

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
MAY 19, 2005
10 AM – 12 NOON**

AGENDA

INVOCATION AND PLEDGE OF ALLEGIANCE

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

- I. CITIZEN'S COMMENTS**
- II. CITIZEN'S ENVIRONMENTAL ADVISORY COMMITTEE**
Report from the Chairman – David Jellerson
- III. CONSENT AGENDA**
 - A. Approval of Minutes: April 21, 2005 2
 - B. Monthly Activity Reports 7
 - C. Pollution Recovery Trust Fund 19
 - D. Gardinier Settlement Trust Fund 20
 - E. Legal Department Monthly Report 21
 - F. Authorize Executive Director to Execute FDEP Contract (Air Title V) 27
 - G. Approve Revised Mitigation Agreement – Main Street at Hampton Lakes 33
- IV. PRESENTATIONS**
Clean Air Month
- V. LEGAL DEPARTMENT**
 - A. Update on Ford Amphitheatre 34
 - B. Legislative Update 35
- VI. COMMISSIONER'S REQUEST**
Discussion of SMARTT Model (Commissioner Storms) 38
- VII. EXECUTIVE DIRECTOR**

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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APRIL 21, 2005 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, April 21, 2005, at 10:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Vice Chairman Ronda Storms and Commissioners Brian Blair, Thomas Scott, and Mark Sharpe.

The following members were absent: Chairman Kathy Castor (schedule conflict) and Commissioners Ken Hagan and Jim Norman (schedule conflict).

Vice Chairman Storms called the meeting to order at 10:08 a.m. Commissioner Sharpe led in the pledge of allegiance to the flag and gave the invocation.

CHANGES TO THE AGENDA

Dr. Richard Garrity, EPC Executive Director, reported Item V.a., Florida State Fair Authority v. EPC, was deleted from the agenda. **Commissioner Scott moved the changes, seconded by Commissioner Sharpe, and carried four to zero.** (Chairman Castor and Commissioners Hagan and Norman were absent.)

CITIZENS COMMENTS

Vice Chairman Storms called for public comment; there was no response.

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Report From the Chairman, David Jellerson - Mr. Jellerson said the April 4, 2005, CEAC meeting included EPC staff updates and a presentation on the Hillsborough independent monitoring program and watershed management initiative. He discussed efforts to find funding sources to connect Buster Bean Drive residents to water services and noted the Pollution Recovery Fund (PRF) was considered.

CONSENT AGENDA

- A. Approval of minutes: February 24, 2005.
- B. Monthly activity reports.
- C. PRF.
- D. Gardinier Settlement Trust Fund.
- E. Legal Department monthly report.
- F. Request authority to create limited duration grant position (smart driver program).

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G. Request authority to take appropriate legal action against Mr. Juan and Ms. Rafaela Lassere (underground storage tanks).

H. Request approval of PRF contract extension.

Commissioner Scott moved approval of the Consent Agenda, seconded by Commissioner Blair, and carried four to zero. (Chairman Castor and Commissioners Hagan and Norman were absent.)

AUDIT FOLLOW-UP REPORT

Mr. Dan Pohto, Director, County Audit Department, Clerk of the Circuit Court, presented Audit Report 132, which was a follow-up report to the October 2003 audit, and he reviewed findings addressed, closed, and pending. Following discussion, Commissioner Scott moved to receive and file, seconded by Commissioner Sharpe, and carried four to zero. (Chairman Castor and Commissioners Hagan and Norman were absent.) Dr. Garrity offered appreciative comments.

LEGAL DEPARTMENT

Florida State Fair Authority v. EPC, Case LEPC04-022 - Deleted from the agenda.

Legislative Update - EPC General Counsel Richard Tschantz utilized an overhead presentation to review four bills related to environmental issues, as detailed in background material. He noted letters were sent regarding concerns with the agricultural conservation bill, wetland fill, and the lack of mitigation requirements, and explained concerns with the incentive-based permitting act bill regarding the lack of disincentives, permitting process burdening agencies, and issues with easy eligibility. Staff opposed the bill and requested a letter be sent to the Legislative Delegation. In reply to Vice Chairman Storms, Attorney Tschantz said the recommendation was for staff to prepare a letter for the Chairman to sign in opposition to the incentive-based permitting act bill, for the reasons enumerated. Commissioner Sharpe so moved, seconded by Commissioner Scott, and carried four to zero. (Chairman Castor and Commissioners Hagan and Norman were absent.)

Attorney Tschantz outlined concerns with the building permit bill and the ten-day review period requirement, which would impact the EPC time frame for review and staffing needs, and perceived clarification was needed for instances when additional information would be requested. He requested the EPC Board send a separate letter asking for those two areas to be improved or clarified. In response to Commissioner Blair, Attorney Tschantz stated online

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permit processing was not included in the bill but agreed the same time frames would apply and ought to be addressed. Vice Chairman Storms called for a motion. **Commissioner Scott so moved, seconded by Commissioner Blair, and carried four to zero.** (Chairman Castor and Commissioners Hagan and Norman were absent.) Attorney Tschantz explained staff currently supported and would continue to monitor the bill regarding alternative water supply sources and total maximum daily loads.

Commissioner Storms requested staff to review the smart model impact on groundwater pumping and wetlands and whether Tampa Bay Water governance contemplated reducing groundwater pumping and the desalination plant running at full capacity and to set an item for discussion for the Board of County Commissioners. In response to Attorney Tschantz, Vice Chairman Storms said to make the determination whether the discussion needed to occur before the tolling of 30 days.

