

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
COMMISSIONER'S BOARD ROOM  
OCTOBER 20, 2005  
9:30AM – 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 Chair – David Jellerson
- III. CONSENT AGENDA**
  - A. Approval of Minutes: September 13 & 15, 2005 2
  - B. Monthly Activity Reports 9
  - C. Pollution Recovery Trust Fund 21
  - D. Gardinier Settlement Trust Fund 22
  - E. Legal Department Monthly Reports 23
  - F. Approve Extension of Time - Florida Aquarium (PRF Project) 30
  - G. Approve Extension of Time - Girl Scouts Suncoast Council (PRF Project) 33
  - H. Request Authority to Hold Public Hearing on November 17, 2005 to Consider  
Adoption of Chapter 1-14, Rules of the EPC, (Mangrove Trimming and Preservation) 36
  - I. Request Approval for Use of Grant Funds from ICMA 37
  - J. Report - EPC Assumption of LDC Wetlands Setback Regulations 38
  - K. Tampa Port Authority Grant for Sediment Analysis 39
- IV. PUBLIC HEARING (10AM Time Certain)**  
Consider Request for Variance from CC Entertainment Music-Tampa LLC 45
- V. ENVIRONMENTAL RESOURCES MANAGEMENT DIVISION**  
Authorize Staff to Negotiate an Interlocal Agreement Addressing Watershed  
Management, the Development of Basin Management Action Plans and  
Implementation of TMDLs 94
- VI. WASTE MANAGEMENT DIVISION**  
Update - Buster Bean Drive County Potable Water Supply Connection 105
- VII. AIR MANAGEMENT DIVISION**  
Fish Advisory Update 107
- VIII. EXECUTIVE DIRECTOR'S REPORT**

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](http://www.epchc.org)*

SEPTEMBER 13, 2005 - ENVIRONMENTAL PROTECTION COMMISSION SPECIAL MEETING -  
DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Special Meeting to consider Arbitration of Tampa Bay Water (TBW) Proposed Applications for Environmental Resource Permits (ERP) and a National Pollutant Discharge Elimination System (NPDES) Permit, scheduled for Tuesday, September 13, 2005, at 2:48 p.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Kathy Castor and Commissioners Jim Norman, Thomas Scott, Mark Sharpe, and Ronda Storms.

The following members were absent: Commissioners Brian Blair and Ken Hagan.

Chairman Castor called the meeting to order at 2:48 p.m.

Mr. Gordon Leslie, EPC staff, said the TBW proposed applications for letter modification of the ERP for the regional surface water treatment plant, ERP application associated with the South Central Hillsborough infrastructure improvements project, and NPDES permit modification for the Tampa Bay seawater desalination facility had been thoroughly reviewed. Staff recommended EPC not arbitrate the permits. **Commissioner Scott so moved.** Chairman Castor called for public comment; there was no response. **Commissioner Sharpe seconded the motion, which carried five to zero.** (Commissioners Blair and Hagan were absent.)

There being no further business, the meeting was adjourned at 2:49 p.m.

READ AND APPROVED: \_\_\_\_\_  
CHAIRMAN

ATTEST:  
PAT FRANK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

SW

SEPTEMBER 15, 2005 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, September 15, 2005, at 10:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Kathy Castor and Commissioners Brian Blair (arrived at 10:04 a.m.), Ken Hagan, Jim Norman, Thomas Scott, Mark Sharpe, and Ronda Storms (arrived at 10:31 a.m.).

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

CHANGES TO THE AGENDA

Dr. Richard Garrity, EPC Executive Director, requested time to present a Citizens Environmental Advisory Committee (CEAC) award and stated an item was added to the Consent Agenda approving an amendment to the interlocal agreement for stormwater national pollutant discharge elimination system (NPDES) pollution prevention (P2) and a Legal Department item providing an update on the Honeywell property. **Commissioner Norman moved the changes, seconded by Commissioner Scott.** Chairman Castor noted Commissioner Scott had requested time to address an issue related to the County budget. **The motion carried six to zero.** (Commissioner Storms had not arrived.)

SPECIAL RECOGNITION

Commissioner Norman offered comments regarding service provided to the County by Mr. Larry Padgett, former chairman, CEAC. Chairman Castor presented a plaque recognizing Mr. Padgett for service on the CEAC from 1996 to 2005. Mr. Padgett offered appreciative comments.

CEAC

Report From the Chairman, David Jellerson - Mr. Jellerson offered comments regarding Mr. Padgett's service and reported the last CEAC meeting included an issue update from EPC staff, the annual state of the environment report, an update regarding ongoing cleanup activities at the Honeywell site, and a review of the proposed mangrove protection regulations. CEAC members had expressed concern regarding the length of time for cleanup of the Honeywell site and offered suggestions for improvements on the mangrove protection regulations. The main issue before CEAC was the review and evaluation of new pollution recovery fund (PRF) grant applications.

CITIZENS COMMENTS

Ms. Denise Layne, 2504 Ayers Hill Court, expressed concern that the County still did not have a complete ecosystem review of any development in the

THURSDAY, SEPTEMBER 15, 2005 - DRAFT MINUTES

County. She noted environmental reviews occurring in different County departments and asked that the County have conversations to unite the ecosystem review under EPC. Commissioner Norman referred the issue to Dr. Garrity for a report. Dr. Garrity agreed to meet with the Mr. Bruce McClendon, Director, Planning and Growth Management Department, and to bring back a report at the next EPC meeting.

CONSENT AGENDA

- A. Approval of minutes: August 18, 2005.
- B. Monthly activity reports.
- C. PRF.
- D. Gardinier Settlement Trust Fund.
- E. Legal Department monthly report.
- F. Approve amendment to the interlocal agreement (stormwater NPDES) and total maximum daily loads regulations.
- G. Approve interlocal agreement (County/EPC Water Resource Team).
- H. Approve amendment to the interlocal agreement (stormwater NPDES-P2).

**Commissioner Scott moved the Consent Agenda, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioner Hagan was out of the room; Commissioner Storms had not arrived.)

PROCLAMATION

Dr. Garrity noted Pollution Prevention Week was September 19-25, 2005, with the theme being electronic waste. Commissioner Castor read the proclamation. Mr. Hooshang Boostani, Director, EPC Waste Management Division, stated the proclamation was brought forward in the form of a partnership between EPC and the Solid Waste Management Department, distributed a pamphlet on the item, and pointed out obsolete cell phones were also being accepted. At the request of Chairman Castor, Mr. Boostani reviewed materials that would be accepted for disposal. He introduced Mr. Gerry Javier, EPC staff, and Mr. Anthony Sullivan, Solid Waste Management Department staff, who worked on the project. In response to Chairman Castor, Mr. Sullivan reviewed locations and dates for drop off and noted information was distributed through newsletters and pamphlets.

Commissioner Norman suggested a partnership with the Water Department to include pamphlets with water bills. Mr. Sullivan stated that was something

that was reviewed and noted a spike in collections since newsletters were distributed. Mr. Paul Vanderploog, Director, Water Department, agreed to include the pamphlet with water bills but requested about six weeks lead time for proper printing. Chairman Castor recommended the Neighborhood Relations Office be contacted to publicize information and to ask neighborhood associations to include the information in their newsletters. Dr. Garrity agreed to contact Hillsborough Television Channel 22 about a public service announcement. Mr. Boostani asked that Messrs. Javier and Sullivan accept the proclamation.

Dr. Garrity announced the former chief of the Bureau of Solid and Hazardous Waste for the Florida Department of Environmental Protection (FDEP) had passed away. Chairman Castor requested a moment of silence.

#### COUNTY BUDGET

Commissioner Scott submitted information and asked to flag a request for \$10,000 for the Seniors in Service of Tampa Bay Incorporated. Commissioner Blair seconded the flag. Commissioner Castor asked that the information be forwarded to the Board of County Commissioners (BOCC). **Commissioner Scott moved that, seconded by Commissioner Blair, and carried five to zero.** (Commissioner Hagan was out of the room; Commissioner Storms had not arrived.)

