

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
FEBRUARY 17, 2005
10 AM – 12 NOON**

AGENDA

- INVOCATION AND PLEDGE OF ALLEGIANCE**
- APPROVAL OF CHANGES TO THE AGENDA AND REMOVAL OF CONSENT
AGENDA ITEMS WITH QUESTIONS, AS REQUESTED BY BOARD MEMBERS**
- I. CITIZEN'S COMMENTS**
- II. CITIZEN'S ENVIRONMENTAL ADVISORY COMMITTEE**
Report from the Chairman – David Jellerson
- III. CONSENT AGENDA**
- | | |
|---|----|
| A. Approval of Minutes: None | |
| B. Monthly Activity Reports | 2 |
| C. Legal Department Monthly Report | 14 |
| D. Pollution Recovery Trust Fund | 19 |
| E. Gardinier Settlement Trust Fund | 20 |
| F. Authorize Executive Director to Execute Agreement with SWFWMD | 21 |
| G. Authorize Executive Director to Execute Contracts for Professional Services | 31 |
| H. Request Authority to Take Appropriate Legal Action Against:
Sterling Jackson (Waste –Tanks) | 50 |
- IV. EXECUTIVE DIRECTOR'S REPORT**
- V. LEGAL DEPARTMENT**
Update – Ford Amphitheatre 51
- VI. ENVIRONMENTAL RESOURCES MANAGEMENT DIVISION**
Consider CEAC/Staff Recommendations for 2004-5 Pollution Recovery Fund Projects 52

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.

Visit our website at www.epchc.org

MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION
JANUARY

A.	Public Outreach/Education Assistance:	
1.	Phone Calls:	<u>345</u>
2.	Literature Distributed:	<u>20</u>
3.	Presentations:	<u>0</u>
4.	Media Contacts:	<u>6</u>
5.	Internet:	<u>59</u>
6.	Host/Sponsor Workshops, Meetings, Special Events	<u>0</u>
B.	Industrial Air Pollution Permitting	
1.	Permit Applications Received (Counted by Number of Fees Received):	
a.	Operating:	<u>6</u>
b.	Construction:	<u>1</u>
c.	Amendments:	<u>0</u>
d.	Transfers/Extensions:	<u>1</u>
e.	General:	<u>0</u>
f.	Title V:	<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 Counted by Number of Emission Units affected by the Review):	
a.	Operating ¹ :	<u>8</u>
b.	Construction ¹ :	<u>1</u>
c.	Amendments ¹ :	<u>0</u>
d.	Transfers/Extensions ¹ :	<u>0</u>
e.	Title V Operating ² :	<u>66</u>
f.	Permit Determinations:	<u>3</u>
g.	General:	<u>2</u>
3.	Intent to Deny Permit Issued:	<u>0</u>
C.	Administrative Enforcement	
1.	New cases received:	<u>4</u>
2.	On-going administrative cases:	
a.	Pending:	<u>8</u>
b.	Active:	<u>16</u>
c.	Legal:	<u>5</u>
d.	Tracking compliance (Administrative):	<u>22</u>
e.	Inactive/Referred cases:	<u>0</u>
	Total	<u>51</u>
3.	NOIs issued:	<u>4</u>
4.	Citations issued:	<u>0</u>
5.	Consent Orders Signed:	<u>2</u>
6.	Contributions to the Pollution Recovery Fund:	<u>\$ 41.66</u>
7.	Cases Closed:	<u>3</u>

D.	Inspections:	
1.	Industrial Facilities:	<u>10</u>
2.	Air Toxics Facilities:	
a.	Asbestos Emitters	<u>0</u>
b.	Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>11</u>
c.	Major Sources	<u>1</u>
3.	Asbestos Demolition/Renovation Projects:	<u>14</u>
E.	Open Burning Permits Issued:	<u>1</u>
F.	Number of Division of Forestry Permits Monitored:	<u>310</u>
G.	Total Citizen Complaints Received:	<u>83</u>
H.	Total Citizen Complaints Closed:	<u>55</u>
I.	Noise Sources Monitored:	<u>9</u>
J.	Air Program's Input to Development Regional Impacts:	<u>2</u>
K.	Test Reports Reviewed:	<u>95</u>
L.	Compliance:	
1.	Warning Notices Issued:	<u>16</u>
2.	Warning Notices Resolved:	<u>10</u>
3.	Advisory Letters Issued:	<u>11</u>
M.	AOR's Reviewed:	<u>0</u>
N.	Permits Reviewed for NESHAP Applicability:	<u>1</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>\$4,040.00</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>\$5,400.00</u>
(c) Delegated General Permit (20% is forwarded to DEP and not included here)	<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	\$5,000.00
(b) for structure greater than 50,000 sq ft	<u>\$ 300.00</u>
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	<u>\$2,400.00</u>
(b) renovation greater than 1000 linear feet or 1000 sq ft	<u>\$2,000.00</u>
8. Open burning authorization	<u>\$2,200.00</u>
9. Enforcement Costs	<u>\$ -0-</u>

COMMISSION
 Brian Blair
 Kathy Castor
 Ken Hagan
 Jim Norman
 Thomas Scott
 Mark Sharpe
 Ronda Storms



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Executive Director
 Richard D. Garrity, Ph.D.

M E M O R A N D U M

DATE: February 8, 2005

TO: Tom Koulianos, Director of Finance and Administration

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

SUBJECT: **WASTE MANAGEMENT'S JANUARY 2005 AGENDA INFORMATION**

A. ADMINISTRATIVE ENFORCEMENT

1. New cases received	0
2. On-going administrative cases	96
a. Pending	8
b. Active	61
c. Legal	7
d. Tracking Compliance (Administrative)	20
e. Inactive/Referred Cases	0
3. NOI's issued	0
4. Citations issued	1
5. Consent Orders and Settlement Letters Signed	0
6. Civil Contributions to the Pollution Recovery Fund	\$1,250
7. Enforcement Costs collected	\$1,337
9. Cases Closed	2

B. SOLID AND HAZARDOUS WASTE

1. Permits (received/reviewed)	0
2. EPC Authorization for Facilities NOT requiring DEP permit	0
3. Other Permits and Reports	
a. County Permits	2/2
b. Reports	51/50
4. Inspections (Total)	293
a. Complaints	32
b. Compliance/Reinspections	13
c. Facility Compliance	26
d. Small Quantity Generator	222
e. P2 Audits	0
5. Enforcement	
a. Complaints Received/Closed	34/29
b. Warning Notices Issued/Closed	2/3
c. Compliance letters	28
d. Letters of Agreement	0
e. DEP Referrals	4
6. Pamphlets, Rules and Material Distributed	114

C. STORAGE TANK COMPLIANCE

1. Inspections	
a. Compliance	90
b. Installation	24
c. Closure	7
d. Compliance Re-Inspections	29
2. Installation Plans Received/Reviewed	4/7
3. Closure Plans & Reports	
a. Closure Plans Received/ Reviewed	3/3
b. Closure Reports Received/Reviewed	8/4
4. Enforcement	
a. Non-compliance Letters Issued/Closed	35/26
b. Warning Notices Issued/Closed	3/2
c. Cases referred to Enforcement	0
d. Complaints Received/Investigated	2/2
e. Complaints Referred	0
5. Discharge Reporting Forms Received	3
6. Incident Notification Forms Received	3
7. Cleanup Notification Letters Issued	5
8. Public Assistance	200+

D. STORAGE TANK CLEANUP

1. Inspections	15
2. Reports Received/Reviewed	72/86
a. Site Assessment	24/31
b. Source Removal	5/3
c. Remedial Action Plans (RAP's)	8/14
d. Site Rehabilitation Completion Order/ No Further Action Order	5/4
e. Others	30/34
3. State Cleanup	
a. Active Sites	NO LONGER ADMINISTERED
b. Funds Dispersed	

E. RECORD REVIEWS

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**ACTIVITIES REPORT
WATER MANAGEMENT DIVISION
JANUARY, 2005**

A. ENFORCEMENT

1. New Enforcement Cases Received:	7
2. Enforcement Cases Closed:	6
3. Enforcement Cases Outstanding:	58
4. Enforcement Documents Issued:	5
5. Recovered costs to the General Fund:	\$718.86
6. Contributions to the Pollution Recovery Fund:	\$2,645.00

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. University Place Business Center	Discharging Raw Sewage	\$645.00
b. Pumpco	Industrial Wastewater Discharge/ Constructing Facility w/o permit	\$1,000.00
c. St. Joseph's-Van Dyke	Placement of c/s in service w/o acceptance letter	\$500.00
d. Jomar Commerce Ctr.	Placement of c/s in service w/o acceptance letter	\$500.00

B. PERMITTING/PROJECT REVIEW - DOMESTIC

1. Permit Applications Received:	39
a. Facility Permit:	4
(i) Types I and II	1
(ii) Types III	3
b. Collection Systems-General	17
c. Collection Systems-Dry Line/Wet Line:	18
d. Residuals Disposal:	0
2. Permit Applications Approved:	26
a. Facility Permit:	3
b. Collection Systems-General:	7
c. Collection Systems-Dry Line/Wet Line:	16
d. Residuals Disposal:	0
3. Permit Applications Recommended for Disapproval:	0
a. Facility Permit:	0
b. Collection Systems-General:	0
c. Collection Systems-Dry Line/Wet Line:	0
d. Residuals Disposal:	0
4. Permit Applications (Non-Delegated):	
a. Recommended for Approval:	0

5. Permits Withdrawn:	1
a. Facility Permit:	0
b. Collection Systems-General:	0
c. Collection Systems-Dry Line/Wet Line:	1
d. Residuals Disposal:	0
6. Permit Applications Outstanding:	52
a. Facility Permit:	11
b. Collection Systems-General:	33
c. Collection Systems-Dry Line/Wet Line:	8
d. Residuals Disposal:	0
7. Permit Determination:	4
8. Special Project Reviews:	1
a. ARs:	0
b. Reuse:	1
c. Residuals/AUPs:	0
d. Others:	0
C. INSPECTIONS - DOMESTIC	99
1. Compliance Evaluation:	16
a. Inspection (CEI):	2
b. Sampling Inspection (CSI):	9
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	5
2. Reconnaissance:	39
a. Inspection (RI):	7
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	31
d. Enforcement Inspection (ERI):	1
3. Engineering Inspections:	44
a. Reconnaissance Inspection (RI):	3
b. Sample Reconnaissance Inspection (SRI):	0
c. Residual Site Inspection (RSI):	0
d. Preconstruction Inspection (PCI):	13
e. Post Construction Inspection (XCI):	28
f. On-site Engineering Evaluation:	0
g. Enforcement Reconnaissance Inspection (ERI):	0

D. PERMITTING/PROJECT REVIEW - INDUSTRIAL		
1.	Permit Applications Received:	3
	a. Facility Permit:	0
	(i) Types I and II	3
	(ii) Type III with Groundwater Monitoring:	0
	(iii) Type III w/o Groundwater Monitoring:	0
	b. General Permit:	0
	c. Preliminary Design Report:	0
	(i) Types I and II	0
	(ii) Type III with Groundwater Monitoring:	0
	(iii) Type III w/o Groundwater Monitoring:	0
2.	Permits Recommended to DEP for Approval:	2
3.	Special:	0
	a. Facility Permits:	0
	b. General Permits:	0
4.	Permitting Determination:	0
5.	Special Project Reviews:	46
	a. ARs:	0
	b. Phosphate DMRs:	0
	c. Phosphate:	29
	d. Industrial Wastewater:	10
	e. Others:	7
E. INSPECTIONS - INDUSTRIAL		52
1.	Compliance Evaluation:	0
	a. Inspection (CEI):	15
	b. Sampling Inspection (CSI):	0
	c. Toxics Sampling Inspection (XSI):	0
	d. Performance Audit Inspection (PAI):	0
2.	Reconnaissance:	17
	a. Inspection (RI):	12
	b. Sample Inspection (SRI):	0
	c. Complaint Inspection (CRI):	5
	d. Enforcement Reconnaissance Inspections (ERI):	0

3. Engineering Inspections:	20
a. Compliance Evaluation (CEI):	0
b. Sampling Inspection (CSI):	0
c. Performance Audit Inspection (PAI):	20
d. Complaint Inspection (CRI):	0
e. Enforcement Reconnaissance Inspections (ERI):	0
F. INVESTIGATION/COMPLIANCE	
1.. Citizen Complaints:	
a. Domestic:	27
(i) Received:	15
(ii) Closed:	12
b. Industrial:	12
(i) Received:	5
(ii) Closed:	7
2. Warning Notices:	
a. Domestic:	13
(i) Received:	9
(ii) Closed:	4
b. Industrial:	5
(i) Received:	1
(ii) Closed:	4
3. Non-Compliance Advisory Letters:	20
4. Environmental Compliance Reviews:	
a. Industrial:	37
b. Domestic:	104
5. Special Project Reviews:	
a. ARs:	1
b. Others:	0
G. RECORD REVIEWS	
1. Permitting:	5
2. Enforcement:	1
H. ENVIRONMENTAL SAMPLES ANALYZED FOR:	
1. Air Division:	79
2. Waste Division:	0
3. Water Division:	12
4. Wetlands Division:	0
5. ERM Division:	109

I. SPECIAL PROJECT REVIEWS:	3
1. DRIs:	3
2. ARs:	0
3. Technical Support:	0
4. Other:	0

**EPC WETLANDS MANAGEMENT DIVISION
BACKUP AGENDA
January 2005**

	Totals
A. General	
1. Telephone Conferences	968
2. Unscheduled Citizen Assistance	109
3. Scheduled Meetings	199
4. Correspondence	61
B. Assessment Reviews	
1. Wetland Delineations	55
2. Surveys	28
3. Miscellaneous Activities in Wetland	37
4. Impact/ Mitigation Proposal	10
5. Tampa Port Authority Permit Applications	33
6. Wastewater Treatment Plants (FDEP)	0
7. DRI Annual Report	2
8. Land Alteration/Landscaping	3
9. Land Excavation	0
10. Phosphate Mining	0
11. Rezoning Reviews	85
12. CPA	0
13. Site Development	59
14. Subdivision	72
15. Wetland Setback Encroachment	7
16. Easement/Access-Vacating	0
17. Pre-Applications	28
18. On-Site Visits	119
C. Investigation and Compliance	
1. Complaints Received	46
2. Complaints Closed	48
3. Warning Notices Issued	10
4. Warning Notices Closed	8
5. Complaint Inspections	52
6. Return Compliance Inspections	54
7. Mitigation Monitoring Reports	24
8. Mitigation Compliance Inspections	29
9. Erosion Control Inspections	43
D. Enforcement	
1. Active Cases	43
2. Legal Cases	3
3. Number of "Notice of Intent to Initiate Enforcement"	1
4. Number of Citations Issued	0
5. Number of Consent Orders Signed	4
6. Administrative - Civil Cases Closed	6
7. Cases Referred to Legal Department	3
8. Contributions to Pollution Recovery	1500
9. Enforcement Costs Collected	779



EPC Agenda Item Cover Sheet

Date of EPC Meeting: February 17, 2005

Subject: Legal Case Summary for February 2005

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

Division: Legal Department

Recommendation: None, informational update.

