

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
DECEMBER 5, 2002
2 – 4 PM
AGENDA**

INVOCATION AND PLEDGE OF ALLEGIANCE

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

- I. CITIZEN'S COMMENTS**
- II. CITIZEN'S ENVIRONMENTAL ADVISORY COMMITTEE**
Items of Interest
- III. PUBLIC HEARING**
Issuance of Final Order – Sam Stone 2
- IV. CONSENT AGENDA**
- A. Approval of Minutes: None
 - B. Monthly Activity Reports 3
 - C. Legal Department Monthly Report 18
 - D. Pollution Recovery Trust Fund 22
 - E. Gardinier Settlement Trust Fund 23
 - F. Letter Report - Wetlands Review of FDOT Projects 24
- V. EXECUTIVE DIRECTOR**
- A. EPA/FDEP Audit Report of Air Monitoring Program 32
 - B. Presentation – EPC 2001 Annual Report
- VI. LEGAL DEPARTMENT**
Litigation Policy – Commissioner Discussion with Litigants 37
- VII. WASTE MANAGEMENT DIVISION**
Approval of Inter-local Agreement with City of Tampa – Stormwater 39
- VIII. SPECIAL STAFF PRESENTATION**
Artificial Reef Program

Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

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AGENDA ITEM COVER SHEET

Date: November 20, 2002

Agenda Item: Public Hearing - Issuance of Final Order - Sam Stone

Description/Summary:

On June 18, 2001 the EPC entered an administrative Citation against Sam Stone for unauthorized impacts to wetlands on his property located in Hillsborough County at 4614 Shepherd Road, Plant City, Florida. On August 27, 2001 Mr. Stone filed a Notice of Administrative Appeal and a Request for Relief to Determine Estoppel. The appeals were consolidated and referred to Hearing Officer Robert Fraser, Esq. The Final Hearing on the estoppel issue was heard on September 6, 2002.

On October 23, 2002 the Hearing Officer issued his Findings of Fact, Conclusions of Law and Recommendation. On October 31, 2002 counsel for the EPC timely filed Exceptions to the Recommended Order pursuant to Chapter 1-2.35 Rules of the Commission. To date, no response has been received by counsel for Sam Stone to the Exceptions filed by EPC. If a response is received, it will be included in the Supplemental Agenda Item for this case.

Pursuant to the rule, the Commission must review the Recommended Order and the Exceptions and may hear arguments, if necessary, from both parties on the issues reasonably raised by the Exceptions. No evidence will be taken although opinions from the public may be heard at the Commission's discretion. At the conclusion of the hearing, the Commission shall affirm, reverse or modify the Hearing Officer's findings of fact, make appropriate conclusions of law and render a written Final Order.

A Supplemental Agenda Item regarding this matter will be delivered to each Commission member on November 27, 2002.

Commission Action Recommended:

Conduct a Public Hearing and issue an appropriate Final Order in this matter.

MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION
OCTOBER

A.	Public Outreach/Education Assistance:	
	1. Phone Calls:	<u>161</u>
	2. Literature Distributed:	<u>210</u>
	3. Presentations:	<u>2</u>
	4. Media Contacts:	<u>8</u>
	5. Internet:	<u>53</u>
B.	Industrial Air Pollution Permitting	
	1. Permit Applications Received (Counted by Number of Fees Received):	
	a. Operating:	<u>4</u>
	b. Construction:	<u>1</u>
	c. Amendments:	<u>0</u>
	d. Transfers/Extensions:	<u>6</u>
	e. General:	<u>1</u>
	2. Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval (¹ Counted by Number of Fees Collected) - (² Counted by Number of Emission Units affected by the Review):	
	a. Operating ¹ :	<u>0</u>
	b. Construction ¹ :	<u>0</u>
	c. Amendments ¹ :	<u>6</u>
	d. Transfers/Extensions ¹ :	<u>2</u>
	e. Title V Operating ² :	<u>42</u>
	f. Permit Determinations ² :	<u>0</u>
	g. General:	<u>0</u>
	3. Intent to Deny Permit Issued:	<u>1</u>
C.	Administrative Enforcement	
	1. New cases received:	<u>6</u>
	2. On-going administrative cases:	
	a. Pending:	<u>4</u>
	b. Active:	<u>14</u>
	c. Legal:	<u>4</u>
	d. Tracking compliance (Administrative):	<u>17</u>
	e. Inactive/Referred cases:	<u>0</u>
	Total	<u>39</u>
	3. NOIs issued:	<u>6</u>
	4. Citations issued:	<u>0</u>
	5. Consent Orders Signed:	<u>3</u>
	6. Contributions to the Pollution Recovery Fund:	<u>\$10,425</u>
	7. Cases Closed:	<u>1</u>

D.	Inspections:	
	1. Industrial Facilities:	<u>8</u>
	2. Air Toxics Facilities:	
	a. Asbestos Emitters	<u>1</u>
	b. Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>12</u>
	c. Major Sources	<u>0</u>
	3. Asbestos Demolition/Renovation Projects:	<u>59</u>
E.	Open Burning Permits Issued:	<u>11</u>
F.	Number of Division of Forestry Permits Monitored:	<u>248</u>
G.	Total Citizen Complaints Received:	<u>54</u>
H.	Total Citizen Complaints Closed:	<u>54</u>
I.	Noise Sources Monitored:	<u>6</u>
J.	Air Program's Input to Development Regional Impacts:	<u>1</u>
K.	Test Reports Reviewed:	<u>75</u>
L.	Compliance:	
	1. Warning Notices Issued:	<u>17</u>
	2. Warning Notices Resolved:	<u>10</u>
	3. Advisory Letters Issued:	<u>10</u>
M.	AOR's Reviewed:	<u>0</u>
N.	Permits Reviewed for NESHAP Applicability:	<u>4</u>

FEES COLLECTED FOR AIR MANAGEMENT DIVISION
OCTOBER

	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	\$ 800.00
(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>\$ 200.00</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>\$1,840.00</u>
(c) Delegated General Permit (20% is forwarded to DEP and not included here)	<u>\$ 80.00</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	\$2,185.00
(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>\$ 190.00</u>
(b) renovation greater than 1000 linear feet or 1000 sq ft	<u>\$ 400.00</u>
8. Open burning authorization	<u>\$4,675.00</u>
9. Enforcement Costs	<u>\$2,920.00</u>

COMMISSION
 Stacy Easterling
 Pat Frank
 Chris Hart
 Jim Norman
 Jan Platt
 Thomas Scott
 Ronda Storms



Administrative Offices,
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 The Roger P. Stewart Environmental Center
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 Waste Management Fax 276-2256
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Executive Director
 Richard D. Garrity, Ph.D.