#### STAFF REPORT

Presentation of Agency Comprehensive Emergency Management Plan (CEMP) - Mr. Lynn Watson, EPC staff, reviewed an overhead presentation highlighting the CEMP, including the County emergency management organizational chart, CEMP objectives, levels of emergency response, EPC role and responsibility, situational awareness and communication, and CEMP preparedness. Mr. Watson explained the EPC now had a presence at the Emergency Operations Center (EOC) during major events to help communicate information. Dr. Garrity reported EPC had contacted FDEP regarding the disaster on the Gulf Coast to offer services.

Referencing previous disasters, Commissioner Storms reminded everyone emergencies could take different forms, not just hurricanes, and asked if the plan included satellite phones. Mr. Watson noted not at that point. Commissioner Storms recommended the purchase of at least one satellite phone and understood the County would be acquiring satellite phones. **Commissioner Storms moved to ask to include at least one satellite phone in the plan and refer that to the Executive Director to come back with a report, seconded by Commissioner Hagan.** Commissioner Norman noted Commissioner Sharpe had previously suggested an overall review of different departments, and he agreed with the idea of coordination of emergency unit purchases. Commissioner Blair

THURSDAY, SEPTEMBER 15, 2005 - DRAFT MINUTES

wondered if the item should be referred to the EOC. Mr. Watson referenced discussions with EOC staff about acquiring satellite phones. **The motion carried six to zero.** (Commissioner Scott was out of the room.)

At the request of Chairman Castor, Mr. Watson reviewed roles in environmental hazards and who were the first responders and reported that the County and the city of Tampa had hazardous materials experts. Commissioner Storms pointed out the BOCC had funded part of that in the budget. Mr. Watson reviewed the role of the Tampa Port in an environmental event, stated he was unsure who first responders were for the Tampa International Airport, and explained the role of the Florida Department of Community Affairs in environmental issues.

Chairman Castor asked if plans were altered after the ammonia leak or Mosaic Phosphate Company spill last year. Mr. Watson stated each division within the EPC had established procedures for different events and had recognized an overall guiding document was needed, which was why CEMP was created. Chairman Castor asked if similar evaluations were being completed based on environmental events resulting from the recent hurricane. Dr. Garrity stated that would be done, and he was following closely what had happened in the Gulf Coast states and how that might impact the County. Chairman Castor asked if that would include an evaluation of how the County communicated to low-income neighborhoods. Dr. Garrity stated that was more in line with what the EOC was doing, but the EPC would closely coordinate with the EOC. Chairman Castor noted many of the hazardous materials facilities were permitted by the State, and she asked about permit conditions and reevaluation of those conditions. Dr. Garrity asked to bring back information on that.

Commissioner Sharpe perceived the EPC was fairly well prepared and took advantage of lessons learned from previous events and thanked Dr. Garrity and EPC staff for proactive work. Commissioner Storms called attention to reasons why staff was placed in positions of expertise in emergency management.

Dr. Garrity pointed out that Mr. Frederick Nassar, EPC staff, along with five others, was tasked to deploy State communications assets to assist in restoring loss of critical public service communications in areas around southern Mississippi. Mr. Nassar reviewed an overhead presentation highlighting work in Mississippi and damage to the area. Commissioner Sharpe had spoken with individuals who had been in Mississippi with County staff. Those individuals pointed out the importance of satellite phones and commended the work by County staff. Mr. Nassar stated that many of those responsible for communications in Mississippi were made homeless and could not respond, it was those who came from the outside with that expertise that made the difference in getting communication going. Chairman Norman had been working

THURSDAY, SEPTEMBER 15, 2005 - DRAFT MINUTES

with the Administrator to get a comprehensive report on expertise and delivery of service by the County to both Mississippi and Louisiana and noted there were independent individuals from the State who wanted to recognize County professionalism.

EXECUTIVE DIRECTOR'S REPORT

Presentation of Agency Goals and Objectives - Utilizing an overhead presentation, Dr. Garrity reviewed achievements of EPC goals and objectives and future challenges regarding regulatory effectiveness, regulatory efficiency, coordination and delegation with regulatory partners, improving partnerships with the regulated community for better compliance, and public outreach.

ADMINISTRATION

Present Evaluation Results of the Executive Director - Mr. Tom Koulianos, Director, EPC Finance and Administration, presented the results of the completed evaluations. The overall average of scores was a 4.29. Mr. Koulianos explained a 2.5 percent increase was included in fiscal year 2006, which was the same as that set aside for other employees. Chairman Castor noted the average score was exceptional. Commissioner Scott stated Dr. Garrity did a tremendous job for the County and was a valuable resource.

After asking if it was proper to move the 2.5 percent, **Commissioner Blair moved that.** Mr. Koulianos asked for an effective date of October 1, 2005. **Commissioner Blair included that.** Commissioner Scott asked if Dr. Garrity would receive the 2.5 percent performance increase as well as the 2.5 market equity increase for a total of 5 percent. **Commissioner Blair agreed.** In response to Commissioner Scott, Dr. Garrity stated his contract was for three years. **Commissioner Scott seconded the motion.** Commissioner Storms offered appreciative comments. Dr. Garrity acknowledged the work of division directors. In response to Commissioner Blair, Dr. Garrity discussed funds collected. **The motion carried five to zero.** (Commissioners Norman and Sharpe were out of the room.)

LEGAL DEPARTMENT

Honeywell Property (Waters and Himes Avenues) Update - EPC General Counsel Richard Tschantz noted past meetings, letters written to expedite cleanup of the property, options being considered by the County Administrator to be brought back in 60 days, and previous direction for a letter intervening in any petition Honeywell might file against FDEP regarding cleanup. Noting Honeywell had filed two petitions, staff performed legal research and found

THURSDAY, SEPTEMBER 15, 2005 - DRAFT MINUTES

that as interveners the EPC could not demand expedited cleanup. Attorney Tschantz reviewed conversations regarding the withdrawal of original agency actions, which led to a comprehensive package including time schedules for cleanup. If Honeywell did not agree to that, FDEP was prepared to move forward and make that the new agency action. A copy of the schedule would be forwarded to EPC and the EPC Chairman for review. Commissioner Blair noted comments at the BOCC meeting regarding cleanup and code enforcement actions; he hoped for some improvements since the parcel was a blight to the area. Attorney Tschantz was speaking to underground issues, but the County Administrator was preparing a report on plans for beautification of the area.

There being no further business, the meeting was adjourned at 11:28 a.m.

READ AND APPROVED: \_\_\_\_\_  
CHAIRMAN

ATTEST:

PAT FRANK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

kc



MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION  
**September**

A. Public Outreach/Education Assistance:		
1. Phone Calls:		322
2. Literature Distributed:		<u>373</u>
3. Presentations:		<u>3</u>
4. Media Contacts:		<u>3</u>
5. Internet:		<u>70</u>
6. Host/Sponsor Workshops, Meetings, Special Events (Commuter Choice Week, Smart Driver and Community Meeting)		<u>3</u>
B. Industrial Air Pollution Permitting		
1. Permit Applications Received (Counted by Number of Fees Received):		
a. Operating:		<u>3</u>
b. Construction:		<u>5</u>
c. Amendments:		<u>1</u>
d. Transfers/Extensions:		<u>0</u>
e. General:		<u>2</u>
f. Title V:		<u>2</u>
2. Delegated Permits Issued by EPC and Non-delegated Permits Recommended to DEP for Approval ( <sup>1</sup> Counted by Number of Fees Collected) - ( <sup>2</sup> Counted by Number of Emission Units affected by the Review):		
a. Operating <sup>1</sup> :		<u>7</u>
b. Construction <sup>1</sup> :		<u>3</u>
c. Amendments <sup>1</sup> :		<u>0</u>
d. Transfers/Extensions <sup>1</sup> :		<u>0</u>
e. Title V Operating <sup>2</sup> :		<u>0</u>
f. Permit Determinations:		<u>3</u>
g. General:		<u>2</u>
3. Intent to Deny Permit Issued:		<u>0</u>
C. Administrative Enforcement		
1. New cases received:		<u>2</u>
2. On-going administrative cases:		
a. Pending:		<u>5</u>
b. Active:		<u>15</u>
c. Legal:		<u>5</u>
d. Tracking compliance (Administrative):		<u>23</u>
e. Inactive/Referred cases:		<u>0</u>
	Total	<u>48</u>
3. NOIs issued:		<u>1</u>
4. Citations issued:		<u>0</u>
5. Consent Orders Signed:		<u>1</u>
6. Contributions to the Pollution Recovery Fund:		<u>\$3,406.25</u>
7. Cases Closed:		<u>1</u>

