPA's concern with *preventing uninformed acts* by agencies.

III. SUBSTANTIVE REVIEW UNDER NEPA

What, if any, limits does NEPA put on an agency's substantive decision to proceed with a proposal? Put another way, if an agency follows all the procedures of NEPA, may it proceed with an environmentally destructive project despite clearly preferable alternatives so long as it has some rational reason for selecting the project it has selected?

- A. **Standard of review of the substantive decision:** In *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223 (1980), the Supreme Court evaluated a decision by the court of appeals overturning the selection of a site by HUD for a proposed low income housing project. The Court held that once an agency had complied with its duties under NEPA, the role of the reviewing court was *limited to insuring that the agency actually considered environmental matters* — not to substitute its judgment for the agency's on the merits. The reviewing court could not "interject itself within the area of discretion of the executive as to the choice of action to be taken." 444 U.S. at 227 (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)). Moreover, a reviewing court *cannot elevate environmental considerations* over other legitimate factors when determining agency compliance with NEPA. The Court in *Robertson* affirmed this narrow nature of substantive overview over agency action under NEPA by characterizing the Act's policy in §101 as "precatory" and stating that the nature of NEPA is to prescribe a "process" for considering environmental values rather than to mandate any particular results.
- B. **Consideration of all relevant factors:** Recall that in *Overton Park*, *supra*; p. 21, the Supreme Court held that an agency's decision to put a highway through a park would be reviewed under the arbitrary and capricious standard. Although this standard of substantive review is quite narrow, the Court said it *did require full consideration of all relevant factors*. NEPA makes environmental factors relevant to agency decisionmaking. If an agency has failed to give adequate consideration to environmental factors, not only will its EIA or EIS be proce-

durably defective under NEPA, but also its substantive decision to proceed may be attacked as deficient under the generally applicable standard of review under the APA.

IV. INTERNATIONAL APPLICATION OF NEPA

NEPA is generally not considered to be applicable to federal actions abroad or those that have significant extraterritorial effects.

- A. **Exceptions:** The presumption against extraterritorial application of NEPA has been held *not* to apply when the conduct takes place primarily within the United States and the effects are felt in Antarctica, a continent without a sovereign. *EDF v. Massey*, 986 F.2d 528 (D.C. Cir. 1993).
- B. **International application by Executive Order:** Executive Order 12114, however, imposes somewhat similar requirements to those of NEPA on federal actions that have significant environmental effects abroad. The coverage of the order is more limited than NEPA and private citizens may not sue to compel compliance.

V. STATE ENVIRONMENTAL POLICY ACTS

A majority of states have enacted their own state environmental policy acts (SEPA) that require some form of environmental study for state government actions. The state acts vary, and some SEPA may be more encompassing than NEPA, applying to private acts as well as governmental acts.

VI. CRITICISMS OF NEPA

NEPA has met with *mixed reviews*. Critics argue that the agencies go through the motions of an EIS without actually using it in the decision-making process. Supporters counter that the requirement of documenting possible problems may direct an agency towards a less harmful alternative, or at least motivate the public to become involved. Both agree that the EIS process delays — for better or for worse — the proposed actions, sometimes forcing cancellation or alteration of the planned project.

AGENDA ITEM COVER SHEET

Date: February 17, 2000

Agenda Item: Staff Presentation to the EPC Board on the current status of the State's Motor Vehicle Inspection Program (MVIP).

Description/Summary:

EPC staff will describe the current motor vehicle emissions testing program, including the program's capabilities and limitations in helping the County meet EPA's air quality standards. Staff will present the Board with a list of possible options to the current MVIP program. The presentation will be assisted by Carlos Thomas, Program Manager of Gordon Darby, Inc., which administers the MVIP program in Hillsborough and Pinellas counties. Mr. Thomas will speak on the merits of the MVIP program.

Commission Action Recommended:

Recommend the best option to the legislative delegation on the future of motor vehicle emissions testing in Hillsborough County.

COMMISSION

PAT FRANK
CHRIS HART
JIM NORMAN
JAN PLATT
THOMAS SCOTT
RONDA STORMS
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EXECUTIVE DIRECTOR

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MEMORANDUM

DATE: November 17, 1999
TO: Commissioner Ronda Storms
FROM: Roger P. Stewart *Roger Stewart*
SUBJECT: Information on Vehicle Emission Testing

Thank you for your inquiry concerning the future status of vehicle emission testing in Hillsborough County. The program is authorized by the State Legislature and run by the Department of Motor Vehicles. The EPC's role has been limited to evaluating its effectiveness and commenting on alternatives.

In the 1980's the U. S. Environmental Protection Agency (EPA) cited six Florida counties for exceeding the National Ambient Air Quality Standards for the pollutant ozone. These counties included Broward, Dade, Duval, Palm Beach, as well as Pinellas and Hillsborough. The EPA further directed the State to clean up or face federal sanctions.

Faced with one of the highest emission control tampering rates in the country, the State decided to implement the current motor vehicle inspection program (MVIP) starting in 1991. Once the Legislature authorized it, the State's Department of Environmental Protection (DEP) then committed to the EPA that we would include it our overall air pollution control plan. This in effect now requires us to get the EPA's approval as well as the Legislature's to abolish the program.

