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**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM**

**APRIL 21, 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**
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| D. Gardinier Settlement Trust Fund | 17 |
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(Underground Storage Tanks) | 31 |
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- V. LEGAL DEPARTMENT**
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Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

Visit our website at www.epchc.org

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM**

**APRIL 21, 2005
10 AM – 12 NOON**

AGENDA ADDENDUM

**The following agenda item has been
removed from the EPC Agenda:**

V. LEGAL DEPARTMENT

- A. Florida State Fair Authority v. EPC, Case No. LEPC04-022
(Administrative Enforcement Case) - Order on Motion to Dismiss

36

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

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FEBRUARY 24, 2005 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Budget Workshop scheduled for Thursday, February 24, 2005, at 2:30 p.m., in the main conference room, Roger P. Stewart Environmental Center at Sabal Park, Tampa, Florida.

The following members were present: Chairman Kathy Castor and Commissioners Brian Blair (arrived at 2:57 p.m.), Ken Hagan (arrived at 2:39 p.m.), Jim Norman, and Ronda Storms (arrived at 2:40 p.m.).

The following members were absent: Commissioners Thomas Scott (family emergency) and Mark Sharpe (family emergency).

Chairman Castor called the meeting to order at 2:38 p.m.

CITIZENS COMMENTS

Chairman Castor called for public comment. Dr. Rich Brown, Friends of the River, requested support for the EPC budget and opined the EPC should advocate water science issues for Hillsborough County, as the Southwest Florida Water Management District (SWFWMD) and Tampa Bay Water (TBW) addressed water supply issues.

BUDGET WORKSHOP

EPC Executive Director Richard Garrity and EPC staff offered introductory remarks. Dr. Garrity utilized an overhead presentation to review the proposed budget, as provided in background material, and commented on revenue sources. Responding to Commissioner Storms, Mr. Tom Koulianos, Director, EPC Finance and Administration, discussed fee generation and General Fund disbursements. Dr. Garrity reviewed goals and objectives and budget preparation, distributed federal budget guidelines for performance management and return on investment (ROI), and gave an overview of the organizational chart.

Mr. Koulianos provided an overview of enhancement requests and discussed the Water Resource Team (WRT) continuation funding. Commissioner Norman suggested water utilities provide funding. After commenting on water utility bondholder requirements, Mr. Bart Weiss, WRT Administrator, would seek an updated legal opinion regarding fund flexibility. In response to Commissioner Storms, Dr. Gerold Morrison, Director, EPC Environmental Resources Management Division, discussed eliminated staff positions. In reply to Commissioner Norman, Attorney Andrew Zodrow, EPC legal staff, agreed to review the WRT funding issue with the County Attorney; Chairman Castor would send a memorandum to the County Attorney's Office. Following discussion, Commissioner Norman moved the request for review, seconded by Commissioner Storms, and carried five to zero.

THURSDAY, FEBRUARY 24, 2005

(Commissioners Scott and Sharpe were absent.) In response to Commissioner Blair, EPC staff and Board members clarified the roles of the EPC legal department and the County Attorney's Office. Dr. Garrity noted resources were not increased for bay monitoring. In response to EPC member queries, Dr. Garrity confirmed WRT staffing was decreased, and he was considering initiating work with TBW on redundant monitoring activities.

Mr. Koulianos reviewed the Wetlands Management Division enhancement requests and ROI. In response to Commissioner Blair, Dr. Garrity discussed salary ranges. Ms. Jadell Kerr, Director, EPC Wetlands Management Division, said additional staff was necessary to meet the goals related to the Planning and Growth Management Department rezoning review process. In response to Commissioner Storms, Ms. Kerr discussed impacts to the timing of the review process and initiating construction. Commissioner Norman questioned whether the building industry offering assessments would help streamline that process. Following discussion, Chairman Castor confirmed the issue would be included as an item for review. Ms. Kerr discussed staffing requests for engineering reviews, mitigation compliance, and mangrove trimming, which was dependent upon the Florida Department of Environmental Protection delegation. Mr. Koulianos outlined correlating changes on the organizational chart.

Mr. Koulianos discussed the Waste Management Division and enhancement request for coordination of the Green Yards and Green Star programs. Mr. Paul Schipfer, EPC staff, reviewed the Green Yards program, which awarded auto parts salvage yards green status for pollution prevention activities, and commented on the initiation of the Green Star program for auto-repair facilities. He reviewed various revenue sources, noting the program generated more revenue than was spent. Following discussion, Mr. Koulianos would provide information on potential fee waivers for incentives, and he outlined the correlating changes on the organizational chart.

Mr. Koulianos and Dr. Morrison discussed the Environmental Resources Management staffing request to monitor pollution recovery fund (PRF) project outcomes utilizing PRF funding and nonrecurring enhancements for the graphic information system (GIS) project hardware and software needs. Dr. Garrity noted County and SWFWMD GIS systems data was also utilized.

Mr. Koulianos discussed the Finance and Administration budget enhancements for communications and computer equipment for the new laboratory and noted possible funding through the Real Estate Department. In response to Commissioner Storms, Mr. Koulianos discussed EPC payments for the new facility.

THURSDAY, FEBRUARY 24, 2005

Mr. Koulianos outlined WRT enhancements for additional hydrology and biology professional services, global positioning system software and hardware, water monitoring equipment, and vehicles. Dr. Garrity explained the requests were for bay monitoring. Dr. Morrison said the staff reduction and work outsourcing would result in net savings.

Mr. Koulianos discussed Water Management Division nonrecurring enhancements for laboratory equipment. Mr. Chris Dunn, Director, EPC Water Management Division, discussed the request for a new organics concentrator and a nutrient analyzer pump. Dr. Garrity noted water sampling was also conducted for other County departments.

Mr. Koulianos discussed the Air Management Division funding shift for a citizen response position. Mr. Jerry Campbell, Director, EPC Air Management Division, explained the original funding source had ceased and the request was to switch to ad valorem funds. Discussion ensued on funding sources and citizen response positions. Mr. Koulianos outlined correlating changes to the organizational chart.

Mr. Koulianos discussed the Water Management Division request for a compliance enforcement inspector. Mr. Dunn said the inspector would help reduce the case backlog and inspect major facilities. In response to Chairman Castor, Mr. Dunn discussed major facilities inspected, inspections of pump station overflows, and compilation of maps and survey information for annual inspections. Commissioner Norman left the meeting at 3:40 p.m.

Dr. Garrity provided summary comments. In response to Commissioner Blair, Mr. Koulianos would provide information on the current budget and total enhancements, and he discussed potential areas where the budget could be reduced but noted impacts to ROI. Dr. Garrity commented on striving for a fiscally conservative budget. Mr. Koulianos requested EPC approval of the presentation, along with the other information requested, for transmittal to the Board of County Commissioners. **Commissioner Storms so moved, seconded by Commissioner Blair, and carried four to zero.** (Commissioner Norman had left the meeting; Commissioners Scott and Sharpe were absent.)

THURSDAY, FEBRUARY 24, 2005

There being no further business, the meeting was adjourned at 3:45 p.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

lm

MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION
MARCH

A. Public Outreach/Education Assistance:		
1. Phone Calls:		178
2. Literature Distributed:		<u>2</u>
3. Presentations:		<u>1</u>
4. Media Contacts:		<u>0</u>
5. Internet:		<u>76</u>
6. Host/Sponsor Workshops, Meetings, Special Events (Strawberry Festival Parade)		<u>1</u>
B. Industrial Air Pollution Permitting		
1. Permit Applications Received (Counted by Number of Fees Received):		
a. Operating:		3
b. Construction:		<u>4</u>
c. Amendments:		<u>0</u>
d. Transfers/Extensions:		<u>2</u>
e. General:		<u>1</u>
f. Title V:		<u>5</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 :		5
b. Construction ¹ :		<u>0</u>
c. Amendments ¹ :		<u>0</u>
d. Transfers/Extensions ¹ :		<u>3</u>
e. Title V Operating ² :		<u>16</u>
f. Permit Determinations:		<u>0</u>
g. General:		<u>2</u>
3. Intent to Deny Permit Issued:		<u>0</u>
C. Administrative Enforcement		
1. New cases received:		
		<u>2</u>
2. On-going administrative cases:		
a. Pending:		14
b. Active:		<u>20</u>
c. Legal:		<u>5</u>
d. Tracking compliance (Administrative):		<u>18</u>
e. Inactive/Referred cases:		<u>0</u>
	Total	<u>57</u>
3. NOIs issued:		<u>5</u>
4. Citations issued:		<u>0</u>
5. Consent Orders Signed:		<u>0</u>
6. Contributions to the Pollution Recovery Fund:		<u>\$1,549.32</u>
7. Cases Closed:		<u>2</u>

D.	Inspections:	
1.	Industrial Facilities:	<u>9</u>
2.	Air Toxics Facilities:	
a.	Asbestos Emitters	<u>0</u>
b.	Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>15</u>
c.	Major Sources	<u>0</u>
3.	Asbestos Demolition/Renovation Projects:	<u>4</u>
E.	Open Burning Permits Issued:	<u>14</u>
F.	Number of Division of Forestry Permits Monitored:	<u>300</u>
G.	Total Citizen Complaints Received:	<u>52</u>
H.	Total Citizen Complaints Closed:	<u>57</u>
I.	Noise Sources Monitored:	<u>5</u>
J.	Air Program's Input to Development Regional Impacts:	<u>2</u>
K.	Test Reports Reviewed:	<u>19</u>
L.	Compliance:	
1.	Warning Notices Issued:	<u>16</u>
2.	Warning Notices Resolved:	<u>9</u>
3.	Advisory Letters Issued:	<u>9</u>
M.	AOR's Reviewed:	<u>1</u>
N.	Permits Reviewed for NESHP Applicability:	<u>2</u>

FEES COLLECTED FOR AIR MANAGEMENT DIVISION
MARCH

	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>\$4,600.00</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>\$2,120.00</u>
(c) Delegated General Permit (20% is forwarded to DEP and not included here)	<u>\$ 80.00</u>
4. Non-delegated permit revision for an air pollution source	<u>\$ -0-</u>
5. Non-delegated permit transfer of ownership, name change or extension	<u>\$ -0-</u>
6. Notification for commercial demolition	
(a) for structure less than 50,000 sq ft	\$8,000.00
(b) for structure greater than 50,000 sq ft	<u>\$ -0-</u>
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	\$1,500.00
(b) renovation greater than 1000 linear feet or 1000 sq ft	<u>\$3,000.00</u>
8. Open burning authorization	<u>\$8,400.00</u>
9. Enforcement Costs	<u>\$ -0-</u>

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

A. ENFORCEMENT

1. New Enforcement Cases Received:	2
2. Enforcement Cases Closed:	4
3. Enforcement Cases Outstanding:	53
4. Enforcement Documents Issued:	10
5. Recovered costs to the General Fund:	\$2,021.99
6. Contributions to the Pollution Recovery Fund:	\$4,645.00

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. University Place	Discharging raw sewage	\$645.00
b. Northwest Ministries	Construction without permit	\$1,000.00
c. Lithia Plaza	Placement of c/s in service without acceptance letter	\$500.00
d. Camp Lemora	Improper operation/failure to maintain; Violation of permit conditions; Unpermitted disch.	\$2,000.00
e. Precision Toyota	Placement of c/s in service without acceptance letter	\$500.00

B. PERMITTING/PROJECT REVIEW - DOMESTIC

1. Permit Applications Received:	47
a. Facility Permit:	12
(i) Types I and II	3
(ii) Types III	9
b. Collection Systems-General	13
c. Collection Systems-Dry Line/Wet Line:	22
d. Residuals Disposal:	0
2. Permit Applications Approved:	37
a. Facility Permit:	7
b. Collection Systems-General:	10
c. Collection Systems-Dry Line/Wet Line:	20
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):	0
a. Recommended for Approval:	0