Brief Summary: The EPC Legal Department provides a monthly list of all its pending civil matters, administrative matters, and cases that parties have asked for additional time before filing a challenge.

Background: In an effort to provide the Commission a timely list of pending legal challenges, the EPC staff provides monthly updates. The updates not only can inform the Commission of pending litigation, but may be a tool to check for any conflicts they may have. This month the EPC provides the February 2005 case summary. The summaries generally detail pending civil matters, administrative matters, and cases that parties have asked for additional time before filing a challenge.

List of Attachments: February 2005 EPC Legal Case Summary

EPC LEGAL DEPARTMENT MONTHLY REPORT

February 2005

A. ADMINISTRATIVE CASES

NEW CASES [1]

Omar T. Chaudhry, MTC Investment Group LLC and C & C Food Corporation [LEPC05-002]: EPC issued a Citation to the owner and operators of a retail fuel facility known as Kwik Food Store. The facility was out of compliance with several waste management regulations and the respondents have failed to timely resolve the matter through any form of settlement. The owners and operators filed an appeal challenging the findings contained within the Citation. The matter is being referred to a Hearing Officer. (AZ)

EXISTING CASES [5]

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)

Col Met, Inc. [LCOL03-019]: On March 19, 2003, Co Met, Inc. was issued a Citation to Cease and Order to Correct Violation regarding its aluminum painting operation. Col Met, Inc. timely filed an Appeal of the Citation. The company has since ceased operations and is negotiating a sale. The matter has been held in abeyance pending result of the sale and a determination whether the operation will continue. (RT)

Carolina Holdings, Inc. v. EPC [LCHP04-008]: A proposed final agency action letter denying an application for authorization to impact wetlands was sent on May 7, 2004. Carolina Holdings, Inc. requested an extension of time to file an appeal. The EPC entered an Order Granting the Request for Extension of Time on June 3, 2004 and the current deadline for filing an appeal was July 2, 2004. On July 2, 2004, Carolina Holdings, Inc. filed an appeal challenging the decision denying the proposed wetland impacts. The parties are still in negotiations. A pre-hearing conference was conducted on September 22, 2004 to discuss the case. The parties have conducted a mediation to attempt to resolve the matter without a hearing. The EPC is waiting for a final site plan for the development and the matter may be resolved. (AZ)

IMC Phosphates, Inc. v. EPC [LIMC04-007]: IMC Phosphates timely requested two extensions of time to file an appeal challenging the Executive Director's decision dated February 25, 2004 regarding the review of justification of wetland impacts for Four Corners MU19E. The EPC entered a second Order Granting the Request for Extension of Time until September 13, 2004 to file the appeal. On September 10, 2004, IMC Phosphates filed its appeal and the matter has been referred to the Hearing Officer. The case has been put in abeyance pending settlement discussions for resolution of this matter and future wetland impact authorizations. (AZ)

CC Entertainment Music – Tampa, LLC and Florida State Fair Authority [LEPC04-022]: A Citation was filed on August 27, 2004 for violations of EPC's Noise rule Ch.1-10 regarding the Ford Amphitheater. Clear Channel and the Fair Authority timely filed requests for extension of time in which to file an appeal. Clear Channel filed its appeal on October 18, 2004 and the Fair Authority filed on November 1, 2004. The EPC has moved for consolidation of the appeals so that they may be heard at one time. The Fair Authority opposes the consolidation. Settlement negotiations are ongoing. A final hearing set for early March 2005 will be moved to April in an effort to resolve matters and to allow more time to address the civil case. (RT)

RESOLVED CASES [1]

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. An alternate remedial plan has been approved. The site has been included on the historic landfill list and the matter has been closed. (RT)

B. CIVIL CASES

NEW CASES [1]

Kwik Food Store [LEPC05-001]: The EPC granted authority on January 20, 2005 to take appropriate legal action for violations of the EPC's Underground Storage Tank (UST) regulations. The facility is currently in compliance but the responsible party has refused to enter into a settlement and EPC staff has submitted the matter to the EPC Legal Department to recover penalties and costs for the previous violations. (AZ)

EXISTING CASES [15]

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)

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 has failed to respond to the complaint and on July 9, 2001 the court entered a default against the Defendant. On August 28, 2001 the court entered a Default Final Judgment in the case. 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. 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. Negotiations are continuing in the case. (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 so that their residents can continue without relocation. (RT)

Botner, Clyde [LBOT03-017]: Authority to take appropriate action against Mr. Botner for unauthorized wetland impacts was granted in September 2003. The EPC issued Mr. Botner a Citation and Order to Correct for the unresolved wetland violations. He failed to appeal the Citation and the EPC is filing suit to enforce the Order. On October 16, 2003 the EPC Legal Department filed a lawsuit requiring corrective actions as well as penalties and

costs for the unresolved wetland violation. The Defendant has filed a response to the lawsuit and the case is moving forward. The Defendant denied the EPC access to the site. On April 6, 2004 the EPC obtained judicial authority to inspect the site. A site visit was performed but the Defendant failed to allow a thorough inspection. The EPC obtained a second judicial inspection warrant in May, 2004. On June 1, 2004, the EPC staff executed the search warrant and conducted a site inspection of the property. At the conclusion of the discovery portion of the case the matter will be set for trial. (AZ)

Plant City Nightclub Company [LPLA04-003]: Plant City Nightclub filed a lawsuit against Hillsborough County, the Sheriff's Office, and the EPC requesting declaratory relief and challenging the EPC's enabling act and noise rule. The EPC Legal Department filed a Motion to Dismiss the lawsuit and the matter will be set for hearing. (RT and AZ)

U-Haul of North Tampa [LUHA04-010]: Authority to take appropriate action against U-Haul of North Tampa for failure to prepare a required addendum to a Site Assessment Report for petroleum contaminant concentrations exceeding soil cleanup target levels was granted July 22, 2004. The parties are currently in negotiations. (AZ)

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

Lewis 8001 Enterprises, Inc. [LEPC04-012]: Authority to take appropriate action against Lewis 8001 Enterprises, Inc. was granted on May 20, 2004. Lewis 8001 Enterprises, Inc. has failed to remove improperly stored solid waste from its property. The responsible party has failed to respond to the Legal Department's requests and on February 3, 2005 a lawsuit was filed compelling compliance and to recover penalties and costs for the violations. (AZ)

Cornerstone Abatement and Demolition Co. [LEPC04-013]: Authority to take appropriate action against Cornerstone Abatement and Demolition Co. for failing to properly handle and remove regulated asbestos-containing material was granted on May 20, 2004. Staff is currently drafting a complaint. (RT)

Julsar, Inc. [LEPC04-014]: Authority to take appropriate action against Julsar, Inc. for illegally removing over 11,400 square feet of regulated asbestos-containing ceiling material was granted on May 20, 2004. Staff is currently drafting a complaint. (RT)

Pedro Molina, d/b/a Professional Repair [LEPC04-015]: Authority to take appropriate action against Pedro Molina, d/b/a Professional Repair for failing to comply with the terms of a previously issued Consent Order regarding a spray paint booth ventilation system and other permit condition violations was granted on July 22, 2004. Staff is currently drafting a complaint. (RT)

U-Haul Company of Florida [LEPC04-016]: Authority to take appropriate action against U-Haul Company of Florida for failure to conduct a landfill gas investigation and remediation plan was granted September 18, 2003. The EPC Legal Department filed a lawsuit on September 3, 2004 and the case is progressing through discovery. (AZ)

Kovacs Geza, Inc. [LEPC04-019]: Authority was granted on August 2004 to take appropriate action against Geza Kovacs and Kovacs Geza, Inc. for failing to comply with the terms of a previously issued Consent Order that required that unauthorized accumulation of solid waste be removed and disposed at a properly permitted facility. Staff is currently drafting a complaint. (AZ)

River Walk MHP, Ltd. [LEPC04-023]: The EPC Board voted on September 9, 2004, to grant authorization to take any legal action necessary against River Walk Mobile Home Park, Ltd., including but not limited to a civil suit and the authority to settle the matter without further Board Action. The MHP located in Gibsonton has, among other violations at its wastewater treatment and disposal facility, discharged effluent from its disposal system to a tidal stream and/or a storm drain, failed to properly operate and maintain the disposal system, failed to install filters in a timely fashion, failed to provide adequate chlorine contact time, and violated other permit conditions. The EPC will

seek a negotiated settlement and, if not reached shortly, file a complaint in the Circuit Court. (RM)

EPC vs. CC Entertainment Music – Tampa, LLC and Florida State Fair Authority [LEPC04-026]: On December 21, 2004, the EPC filed a complaint and a motion for temporary injunction against CC Entertainment Music – Tampa, LLC and the Florida State Fair Authority for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise) regarding noise level violations and noise nuisance violations stemming from concerts held at the new Ford Amphitheater. The EPC had an injunction hearing scheduled for January 14, 2005, but Judge Holder heard an emergency motion for continuance on January 12, 2005 and, citing the complexity of the issues, issued an Order granting the continuance until February 4, 2005. Subsequently, due to the judge's own scheduling conflict, the Hearing for Temporary Injunction was moved to February 26, 2005. Settlement meetings and extensive discovery have commenced. Due to the importance of the injunction hearing and the need for counsel involved early in the process, the EPC authorized the EPC staff to hire outside counsel and expert witnesses. The EPC has retained Mark Bentley, Esq. of Gray Robinson, P.A. Mediation is scheduled for February 22, 2005. There are also two pending administrative challenges to EPC citations which are a separate matter and are described above. (RT)

RESOLVED CASES [0]

C. OTHER OPEN CASES [1]

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

Jozsi, Daniel A. and Celina v. EPC [LEPC04-025]: Daniel A. and Celina Jozsi have timely requested an extension of time to file an appeal challenging the approval of a wetland survey line for the Winterroth Property located on Lake Hills Drive, Riverview, FL. The EPC entered an Order Granting Request for Extension of Time on December 8, 2004 and the current deadline for filing an appeal is February 4, 2005. On February 3, 2005 Daniel A. and Celina Jozsi filed a second request for extension of time. The request failed to show good cause for the extension and an Order denying the second request was issued, however the appellant was provided an additional 7 days, until February 10, 2005, to file an appeal.

COMMISSION
 Brian Blair
 Kathy Castor
 Ken Hagan
 Jim Norman
 Thomas Scott
 Mark Sharpe
 Ronda Storms



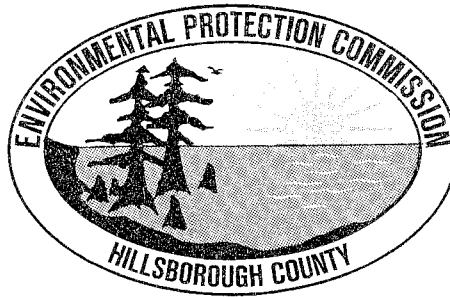
Administrative Offices,
 Legal & Water Management Division
 1900 - 9th Ave. • Tampa, FL 33605
 Ph. (813) 272-5960 • Fax (813) 272-5157
 Waste Management, Wetlands &
 Environmental Resource Management Divisions
 3629 Queen Palm Dr. • Tampa, FL 33619
 Waste Fax (276-2256) Wetlands Fax (272-7144)
 Air Management Division
 1410 N. 21st St. • Tampa, FL 33605
 Fax (272-5605)

Executive Director
 Richard D. Garrity, Ph.D.

ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 POLLUTION RECOVERY TRUST FUND
 AS OF JANUARY 31, 2005

Fund Balance as of 10/01/04	\$1,737,812
Interest Accrued	15,053
Deposits FY05	74,379
Disbursements FY05	83,541
Intrafund Transfers	19,384
 Fund Balance	 \$1,763,087
 Encumbrances Against Fund Balance:	
Artificial Reef	93,123
(66) Asbestos Abatement	4,486
(73) Balm Road Scrub	- 0 -
(84b) Cockroach Bay Aerial Photos	3,392
(90) Upper Tampa Bay Trail	- 0 -
(91) Alafia River Basin	21,283
(92) Brazilian Pepper	26,717
(93) Rivercrest Park	1,743
(97) COT Parks Dept/Cypress Point	100,000
(99) Seagrass Restoration Cockroach Bay	58,020
(100) Agriculture Pesticide Collection	38,115
(101) Pollution Prevention Program	38,194
Old Landfills/Coronet	20,174
Palm River Habitat	200,000
Riverview Library	10,000
Simmons Park	60,000
Adopt A Shoreline	10,416
Bahia Beach Restoration	150,000
State of the River/Greenways	7,200
Stormwater Mgmt/Florida Aquarium	30,000
Water Drop Patch/Girl Scouts	7,350
Tampa Shoreline Restoration	30,000
 Total of Encumbrances	 910,213
 Minimum Balance (Reserve)	 120,000 *
 Fund Balance Available January 31, 2005	 \$ 732,874

COMMISSION
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 Richard D. Garrity, Ph.D.

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 Fax (272-5605)

ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 ANALYSIS OF GARDINIER SETTLEMENT TRUST FUND
 AS OF JANUARY 31, 2005

Fund Balance as of 10/01/04	\$ 818,538
Interest Accrued	6,085
Disbursements FY05	123,756
Fund Balance	\$ 700,867

Encumbrances Against Fund Balance:

SP591 Mechanical Seagrass Planting	3,584
SP597 Fantasy Island Restoration	1,633
Marsh Creek/Ruskin Inlet	47,500
SP604 Desoto Park Shoreline	150,000
SP610 H.C. Resource Mgmt/Apollo Beach Restoration	35,000
Tampa Bay Scallop Restoration	117,544
SP612 Riverview Civic Center	4,244
SP615 Little Manatee River Restoration	50,000
SP616 Manatee Protection Areas	2,246
SP614 Manatee & Seagrass Protection	3,200
Fantasy Island	20,000
E.G. Simmons Park	43,200
Cockroach Bay ELAPP Restoration	222,716
Total of Encumbrances	700,867

Fund Balance Available January 31, 2005	\$ - 0 -
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EPC Agenda Item Cover Sheet

Date of EPC Meeting: February 17, 2005

Subject: Cooperative agreement with the Southwest Florida Water Management District (SWFWMD) for pilot project to estimate pollutant loads and yields

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

Division: Environmental Resources Management (ERM)

Recommendation:

Authorize the Executive Director to sign a cooperative agreement with SWFWMD for estimation of pollutant loads and yields

Brief Summary:

The attached agreement defines the mutual responsibilities of EPC and SWFWMD in carrying out a cooperative pilot project to estimate pollutant loads and yields at 12 locations within Hillsborough County, providing technical support for watershed management activities and the total maximum daily load (TMDL) program.

Background:

Hillsborough County contains a number of rivers, lakes and streams whose water quality has been characterized as "impaired" by the Florida Department of Environmental Protection (FDEP) and the U.S. Environmental Protection Agency (USEPA), pursuant to Sect. 303(d) of the federal Clean Water Act. "Total maximum daily loads" (TMDLs), which estimate the maximum amounts ("loads") of pollutants these rivers and streams can receive from their watersheds without violating federal and state water quality standards, are currently being developed by FDEP and USEPA. The TMDLs will also specify the load reductions that will be necessary to bring the impaired water bodies into compliance with existing water quality standards.

Cooperative efforts to measure annual pollutant loads discharged to these impaired rivers and streams from their watersheds will be beneficial to EPC, the County, SWFWMD and other stakeholder groups in the Tampa Bay region as they work to implement watershed management activities, comply with TMDLs, and take other steps improve the quality of impaired water bodies.

Through the pilot project described in the attached agreement, EPC and SWFWMD will work cooperatively, using existing budget resources, to measure pollutant concentrations and estimate pollutant loads at 12 selected points within the County. It is anticipated that the sites will be located in northwestern Hillsborough County and in the Alafia River and Hillsborough River watersheds. The project does not involve transfers of funds between the two agencies.

List of Attachments: Copy of proposed agreement between EPC and SWFWMD

COOPERATIVE FUNDING AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND THE
ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
FOR
HILLSBOROUGH COUNTY ESTIMATION OF POLLUTION LOADS AND YIELD (W258)

THIS COOPERATIVE FUNDING AGREEMENT is made and entered into by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, for itself and on behalf of the Northwest Hillsborough, Hillsborough River and Alafia River Basin Boards, hereinafter collectively referred to as the "DISTRICT," and the ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY, a political subdivision of the State of Florida, whose address is 1900 9th Avenue, Tampa, Florida 33605, hereinafter referred to as the "EPC."

WITNESSETH:

WHEREAS, the EPC proposed a project to the DISTRICT for funding consideration under the DISTRICT's cooperative funding program; and

WHEREAS, the project consists of the determination of annual pollutant loads discharged to impaired rivers and streams in the Northwest Hillsborough, Hillsborough River and Alafia River basins referred to as the "PROJECT"; and

WHEREAS, the DISTRICT considers the PROJECT worthwhile and desires to assist the EPC in funding the PROJECT.

NOW THEREFORE, the DISTRICT and the EPC, in consideration of the mutual terms, covenants and conditions set forth herein, agree as follows:

1. PROJECT MANAGER AND NOTICES. Each party hereby designates the employee set forth below as its respective Project Manager. Project Managers will assist with PROJECT coordination and will be each party's prime contact person. Notices and reports will be sent to the attention of each party's Project Manager by U.S. mail, postage paid, to the parties' addresses as set forth below:

Project Manager for the DISTRICT:
Attention: Jim Griffin
Tampa Service Office
7601 Highway 301 North
Tampa Florida 33637-6759

Project Manager for the EPC:
Attention: Gerold Morrison
Environmental Protection Commission of Hillsborough County
3629 Queen Palm Dr.
Tampa, Florida 33619-1309

Any changes to the above representatives or addresses must be provided to the other party in writing.

The DISTRICT's Project Manager is hereby authorized to approve requests to extend a PROJECT task deadline set forth in this Agreement. Such approval must be in writing, explain the reason for the extension and be signed by the Project Manager and his or her Department Director, or Deputy Executive Director if the Department Director is the Project Manager. The DISTRICT's Project Manager is not authorized to approve any time extension which will result in an increased cost to the DISTRICT or which will exceed the expiration date set forth in Paragraph 4, Contract Period.

2. PROJECT SPECIFIC OBLIGATIONS. The DISTRICT and the EPC shall perform the services and fulfill the obligations as specifically designated in Exhibit "A," attached hereto. Any changes to the obligations and associated costs shall be mutually agreed to in a formal written amendment approved by the DISTRICT Governing Board and the EPC prior to being performed by either party subject to the provisions of Paragraph 3 below.
3. FUNDING. The DISTRICT will fund those costs associated with the measurement of water level and flow at the sample sites selected during the project's design phase and as specified in the Scope of Work set forth in Exhibit "A". The EPC will fund or perform as in-kind services all other tasks specified the Scope of Work set forth in Exhibit "A." The parties anticipate that the total cost of the PROJECT will be One Hundred and Seventy Five Thousand Dollars (\$175,000). The DISTRICT agrees to purchase or pay for services for measurement of flow and level as delineated in the Scope of Work set forth in Exhibit A. The DISTRICT's costs will not exceed Seventy Five Thousand Dollars (\$75,000) and the DISTRICT will have no obligation to pay any costs beyond this maximum amount. The EPC agrees to fund or provide in-kind services of up to One Hundred Thousand Dollars (\$100,000). The EPC will be the lead party to this Agreement, however, the EPC will not invoice the DISTRICT.

All funding obligations of the DISTRICT and EPC are contingent upon funds being budgeted for by the DISTRICT Governing Board and the EPC.

4. CONTRACT PERIOD. This Agreement will be effective upon execution by all parties and will remain in effect through December 31, 2007, unless terminated, pursuant to Paragraph 3 above, or Paragraph 9 below, or amended in writing by the parties.
5. PROJECT RECORDS AND DOCUMENTS. Each party, upon request, will permit the other party to examine or audit all PROJECT related records and documents during or following completion of the PROJECT. Each party will maintain all such records and documents for at least three (3) years following completion of the PROJECT. All records and documents generated or received by either party in relation to the PROJECT are subject to the Public Records Act, Chapter 119, F.S.
6. OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS. All documents, including reports, drawings, estimates, programs, manuals, specifications, and all goods or products, including intellectual property and rights thereto, purchased under this Agreement with DISTRICT funds will be and will remain the property of the DISTRICT.

7. REPORTS. Both parties will provide the other party with copies of any and all reports, models, studies, maps or other documents resulting from the PROJECT.

The EPC must submit all applicable water quality data collected under this Agreement to the U.S. Environmental Protection Agency's (EPA) STORage and RETrieval database (STORET), in accordance with Rule 62-40.540, Florida Administrative Code (Water Data). The EPC must provide the DISTRICT with copies of the EPA e-mail receipts, which include the ORG ID and export file name and export date, for the STORET uploads. For Florida Department of Environmental Protection (FDEP) assistance in uploading data to STORET, please contact:

Ellen McCarron, Administrator
Watershed Monitoring and Data Management Section
Florida Department of Environmental Protection
2600 Blair Stone Road, Mail Station 3525
Tallahassee, Florida 32399-2400
ellen.mccarron@dep.state.fl.us
(850) 245-8503

8. LIABILITY. Each party hereto agrees to indemnify and hold the other harmless, to the extent allowed under Section 768.28, F.S., from all claims, loss, damage and expense, including attorney fees and costs and attorney fees and costs on appeal, arising from the negligent acts or omissions of its officers, employees, contractors and agents related to its performance under this Agreement. Nothing herein shall be deemed a waiver, express or implied, of either party's sovereign immunity under Section 768.28, F.S.
9. DEFAULT. Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement. To initiate termination, the terminating party must provide the defaulting party with a written "Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement will automatically terminate.
10. RELEASE OF INFORMATION. The parties agree not to initiate any oral or written media interviews or issue press releases on or about the PROJECT without providing advance notices or copies to the other party. This provision will not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.
11. PROJECT RECOGNITION. The parties agree to recognize all funding sources, the EPC the DISTRICT and the Alafia River, Hillsborough River and Northwest Hillsborough Basin Board in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition will be mutually approved.

12. PERMITS AND REAL PROPERTY RIGHTS. The DISTRICT and EPC will work cooperatively to obtain permits, local government approvals and real property rights necessary to establish the PROJECT monitoring sites.
13. LAW COMPLIANCE. Each party will comply with all applicable federal, state and local laws, rules, regulations and guidelines, related to performance under this Agreement.
14. DIVERSITY IN CONTRACTING AND SUB-CONTRACTING. The DISTRICT is committed to supplier diversity in the performance of all contracts associated with DISTRICT cooperative funding projects. The DISTRICT requires the EPC to make good faith efforts to encourage the participation of minority- and woman-owned business enterprises, both as prime contractors and sub-contractors, in the performance of this Agreement, in accordance with applicable laws.

If requested, the DISTRICT will assist the EPC by sharing information to help the cooperator in ensuring that minority- and woman-owned businesses are afforded an opportunity to participate in the performance of this Agreement.

15. ASSIGNMENT. No party may assign any of its rights under this Agreement, including any operation or maintenance duties related to the PROJECT, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner without the prior written consent of the other party. In the event of any purported assignment of rights in violation of this section, the parties agree that this Agreement shall terminate and is void.
16. SUBCONTRACTORS. Nothing in this Agreement will be construed to create, or be implied to create, any relationship between the DISTRICT and any subcontractor of the EPC.
17. THIRD PARTY BENEFICIARIES. Nothing in this Agreement will be construed to benefit any person or entity not a party to this Agreement.
18. LOBBYING PROHIBITION. Pursuant to Section 216.347, F.S., the EPC is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
19. PUBLIC ENTITY CRIMES. Pursuant to Subsections 287.133(2) and (3), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months following the date of being placed on the convicted vendor list. EPC agrees to include this provision in all subcontracts issued as a result of this Agreement.

20. DISCRIMINATION. Pursuant to Subsection 287.134(2)(a), F.S., an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. EPC agrees to include this provision in all subcontracts issued as a result of this Agreement.
21. ENTIRE AGREEMENT. This Agreement and the attached exhibits listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.
22. DOCUMENTS. The following documents are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority will first be given to the language in the body of this Agreement, and then to Exhibit "A,"

Exhibit "A" Scope of Work

The remainder of this page left blank intentionally.

IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
David L. Moore, Executive Director Date

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

By: _____
Richard D. Garrity, Executive Director Date

COOPERATIVE FUNDING AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND THE
ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
FOR
HILLSBOROUGH COUNTY ESTIMATION OF POLLUTION LOADS AND YIELD (W258)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<i>DM</i>	<i>12/13</i>
RISK MGMT	<i>N/A</i>	
CONTRACTS	<i>DM</i>	<i>12/13</i>
DEPT DIR	<i>DM</i>	<i>12/13</i>
DEPUTY EXEC DIR	<i>DM</i>	<i>12/13</i>
GOVERNING BOARD		<i>N/A DM</i>

Sign & Ret. Please

**EXHIBIT "A"
SCOPE OF WORK**

**HILLSBOROUGH COUNTY ESTIMATION OF POLLUTION LOADS AND YIELD
(W258)**

PROJECT Description

The EPC conducts monthly water quality monitoring at approximately 100 stations in Tampa Bay and its watershed, as part of a surface water quality program that was begun in the early 1970s.

A number of these stations are located on rivers and streams whose water quality has been characterized as "impaired" by the Florida Department of Environmental Protection (FDEP) and the U.S. Environmental Protection Agency (USEPA), pursuant to Sect. 303(d) of the federal Clean Water Act. "Total maximum daily loads" (TMDLs), which estimate the maximum amounts ("loads") of pollutants these rivers and streams can receive without violating federal and state water quality standards, are currently being developed by FDEP and USEPA. The TMDLs will also specify the load reductions that will be necessary to bring the impaired water bodies into compliance with existing water quality standards.

A cooperative program to measure annual pollutant loads discharged to these impaired rivers and streams from their drainage basins meets the analytical goals of the Tampa Bay Surface Water Improvement and Management (SWIM) Plan and will be beneficial to the DISTRICT, EPC, federal and state regulatory agencies, and other stakeholder groups in the Tampa Bay watershed. Loading estimates are needed to improve the Bay-wide Water Quality Modeling initiative supported by the Tampa Bay SWIM. From a resource management perspective it would also be desirable to measure and track the pollutant loads that are being discharged to a representative sample of unimpaired water bodies in the Tampa Bay watershed, to give managers a clearer understanding of the relationships that exist between pollutant loads and water quality conditions in receiving waters within the watershed.

In order to compute estimates of annual pollutant loads, measurements of pollutant concentrations — such as those made on a monthly basis by the EPC monitoring program — will need to be combined with continuous measurements of stream flow at each location of interest. Through the PROJECT, EPC and the DISTRICT will work cooperatively to:

- select a set of monitoring locations where the necessary pollutant concentration and stream flow data will be collected;
- collect the necessary data for a period of one year; and

- at the end of the one-year monitoring period, prepare a report summarizing the pollutant concentration and stream flow data, and providing estimates of the pollutant loads and yields discharged from the drainage basins included in the monitoring program.

The PROJECT will be carried out at selected locations within the DISTRICT's Northwest Hillsborough, Hillsborough River, and Alafia River basins. Sites selected for monitoring will be located in non-tidal freshwater areas, to allow stream flow to be measured without the complications introduced by tidal effects. They will be located as far downstream as possible on each stream or manmade conveyance, to allow pollutant loads from the largest possible portion of each drainage basin to be measured by the monitoring effort.

Agency Tasks

The PROJECT represents a cooperative effort between the EPC and DISTRICT, who agree to carry out the following tasks:

Task 1. Monitoring PROJECT Design: The EPC and DISTRICT will develop a Monitoring Project Design Document that will direct the PROJECT. The design document will list the selected PROJECT monitoring sites and will include by reference or as an attachment a Quality Assurance Project Plan (QAPP) and a monitoring site description. A minimum of twelve (12) sites will be selected for the PROJECT. Six (6) sites in the Northwest Basin and three (3) sites each in the Hillsborough and Alafia Basins.

Task 2. Monthly Water Quality Monitoring: The EPC will conduct monthly water quality monitoring for a period of one year at each of the locations selected for inclusion in the PROJECT. Water quality constituents included in the monitoring program will include major nutrient forms (DIP, TP, DIN, TN), TSS, chlorophyll *a*, bacteriological indicators (fecal coliforms, enterococcus), and *in situ* hydrographic measurements (water temperature, pH, specific conductance, DO).

Task 3. Continuous Flow Monitoring: The DISTRICT will engage a hydrologic data consultant to provide continuous stream flow measurements for a period of one year at the locations selected. The number of locations will not exceed 12, and the one-year monitoring period will coincide with the period in which water quality monitoring is conducted by EPC. At the end of the PROJECT all installed equipment, other than the installed water level gage, will be removed.

Task 4. PROJECT Coordination and Quality Assurance: The EPC and the DISTRICT will each designate project managers, who will meet at a minimum of once every three months to exchange data and discuss any outstanding PROJECT coordination and quality assurance issues.

Task 5. Report Preparation: Following completion of the one-year monitoring period, EPC will prepare a draft technical report summarizing the water quality and stream-flow data collected over the course of the year and providing quantitative estimates of loads and yields for each pollutant and location of interest. Following review by the DISTRICT, EPC will prepare a final technical report incorporating the DISTRICT's input.

Agency Funding Responsibilities

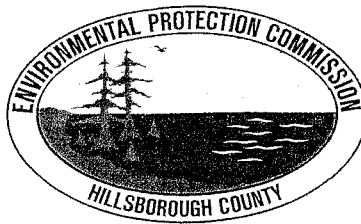
No funds will be transferred between EPC and the DISTRICT to carry out these tasks. Each agency will carry out its responsibilities using its own budgetary and staff resources. The EPC and DISTRICT will prepare funding documents that demonstrate that each is meeting its cooperative funding requirements. For in-kind services the number of stations monitored and costs associated with the monitoring, chemical analysis, data interpretation and report preparation efforts will be maintained and included in quarterly reports. For cost services (laboratory, consultant, equipment purchase), the records necessary to demonstrate service or equipment cost will be maintained and included in quarterly reports.

Proposed Timeline

The following tasks will be completed within the number of months indicated below as counted from the date of execution of the Agreement

Milestone	Months from Execution of Agreement
Design Monitoring Plan/Execute Contracts	5
Monitor water quality (monthly) and stream flow (continuous)	17
Calculate pollutant loads and yields	18
Complete draft final report	20
Complete final report	24

Potential Monitoring Locations: To be determined see Task 1.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: February 17, 2005

Subject: Amphitheatre Professional Services Contracts

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

Division: Legal Department

Recommendation: Authorize Dr. Garrity to negotiate and execute three contracts for professional services regarding noise enforcement in substantially the same form as attached.

Brief Summary: On December 21, 2004, the EPC filed a complaint and a motion for temporary injunction against CC Entertainment Music – Tampa, LLC and the Florida State Fair Authority for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise) regarding noise level violations and noise nuisance violations stemming from concerts held at the new Ford Amphitheatre. Due to the importance of the issues to be raised at the injunction hearing and the need for counsel and experts to be involved early in the litigation process, the EPC authorized staff to hire outside counsel and expert witnesses. The EPC has retained Mark Bentley, Esq. of Gray Robinson, P.A. as outside legal counsel and has retained Gary Siebein and Dr. Roger Wayson as architectural acoustics and noise experts.

Background: Pursuant to Commission direction, on December 21, 2004, the EPC filed a complaint and a motion for temporary injunction against CC Entertainment Music – Tampa, LLC and the Florida State Fair Authority for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise) regarding noise level violations and noise nuisance violations stemming from concerts held at the new Ford Amphitheater. A full-day injunction hearing is set for February 26, 2005. Among other things, CC Entertainment Music – Tampa has challenged the validity and constitutionality of the EPC Act and noise rule, our measurement methods, and our measurement equipment. Any ruling on February 26, 2005, may have an impact on the future trial in this matter. Thus, on January 20, 2005, after a closed session and due to the importance and complexity of the issues to be raised at the injunction hearing and the need for counsel and experts to be involved early in the litigation process, the EPC authorized staff to hire outside counsel and expert witnesses. The EPC has retained Mark Bentley, Esq. of Gray Robinson, P.A. as outside legal counsel and has retained Gary Siebein and Dr. Roger Wayson as architectural acoustics and noise experts. The County Attorney's office and the County Administrator are assisting in funding the short term and long term costs of the litigation. The counsel and experts are currently assisting the EPC. Thus, the EPC staff requests that the EPC grant the Executive Director, Dr. Garrity, the authorization to negotiate and execute the final professional service contracts in this matter in substantially the same form as attached.

List of Attachments: Gray Robinson, P.A./Bentley contract
 Wayson contract
 Siebein contract

**AGREEMENT FOR SPECIAL COUNSEL SERVICES BETWEEN
THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH
COUNTY AND GRAY ROBINSON, P.A.**

THIS AGREEMENT is entered into in Hillsborough County, Florida on this ____ of _____ 2005, by and between the Environmental Protection Commission of Hillsborough County, an administrative agency created by Special Act of the Legislature and a political subdivision of the State of Florida, 1900 9th Avenue, Tampa, Florida 33605 (hereinafter referred to as the "EPC"), and Gray Robinson, P.A., 201 N. Franklin St., Suite 2200, Tampa, Florida, 33602 (hereinafter referred to as the "Attorney").

WHEREAS, the EPC desires the services of Mark Bentley, Esq., with the firm of Gray Robinson, with respect to pending noise level and noise nuisance litigation involving the EPC; and

WHEREAS, it is in the best interests of the EPC to retain professional legal services with experience in the negotiation, pre-trial, and trial practices of those matters to provide specialized legal services; and

WHEREAS, the EPC desires to retain the Attorney to provide such services, as provided herein.

NOW, THEREFORE, in consideration of the foregoing premises, which shall be deemed an integral part of this Agreement, and of the mutual covenants and agreements set forth below, the EPC and the Attorney, intending to be legally bound, hereby agree as follows:

1. ATTORNEY DUTIES:

a) Scope of Services. The EPC hereby retains and employs the Attorney as its attorney to perform professional legal services, as requested and assigned by the General Counsel or her designee on a task-by-task basis, including, but not limited to:

i) Perform professional legal services regarding the EPC's enforcement of noise laws and rules at the Ford Amphitheatre and Florida State Fair Grounds; and

ii) Representing the EPC in any judicial, administrative, or quasi-judicial proceeding arising from the EPC's enforcement of its noise laws and rules, including but not limited to enforcement at the Ford Amphitheatre and Florida State Fair Grounds.

The Attorney agrees that Mark Bentley, Esq. will be the partner in charge of all matters arising under this Agreement. In consultation with the General Counsel or his designee, the Attorney may assign specific tasks under this Agreement to other attorneys or professionals as needed, pursuant to a task authorization.

b) All services authorized shall be evidenced by written task authorizations signed by EPC's General Counsel or his designee. Each task authorization shall specify the scope of the

services to be performed within the above categories, the time frame for completion, the number of hours projected for such performance, the estimated total of reimbursable expenses to be incurred, and the maximum compensation for performing the services.

2. EPC's DUTY. The EPC shall make available to the Attorney upon request, all such existing EPC studies, reports, and other available data and services of others pertinent to the aforementioned litigation and the Scope of Services under Section 1 of this Agreement that are necessary for the performance of the Attorney's services.

3. TERM. This Agreement shall take effect immediately upon its execution by the Environmental Protection Commission of Hillsborough County and the Attorney and shall continue until conclusion of the matters referenced in Section 1 above, unless earlier terminated pursuant to Section 9.

4. COMPENSATION AND EXPENSES. The EPC shall pay the Attorney as compensation for

professional legal services performed pursuant to this Agreement the following:

- a) Two hundred dollars (\$200.00) per hour for attorney services,
- b) All amounts agreed to in "Attachment A" for other costs and services; and
- c) All reasonable out-of-pocket expenses. The EPC shall reimburse the Attorney for all out-of-County traveling expenses (subject to the limitations of Section 112.061, Florida Statutes (2004), as it may be amended), (i) provided, the Attorney maintains appropriate documentation substantiating the expense, (ii) discloses such claim is true and correct as to every material matter, and (iii) honors a claim for refund by the County should such reimbursement be in excess of the statutory limit.
- d) Without prior approval of the General Counsel or his designee, a total number of hours per month not to exceed one hundred eighty (180). Should Attorney exhaust this limit on tasks covered by Section 1 of this Agreement, approval from the General Counsel or his designee shall be obtained prior to expending further time or resources on behalf of EPC by Attorney.

5. PAYMENT OF FEES AND EXPENSES. The fee for professional services and reimbursable expenses shall be submitted monthly by the Attorney to the EPC General Counsel, or its designee, for approval and transmittal to the County for approval and payment. Each invoice shall provide a detailed description of services performed and expenses incurred during the period covered by the invoice, together with supporting documentation.