During the last session, the Legislature amended the MVIP. Starting in June 2000, the MVIP has been reauthorized for a minimum of 4 years with the following modifications.

- Current model year vehicles and vehicles manufactured in the two prior model years will be exempt from testing.
- Testing will be conducted on a biennial basis.
- Testing fee will be increased from \$10 to \$19.

Commissioner Ronda Storms
November 17, 1999
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So unless there is another amendment from the Legislature, we will have the MVIP through 2004 with further extensions possible.

As I stated early on, the EPC has been evaluating the MVIP. And while the program helped reduce our high tampering rate and increased public awareness, we now feel it produces only marginal air quality benefits. As a result, we have been actively speaking to members of our legislative delegation about less intrusive and more effective alternatives. In particular, we are encouraged about the possible statewide implementation of a cleaner burning low sulfur gasoline. This would do more to improve our ozone situation than the current MVIP, and the costs appear to be reasonable.

Be advised that the DEP has initiated the process to receive the EPA's permission to end the MVIP as early as this coming June in the four counties outside of the Tampa Bay area. If they get the EPA's approval, this would give the Legislature the option of terminating MVIP in Jacksonville and the southeast coast. Because of the elevated ozone readings in this area, the DEP is reluctant to end it here pending further study. We are asking them to carefully look at this decision.

I hope this memo has served to clear up any questions you may have had about the emission testing program and how it affects Hillsborough County. If we can be of any further assistance, please let me know.

cag

cc: Commissioner Frank
Commissioner Hart
Commissioner Norman
Commissioner Platt
Commissioner Scott
Commissioner Wacksman

State of Florida
Motor Vehicle Inspection Program
(MVIP)

History:

- Hillsborough County was classified as nonattainment for the pollutant ozone by the EPA in the 80's.
- EPA surveys indicated that the Tampa Bay area had one of the highest automobile emission system tampering rates in the Country.
- In 1987, ozone readings throughout the State reached record levels.
- In 1988, the Legislature established Florida's MVIP in Hillsborough and five other counties including Pinellas.
- The Florida Department of Environmental Protection (DEP) requests air quality credits for the MVIP from the EPA and receives them.
- Emission inspections began April 1, 1991 in Hillsborough County.
- The program is run by the State through the Department of Highway Safety and Motor Vehicles (DHSMV) and administered locally by their contractor Gordon-Darby, Inc.
- In 1996, the one hour ozone readings have decreased below the standard and the area is redesignated from a nonattainment area to an ozone maintenance area.
- In 1999, the Legislature revises the MVIP statute authorizing DHSMV to enter contracts to extend MVIP for up to another 7 years.

February 10, 2000

(History continued)

- Current MVIP contracts expire June 30, 2000.
- Tampa and Pensacola experience elevated ozone readings for the three year period of 1997 – 1999, thus exceeding the EPA's new ozone standard.
- Florida DEP initiates request to end all air quality credits from EPA for Jacksonville and the southeast coast.

Considerations:

- In Hillsborough county the failure rate this past year was less than 6 %.
- In July of 2000, MVIP exempts the three latest model years.
- All other vehicles will be required to be tested biennially.
- DHSMV's portion of the inspection fee goes into their Highway Safety Operating Trust Fund and is not necessarily spent in the county where it is collected.
- MVIP does not test for NOx which is the problem pollutant and a precursor for ozone.
- On average, each county with MVIP receives about a single ton of NOx credit per day (this is an estimate).

February 10, 2000

(Considerations continued)

- To put this in perspective, the NOx budget for Hillsborough and Pinellas counties is several hundred tons per day.
- Vehicle miles traveled in Hernando, Pasco, Polk, Manatee and Sarasota Counties is equivalent to the total miles driven on any given day in Pinellas and Hillsborough, yet these counties do not participate in the MVIP.
- Worker commute trips alone into Hillsborough and Pinellas from the surrounding counties is over a hundred thousand trips per day.
- The governor has announced he does not intend to expand the MVIP into the Pensacola area even though their ozone problem is equivalent to west central Florida's.

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Possible Options:

- Direct staff to draft correspondence for the Chairman's signature requesting Secretary Struhs initiate action to withdraw air quality credits for the MVIP for the Tampa Bay area through the EPA. Concurrently have staff draft a second letter from our Chairman to the legislative delegation, requesting they support any initiative to terminate the MVIP in Hillsborough county effective June 30, 2000.
- Direct staff to draft correspondence for the Chairman's signature to the legislative delegation requesting they propose and/or support: any initiative to expand the MVIP to Hernando, Pasco, Polk, Manatee and Sarasota counties, and revise MVIP to include NOx testing.
- Direct staff to draft correspondence for the Chairman's signature to the legislative delegation requesting they propose and/or support: any initiative to limit the new MVIP contract to a period not to exceed 2 years, and exclude NOx testing and the surrounding counties.
- Take no action and monitor the legislature this spring.

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