5. Permits Withdrawn:	0
a. Facility Permit:	0
b. Collection Systems-General:	0
c. Collection Systems-Dry Line/Wet Line:	0
d. Residuals Disposal:	0
6. Permit Applications Outstanding:	53
a. Facility Permit:	18
b. Collection Systems-General:	28
c. Collection Systems-Dry Line/Wet Line:	7
d. Residuals Disposal:	0
7. Permit Determination:	6
8. Special Project Reviews:	2
a. ARs:	0
b. Reuse:	1
c. Residuals/AUPs:	0
d. Others:	1
C. INSPECTIONS - DOMESTIC	
1. Compliance Evaluation:	13
a. Inspection (CEI):	4
b. Sampling Inspection (CSI):	9
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	0
2. Reconnaissance:	42
a. Inspection (RI):	14
b. Sample Inspection (SRI):	2
c. Complaint Inspection (CRI):	19
d. Enforcement Inspection (ERI):	7
3. Engineering Inspections:	50
a. Reconnaissance Inspection (RI):	5
b. Sample Reconnaissance Inspection (SRI):	0
c. Residual Site Inspection (RSI):	0
d. Preconstruction Inspection (PCI):	10
e. Post Construction Inspection (XCI):	35
f. On-site Engineering Evaluation:	0
g. Enforcement Reconnaissance Inspection (ERI):	0

D. PERMITTING/PROJECT REVIEW - INDUSTRIAL	3
1. Permit Applications Received:	0
a. Facility Permit:	0
(i) Types I and II	0
(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:	1
(iii) Type III w/o Groundwater Monitoring:	2
2. Permits Recommended to DEP for Approval:	2
3. Special:	0
a. Facility Permits:	0
b. General Permits:	0
4. Permitting Determination:	1
5. Special Project Reviews:	44
a. ARs:	0
b. Phosphate DMRs:	0
c. Phosphate:	16
d. Industrial Wastewater:	14
e. Others:	14
E. INSPECTIONS - INDUSTRIAL	30
1. Compliance Evaluation:	17
a. Inspection (CEI):	17
b. Sampling Inspection (CSI):	0
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	0
2. Reconnaissance:	5
a. Inspection (RI):	5
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	0
d. Enforcement Reconnaissance Inspections (ERI):	0

3. Engineering Inspections:	8
a. Compliance Evaluation (CEI):	8
b. Sampling Inspection (CSI):	0
c. Performance Audit Inspection (PAI):	0
d. Complaint Inspection (CRI):	0
e. Enforcement Reconnaissance Inspections (ERI):	0
F. INVESTIGATION/COMPLIANCE	
1. Citizen Complaints:	31
a. Domestic:	19
(i) Received:	10
(ii) Closed:	9
b. Industrial:	12
(i) Received:	6
(ii) Closed:	6
2. Warning Notices:	14
a. Domestic:	10
(i) Received:	7
(ii) Closed:	3
b. Industrial:	4
(i) Received:	0
(ii) Closed:	4
3. Non-Compliance Advisory Letters:	0
4. Environmental Compliance Reviews:	0
a. Industrial:	61
b. Domestic:	199
5. Special Project Reviews:	0
a. ARs:	2
b. Others:	0
G. RECORD REVIEWS	0
1. Permitting:	0
2. Enforcement:	0
H. ENVIRONMENTAL SAMPLES ANALYZED FOR:	179
1. Air Division:	51
2. Waste Division:	0
3. Water Division:	19
4. Wetlands Division:	0
5. ERM Division:	109

I. SPECIAL PROJECT REVIEWS:

1. DRIs:	3
2. ARs:	1
3. Technical Support:	0
4. Other:	2
	0

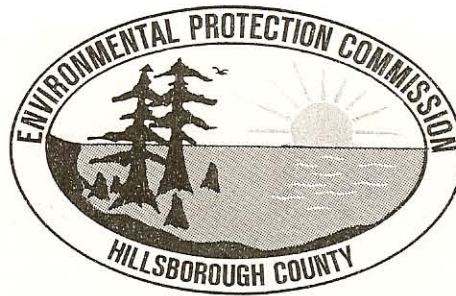
**EPC WETLANDS MANAGEMENT DIVISION
BACKUP AGENDA
March 2005**

	Totals
A. General	
1. Telephone Conferences	1104
2. Unscheduled Citizen Assistance	169
3. Scheduled Meetings	301
4. Correspondence	53
B. Assessment Reviews	
1. Wetland Delineations	91
2. Surveys	23
3. Miscellaneous Activities in Wetland	39
4. Impact/ Mitigation Proposal	21
5. Tampa Port Authority Permit Applications	37
6. Wastewater Treatment Plants (FDEP)	6
7. DRI Annual Report	0
8. Land Alteration/Landscaping	4
9. Land Excavation	0
10. Phosphate Mining	10
11. Rezoning Reviews	36
12. CPA	7
13. Site Development	69
14. Subdivision	97
15. Wetland Setback Encroachment	11
16. Easement/Access-Vacating	2
17. Pre-Applications	52
18. On-Site Visits	148
C. Investigation and Compliance	
1. Complaints Received	52
2. Complaints Closed	50
3. Warning Notices Issued	24
4. Warning Notices Closed	12
5. Complaint Inspections	75
6. Return Compliance Inspections	58
7. Mitigation Monitoring Reports	6
8. Mitigation Compliance Inspections	35
9. Erosion Control Inspections	30
D. Enforcement	
1. Active Cases	44
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	3
7. Cases Referred to Legal Department	3
8. Contributions to Pollution Recovery	\$850.00
9. Enforcement Costs Collected	\$250.00

EPC WETLANDS MONTHLY WORKSHEET

General	Enforcement	Compliance	Assessment	Engineering	Admin	Totals
Telephone Conferences			373	47	684	1104
Unscheduled Citizen Assistance			89	8	72	169
Scheduled Meetings			114	55	132	301
Correspondence	16	36		1		53
Assessment Reviews						
Wetland Delineations			91			91
Surveys			23			23
Miscellaneous Activities in Wetland			39			39
Impact/ Mitigation Proposal			21			21
Tampa Port Authority Permit Applications			37			37
Wastewater Treatment Plants (FDEP)			6			6
DRI Annual Report						0
Land Alteration/Landscaping			4			4
Land Excavation						0
Phosphate Mining			10			10
Rezoning Reviews			36			36
CPA			7			7
Site Development			69			69
Subdivision			97			97
Wetland Setback Encroachment			11			11
Easement/Access-Vacating			2			2
Pre-Applications			52			52
On-Site Visits		20	127	1		148
Investigation and Compliance						
Complaints Received		52				52
Complaints Closed		50				50
Warning Notices Issued		24				24
Warning Notices Closed		12				12
Complaint Inspections		75				75
Return Compliance Inspections		58				58
Mitigation Monitoring Reports		6				6
Mitigation Compliance Inspections		35				35
Erosion Control Inspections		30				30
Enforcement						
Active Cases	44					44
Legal Cases	3					3
Number of "Notice of Intent to Initiate Enforcement"	1					1
Number of Citations Issued						0
Number of Consent Orders Signed	4					4
Administrative - Civil Cases Closed	3					3
Cases Referred to Legal Department	3					3
Contributions to Pollution Recovery	850					\$850
Enforcement Costs Collected	250					\$250

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



Executive Director
 Richard D. Garrity, Ph.D.

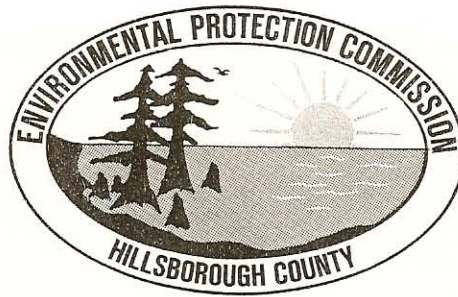
Administrative Offices,
 Legal & Water Management Division
 1900 - 9th Ave. • Tampa, FL 33605
 Ph. (813) 272-5960 • Fax (813) 272-5157
 Waste Management, Wetlands &
 Environmental Resource Management Divisions
 3629 Queen Palm Dr. • Tampa, FL 33619
 Waste Fax (276-2256) Wetlands Fax (272-7144)
 Air Management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

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

Fund Balance as of 10/01/04	\$1,737,812
Interest Accrued	18,584
Deposits FY05	116,525
Disbursements FY05	127,454
Intrafund Transfers	34,582
Fair Value Adjustment	(8,785)
Fund Balance	\$1,771,264
Encumbrances Against Fund Balance:	
Artificial Reef	73,360
(66) Asbestos Abatement	4,486
(92) Brazilian Pepper	26,717
(97) COT Parks Dept/Cypress Point	100,000
(99) Seagrass Restoration Cockroach Bay	38,260
(100) Agriculture Pesticide Collection	38,115
(101) Pollution Prevention Program	36,034
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	4,971
Stormwater Mgmt/Florida Aquarium	30,000
Water Drop Patch/Girl Scouts	7,350
Tampa Shoreline Restoration	30,000
Apollo Beach Air Monitoring Program	14,000
Health Advisory Signs for Beaches	1,531
Field Measurement for Wave Energy	125,000
Water & Coastal Area Restoration & Maint	41,379
Port of Tampa Stormwater Improvement	45,000
G. Maynard Underground Storage Tank Closure	20,000
School Bus Diesel Retrofit	100,000
Natures Classroom Capital Campaign	44,000
Total of Encumbrances	1,210,619
Minimum Balance (Reserve)	120,000 *
Fund Balance Available March 31, 2005	\$ 440,645



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



Executive Director
 Richard D. Garrity, Ph.D.

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)

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

Fund Balance as of 10/01/04	\$ 818,538
Interest Accrued	7,463
Disbursements FY05	185,643
Fair Value Adjustment	3,295
Fund Balance	\$ 637,063

Encumbrances Against Fund Balance:

Marsh Creek/Ruskin Inlet	47,500
SP604 Desoto Park Shoreline	150,000
SP610 H.C. Resource Mgmt/Apollo Beach Restoration	35,000
SP627 Tampa Bay Scallop Restoration	58,157
SP615 Little Manatee River Restoration	50,000
SP614 Manatee & Seagrass Protection	3,200
SP636 Fantasy Island	20,000
SP630 E.G. Simmons Park	43,200
SP634 Cockroach Bay ELAPP Restoration	230,006
Total of Encumbrances	637,063

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

Date of EPC Meeting: April 21, 2005

Subject: Legal Case Summary for April 21, 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 April 2005 case summary. Most notable is the writ of mandamus filed by CC Entertainment against the EPC regarding the Amphitheatre requesting the Second District Court of Appeals to reinstate the recused judge. 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: April 2005 EPC Legal Case Summary

EPC LEGAL DEPARTMENT MONTHLY REPORT
April 2005

A. ADMINISTRATIVE CASES

NEW CASES [1]

EPC vs. USACOE and Florida Department of Environmental Protection [LEPC05-005]: On 02/11/05 EPC requested additional time to file an appeal of the FDEP's intent to issue an Environmental Resource Permit (ERP) permitting the dredging and deepening of the Alafia River Channel. The FDEP provided the EPC until March 16, 2005 to file the appeal. On February 17, 2005, the EPC board authorized the EPC Legal Department to file the appeal challenging the proposed FDEP permit. The EPC filed its request for a Chapter 120, F.S. administrative hearing challenging the conditions imposed in the permit on March 16, 2005.