MEMORANDUM

DATE: November 20, 2002

TO: Tom Koulianos, Director of Finance and Administration

FROM: *JH* Joyce H. Moore, Executive Secretary, Waste Management Division through
 Hooshang Boostani, Director of Waste Management

SUBJECT: **WASTE MANAGEMENT'S OCTOBER 2002
 AGENDA INFORMATION**

A. ADMINISTRATIVE ENFORCEMENT

1. New cases received	4
2. On-going administrative cases	94
a. Pending	14
b. Active	54
c. Legal	9
d. Tracking Compliance (Administrative)	17
e. Inactive/Referred cases	0
3. NOI's issued	5
4. Citations issued	0
5. Settlement Documents Signed	2
6. Civil Contributions to the Pollution Recovery Fund	\$700
7. Enforcement Costs collected	\$0
9. Cases Closed	5



B. SOLID AND HAZARDOUS WASTE

1. Permits (received/reviewed)	71/62
2. EPC Authorization for Facilities NOT requiring DEP permit	1 / 2
3. Other Permits and Reports	
a. County Permits	1/1
b. Reports	69/57
4. Inspections (Total)	207
a. Complaints	34
b. Compliance/Reinspections	25
c. Facility Compliance	20
d. Small Quantity Generator	128
5. Enforcement	
a. Complaints Received/Closed	42/38
b. Warning Notices Issued/Closed	4/3
c. Compliance letters	31
d. Letters of Agreement	0
e. DEP Referrals	1
6. Pamphlets, Rules and Material Distributed	310

C. STORAGE TANK COMPLIANCE

1. Inspections	
a. Compliance	91
b. Installation	34
c. Closure	9
d. Compliance Re-Inspections	23
2. Installation Plans Received/Reviewed	3/1
3. Closure Plans & Reports	
a. Closure Plans Received/ Reviewed	4/4
b. Closure Reports Received/Reviewed	8/6
4. Enforcement	
a. Non-compliance Letters Issued/Closed	65/32
b. Warning Notices Issued/Closed	13/10
c. Cases referred to Enforcement	3
d. Complaints Received/Investigated	2/2
e. Complaints Referred	0
5. Discharge Reporting Forms Received	2
6. Incident Notification Forms Received	8
7. Cleanup Notification Letters Issued	2
8. Public Assistance	200+

D. STORAGE TANK CLEANUP

1. Inspections	16
2. Reports Received/Reviewed	104/100
a. Site Assessment	39/54
b. Source Removal	4/7
c. Remedial Action Plans (RAP's)	8/9
d. Site Rehabilitation Completion Order/ No Further Action Order	2/1
e. Others	51/29
3. State Cleanup	
a. Active Sites	NO LONGER ADMINISTERED
b. Funds Dispersed	

E. RECORD REVIEWS

32

**ACTIVITIES REPORT
WATER MANAGEMENT DIVISION**

OCTOBER, 2002

A. ENFORCEMENT

1. New Enforcement Cases Received:	<u>4</u>	
2. Enforcement Cases Closed:	<u>3</u>	
3. Enforcement Cases Outstanding:	<u>18</u>	
4. Enforcement Documents Issued:	<u>10</u>	
5. Warning Notices:	<u>6</u>	
a. Issued:	<u>6</u>	
b. Resolved:	<u>0</u>	
6. Recovered costs to the General Fund:	\$ <u>900.00</u>	
7. Contributions to the Pollution Recovery Fund:	<u>\$2,983.36</u>	

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. Country Haven on Bullfrog Creek	Expired permit; Operation w/o permit	600.02
b. AOK MHP	Inproper Operation; Failure to maintain; Discharging raw sewage	383.34
c. Westshore Pumping Station	Placement of C/S in service w/out acceptance letter	500.00
d. Summerview Oaks	Construction w/out a permit	1,000.00
e. Madison Middle School	Placement of C/S in service w/out acceptance letter	500.00

B. PERMITTING - DOMESTIC

1. Permit Applications Received:	<u>26</u>	
a. Facility Permit:	<u>3</u>	
(i) Types I and II	<u>0</u>	
(ii) Type III	<u>3</u>	
b. Collection Systems-General:	<u>13</u>	
c. Collection Systems-Dry Line/Wet Line:	<u>10</u>	
d. Residuals Disposal:	<u>0</u>	
2. Permit Applications Approved:	<u>22</u>	
a. Facility Permit:	<u>7</u>	
b. Collection Systems-General:	<u>8</u>	
c. Collection Systems-Dry Line/Wet Line:	<u>9</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:	1
a. Facility Permit:	<u>1</u>
b. Collection Systems-General:	<u>0</u>
c. Collection Systems-Dry Line/Wet Line:	<u>0</u>
d. Residuals Disposal:	<u>0</u>
6. Permit Applications Outstanding:	42
a. Facility Permit:	<u>21</u>
b. Collection Systems-General:	<u>12</u>
c. Collection Systems-Dry Line/Wet Line:	<u>9</u>
d. Residuals Disposal:	<u>0</u>
C. INSPECTIONS - DOMESTIC	103
1. Compliance Evaluation:	16
a. Inspection (CEI):	<u>1</u>
b. Sampling inspection (CSI):	<u>14</u>
c. Toxics Sampling Inspection (XSI):	<u>0</u>
d. Performance Audit Inspection (PAI):	<u>1</u>
2. Reconnaissance:	52
a. Inspection (RI):	<u>38</u>
b. Sample Inspection (SRI):	<u>0</u>
c. Complaint Inspection (CRI):	<u>12</u>
d. Enforcement Inspection (ERI):	<u>2</u>
3. Special:	35
a. Diagnostic Inspection (DI):	<u>0</u>
b. Residual Site Inspection (RSI):	<u>0</u>
c. Preconstruction Inspection (PCI):	<u>5</u>
d. Post Construction Inspection (XCI):	<u>30</u>
D. PERMITTING - INDUSTRIAL	
1. Permit Applications Received:	1
a. Facility Permit:	<u>1</u>
(i) Types I and II	<u>1</u>
(ii) Type III with groundwater monitoring	<u>0</u>
(iii) Type III w/o groundwater monitoring	<u>0</u>
b. General Permit:	<u>0</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>2</u>
3. Permit Applications Outstanding:	29
a. Facility Permits:	<u>29</u>
b. General Permits:	<u>0</u>

E. INSPECTIONS - INDUSTRIAL	<u>34</u>
1. Compliance Evaluation:	<u>8</u>
a. Inspection (CEI):	<u>8</u>
b. Sampling Inspection (CSI):	<u>0</u>
c. Toxics Sampling Inspection (XSI):	<u>0</u>
d. Performance Audit Inspection (PAI):	<u>0</u>
2. Reconnaissance:	<u>26</u>
a. Inspection (RI):	<u>21</u>
b. Sample inspection (SRI):	<u>0</u>
c. Complaint Inspection (CRI):	<u>5</u>
F. CITIZEN COMPLAINTS	
1. Domestic:	<u>17</u>
a. Received:	<u>5</u>
b. Closed:	<u>12</u>
2. Industrial:	<u>7</u>
a. Received:	<u>2</u>
b. Closed:	<u>5</u>
G. RECORD REVIEWS	
1. Permitting:	<u>4</u>
2. Enforcement:	<u>0</u>
H. ENVIRONMENTAL SAMPLES ANALYSED FOR:	
1. Air Division:	<u>98</u>
2. Waste Division:	<u>2</u>
3. Water Division:	<u>371</u>
4. Wetlands Division:	<u>0</u>

AR10.02

Totals

A. EPC WETLANDS REVIEWS

1. Wetland Delineations	
a. Wetland Delineations (\$120.00)	58
b. Wetland Delineation Dispute	1
c. Wetland Line Survey Reviews	63
d. Additional Footage Fees	1539.72
2. Misc Activities in Wetland (\$0 or \$100 as applicable)	
a. Nuisance Vegetation/docks, etc.	32
3. Impact / Mitigation Proposal (\$775)	21
4. Mitigation Agreements Recorded	0
5. FDOT Reviews	0