AIR MANAGEMENT DIVISION

Clean Air Month 2005 Proclamation - Mr. Jerry Campbell, Director, EPC Air Management Division, discussed the annual proclamation to enhance public awareness, said the current theme was Asbestos Beware, and requested the EPC Board present the proclamation declaring May 2005 as Clean Air Month. Vice Chairman Storms presented the proclamation, which was accepted by Ms. Dotti Groover-Zegota, director of programs, American Lung Association, who offered comments; Dr. Lawrence Robinson, H. Lee Moffitt Cancer Center and Research Institute Incorporated, who offered comments; and Ms. Allanna Lynn, EPC staff.

EXECUTIVE DIRECTOR

Audit Report, U.S. Environmental Protection Agency (USEPA) - Dr. Garrity read an excerpt from the USEPA audit highlighting the excellent air monitoring program and recognized EPC staff. He advised Earth Day 2005 was being held at Lowry Park Zoo on Saturday, April 23, 2005, from 11:00 a.m. to 4:00 p.m., and the theme was The Best Things in Life Are Green.

Wetlands Video - Dr. Garrity showed a three-minute segment of the Hillsborough Television Channel 22 Clean Living program episode on the Wetlands Management Division. Commissioner Storms commented on wetland elements of hydric soil, aquatic vegetation, and water; stormwater filtration provided by wetlands; impacts from filled wetlands, including peripheral costs and water quality issues; and emphasis on providing that information and rerunning the program.

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WATER MANAGEMENT DIVISION

Industrial Reclaimed Water Reuse Project - Dr. Garrity offered introductory remarks. Mr. Chris Dunn, Director, EPC Water Management Division, utilized an overhead presentation to discuss the water reuse project and provision of industrial reclaimed water by Tampa Bay Fisheries to Tampa Wholesale Nursery, as detailed in background material, and he commented on the history of the seafood facility, environmental requirements, compliance issues, and environmental benefits of the partnership. Dr. Garrity said certificates of appreciation would be given to contributory parties.

Mr. Roy Davis, owner, Tampa Wholesale Nursery Incorporated, noted he requested the Southwest Florida Water Management District permit be maintained and commented on research assistance received from the University of Florida Institute of Food and Agricultural Sciences and impacts of untreated water. The project was online one month and he was hoping for the best. Mr. Steven Davis, owner, Tampa Wholesale Nursery Incorporated, anticipated project success. Mr. Robert Paterson Jr., Tampa Bay Fisheries Incorporated, commented on the corporate philosophy for environmental stewardship, long-term investment for sustainability and compliance, and additional investments to fine-tune the program. Vice Chairman Storms encouraged staff to contact local newspapers to produce the story.

COMMISSIONERS' REQUEST

Report on the Environmental Impact of Municipal Solid Waste Versus Landfilling - Dr. Garrity offered introductory remarks. Mr. Paul Schipfer, EPC staff, utilized an overhead presentation to discuss the environmental considerations of the integrated solid waste management system, as detailed in background material, highlighting disposal options, County facilities, and incineration versus landfilling. Staff perceived the integrated system was well managed and environmentally responsible, supported the maximization of existing facilities, and complied with environmental regulations with state-of-the-art environmental controls. Mr. Schipfer opined the facility was operated in a textbook manner. Commissioner Storms commented on national recognition. Commissioner Sharpe offered appreciative comments and would follow-up with staff with further questions.

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There being no further business, the meeting was adjourned at 11:14 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _____
Deputy Clerk

lm

MONTHLY ACTIVITIES REPORT
AIR MANAGEMENT DIVISION
APRIL

A. Public Outreach/Education Assistance:		
1. Phone Calls:		297
2. Literature Distributed:		<u>50</u>
3. Presentations:		<u>6</u>
4. Media Contacts:		<u>2</u>
5. Internet:		<u>67</u>
6. Host/Sponsor Workshops, Meetings, Special Events (Citrus Park Townhall Meeting and Earth Day)		<u>2</u>
B. Industrial Air Pollution Permitting		
1. Permit Applications Received (Counted by Number of Fees Received):		
a. Operating:		<u>9</u>
b. Construction:		<u>0</u>
c. Amendments:		<u>0</u>
d. Transfers/Extensions:		<u>1</u>
e. General:		<u>1</u>
f. Title V:		<u>4</u>
2. Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval (¹ Counted by Number of Fees Collected) - (² Counted by Number of Emission Units affected by the Review):		
a. Operating ¹ :		<u>9</u>
b. Construction ¹ :		<u>6</u>
c. Amendments ¹ :		<u>0</u>
d. Transfers/Extensions ¹ :		<u>0</u>
e. Title V Operating ² :		<u>33</u>
f. Permit Determinations:		<u>0</u>
g. General:		<u>0</u>
3. Intent to Deny Permit Issued:		<u>1</u>
C. Administrative Enforcement		
1. New cases received:		<u>2</u>
2. On-going administrative cases:		
a. Pending:		<u>9</u>
b. Active:		<u>19</u>
c. Legal:		<u>5</u>
d. Tracking compliance (Administrative):		<u>23</u>
e. Inactive/Referred cases:		<u>0</u>
	Total	<u>56</u>
3. NOIs issued:		<u>9</u>
4. Citations issued:		<u>0</u>
5. Consent Orders Signed:		<u>8</u>
6. Contributions to the Pollution Recovery Fund: \$17,866.00		
7. Cases Closed:		<u>1</u>

D.	Inspections:	
	1. Industrial Facilities:	<u>24</u>
	2. Air Toxics Facilities:	
	a. Asbestos Emitters	<u>0</u>
	b. Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>11</u>
	c. Major Sources	<u>0</u>
	3. Asbestos Demolition/Renovation Projects:	<u>17</u>
E.	Open Burning Permits Issued:	<u>8</u>
F.	Number of Division of Forestry Permits Monitored:	<u>310</u>
G.	Total Citizen Complaints Received:	<u>88</u>
H.	Total Citizen Complaints Closed:	<u>39</u>
I.	Noise Sources Monitored:	<u>24</u>
J.	Air Program's Input to Development Regional Impacts:	<u>2</u>
K.	Test Reports Reviewed:	<u>47</u>
L.	Compliance:	
	1. Warning Notices Issued:	<u>18</u>
	2. Warning Notices Resolved:	<u>7</u>
	3. Advisory Letters Issued:	<u>7</u>
M.	AOR's Reviewed:	<u>3</u>
N.	Permits Reviewed for NESHAP Applicability:	<u>2</u>