EXISTING CASES [6]

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 it 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 and 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 and it was granted on March 29, 2005. The EPC Executive Director also defended a motion to dismiss filed by the Fair, and the Hearing Officer recommended that the motion be denied. The matter will be heard by the Board on April 21, 2005. Settlement negotiations are ongoing. (RT)

Jozsi, Daniel A. and Celina v. EPC and Winteroth [LEPC04-025]: Daniel A. and Celina Jozsi timely requested an extension of time to file an appeal challenging the approval of a wetland survey line for the Winteroth Property located on Lake Hills Drive, Riverview, FL. On February 10, 2005, the Appellants filed their appeal challenging the wetland line set on their neighbor's property. The matter is being referred to a Hearing Officer. (AZ)

RESOLVED 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 parties amicably settled the matter through entry of a Settlement Letter for payment of \$3,500.00 in penalties and \$1,500.00 in administrative costs. (AZ)

B. CIVIL CASES

NEW CASES [0]

EXISTING CASES [17]

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. The parties are currently in negotiations to resolve the matter. (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. The parties are currently in negotiations to resolve the matter. (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. The property was purchased by Kimball Weatherington in March 2005. The new owner has agreed to perform all necessary corrective actions at the property. The EPC staff is currently determining whether to seek penalties and costs from the responsible party. (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. The parties have discussed settlement terms and await a written offer from their counsel. (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. A Temporary Injunction hearing was begun on February 26, 2005. Settlement meetings and extensive discovery have commenced. Mediation occurred on February 22, 2005. The injunction hearing was heard in part all day on February 26, 2005, but was continued due to settlement talks. Subsequently, Judge Holder was recused and Judge Honeywell was assigned to the matter. The parties continue with required pleadings, motion practice, and discovery. There is also a consolidated administrative challenge to EPC citations which is a separate matter and is described above. (RT)

Sterling Jackson [LEPC05-004]: The EPC granted authority on February 17, 2005 to take appropriate legal action for violations of the EPC's Underground Storage Tank (UST) regulations. The responsible party has failed to close the USTs and has failed to adequately respond to the EPC. In addition, the party has failed to comply with a Citation and Order to Correct issued in 2002. (AZ)

CC Entertainment Music – Tampa, LLC vs. EPC and Florida State Fair Authority [LEPC05-006]: On February 17, 2005 CC Entertainment filed a Complaint for Declaratory Relief against the Environmental Protection Commission and the Florida State Fair Authority regarding regulation of the Ford Amphitheatre. Among other issue, CCE has raised constitutional challenges against portions of the EPC Act and rules as they relate to noise, and also CCE has suggested they should benefit from any sovereign immunity the Fair claims it has. EPC moved for a stay in this matter. (RT)

RESOLVED 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. The parties amicably settled the matter through entry of a Settlement Letter for payment of \$3,500.00 in penalties and \$1,500.00 in administrative costs. (AZ)

C. OTHER OPEN CASES [2]

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.

Kimmins Contracting Corp. v. EPC [LEPC05-003]: Kimmins Contracting Corp. was issued a Notice of Violation and Orders For Corrective Action on February 3, 2005, regarding alleged improper handling of asbestos containing materials at a renovation project. A request for informal conference was timely filed by Kimmins to resolve the issues addressed in the Notice of Violation. The parties met and discussed settlement, and the EPC has transmitted a draft Consent Order for their consideration. (RM)

CC Entertainment Music – Tampa, LLC vs. EPC and FSFA [LEPC05-008]: On March 28, 2005 Petitioner CC

Entertainment Music – Tampa, LLC filed a Petition for Writ of Mandamus in the 2nd District Court of Appeal (2DCA#: 2D05-1476) requesting the Court to reverse an Order on Plaintiff EPC's Verified Motion to Recuse and to issue a writ of mandamus ordering the reinstatement of Judge Holder in the civil litigation case no. 04-11404, Division J.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 21, 2005

Subject: Request to Hire a Limited Duration Public Relations Information Specialist I to Implement an Outreach Program

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

Division: Air Division

Recommendation:

Authorize the Executive Director to seek permission from the BOCC to hire a limited duration Public Relations Information Specialist I to implement the Smart Driver Program effective June 1, 2005.

Brief Summary:

The Air Division was awarded a Congestion Mitigation and Air Quality improvement (CMAQ) grant to implement an education and outreach program called "Smart Driver". The Smart Driver program will stress the need to reduce automobile emissions by operating personal vehicles in a more efficient manner. The program will be delivered to the public through presentations at forums where high public turnout would be expected, such as homeowner's association meetings, businesses, government functions and various other public events. The above personnel action is being requested to implement the program. This position will be funded with CMAQ grant monies for a limited duration period, scheduled to end approximately one year after commencement. The CMAQ grant was accepted by the Board in August 2004 and no Ad Valorem funds will be utilized for this request.

Background: In 2001, staff applied to the Hillsborough County Metropolitan Planning Organization for a CMAQ grant to develop an education and outreach program that targets personal driving behavior. The CMAQ program is a federal transportation initiative, administered by the Florida Department of Transportation (FDOT). It is designed to provide funding for transportation projects that contribute to air quality improvements in sensitive areas.

The goal of the Smart Driver program is to minimize factors that contribute to high ozone, thus reducing the incidence of respiratory ailments in Hillsborough County. The Smart Driver application was subsequently approved for funding by the MPO Board that same year and forwarded to FDOT for programming. By resolution, the Board entered into a Joint Participation Agreement with FDOT for the administration of the grant in August 2004. The Public Relations Information Specialist I position will be funded from the CMAQ grant.

List of Attachments: Smart Driver Project Description
Emissions Benefits Calculations
Grant Award Letter
Resolution No. R04 – 003EPC

Smart Driver Project Description

The Smart Driver Program will educate the public on:

- 1) The ozone pollution problem
- 2) The impact of high ozone levels on human health
- 3) How driving behaviors and patterns contribute to our ozone problem
- 4) How proper vehicle maintenance contributes to good air quality and saves fuel
- 5) Effective measures that can be taken to reduce single vehicle occupancy such as the use of public transportation, trip chaining, carpooling and non-peak hour driving, which will serve to remove cars from the road

The target audience for this program is the driving public. We will present this emissions savings information at forums where we would expect good attendance such as homeowner's association meetings, businesses, government functions and various public events. We will publish informational materials, advertisement time, establish a Smart Driver informational website and obtain any ancillary needs to facilitate the program.

Emissions Benefits Calculations

No air quality analysis was necessary for this project because it is a public education and outreach effort. However, we have attempted to quantify the potential benefits of the program. See attached.

Total Cost

\$75,000

Emissions Benefits Estimation for the Smart Driver Education Program

Home-based Work Trips Rate

The first step in this analysis combines the knowledge of Work Trips for the area with the Trip Rate.

Hillsborough County has an estimated employment of 643,000. Knowing the Home-Based Work Trip Rate is 1.4152, provided by the Hillsborough County Metropolitan Planning Organization (MPO) FSUTMS model, Daily work trips were calculated as follows.

$$\text{Daily Work Trips} = \text{Total Employment} * \text{Trip Rate} = 643,000 * 1.4152 = 909,974 \text{ Trips}$$

Average Trip Length

The average trip length for residents of Hillsborough County can be derived by multiplying the mean trip length by the average travel speed. In Hillsborough the mean trip length is 22 minutes and the average travel speed is 29 mph during peak hours and 33 mph off-peak. For purposes of this analysis we will use the off-peak mph average because of the availability of emission factors for that speed.

$$\begin{aligned} \text{Average Trip Length} &= \text{Average Travel Speed} * \text{Mean Trip Length} * \text{hr}/60\text{min} = \\ &33 \text{ miles/hr} * 22 \text{ min} * \text{hr} / 60\text{min} = 12.1 \text{ miles} \end{aligned}$$

VMT Reduction

VMT reduction was obtained by multiplying the daily work trips by the average trip length.

$$\text{VMT Reduced} = 909,974 * 12.1 \text{ miles} = 11,010,685$$

Estimated Percent Reduction in Work Trips

Based on a study conducted by STAPPA/ALAPCO an estimated percent reduction in work travel VMT was found to be 0.5 %. Therefore, the VMT Reduction due to the implementation of the Public Education and Outreach Smart Driver Program is as follows.

$$\% \text{ VMT Reduction} = 11,010,685 * 0.005 = 55,053$$

Emissions Reductions

The final step is to calculate the emission reductions using the provided MOBILE5a emission factors for the average speed of 33 mph.

$$\text{Emission Reduction} = \text{VMT} * \text{Emission Factor (g/mile)} * \text{kg}/1000\text{g}$$

$$\text{VOC Reduction} = 55,053 * 1.19 \text{ g/mile} * \text{kg}/1000\text{g} * \text{lb}/.454\text{kg} = 144.3 \text{ lb/day}$$

$$\text{CO Reduction} = 55,053 * 9.03 \text{ g/mile} * \text{kg}/1000\text{g} * \text{lb}/.454\text{kg} = 1094.9 \text{ lb/day}$$

$$\text{NOx Reduction} = 55,053 * 1.94 \text{ g/mile} * \text{kg}/1000\text{g} * \text{lb}/.454\text{kg} = 234 \text{ lb/day}$$

Florida Department of Transportation SEP 22 2004

11201 N. McKinley Drive • Tampa, FL 33612-6456 • Phone (813) 975-6000 • 1-800-226-7220

JEB BUSH
GOVERNOR

JOSE ABREL
SECRETARY

September 20, 2004

EPC of HC
AIR MANAGEMENT

Mr. Reginald Sanford
Environmental Specialist
EPC
1410 N. 21st Street
Tampa, FL 33605

RE: EXECUTED JOINT PARTICIPATION AGREEMENT (JPA)
CMAQ Program

FPN: 410935-1-84-01

CONTRACT: ANO05

Dear Mr. Sanford:

The Florida Department of Transportation, District 7, is pleased to acknowledge that EPC has been awarded the attached Joint Participation Agreement!

Enclosed please find a fully executed agreement along with invoicing information and instructions. Adherence to guidelines will minimize any potential billing situations.

As always the Department looks forward to successful project implementation through cooperative partnerships with EPC. Please feel free to call me at (813) 975-6405 for any assistance or questions concerning this project.

Sincerely,

Alan G. Gudge for RAY CLARK
Public Transit Project Manager

MC
Enclosures

cc: Linda Mitchell
Walter Ortiz
File

RESOLUTION NO. R04-003EPC

A RESOLUTION OF THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPC) EXPRESSING SUPPORT FOR ENTRY INTO A JOINT PARTICIPATION AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE ADMINISTRATION OF A FEDERAL TRANSPORTATION IMPROVEMENT GRANT (CMAQ GRANT - SMART DRIVER PROGRAM)

Upon motion by Commissioner Norman, seconded by Commissioner Castor, the following Resolution was adopted by a vote of 4 to 0; with Commissioner(s) _____ voting "No"; Commissioner(s) Hagan, Storms, Scott being absent.

WHEREAS, the Federal Highway Administration and Federal Transit Administration's goals to reduce delays on transportation systems and to protect and enhance the natural environment and communities affected by transportation are greatly advanced by the Congestion Mitigation and Air Quality Improvement Program (CMAQ), established in 1991 by the U.S. Congress as part of the Intermodal Surface Transportation Efficiency Act, and continued in 1998, as part of the Transportation Equity Act; and

WHEREAS, the CMAQ program is administered in Hillsborough County, Florida by the State of Florida's Department of Transportation (FDOT), District Seven office; and

WHEREAS, the Environmental Protection Commission of Hillsborough County (EPC) is an air pollution control agency defined by section 302(b) of the Clean Air Act and an approved local program in accordance with section 403.182 of the Florida Statutes; and

WHEREAS, the EPC has established an education and outreach program that will stress the need to reduce of vehicle emissions in Hillsborough County and achieve greater energy savings by traveling more efficiently; and

WHEREAS, the FDOT requires that local governments express their support for entering into Joint Participation Agreements;

NOW, THEREFORE BE IT RESOLVED BY THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY in regular meeting assembled this 19th day of August, 2004, as follows:

1. The above findings of fact are hereby incorporated within this Resolution.

2. The EPC expresses support for entry into a Joint Participation Agreement (JPA) with the FDOT for the administration of a federal transportation improvement grant (Finance Project Number FPN #410#935-1-84-01, Contract #ANO05) in the amount of \$75,000.

3. Richard D. Garrity, Ph.D., Executive Director, is hereby authorized to sign the JPA on behalf of the EPC Board.

4. This Resolution shall take effect immediately upon adoption.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Richard Ake, Clerk of the Circuit Court and Ex Officio Clerk of the Environmental Protection Commission of Hillsborough County, in Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of a Resolution adopted by the Environmental Protection Commission of Hillsborough County, in Hillsborough County, Florida, at its meeting of August 19 2004, as the same appears on record in Minute Book _____ of the Public Records of Hillsborough County, Florida.

Witness my hand and official seal this 26th day of August, 2004.

RICHARD AKE, Clerk

BY: Michelle K. Dyer
Deputy Clerk



Approved as to Form and Legal Sufficiency

By: [Signature]
General Counsel, EPC



EPC Agenda Item Cover Sheet

Date of EPC Meeting:

Subject: Request for Authority to Take Legal Action regarding Juan and Rafaela Lasserre and Temple Crest Automotive / Case #04-01405

Consent Agenda **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: Mr. and Mrs. Lasserre have violated Chapter 62-701, F.A.C., Chapter 62-730, F.A.C., Chapters 1-1, 1-5, and 1-7, Rules of the EPC, and Sections 12, 16, and 17, of the Hillsborough County Environmental Protection Act by failing to submit a Limited Environmental Assessment Report and a Best Management Plan.