D.	Inspections:	
	1. Industrial Facilities:	<u>19</u>
	2. Air Toxics Facilities:	
	a. Asbestos Emitters	<u>0</u>
	b. Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>6</u>
	c. Major Sources	<u>0</u>
	3. Asbestos Demolition/Renovation Projects:	<u>31</u>
E.	Open Burning Permits Issued:	<u>6</u>
F.	Number of Division of Forestry Permits Monitored:	<u>315</u>
G.	Total Citizen Complaints Received:	<u>50</u>
H.	Total Citizen Complaints Closed:	<u>38</u>
I.	Noise Sources Monitored:	<u>9</u>
J.	Air Program's Input to Development Regional Impacts:	<u>9</u>
K.	Test Reports Reviewed:	<u>11</u>
L.	Compliance:	
	1. Warning Notices Issued:	<u>30</u>
	2. Warning Notices Resolved:	<u>26</u>
	3. Advisory Letters Issued:	<u>6</u>
M.	AOR's Reviewed:	<u>24</u>
N.	Permits Reviewed for NESHAP Applicability:	<u>3</u>

FEES COLLECTED FOR AIR MANAGEMENT DIVISION  
September

	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>\$8,800.00</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>\$3,400.00</u>
(c) Delegated General Permit (20% is forwarded to DEP and not included here)	<u>\$ 160.00</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	\$6,900.00
(b) for structure greater than 50,000 sq ft	<u>\$ 300.00</u>
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	<u>\$ 600.00</u>
(b) renovation greater than 1000 linear feet or 1000 sq ft	<u>\$2,000.00</u>
8. Open burning authorization	<u>\$3,348.30</u>
9. Enforcement Costs	<u>\$1,509.95</u>

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



Roger P. Stewart Center  
 3629 Queen Palm Dr. • Tampa, FL 33619  
 Ph: (813) 627-2600  
 Fax Numbers (813):  
 Admin. 627-2620 Waste 627-2640  
 Legal 627-2602 Wetlands 627-2630  
 Water 627-2670 ERM 627-2650  
 Air 627-2660 Lab 272-5157

Executive Director  
 Richard D. Garrity, Ph.D.

**MEMORANDUM**

**DATE:** October 12, 2005

**TO:** Tom Koulianos, Director of Finance and Administration

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

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

**A. ADMINISTRATIVE ENFORCEMENT**

1. New cases received	3
2. On-going administrative cases	106
a. Pending	3
b. Active	55
c. Legal	7
d. Tracking Compliance (Administrative)	27
e. Inactive/Referred Cases	14
3. NOI's issued	0
4. Citations issued	0
5. Consent Orders and Settlement Letters Signed	1
6. Civil Contributions to the Pollution Recovery Fund	\$1,420
7. Enforcement Costs collected	\$553
9. Cases Closed	4

**B. SOLID AND HAZARDOUS WASTE**

1. Permits (received/reviewed)	4/4
2. EPC Authorization for Facilities NOT requiring DEP permit	
3. Other Permits and Reports	0/1
a. County Permits	8/8
b. Reports	88/91
4. Inspections (Total)	296
a. Complaints	38
b. Compliance/Reinspections	46
c. Facility Compliance	14
d. Small Quantity Generator	220
e. P2 Audits	0
5. Enforcement	
a. Complaints Received/Closed	41/33
b. Warning Notices Issued/Closed	11/6
c. Compliance letters	100
d. Letters of Agreement	0
e. DEP Referrals	5
6. Pamphlets, Rules and Material Distributed	323

**C. STORAGE TANK COMPLIANCE**

1. Inspections	
a. Compliance	106
b. Installation	36
c. Closure	17
d. Compliance Re-Inspections	17
2. Installation Plans Received/Reviewed	10/3
3. Closure Plans & Reports	
a. Closure Plans Received/ Reviewed	4/2
b. Closure Reports Received/Reviewed	9/10
4. Enforcement	
a. Non-compliance Letters Issued/Closed	55/40
b. Warning Notices Issued/Closed	2/7
c. Cases referred to Enforcement	3
d. Complaints Received/Investigated	3/3
e. Complaints Referred	0
5. Discharge Reporting Forms Received	2
6. Incident Notification Forms Received	6
7. Cleanup Notification Letters Issued	8
8. Public Assistance	200+

**D. STORAGE TANK CLEANUP**

1. Inspections	47
2. Reports Received/Reviewed	116/119
a. Site Assessment	15/17
b. Source Removal	6/1
c. Remedial Action Plans (RAP's)	20/16
d. Site Rehabilitation Completion Order/ No Further Action Order	3/3
e. Others	72/82
3. State Cleanup	
a. Active Sites	NO LONGER ADMINISTERED
b. Funds Dispersed	

**E. RECORD REVIEWS**

- 35

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

**A. ENFORCEMENT**

1. New Enforcement Cases Received:	3
2. Enforcement Cases Closed:	2
3. Enforcement Cases Outstanding:	58
4. Enforcement Documents Issued:	5
5. Recovered costs to the General Fund:	\$691.95
6. Contributions to the Pollution Recovery Fund:	\$1,000.00

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. Castro & Castro Residential	Placement of col. sys. in service without acceptance letter	\$500.00
b. APEC-Hwy. 301 Gas/Conv.	Placement of col. sys. in service without acceptance letter	\$500.00

**B. PERMITTING/PROJECT REVIEW - DOMESTIC**

1. Permit Applications Received:	32
a. Facility Permit:	3
(i) Types I and II	0
(ii) Types III	3
b. Collection Systems-General	11
c. Collection Systems-Dry Line/Wet Line:	18
d. Residuals Disposal:	0
2. Permit Applications Approved:	30
a. Facility Permit:	2
b. Collection Systems-General:	13
c. Collection Systems-Dry Line/Wet Line:	15
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:	55
	a. Facility Permit:	8
	b. Collection Systems-General:	34
	c. Collection Systems-Dry Line/Wet Line:	13
	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
<b>C.</b>	<b>INSPECTIONS - DOMESTIC</b>	<b>113</b>
1.	Compliance Evaluation:	34
	a. Inspection (CEI):	23
	b. Sampling Inspection (CSI):	9
	c. Toxics Sampling Inspection (XSI):	0
	d. Performance Audit Inspection (PAI):	2
2.	Reconnaissance:	50
	a. Inspection (RI):	13
	b. Sample Inspection (SRI):	0
	c. Complaint Inspection (CRI):	35
	d. Enforcement Inspection (ERI):	2
3.	Engineering Inspections:	29
	a. Reconnaissance Inspection (RI):	2
	b. Sample Reconnaissance Inspection (SRI):	0
	c. Residual Site Inspection (RSI):	0
	d. Preconstruction Inspection (PCI):	14
	e. Post Construction Inspection (XCI):	12
	f. On-site Engineering Evaluation:	0
	g. Enforcement Reconnaissance Inspection (ERI):	1