FEES COLLECTED FOR AIR MANAGEMENT DIVISION
APRIL

	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>\$ 40.00</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>\$7,000.00</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	\$6,800.00
(b) for structure greater than 50,000 sq ft	<u>\$ 300.00</u>
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	\$ 300.00
(b) renovation greater than 1000 linear feet or 1000 sq ft	<u>\$1,000.00</u>
8. Open burning authorization	<u>\$5,200.00</u>
9. Enforcement Costs	<u>\$4,939.00</u>

M E M O R A N D U M

DATE: May 11, 2005

TO: Tom Koulianos, Director of Finance and Administration

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

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

A. ADMINISTRATIVE ENFORCEMENT

1.	New cases received	10
2.	On-going administrative cases	105
	a. Pending	18
	b. Active	54
	c. Legal	6
	d. Tracking Compliance (Administrative)	27
	e. Inactive/Referred Cases	0
3.	NOI's issued	1
4.	Citations issued	0
5.	Consent Orders and Settlement Letters Signed	3
6.	Civil Contributions to the Pollution Recovery Fund	\$938
7.	Enforcement Costs collected	\$1,125
9.	Cases Closed	1

B. SOLID AND HAZARDOUS WASTE

1. Permits (received/reviewed)	1
2. EPC Authorization for Facilities NOT requiring DEP permit	1/3
3. Other Permits and Reports	
a. County Permits	0
b. Reports	89/81
4. Inspections (Total)	210
a. Complaints	49
b. Compliance/Reinspections	20
c. Facility Compliance	23
d. Small Quantity Generator	117
e. P2 Audits	1
5. Enforcement	
a. Complaints Received/Closed	46/36
b. Warning Notices Issued/Closed	8/5
c. Compliance letters	11
d. Letters of Agreement	0
e. DEP Referrals	8
6. Pamphlets, Rules and Material Distributed	203

C. STORAGE TANK COMPLIANCE

1. Inspections	
a. Compliance	117
b. Installation	25
c. Closure	9
d. Compliance Re-Inspections	23
2. Installation Plans Received/Reviewed	16/14
3. Closure Plans & Reports	
a. Closure Plans Received/ Reviewed	9/10
b. Closure Reports Received/Reviewed	7/5
4. Enforcement	
a. Non-compliance Letters Issued/Closed	68/26
b. Warning Notices Issued/Closed	5/1
c. Cases referred to Enforcement	1
d. Complaints Received/Investigated	2/2
e. Complaints Referred	0
5. Discharge Reporting Forms Received	1
6. Incident Notification Forms Received	6
7. Cleanup Notification Letters Issued	1
8. Public Assistance	200+

D. STORAGE TANK CLEANUP

1. Inspections	46
2. Reports Received/Reviewed	99/111
a. Site Assessment	24/25
b. Source Removal	3/3
c. Remedial Action Plans (RAP's)	13/21
d. Site Rehabilitation Completion Order/ No Further Action Order	8/8
e. Others	51/54
3. State Cleanup	
a. Active Sites	NO LONGER ADMINISTERED
b. Funds Dispersed	

E. RECORD REVIEWS

24

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

A. ENFORCEMENT

1. New Enforcement Cases Received:	5
2. Enforcement Cases Closed:	9
3. Enforcement Cases Outstanding:	32
4. Enforcement Documents Issued:	6
5. Recovered costs to the General Fund:	\$2,259.58
6. Contributions to the Pollution Recovery Fund:	\$13,645.00

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. University Place Business Center		\$645.00
b. Tampa Bay Village		\$1,000.00
c. Bay Hills Village		\$2,000.00
d. Charlie 39, LLC		\$1,000.00
e. Oaks Business Ctr.		\$1,000.00
f. Countryside Baptist Church of Dover		\$1,000.00
g. Black Diamond Flight Service		\$500.00
h. South County Career Center		\$2,000.00
i. Hendry Corp.		\$4,500.00

B. PERMITTING/PROJECT REVIEW - DOMESTIC

1. Permit Applications Received:	34
a. Facility Permit:	7
(i) Types I and II	0
(ii) Types III	7
b. Collection Systems-General	15
c. Collection Systems-Dry Line/Wet Line:	12
d. Residuals Disposal:	0
2. Permit Applications Approved:	30
a. Facility Permit:	5
b. Collection Systems-General:	8
c. Collection Systems-Dry Line/Wet Line:	17
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:	57
a. Facility Permit:	20
b. Collection Systems-General:	35
c. Collection Systems-Dry Line/Wet Line:	2
d. Residuals Disposal:	0
7. Permit Determination:	0
8. Special Project Reviews:	0
a. ARs:	0
b. Reuse:	0
c. Residuals/AUPs:	0
d. Others:	0
 C. INSPECTIONS - DOMESTIC	
1. Compliance Evaluation:	15
a. Inspection (CEI):	1
b. Sampling Inspection (CSI):	11
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	3
2. Reconnaissance:	54
a. Inspection (RI):	11
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	40
d. Enforcement Inspection (ERI):	3
3. Engineering Inspections:	0
a. Reconnaissance Inspection (RI):	0
b. Sample Reconnaissance Inspection (SRI):	0
c. Residual Site Inspection (RSI):	0
d. Preconstruction Inspection (PCI):	0
e. Post Construction Inspection (XCI):	0
f. On-site Engineering Evaluation:	0
g. Enforcement Reconnaissance Inspection (ERI):	0