Background: Juan B. Lasserre and Rafaela Lasserre own and operate an automotive repair shop, known as Temple Crest Automotive, on property located at 7104 N. 40th Street, Tampa, Florida. Oil covered auto parts had been stored on the ground, used oil and free product oil had been stored in open 55 gallon drums that overflowed and were allowed to flow onto the bare ground. Most of the oil and auto parts were removed and disposal receipts were provided for approximately 600-gallons of oil and oil/water. Juan B. Lasserre and Rafaela Lasserre have owned the property since 1986.

On October 5, 2004, EPC staff issued a Citation and Order to Correct to Juan B. Lasserre and Rafaela Lasserre. Mr. and Mrs. Lasserre did not appeal the Citation and it became a final agency order on October 28, 2004. Mr. Lasserre advised EPC staff he could not afford to hire a consultant to perform an assessment and cleanup of the property.

Staff has attempted to work with Mr. Lasserre 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, a Limited Environmental Assessment Report or a plan to properly contain and manage oil to prevent future discharges to the environment.

Juan B. Lasserre and Rafaela Lasserre have violated Chapter 62-701, F.A.C., Chapter 62-730, F.A.C., Chapters 1-1, 1-5, and 1-7, Rules of the EPC, and Sections 12, 16, and 17, of the Hillsborough County Environmental Protection Act by failing to submit a Limited Environmental Assessment Report. Since Mr. Lasserre 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: April 21, 2005

Subject: Pollution Recovery Fund Contract Extension for USF & HCC Seagrass Restoration Project

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

Division: Environmental Resources Management

Recommendation:

Staff Recommends Approval of the PRF contract extension with a new expiration date of December 31, 2005.

Brief Summary:

The project managers (Dr. Clinton Dawes / USF & Dr. Nick Ehringer / HCC) have requested that the original expiration date of April 30, 2005 be extended to December 31, 2005 to allow for the completion of work on a seagrass nursery at the Cockroach Bay Aquatic Preserve.

Background:

The University of South Florida and Hillsborough Community College are currently under contract with the Environmental Protection Commission to use Pollution Recovery Funds for the project titled: "Restoration of Propeller Cuts Through Seagrass Beds in Little Cockroach Bay and Establishment of Seagrass Nurseries". The EPC Board and CEAC approved funding on February 20, 2003 in the amount of \$58,020.00 for the project which has an original expiration date of April 30, 2005. Due to difficulties in establishing the land-based nursery during the first year of the project, the applicants have requested an extension of the expiration date until December 31, 2005. There are no additional funds being requested.

Staff has no objections to the requested extension and recommends approval.

List of Attachments: First Amendment to the Agreement between the Environmental Protection Commission of Hillsborough County and the University of South Florida, Board of Trustees and Hillsborough Community College.

**FIRST AMENDMENT
TO THE AGREEMENT between
The ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
and
The UNIVERSITY OF SOUTH FLORIDA, Board of Trustees
and
HILLSBOROUGH COMMUNITY COLLEGE**

THIS FIRST AMENDMENT to the Agreement, is made and entered into this ____ day of _____, 2005, by and between the **ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPC)**, a governmental agency established by Chapter 84-446, Laws of Florida, the **UNIVERSITY OF SOUTH FLORIDA (USF), Board of Trustees**, a public body corporate, and **HILLSBOROUGH COMMUNITY COLLEGE (HCC)**, a political subdivision of the State of Florida,

WITNESSETH

WHEREAS, the EPC approved, on February 20, 2003, the expenditure of funds for USF and HCC to perform the following Pollution Recovery Fund study: "Restoration of Propeller Cuts through Seagrass Beds in Little Cockroach Bay and Establishment of Seagrass Nurseries"; and

WHEREAS, the parties executed an approximately 2 year agreement that is due to expire on April 30, 2005; and

WHEREAS, USF requests additional time to complete the study;

NOW, THEREFORE, in consideration of the foregoing premises, mutual terms, covenants, and conditions set forth herein, the parties hereto agree to the following amendments and conditions:

1. The first paragraph on the first page of the original contract shall read that the original contract was entered into "this 30th day of July, 2003." This information was inadvertently omitted during execution of the original agreement.
2. Numbered paragraph 1 on page one shall now read that the agreement shall run "until all authorized monies are expended, the Agreement is cancelled, or until December 31, 2005, whichever occurs first."

3. Paragraph 8(c) shall read that the EPC Administrative Contact is Tom Ash, 1900 9th Ave., Tampa, Florida 33605.

4. This Amendment only modifies the Agreement as detailed above. All other provisions of the Agreement and its attachments shall remain in full force and effect. No additional funds beyond those described in the Agreement are authorized.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day and year set forth above.

**ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH
COUNTY**

By: _____
Kathy Castor, EPC Chair

Date: _____

UNIVERSITY OF SOUTH FLORIDA

By: _____

Title: _____

Date: _____

HILLSBOROUGH COMMUNITY COLLEGE

By: _____

Title: _____

Date: _____



EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 21, 2005

Subject: Amphitheatre Administrative Case (LEPC04-022) Hearing on the recommended denial of the Fair's Motion to Dismiss

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

Division: Legal Department

Recommendation: Hold hearing to consider the recommended order.

Brief Summary: The Florida State Fair Authority (Fair) moved to dismiss the citation the EPC issued on August 27, 2004, regarding alleged noise level and noise nuisance violations at the Amphitheatre. Among other things, the Fair alleges in the motion that the EPC does not have jurisdiction over the Fair because the Fair is a state entity and should enjoy sovereign immunity and that it has not waived its sovereign immunity to allow the EPC, a local government, to enforce its noise pollution regulations. On March 29, 2005, the Hearing Officer entered a recommended order denying the Fair's motion to dismiss. The Hearing Officer recommends that an order be entered denying the Fair's Motion to Dismiss and requested that Commissioner Castor or the entire EPC Board rule on the motion.

Background: On August 27, 2004, the EPC Executive Director issued a citation to cease and order to correct violation (citation) to the Florida State Fair Authority regarding noise level and noise nuisance violations at the Ford Amphitheatre on the State Fairgrounds. The Fair subsequently appealed the citation pursuant to Chapter 1-2, Rules of the EPC. The Fair then moved to dismiss the citation. The Fair alleges in the motion that the EPC does not have jurisdiction over the Fair because the Fair is a state entity and should enjoy sovereign immunity and that it has not waived its sovereign immunity to allow the EPC, a local government, to enforce its noise pollution regulations. On March 29, 2005, after a hearing and memoranda filed by both parties, the assigned Hearing Officer entered the Recommendation of Hearing Officer as to Motion to Dismiss Filed by Appellant Florida State Fair Authority (recommended order). The Hearing Officer recommends that an order be entered denying the Fair's Motion to Dismiss and requested that Commissioner Castor or the entire EPC Board rule on the motion. While this is not a final order after an evidentiary hearing, the Hearing Officer felt this issue should be ruled on by the EPC. Thus, a hearing to consider both parties written and oral exceptions is necessitated. The EPC Board will be represented by Assistant County Attorney Ed Helvenston in this matter as the EPC's attorneys are advocates on behalf of the EPC Executive Director. The EPC should consider the pertinent documents in the Hearing Officer's file, the recommended order, the exceptions, and any relevant oral argument prior to ruling on the recommendation to deny the motion to dismiss.

- List of Attachments:**
1. Hearing Officer's Recommended Order
 2. EPC Executive Director's Exception
 3. Fair's Exceptions (including transcript of March 17, 2005 hearing on the motion)

BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

FLORIDA STATE FAIR AUTHORITY,

Appellant,

CASE NO. LEPC04-022

v.

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY,

Respondent.

RECOMMENDATION OF HEARING OFFICER AS TO MOTION TO DISMISS FILED BY APPELLANT FLORIDA STATE FAIR AUTHORITY

THIS CAUSE came on for hearing before the undersigned Hearing Officer (the undersigned) on March 17, 2005 on a Motion to Dismiss filed by Appellant Florida State Fair Authority (Authority). Counsel for the Authority, Gordon J. Schiff, Esquire appeared as did Mark Bentley, Esquire and Richard T. Tschantz, Esquire for the Hillsborough County Environmental Protection Commission (EPC).

The Authority primarily argued that the citation to cease and order to correct violation issued by Richard D. Garrity, Ph.D., Executive Director of the EPC, on August 27, 2004 should be dismissed because the Authority enjoys sovereign immunity from suit. The undersigned applied the familiar rules of civil procedure regarding the motion to dismiss. A motion to dismiss requires the movant to admit all well-pleaded material facts. *H.E. Temples v. Florida Industrial Construction Company, Inc.*, 310 So. 2d 326 (Fla. 2d DCA 1975). The facts must be viewed by the undersigned in a light most favorable to the EPC. *Palm Beach-Broward Medical Imaging Center, Inc. v. Continental Grain Company*, 715 So. 2d 343 (Fla. 4th DCA 1998). The undersigned must restrict

arguments to the four corners of the citation. *McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss*, 704 So. 2d 214 (Fla. 2d DCA 1998).

Counsel for the EPC argued that the jurisdiction of the EPC over the Authority raises primarily an affirmative defense to be decided along with other evidentiary issues. The law mandates otherwise. *Schmauss v. Snoll*, 245 So. 2d 112 (Fla. 3d DCA), *cert denied* 248 So. 2d 172 (1971), *Kirk v. Kennedy*, 231 So. 2d 246 (Fla. 2d DCA 1970).

The citation to cease and order to correct violation alleges four different instances of noise in excess of permitted levels. The EPC staff conducted noise monitoring while concerts were being held at the Ford Amphitheater. All of the measurements allegedly exceeded the standards contained in § 17 of the EPC Act regarding sound levels at the various times in the various sites. Those allegations, taken as true for the purposes of a motion to dismiss, establish a *prima facie* case of noise pollution.

Counsel for the Authority forcefully argued that this proceeding will deprive his client of constitutional rights, including equal protection of the law and especially a denial of due process. *See, e.g. Ward v. Village of Monroeville, Ohio*, 93 S. Ct. 80, 409 U.S. 57 (1972); *Cherry Communications, Inc. v. Deason*, 652 So. 2d 803 (Fla. 1995) and *Ridgewood Properties, Inc. v. Dept. Of Community Affairs*, 562 So. 2d 322 (Fla. 1990). He also argued that the undersigned lacks the authority to make findings or recommendations regarding the deprivation of constitutional rights. The undersigned agrees and will decline all invitations to make recommendations with respect to constitutional issues unless the EPC directs otherwise.

Given the possibility at least that this proceeding could be declared a legal nullity at some point, the undersigned urges the parties to seek a resolution through negotiation and compromise. The vigor with which counsel for the Authority and the EPC presented their respective cases

convinces the undersigned that this proceeding promises to be a long, arduous and expensive one for all concerned.

I. IS THE AUTHORITY ENTITLED TO SOVEREIGN IMMUNITY OR HAS IT BEEN WAIVED?

Counsel for the Authority points to the ch. 616, Fla. Stat. as the legislation defining his client and its powers. Since the legislature created the Authority small doubt exists that it constitutes a governmental entity entitled to the protections of sovereign immunity.

Counsel for the EPC argued that the protections of sovereign immunity had been waived. Counsel pointed to § 616.254, Fla. Stat. (2004) which authorizes the Authority to “sue and be sued” and “complain and defend in all courts of law and equity with respect to its contractual rights and obligations and its responsibility to carry out its proper purposes and functions.” In § 616.256(1)(I), the legislature authorizes the Authority to “engage in any *lawful* business or activity deemed by it to be necessary, convenient, appropriate or useful...” (*e.s.*)

While the power to “sue and be sued” certainly suggests an intent to waive sovereign immunity, it does not constitute a waiver. In *A.G. Spangler v. Florida State Turnpike Authority*, 106 So. 2d 421, 423 (Fla. 1958), the Court held that the power “to sue and be sued” did not sufficiently constitute a waiver of immunity for damages in a tort action.

The undersigned recognizes that this case does not present a liability in tort against the Authority. In any realistic sense, though, the EPC is proceeding against the Authority on a nuisance theory and the possible consequences include fines of \$5,000 a day. While not tortious in a strict sense, no real distinction exists between this proceeding and an action for damages, at least within the ambit of sovereign immunity. Accordingly, the undersigned recommends that the EPC find that the Authority should receive the protections of sovereign immunity and that those protections have not been waived.