B. EPC DELEGATION / REVIEWS FROM
 STATE / REGIONAL / FEDERAL AUTHORITIES

1. Tampa Port Authority Permit Applications (\$50. Or \$150. as applicable)	54
2. Wastewater Treatment Plants (FDEP)	3
3. FDEP Wetland Resource Applications	3
4. FDEP Grandfathered Delineations	0
5. SWFWMD Wetland Resource Applications	0

- 6. Army Corps of Engineers 0
- 7. Interagency Clearinghouse Reviews 0
- 8. DRI Annual Report 2

C. HILLSBOROUGH COUNTY / MUNICIPALITY
 PERMIT APPLICATION REVIEWS

- 1. Land Alteration / Landscaping (\$100)
 - a. LAL (SFD) 0
 - b. LAL (Other) 2
- 2. Land Excavation (\$785 or \$650 as applicable) 1
- 3. Phosphate Mining
 - a. Unit Review / Reclamation (\$760) 2
 - b. Annual Review / Inspection (\$375) 0
 - c. Master Plan 0
- 4. Rezoning
 - a. Reviews (\$85) 39
 - b. Hearings 6
 - c. Hearing Preparation (hours) 0
- 5. Site Development (\$360)
 - a. Preliminary 8
 - b. Construction 35
- 6. Subdivision
 - a. Preliminary Plat (\$140) 20
 - b. Master Plan (\$550) 0
 - c. Construction Plans (\$250.00) 22
 - d. Final Plat (\$90) 16
 - e. Waiver of Regulations (\$100) 0
 - f. Platted - No-Improvements (\$100) 14
 - g. Minor - Certified Parcel (\$100) 11

7. As-Builts (\$255)	5
8. Miscellaneous Reviews (no fees)	
a. Wetland Setback Encroachment	0
b. Easement / Vacating	6
c. NRCS Review	0
9. Pre-Applications (no fees)	
a. Review Preparations	50
b. Meetings	0
10. Development Review Committee (no fees)	
a. Review Preparation (hours)	6
b. Meetings	0

D. OTHER ACTIVITIES

1. Unscheduled meetings with members of the public (walk-ins)	90
2. Other Meetings	115
3. Telephone Conferences	624
4. Presentations	3
5. Correspondence	452
6. Correspondence Review (hours)	35
7. Special Projects (hours)	17.5
8. On-site visits	102
9. Appeals (hours)	0

ADMINISTRATIVE ENFORCEMENT	TOTALS
A. NEW CASES RECEIVED	5
B. ACTIVITIES	
1. Ongoing Cases	
a. Active	78
b. Legal	4
c. Inactive	7
2. Number of "Notice of Intent to Initiate Enforcement"	5
3. Number of Citations 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	5
2. Criminal Cases Closed	0
3. Cases Referred to Legal Dept.	1
D. CONTRIBUTIONS TO POLLUTION RECOVERY	\$2,660.00
E. ENFORCEMENT COSTS COLLECTED	\$1,507.98

INVESTIGATIONS / COMPLIANCE SECTION

A. COMPLAINTS	TOTALS
1. Received	28
2. Return Inspections	55
3. Closed	69
B. WARNING NOTICES	
1. Issued	13
2. Return Inspections	65
3. Closed	20
C. MITIGATION	
1. Compliance/Monitoring Reviews	16
2. Compliance Inspections	38
D. OTHER ACTIVITIES	
1. Case Meetings	4
2. Other Meetings	55
3. Telephone Calls	482
4. File Reviews	16
5. Cases Referred to Enforcement Coordinator	11
6. Letters	60

ADMINISTRATIVE / TECHNICAL SECTIONS TOTALS

A. ADMINISTRATIVE SUPPORT STAFF

1. File Reviews	5
2. Telephone Assistance	737
3. Letters	244
4. Incoming Projects	129
5. Additional Info / Additional Footage	45 / 22
6. Resubmittals / Revisions	15 / 14
7. Surveys / Data Entry	34 / 555

B. ENGINEERING STAFF

1. Meetings	29
2. Reviews	50
3. Aerial Reviews	9
4. Telephone Calls	111
5. Field Visits / Conferences	3 / 0
6. Inquiries	8

EPC LEGAL DEPARTMENT MONTHLY REPORT
November 20, 2002

A. ADMINISTRATIVE CASES

NEW CASES | 1 |

Roy & Edith Rock and MNH, Inc. [LROC02-031]: Respondents filed a Notice of Appeal on October 7, 2002 challenging a Citation alleging improper handling of wastes and finding of soil and groundwater contamination on the property. The matter has been referred to a Hearing Officer and a case management conference was scheduled for November 18, 2002. The matter is being held in abeyance pending a circuit court litigation case that may resolve the liability issue for the contamination. (AZ)

EXISTING CASES | 11 |

FIBA/Bridge Realty [LBRI95-162]: EPC issued a citation to the owner, Bridge Realty and former tenant FIBA Corp., for various unlawful waste management practices. It was 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 and staff requested additional information only a portion of which was delivered. However, an alternate remedial plan was approved and staff is reviewing the final report. (RT)

Cone Constructors, Inc. [LCONB99-006]: (*See related case under Civil Cases*). Citation for Noise Rule violations during the construction of the Suncoast Parkway was appealed. On September 14, 2000, Mr. Cone signed a Settlement Letter to resolve this case. In addition to prohibiting Mr. Cone from conducting night time operation of heavy duty rock hauling, the Settlement Letter provided for payment of \$1,074.00 as reimbursement for costs and expenses associated with the investigation and resolution of this matter. To date, Mr. Cone has not paid the agreed upon amount. Options for collection of the agreed upon amount are being investigated. (RT)

DOT [LDOTF00-008]: DOT appealed a citation issued to them for failing to obtain a Director's Authorization prior to excavating solid waste from old landfills at two sites in Hillsborough County. The appeal proceedings were held in abeyance pending possible settlement. The parties have reached a settlement in terms, and a final settlement is being routed for execution. (RM)

Tampa Bay Organics [LTBOF00-007]: Tampa Bay Organics, a wood and yard waste recycling facility, filed a Notice of Appeal of EPC's citation for causing a dust nuisance and for operating an air pollution source without valid permits. The appeal is being held in abeyance pending settlement discussions. A civil complaint was filed June 29, 2001. (*See related case under Civil Cases*). (RT)

Stone, Sam [LSTO01-020 & LSTO01-028]: On June 18, 2001 the EPC entered a citation against an individual for unauthorized impacts to wetlands. The appellant has filed a request for extension of time to file a Notice of Appeal of the citation. Mr. Stone filed a Notice of Appeal and a Request for Relief to Determine Estoppel August 27, 2001. The matters have been consolidated and referred to a Hearing Officer. The final hearing on the estoppel case was heard on September 6, 2002. The assigned Hearing Officer entered a Recommended Order on October 23, 2002 finding that the EPC was estopped from issuing a citation for unauthorized impacts to wetlands. The EPC Executive Director has filed exceptions to the board which will be heard at the December meeting. (AZ)