D. PERMITTING/PROJECT REVIEW - INDUSTRIAL

1. Permit Applications Received:	1
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:	0
(iii) Type III w/o Groundwater Monitoring:	1
2. Permits Recommended to DEP for Approval:	0
3. Special:	0
a. Facility Permits:	0
b. General Permits:	0
4. Permitting Determination:	0
5. Special Project Reviews:	13
a. ARs:	0
b. Phosphate DMRs:	0
c. Phosphate:	2
d. Industrial Wastewater:	9
e. Others:	2

E. INSPECTIONS - INDUSTRIAL

1. Compliance Evaluation:	8
a. Inspection (CEI):	8
b. Sampling Inspection (CSI):	0
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	0
2. Reconnaissance:	16
a. Inspection (RI):	10
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	6
d. Enforcement Reconnaissance Inspections (ERI):	0

3.	Engineering Inspections:	0
	a. Compliance Evaluation (CEI):	0
	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:	39
	a. Domestic:	28
	(i) Received:	17
	(ii) Closed:	11
	b. Industrial:	11
	(i) Received:	6
	(ii) Closed:	5
2.	Warning Notices:	71
	a. Domestic:	62
	(i) Received:	37
	(ii) Closed:	25
	b. Industrial:	9
	(i) Received:	5
	(ii) Closed:	4
3.	Non-Compliance Advisory Letters:	21
4.	Environmental Compliance Reviews:	164
	a. Industrial:	40
	b. Domestic:	124
5.	Special Project Reviews:	2
	a. ARs:	2
	b. Others:	0
G.	RECORD REVIEWS	4
1.	Permitting:	3
2.	Enforcement:	1
H.	ENVIRONMENTAL SAMPLES ANALYZED FOR:	193
1.	Air Division:	64
2.	Waste Division:	3
3.	Water Division:	17
4.	Wetlands Division:	0
5.	ERM Division:	109

I. SPECIAL PROJECT REVIEWS:

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

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

A. General	Totals
1. Telephone Conferences	1043
2. Unscheduled Citizen Assistance	125
3. Scheduled Meetings	242
4. Correspondence	31
B. Assessment Reviews	
1. Wetland Delineations	96
2. Surveys	29
3. Miscellaneous Activities in Wetland	52
4. Impact/ Mitigation Proposal	20
5. Tampa Port Authority Permit Applications	32
6. Wastewater Treatment Plants (FDEP)	0
7. DRI Annual Report	0
8. Land Alteration/Landscaping	0
9. Land Excavation	0
10. Phosphate Mining	1
11. Rezoning Reviews	45
12. CPA	0
13. Site Development	63
14. Subdivision	76
15. Wetland Setback Encroachment	3
16. Easement/Access-Vacating	1
17. Pre-Applications	51
18. On-Site Visits	177
C. Investigation and Compliance	
1. Complaints Received	29
2. Complaints Closed	46
3. Warning Notices Issued	13
4. Warning Notices Closed	18
5. Complaint Inspections	63
6. Return Compliance Inspections	56
7. Mitigation Monitoring Reports	4
8. Mitigation Compliance Inspections	29
9. Erosion Control Inspections	49
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	3
6. Administrative - Civil Cases Closed	2
7. Cases Referred to Legal Department	3
8. Contributions to Pollution Recovery	\$10,300
9. Enforcement Costs Collected	\$6,170

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



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

Executive Director
 Richard D. Garrity, Ph.D.

ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 POLLUTION RECOVERY TRUST FUND
 AS OF APRIL 30, 2005

Fund Balance as of 10/01/04	\$1,737,812
Interest Accrued	27,375
Deposits FY05	157,466
Disbursements FY05	165,990
Intrafund Transfers	34,582
Fair Value Adjustment	(8,830)
Fund Balance	\$1,782,415
Encumbrances Against Fund Balance:	
Artificial Reef	54,980
(66) Asbestos Abatement	4,486
(92) Brazilian Pepper	26,717
(97) COT Parks Dept/Cypress Point	100,000
(99) Seagrass Restoration Cockroach Bay	18,607
(100) Agriculture Pesticide Collection	18,355
(101) Pollution Prevention Program	36,016
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	13,515
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	1,152,323
Minimum Balance (Reserve)	120,000 *
Fund Balance Available April 30, 2005	\$ 510,092



COMMISSION
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 Ronda Storms



Executive Director
 Richard D. Garrity, Ph.D.

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 Air Management Division
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 Fax (272-5605)

ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 ANALYSIS OF GARDINIER SETTLEMENT TRUST FUND
 AS OF April 30, 2005

Fund Balance as of 10/01/04	\$ 818,538
Interest Accrued	10,677
Disbursements FY05	221,851
Fair Value Adjustment	(3,303)
Fund Balance	\$ 604,061

Encumbrances Against Fund Balance:

Marsh Creek/Ruskin Inlet	47,500
SP604 Desoto Park Shoreline	150,000
SP610 H.C. Resource Mgmt/Apollo Beach Restoration	- 0 -
SP627 Tampa Bay Scallop Restoration	56,948
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	233,213
Total of Encumbrances	604,061

Fund Balance Available April 30, 2005	\$ - 0 -
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EPC Agenda Item Cover Sheet

Date of EPC Meeting: May 19, 2005

Subject: Legal Case Summary for May 19, 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 May 2005 case summary. The summaries generally detail pending civil matters, administrative matters, and cases that parties have asked for additional time before filing a challenge. Most notable in this month's summary is the Second District Court of Appeals (2d DCA) denial of the writ of mandamus filed by CC Entertainment (Amphitheatre owner) against the EPC which requested the 2d DCA to reinstate the recused judge.