<b>D. PERMITTING/PROJECT REVIEW - INDUSTRIAL</b>	<b>64</b>
1. Permit Applications Received:	2
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:	2
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:	61
a. ARs:	0
b. Phosphate DMRs:	0
c. Phosphate:	19
d. Industrial Wastewater:	14
e. Others:	28
<b>E. INSPECTIONS - INDUSTRIAL</b>	<b>27</b>
1. Compliance Evaluation:	10
a. Inspection (CEI):	10
b. Sampling Inspection (CSI):	0
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	0
2. Reconnaissance:	17
a. Inspection (RI):	13
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	4
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
<b>F. INVESTIGATION/COMPLIANCE</b>	
1. Citizen Complaints:	38
a. Domestic:	28
(i) Received:	12
(ii) Closed:	16
b. Industrial:	10
(i) Received:	4
(ii) Closed:	6
2. Warning Notices:	9
a. Domestic:	4
(i) Received:	2
(ii) Closed:	2
b. Industrial:	5
(i) Received:	4
(ii) Closed:	1
3. Non-Compliance Advisory Letters:	23
4. Environmental Compliance Reviews:	181
a. Industrial:	33
b. Domestic:	148
5. Special Project Reviews:	1
a. ARs:	1
b. Others:	0
<b>G. RECORD REVIEWS</b>	<b>3</b>
1. Permitting:	3
2. Enforcement:	0
<b>H. ENVIRONMENTAL SAMPLES ANALYZED FOR:</b>	
1. Air Division:	176
2. Waste Division:	0
3. Water Division:	15
4. Wetlands Division:	0
5. ERM Division:	151
<b>I. SPECIAL PROJECT REVIEWS:</b>	<b>11</b>
1. DRIs:	10
2. ARs:	0
3. Technical Support:	1
4. Other:	0

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

<b>A. General</b>	<b>Totals</b>
1. Telephone Conferences	793
2. Unscheduled Citizen Assistance	105
3. Scheduled Meetings	278
4. Correspondence	56
<b>B. Assessment Reviews</b>	
1. Wetland Delineations	61
2. Surveys	43
3. Miscellaneous Activities in Wetland	37
4. Impact/ Mitigation Proposal	43
5. Tampa Port Authority Permit Applications	56
6. Wastewater Treatment Plants (FDEP)	3
7. DRI Annual Report	4
8. Land Alteration/Landscaping	4
9. Land Excavation	2
10. Phosphate Mining	3
11. Rezoning Reviews	52
12. CPA	2
13. Site Development	43
14. Subdivision	87
15. Wetland Setback Encroachment	3
16. Easement/Access-Vacating	3
17. Pre-Applications	28
18. On-Site Visits	210
<b>C. Investigation and Compliance</b>	
1. Complaints Received	46
2. Complaints Closed	63
3. Warning Notices Issued	14
4. Warning Notices Closed	21
5. Complaint Inspections	59
6. Return Compliance Inspections	40
7. Mitigation Monitoring Reports	16
8. Mitigation Compliance Inspections	32
9. Erosion Control Inspections	55
<b>D. Enforcement</b>	
1. Active Cases	41
2. Legal Cases	3
3. Number of "Notice of Pending 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	\$1,805.00
9. Enforcement Costs Collected	\$539.00

## EPC WETLANDS MONTHLY WORKSHEET

General	Enforcement	Compliance	Assessment	Engineering	Admin	Totals
Telephone Conferences			303	27	463	793
Unscheduled Citizen Assistance			71	3	31	105
Scheduled Meetings			130	53	95	278
Correspondence		55		1		56
<b>Assessment Reviews</b>						
Wetland Delineations			61			61
Surveys			43			43
Miscellaneous Activities in Wetland			37			37
Impact/ Mitigation Proposal			43			43
Tampa Port Authority Permit Applications			56			56
Wastewater Treatment Plants (FDEP)			3			3
DRI Annual Report			4			4
Land Alteration/Landscaping			4			4
Land Excavation			2			2
Phosphate Mining			3			3
Rezoning Reviews			52			52
CPA			2			2
Site Development			43			43
Subdivision			87			87
Wetland Setback Encroachment			3			3
Easement/Access-Vacating			3			3
Pre-Applications			28			28
On-Site Visits		19	189	2		210
<b>Investigation and Compliance</b>						
Complaints Received		46				46
Complaints Closed		63				63
Warning Notices Issued		14				14
Warning Notices Closed		21				21
Complaint Inspections		59				59
Return Compliance Inspections		39		1		40
Mitigation Monitoring Reports		16				16
Mitigation Compliance Inspections		32				32
Erosion Control Inspections		55				55
<b>Enforcement</b>						
Active Cases	41					41
Legal Cases	3					3
Number of "Notice of Pending 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	\$1,805					\$1,805.00
Enforcement Costs Collected	\$539					\$539.00

ENVIRONMENTAL PROTECTION COMMISSION  
 OF HILLSBOROUGH COUNTY  
 POLLUTION RECOVERY TRUST FUND  
 As of August 31, 2005

Balance as of 10/1/04	\$ 1,737,812
Interest Accrued	41,830
Deposits FY 05	590,954
Disbursements FY 05	246,388
Intrafund Budget Transfers 1/	883,627
Intrafund Transfers In	34,582
Fair Value Adjustment	<u>(8,393)</u>
 Pollution Recovery Fund Balance	 \$ 1,266,770
 Encumbrances:	
Remedial Illegal Dump Asbestos (66)	4,486
USF Seagrass Restoration (99)	6,190
HCC Seagrass Restoration	24,020
Agr Pesticide Collection (100)	18,355
Riverview Library Invasive Plant Removal	10,000
Simmons Park Invasive Plant Removal	60,000
Florida Aquarium/Stormwater Mgmt	30,000
Tampa Adop a Shor Voi Restoration	10,416
Water Drop Patch/Girl Scouts	7,350
 Artificial Reef Program	 20,205
Pollution Prevention/Waste Reduction (101)	27,696
 Total of Encumbrances	 \$ 218,718
 Minimum Balance (Reserve)	 \$ 120,000
 Balance Available August 31, 2005	 <u>\$ 928,052</u>
 1/ Intrafund Budget Transfers to the Pollution Recovery Project Fund	
Brazilian Pepper (92)	\$ 26,717
COT Parks Dept/Cypress Point (97)	100,000
Palm River Habitat	200,000
Bahia Beach Restoration (contract 04-03)	150,000
Tampa Shoreline Restoration	30,000
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 Stg Tank Closure	20,000
School Bus Diesel Retrofit	100,000
Natures Classroom Capital Campaign	44,000
Total	<u>\$ 883,627</u>

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



Roger F. Stewart Center  
 3629 Queen Palm Dr. • Tampa, FL 33619  
 Ph: (813) 627-2600

Fax Numbers (813):

Admin.	627-2620	Waste	627-2640
Legal	627-2602	Wetlands	627-2630
Water	627-2670	ERM	627-2650
Air	627-2660	Lab	272-5157

Executive Director  
 Richard D. Garrity, Ph.D.

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

Fund Balance as of 10/01/04	\$ 818,538
Interest Accrued	15,463
Disbursements FY05	225,051
Fair Value Adjustment	(3,158)
 Fund Balance	 \$ 605,792

Encumbrances Against Fund Balance:

SP625 Marsh Creek/Ruskin Inlet	47,500
SP604 Desoto Park Shoreline	150,000
SP627 Tampa Bay Scallop Restoration	56,948
SP615 Little Manatee River Restoration	50,000
SP636 Fantasy Island	20,000
SP630 E.G. Simmons Park	43,200
SP634 Cockroach Bay ELAPP Restoration	238,144
 Total of Encumbrances	 605,792

Fund Balance Available August 31, 2005	\$ - 0 -
--	----------



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** October 20, 2005

**Subject:** Legal Case Summary for October 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 to file an administrative 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 October 2005 legal case summary. The summaries generally detail pending civil matters, administrative matters, and cases where parties have asked for additional time in order to allow them to decide whether they wish to file an administrative challenge to an agency action.