6. CONFLICTS OF INTEREST. The Attorney accepts employment and agrees to perform in a professional manner all legal services necessary and proper for the protection of the interests of the EPC regarding the matter described in Section I of this Agreement. The Attorney represents that it presently does not represent any other clients which would conflict in any manner with the performance of the services required hereunder, especially Clear Channel Entertainment (or its subsidiaries) and the Florida State Fair Authority. During the term of this Agreement, the Attorney agrees it will not accept representation of another client to pursue interests that are adverse to the EPC's interests unless and until the Attorney has made full disclosure to the EPC of all the relevant facts, circumstances, and implications of the Attorney's undertaking of the two representations and the EPC has consented to the Attorney's representation of the other client. The circumstances to be considered in determining whether a client of Attorney has interests adverse to the EPC shall include, but not be limited to: (i) whether there is a substantial relationship between any matter in which the Attorney is

representing or has represented the EPC and the matter for the other client; (ii) whether the Attorney's representation of the other client will not implicate any confidential information the Attorney has received from the EPC; (iii) whether effective representation to the EPC and the discharge of the Attorney's professional responsibilities to the EPC will be prejudiced by the Attorney's representation of the other client; and (iv) whether the other client has also consented in writing based on the Attorney's full disclosure of the relevant facts, circumstances, and implications of the Attorney's undertaking the two representations. The EPC agrees, however, that it will not restrict the Attorney from securing other clients whose interests are not adverse to the EPC. If the Attorney is required to decline employment or to withdraw from employment under the provisions of this Section, no partner or associate of the Attorney's law firm may accept such employment or continue such employment.

7. DISCRIMINATION. During the performance of this Agreement, the Attorney assures the EPC it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Human Rights Act of 1997 and the Hillsborough County Affirmative Action Policies in that the Attorney does not, on the grounds of race, color, national origin, religion, sex, age, handicap or marital status discriminate in any form or manner against said Attorney's employees or applicants for employment. The Attorney understands and agrees this Agreement is conditioned upon the veracity of this Statement of Assurances. Other applicable Federal and State laws, executive orders, and regulations prohibiting the type of discrimination as herein above delineated are included by this reference thereto. This Statement of Assurances shall be interpreted to include Vietnam Era Veterans and handicapped persons within this protective range of applicability.

8. INDEMNIFICATION AND INSURANCE. The Attorney agrees to protect, defend, indemnify, and hold the EPC and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or due to any negligent act or omission of the Attorney, its employees, agents and subcontractors in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting its liability under this Agreement, the Attorney shall procure and maintain during the life of this Agreement professional liability insurance in an amount of Three Hundred Thousand Dollars (\$400,000) per claim and in a minimum amount of Three Hundred Thousand Dollars (\$400,000) aggregate.

9. TERMINATION. The EPC may terminate this Agreement upon fifteen (15) days advance written notice to the Attorney. In the event of termination, the Attorney agrees to transfer to the EPC any documents and other work product belonging to the EPC. In the event of termination, the Attorney shall immediately cease work hereunder and shall be compensated for billable hours of service rendered to the time of such termination and reimbursement for eligible and documented reimbursable expenses incurred prior to the date of termination, as approved by the EPC General Counsel or his designee.

10. NOTICE. Any notice required or permitted to be delivered hereunder shall be deemed to be properly made if addressed as follows and sent by United States certified mail, return receipt requested, or delivered in person with proof thereof.

To the Attorney:

Mark Bentley, Esq.
Gray Robinson, P.A.
201 N. Franklin St., Suite 2200
Tampa, Florida, 33602

To the EPC:

Richard Tschantz, General Counsel
1900 9th Avenue
Tampa, Florida 33605

11. MISCELLANEOUS.

- a) All communications between the EPC and the Attorney shall be deemed privileged and confidential attorney-client communications to the extent permitted by law;
- b) Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the EPC or the Attorney;
- c) The Attorney shall not sublet, assign, or transfer this Agreement or any work specifically set forth under this Agreement without the prior written consent of the EPC General Counsel or his designee;
- d) No changes or modifications of this Agreement shall be valid unless the same be in writing and signed by all parties hereto;
- e) It is understood that unusual and unforeseen circumstances could occur and that the County Attorney may request the Attorney's services for matters outside the scope contemplated by this Agreement, in which case the EPC General Counsel will advise the Attorney of the same, and at such time the Attorney and the EPC General Counsel shall consider and mutually agree upon the nature and scope of such work, and such work, upon such mutual agreement, shall be billed based on the compensation formula set forth in Section 4;
- f) Venue for any action, litigation, mediation, or arbitration arising out of this Agreement shall be in Hillsborough County, Florida;
- g) This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida;
- h) If any provision of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this Agreement which shall continue in full force and effect, provided the rights and obligations of the parties contained herein are not materially prejudiced and that the intentions of the parties can continue to be effective;
- i) This Agreement calls for Attorney to provide legal services, as an independent contractor, and Attorney shall not be considered an employee or agent of the EPC for any purpose. Attorney shall have authority to control the means and methods necessary to perform the services under this Agreement. In this regard, Attorney shall be fully responsible for employment, direction, supervision, compensation, and control of any and all persons employed by Attorney. Attorney shall comply with all worker's compensation, employers' liability, and other Federal, State, county and municipal laws, ordinances, and regulations required of an employer performing services as herein contemplated. Furthermore, Consultant is responsible for paying all income and employment taxes and the EPC shall not be responsible for collecting and/or paying withholding, FUTA, FICA, or any other state or federal taxes;
- j) But for those exempted or protected by law, all documents in this matter are public records and Attorney will maintain those documents subject to the public records law (Chp. 119, F.S.). This Agreement may be canceled in writing immediately by the EPC without prior notice, for refusal by the Attorney to allow public access to all documents, papers, letter, or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with the Agreement. The EPC or other authorized representatives shall have access to such records for audit purposes

during the term of this Agreement and for five (5) years following Agreement completion.
k) The EPC and the Attorney agree that each has played an equal part in the negotiation and drafting of this Agreement, and in the event any ambiguity should be asserted or realized in the interpretation or construction of this Agreement, the result of such ambiguity shall be equally assumed and realized by both parties; and
l) This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

IN WITNESS WHEREOF, the EPC and the Attorney have duly executed this Agreement on the day and year first above written,

**Environmental Protection Commission
of Hillsborough County**

Richard Garrity, PhD, Executive Director

WITNESS

Gray Robinson, P.A.

Name

Signature

Signature

Name

Title

GRAY ROBINSON

ATTORNEYS AT LAW

SUITE 2700
 201 N. FRANKLIN STREET (33602)
 POST OFFICE BOX 3324
 TAMPA, FL 33601
 TEL 813-273-5000
 FAX 813-273-5145
 gray-robinson.com

CLEMONT
 KEY WEST
 LAKELAND
 MELBOURNE
 ORLANDO
 TALLAHASSEE
 TAMPA

813-273-5041

MBENTLEY@GRAY-ROBINSON.COM

January 28, 2005

VIA FACSIMILE (813) 272-5287
 AND REGULAR U.S. MAIL

Richard T. Tschantz, Esquire
 General Counsel
 Environmental Protection Commission
 Administrative/ Legal Dept.
 1900 9th Avenue East
 Tampa, FL 33605

Re: *EPC v. CC Entertainment Music - Tampa, LLC, and Florida State Fair Authority;*
 Case No: 04-11404, Division J

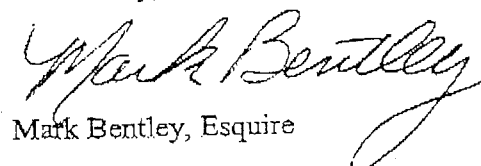
Dear Rick:

Thank you for selecting our firm to assist you in the above referenced matter. Specifically, this letter shall confirm that you have retained this law firm to appear as co-counsel and represent the Environmental Protection Commission of Hillsborough County's (the "Agency's") interest in the ongoing litigation cited above. The scope of our services will be mutually agreed upon as this case progresses.

As we discussed, we propose to perform the foregoing scope of work at the blended rates of \$200.00 per hour for our attorneys' fees, and \$100.00 per hour for paralegals, plus actual costs and expenses (no mark-ups), which include, but are not limited to, photocopying, postage, telephone long-distance and computer research charges. The firm does not charge for routine travel, however, in the unlikely event that long distance travel is required, the Agency would be responsible for travel costs including transportation, meals and lodging.

Should you have any questions about the scope of work or the terms of service, please do not hesitate to contact me. We welcome the opportunity to be of service and look forward to working with you and the Agency on this important matter.

Yours truly,



Mark Bentley, Esquire

MSB/hc

Attachment
 A-37-

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES BETWEEN
THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH
COUNTY AND ROGER WAYSON**

THIS AGREEMENT is entered into in Hillsborough County, Florida on this ____ day of _____, 2005, by and between the Environmental Protection Commission of Hillsborough County, an administrative agency created by Special Act of the Legislature and a political subdivision of the State of Florida, 1900 9th St., Tampa, Florida 33605 ("EPC"), and Roger L. Wayson, Ph.D., P.E., University of Central Florida, P.O. Box 162450, Orlando, FL 32816 ("Consultant").

W I T N E S S E T H

WHEREAS, it is the EPC's desire to retain a consultant to provide professional consulting services and litigation assistance services, including expert witness testimony, as provided herein; and

WHEREAS, the Consultant possesses unique professional experience that would satisfy the EPC's professional consulting and litigation assistance service requirements; and

WHEREAS, the EPC, having determined that it would be unable to obtain such services from another source, recognizes the Consultant to be a sole source for the purposes of providing the services set forth herein; and

WHEREAS, it is the Consultant's desire to provide professional consulting and litigation assistance service, as provided herein.

NOW, THEREFORE, in consideration of the foregoing premises, which shall be deemed an integral part of this Agreement, and of the mutual covenants and agreements set forth below, the EPC and Consultant, intending to be legally bound, hereby agree as follows:

1. **SCOPE OF SERVICE.** The EPC employs and retains Consultant to provide professional consulting services, including but not limited to architectural acoustics, noise analysis, sound engineering, community noise standards, noise regulation, and consulting and expert witness testimony, on an as-needed basis in connection with any existing or future litigation or administrative challenges related to noise emissions from the Ford Amphitheatre or any existing, proposed, adopted or enacted law, rule, regulation, permit, or other matter that may directly or indirectly affect the EPC regulatory duties as it pertains to noise nuisance and/or sound level limits. Such professional consulting services and expert testimony shall be requested and assigned by the EPC Executive Director or the General Counsel or their designee(s) on a task-by task basis. The Consultant acknowledges that this Agreement is to retain the professional consulting and expert witness services of Roger Wayson. Although the full resources of the Consultant will be available in terms of providing substantive technical support, depending on the particular needs of the EPC and subject to the concurrence of the EPC Executive Director or the General Counsel or their designee(s), Roger Wayson, individually, shall be

available to perform the services requested and assigned pursuant to this Agreement.

2. **EPC'S RESPONSIBILITY.** During the term of this Agreement, the EPC shall make available to the Consultant upon request, all such existing EPC studies, reports, and other available data and services of others pertinent to the Scope of Services under Section 1 of this Agreement that are determined by the EPC to be necessary for the performance of Consultant's services. The Consultant agrees that it will not disclose to any third person any of the strategies or information that the Consultant will be privy to by reason of the Consultant's performance under this Agreement without the prior written approval of the EPC. The above requirement as to disclosure shall not apply to strategies or information which is in the public domain; or is in Consultant's possession prior to receiving the strategies or information; or is received from a third party without the confidentiality obligation; or information or strategies required to be disclosed by law or governmental or judicial order.
3. **TERM.** This Agreement shall take effect immediately upon its full and complete execution by the EPC and the Consultant and shall continue until conclusion of the matters referenced in Section 1 above, including but not limited to any mediation hearings, arbitration hearings, administrative or civil litigation, and any appeals thereof, unless earlier terminated pursuant to Section 7.
4. **COMPENSATION AND EXPENSES.** Compensation for services rendered and expenses incurred by Consultant to this Agreement are as follows:
 - a. The EPC shall pay the Consultant for services rendered pursuant to Section 1 of this Agreement at the rate of \$100.00 per hour for the services of Dr. Wayson. The EPC shall only be billed at the rate of \$50.00 per hour for travel time from Consultant's place of business to locations in Hillsborough County.
 - b. Without prior approval of the General Counsel or his designee, a total number of hours per month not to exceed fifty (50). Should Consultant exhaust this limit on tasks covered by Section 1 of this Agreement, approval from the General Counsel or his designee shall be obtained prior to expending further time or resources on behalf of EPC by Consultant.
 - c. The EPC shall reimburse Consultant for reasonable out-of-pocket expenses, subject to the not-to-exceed limitations set forth in section 4 above. The EPC shall reimburse Consultant for all reasonable traveling expenses (subject to the limitations of Section 112.061, Florida Statutes, as may be amended from time to time), provided Consultant (i) maintains appropriate documentation substantiating the expense, (ii) discloses such claim is true and correct as to every material matter, and (iii) honors a claim for refund by the EPC should such reimbursement be in excess of the statutory limit. Reimbursable expenses shall be limited to travel expenses, courier charges, and other expenses involving direct party payments specifically authorized by the EPC Executive Director or the General Counsel or their designee(s).

5. **PAYMENT OF FEES AND EXPENSES.**

- a. The Consultant shall perform no duties which would result in exceeding the not-to-exceed limitations set forth in section 4, above.
- b. The Consultant shall bill the EPC on a monthly basis and each billing shall provide a general description of services performed and costs and expenses incurred during the period covered by the invoice, together with supporting documentation. Consultant shall itemize on each invoice any work performed for EPC. Each invoice shall also indicate the total amount invoiced to date as well as the total remaining balance of the Agreement. The original billing shall be submitted to the EPC General Counsel or designee. The EPC shall pay such charges that are reasonable and consistent with this Agreement within 30 days after receiving Consultant's invoice, provided the Consultant has not violated the terms of this Agreement.