List of Attachments: May 2005 EPC Legal Case Summary

EPC LEGAL DEPARTMENT MONTHLY REPORT
May 2005

A. ADMINISTRATIVE CASES

NEW CASES [0]

EXISTING CASES [7]

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

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

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

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

CC Entertainment Music – Tampa, LLC and Florida State Fair Authority [LEPC04-022]: A Citation was filed on August 27, 2004 for violations of EPC's Noise rule Ch.1-10 regarding the Ford Amphitheater. Clear Channel and the Fair Authority timely filed requests for extension of time in which to file 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. (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 Winterroth 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)

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. (AZ)

RESOLVED CASES [0]

B. CIVIL CASES

NEW CASES [1]

Temple Crest Automotive [LEPC05-009]: Authority was granted on April 21, 2005 to pursue appropriate legal action against Juan and Rafaela Lasserre to enforce the agency requirement that a limited environmental assessment report and a plan to properly contain and manage oil to prevent future discharges to the environment be submitted to EPC. On October 5, 2004 EPC staff issued a Citation and Order to Correct to Juan B. and Rafaela Lasserre for violations of Chapters 61-701 and 61-730, F.A.C. and Chapters 1-1, 1-5, and 1-7, Rules of the EPC. Mr. and Mrs. Lasserre did not appeal the Citation and it became a final agency order on October 28, 2004. Until April 21, 2005, EPC staff had received no response to their attempts to resolve the matter. On April 21, 2005 EPC was contacted by Mr. and Mrs. Lasserre's legal counsel with a request to review the file prior to entering a discussion regarding resolution. (AZ)

EXISTING CASES [16]

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 EPC staff have begun preparations to perform the corrective actions utilizing PRF money. Upon completion of the work the EPC will seek to recover those costs from the property owner as a lien. (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)

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 (CCE) 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. CCE filed a writ of mandamus to the Second District Court of Appeal asking that appellate court to reinstate the recused judge. CCE then asked for the circuit court case to be stayed until the appellate court ruled. The writ was denied by the appellate court. The EPC will seek to set a new date for the injunction hearing. 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. On April 15, 2005, the EPC filed a lawsuit requesting corrective actions and payment of penalties and costs. The deadline for filing a response is May 10, 2005. (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]

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. On April 29, 2005 the parties entered into a Consent Order resolving the existing violations. The Consent Order provided for corrective actions and a settlement of \$2,000.00 for penalties and payment of administrative costs. The matter has been closed. (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. The writ was denied by the appellate court.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: May 19, 2005

Subject: Authorize EPC Executive Director to Sign FY05-06 Air Contracts with the State

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

Division: Air Management Division

Recommendation:

Authorize the EPC's Executive Director to sign contracts with the Florida Department of Environmental Protection to carry out air quality control work for FY05-06.

Brief Summary:

Since 1993, the State has offered the EPC contracts to execute the US EPA's Title V major source permitting program, and conduct air monitoring for various pollutants. This is accomplished through two separate documents. DEP Contract No. AQ 178 will be amended to include some \$761,376 for permitting and compliance work covering the period of July 1, 2005 to June 30, 2006. DEP contract No. SO 169 will be amended for \$303,150 for monitoring activities for the same twelve month period.

Background:

The Clean Air Act Amendments of 1990 created a federal program for addressing pollution from major sources. This was done under Title V of the Act and thus is referred to as the Title V major source permitting program. The program includes issuing permits and inspecting these facilities as well as monitoring air quality in their vicinity. The State of Florida has been delegated this program by the US EPA, and in turn contracted with local programs such as EPC to carry it out. The contracts are worth over one million dollars a year and fund some thirteen positions within the Agency.

List of Attachments: DEP Contract No. AQ178 - Amendment No. 5
 DEP Agreement No. SO169 - Amendment No. 1

DEP CONTRACT NO. AQ178
AMENDMENT NO. 5

THIS AGREEMENT as entered into on the 28th day of September, 2001, and amended on the 9th day of October, 2002, the 8th day of August, 2003, the 25th day of September, 2003, and the 21st day of January, 2004, between the STATE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "Department") and the ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (hereinafter referred to as the "Contractor") is hereby amended.

WHEREAS, the parties hereto desire to continue the work described under this Agreement for an additional Service Period; and

WHEREAS, the Scope of Services and funding for the fourth period of service need to be added to this Agreement; and,

WHEREAS, other changes to the Agreement are necessary.

NOW, THEREFORE, the Agreement is hereby amended as follows:

- Paragraph 5. is hereby modified to make the ending date of the Agreement June 30, 2005.
- In accordance with Paragraph 6, which allows for the inclusion of additional services and funding for each additional year of the Agreement, the maximum compensation amount of the Agreement is hereby increased from \$2,164,128 to \$2,735,160 (an increase of \$571,032) to provide funding for the Fourth Service Period which shall begin October 1, 2004 and end June 30, 2005.
- Paragraph 10. shall be deleted in its entirety and replaced with the following language:

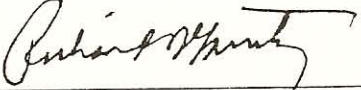
The Contractor shall submit the Title V Monthly Progress Report provided as **Attachment E** to this Agreement. These reports shall be submitted no later than the 20th day of the month following the month of services.
- In Paragraph 13., ten (10) calendar days written notice of intent to terminate is changed to thirty (30) days written notice.
- In Paragraph 17., the phone number for Patty Adams is changed to (850) 488-0114.
- **Attachment A-3**, Scope of Services – Fourth Service Period, is hereby added to the Agreement. All references in the Agreement to Attachments A, A-1 and A-2 are hereby revised to read Attachments A, A-1, A-2 and A-3, as appropriate.
- Attachment C-1, Revised Special Audit Requirements, is hereby deleted in its entirety and replaced with **Attachment C-2**, Second Revised Special Audit Requirements, attached hereto and made a part of the Agreement. All references in the Agreement to Attachment C-1 shall hereinafter refer to **Attachment C-2**.