**List of Attachments:** October 2005 EPC Legal Case Summary

**EPC LEGAL DEPARTMENT MONTHLY REPORT**  
**October 2005**

**A. ADMINISTRATIVE CASES**

**NEW CASES [ 0 ]**

**EXISTING CASES [ 7 ]**

**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 mediation to attempt to resolve the matter without a hearing. The applicant has re-submitted the new final site plan for re-zoning determination and the EPC is waiting for the decision. Upon approval of the re-zoning for the new site plan 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 Winteroth Property located on Lake Hills Drive, Riverview, Florida. On February 10, 2005, the Appellants filed their appeal challenging the wetland line set on their neighbor's property. The matter has been referred to a Hearing Officer. The parties are currently in settlement discussions. (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. The matter is currently in abeyance until September 12, 2005. The parties have sought an additional extension of time to continue negotiations. The parties are in negotiations to resolve the case. (AZ)

**Robert Nixon** [EPC05-020] On August 5, 2005, Robert Nixon filed an appeal challenging a Citation of Violation and Order to Correct that was issued on July 6, 2005. The appeal was not timely filed as the deadline for filing was August 1, 2005. The Citation found violations of the EPC Wetland Rule involving the unauthorized construction of a seawall in a jurisdictional wetland. The corrective actions required the seawall be removed. The matter has been referred to a Hearing Officer and the case is moving forward. (AZ)

## RESOLVED CASES | 0 |

### B. CIVIL CASES

## NEW CASES | 1 |

**City of Tampa** [LEPC05-028]: On August 29, 2005, the City of Tampa filed a petition for eminent domain against the property owned by Georgia Maynard (*See related case below*). The City of Tampa is seeking to acquire a portion of the property through eminent domain. The EPC's answer is due on October 21, 2005. The EPC will be seeking to recover its liens on the property. (AZ)

## EXISTING CASES | 18 |

**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)

**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. On June 30, 2005, Hillsborough County filed a motion to dismiss for failure to prosecute the case. The parties are waiting for the court's decision. (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)

**Riverwalk MHP, Ltd.** [LEPC04-023]: The EPC Board voted on September 9, 2004, to grant authorization to take any legal action necessary against Riverwalk 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 are negotiating a settlement via a consent order. (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. Judge Honeywell ruled in July that the Fair enjoyed sovereign immunity, but that the EPC could amend its complaint to show how the Fair has waived sovereign immunity. The EPC amended its complaint. Also, on July 25, 2005, the Judge ruled that CCE did not enjoy sovereign immunity from EPC laws and regulations. On July 27, 2005, after two days of mediation, the Court agreed to stay the proceedings.

to no later than October 28, 2005, to see if the ongoing mediation will result in a settlement. The citizens' law suit, which the EPC is not a party to, but was consolidated with the EPC suit, was dismissed without prejudice as part of the mediation. On August 29 a variance application was filed by CCE with the EPC and will be presented at a public hearing on October 20, 2005 for EPC consideration as a key component of a settlement. 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 was May 10, 2005. The Defendant has failed to respond and the EPC has moved for entry of a default on May 13, 2005. The property was recently purchased by a new entity who has tentatively agreed to perform all corrective actions at the site. The Waste Management Division has confirmed all corrective actions have been completed and is deciding to take whatever appropriate action against the previous owner for the violations. (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. This case has been consolidated with the EPC suit Case No. 04-11404. (RT)

**Temple Crest Automotive** [LEPC05-009]: Authority was granted on April 21, 2005 to pursue appropriate legal action against Juan and Rafacla 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)

**L and D Petroleum, Inc. a/k/a Llutz Chevron** [LEPC05-015]: Authority was granted on June 16, 2005 to pursue appropriate legal action against L and D Petroleum, Inc. for violations of the EPC and state underground storage tank (UST) rules. On January 6, 2004, a Citation of Violation and Order to Correct was issued to L and D Petroleum, Inc. for the unresolved violations. EPC staff had received no response to their attempts to resolve the matter. The Legal Department filed a civil lawsuit on September 8, 2005. The response is due on October 12, 2005. (AZ)

**Haaz Investments Two LLC a/k/a Presco Food Store #1** [LEPC05-024]: Authority was granted on August 18, 2005 to pursue appropriate legal action against Haaz Investments Two LLC for violations of the EPC and state petroleum contamination rules. On April 15, 2003, a Citation of Violation and Order to Correct was issued to Haaz Investments Two LLC for the unresolved violations. EPC staff had received no response to their attempts to resolve the matter. The Legal Department is preparing to file a civil lawsuit. (AZ)

**Spencer Farms, Inc.** [LEPC05-025]: Authority was granted on August 18, 2005 to pursue appropriate legal action against Spencer Farms, Inc. for violations of the EPC and state above ground storage tank (AST) rules. On March 18, 2005, a Citation of Violation and Order to Correct was issued to Spencer Farms, Inc. for the unresolved violations. EPC staff had received no response to their attempts to resolve the matter. The Legal Department is preparing to file a civil lawsuit. (AZ)

#### RESOLVED CASES [ 1 ]

**FDOT & Cone Constructors, Inc.** [LCONB99-007]: 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 were investigated. Based on the unlikely recovery of penalties, the matter has been closed. (RT)

#### C. OTHER OPEN CASES [ 10 ]

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

**Montrey Virgil Davis, Cen-Com Associates, Inc and APC Rentals, Inc. vs. EPC** [LEPC05-011]: On May 14, 2005 the legal counsel for Montrey Virgil Davis, Cen-Com Associates, Inc. and APC Rentals, Inc. filed a request for an extension of time to file notice of appeal of a citation finding waste management violations at a site. The Legal Department granted the request and provided the Appellant a deadline of July 20, 2005 for filing an appeal. A second request for extension was filed and granted by the Legal Department. The current deadline is September 19, 2005. (AZ)

**Notice of Intent to Initiate Litigation Against EPC, Billy Williams, Claimant** [LEPC05-013]: On April 29, 2005 McCurdy and McCurdy, LLP submitted to EPC a Notice of Intent to Initiate Litigation Against Governmental Entity Re: Hillsborough County Environmental Protection Commission on behalf of Mr. Billy Williams, Claimant, for damages sustained on or about December 15-18, 2003. The Notice alleges that Mr. Williams sustained serious bodily injuries and property damage as the result of EPC's actions and inactions with regard to alleged fugitive emissions released into the air by Coronet Industries. Suit cannot be filed until October 2005. (RT)

**Rentokil Initial Environmental Services, Inc.** [EPC05-021]: On August 8, 2005, Rentokil Initial Environmental

Services, Inc. filed a request for extension of time to file an appeal of a Citation of Violation and Order to Correct for unresolved petroleum contamination violations existing at the subject property. The Legal Department granted the request and provided the Appellant with a deadline of November 7, 2005 to file an appeal. (AZ)

**Mosaic Phosphates Co.** [EPC05-010]: On May 6, 2005, Mosaic Phosphates Co. (Mosaic) requested additional time to file an appeal of a conceptual approval letter authorizing wetland impacts for the minewide application to impact wetlands. An order was granted providing Mosaic until July 7, 2005 to file an appeal. A second extension of time was provided to Mosaic until August 9, 2005 to file an appeal. Finally, on August 10, 2005, a third extension of time was provided to Mosaic to file the appeal before December 7, 2005. The extensions of time were provided to allow the parties to negotiate a settlement without the need of filing an appeal. (AZ)

**Medallion Convenience Stores, Inc.** [LEPC05-023]: On August 10, 2005, Medallion Convenience Stores, Inc. filed a request for extension of time to file an appeal of a Citation of Violation and Order to Correct for unresolved assessment and remediation of contamination at the subject facility. The Legal Department approved the request and provided the Appellant with a deadline of November 9, 2005 to file an appeal. (AZ)

**MDC 6, LLC** [LEPC05-022]: On August 10, 2005, MDC 6, LLC filed a request for extension of time to file an appeal of a Citation of Violation and Order to Correct for unresolved assessment and remediation of contamination at the subject facility. The Legal Department approved the request and provided the Appellant with a deadline of November 9, 2005 to file an appeal. (AZ)

**Ball Metal Beverage Container Corporation** [LEPC05-026]: On August 19, 2005, Ball Metal Beverage Container Corporation filed a request for extension of time to file an appeal of a Title V Draft Permit. The Legal Department approved the request and provided the Appellant with a deadline of November 17, 2005 to file a petition. (RT)