Sapp, Richard [LSAP01-016] & [LSAP01-033]: On July 9, 2001, an applicant for an Executive Director's Authorization for wetland impacts filed a Notice of Appeal regarding the Executive Director's denial of the application. The Appeal has been referred to a Hearing Officer for an Administrative Hearing. Limited discovery has been sent by the EPC in the case. The EPC also issued a citation and order to correct regarding alleged wetland violations currently on the property. The citation was appealed and a new case was opened and referred to the Hearing Officer. The EPC has asked the hearing officer to consolidate the two cases. The parties attended mediation on November 5, 2001 and November 27, 2001. Discovery is ongoing in the case. The EPC Wetlands staff have conceptually approved the mitigation package and the Natural Resource Conservation Service (NRCS) has taken the lead in

providing the site specific plans to demonstrate justification for the proposed project. The final hearing in the matter is currently being rescheduled as settlement discussions continue. (AZ)

McCann, Don [LMCN02-020]: On June 6, 2002 the EPC received an appeal of a wetland delineation on a property from an adjacent landowner. The appeal will be consolidated with the below EPC Case No.: LCUR02-021. The appeals have been referred to a Hearing Officer and a Motion to Dismiss the appeals for lack of standing has been filed by the EPC. The matter was heard on August 26, 2002. The parties have entered into a settlement and the Appellants have voluntarily dismissed their appeal. (AZ)

Curtis, Greg and Vickie [LCUR02-021]: On June 6, 2002 the EPC received an appeal of a wetland delineation on a property from an adjacent landowner. The appeal has been consolidated with the above EPC Case No.: LMCN02-020. (See above case). The parties have entered into a settlement and the Appellants have voluntarily dismissed their appeal. (AZ)

CSX Transportation v. EPC [LCSX02-018] EPC issued a Citation of Violation and Order to Correct on May 3, 2002. CSX spilled 150 gallons of diesel fuel on railroad tracks and adjacent soil in Plant City, therefore the EPC seeks corrective measures and penalties. CSX challenged the Citation, but appears willing to settle that matter, thus the case is in abeyance. (RM)

Country Haven on Bullfrog Creek HOA [LCOH02-024]: EPC issued a permit denial to the Country Haven on Bullfrog Creek Home Owners Association (HOA) due to failure to provide proof of financial responsibility to comply with domestic wastewater laws and rules in the operation of their .015 mgd domestic wastewater treatment plant. The HOA challenged the denial and the matter is in abeyance to allow time to negotiate the permitting issues. (RM)

R.L. Holley and Candace Holley Life Estate: [LHOL02-028]: Respondents filed a Notice of Appeal on August 15, 2002 challenging a Citation alleging improper handling of wastes and hazardous wastes. The matter has been assigned to a Hearing Officer and a pre-hearing conference has been rescheduled for October 11, 2002. The parties met at the pre-hearing conference and discussed a potential settlement to the case. Settlement discussions are ongoing. (AZ)

RESOLVED CASES [1]

Brandon Sherwood Forests Associates, L.P. [LBSF02-025]: EPC issued a permit denial to Brandon Sherwood Forests Associates due to failure to provide reasonable assurance of the adequacy of wastewater treatment and failure to provide proof of financial responsibility to comply with domestic wastewater laws and rules in the operation of the Grand Oaks (.020 mgd) domestic wastewater treatment plant. The Associates requested an extension of time to file a petition to challenge the denial, and the extension was granted to allow time for negotiations to resolve the permitting issues. The parties entered into a Consent Order resolving both enforcement and permitting matters. (RM)

B. CIVIL CASES

NEW CASES [1]

Florida Department of Transportation v. Joseph Garcia, et al. [LFDO02-032] Florida Department of Transportation (FDOT) is exercising its power of eminent domain by filing a petition in eminent domain against various parties, including the EPC, for various parcels of property in Hillsborough County in order to acquire land and easements to expand Interstate 4 between 34th Street and 50th Street. On one of the properties FDOT seeks to acquire, the EPC has mitigation agreement recorded in the public record. This mitigation agreement with 40th St. WH Associates, Ltd. provided for the mitigation of wetland impacts by requiring certain wetland construction. Because the EPC has a recorded interest on parcel 111, FDOT is required to include us in the proceeding. EPC confirmed that the project was never developed and that no wetland impacts occurred. The EPC agreed to release the encumbrance of the mitigation agreement because no development occurred, thus the DOT dropped the EPC

from the case November 14, 2002. (RM)

EXISTING CASES [9]

FDOT & Cone Constructors, Inc. [LCONB99-007]: (See related case under *Administrative Cases*) 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. On September 14, 2000, Mr. Cone signed a Settlement Letter to resolve this case. In addition to prohibiting Mr. Cone from conducting night time operation of heavy duty rock hauling, the Settlement Letter provided for payment of \$1,074.00 as reimbursement for costs and expenses associated with the investigation and resolution of this matter. To date, Mr. Cone has not paid the agreed upon amount. Options for collection of the agreed upon amount are being investigated. (RT)

Oasem J. v. EPC, et al. [LQAS98-161]: 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. Defendant, property owner HJEM, Inc., filed a motion for summary judgment asserting the Plaintiff's mortgage was entered into fraudulently and that it has priority over all lien holders. EPC responded by asserting the priority of its judgment over the Defendant, HJEM, Inc.'s ownership of the property as the property was sold to HJEM, Inc. subject to EPC's judgment. The attorney for the property owner HJEM, Inc. has contacted the EPC regarding purchasing the EPC's interest in the property and settling the matter. The EPC has agreed to convey its judgment lien on the property to HJEM, Inc. in consideration for payment of \$7,500.00. This should remove the EPC from the pending foreclosure case and allow the EPC to recover a reasonable portion of its judgment lien entered against the prior owner of the property. The EPC is currently waiting for resolution of the case so as to collect the remaining amounts for payment of EPC's lien. (AZ)

Georgia Maynard [LMAYZ99-003]: Authority to take appropriate action against Ms. Maynard as owner and operator 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. The EPC filed suit for injunctive relief and penalties and costs on March 8, 2001. The Defendant was served with a summons and copy of the complaint on May 21, 2001. The Defendant has failed to respond to the complaint and on July 9, 2001 the court entered a default against the Defendant. The Legal Department has requested that the court enter a Default Judgment against the Defendant. On August 28, 2001 the court entered a Default Final Judgment in the case. The EPC is awaiting compliance with the court's order. On March 12, 2002 the EPC obtained an amended Final Judgment that awarded the EPC \$15,000 in penalties and allows the agency to complete the work through Pollution Recovery Fund (PRF) money and to assess these costs back to the Defendant. A submittal for PRF is being prepared to do the corrective actions. On April 12, 2002 Ms. Maynard applied for state assistance for cleanup of any contamination at the site. The Defendant has become eligible for state assistance to cleanup any contamination on the property. The parties are attempting to negotiate a sale of the property and have the buyers perform the corrective actions. (AZ)

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

Nutmeg LLC C/O Roundhill Capital [LNUT01-021]: Authority was requested and received by the EPC on July 12, 2001 to initiate judicial enforcement to close and remove abandoned underground storage tank systems (USTs) and to obtain civil penalties and costs. A judicial complaint was filed on July 31, 2001. The EPC asked the court to enter a default in the case for failure to respond to the complaint. An Order of Default was entered in favor of the EPC on September 25, 2001. On April 30, 2002 the circuit court awarded the EPC \$43,000.00 in penalties and \$764.00 in administrative costs for the failure to properly close the abandoned USTs on the property. In addition, the court awarded the EPC injunctive relief requiring the USTs to be closed by a set deadline and provided the

opportunity to the EPC to do the work and be reimbursed by an additional lien on the property, in the event the Defendant does not comply with the judgment. The EPC is currently waiting for compliance with the judgment. (AZ)