Counsel for the Authority evidently believes these findings to be dispositive of his client's exposure for its alleged noise pollution. The undersigned disagrees.

II. HOW SHOULD THIS DISPUTE BETWEEN GOVERNMENTAL ENTITIES BE RESOLVED?

When asked how the residents complaining of excessive noise could remedy their problem, counsel for the Authority could provide no clear answer. Under the circumstances, no clear remedy apart from the EPC's intervention appears possible. The law generally disfavors a vacuum. The legislative authorization requires the Authority to engage in any *lawful* business which, by virtue of its Motion to Dismiss, it admittedly has not. Again, the undersigned must accept all-well pleaded allegations in the citation as true. The evidence might well produce a contrary finding.

Counsel for the EPC proposed a "balancing of interests" analysis to the allegations at issue. He cited *Hillsborough Association for Retarded Citizens, Inc. v. City of Temple Terrace*, 332 So. 2d 610 (Fla. 1976), which adopted the opinion of *City of Temple Terrace v. Hillsborough Association for Retarded Citizens, Inc.*, 322 So. 2d 571 (Fla. 2d DCA 1975) in its entirety.

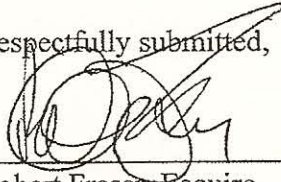
The case involved the question of whether the City of Temple Terrace could regulate a home established by the Division of Retardation, Department of Health and Rehabilitative Services, as part of its zoning power. The opinion of Judge Grimes essentially held that the clash of two governments should be resolved by weighing the interests of each to determine which should prevail. In this case, the interests of the Authority in holding concerts at the Ford Amphitheater should be considered against the interests of nearby residents with respect to the enjoyment of their property and sustaining their property values. Zoning and noise regulation present closely analogous values and no real distinction between them exists.

Obviously, this question requires an evidentiary hearing to determine the existence of the alleged nuisance and feasibility of mitigating it if it exists. The undersigned makes no finding at this point on any evidentiary issue.

Accordingly, the undersigned recommends to the Environmental Protection Commission of Hillsborough County that the Motion to Dismiss filed by Appellant Florida State Fair Authority should be DENIED.

Recommended in Hillsborough County, Florida, this 29th day of March, 2005.

Respectfully submitted,



Robert Fraser, Esquire
Hearing Officer for Environmental
Protection Commission of
Hillsborough County
Pilka & Associates, P.A.
213 Providence Road
Brandon, FL 33511
(813) 653-3800
Florida Bar No.: 218529

cc: Richard Tschantz, Esquire
William Hyde, Esquire
Gordon J. Schiff, Esquire
G. Donovan Conwell, Esquire

BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

FLORIDA STATE FAIR AUTHORITY,

Appellant,

CASE NO. LEPC04-022

v.

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY,

Respondent.

_____ /

ORDER

THIS CAUSE came on for consideration on the recommendation of the Hearing Officer with respect to a Motion to Dismiss filed by Appellant Florida State Fair Authority. Upon having considered the recommendation it is

ORDERED AND ADJUDGED that the Motion be, and the same hereby is, GRANTED.

DONE AND ORDERED this _____ day of March, 2005 in Hillsborough County, Florida.

Kathy Castor, Chairperson
Environmental Protection Commission of
Hillsborough County
601 East Kennedy Boulevard
2nd Floor, County Center
Tampa, FL 33601
813-272-5321

cc: Richard Tschantz, Esquire
William Hyde, Esquire
Gordon J. Schiff, Esquire
G. Donovan Conwell, Esquire

BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

FLORIDA STATE FAIR AUTHORITY,

Appellant,

CASE NO. LEPC04-022

v.

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY,

Respondent.

ORDER

THIS CAUSE came on for consideration on the recommendation of the Hearing Officer with respect to a Motion to Dismiss filed by Appellant Florida State Fair Authority. Upon having considered the recommendation it is

ORDERED AND ADJUDGED that the Motion be, and the same hereby is, DENIED.

DONE AND ORDERED this ____ day of March, 2005 in Hillsborough County, Florida.

Kathy Castor, Chairperson
Environmental Protection Commission of
Hillsborough County
601 East Kennedy Boulevard
2nd Floor, County Center
Tampa, FL 33601
813-272-5321

cc: Richard Tschantz, Esquire
William Hyde, Esquire
Gordon J. Schiff, Esquire
G. Donovan Conwell, Esquire

BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY

CC ENTERTAINMENT MUSIC – TAMPA, LLC.

Appellant,

vs.

EPC CASE NO. LEPC04-022

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY

Respondent.

FLORIDA STATE FAIR AUTHORITY

Appellant,

EPC CASE NO. LEPC04-022

v.

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY

Respondent,

EPC EXECUTIVE DIRECTOR'S EXCEPTION TO RECOMMENDED ORDER
ON THE FAIR'S MOTION TO DISMISS

Respondent Executive Director of the Environmental Protection Commission of Hillsborough County (EPC), hereby files exceptions to the Hearing Officer's Recommended Order on the Florida State Fair Authority's (Fair) Motion to Dismiss filed by the assigned Hearing Officer, and states as follows:

On August 27, 2004, the EPC Executive Director issued a citation to cease and order to correct violation (citation) to the Fair regarding noise level and noise nuisance violations at the Ford Amphitheatre, on the State Fairgrounds. The Fair subsequently

appealed the citation pursuant to Chapter 1-2, Rules of the EPC. The Fair then moved to dismiss the citation. The Fair alleges in the motion that the EPC does not have jurisdiction over the Fair because the Fair is a state entity and should enjoy sovereign immunity and that it has not waived its sovereign immunity to allow a local government to enforce its noise pollution regulations. The Executive Director disagrees. On March 29, 2005, after a hearing and memoranda filed by both parties, the assigned Hearing Officer entered the Recommendation of Hearing Officer as to Motion to Dismiss Filed by Appellant Florida State Fair Authority (recommended order). The Hearing Officer recommends that an order be entered denying the Fair's Motion to Dismiss, thus a final administrative hearing should still be held as to the merits of the citation. As the case style also reflects above, on March 29, 2005, the Hearing Officer, upon an EPC motion, consolidated the Fair's appeal with that of CC Entertainment Music – Tampa, LLC.

It should be clarified that this is not a recommended order after a final administrative hearing, but only after a motion to dismiss hearing. While the rules of the EPC are silent as to whether a motion to dismiss should be heard by the full EPC Board, in an abundance of caution, the Hearing Officer requests that the Board rule on the matter. The Executive Director suggested the Hearing Officer could rule on his own, but he declined. Although the Executive Director agrees with the conclusion contained within the recommended order denying the motion to dismiss, the Hearing Officer also suggested in the recommended order that the EPC should recognize the Fair's sovereign immunity as it relates to a tort or damage claim. The Executive Director requests that this be stricken or clarified.

The appropriate scope of review for a Hearing Officer's recommended findings of fact and conclusions of law is well established. Section 1-2.35, Rules of the EPC, provides that exceptions shall be limited to challenge of the Hearing Officer's determination of facts with specific reference to evidence in the record, or to challenge the Hearing Officer's application of the existing rules to the facts as found. The Commission shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of Chapter 84-446 or the rules enacted pursuant to said act.

Exception regarding suggestion of limited sovereign immunity

As this was not an evidentiary hearing, the EPC Executive Director does not address any findings of fact, as there are none. The EPC Executive Director requests that one un-numbered conclusion of law, or more appropriately labeled as a "suggestion," be clarified or stricken in the Order that the EPC Board is being asked to issue. The Hearing Officer's suggestion in the recommended order on page 3 in the last full paragraph makes it unclear as to how the EPC Board is to govern itself at a final hearing and it is not necessary language for an order on a motion to dismiss. As general guidance in this motion, Section 1-2.35, Rules of the EPC, provides that exceptions to conclusions of law are to be limited to the Hearing Officer's application of the existing rules to the facts as found. In addition, Section 1-2.35, Rules of the EPC, states the Commission shall not take any action in making its final order which conflicts with or nullifies any provision of Chapter 84-446 or the rules enacted pursuant to said act.

The Hearing Officer states on page 3 and 4 of his recommended order:

The undersigned recognizes that this case does not present a liability in tort against the [Fair] Authority. In any realistic sense, though, the EPC is proceeding against the Authority on a nuisance theory and the possible consequences include fines of \$5,000 a day. While not tortuous in a strict sense, no real distinction exists between this proceeding and an action for damages, at least within the ambit of sovereign immunity. Accordingly, the undersigned recommends that the EPC find that the Authority should receive the protections of sovereign immunity and that those protections have not been waived.

Counsel for the Authority evidently believes these findings to be dispositive of his client's exposure for its alleged noise pollution. The undersigned disagrees.

When asked how the residents complaining of excessive noise could remedy their problem, counsel for the Authority could provide no clear answer. Under the circumstances, no clear remedy apart from the EPC's intervention appears possible. The law generally disfavors a vacuum. The legislative authorization requires the Authority to engage in any lawful business which, by virtue of its Motion to Dismiss, it admittedly has not. Again, the undersigned must accept all-well pleaded allegations in the citation as true. The evidence might well produce a contrary finding.

The EPC exception applies to the following suggestion, "Accordingly the undersigned recommends that the EPC find that the Authority should receive the protections of sovereign immunity and that those protections have not been waived." In the Hearing Officer's reasoning, he likened tort actions to the EPC pursuing fines for violations of the nuisance rules. Thus, if that portion of the EPC requested relief in its citation is similar to a tort action relief (e.g. - seeking damages), the Fair should enjoy limited sovereign immunity as to that relief requested. He then goes on to clarify that the EPC should be able to regulate noise pollution when he states, "Counsel for the Authority evidently believes these findings to be dispositive of his client's exposure for its alleged noise pollution. The undersigned disagrees. . . Under the circumstances, no clear remedy apart from the EPC's intervention appears possible." Thus, the Hearing Officer is suggesting the EPC should not pursue fines or damages, but merely forcing the Fair to mitigate a

nuisance, if one is found after a hearing (see page 5 of the recommended order). This is exactly what the citation requests as relief. In fact, the EPC did not pursue fines (or "penalties" as the EPC refers to them) or damages as part of the citation, thus the issue of recognizing sovereign immunity as to any part of our citation which is tort like in nature is both irrelevant and moot. In fact, the EPC does not have the legislative authority in its local program to assess fines under its enabling act. Only a circuit court can assess penalties for violations of EPC laws or regulations. This issue is not before the Hearing Officer in this matter, thus it should not be raised as an issue in any Order on a motion to dismiss.

Furthermore, the Hearing Officer did agree that an evidentiary hearing be held to conduct a balancing of interests as to whether the EPC as a local government has a greater interest in abating noise pollution and noise nuisance or whether the Fair as an instrumentality of the State has a greater interest in allowing or operating concerts at the Amphitheatre. In 1982 Fla. AG LEXIS 77; 1982 Op. Atty Gen. Fla. 562, dated April 20, 1982, the Attorney General was presented with the question of whether the Tampa Port Authority, an instrumentality of the State of Florida with the same apparent legal status as the Fair, had blanket sovereign immunity or whether it was subject to the City of Tampa's building regulations. In his analysis, the Attorney General reviewed various legal authorities, and generally concluded that the balancing of interests tests between a state and local government involved in a land use conflict as established in *Hillsborough Association for Retarded Citizens, Inc. v. City of Temple Terrace*, 332 So.2d 610 (Fla. 1976) should be applied to resolve the conflict. In quoting the Supreme Court's opinion, the Attorney General noted that "... only where a specific legislative directive requires

a nonconforming use would there be immunity from local zoning regulations, and only then would the balancing of interests test not be applicable to the proposed land use.” (emphasis added)

Applying this analysis to the operations and use of the Fair's property, there has been no “specific legislative directive” authorizing the Fair’s inappropriate conduct of causing excessive noise impact on the community, and as such, the balancing of interests test must be applied. Therefore, under the law, the Fair has the burden under this analysis to demonstrate that its alleged interest in leasing its property to a for-profit corporation that generates excessive noise into the homes of surrounding property owners and citizens, so that the Fair may collect rent to presumably help underwrite its operations, substantially outweighs the rights of hundreds of citizens of the Hillsborough County to the comfortable, peaceful enjoyment of their lives and their properties, their right to maintain their property values, their right to a healthy, peaceful night’s sleep for their children, and their right to a normal peaceful existence to which they are clearly entitled. On balance, the negative impacts created by the Fair in furtherance of obtaining rent from a for-profit, non-fair commercial function are obviously far outweighed by EPC’s responsibility to protect and preserve the quality of life for hundreds of Hillsborough County citizens.