**John A. R. Grimaldi, Jr. M.D.** [LEPC05-027]: On September 5, 2005, John A. R. Grimaldi, Jr. filed a request for extension of time to file an appeal of the Executive Director's approval of a wetland line survey for his property located on the Tampa Interbay Peninsula. The Legal Department approved the request and provided the Appellant with a deadline of October 7, 2005 to file an appeal. (AZ)

**Connelly, Leonard and Lisa** [LEPC05-029]: On September 24, 2005, Leonard and Lisa Connelly filed a request for an extension of time to file an appeal of the Executive Director's decision to revoke a miscellaneous activities in wetlands permit for the property located at 7312 Egypt Lake Drive. The Legal Department has approved the request and provided the Appellant with a deadline of March 23, 2006. (AZ)

**Murphy Oil, Inc.** [LEPC05-030]: On October 4, 2005, Murphy Oil USA, Inc. filed a request for an extension of time to file a petition for administrative hearing regarding a revised draft construction permit. The Appellant requested additional time to review and respond to EPC comments. The Legal Department has approved the request and provided the Appellant with a deadline of January 2, 2006.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** October 20, 2005

**Subject:** Florida Aquarium, Inc. Pollution Recovery Fund Agreement Extension of Deadline

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

**Division:** Environmental Resource Management

**Recommendation:** Approve the extension of time of the Florida Aquarium's Pollution Recovery Fund Agreement until December 31, 2005.

**Brief Summary:** The EPC approved entering into a Pollution Recovery Fund (PRF) project with Florida Aquarium, Inc. on March 18, 2004. The approved PRF project, Stormwater Management Demonstration Project, is a combination of public education and construction of a teaching facility and stormwater treatment system. The PRF funding is for a teaching platform over a stormwater pond and the development and delivery of educational programs. The PRF Agreement expired on September 30, 2005, but the Florida Aquarium asked for an extension of the Agreement in a timely manner. Staff recommends granting an extension until December 31, 2005.

**Background:** The Pollution Recovery Fund (PRF) was established in Section 19(5) of the EPC Act and is further detailed in Chp. 1-9 Rules of the EPC. The PRF is funded by environmental enforcement penalties collected by the EPC staff. The PRF money is then disbursed by the EPC Board after a rigorous application process mainly to applicants that proposed environmental remediation or education projects. The EPC Board approved entering into a PRF Agreement with Florida Aquarium, Inc. on March 18, 2004. The project involves the restoration of a polluted area, the mitigation of the effects of pollution, provides a pollution control activity to prevent or minimize pollution and education through stormwater management techniques, a curriculum-based educational program for school students and educational signage, and a "stormwater trail" for the general public. The project has three distinct phases of which the EPC approved partial funding for the addition of a teaching platform over the pond, coupled with the development and delivery of educational programs for school groups and the general public. The PRF Agreement was executed on October 20, 2004, and expired on September 30, 2005, but the Florida Aquarium asked for an extension of the Agreement in a timely manner. Staff recommends granting an extension until December 31, 2005, to allow for completion of all tasks delineated in the agreement. No additional funds are requested.

**List of Attachments:** PRF Amendment

**FIRST AMENDMENT TO THE AGREEMENT between  
The ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**And  
The FLORIDA AQUARIUM, INC.**

**THIS FIRST AMENDMENT TO THE AGREEMENT** dated October 20, 2004, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the **ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**, herein after referred to as the EPC, a political subdivision of the State of Florida established by Chapter 84-446, Laws of Florida, and the **FLORIDA AQUARIUM, INC.**, herein after referred to as **CONTRACTOR**;

**WITNESSETH**

**WHEREAS**, CONTRACTOR submitted an application for funding from the Hillsborough County Pollution Recovery Fund, entitled "**Stormwater Management Demonstration Project**";

**WHEREAS**, CONTRACTOR proposed a one (1) year project. The project's location is the Florida Aquarium site building pond which is located 701 Channelside Drive, Tampa, Florida. The CONTRACTOR proposes the restoration of a polluted area, the mitigation of the effects of pollution, provides a pollution control activity to prevent or minimize pollution and education through stormwater management techniques, a curriculum-based educational program for school students and educational signage and a "stormwater trail" for the general public. The project has three distinct phases of which the Pollution Recovery has chosen to approve partial funding for the addition of a teaching platform over the pond, coupled with the development and delivery of educational programs for school groups and the general public (herein after referred to as the "Project");

**WHEREAS**, the EPC determined that the funding of CONTRACTOR for the Project as requested is an appropriate and worthy expenditure of public funds; and

**WHEREAS**, the EPC Board approved on March 18, 2004, the expenditure of such funds for this purpose upon the following conditions; and

**WHEREAS**, the parties entered into an AGREEMENT on October 20, 2004.

**WHEREAS**, the CONTRACTOR is nearing completion of the PRF funded tasks, but needs an additional few weeks to complete the tasks beyond the current expiration date.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties hereto agree to the following amendments:

1. This Amendment to the Agreement is effective upon the date of execution by the last signatory and continues until all authorized monies are expended, the Agreement is cancelled, or until **December 31, 2005**, whichever occurs first. The Scope of Services also automatically is amended to reflect the amended expiration date of the Amendment to the Agreement.

2. But for as described above, all other provision of the Agreement and any attachments remain unchanged and in full force and effect.

**ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH  
COUNTY**

**CONTRACTOR**

By: \_\_\_\_\_  
Kathy Castor, EPC Chair

By: \_\_\_\_\_  
Greg Harris, Executive V.P.  
External Affairs, Florida Aquarium, Inc.

Date: \_\_\_\_\_

Date: \_\_\_\_\_





## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** October 20, 2005

**Subject:** Girls Scouts of Suncoast Council, Inc. Pollution Recovery Fund Agreement Extension of Deadline

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

**Division:** Environmental Resource Management

**Recommendation:** Approve the extension of time of the Girl Scout's Pollution Recovery Fund Agreement until June 1, 2006.

**Brief Summary:** The EPC approved entering into a Pollution Recovery Fund (PRF) project with Girls Scouts of Suncoast Council, Inc. on March 18, 2004. The approved PRF project, Water Drop Patch Program, is a mix of public education, storm drain stenciling, and presentation materials produced and performed by the Girl Scouts to alleviate stormwater pollution. The PRF Agreement expired on September 18, 2005 but the Girl Scouts asked for an extension of the Agreement in a timely manner. Staff recommends granting an extension until June 1, 2006.

**Background:** The Pollution Recovery Fund (PRF) was established in Section 19(5) of the EPC Act and is further detailed in Chp. 1-9 Rules of the EPC. The PRF is funded by environmental enforcement penalties collected by the EPC staff. The PRF money is then disbursed by the EPC Board after a rigorous application process mainly to applicants that proposed environmental remediation or education projects. The EPC Board approved entering into a PRF Agreement with Girls Scouts of Suncoast Council, Inc. on March 18, 2004. The approved PRF project, Water Drop Patch Program, serves approximately 8,700 in Hillsborough County through troop meetings, group interactions at various sites, and interest projects concerning environmental issues to educate girls and inform the community. The Girl Scouts intend to accomplish their program through public education, storm drain stenciling, and presentation materials. The PRF Agreement was executed on November 8, 2004, and expired on September 18, 2005, but the Girl Scouts asked for an extension of the Agreement in a timely manner. Staff recommends granting an extension until June 1, 2006, to allow for completion of all tasks delineated in the agreement. No additional funds are requested.