Tampa Bay Organics [LTBO01-015]: Authority was requested and received by the EPC on April 19, 2001 to initiate judicial enforcement with respect to failure to comply with a Director's Authorization and failure to obtain an air pollution source permit for the operation of a wood and yard waste recycling facility. EPC filed a civil complaint on June 29, 2001. TBO filed a motion to dismiss on September 5, 2001, which is pending. Settlement discussions are ongoing. Case status conference set for January 6, 2003. (*See related case under Administrative Cases*). (RT)

Slusmeyer, Boyce [LSLU01-029]: Authority was requested and received by the EPC on September 20, 2001 to initiate judicial enforcement with respect to failure to comply with a Executive Director's Citation and Order to Correct Violation for the failure to initiate a cleanup of a contaminated property. The Defendant failed to appeal the Citation, which became a Final Order for the agency on September 18, 2001. Because the EPC has not received any satisfactory response in the settlement negotiations, on October 11, 2002 the EPC filed a lawsuit seeking an injunction to correct the violations in addition to payment of penalties and costs to be assessed. (AZ)

Big Red's Garage, et al. [LBRG02-012]: Authority to take appropriate action against responsible parties to obtain a Site Assessment for contamination on a property was requested and received by the EPC on March 21, 2002. The parties are currently in negotiations regarding resolving the matter. (AZ)

Louis and Jeanie Putney [LPUT01-007]: The Plaintiffs Louis and Jeanie Putney filed suit against the EPC alleging inverse condemnation by denying them authorization for impacts to wetlands on their property. The Plaintiffs filed suit against Hillsborough County in 2001 and on August 9, 2002 they amended their complaint to include the EPC. On August 16, 2002 the EPC filed a Motion for More Definite Statement and/or Motion to Strike portions of the lawsuit. The matter has been set for hearing on December 5, 2002. (AZ)

RESOLVED CASES | 0 |

COMMISSION
 Stacy Easterling
 Pat Frank
 Chris Hart
 Jim Norman
 Jan Platt
 Thomas Scott
 Ronda Storms



Administrative Offices,
 Legal & Water Management Division
 The Roger P. Stewart Environmental Center
 1900 - 9th Ave. • Tampa, FL 33605
 Ph. (813) 272-5960 • Fax (813) 272-5157
 Air Management Fax 272-5605
 Waste Management Fax 276-2256
 Wetlands Management Fax 272-7144
 1410 N. 21st Street • Tampa, FL 33605

Executive Director
 Richard D. Garrity, Ph.D.

ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 POLLUTION RECOVERY TRUST FUND
 AS OF OCTOBER 31, 2002

Fund Balance as of 10/01/02	\$1,601,788
Interest Accrued FY03	15,807
Deposits FY03	15,742
Disbursements FY03	4,223
 Fund Balance	 \$1,629,114
 Encumbrances Against Fund Balance:	
Art. Reef FY03	108,075
(66) Asbestos Abatement	4,486
(73) Balm Road Scrub	300,000
(84) b Cockroach Bay Aerial Photos	16,188
(90) Upper Tampa Bay Trail	71,339
(91) Alafia River Basin	36,000
(92) Brazilian Pepper	26,717
(93) Rivercrest Park	15,000
(95) COT Stormwater Improvement	37,800
(96) H. C. Parks/Riverview Civic	40,000
(97) COT Parks Dept/Cypress Point	100,000
 Total Encumbrances	 755,605
 Minimum Balance	 120,000 *
 Fund Balance Available October 31, 2002	 \$ 753,509

*\$20,000 to be used for City of Tampa Parks Department

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Executive Director
 Richard D. Garrity, Ph.D.

ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 ANALYSIS OF GARDINIER SETTLEMENT TRUST FUND
 AS OF OCTOBER 31, 2002

Fund Balance as of 10/01/02	\$1,265,455
Interest Accrued FY03	11,787
Disbursements FY03	- 0 -

Fund Balance	\$1,277,242
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Encumbrances Against Fund Balance:

SP462 Port Redwing	300,000
SP464 Davis Tract	- 0 -
SP591 Mechanical Seagrass Planting	25,000
SP597 Fantasy Island Restoration	1,633
SP602 Apollo Beachhabitat Restoration	100,000
Marsh Creek/Ruskin Inlet	47,500
SP604 Desoto Park Shoreline	150,000
SP610 H.C. Resource Mmt/Apollo Beach Restoration	35,000
Tampa Bay Scallop Restoration	127,900
SP611 COT Stormwater Improvements	21,000
SP612 Riverview Civic Center	120,000
SP615 Little Manatee River Restoration	50,000
SP616 Manatee Protection Areas	40,147
Manatee & Seagrass Protection	27,200

Total of Encumbrances	1,045,380
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Fund Balance Available October 31, 2002	\$ 231,862
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AGENDA ITEM COVER SHEET

Date: November 20, 2002

Agenda Item: EPC Wetlands Management Division Review of FDOT Projects

Description/ Summary: The Environmental Protection Commission (EPC), Board directed staff, during the October 2002 meeting, to provide a report describing the relationship between the Florida Department of Transportation (FDOT) and EPC's Wetlands Management Division with respect to wetland impacts and mitigation. Pursuant to the Board's instruction, the attached memorandum gives a brief background and describes the current permitting relationship.

Commission Action Recommended:

This report is provided for informational purposes only. Board Action is not necessary.

COMMISSION
Stacy Easterling
Pat Frank
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Jim Norman
Jan Platt
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Ronda Storms



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Executive Director
Richard D. Garrity, Ph.D.

DATE: November 20, 2002
TO: EPC BOARD MEMBERS
FROM: JADELL KERR, DIRECTOR, WETLANDS MANAGEMENT
THROUGH: DR. RICHARD GARRITY
SUBJECT: EPC REGULATION OF FDOT PROJECTS

During the October 2002 meeting of the Environmental Protection Commission (EPC), staff was directed to provide the Board with a report describing the relationship between the Florida Department of Transportation (FDOT) and EPC's Wetlands Management Division with respect to wetland impacts and mitigation. The following provides an updated analysis of EPC's wetland regulation as it interfaces with the FDOT process in Hillsborough County.

Until 1994, the EPC's regulatory authority over the wetlands in Hillsborough County had been largely overlooked by FDOT. Continued attempts by EPC staff to bring the FDOT into permitting compliance were unsuccessful. In 1994, an Attorney General's Opinion found that the "...FDOT must abide by the EPC's jurisdiction and authority in Hillsborough County". Subsequent to that Order, negotiations between FDOT and EPC determined that EPC would not exert its regulatory authority over projects that were under construction, within the construction design phase, or in the Project Development & Environmental (PD&E) stage of development at the time of the 1994 Opinion. Likewise, it was agreed that all new FDOT projects, projects proposed outside of the aforementioned parameters, would be reviewed by EPC staff for potential wetland impacts and that impacts to wetlands in Hillsborough County would require the EPC's Executive Director's authorization in accordance with the Chapter 1-11, EPC Wetlands Rule.

EPC staff currently participates in the FDOT kickoff meetings for projects proposed within Hillsborough County and provides preliminary comments during the Environmental Impact Statement process and the PD&E studies. When a Hillsborough County FDOT project enters the permitting stage, FDOT provides EPC staff with documentation of the project's history, including the dates when the project entered into its PD&E study. In accordance with our agreement, EPC staff responds to FDOT verifying whether or not the project will require EPC authorization for wetland impacts.