In all other respects, the Agreement of which this is an Amendment and attachments relative thereto, shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed the day and year last written below.

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH
COUNTY

By: 
Contractor's Authorized Signatory*

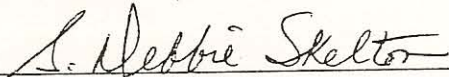
Date: 12/10/04

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

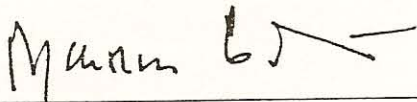
By: 
Director, Division of Air Resource
Management or designee

Date: 12/20/04


Patty Adams, DEP Contract Manager


DEP Contracts Administrator

Approved as to form and legality:


DEP Attorney

*For Agreements with governmental boards/commissions: If someone other than the Chairman signs this Amendment, a resolution, statement or other document authorizing that person to sign on behalf of the Grantee must accompany the amendment.

List of attachments included as part of this Amendment:

Specify Type	Letter/ Number	Description (include number of pages)
Attachment	A-3	Scope of Services – Fourth Service Period (3 Pages)
Attachment	C-2	Second Revised Special Audit Requirements (5 Pages)
Attachment	E	Title V Monthly Progress Report (1 Page)

DEP AGREEMENT NO. S0169
AMENDMENT NO. 1

THIS AGREEMENT as entered into on the 29th day of October, 2004, between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "Department") and the ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (hereinafter referred to as "Grantee" or "Recipient") is hereby amended.

WHEREAS, Paragraph 3.A. of the Agreement provides for the inclusion of additional periods of service as funding becomes available; and,

WHEREAS, additional funding in the amount of \$303,150 has been made available to the Department for the continuation of services through June 30, 2006; and,

WHEREAS, the Agreement needs to be revised to include the additional funding; and,

WHEREAS, additional changes to the Agreement are necessary.

NOW, THEREFORE, the parties hereto agree as follows:

-- The title of the Agreement is hereby revised to read as follows:

DEP AGREEMENT NO. S0169

STATE OF FLORIDA
GRANT ASSISTANCE

PURSUANT TO LINE ITEM 1806 OF THE 2004-2005 GENERAL APPROPRIATIONS ACT AND
PURSUANT TO LINE ITEM ____ OF THE 2005-2006 GENERAL APPROPRIATIONS ACT

-- Paragraph 3.A. is hereby deleted in its entirety and replaced with the following:

3. A. As consideration for the services rendered by the Grantee under the terms of this Agreement, the Department shall pay the Grantee on a cost reimbursement basis in amount not to exceed \$530,513. For the first period of service beginning October 1, 2004 and ending June 30, 2005 the Department shall pay the Grantee \$227,363 for satisfactory completion of the work described in Attachment A, Grant Work Plan. For the second period of service beginning July 1, 2005 and ending June 30, 2006, the Department shall pay the Grantee \$303,150 for satisfactory completion of the work described in Attachment A-1, Grant Work Plan – Second Service Period. Additional periods of service and additional funding may be added to the Agreement by formal amendment if additional funding becomes available. The parties hereto understand and agree that this Agreement does not require a cost sharing or match on the part of the Grantee. If the Grantee finds, after receipt of competitive bids, that the work described in Attachments A and A-1 cannot be accomplished for the current estimated project cost, the parties hereto agree to modify the Project Work Plan described in Attachments A and A-1 to provide for the work that can be accomplished for the funding identified above.

-- Paragraph 5.B. is hereby deleted in its entirety and replaced with the following:

5. B. The Grantee shall submit validated ambient data to the Department's ambient air quality central database within thirty (30) days after the end of the month in which they were recorded. Verification of the ambient data, on a quarterly basis, shall be made within fifty (50) days after the end of the calendar quarter in which they were recorded.

Paragraph 10. is hereby deleted in its entirety and replaced with the following:

10. A. In addition to the requirements of the preceding paragraph, the Grantee shall comply with the applicable provisions contained in Attachment C-1 (Revised Special Audit Requirements), attached hereto and incorporated herein by reference. Exhibit 1 to Attachment C-1 summarizes the funding sources supporting the Agreement for purposes of assisting the Grantee in complying with the requirements of Attachment C-1. A revised copy of Exhibit 1 must be provided to the Grantee for each amendment which authorizes a funding increase or decrease. If the Grantee fails to receive a revised copy of Exhibit 1, the Grantee shall notify the Department's Grants Development and Review Manager at 850/245-2361 to request a copy of the updated information.

B. The Grantee is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment C-1, Exhibit 1 when making its determination. For federal financial assistance, the Grantee shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section ____, 210 for determining whether the relationship represents that of a subrecipient or vendor. For state financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number FSAA_CL2) that can be found under the "Links/Forms" section appearing at the following website:

<http://www.fsaa.state.fl.us/>

The Grantee should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

Attachment A-1, Grant Work Plan - Second Service Period, attached hereto is hereby added to the Agreement. All references in the Agreement to Attachment A shall hereinafter include Attachment A-1, Grant Work Plan - Second Service Period.

Attachment C, Special Audit Requirements is hereby deleted in its entirety and replaced with Attachment C-1, Revised Special Audit Requirements, attached hereto and made a part of the Agreement. All references in the Agreement to Attachment C shall hereinafter refer to Attachment C-1, Revised Special Audit Requirements.

In all other respects, the Agreement of which this is an Amendment, and attachments relative thereto shall remain in full force and effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed the day and year last written below.