**List of Attachments:** PRF Amendment

**FIRST AMENDMENT TO THE AGREEMENT between  
The ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**And  
GIRL SCOUTS OF SUNCOAST COUNCIL, INC.**

**THIS FIRST AMENDMENT TO THE AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the **ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**, herein after referred to as the EPC, a political subdivision of the State of Florida established by Chapter 84-446, Laws of Florida, and **GIRL SCOUTS OF SUNCOAST COUNCIL, INC.**, a non-profit agency herein after referred to as **CONTRACTOR**;

**WITNESSETH**

**WHEREAS**, CONTRACTOR submitted an application for funding from the Hillsborough County Pollution Recovery Fund, entitled "**Water Drop Patch Program**":

**WHEREAS**, CONTRACTOR proposes a one (1) year project. The project will serve approximately 8,700 in Hillsborough County through troop meetings, group interactions at various sites, and interest projects concerning environmental issues to educate girls and inform the community. The Girl Scouts intend to accomplish their program through public education, storm drain stenciling, and presentation materials (herein after referred to as "Project");

**WHEREAS**, the EPC determined that the funding of CONTRACTOR for the Project as requested is an appropriate and worthy expenditure of public funds; and

**WHEREAS**, the EPC Board approved on March 18, 2004, the expenditure of such funds for this purpose upon the following conditions; and

**WHEREAS**, the parties entered into an **AGREEMENT** on November 8, 2004.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties hereto agree to the following amendments:

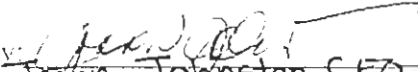
1. This Amendment to the Agreement is effective upon the date of execution by the last signatory and continues until all authorized monies are expended, the Agreement is cancelled, or until **June 1, 2006**, whichever occurs first. The Scope of Services shall also be amended to reflect the amended expiration date of the Amendment to the Agreement.

2. All other provision of the Agreement and any attachments remain unchanged and in full force and effect.

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH  
COUNTY

CONTRACTOR

By: \_\_\_\_\_  
Kathy Castor, EPC Chair

By:  \_\_\_\_\_  
Joann Johnston, CEO  
~~Sandra Cunningham, Director of Programs.~~  
Girl Scouts of Suncoast Council

Date: \_\_\_\_\_

Date: 9/21/05



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** October 20, 2005

**Subject:** Request for a public hearing to approve amendments to Chp. 1-14 (Mangrove Trimming and Preservation Rule), Rules of the EPC

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

**Division:**    Legal Department

**Recommendation:**

Approve holding a public hearing at the EPC Board Meeting of November 17, 2005, to consider adoption of Chapter 1-14, Rules of the EPC (Mangrove Trimming and Preservation Rule)

**Brief Summary:**

Pursuant to the EPC Act, the EPC Board must hold a noticed public hearing to approve a rule. The EPC staff requests that the Board approve holding a Mangrove Trimming and Preservation Rule adoption public hearing at its next regularly scheduled meeting on November 17, 2005.

**Background:**

Pursuant to the Hillsborough County Environmental Protection Act (EPC Act) Section 5.2, the EPC Board must hold a noticed public hearing to approve a rule or rule amendment. The EPC staff requests that the Board approve holding a rule adoption public hearing at its next regularly scheduled meeting on November 17, 2005.

As discussed with the EPC Board in previous meetings, the EPC is seeking delegation and the adoption of a local rule concerning the trimming and preservation of mangroves in Hillsborough County. This rule adoption will provide the EPC delegation from the State of Florida Department of Environmental Protection for the regulation of trimming and other impacts to mangroves. This delegation is authorized under sections 403.9321-403.9333, Florida Statutes. This proposed rule will provide for revising standards in the existing State statute and will constitute the sole review for trimming and other impacts to mangroves in Hillsborough County. The proposed rule is attached and will be fully discussed at the November EPC Board meeting. The staff has issued extensive notices of the rule adoption process, is holding a third workshop on October 26, 2005, and a third CEAC briefing on November 7, 2005. The draft rule adoption is still subject to changes upon receipt of public comment.

**List of Attachments:**    Draft proposed Chp. 1-14



## EPC Agenda Item Cover Sheet

<b>Date of EPC Meeting:</b>	October 20, 2005		
<b>Subject:</b>	Old Landfill Investigation Program Grant Received From the International City/County Management Association		
<b>Consent Agenda</b>	<input checked="" type="checkbox"/>	<b>Regular Agenda</b>	<b>Public Hearing</b>
<b>Division:</b>	Waste Management Division		
<b>Recommendation:</b>	No staff recommendations. Requesting Board Approval for Use of Grant Funds.		
<b>Brief Summary:</b>	Staff is providing notification to the Board of the Waste Management Division's receipt of a grant in the amount of \$5,000 for use in its Old Landfill Investigation Program.		

**Background:**

In early July, 2005, the EPC received notification of an opportunity to participate in a \$5,000.00, grant application process which is being sponsored by the International City/County Management Association (ICMA). The grant is being provided to local governments involved in the tracking of contaminated properties, to include old landfill sites.

Based on staff's submission of a grant application of the ICMA, the \$5,000.00 grant was awarded to the EPC's Waste Management Division for use in the development of its Old Landfill Investigation Program, which has received prior Board approval.

The funds awarded will be used by the Waste Management Division to improve the quality and detail of information and data as pertains to the 162 known old landfill sites throughout Hillsborough County, in the development of a web based GIS system to include the detailed mapping of all old landfill sites, and to improve the agency's ability of share all old landfill information with other governmental entities as well as the general public.

Staff is seeking the Boards approval to utilize the awarded grant funds in its old landfill investigation program.

**List of Attachments:** Copy of ICMA award letter received by the EPC on SEP 12, 2005.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** October 20, 2005

**Subject:** EPC Assumption of LDC Wetlands Setback Regulations

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

**Division:** Wetlands Management Division

**Recommendation:**

Direct staff to continue working with PGMD staff to determine the feasibility of EPC staff assuming regulatory authority of the wetland setback

**Brief Summary:**

In response to comments from citizen, Denise Layne, during the September 15, 2005 EPC Board Meeting, the Commission directed staff to meet with Planning and Growth Management staff to determine the feasibility of EPC assuming responsibility for the upland permitting in the County.

**Background:**

In response to comments from citizen, Denise Layne, during the September 15, 2005 EPC Board Meeting, the Commission directed staff to meet with Planning and Growth Management staff to determine the feasibility of EPC assuming responsibility for the upland permitting in the County. As the EPC is a pollution control agency and does not regulate land development, it was determined that EPC rules would only allow for assumption of the wetland setback regulations contained in the Hillsborough County Land Development Code (LDC). While EPC is already conducting the field work and providing comments to PGMD regarding proposed activities in the wetland setback, regulation of the wetland setback requires, in many cases, a variance process through the Land Use Hearing Officer and in all cases the issuance of a specific permit. While EPC and PGMD staffs maintain a positive response to the possibility of EPC assuming this new regulatory responsibility, the details of the process, enforcement, and resources required to conduct the process must be addressed. Over the course of the next several months, EPC and PGMD staff will evaluate the setback language currently contained within the LDC, properly process any needed amendments, and consider the possibility of a MOU or some other instrument of agreement that would allow the process to move forward either on a trial or permanent basis.

**List of Attachments:** None



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** October 20, 2005

**Subject:** Tampa Port Authority Grant for Sediment Analysis

**Consent Agenda** XXX **Regular Agenda** \_\_\_\_\_ **Public Hearing** \_\_\_\_\_

**Division:** Water Management and Environmental Resources Management Division

**Recommendation:** Accept the Grant from the Tampa Port Authority to be paid through its contract with WRS Infrastructure and Environment Inc.

**Brief Summary:** The Tampa Port Authority is offering a grant through a work order from WRS Infrastructure and Environment Inc. in the amount of \$27,000 to the Environmental Protection Commission to collect and analyze water quality and sediment samples collected in the Port of Tampa. The analysis is to determine the level of contamination for various parameters including nutrients, metal, and organic compounds. The Tampa Port Authority is required to report the level and nature of contamination in the Port to the Florida Department of Environmental Protection as part of the permitting process. EPC has established expertise in this type of work.

### **Background:**

Staff recommends the Environmental Protection Commission accept the grant of \$27,000 from the Tampa Port Authority to be paid through a work order from their contract with WRS Infrastructure and Environment Inc.

The Tampa Port Authority is required to report the nature and level of contamination in the Port to the Florida Department of Environmental Protection (DEP) as part of the permitting process for maintenance dredging within the Port of Tampa.