In his opinion, the Attorney General also analyzed and applied a line of cases that stand for the proposition that local governments can control the conduct of other governmental entities. Specifically, he recognized that the law applicable in Florida in resolving government to government conflicts was established in *Orange County v. City of Apopka*, 299 So.2d 652 (Fla. 4th DCA 1975), reaffirmed in *Palm Beach County v.*

Town of Palm Beach, 310 So.2d 384 (Fla. 4th DCA 1975), noting that “. . . the recently developed general rule in Florida is that unless the Legislature determines otherwise, one governmental unit in the use of its property located within the jurisdictional boundaries of another governmental unit, is bound by the zoning regulations of the latter.” The Attorney General then concluded that “. . . unless or until legislatively determined otherwise it is my opinion that the Tampa Port Authority [the instrumentality of the state] is subject to the City of Tampa’s building regulations,” and as such is required to recognize and acquiesce to the City’s jurisdiction.

In applying the same analysis to the instant case, it is especially significant that the Fair’s enabling legislation is silent concerning environmental controls, because there is no other state or local agency actively controlling noise pollution in Hillsborough County but the EPC. Accordingly, the Fair has not carved out an exception prohibiting local governmental jurisdiction, and is subject to the EPC’s jurisdiction. As the Hearing Officer and the Fair noted, both citing *A.G. Spangler v. Florida State Turnpike Authority*, 106 So.2d 421 (Fla. 1958), a mere recitation in the statute that an agency can “sue or be sued” is not a waiver of a State’s immunity from liability in tort actions. The EPC is not pursuing a tort action. Furthermore, the Fair’s enabling legislation is more expansive than saying it can “sue or be sued.” Section 616.254, Florida Statutes, states:

The authority may sue and be sued, plead and be impleaded, and complain and defend in all courts of law and equity with respect to its contractual rights and obligations and its responsibility to carry out its proper purposes and functions.

Section 616.256(1)(i), Florida Statutes, states in part that the Fair has the power to:

Engage in any lawful business or activity deemed by it to be necessary, convenient, appropriate, or useful in the full exercise of its powers to establish, finance, and operate the Florida State Fair under the provisions of this part

The Fair's enabling legislation says they can be sued regarding its contractual rights and obligations and its responsibility to carry out its proper purposes and functions. The EPC citation clearly shows that the Fair is not carrying out its proper functions, in that it is violating noise laws and creating a noise nuisance in the community. Thus, following the above mentioned case law and analyzing the Fair's enabling legislation, further validate that the Hearing Officer appropriately recommended denying the motion to dismiss, but should not have gone the extra step to suggest they have limited sovereign immunity as to the tort-like act of seeking fines, which the EPC is not even pursuing in this administrative citation.

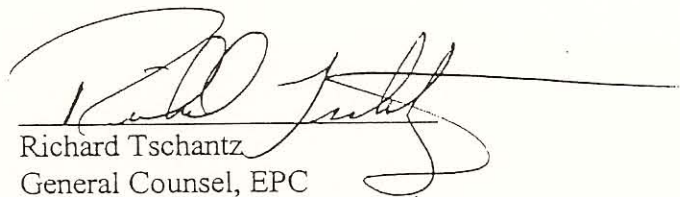
The Hearing Officer was not required to make extraneous statements regarding how the EPC should conduct itself in pursuit of fines vis-à-vis sovereign immunity. The aforementioned suggestion or conclusion of law is not supported by the rules and statutes, in that it is more appropriate to leave that limited issue of pursuing fines or damages to a Circuit Court where the issue would be ripe. Therefore, the Executive Director requests that either the language be stricken which suggests that Fair should enjoy sovereign immunity as to EPC pursuing fines, or in the alternative the order should be clarified to make it abundantly clear that the EPC is not barred from seeking corrective actions (mitigation) from the Fair if it prevails after an evidentiary hearing.

CONCLUSION

Therefore, the EPC Executive Director requests that the EPC Board enter an Order striking the Hearing Officer's suggestion of recognizing limited sovereign

immunity for the Fair or in the alternative clarify that the EPC can seek corrective actions via a final administrative hearing. The remaining portions of the Hearing Officer's Recommended Order should be adopted in its entirety. See attached proposed Order. Respectfully submitted this 8th day of April, 2005.

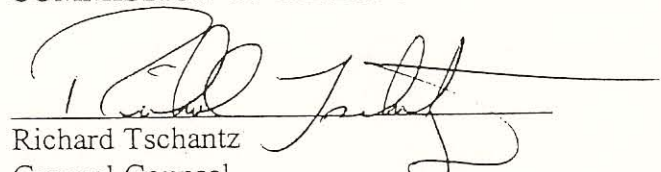
Respectfully submitted,


Richard Tschantz
General Counsel, EPC

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was mailed to **William Hyde, Esq** Fowler White Boggs Banker, P.A., P.O. Box 11240, Tallahassee, Florida 32302, **Don Conwell, Esq.**, Fowler White Boggs Banker, P.A., P.O. Box 1438, Tampa, FL 33601 and **Gordon J. Schiff, Esq.**, Schiff Law Group, 1211 N. Westshore Blvd., Suite 401, Tampa, FL 33607 on this 8th day of April 2005.

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY


Richard Tschantz
General Counsel
1900 9th Ave.
Tampa, Florida 33605
Telephone: (813) 272-5960
Facsimile: (813) 272-5287

cc: Robert Fraser, Esq./Hearing Officer
Appointed Attorney for the EPC Board
EPC Commissioners

BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY

CC ENTERTAINMENT MUSIC – TAMPA, LLC.

Appellant,

vs.

EPC CASE NO. LEPC04-022

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY

Respondent.

FLORIDA STATE FAIR AUTHORITY

Appellant,

EPC CASE NO. LEPC04-022

v.

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY

Respondent,

EPC'S PROPOSED ORDER ON FAIR'S MOTION TO DISMISS

THIS MATTER came before the Board of the Environmental Protection Commission of Hillsborough County (EPC) upon receipt and review of a recommended order from the Hearing Officer and exceptions and/or argument from the EPC Executive Director and the Florida State Fair Authority (Fair) the EPC Board being fully advised, hereby ORDERS:

1. The Fair's Motion to Dismiss is hereby Denied.

2. The last sentence in the last paragraph of the Hearing Officer's recommended order on page three is stricken and clarified as follows: Accordingly, the undersigned recommends that the final administrative hearing , among other issues of fact and law, address whether EPC find that the Authority should receive the protections of sovereign immunity and whether that those protections have not been waived or not as it relates to fines or damages.

3. The remainder of the recommended order shall be adopted in its entirety as modified above.

DONE AND ORDERED this _____ day of _____, 2005 in Tampa, Hillsborough County, Florida.

Kathy Castor, EPC Chair
Environmental Protection Commission of
Hillsborough County

cc: Richard Tschantz, Esq.
William Hyde, Esq.
Gordon J. Schiff, Esq.
Donald Conwell, Esq.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

FLORIDA STATE FAIR AUTHORITY,

Appellant,

v.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,**

Respondent,

**EPC Legal Case No. LEPC04-022
A/R/A Case No. 04-0818MB1
A/R/A Case No. 04-0818MB2**

**WITHOUT PREJUDICE
RESERVATION OF RIGHTS
UNDER PROTEST**

**FLORIDA STATE FAIR AUTHORITY'S EXCEPTIONS TO RECOMMENDATION OF
HEARING OFFICER AS TO FLORIDA STATE FAIR AUTHORITY'S MOTION TO
DISMISS**

FLORIDA STATE FAIR AUTHORITY ("FSFA"), by and through its undersigned counsel, is filing Exceptions under protest, without prejudice, and with full reservation of rights and non-waiver of rights under the Florida Constitution, Chapter 616 of the Florida Statutes, and Florida law, and subject to issues of lack of jurisdiction and authority of ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY ("EPC"), and subject to the pending Motion for Stay of Proceeding and Request for Hearing filed herein, hereby files its Exceptions to Recommendation of Hearing Officer as to Motion to Dismiss Filed by Florida State Fair Authority and says:

1. On March 17, 2005, a hearing was held by the Hearing Officer on a Motion to Dismiss and Supplemental Motion to Dismiss filed by FSFA regarding the Citation to Cease and Order to Correct Violation issued by the EPC Executive Director (hereinafter "EPC Executive Director's Order"). (FSFA's Motion to Dismiss and FSFA's Supplemental Motion to Dismiss are hereinafter collectively referred to as "Motion to Dismiss".)

2. On March 29, 2005, the Hearing Officer issued a “Recommendation of Hearing Officer as to Motion to Dismiss” (hereinafter “Recommendation”).

3. Page 3 of the Recommendation provides that “[s]ince the Legislature created the Authority small doubt exists that it constitutes a governmental entity entitled to the protections of sovereign immunity.” The Recommendation further provides on page 3 that “[A]ccordingly, the undersigned recommends that the EPC find that the Authority [FSFA] should receive the protections of sovereign immunity and that those protections have not been waived.”

4. Based upon the foregoing, the EPC Executive Director’s Order and consequently this proceeding, should be dismissed. *See Spangler v. Florida State Turnpike Authority*, 106 So.2d 421 (Fla. 1958); *also see* Motion to Dismiss, Memorandum of Law in Support of Motion to Dismiss and Supplemental Motion to Dismiss, filed by FSFA (hereinafter “Memorandum of Law) and the transcript of the proceedings of March 17, 2005 (a copy of transcript attached hereto and incorporated herein).

5. FSFA files the following written exceptions to the Recommendation:

a. FSFA objects to EPC Board considering the Recommendation of the Hearing Officer on FSFA’s Motion to Dismiss. EPC cannot be a decisionmaker in an inter-governmental dispute of this nature. The proper forum for resolving intergovernmental disputes between governmental entities is not an enforcement administrative action by one governmental agency against another, but in the courts of the State of Florida. *See Orange County v. City of Apopka*, 299 So.2d 652 (Fla. 4th DCA 1974); *Pal-Mar Water Management District v. Martin County*, 377 So.2d 752 (Fla. 4th DCA 1980).

b. FSFA objects to EPC Board considering the Recommendation of the Hearing Officer on FSFA's Motion to Dismiss, as the EPC Board has demonstrated bias and prejudgment of adjudicative facts in this proceeding through the following actions:

(1) The EPC Board is also the plaintiff in a civil action against FSFA on the same facts at issue in this proceeding. In other words, the "judge" in this proceeding is also the plaintiff suing the defendant in the civil action.

(2) The EPC Board and EPC's attorneys have strategized in "closed sessions" with respect to the adjudicative facts of this proceeding.

(3) The EPC Board has announced at public meetings their intent to cite and/or fine and/or institute legal proceedings against FSFA and CC Entertainment Music – Tampa, LLC.