All proposals to impact wetlands are evaluated subject to the intent of Chapter 1-11, that being, disturbances to wetlands be avoided and that development requiring mitigation be a last resort only when reasonable use of the property is otherwise unavailable. EPC staff's review of FDOT proposals provides no exception. The Wetlands Management Division evaluates each proposed wetland impact against FDOT's provided justification. Given the wide variety of circumstances, including site conditions, road alignment geometry, safety issues, and traffic studies, road designs frequently include some form of impacts to wetlands. It is incumbent upon the applicant, FDOT, to provide sufficient design information and written justification for the impact. At no time during the EPC review process is the mitigation of wetland impacts considered to be justification for impacts. If upon review of the impact justification, staff determines that the impacts are appropriate and/or required, then the impacts are further analyzed to determine how and if the proposed impacts can be minimized. In the case of FDOT projects, this might include reduction of roadway cross-sections by constructing steeper slopes or an adjustment to the alignment such that a larger portion of the roadway footprint is located within the wetland setback rather than in the wetland.

Upon completion of the avoidance and minimization analysis, FDOT's mitigation for the justified wetland impacts takes a turn somewhat atypical from that of other developers. The appropriation of funding for FDOT projects is provided annually during the first session of the Florida Legislature. Upon approval of funding, Section 373.4137, F.S. Mitigation Requirements, mandates that FDOT submit by May 1 of each year to the Florida Department of the Environmental Protection and the Water Management Districts, a copy of the adopted work program and an inventory of habitats that will be impacted by each project. Knowing the habitats that will be impacted by the proposed projects, this statute provides authority to the water management districts to find sites on which to conduct appropriate mitigation, and design and carry out the mitigation. Funding is established on a cost per acre basis at a rate of \$75,000 per acre, and the Secretary of the Department of Environmental Protection prior to implementation must approve all mitigation plans. While the statute does not relieve the FDOT from its requirement to implement practicable design modifications to reduce or eliminate impacts to wetlands, approval of the mitigation plan as compensation for wetland impacts is the sole authority of the Secretary of the Department of Environmental Protection and local approvals of mitigation plans are not required. The statute clearly preempts EPC from review and approval of wetland mitigation plans associated with FDOT projects.

To provide EPC with documentation verifying FDOT's compensation for wetland impacts, the Southwest Florida Water Management District (SWFWMD) supplies EPC with an annual copy of the FDOT's inventory list, as well as a location and project name of the associated wetland mitigation sites. The SWFWMD staff makes every attempt to locate mitigation sites within the same county in which the wetland impact occurs; however, there is no guarantee that this can be accomplished in every case.

Once EPC has evaluated the project for its justification of wetland impacts and verified that mitigation is being provided pursuant to the statute, EPC has no further involvement in the implementation of or the project's compliance with the mitigation plan. If wetland impacts are proposed outside that which is covered by the statute, FDOT must provide an appropriate mitigation plan and mitigation agreement typical of any other developer. Should unauthorized wetland impacts occur during the construction of an FDOT project, EPC pursues corrective actions and potential enforcement just as it would with any other violation of Chapter 1-11.

I hope that this summary provides you with some insight into EPC's review of FDOT projects. I have attached a copy of Section 373.4137, F.S. Mitigation Requirements for your review. Please let me know if the Commission desires any additional information.

373.4137 Mitigation requirements.--

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the Department of Environmental Protection and the water management districts, including the use of mitigation banks established pursuant to this part.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation shall be developed as follows:

(a) By May 1 of each year, the Department of Transportation shall submit to the Department of Environmental Protection and the water management districts a copy of its adopted work program and an inventory of habitats addressed in the rules tentatively, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted by its plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation may also include in its inventory the habitat impacts of any future transportation project identified in the tentative work program.

(b) The environmental impact inventory shall include a description of these habitat impacts, including their location, acreage, and type; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a survey of threatened species, endangered species, and species of special concern affected by the proposed project.

(3) To fund the mitigation plan for the projected impacts identified in the inventory described in subsection (2), the Department of Transportation shall identify funds quarterly in an escrow account within the State Transportation Trust Fund for the environmental mitigation phase of projects budgeted by the Department of Transportation for the current fiscal year. The escrow account will be maintained by the Department of Transportation for the benefit of the Department of Environmental Protection and the water management districts. Any interest earnings from the escrow account shall remain with the Department of Transportation. The Department of Environmental Protection or water management districts may request a transfer of funds from the escrow account no sooner than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation and the Department of Environmental Protection by November 1 of each year with the plan. The conceptual plan preparation costs of each water management district will be paid based on the amount approved on the mitigation plan and allocated to the current fiscal year projects identified by the water management district. The amount transferred to the

escrow account each year by the Department of Transportation shall correspond to a cost per acre of \$75,000 multiplied by the projected acres of impact identified in the inventory described in subsection (2). However, the \$75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions nor is the cost admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. At the end of each year, the projected acreage of impact shall be reconciled with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer of funds shall be adjusted accordingly to reflect the overtransfer or undertransfer of funds from the preceding year. The Department of Transportation is authorized to transfer such funds from the escrow account to the Department of Environmental Protection and the water management districts to carry out the mitigation programs.

(4) Prior to December 1 of each year, each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. This plan shall also address significant invasive plant problems within wetlands and other surface waters. In developing such plans, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) waterbodies and lands identified for potential acquisition for preservation, restoration, and enhancement, to the extent that such activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in such plans, the districts shall also consider the purchase of credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include such purchase as a part of the mitigation plan when such purchase would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option. The mitigation plan shall be preliminarily approved by the water management district governing board and shall be submitted to the secretary of the Department of Environmental Protection for review and final approval. The preliminary approval by the water management district governing board does not constitute a decision that affects substantial interests as provided by s. 120.569. At least 30 days prior to preliminary approval, the water management district shall provide a copy of the draft mitigation plan to any person who has requested a copy.

(a) For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable.

(b) Specific projects may be excluded from the mitigation plan and shall not be subject to this section upon the agreement of the Department of Transportation, the Department of Environmental Protection, and the appropriate water management district that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process, or the Department of Environmental Protection and the water management district are unable to identify mitigation that would offset the impacts of the project.

(c) Surface water improvement and management or invasive plant control projects undertaken using the \$12 million advance transferred from the Department of Transportation to the Department of Environmental Protection in fiscal year 1996-1997 which meet the requirements for mitigation under this part and 33 U.S.C. s. 1344 shall remain available for mitigation until the \$12 million is fully credited up to and including fiscal year 2004-2005. When these projects are used as mitigation, the \$12 million advance shall be reduced by \$75,000 per acre of impact mitigated. For any fiscal year through and including fiscal year 2004-2005, to the extent the cost of developing and implementing the mitigation plans is less than the amount transferred pursuant to subsection (3), the difference shall be credited towards the \$12 million advance. Except as provided in this paragraph, any funds not directed to implement the mitigation plan should, to the greatest extent possible, be directed to fund invasive plant control within wetlands and other surface waters.