6. **DISCRIMINATION.** During the term of this Agreement, the Consultant assures the EPC it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Human Rights Act of 1997 and the Hillsborough County Affirmative Action Policies in that Consultant does not, on the grounds of race, color, national origin, religion, sex, age, handicap or marital status discriminate in any form or manner against Consultant's employees or applicants for employment. Consultant understands and agrees this Agreement is conditioned upon the veracity of this Statement of Assurances. Other applicable Federal and State laws, executive orders and regulations prohibiting the type of discrimination as herein above delineated are included by this reference thereto. This Statement of Assurances shall be interpreted to include Vietnam Era Veterans and Handicapped persons within this protective range of applicability.

7. **TERMINATION.** The EPC may terminate this Agreement upon ten (10) days advance written notice to the Consultant. In the event of termination, Consultant shall immediately cease work hereunder and shall be compensated for billable hours of service rendered to the date of notification and reimbursement for eligible and documented reimbursable expenses incurred prior to the date of notification, as approved by the EPC. Upon termination, the Consultant shall deliver to the EPC all papers, surveys, reports and other materials prepared by the Consultant pursuant to this Agreement.

8. **NOTICE.** Any notice required or permitted to be delivered hereunder shall be deemed to be properly made if addressed as follows and sent by United States certified mail, return receipt requested, or delivered in person with proof hereof:

To the Consultant:

Roger L. Wayson, Ph.D., P.E.
University of Central Florida
P.O. Box 162450
Orlando, Florida 32816

To the EPC:

Richard Tschantz, General Counsel
EPC Legal Department
1900 9th Ave.
Tampa, Florida 33605

All invoices shall be sent to this address.

9. **MISCELLANEOUS.**

- a. All documents prepared by Consultant pursuant to this Agreement are the property of the EPC.
- b. In the performance of its obligations under Section 1 of this Agreement, the Consultant shall assume, towards the EPC, a professional relationship of trust, confidence, and fair dealing. The Consultant shall render services whose quality is consistent with the provisions of this Agreement and prevailing industry standards.
- c. This Agreement calls for Consultant to perform professional consulting services and, if necessary, litigation assistance, including expert testimony, as an independent contractor, and Consultant shall not be considered an employee or agent of the EPC for any purpose. Consultant shall have sole authority to control the means and methods necessary to perform the services under this Agreement. In this regard, Consultant shall be fully responsible for employment, direction, supervision, compensation and control of any and all persons employed by Consultant. Consultant shall comply with all worker's compensation, employers' liability, and other Federal, State, county and municipal laws, ordinances, and regulations required of an employer performing services as herein contemplated. Furthermore, Consultant is responsible for paying all income and employment taxes and the EPC shall not be responsible for collecting and/or paying withholding, FUTA, FICA, or any other state or federal taxes.
- d. The Consultant represents that it is not presently engaged, nor will it accept engagement during the term of this Agreement, to perform any services for the Florida State Fair Authority or Clear Channel Entertainment (or its subsidiaries) without prior written approval of the EPC. The Consultant also represents that it has no known interest, either directly or indirectly, which would conflict in any manner with the performance of the services required hereunder. The Consultant agrees to act solely on behalf of the EPC and not as a representative of any other party where such representation, to Consultant's knowledge, would create a conflict with the performance of the services required hereunder. During the term of this Agreement, the Consultant shall not accept representation of another client to pursue interests that are adverse to the EPC's interest (as such interests are known to the Consultant) unless and until the Consultant has made full disclosure to the EPC of all relevant facts, circumstances and implications of the Consultant's undertaking the two representations and the EPC has consented to the Consultant's representation of the other client. The EPC agrees, however, that it will not unreasonably restrict the Consultant from securing other clients regarding interests that are not adverse to the EPC's interests. Furthermore, nothing herein shall disqualify Consultant from being considered as a consultant on another project or task administered by the EPC.
- e. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the EPC or Consultant.
- f. The Consultant agrees to protect, defend, indemnify and hold the EPC and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character to the extent caused by any negligent or intentional wrongful act or omission of the Consultant, its employees, agents and subcontractors in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting its liability under this Agreement, the Consultant shall procure and maintain during the life of this Agreement professional liability insurance (including errors and omissions) in a minimum amount of \$300,000 per occurrence and in a minimum amount of \$300,000 aggregate.

- g. Consultant shall not sublet, assign, or transfer this Agreement or any work specifically set forth under this Agreement without the prior written consent of the EPC.
- h. No changes or modifications of this Agreement shall be valid unless the same are in writing and signed by all parties hereto.
- i. But for those exempted or protected by law, all documents in this matter are public records and Consultant will maintain those documents subject to the public records law (Chp. 119, F.S.). This Agreement may be canceled in writing immediately by the EPC without prior notice, for refusal by the Consultant to allow public access to all documents, papers, letter, or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with the Agreement. The EPC or other authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following Agreement completion.
- j. Venue for any action, litigation, or arbitration arising out of this Agreement shall be in Hillsborough County, Florida.
- k. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.
- l. If any provision of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this Agreement which shall continue in full force and effect, provided the rights and obligations of the parties contained herein are not materially prejudiced and that the intentions of the parties can continue to be effected.
- m. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ROGER WAYSON, Ph.D., P.E.
CONSULTANT

WITNESS:

By: _____

By: _____

Print Name: _____

Title: _____

By: _____

Date: _____

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

By: _____

Richard Garrity, PhD
 Executive Director, EPC

Professional Contract for Services
 February 2005

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES BETWEEN
THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH
COUNTY AND SIEBEIN ASSOCIATES, INC.**

THIS AGREEMENT is entered into in Hillsborough County, Florida on this ____ day of _____, 2005, by and between the Environmental Protection Commission of Hillsborough County, an administrative agency created by Special Act of the Legislature and a political subdivision of the State of Florida, 1900 9th St., Tampa, Florida 33605 ("EPC"), and Gary W. Siebein of Siebein Associates, Inc., 625 NW 60th Street, Suite C, Gainesville, FL 32607 ("Consultant").

W I T N E S S E T H

WHEREAS, it is the EPC's desire to retain a consultant to provide professional consulting services and litigation assistance services, including expert witness testimony, as provided herein; and

WHEREAS, the Consultant possesses unique professional experience that would satisfy the EPC's professional consulting and litigation assistance service requirements; and

WHEREAS, the EPC, having determined that it would be unable to obtain such services from another source, recognizes the Consultant to be a sole source for the purposes of providing the services set forth herein; and

WHEREAS, it is the Consultant's desire to provide professional consulting and litigation assistance service, as provided herein.

NOW, THEREFORE, in consideration of the foregoing premises, which shall be deemed an integral part of this Agreement, and of the mutual covenants and agreements set forth below, the EPC and Consultant, intending to be legally bound, hereby agree as follows:

1. **SCOPE OF SERVICE**. The EPC employs and retains Consultant to provide professional consulting services, including but not limited to architectural acoustics, noise analysis, sound engineering, community noise standards, noise regulation, and consulting and expert witness testimony, on an as-needed basis in connection with any existing or future litigation or administrative challenges related to noise emissions from the Ford Amphitheatre or any existing, proposed, adopted or enacted law, rule, regulation, permit, or other matter that may directly or indirectly affect the EPC regulatory duties as it pertains to noise nuisance and/or sound level limits. Such professional consulting services and expert testimony shall be requested and assigned by the EPC Executive Director or the General Counsel or their designee(s) on a task-by task basis. The Consultant acknowledges that this Agreement is to retain the professional consulting and expert witness services of Gary Siebein. Although the full resources of the Consultant will be available in terms of providing substantive technical support, depending on the particular needs of the EPC and subject to the concurrence of the EPC Executive Director or the General Counsel or their designee(s), Gary Siebein, individually, shall be available

to perform the services requested and assigned pursuant to this Agreement.

2. **EPC'S RESPONSIBILITY.** During the term of this Agreement, the EPC shall make available to the Consultant upon request, all such existing EPC studies, reports, and other available data and services of others pertinent to the Scope of Services under Section 1 of this Agreement that are determined by the EPC to be necessary for the performance of Consultant's services. The Consultant agrees that it will not disclose to any third person any of the strategies or information that the Consultant will be privy to by reason of the Consultant's performance under this Agreement without the prior written approval of the EPC. The above requirement as to disclosure shall not apply to strategies or information which is in the public domain; or is in Consultant's possession prior to receiving the strategies or information; or is received from a third party without the confidentiality obligation; or information or strategies required to be disclosed by law or governmental or judicial order.

3. **TERM.** This Agreement shall take effect immediately upon its full and complete execution by the EPC and the Consultant and shall continue until conclusion of the matters referenced in Section 1 above, including but not limited to any mediation hearings, arbitration hearings, administrative or civil litigation, and any appeals thereof, unless earlier terminated pursuant to Section 7.

4. **COMPENSATION AND EXPENSES.** Compensation for services rendered and expenses incurred by Consultant to this Agreement are as follows:

- a. The EPC shall pay the Consultant for services rendered pursuant to Section 1 of this Agreement at the rates as described in "Attachment A" of this Agreement.
- b. Without prior approval of the General Counsel or his designee, a total number of hours per month not to exceed eighty (80). Should Consultant exhaust this limit on tasks covered by Section 1 of this Agreement, approval from the General Counsel or his designee shall be obtained prior to expending further time or resources on behalf of EPC by Consultant.
- c. The EPC shall reimburse Consultant for reasonable out-of-pocket expenses, subject to the not-to-exceed limitations set forth in section 4 above. The EPC shall reimburse Consultant for all reasonable traveling expenses (subject to the limitations of Section 112.061, Florida Statutes, as may be amended from time to time), provided Consultant (i) maintains appropriate documentation substantiating the expense, (ii) discloses such claim is true and correct as to every material matter, and (iii) honors a claim for refund by the EPC should such reimbursement be in excess of the statutory limit. Reimbursable expenses shall be limited to travel expenses, courier charges, and other expenses involving direct party payments specifically authorized by the EPC Executive Director or the General Counsel or their designee(s).

5. **PAYMENT OF FEES AND EXPENSES.**

- a. The Consultant shall perform no duties which would result in exceeding the not-to-exceed limitations set forth in section 4, above.

b. The Consultant shall bill the EPC on a monthly basis and each billing shall provide a general description of services performed and costs and expenses incurred during the period covered by the invoice, together with supporting documentation. Consultant shall itemize on each invoice any work performed for EPC. Each invoice shall also indicate the total amount invoiced to date as well as the total remaining balance of the Agreement. The original billing shall be submitted to the EPC General Counsel or designee. The EPC shall pay such charges that are reasonable and consistent with this Agreement within 30 days after receiving Consultant's invoice, provided the Consultant has not violated the terms of this Agreement.

6. **DISCRIMINATION.** During the term of this Agreement, the Consultant assures the EPC it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Human Rights Act of 1997 and the Hillsborough County Affirmative Action Policies in that Consultant does not, on the grounds of race, color, national origin, religion, sex, age, handicap or marital status discriminate in any form or manner against Consultant's employees or applicants for employment. Consultant understands and agrees this Agreement is conditioned upon the veracity of this Statement of Assurances. Other applicable Federal and State laws, executive orders and regulations prohibiting the type of discrimination as herein above delineated are included by this reference thereto. This Statement of Assurances shall be interpreted to include Vietnam Era Veterans and Handicapped persons within this protective range of applicability.

7. **TERMINATION.** The EPC may terminate this Agreement upon ten (10) days advance written notice to the Consultant. In the event of termination, Consultant shall immediately cease work hereunder and shall be compensated for billable hours of service rendered to the date of notification and reimbursement for eligible and documented reimbursable expenses incurred prior to the date of notification, as approved by the EPC. Upon termination, the Consultant shall deliver to the EPC all papers, surveys, reports and other materials prepared by the Consultant pursuant to this Agreement.

8. **NOTICE.** Any notice required or permitted to be delivered hereunder shall be deemed to be properly made if addressed as follows and sent by United States certified mail, return receipt requested, or delivered in person with proof hereof:

To the Consultant:	To the EPC:
Gary W. Siebein, FASA, AIA Siebein Associates, Inc. 625 NW 60 th Street, Suite C Gainesville, FL 32607	Richard Tschantz, General Counsel EPC Legal Department 1900 9 th Ave. Tampa, Florida 33605

All invoices shall be sent to this address.

9. **MISCELLANEOUS.**
a. All documents prepared by Consultant pursuant to this Agreement are the property of the EPC.
b. In the performance of its obligations under Section 1 of this Agreement, the Consultant shall assume, towards the EPC, a professional relationship of trust, confidence, and fair dealing. The

Consultant shall render services whose quality is consistent with the provisions of this Agreement and prevailing industry standards.