As a result, FSFA cannot receive a fair hearing. Due process requires a neutral and detached arbiter and a hearing free from bias. Megill v. Board of Regents of the State of Florida, 541 F.2d 1073 (5th Cir. 1976); Antoniou v. Securities and Exchange Commission, 877 F.2d 721 (8th Cir. 1989); Staton v. Mayes, 552 F.2d 908 (10th Cir. 1977); Ridgewood Properties, Inc. v. Department of Community Affairs, 562 So.2d 322 (Fla. 1990); Ward v. Village of Monroeville, 409 U.S. 57 (1972) (entitled to neutral and detached arbiter in the first instance).

c. FSFA objects to the Hearing Officer's Recommendation not to dismiss EPC Executive Director's Order and this proceeding given his finding that FSFA enjoys sovereign immunity.

d. FSFA objects to the EPC Board considering the Recommendation given EPC has sued FSFA in Circuit Court on the same facts. In the event that EPC does not dismiss the EPC Executive Director's Order and this proceeding, FSFA's due process

and equal protection rights under the Florida and Federal Constitutions will be violated. While the Hearing Officer did not address the constitutional issues, the Recommendation does provide that “this legal proceeding could be declared a legal nullity at some point...” (Page 2 of the Recommendation).

e. FSFA objects to the Hearing Officer’s conclusion that because he was not advised of a remedy for the “problem”, that FSFA’s Motion to Dismiss should be denied. The Recommendation provides on page 4 that “[w]hen asked how the residents complaining of excessive noise could remedy their problem, counsel for the Authority [FSFA] could provide no clear answer.” This question presented by the Hearing Officer regarding available remedies is outside of the scope of the issues before the Hearing Officer, and therefore, should not have been considered by the Hearing Officer. It would have been improper for FSFA to advise the Hearing Officer as to available remedies.

f. FSFA objects to the Hearing Officer’s use of the term “problem” on page 4 of the Recommendation. It has not been determined whether a “problem” exists, and therefore, no weight should be given to the use of that term.

g. FSFA objects to the Hearing Officer inserting his personal opinion and leaping to a conclusion that this is a “vacuum” in the law when the only issue before him was whether EPC Executive Director’s Order should be dismissed. As noted in paragraph e., above, the issue of what other remedies are available is not proper in determining whether the citation of FSFA should be dismissed. In fact, EPC Rules legally contain “vacuums” from regulation for certain activities, including, but not limited to, Gasparilla, Fourth of July, New Year’s Eve, Guavaween, or officially authorized spectator events.

h. FSFA objects to the Hearing Officer's use of the term "lawful business" on page 4 of the Recommendation. The Hearing Officer latched on to the term "lawful business" in order to support his Recommendation. This logic is flawed. Since there is no law applicable to the FSFA as a result of it enjoying sovereign immunity, it does not logically follow that FSFA is undertaking something that is not lawful. Moreover, there is no allegation in EPC Executive Director's Order that FSFA is not engaging in a lawful business.

i. FSFA objects to the Hearing Officer's application of the "balancing of interests" analysis in this proceeding. The "balancing of interests" analysis is not applicable in this proceeding given that FSFA has sovereign immunity and a balancing of interests analysis should only be applied "in the absence of specific legislative authority to the contrary" and "no legislative guidance either way". Hillsborough Association for Retarded Citizens, Inc. v. City of Temple Terrace, 332 So.2d 610 (Fla. 1976); *also see* Memorandum of Law at pages 21-23. Accordingly, the "balancing of interests" analysis is not applicable because sovereign immunity applies.

j. Alternatively, FSFA objects to the "balancing of interests" analysis, because even if "balancing of interests" were applicable, it cannot occur in an administrative enforcement action. *See* Orange County v. City of Apopka, 299 So.2d 652 (Fla. 4th DCA 1974); Pal-Mar Water Management District v. Martin County, 377 So.2d 752 (Fla. 4th DCA 1980); *also see* Memorandum of Law at page 21. It should be noted that the case cited by the Hearing Officer in the Recommendation to support the "balancing of interests" analysis is distinguishable from the facts in this proceeding as it was a court proceeding and was not an administrative enforcement action by one of the agencies.

k. FSFA objects to the Hearing Officer's refusal to consider that Hillsborough County has no permitting authority over FSFA. Public records establishing lack of authority were proffered at the hearing on March 17, 2005; however, the Hearing Officer refused to accept the evidence.

l. FSFA objects to the statement in the Recommendation which provides that "[o]bviously, this question requires an evidentiary hearing to determine the existence of the alleged nuisance and feasibility of mitigating if it exists." (Page 5 of the Recommendation). An evidentiary hearing is not necessary as a result of the determination of FSFA's sovereign immunity. *See Spangler*, supra and Memorandum of Law. The finding of sovereign immunity should result in dismissal of the EPC Executive Director's Order and this proceeding.

m. FSFA objects to the Hearing Officer's failure to expressly mention in the Recommendation the additional constitutional argument of FSFA concerning unlawful delegation of legislative authority under the Federal and Florida Constitutions.

n. FSFA objects to the Hearing Officer's correspondence to The Honorable Kathy Castor, Chairperson, dated March 29, 2005 (forwarding the Recommendation and two orders), which states "[t]he parties have agreed that the Motion to Dismiss raises sufficiently serious issues for review by you [Chairperson] or perhaps the entire Commission." FSFA has not so agreed, and in fact, EPC's Board should not be participating in this proceeding for reasons stated above. Moreover, FSFA objects to the Hearing Officer's suggestion that the Chairman could make a determination on any matter.

6. If EPC does not dismiss the EPC Executive Director's Order, the decision would be a nullity and no force and effect due to reasons stated above.

WHEREFORE, subject to the objections and reservations set forth above, the Florida State Fair Authority requests the Environmental Protection Commission of Hillsborough County:

1. Dismiss and rescind the EPC Executive Director's Order and this proceeding;
2. Determine that the EPC Board cannot sit as a tribunal in this proceeding;
3. Alternatively, grant FSFA's Motion to Dismiss; and
4. Grant such other relief as is just and equitable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished via hand-delivery to The Honorable Kathy Castor, Chairperson, Environmental Protection Commission of Hillsborough County, 601 E. Kennedy Boulevard, 2nd Floor, Tampa, Florida 33602; and a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to Dr. Richard Garrity, Executive Director, Environmental Protection Commission of Hillsborough County, 1900 9th Avenue, Tampa, Florida 33602 (fax number 813-272-5157); Richard Tschantz, Esq., General Counsel, and Ricardo Muratti, Esq., Hillsborough County Environmental Protection Commission, 1900 9th Avenue, Tampa, Florida 33605 (fax number 813-272-5287); and Mark Bentley, Esq., Gray Robinson, P.A., 201 N. Franklin Street, Suite 2200, Tampa, Florida 33602 (fax number 813-273-5145) on this 9th day of April, 2005.

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EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 21, 2005

Subject: Legislative Summary

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

Division: Legal Department

Recommendation: Sending letter to Legislative Delegation regarding various bills.

Brief Summary: The EPC Legal Department provides a summary of legislation of interest in the 2005 session. The Board after discussing the bills may choose to send a letter regarding its position on some of the bills presented including but not limited to: review timeframes for local permits, incentive based permitting, and Total Maximum Daily Loads (TMDL). The local building permit bill would force agencies to rush initial reviews of permits to determine if they are complete or not. This could require additional staffing to ensure applications are sufficient. The incentive based permitting bill places additional burdens on state regulatory agencies, of which the EPC administers Air and Water programs for the state. The TMDL bills may be acceptable with minor changes, but the EPC should encourage these bill be monitored to avoid any reduction in water quality protection.

Background: The EPC Legal Department, in coordination with all divisions, monitors the Florida Legislative sessions. The EPC Legal Department focuses mainly on bills that would impact either positively or negatively the EPC powers, duties, and regulatory functions as laid out in the EPC Act and Rules. The County's Public Affair's Office asks the EPC Legal Department to comment on dozens of bills via its on-line legislative tracking system. The comments, when needed, are routed to appropriate staff and posted on the system for the Public Affair Officer and her staff to review and consider as they lobby in Tallahassee. This 2005 Legislative session is particularly active in environmental matters. A few bills of interest regard the following: the use of agricultural wetlands for fill or tailwater recovery ponds, Total Maximum Daily Loads, alternative water supply, contamination notification, local government permit application review deadlines, and incentive based permitting.

1. WETLANDS. In response to SB 1748 regarding Agricultural Water Conservation, EPC Board voted last month to send a letter to our local Legislative Delegation asking them to oppose any legislation that may limit or compromise the authority of the EPC to regulate wetlands in Hillsborough County. Specifically, EPC expressed concern for the language that was originally in SB 1748 which was removed in part prior to the March EPC Board meeting but then resurfaced after the EPC meeting in House bill PCB AG05-03. House PCB AG05-03 would authorize state agencies to promulgate general permits facilitating the filling of up to forty acres of wetlands on agricultural property with no assurance of compensatory mitigation. We asked in a letter dated April 6, 2005, that our delegation continue to ensure that SB 1748 and PCB AG05-03 delete all provisions allowing for weakened protection. Specifically, we requested that

any bill proposed for final action 1) incorporate accepted best management practices (BMPs) for tailwater recovery ponds in wetlands and 2) requires wetland impact minimization and compensatory mitigation requirements for proposed wetland filling permits to guarantee the continued protection of wetlands and their associated functions within Hillsborough County. No additional action is requested to date.

2. INCENTIVE-BASED PERMITTING ACT. Senate bill 1182 proposed by Sen. Campbell (see also HB 137 which at this time is identical) is not the same as the DEP has proposed the past few years. The bill has some positive ideas, but overall it adds more burdens to the DEP and delegated programs without giving better grounds to deny permits or add additional conditions to permits for bad actors as the DEP has proposed in the past. As the title indicates incentives are offered for the regulated community to, among other things, avoid certain violations, thus giving them the opportunity to expedite permitting, minimize agency requests for additional information, automatic permit renewals, and potentially avoid some permit challenges (via longer permits or automatic renewals). First, the bill only applies to DEP permits or certifications issued under 403, beaches permits under Chp. 161, and wetlands construction or alteration permits issued under sec. 373.413 (ERP). It appears that delegated programs would follow this statute, thus EPC Water and Air Divisions are impacted. Most likely the tanks program (USTs and ASTs) would not be impacted because the bill does not reference Chp. 376, F.S. or other programs that are registration based.

It doesn't appear that the bill deletes the existing rule (62-4.070, FAC) that allows denying a permit based on the past history of compliance. The bill focuses on incentives instead. The bill creates two levels of incentive-based permitting; they both require rulemaking to be effective.

Being eligible for incentives is predicated on having some past history of operating facilities, plus not having a "formal enforcement action" history that resulted in significant harm to humans or the environment. The bill does not define formal enforcement action, plus it raises the bar by saying it must be a significant harm to humans or environment. Thus, many people may have consistent environmental violations, but could be eligible for incentives because they settled them all before formal action or the violations didn't cause significant harm. This opens the incentive program to many applicants. Some of the incentives you can receive under level one are 1) automatic renewal of permits, without agency action, thus they file a renewal request allow public comment and agency review, but if no major concerns are raised, the permit automatically renews "without agency action", which typically means there is no right for entities/citizens to challenge it; 2) permit review time is reduced to 45 days once the application is deemed complete (currently agencies typically have 90 days); and 3) short-form renewals. The bill also creates a higher level of incentives called Level 2. To qualify for Level 2 incentives one has to meet Level 1 standards plus actively go beyond environmental regulations and take measures to reduce pollution and impacts. Level 2 incentives may include all Level 1 incentives, plus ten-year permits, fewer inspections by the agency, expedited permit modification reviews, agency recognition of being a good facility and/or program specific incentives, potentially making future renewals merely certificates (not permits), and limiting an agency to no more than two request for additional information (RAI) when processing an application. This RAI limitation could backfire in that agencies may have to deny applications that are incomplete. Also, the concept of making renewals only certifications, could also deny persons a point of entry to challenge permits.

Furthermore the bill encourages agencies to work with the regulated community to maintain compliance and notify them of this program. Finally, the bill makes it harder to revoke permits, because it puts more burdens on agencies to notify permittees of violations and gives them a chance to cure, before revocation. Also, the agency can only revoke if the permittee "knowingly" violates the laws, orders, regulations, or knowingly submits false information. While all of this is generally practiced, it ties the agencies down with more formalities. The bill could be amended to be more palatable and this may be occurring, but EPC may want to oppose or actively try to modify it.

3. WATER and TMDLs. The committee substitute/amendment for SB 444 (bar code 351004) is an omnibus water bill. The bill focuses on establishing additional water supply legislation and incorporates most of SB 2322 regarding TMDLs. The bill provides for the creation of a water protection and supply bond (a revenue generating tool to assist in funding restoration projects, alternative water supply projects, and helping persons implement BMPs to comply with TMDLs), provides for encouragement of and incentives for producing alternative water supplies (which includes among other things various uses of reclaimed water), prioritizes funding for alternative water supplies, encourages the creation of regional water supply authorities, creates a grant funding committee and procedures to qualify for alternative water supply grants, may allow for funding for reuse projects to be conditioned on metering and rate structures, as it relates to water use permitting under Chp. 373 the bill creates a presumption that alternative water supply projects are in the public interest (thus facilitating a hurdle in permit approval) and that the permit shall be for at least 20 years. We may want to ask the legislators to insert language encouraging all water supply entities to pursue these water supplies with environmental and conservation goals as one of their guiding principles.