(5) The water management district shall be responsible for ensuring that mitigation requirements pursuant to 33 U.S.C. s. 1344 are met for the impacts identified in the inventory described in subsection (2), by implementation of the approved plan described in subsection (4) to the extent funding is provided by the Department of Transportation. During the federal permitting process, the water management district may deviate from the approved mitigation plan in order to comply with federal permitting requirements.

(6) The mitigation plan shall be updated annually to reflect the most current Department of Transportation work program and may be amended throughout the year to anticipate schedule changes or additional projects which may arise. Each update and amendment of the mitigation plan shall be submitted to the secretary of the Department of Environmental Protection for approval. However, such approval shall not be applicable to a deviation as described in subsection (5).

(7) Upon approval by the secretary of the Department of Environmental Protection, the mitigation plan shall be deemed to satisfy the mitigation requirements under this part and any other mitigation requirements imposed by local, regional, and state agencies for impacts identified in the inventory described in subsection (2). The approval of the

secretary shall authorize the activities proposed in the mitigation plan, and no other state, regional, or local permit or approval shall be necessary.

(8) This section shall not be construed to eliminate the need for the Department of Transportation to comply with the requirement to implement practicable design modifications, including realignment of transportation projects, to reduce or eliminate the impacts of its transportation projects on wetlands and other surface waters as required by rules adopted pursuant to this part, or to diminish the authority under this part to regulate other impacts, including water quantity or water quality impacts, or impacts regulated under this part that are not identified in the inventory described in subsection (2).

History.--s. 1, ch. 96-238; s. 36, ch. 99-385; s. 1, ch. 2000-261.

AGENDA ITEM COVER SHEET

Date: November 19, 2002

Agenda Item: EPA/FDEP Audit of EPC's Air Monitoring Program

Description Summary:

EPA and the Florida Department of Environmental Protection conducted a technical systems audit of EPC's ambient air monitoring program August 27-29, 2002. The audit concluded that the air monitoring program is well run and that all EPA requirements for the operation and quality assurance of an air monitoring network were met. A copy of the audit report results is attached.

Commission Action Recommended: None. Information only.

Commission Action Taken:



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

Science and Ecosystem Support Division
980 College Station Road
Athens, Georgia 30605-2720

October 8, 2002

Mr. Jerry Campbell, Director
Hillsborough County Environmental
Protection Commission
1900 Ninth Avenue
Tampa, FL 33605

RECEIVED

OCT 11 2002

EPC of HC
AIR MANAGEMENT

Dear Mr. Campbell:

During August 27-29, 2002, Danny France, Environmental Protection Agency, Region 4, conducted a technical system audit (TSA) of the Hillsborough County Environmental Protection Commission ambient air monitoring program. Ed Huck represented the Florida Department of Environmental Protection at the audit. Based on the audit results, it is concluded that all EPA requirements for the operation and quality assurance of an air monitoring network were met. The quality assurance program and documentation were sufficient to support the agency's operation; and an evaluation of the data that are being collected and submitted to the Aerometric Information Retrieval System (AIRS) in accordance with 40 CFR Part 58.

The data collection period covered by the audit was calendar year 2001. The "Technical Systems Audit Form Questionnaire" was used as a guide in conducting the audit and is attached.

Overall, the monitoring program is well run and documented. The monitoring and laboratory staff were very professional in identifying and correcting problems. Commendations to you and your staff for collecting, analyzing and reporting quality ambient air monitoring data.

If you have any questions regarding the audit, please call Danny France at (706) 355-8738.

Sincerely,

Archie Lee, Chief
Superfund and Air Section

cc: Doug Neeley w/attachment
Dick Arbys, FDEP

**Hillsborough County Environmental
Protection Commission**

**2002 SYSTEMS AUDIT
Project 02-1145**

CONDUCTED BY

Danny France
August 27-29, 2002

INTRODUCTION

During August 27-29, 2002, Danny France, Environmental Protection Agency, Region 4, conducted a technical system audit (TSA) of the Hillsborough County Environmental Protection Commission (HCEPC) ambient air monitoring program. The audit was conducted according to the provisions of 40 CFR Part 58. During the audit, the National Ambient Air Systems (NAAS) Technical Systems Audit Questionnaire was completed, the Aerometric Information Retrieval System (AIRS) data reports were reviewed, field and laboratory procedures were reviewed. The audit was conducted at both the HCEPC office and laboratory.

AIR MONITORING PROGRAM

The air monitoring records from CY 2001 were reviewed. The documentation was thorough and complete. The agency had done an excellent job in spite of the additional work load of jointly participating in the Pilot City Air Toxics Study with Pinellas County Department of Environmental Management. HCEPC also coordinated the Bay Regional Atmospheric Chemistry Experiment (BRACE). BRACE was a collaborative effort of the Florida Department of Environmental Protection (FDEP), HCEPC, Pinellas County Department of Environmental Management, National Oceanic and Atmospheric Administration (NOAA), and the United States Environmental Protection Agency (USEPA); the University of South Florida (USF), the University of Maryland (UMD), the University of Miami (UM), Texas Tech University (TTU) and the University of Michigan (UMICH). The mission of this intensive study was to improved estimates of the atmospheric nitrogen deposition to Tampa Bay and to apportion the atmospheric nitrogen between local, regional and remote emission sources.

Even with the extra workload imposed by the Pilot Cities Air Toxics Study and the BRACE project, the agency had maintained good data recovery on the SLAMS air monitoring network that they operate. All necessary calibrations, precision and accuracy checks, and preventative maintenance had been performed on the SLAMS air monitors.

The auditor made a suggestion for improvement in how the agency archives their air monitoring data. the ESC Digitrend™ software and manual data is currently saved from hard disk to a Zip™ drive. However, it isn't saved on regular calendar intervals, but data is just loaded onto each Zip™ disk until it is full. The archival is then continued onto another Zip™ disk with month's data sometimes being spread between two disks. The auditor recommended that they archive the raw data monthly or quarterly to CD-ROM disks and store them in a secure place to provide a more secure and efficient archival of the data.

One final issue was the PVC laminar flow manifolds used by the agency at most of their air monitoring sites. While this manifold is currently permitted by EPA regulations, it will not be compatible with the new National Performance Audit Program (NPAP) through the probe audit system that will be introduced next year. EPA will work the the few agencies using the high flow laminar flow manifolds to find alternatives that will be compatible with the NPAP equipment.

LABORATORY

The procedures of the HCEPC laboratory were also reviewed. All record keeping appeared to be in good order and correct procedures were being followed. The chain of custody procedures outlined in their Standard Operating Procedures (SOP) were closely followed. The documentation for all calibrations was in good order.

However, the laboratory had switched from conducting metals analysis with flame atomic absorption spectrometry to using inductively coupled plasma (ICP) spectrometry. The auditor recommended that they modify their lead SOP to reflect the ICP method that is being used. He further recommended that they add a SOP for the metals analysis that is being conducted in support of the air toxics network in Hillsborough and Pinellas Counties.

Conclusions and Recommendations

The HCEPC Air Protection Branch operates a very good air monitoring program with excellent support from the HCEPC laboratory. The documentation is excellent, the staffs of both Divisions that were audited were very conscientious and are doing an outstanding job. The following are the recommendations of the auditors for further improving the HCEPC air monitoring program.

1. Archive the raw data monthly or quarterly to CD-ROM disks and store them in a secure place to provide a more reliable and efficient archival of the data.
2. Modify the lab SOP for lead analysis to reflect the ICP method that is currently being used.
3. Write an SOP for the metals analysis that is being conducted in support of the air toxics network in Hillsborough and Pinellas Counties.