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

By: _____
Title*: _____
Date: _____

By: _____
Secretary or designee
Date: _____

Richard Arbes, DEP Grant Manager

DEP Contracts Administrator

Approved as to form and legality:

DEP Attorney

List of attachments/exhibits included as part of this Amendment:

Specify Type	Letter/ Number	Description (include number of pages)
Attachment	A-1	Grant Work Plan - Second Service Period (2 Pages)
Attachment	C-1	Revised Special Audit Requirements (5 Pages)



EPC Agenda Item Cover Sheet

Date of EPC Meeting: May 19, 2005

Subject: Mitigation for Main Street at Hampton Lakes

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

Division: Wetlands Management

Recommendation: Recommend approval of 13.05 acres of upland preservation in lieu of 6.525 acres of wetland creation mitigation.

Brief Summary: The applicants propose upland preservation under Chapter 1-11, Wetlands, Rules of the EPC (the "Wetland Rule"). The application was received and reviewed prior to the Wetland Rule's July 2004 amendment which incorporated Chapter 62-345, F.A.C., the Uniform Mitigation Assessment Method ("UMAM"). Under the pre-amended version of the Wetland Rule, upland preservation in lieu of wetland creation was allowable with the approval of the Commission.

Background: The applicants were approved by EPC staff for approximately 4.35 acres of wetland impacts in order to develop a Traditional Neighborhood Design Town Center through application received November 22, 2002. As compensation for the authorized impacts, the applicants agreed to create 13.05 acres of wetland mitigation. Half of the required mitigation was accomplished at the Hillsborough County Northwest Mitigation bank, leaving a remainder requirement of 6.525 acres of wetland mitigation. A location for the remaining 6.525 acres of required mitigation was to be finalized within two years. The applicant has provided documentation that the remainder of the mitigation requirement could not be feasibly accomplished as agreed, and as such, is requesting approval to preserve 13.05 acres of uplands. The area proposed as upland preservation mitigation is located along an unnamed tributary to Dug Creek in southern Hillsborough County. The uplands consists of good quality live oak forests, pine flatwoods and prairies adjacent to a stream and wetland forests. Staff has considered this request and determined that it would satisfy the requirements of the pre-existing Chapter 1-11.09 7., Rules of the EPC. The proposal has been duly noticed as required and staff is recommending Board approval of this request.

List of Attachments: None



EPC Agenda Item Cover Sheet

Date of EPC Meeting: May 19, 2005

Subject: Amphitheatre Noise Enforcement Update

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

Division: Legal Department and the Air Management Division

Recommendation: Receive status report.

Brief Summary: On December 21, 2004, the EPC filed a complaint and a motion for temporary injunction against CC Entertainment Music – Tampa, LLC (CCE) and the Florida State Fair Authority for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise) regarding noise level violations and noise nuisance violations stemming from concerts held at the new Ford Amphitheatre. The Temporary Injunction hearing began on February 26, 2005, but was not completed. CCE filed a writ of mandamus to the Second District Court of Appeal asking the appellate court to reinstate the recused judge and asked for the circuit court case to be stayed until the appellate court ruled. The writ was denied by the appellate court. On May 11, 2005 the EPC will seek to set a new date for the injunction hearing.

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

The EPC put on the majority of its case in chief for a temporary injunction on February 26, 2005, but due to the judge's recusal, and intervening motions to stay, the hearing has been delayed. CCE filed a suit against the EPC and the Fair, challenging, among other things, the constitutionality of the noise portions of the EPC Act and rule and also seeking sovereign immunity for CCE. Also, CCE filed a writ of mandamus to the Second District Court of Appeal asking that appellate court to reinstate the recused judge. CCE then asked for the circuit court case to be stayed until the appellate court ruled. The writ was denied by the appellate court. A recent concert on April 30, 2005, did exceed EPC noise standards. On May 11, 2005, the EPC will seek to set a new date for the injunction hearing.

List of Attachments: None



EPC Agenda Item Cover Sheet

Date of EPC Meeting: May 19, 2005

Subject: Legislative Summary

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

Division: Legal Department

Recommendation: Receive status report, discuss whether the EPC should ask the Governor to veto any of the below bills.

Brief Summary: The EPC Legal Department provides a follow-up to last month's summary of legislation of interest in the 2005 session. The EPC Board has sent letters in opposition to, in whole or part, the following bills: review timeframes for local permits, incentive based permitting, and agricultural water conservation. Most bills the EPC staff was tracking died or failed. SB 442, regarding expedited local permit review timeframes may be objectionable.

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 Office of Public Affairs 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 Office of Public Affairs to review and consider as they lobby in Tallahassee. This 2005 Legislative session was 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.

A. The following bills passed and await the Governor's signature:

1. Alternative Water Supplies and TMDLs. SB 444ER, an omnibus water bill, passed. SB 444ER focuses on establishing additional water supply legislation and has extensive language clarifying Total Maximum Daily Load (TMDLs) laws. Among other things, the bill provides for funding of alternative water supplies via funds disbursed by each water management district from the water protection and sustainability trust fund, provides for encouragement of and incentives for producing alternative water supplies, prioritizes funding for alternative water supplies, and encourages the creation of regional water

supply authorities. There is also stronger language requiring potable water supply concurrency for future development.

The bill also clarifies many aspects of the TMDL program. It 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 Best Management Practices (BMPs) to comply with BMAPs, limits when NPDES (surface water discharge) permits can be adjusted to meet TMDLs, does not open a point of entry to challenge an NPDES permit when TMDL are incorporated, if a person is implementing BMPs per a BMAP they cannot 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 cannot 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. While staff has concern with some of the aforementioned items, staff does not oppose the bill.