The bill also clarifies that the TMDL program is designed to "restore water bodies to their designated uses" as opposed to the more strict and existing law that requires that TMDLs lead to a water body meeting "water quality standards" (this is a potential lessening of water quality standards), mandates that final allocation of (TMDL) pollutant loads to point and non-point sources shall be done via basin management action plans (BMAP), establishes the phasing in of a TMDL (i.e. - as data continues to be collected and refined, the TMDL can be adjusted), requires the BMAPs be developed through public participation and followed by DEP rule adoption or secretarial order (both of which can be challenged), encourages the use of BMPs to comply with BMAPs, limits when NPDES (surface water discharge) permits can be adjusted to meet TMDLs, does not open an point of entry to challenge an NPDES permit when TMDL are incorporated, if a person is implementing BMPs per a BMAP they can't be required to further reduce their load and they are deemed in compliance with the TMDL statutes, and finally, requires that the DEP must assess any BMPs or interim measures adopted by rule to determine if they are helping meet TMDLs. If the BMP is determined to be effective for a specific pollutant, then the DEP can't litigate to seek costs or damages for the same pollution. This does not appear to preclude penalties or corrective actions, but does limit the DEP's enforcement powers.

The language that clarifies that the TMDL program is designed to "restore water bodies to their designated uses" as opposed to the more strict and existing law that requires that TMDLs lead to a water body meeting "water quality standards" is problematic as it appears to weaken the original goal of meeting water quality standards. This language, which may be subject to recent amendments, for example would allow a body of water to be brought back to a recreational status, but not necessarily require all accepted water quality standards to be met. Also, the new TMDL language that states that once BMPs are implemented per a BMAP, the DEP can't require the discharger to reduce their load is problematic, as it takes away a regulatory tool to minimize pollution. Nonetheless, via BMAP amendments, the DEP can potentially reduce pollutant loads additionally, but only after a rule adoption or secretarial order. This adds additional burdens on the DEP.

4. BUILDING PERMITS. Senate bills 442, 621, and 2286 seek to expedite building permit reviews by local governments, but the bills are worded generally so that arguably it could include some local environmental permits. Currently a committee substitute to SB442 requires an agency act on a permit within 90 days or get a written extension from the applicant. SB 2286 requires the application to be reviewed in 10 days, then additional information should be requested in the 10 days, once responded to by the applicant the agency has an additional 45 days to request more information, the permit shall issue 120 days from the date it is deemed complete. The EPC staff would prefer the environmental permits are excluded from any of these permitting deadline bills. In the alternative, the EPC staff would request that the language in CS 442 be modified to allow for an extension of the 90-day time application decision if we either get an extension from the applicant or if the local government asks for additional information within 30 days, the 90 day clock restarts. This is the norm for most DEP permitting procedures also. It may be easier to negotiate this language in SB 2286, which has already moved away from the flat 90-day permit application time clock, but the 10 day initial review is problematic.

SB 2286 requires a first review in 10 days, not the typical 30 that EPC and DEP are accustomed to. This could require additional staff to ensure complex permits are reviewed in 10 days. This should be amended to give local governments more time. County lobbyist were seeking a compromise of 20 days for initial review, but no amendment has been posted to date. Also, 2286 states that the new law would only apply to various forms of building permits and permits "for lot grading or site alteration that is associated with an application for any permit specified in this paragraph." Arguably, this last catch all could include some EPC permits for wetland or landfill matters. It would be best to have language that excludes environmental permits from this legislation. The EPC should oppose this bill or seek its modification.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 21, 2005

Subject: Clean Air Month Proclamation

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

Division: Air Management Division

Recommendation: Read the Clean Air Month Proclamation and present copies to representatives of the EPC, the American Lung Association and the H. Lee Moffitt Cancer Center and Research Institute

Brief Summary: For the past 32 years the EPC and the American Lung Association have jointly promoted May as Clean Air Month in Hillsborough County. With the Board's approval, the staff would like to continue with this annual tradition for 2005. The proposed proclamation would be presented to representatives of the EPC, the American Lung Association and the H. Lee Moffitt Cancer Center and Research Institute. The cooperative effort hopes to increase public awareness on this year's theme of "*Asbestos Beware*" and to educate the public of asbestos and its effect on the health and well-being of our citizens.

Background: None



EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 21, 2005

Subject: Air and Water Divisions Technical Systems Audit Report

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

Division: Executive Director's Report

Recommendation: Accept the update.

Brief Summary:

The EPC's Air and Water Management Divisions were recently audited by the US EPA for their air toxics monitoring and laboratory analysis work. The audit results reflected well on the staff and the Executive Director wanted to share this with the Board.

Background:

During February 1-3, 2005, Tim Slagle and Jerry Burger, Environmental Protection Agency, Region 4, conducted a technical system audit (TSA) of the Hillsborough County Environmental Protection Commission ambient air monitoring and laboratory analysis programs. The audit was conducted according to the provisions of 40 CFR Part 58. During the audit, the National Ambient Air Systems (NAAS) Technical Systems Audit Questionnaire and Air Toxics Pilot Program - Technical System Audit Laboratory Form were completed, the Aerometric Information Retrieval System (AIRS) data reports were reviewed, field and laboratory procedures were reviewed. The audit was conducted at both the HCEPC office and laboratory.

List of Attachments: Environmental Protection Agency, Region 4, Technical System Audit



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

REC'D

MAR 17 2005

MAR 21 2005

ENV. PROT. COMM
OF H.C.

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

Dear Mr. Campbell:

During February 1-3, 2005, Tim Slagle and Jerry Burger, Environmental Protection Agency, Region 4, conducted a technical system audit (TSA) of the Hillsborough County Environmental Protection Commission ambient air criteria and toxic monitoring program. Based on the audit results, it is concluded that all EPA requirements for the operation and quality assurance of an air monitoring network were met. The quality assurance program and documentation were sufficient to support the agency's operation, and the data that are being collected and submitted to the Air Quality Subsystem (AQS) in accordance with 40 CFR Part 58.

The data collection period covered by the audit was October 2003 thru September 2004. The "Technical Systems Audit Form Questionnaire" and "Air Toxics Pilot Program - Technical System Audit Form" were used as a guide in conducting the audit and are attached.

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

If you have any questions regarding the audit, please call Tim Slagle (706) 355- or Jerry Burger (706) 355-8739.

Sincerely,

Jim McGuire, Chief
Superfund and Air Section

cc: Doug Neeley w/attachment
Dick Arbys, FDEP

Hillsborough County Environmental
Protection Commission

2005 SYSTEMS AUDIT
SESD Project No. 05-0386

CONDUCTED BY

Tim Slagle, Jerry Burger
February 1-3, 2005

INTRODUCTION

During February 1-3, 2005, Tim Slagle and Jerry Burger, Environmental Protection Agency, Region 4, conducted a technical system audit (TSA) of the Hillsborough County Environmental Protection Commission ambient air monitoring program. The audit was conducted according to the provisions of 40 CFR Part 58. During the audit, the National Ambient Air Systems (NAAS) Technical Systems Audit Questionnaire and Air Toxics Pilot Program - Technical System Audit Laboratory Form were completed, the Aerometric Information Retrieval System (AIRS) data reports were reviewed, field and laboratory procedures were reviewed. The audit was conducted at both the HCEPC office and laboratory.

AIR MONITORING PROGRAM

The air monitoring records from October 2003 thru September 2004 were reviewed. The documentation was thorough and complete. The agency has done an excellent job

The agency has maintained good data recovery from the air monitoring network. All necessary calibrations, precision and accuracy checks, and preventive maintenance had been performed.

In addition to the system audit, an on-site review was conducted of monitoring sites located in Hillsborough County. These sites were:

<u>AQS NUMBER</u>	<u>SITE NAME</u>	<u>PARAMETERS</u>	<u>TYPE</u>
12-057-0095	Causeway	SO ₂ /PM _{10 cont.}	NAMS/SLAMS
12-057-0066	Union	PM ₁₀ (Collocated)	NAMS
—	Progress	PM _{10 cont.} , Met.	SPM
12-057-0083	Gardinier	PM _{10 cont.}	SPM
12-057-0109	East Bay	SO ₂	SLAMS
—	Gibsonton	PM _{10 cont.} , Met.	SPM
12-057-0085	Eisenhower	PM ₁₀	SPM
12-057-0081	Simmons Park	O ₃ , SO ₂ /NO ₂ , Met.	SLAMS/SPM
—	Jewel	Pb, TSP	SPM
12-057-1073	Patent	Pb, TSP	SPM
12-057-1070	SADS	CO/PM _{2.5 cont.}	NAMS/SPM
12-057-1002	Health Dept.	PM ₁₀ (Collocated)	NAMS
—	Apollo Beach	PM _{10 cont.}	SPM
12-057-1069	Harbour Island	PM ₁₀	SLAMS
12-057-0053	Ballast Point	SO ₂	NAMS
12-057-1035	Davis Island	PM _{10 cont.} /O ₃ , SO ₂ /Met.	NAMS/SLAMS/SPM
12-057-1065	Gandy	O ₃ , NO ₂ /Met., Toxics (VOC, Carbonyls, Metals)	NAMS/SPM

The review confirmed the sites meet the requirements of 40 CFR, Part 58, Appendix E.

LABORATORY

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

However, the laboratory has switched from conducting metals analysis with flame atomic absorption spectrometry to using inductively coupled plasma (ICP) spectrometry. The lead SOP has been modified to reflect the ICP method that is being used. The SOP needs to be submitted to EPA for approval as part of the agency QA Plan. An SOP for the metals analysis that is being conducted in support of the air toxics network in Hillsborough and Pinellas Counties has been developed. This SOP needs to be submitted to EPA for approval as part of the Hillsborough and Pinellas Counties air toxics QAPP. It was also suggested the high volume TSP / metals filter number be added to the login sheet for chain-of-custody tracking.

Conclusions and Recommendations

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

1. Submit the laboratory SOP for the ICP Lead analysis through FDEP to EPA for approval as part of the agency's QA plan
2. Submit the SOP for the ICP metals analysis that is being conducted in support of the air toxics network in Hillsborough and Pinellas Counties to EPA for approval as part of the agency's QAPP.
3. Add the high volume TSP / metals filter number to the laboratory login sheet for chain-of-custody tracking.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 21, 2005

Subject: Tampa Bay Fisheries / Tampa Wholesale Nursery: Reclaimed Water Reuse Project
Regular Agenda

Division: Water Management Division

Recommendation: For information only. No action required

Brief Summary:

Through the partnership of regulatory and private businesses, a success story of turning a wasted product into a beneficial reusable resource materialized. The EPC, SWFWMD, Tampa Bay Fisheries, Inc., and Tampa Wholesale Nursery joined efforts to allow treated industrial wastewater from Tampa Bay Fisheries to be reused for irrigation at the Tampa Wholesale Nursery thereby offsetting/replacing groundwater pumping by an average of 100,000 gallons per day.

In December of 2003, the EPC issued an Industrial Wastewater Permit for Tampa Bay Fisheries, Inc. to modify and upgrade their wastewater treatment plant thereby producing an enhanced quality of treated water suitable for reuse. The construction and operation upgrades were completed early this year where the transfer and use of reclaimed water from Tampa Bay Fisheries commenced on February 17, 2005.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: April 21, 2005

Subject: Report on the Environmental Impact of Incineration of Municipal Solid Waste vs. Landfilling

Consent Agenda

Regular Agenda

Public Hearing

Division: Air Management and Waste Management

Recommendation:

N/A

Brief Summary:

Hillsborough County is proposing to add a fourth unit to their Falkenburg Road Resource Recovery Facility. Commissioner Sharpe requested that the Agency provide a presentation on the environmental impact of incinerating versus landfilling municipal solid waste.

Background:

The County operates a Resource Recovery Facility located on Falkenburg Road. It began operation in October 1987, and processes approximately 1,200 tons per day of solid waste, while generating up to 29 megawatts of renewable energy. Covanta Energy runs the operation for the County. Hillsborough County is proposing to add a fourth incineration unit to process the County's solid waste. In addition to this facility, the County operates a Class I landfill, Southeast Landfill, which began operation in 1984 on a 180 acre site. Emissions from both facilities are compared based on the new incinerator proposal versus the landfill facility.

List of Attachments:

Power Presentation – Incineration vs. Landfilling