AGENDA ITEM COVER SHEET

Date: November 20, 2002

Agenda Item: Litigation Policy - Commissioner discussions with litigants

Description/Summary:

At the October 17, 2002 EPC meeting, the Commission adopted a noticing procedure to advise parties of intended Commission action regarding authorizing litigation. As a follow-up to that discussion, the Commission asked the General Counsel to propose a policy, for Commission consideration, regarding Commission member discussions with persons or representatives of persons who are the subject of potential litigation with the Environmental Protection Commission. Although there is no ethical requirement to refrain from this contact in civil actions, the following is the recommendation of the General Counsel.

Judicial Action

1. Once the Commission votes to authorize EPC staff to initiate judicial (i.e.civil) litigation against a certain party, Commission members should refrain from discussing the matter with that party or any representative of that party.
2. Commission members will receive advance notice of future requests to authorize litigation against a party. Members may also refer to the EPC Legal Department Monthly Report (provided in each Board packet) for all current pending Judicial and Administrative cases.

Administrative Action

3. Once the Executive Director files an Administrative Citation against a certain party, Commission members should refrain from discussing the matter with that party, any representative of that party, and EPC staff.
4. Once the Hearing Officer transmits a Recommended Order to the chairman of the Commission for consideration of entry of a Final Order by the full Commission, Florida law prohibits ex parte communications regarding the merits

of the case with the advocates. The Commission may however conduct discussions with the General Counsel or his designated counsel who act as counsel to the Commission and who have insulated themselves from the prior proceedings.

5. Commission members may refer to the EPC Legal Department Monthly Report for all current pending Judicial and Administrative cases.

Commission Action Recommended: Approve the above-recommended policy regarding Commission member discussions with parties subject to litigation with the Commission.

AGENDA ITEM COVER SHEET

Date: November 20, 2002

Agenda Item: Interlocal Agreement with City of Tampa Regarding Stormwater Issues

Description/Summary:

The City of Tampa has certain requirements it must meet in order to be in compliance with its NPDES permit. Currently, the City is able to meet these requirements through the Environmental Protection Commission's (EPC) existing program of inspection of high-risk facilities through their Small Quantity Generator (SQG) Program, the ambient water quality monitoring program, and assistance in the elimination of illicit discharges by EPC's sharing of data and information regarding such inspections and investigations with the City. This Agreement will formalize the above and also compensate EPC monetarily for the time spent coordinating and implementing these activities.

Commission Action Recommended:

Approval of the Interlocal Agreement regarding Stormwater between EPC and the City of Tampa.

INTERLOCAL AGREEMENT
Between the
Environmental Protection Commission of Hillsborough County ("EPC")
and
the City of Tampa ("City")

THIS INTERLOCAL AGREEMENT, hereinafter referred to as the "Agreement," made and entered into this _____ day of _____, 2002, by and between the City of Tampa ("City") and the Environmental Protection Commission of Hillsborough County ("EPC"), a local government agency.

WITNESSETH:

WHEREAS, it is the purpose and intent of this Agreement, the parties hereto, and Section 163.01, Florida Statutes, known and referred to as the Florida Interlocal Cooperation Act of 1969 ("Cooperation Act"), to permit and authorize the CITY and EPC to make the most efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby provide the services and efforts provided for herein in the manner that will best utilize existing resources, powers and authority available to each of them; and,

WHEREAS, it is the purpose of the Cooperation Act to provide a means by which the CITY and EPC may exercise their respective powers, privileges and authority which they may have separately, but which pursuant to this Agreement and the Cooperation Act they may exercise collectively; and,

WHEREAS, the EPC is a local government environmental agency created by Special Act 84-446, Laws of Florida as amended, implements various environmental regulatory programs and conducts activities designed to prevent and minimize pollution; and

WHEREAS, EPC's activities include permitting of potential pollution sources in Hillsborough County, inspecting facilities, conducting tests to determine compliance with environmental regulations, enforcement, and providing information to facilities designed to assist in pollution prevention; and

WHEREAS, the City currently benefits from EPC's existing program of inspection of high-risk facilities through their Small Quantity Generator (SQG) Program, the ambient water quality monitoring program, and receives assistance in the elimination of illicit discharges by EPC's sharing of data and information regarding such inspections and investigations with the City; and

WHEREAS, the EPC and the City have determined that it is in the best interest of both parties to have the EPC's enforcement powers supplement the City's enforcement powers where applicable; and

WHEREAS, EPC and the City agree that a contractual agreement evidencing the intention of the City and EPC to work together is desirable in order to fulfill their responsibilities

with respect to the reduction of surface water pollution including, but not limited to, the inspection of high risk facilities, ambient water quality monitoring, and elimination of illicit connections;

NOW, THEREFORE, the City and EPC hereby agree as follows:

PART I

1. The EPC shall, as it has in the past, provide data to the City for purposes of tracking certain compliance efforts required by the City's MS4 NPDES permit. Specifically:
 - a) EPC's Waste Management Division shall provide the City information from its SQG Program, including, but not limited to, the name and identity of facilities that EPC has routinely inspected and that have been the subject of complaints. The information shall be used by the City to ensure waste from all facilities that use small quantities of hazardous materials is properly handled and disposed of and will be used to satisfy the high risk facility inspection requirements of the City's National Pollutant Discharge Elimination System Permit for its Municipal Separate Storm Sewer System; and
 - b) EPC's Environmental Resources Management Division shall provide the City data from its collection and analysis of water samples collected throughout Tampa and Tampa Bay, providing background and incident specific information on water quality; and
 - c) EPC's Waste and Water Management Divisions shall provide the City water sampling data from their established and ongoing complaint inspection procedures whenever they indicate potential contamination or adverse impacts to surface waters in the City.
2. EPC will notify recipients of enforcement notices within the jurisdiction of the City that they may also be the subject of independent enforcement actions by the City. EPC will provide the City with copies of all such notices.
3. All of the foregoing information shall be provided to the City on an as-needed basis with, at a minimum, an annual summary of each activity.

PART II

1. As consideration for EPC's coordination and implementation of activities relating to the City's NPDES compliance and enforcement, pollution prevention, and other services referenced in this Agreement, the City shall pay \$30,000 as the first year annual fee to defray the costs associated with these programs. The first year annual fee shall be paid within 30 days of the effective date of this Agreement.
2. At the conclusion of the first year of this Agreement, EPC and the City shall reevaluate the terms of the Agreement to ensure the needs of the City are being satisfactorily met and that EPC is being adequately compensated.

3. The initial term of this agreement shall be for a period of not less than one year and is thereafter automatically renewed in two year increments corresponding to each County and City budgeting cycle unless written notice is provided at least 180 days prior to the termination of each renewal period by one of the parties hereto.
4. Modifications to this Agreement may be presented at any time and if mutually agreed upon, the modifications shall be stated in writing and signed by both parties.

IN WITNESS WHEREOF, the parties' authorized officers have executed this Agreement on the date first above written.

ATTEST

CITY OF TAMPA, FLORIDA

By: _____

By: _____
Dick A. Greco, Mayor

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOOROUGH
COUNTY

By: _____
WITNESS

By: _____
Chairman EPC

APPROVED AS TO FORM

By: _____
Jody L. Schwahn
Assistant City Attorney