- c. This Agreement calls for Consultant to perform professional consulting services and, if necessary, litigation assistance, including expert testimony, as an independent contractor, and Consultant shall not be considered an employee or agent of the EPC for any purpose. Consultant shall have sole authority to control the means and methods necessary to perform the services under this Agreement. In this regard, Consultant shall be fully responsible for employment, direction, supervision, compensation and control of any and all persons employed by Consultant. Consultant shall comply with all worker's compensation, employers' liability, and other Federal, State, county and municipal laws, ordinances, and regulations required of an employer performing services as herein contemplated. Furthermore, Consultant is responsible for paying all income and employment taxes and the EPC shall not be responsible for collecting and/or paying withholding, FUTA, FICA, or any other state or federal taxes.
- d. The Consultant represents that it is not presently engaged, nor will it accept engagement during the term of this Agreement, to perform any services for the Florida State Fair Authority or Clear Channel Entertainment (or its subsidiaries) without prior written approval of the EPC. The Consultant also represents that it has no known interest, either directly or indirectly, which would conflict in any manner with the performance of the services required hereunder. The Consultant agrees to act solely on behalf of the EPC and not as a representative of any other party where such representation, to Consultant's knowledge, would create a conflict with the performance of the services required hereunder. During the term of this Agreement, the Consultant shall not accept representation of another client to pursue interests that are adverse to the EPC's interest (as such interests are known to the Consultant) unless and until the Consultant has made full disclosure to the EPC of all relevant facts, circumstances and implications of the Consultant's undertaking the two representations and the EPC has consented to the Consultant's representation of the other client. The EPC agrees, however, that it will not unreasonably restrict the Consultant from securing other clients regarding interests that are not adverse to the EPC's interests. Furthermore, nothing herein shall disqualify Consultant from being considered as a consultant on another project or task administered by the EPC.
- e. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the EPC or Consultant.
- f. The Consultant agrees to protect, defend, indemnify and hold the EPC and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character to the extent caused by any negligent or intentional wrongful act or omission of the Consultant, its employees, agents and subcontractors in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting its liability under this Agreement, the Consultant shall procure and maintain during the life of this Agreement professional liability insurance (including errors and omissions) in a minimum amount of \$300,000 per occurrence and in a minimum amount of \$300,000 aggregate.
- g. Consultant shall not sublet, assign, or transfer this Agreement or any work specifically set forth under this Agreement without the prior written consent of the EPC.
- h. No changes or modifications of this Agreement shall be valid unless the same are in writing and signed by all parties hereto.

- i. But for those exempted or protected by law, all documents in this matter are public records and Consultant will maintain those documents subject to the public records law (Chp. 119, F.S.). This Agreement may be canceled in writing immediately by the EPC without prior notice, for refusal by the Consultant to allow public access to all documents, papers, letter, or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with the Agreement. The EPC or other authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following Agreement completion.
- j. Venue for any action, litigation, or arbitration arising out of this Agreement shall be in Hillsborough County, Florida.
- k. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.
- l. If any provision of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this Agreement which shall continue in full force and effect, provided the rights and obligations of the parties contained herein are not materially prejudiced and that the intentions of the parties can continue to be effected.
- m. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**SIEBEIN ASSOCIATES, INC.
CONSULTANT**

WITNESS:

By: _____

By: _____

Print Name: _____

Title: _____

By: _____

Date: _____

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

By: _____

Richard Garrity, PhD
Executive Director, EPC

Professional Contract for Services
February 2005

SIEBBIN ASSOCIATES, INC.
Consultants in Architectural Acoustics
625 NW 60th Street, Suite C Gainesville, Florida 32607
Telephone - (352)-331-5111 Facsimile - (352)-331-0009

January 25, 2005

Mr. Richard Tschantz, General Council
Hillsborough County Environmental Protection Commission
1900 9th Avenue
Tampa, Florida 33605

Dear Mr. Tschantz:

We are pleased to provide a proposal for acoustical consulting services on an hourly basis for various acoustical issues related to the EPC vs Clear Channel and Florida State Fair case in Hillsborough County, Florida as we have discussed during our recent telephone conversation and electronic mail correspondence.

The work would be conducted on an hourly basis at our normal rates that are listed below. -A Principal Consultant will be involved with a review of noise issues with the Counsel and Client; supervising acoustical field measurements if needed; quality control review for the work; project meetings; telephone conversations with the Counsel to determine appropriate design criteria for the project; and discussions of the results of our findings. A Principal Consultant or Senior Consultant will prepare reports, reach conclusions and present expert witness testimony as required. A Senior Consultant or Consultant will take any acoustical measurements required; review product literature, compare test reports for various products, draft reports and perform any calculations or research required. Sketches, cut sheets etc. will be prepared by Junior Consultants or Technical staff. The total fee for a project such as this would depend on the specific tasks required to complete the work and the amount of time required to reach a suitable solution.

Our basic services include computer modeling of room shaping, room finish selections, sound transmission loss of partitions, environmental noise and HVAC noise control for all projects. Many of the programs we use were developed by our firm.

Terms

Table 1. Siebein Associates, Inc. Hourly Billing Rates

Principal Consultant 1	\$ 185.00 per hour
Principal Consultant 2	\$ 165.00 per hour
Senior Consultant 1	\$ 120.00 per hour
Senior Consultant 2	\$ 100.00 per hour
Consultant 1	\$ 90.00 per hour
Consultant 2	\$ 80.00 per hour
Consultant 3	\$ 65.00 per hour
Administrative	\$ 60.00 per hour
Junior Consultant	\$ 55.00 per hour
Technical staff	\$ 40.00 per hour

Members of the Acoustical Society of America, the Institute of Noise Control Engineers and
the National Council of Acoustical Consultants

1. These rates include office overhead and limited reproduction of our recommendations.
2. Long distance telephone calls, fax transmissions, limited printing of our recommendations, express mail and travel costs are included in the lump sum fees described above. They will be listed as reimbursable expenses with no mark-up added.
3. Travel time and time for job meetings and site visits deemed necessary in addition to those specifically noted above will be billed at the normal hourly rates from time of departure at our office in Gainesville, Florida to the time of our return. Costs of travel will also be included as reimbursable expenses.
4. Our professional liability is limited to the amount of our fee for projects with limited consulting services such as this project.
5. Siebein Associates requires both electronic and hard paper copies of drawings and specifications for our use on projects. If these are not provided by the Architect, they will be billed as reimbursable expenses.
6. Invoices will be submitted monthly during the design process. Payment is due upon receipt unless arrangements are made in advance for an alternate payment schedule. Payments received more than 30 days after invoice are assessed finance charges of 1% per month and interest charges of 1 1/2% per month accrued from date of invoice.

Your signature in the space provided below indicates your consent to these terms and your authorization to proceed with the Work. Please sign and return a copy of this document by facsimile transmission so we can proceed. Send one signed original copy to us by mail for our records and retain one signed copy for your records.

Thank you for considering our firm to work with you. We look forward to hearing from you in the near future in this regard.

Sincerely,

SIEBEIN ASSOCIATES, INC.



Gary W. Siebein, FASA, AIA
President and Principal Consultant
GWS/ras

Signature

Date

Printed Name and Title for EPC of Hillsborough County



EPC Agenda Item Cover Sheet

Date of EPC Meeting: February 17, 2005

Subject: Request for Authority to Take Legal Action regarding Sterling Jackson

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

Division: Waste Management Division – Paula Dent, Enforcement Specialist

Recommendation: Grant authority to pursue appropriate legal action and settlement authority

Brief Summary: Sterling Jackson has violated Chapter 62-761, F.A.C., Chapter 1-12, Rules of the EPC, and Section 12 of the Hillsborough County Environmental Protection Act by failing to properly close underground storage tanks (UST's).

Background: Sterling Jackson owns property located at 520 E. Floribraska Avenue, Tampa, Florida. There are four, unmaintained (abandoned) and unprotected, bare steel underground storage tanks (UST's) on the property identified by the DEP as facility #299101452. Mr. Jackson has owned the property since January 1998.

On July 26, 2002, EPC staff issued a Citation and Order to Correct to Sterling Jackson. Mr. Jackson advised EPC staff that he did not have the funds to properly close the UST's and requested an extension to appeal the Citation. An Order was granted for a time extension, however Mr. Jackson did not appeal the Citation and it became final on October 19, 2002.

Staff has attempted to work with Mr. Jackson to resolve the situation and has repeatedly requested financial information to prove his inability to perform the required work. To date, EPC has not received any financial information and the UST's have not been closed.

Sterling Jackson has violated Chapter 62-761, F.A.C., Chapter 1-12, Rules of the EPC, and Section 12 of the Hillsborough County Environmental Protection Act by failing to properly close UST's. Since Mr. Jackson has not responded to EPC staff efforts to resolve this matter, staff recommends the initiation of appropriate legal action.

List of Attachments: None



EPC Agenda Item Cover Sheet

Date of EPC Meeting: February 17, 2005

Subject: Amphitheatre Noise Enforcement Update

Consent Agenda _____ **Regular Agenda:** X **Public Hearing** _____

Division: Legal Department and the Air Management Division

Recommendation: Receive status report.

Brief Summary: On December 21, 2004, the EPC filed a complaint and a motion for temporary injunction against CC Entertainment Music – Tampa, LLC and the Florida State Fair Authority for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise) regarding noise level violations and noise nuisance violations stemming from concerts held at the new Ford Amphitheatre. The Hearing for Temporary Injunction is now set for February 26, 2005. Due to the importance of the injunction hearing and the need for counsel involved early in the process and after a closed session on January 20, 2005, the EPC authorized staff to hire outside counsel and expert witnesses. The EPC has retained Mark Bentley, Esq. of Gray Robinson, P.A. Mediation is scheduled for February 22, 2005.

Background: Pursuant to Commission direction, on December 21, 2004, the EPC filed a complaint and a motion for temporary injunction against CC Entertainment Music – Tampa, LLC and the Florida State Fair Authority for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise) regarding noise level violations and noise nuisance violations stemming from concerts held at the new Ford Amphitheater. Among other things, the complaint seeks to assess penalties and implement permanent corrective measures at the facility due to the Defendants' violations of rule-based noise level standards and for nuisance violations. The temporary injunction seeks to halt all concerts at the Amphitheater until corrective measures are implemented.

The EPC had an injunction hearing scheduled for January 14, 2005, but Judge Holder heard an emergency motion for continuance on January 12, 2005 and, citing the complexity of the issues, issued an Order granting the continuance until February 4, 2005. Subsequently, due to the judge's own scheduling conflict, the Hearing for Temporary Injunction was moved to February 26, 2005. Settlement meetings and extensive discovery have commenced. Due to the importance of the injunction hearing and the need for counsel involved early in the process, on January 20, 2005, the EPC authorized the EPC staff to hire outside counsel and expert witnesses. The EPC has retained Mark Bentley, Esq. of Gray Robinson, P.A. and also has retained two noise experts Gary Siebein and Dr. Roger Wayson. Mediation is scheduled for February 22, 2005. The EPC also voted to not pursue the temporary injunction against the Fair, because the Fair agreed to enter into a memorandum of understanding that imposes various noise limiting conditions on the 2005 Fair.

There are also two pending administrative challenges to EPC citations which are a separate matter from this civil suit and which cannot be discussed.

List of Attachments: None

AGENDA ITEM COVER SHEET

Date: 2/17/05

Agenda Item: 2004-05 Pollution Recovery Fund Projects

Description/Summary:

Applications for Pollution Recovery Funds have been received and projects have been reviewed by EPC staff and by CEAC. Recommendations for project approval or denial will be presented for Commission consideration.

Commission Action Recommended:

Recommend Commission concur with EPC Staff and CEAC and vote to approve 7 projects being recommended for approval and deny 3 projects recommended for denial.

2004 – 2005 Pollution Recovery Fund Project Summary

Total PRF Funds <u>Available</u> for Projects:	\$692,186.00 (As of 12/31/04)
Total PRF Funds <u>Approved</u> for Projects:	\$376,910.40
Total Remaining <u>Available</u> for Projects:	\$315,275.60

7 Projects Recommended for Approval by both EPC / CEAC

3 Projects Recommended for Denial by both EPC / CEAC

2 Project Applications Withdrawn (EPC Lobby & Solar Photo Voltaic Array)

✓ Health Advisory Signs for Beaches / Hillsborough Co. Health Dept.

- EPC Staff & CEAC Recommend Approval for \$1,531.40 (CEAC Vote 12-0)
- Construction of permanent health advisory signs at 9 public beaches
- Approved once. Future funding needs should be addressed by Health Dept. budget

✓ Field Measurement of Wave Energy in Hillsborough Bay / TBEP

- EPC Staff & CEAC Recommend Approval for \$125,000 (CEAC Vote 8-4)
- Monitoring of natural and man-made energy in Hillsborough & Middle Tampa Bay
- Identify areas of potential seagrass impacts and lagging recovery areas
- Formulate long-term seagrass management strategies in Tampa Bay

✓ Water and Coastal Area Restoration & Maint. / Save Our Canals

- EPC Staff & CEAC Recommend Approval for \$41,379 (CEAC Vote 10-1)
- Approval of Phase One only: Stormwater BMP's in Old Baycrest
- Installation & Maintenance of debris collecting devices (curb inlet baskets or similar)

✓ Port of Tampa Stormwater Improvement & Enhancement / Tampa Port Auth.