2. Building Permits. Senate bills 442, 621, and 2286 are omnibus and lengthy building code proposals. The only issue of concern the EPC raises regards language that expedites building permit reviews by local governments. While it is a building code issue, the bills are worded generally so that arguably they could impact how some local environmental permits are processed. Senate bill 442ER passed, the others died. Generally, a local government must perform an initial review of certain building permit applications within 10 days, but there is a second timeframe of 45 days running to ask for more detail. Permits must issue or be denied in 120 days of receipt of a complete application. A request for additional information (RAI) tolls the 120 permit issuance deadline. There is confusing language regarding a different 45 day RAI deadline. The initial 10 day review period will lend itself to much debate as to what insufficiencies in the application an agency should have notified an applicant about in the first ten days, as opposed to insufficiencies in the following 45 day time frame. Applicants may argue, if a local government did not ask for something in the first 10 days, it may not be requested in the subsequent 45 days. Nonetheless, it appears local rules can supersede this law. It may be appropriate for the EPC to ask the Governor to veto this building code bill, but in light of the fact that 1) the permit review is such a small portion of the bill, 2) the EPC can argue the bill does not apply to environmental permits, and 3) the EPC may be able to supersede this law with our own permit application processing rule, it may not be advisable to request the Governor veto the bill.

3. Growth Management. HB 1865 died, but SB 360ER passed. The EPC staff does not typically present growth management legislation to the EPC Board, as other County departments handle these issues, but near the end of the session Edith Stewart (Office of Public Affairs) informed the EPC that this bill had "urban infill" language in it that would have potentially limited EPC regulatory functions in the three municipalities. EPC staff presented grounds for opposing this bill to Ms. Stewart. Fortunately, that language was stricken from the final version.

4. Wetland Streamlining/Phosphate Mine Reclamation. HB 759ER creates a new method for providing financial assurance for DEP required wetland mitigation in phosphate mining projects. The bill also encourages the DEP to seek permitting authority for wetlands 10 acres or less from the US Army Corp of Engineers. The EPC did not object to either concept, as they do not impact our functions.

5. Licenses and Marinas. HB 989ER passed. EPC staff previously objected to this bill that would have allowed easier permitting of floating docks near seawalls over seagrasses. All of this language was

stricken and in its place was created a general permit to facilitate the construction and operation of marinas by local governments.

6. Contamination Notification. HB 937 and now SB 330 appear identical. The House version passed (HB 937ER). The bill requires anyone who identifies, via approved scientific methods, any off-site contamination during site rehabilitation to notice the DEP in 10 days, then the DEP has to perform extensive fact finding and notice potentially affected parties of the contamination in 30 days. While any additional notification to the public is good, EPC staff previously stated it was an additional burden on DEP that is not merited. The bill was subsequently amended to require the person who discovers the contamination to detail the majority of the information and list local properties that may be impacted, the DEP then generally has to receive the information and mail it back out to the listed properties.

B. The following bills died or otherwise failed:

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 1795 and Senate Bill 7056. The latter two bills would authorize state agencies to promulgate general permits facilitating the filling of up to forty acres of isolated 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 the House version delete all provisions that allow for weakened protection of our wetlands. The Senate bill was amended and passed, focusing on longer water use permits for farmers, without any references to tailwater recovery ponds or filling isolated wetlands, but then the House amended it and it died in messages back at the Senate.

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). Both SB 1182 and HB 137 died.



EPC Agenda Item Cover Sheet

Date of EPC Meeting: May 19, 2005

Subject: Tampa Bay Water's *Source Management and Rotation Technology Tool* (SMARTT) Model

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

Division: Environmental Resource Management Division and Legal Department

Recommendation: Receive staff report and issue letter to Tampa Bay Water.

Brief Summary: On April 21, 2005, at the regularly scheduled EPC meeting, Commissioner Storms asked the EPC staff to analyze the "SMARTT" model as it applies to groundwater withdrawals. Staff met with the County Water Resource Team and outside consultants, and the initial assessment is that the "SMARTT" model favors additional groundwater pumping.

Background: In late 2004, Tampa Bay Water introduced the member governments to a new model, called the Source Management and Rotation Technology Tool (SMARTT), developed in collaboration with the American Water Works Association Research Foundation. The project involves the creation of a decision process and trade-off analyses model for TBW's supply rotation and planning activities. The model will enable TBW to determine what mix of water sources will meet expected demand, given TBW's four Policy Objectives: minimizing operational costs, maximizing water quality, maintaining environmental stewardship, and ensuring source reliability. (Because water quality is a requirement of Governance, it is noted that only the remaining three can be "traded off.") At the April 18, 2005 TBW Board Budget Workshop, TBW staff explained that Water Year 2006 demand for the Member Governments is estimated at 250.8 mgd, of which TBW must supply approximately 170.8 mgd. The TBW Board directed their staff to analyze the following weighting system: Environmental Stewardship 25%, Cost 25%, and Source Reliability 50%. That weighting system results in a predicted consolidated WUP pumping level of 104.95 mgd at a cost of \$2.042 per thousand gallons (the final proposed unitary rate is \$2.1149/1000 gallons). As current pumping from the eleven wellfields has averaged between 74 and 92 mgd for the past two years, the increase in groundwater pumping to 104.95 mgd, while below the 121 mgd permit maximum, is troubling, and may violate the intent of the Partnership Agreement and Consolidated Permit to minimize environmental stress in the vicinity of those wellfields. SWFWMD staff is also evaluating this issue, at the direction of their Governing Board.

EPC staff will present a brief evaluation of the SMARTT model and identify the concerns we have towards potential biases in the design that prioritize additional groundwater pumping over alternative sources. Additionally, staff will present a brief assessment on how the SMARTT model may impact Partnership and the Consolidated Permit.

The EPC proposes that the Chair send a letter to TBW indicating our concern with the SMARTT model as it may result in additional, unnecessary withdrawals of groundwater, with concurrent environmental impacts to the heavily stressed adjacent wetlands. Staff will supplement this agenda item with a proposed letter from the EPC Chair to TBW with a copy to SWFWMD.

List of Attachments: None.