- EPC Staff & CEAC Recommend Approval for \$45,000 (CEAC Vote 8-4)
- Identification, Enhancement and Improvement of stormwater management on Port property
- Encourages Participation in the Federal Portfields Program

✓ G. Maynard Underground Storage Tank Closure / EPC Waste Division

- EPC Staff & CEAC Recommend Approval for \$20,000 (CEAC Vote 12-0)
- Provides for Cleanup of 5 Tanks at 402 S. MacDill Ave.
- Current Property Owner is Legally Indigent and Cannot Pay for Tank Removal
- A Lien on the Property Will Allow for the PRF to be Reimbursed Upon Future Sale

School Bus Diesel Retrofit / Hillsborough County Schools

- EPC Staff & CEAC Recommend Approval for \$100,000 (CEAC Vote 12-0)
- Program will Reduce Diesel Emissions That Degrade Ambient Air Quality
- Reduction in School Children's Exposure to Toxic Diesel Fumes
- Partnership Between Hillsborough County Schools, EPC and EPA

Natures Classroom Capital Campaign

- EPC Staff & CEAC Recommend Approval for \$44,000 (CEAC Vote 11-0)
- Part of an Overall Renovation and Restoration of Facilities at Natures Classroom
- PRF Funding is Specifically Earmarked for Interpretive & ADA Compliant Pathways

X Drinking Water Mitigation for Buster Bean Drive / Taylor Rd. Civic Assoc.

- EPC Staff & CEAC Recommend Denial (\$37,400) (CEAC Vote 6-3)
- PRF is not the Appropriate Funding Source for Drinking Water Projects
- Contaminant Exceedances are for Secondary Standards (Taste & Odor Related)
- Health Based Standards Have Not Been Exceeded

EPC Staff does concur with the applicant that the people living on Buster Bean Dr. would be good candidates for government supplied water. The homes are in an area proximal to a superfund site and many industrial sources and some research would likely indicate the water quality is degraded, although not necessarily exceeding health based standards. That said, however, the staff feels that other, more appropriate funding sources exist and there is considerable concern that the fund would be rapidly depleted if precedence is established for drinking water projects in Hillsborough County. The Executive Director has committed his staff to help the applicants find alternative solutions to this issue.

X Ethanol Production Plant Feasibility Study / Kisinger Campo & Associates Corp.

- EPC Staff & CEAC Recommend Denial (\$75,000) (CEAC Vote 12-0)
- Project Would Help Develop Proprietary Technology
- Project Did Not Demonstrate How it Would Produce Usable Quantities of Ethanol

X Aircraft Wash Racks at Hills. Co. G.A. Airports / Hills. Co. Aviation Authority

- EPC Staff & CEAC Recommend Denial (\$200,000) (CEAC Vote 12-0)
- Stated Project Goals are Already Part of Existing Best Management Practices
- Wash Water / Wastewater Management is Already an EPC Regulated Activity

2004-05 PROJECT REQUESTS FOR POLLUTION RECOVERY FUND

APOLLO BEACH SPECIATION MONITORING

APPLICANT: EPC Air Management Division

This Project will allow the purchase of a PM2.5 speciation air monitor that will measure fine particulates in the Apollo Beach area as well as help better define the air quality of the Tampa bay area as a whole.

PRF Request: \$14,000

Total Cost: \$ 66,100

EPC Staff Recommendation: Approval

***Note: This project was reviewed out-of-cycle and has already received full approval from the EPC Board. It remains in this summary for internal tracking purposes only.*

CEAC Members approved project on 10/4/04 by 13-0 votes / Air Management Division

Project Manager: Tom Tamanini

Phone: 813-272-5960 Ext. 1256

CEAC Recommendation: Approval / 13-0**

2. HEALTH ADVISORY SIGNS FOR BEACHES

APPLICANT: HILLSBOROUGH COUNTY HEALTH DEPT.

This project is to construct permanent signs at nine public beaches in Hillsborough County to ensure the public is properly informed of health advisories.

PRF Request: \$1,531.40

Total Cost: \$1,531.40

EPC Staff Recommendation: Approval

The staff feels that this is a worthy project that should receive funding with the condition that this is a one-time event. Future funding for signage should be planned for in the Health Dept. budget.

CEAC Members reviewing: Ciara Jaladoni, Cheryl Bradford, Hallie Calig / Water Management Division

Project Manager: Eliot Gregos

Phone: 813-307-8015 Ext. 5902

CEAC Recommendation: Approval / 12-0

3. DRINKING WATER MITIGATION FOR BUSTER BEAN DRIVE

APPLICANT: TAYLOR ROAD CIVIC ASSOCIATION

This project is to supply residents of Buster Bean Dr. with a county water supply to alleviate the use of contaminated private wells in the area.

PRF Request: \$37,400

Total Cost: \$37,400

EPC Staff Recommendation: Denial

The staff feels that there are other, more appropriate funding sources available for this project and that there is conflicting information with regard to the contamination data presented. Waste Management Division has volunteered to work with the applicant to find alternative funding sources and other possible means of completing this project.

CEAC Members reviewing: Cam Oberting, Hallie Calig, Harold Falls / Waste Management Division

Project Manager: Cam Oberting

Phone: 813-246-5183

CEAC Recommendation: Denial / 6-3

4. ROGER P. STEWART BUILDING LOBBY DISPLAY

APPLICANT: EPC ENVIRONMENTAL RESOURCES MANAGEMENT DIVISION

This project is to provide an educational display and kiosk to be located in the lobby of the new Roger P. Stewart Bldg., EPC Headquarters in Sabal Park.

PRF Request: \$20,000

Total Cost: \$20,000

EPC Staff Recommendation: Withdrawn

The staff feels that this project does not meet the legal sufficiency necessary to be funded by PRF.

CEAC Members reviewing: Marilyn Smith, Cheryl Bradford, Hallie Calig / Wetlands Management Division

Project Manager: Bob Stetler

Phone: 813-272-5960 Ext. 1088

CEAC Recommendation: N/A

5. **FIELD MEASUREMENT OF WAVE ENERGY IN HILLSBOROUGH BAY**
APPLICANT: TAMPA BAY ESTUARY PROGRAM

This project will provide measurements of wave energy in Hillsborough Bay and Middle Tampa Bay to identify areas where seagrasses may not recover due to natural or manmade waves and where shoreline erosion may be expected. Information will be used for long-term habitat management strategies in the bay.

PRF Request: \$125,000

Project Manager: Holly Greening

Total Cost: \$203,250

Phone: 727-893-2765

EPC Staff Recommendation: Approval

CEAC Recommendation: Approval / 8-4

The staff feels that this is an important project which has broader applications throughout the bay and has support and funding at the local, state and federal level.

CEAC Members reviewing: Cheryl Bradford, Hallie Caig, David Jellerson / Wetlands Management Division

6. **ETHANOL PRODUCTION PLANT FEASIBILITY STUDY**
APPLICANT: KISINGER CAMPO & ASSOCIATES CORP.

This project proposes to conduct a feasibility study for the development of an ethanol production from municipal yard waste facility and to evaluate locations in which municipal yard and wood waste can be cost effectively assessed.

PRF Request: \$75,000

Project Manager: Bradley Krohn

Total Cost: \$75,000

Phone: 941-388-5547

EPC Staff Recommendation: Denial

CEAC Recommendation: Denial / 12-0

The staff feels that this project would generate a proprietary technological advantage to the applicant and does not adequately demonstrate how the project would produce usable quantities of ethanol.

CEAC Members reviewing: Roy Davis, Harold Falls, Wayne Echelberger, Hallie Calig / Waste Management

7. **WATER AND COASTAL AREA RESTORATION & MAINTENANCE**
APPLICANT: SAVE OUR CANALS

The project will rehabilitate canals in Hillsborough County by removing debris and providing new filtration devices for stormwater outflows and participating in long-term monitoring and education.

PRF Request: \$145,000

Project Manager: Marianne Cufone

Total Cost: \$145,000

Phone: 813-881-0150

EPC Staff Recommendation: Approval

CEAC Recommendation: Approval/ 10-1**

The staff feels that this project has potential as a small scale, focused pilot project with clearly defined goals and objectives. The applicant has worked diligently with EPC and Hillsborough County Stormwater staff to obtain direction and support to go forward.

***Note: Approval was based on a reduction of funding to \$41,379 for Phase I – Purchase, Installation and Maintenance of curb inlet devices only.*

CEAC Members reviewing: David Jellerson, Wayne Echelberger, Hallie Calig / ERM Division

8. **PORT OF TAMPA STORMWATER IMPROVEMENT AND ENHANCEMENT**
APPLICANT: TAMPA PORT AUTHORITY

This project will allow participation in the Federal Portfields Program. One of the main identified projects was the enhancement and improvement of the existing stormwater system on Hooker's Point, incorporating retention, wetland treatment and habitat restoration opportunities where available.

PRF Request: \$45,000

Project Manager: Bob Musser

Total Cost: \$45,000

Phone: 813-905-5032

EPC Staff Recommendation: Approval

CEAC Recommendation: Approval / 8-4

The staff feels that this project addresses stormwater issues on Port property not currently under any management plan or covered by the regulated activities of its tenants. This project is an example of EPC Interagency efforts to promote stormwater management at the Port under the Federal Portfields Program.

CEAC Members reviewing: David Jellerson, Wayne Echelberger, Hallie Calig, Bill Newton / Water Management

9. **AIRCRAFT WASH RACKS AT HILLSBOROUGH COUNTY G.A. AIRPORTS**
APPLICANT: HILLSBOROUGH COUNTY AVIATION AUTHORITY

This project consists of the construction of a designated area at each of the three airports specifically intended for exterior aircraft washing only. Wash water from the wash racks will be routed to an oil/water separator before discharging via gravity flow to the closest sanitary sewer.

PRF Request: \$200,000

Project Manager: Joelle Francois, P.E.

Total Cost: \$200,000

Phone: 813- 870-7801

EPC Staff Recommendation: Denial

CEAC Recommendation: Denial / 12-0

The staff feels that the stated goals of this project should already be part of the applicant's best management practices and that there are already applicable regulations in place to ensure the proper management of the applicants waste streams.

CEAC Members reviewing: Roy Davis, Larry Padgett, Hallie Calig / Waste Management Division

10. **G. MAYNARD UNDERGROUND STORAGE TANK CLOSURE**
APPLICANT: EPC WASTE MANAGEMENT DIVISION

This project will take preventative action to terminate potential continual environmental contamination by removing five abandoned underground storage tanks located on the subject property at 402 S. MacDill Ave. Tampa, FL .

PRF Request: \$20,000

Project Manager: Hooshang Boostani

Total Cost: \$20,000

Phone: 813-272-5960 Ext. 1293

EPC Staff Recommendation: Approval

CEAC Recommendation: Approval / 12-0

The staff feels that this project clearly meets the intent of Chapter 1-9. Legal action has already been concluded but without corrective action. After cleanup with PRF funds, a lien will be placed on the property and the fund reimbursed upon sale of the property.

CEAC Members reviewing: Roy Davis, Wayne Echelberger, Hallie Calig / Waste Management Division

11. **SOLAR PHOTO VOLTAIC ARRAY / JAN PLATT LIBRARY**
APPLICANT: HILLSBOROUGH COUNTY FACILITIES MANAGEMENT

This project will power the computers for 46 work stations in the library. By powering the computers with solar energy, the reduction in electricity from the utility will contribute to annual reductions of CO2.

PRF Request: \$115,000

Project Manager: Randy Klindworth

Total Cost: \$115,000

Phone: 813-276-8789

EPC Staff Recommendation: Withdrawn

CEAC Recommendation: N/A

The applicant has chosen to seek alternative funding sources and has indicated that they are no longer seeking approval for PRF funding.

CEAC Members reviewing: Marilyn Smith, Bill Newton, George Parker, Sharon Terrill, Hallie Calig / AirDivision

12. **SCHOOL BUS DIESEL RETROFIT**
APPLICANT: HILLSBOROUGH COUNTY SCHOOLS

This project will partner Hillsborough County Schools with the Environmental Protection Commission to establish a local retrofit program to reduce diesel school bus emissions.

PRF Request: \$100,000

Project Manager: Robert Morgan

Total Cost: \$300,000

Phone: 813-982-5503

EPC Staff Recommendation: Approval

CEAC Recommendation: Approval / 12-0

The staff feels that this project will compliment a \$200,000 EPA grant recently received by the Air Management Division to implement a local retrofit program which will reduce diesel emissions that contribute to the area's ozone and toxic inventories and reduce school children's exposure to toxic diesel fumes.

CEAC Members reviewing: Roy Davis, Larry Parker, Harold Falls, Sharon Terrill, Hallie Calig / Air Division

13. **NATURES CLASSROOM CAPITAL CAMPAIGN**
APPLICANT: HILLSBOROUGH EDUCATIONAL FOUNDATION

This project's objective is to renovate, restore and rebuild the Nature's Classroom facilities to facilitate proper instruction. The successful completion of these new and renovated facilities will result in more students being exposed to hands-on learning activities.

PRF Request: \$15,000

Project Manager: Paul Nesbitt

Total Cost: \$3,425,422

Phone: 813-231-1937

EPC Staff Recommendation: Approval

CEAC Recommendation: Approval/ 11-0**

The staff views this project as an educational component of the Nature's Classroom and its overall mission of providing opportunities for learning and promoting environmental stewardship. The applicant has, per staff request, specifically earmarked the funds to be used for construction of new nature friendly and ADA compliant pathways connecting the various facilities on the property.

***Note: Approval of this project was for a total of \$44,000. The applicant mistakenly thought there was a funding cap of \$15,000 when they filled out their proposal. Subsequent discussions revealed that the total cost of the project could be funded for the higher amount.*

CEAC Members reviewing: Wayne Echelberger, Hallie Calig / Administration Division