EPC's Benthic Monitoring Program and EPC's Chemistry Laboratory have established expertise in this type of work. The work of these programs has established baseline values for these various types of contaminants throughout Tampa Bay and its major tributaries.

DEP recognizes the value of a consistent approach to the determination of these types of contamination and accordingly has encouraged EPC and the TPA to work in concert with DEP to determine the levels of contamination in the Port of Tampa. DEP has established the sampling locations and the parameters to be tested. By having EPC do this work, the results will be comparable to the baseline values EPC has established for these types of contaminants throughout Tampa Bay and its major tributaries as a part of its ambient monitoring program.

This grant is presented as Work Order Number WRS-9-13104 from WRS Infrastructure and Environment Inc. pursuant to the Contract entitled "Environmental Remediation Services"(Contract No. 04-13104) with the Tampa Port Authority.

The analysis is to determine the level of contamination for various parameters including nutrients, metal, and organic compounds. A list of the analysis required is included in the attachments as part of the scope of work proposal.

**List of Attachments:**

Work Order No. WRS-9-13104  
Scope of Work Proposal



WRS Infrastructure & Environment Inc.

Environmental Consultant

Contract No:04-13104



CFR NO 04-44  
Monday, June 27, 2005

**RE: SEDIMENT TESTING**

Work Order No WRS-9-13104 GRANT

NOT TO EXCEED \$29,700.00

START DATE:

COMPLETION DATE:

PERIOD:

LIQUIDATED DAMAGES AT: \$0.00 (per day)

This Work Order is issued pursuant to the Contract entitled "Environmental Remediation Services" Entered into between the Tampa Port Authority and WRS Infrastructure & Environment, Inc. on September 21, 2004

**SCOPE OF WORK:**

CONSULTANT TO ENGAGE THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY (EPCHC) TO PERFORM PORT OF TAMPA SEDIMENT TESTING AS REQUIRED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP)

The Consultant/Contractor shall not exceed the value of this Work Order without written consent of the Environmental Director.

Approved By:

For The Authority

*David G. Perucki*, 6/27-05  
Environmental Director

*By: Kenneth*  
Deputy Port Director/COO

For The Consultant/Contractor

*[Signature]*  
Signature

*Travis*  
Title

Date: 7/25/05

PROPOSAL TO  
 TAMPA PORT AUTHORITY  
 PORT OF TAMPA SEDIMENT MONITORING  
 SCOPE OF WORK

Prepared by:  
 Richard Boler & Bob Steiner  
 Environmental Protection Commission of Hillsborough County

The Environmental Protection Commission of Hillsborough County (EPC) agrees to support the Tampa Port Authority's permit compliance requirements to the Florida Department of Environmental Protection (DEP).

Objective: Under this contract EPC will complete the analysis 25 sediment samples from Tampa Bay for sediment chemistry. Sample locations will be mutually determined by EPC, DEP and TPA. EPC will be responsible for samples collection.

Methods: Field and laboratory methods will be consistent with those specified by the Department of Environmental Protection permit conditions.

Deliverables: Within 120 days of acceptance this contract EPC will provide the TPA with a completed dataset of all analysis for the 2005 sediment monitoring effort.

Costs Breakdown: The total cost for collecting and analysis of 25 sediment chemistry samples including quality control, data entry and data submission, is

*Total* ..... \$27,000.

Sample Collection

		2000 Port Sampling Effort	EPA - Proposed Parameters	Sediment	Water Column	Elutriate
<b>Physical Parameters **</b>		X	N)			
<b>Organics/Nutrients</b>						
TOC		X	N)			
Ammonia Nitrogen		X	)	6	1	6
Unionized ammonia		X	)	6	1	6
TKN		X	)	6		6
Oil & Grease		X	N)			
Phosphorus		X	)	6		6
<b>Metals</b>						
Aluminum	Al	X	)	6		6
Antimony	Sb		)	6		6
Arsenic	As		)	6		6
Cadmium	Cd	X	)	6	1	6
Chromium	Cr	X	)	6	1	6
Copper	Cu	X	)	6		6
Iron	Fe		)	6	1	6
Lead	Pb	X	)	6		6
Manganese	Mn		)	6		6
Nickel	Ni	X	)	6		6
Selenium	Se		)	6		6
Silver	Ag	X	)	6		6
Tin	Sn		X)	6		6
Zinc	Zn	X	X)	6		6
Mercury	Hg	X	IO)			
<b>Organochlorine Pesticides</b>						
Aldrin			X)	6		6
Alpha BHC		X	X)	6		6
alpha Chlordane		X	X)	6		6
Beta BHC		X	X)	6		6
Chlordane		X	X)	6		6
DDD		X	X)	6		6
DDE		X	X)	6		6
DDT		X	X)	6		6
Delta BHC		X	X)	6		6
Dieldrin		X	X)	6		6
EndoSulfan 1		X	X)	6		6
Endosulfan II		X	X)	6		6
Endosulfan Sulfate		X	X)	6		6
Endrin		X	X)	6		6
Endrin Aldehyde		X	X)	6		6
Endrin Ketone		X	X)	6		6
Gamma BHC		X	X)	6		6

gamma Chlordane	X	X	6	6
Heptachlor	X	X	6	6
Heptachlor Epoxide	X	X	6	6
Methoxychlor		X	6	6
Mirex		X	6	6

	PCBs	Arochors	Congeners		
PCB101			X	6	6
PCB105			X	6	6
PCB118			X	6	6
PCB153			X	6	6
PCB170			X	6	6
PCB18			X	6	6
PCB180			)	6	6
PCB187			)	6	6
PCB195			)	6	6
PCB206			)	6	6
PCB28			)	6	6
PCB44			)	6	6
PCB52			)	6	6
PCB66			)	6	6
PCB8			)	6	6
Total PCBs					

	PAHs			
2-Methylnaphthalene		:	6	6
Acenaphthene		:	6	6
Acenaphthylene		:	6	6
Anthracene		:	6	6
Benzo (a) anthracene		:	6	6
Benzo (a) pyrene		:	6	6
Benzo (B) fluoranthene		:	6	6
Benzo (K) fluoranthene		:	6	6
Benzo [g,h,i] perylene		:	6	6
Chrysene		:	6	6
Coronene		:	6	6
Dibenzo [a,h] anthracene		:	6	6
Fluoranthene		:	6	6
Fluorene		:	6	6
Indeno (1,2,3-cd) pyrene		:	6	6
Naphthalene		:	6	6
Phenanthrene		:	6	6
Pyrene		:	6	6
Retene		:	6	6
Total HMW-PAHs				
Total LMW-PAHs				
Total PAHs				

876 duplicate 5 876 duplicate 1757

Total



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** October 20, 2005

**Subject:** CC Entertainment Music – Tampa, LLC's (Clear Channel) request for variance from Chapter 1-10, Rules of the EPC regarding the Ford Amphitheatre.

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

**Division:** Air Management Division and Legal Department

**Recommendation:** Hold a public hearing and vote on whether or not to grant Clear Channel its variance request. Staff's final recommendation to be provided under separate cover.

**Brief Summary:** In an effort to settle EPC vs. CC Entertainment Music – Tampa LLC and Florida State Fair Authority and related civil and administrative cases, the parties entered court-ordered mediation. The mediation resulted in an interim agreement that allowed for Clear Channel to file for a variance pursuant to Chapter I-2, Rules of the EPC, while all parties agreed to stay the litigation until October 28, 2005. The EPC staff will present its recommendation on the request to the Commission. The Commission may grant, deny, or modify the request. If the Commission grants any variance, even if it modifies the Clear Channel request, then Clear Channel has 5 days to accept or reject the variance. If the variance is rejected, the litigation will resume. If accepted, the parties will enter a final settlement, Clear Channel will implement various administrative and structural modifications to the facility, and the variance will be an enforceable standard.

**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 Ford Amphitheater located at the Florida State Fairgrounds. In an effort to settle Environmental Protection Commission of Hillsborough County vs. CC Entertainment Music – Tampa LLC and Florida State Fair Authority (Case No. 04-11404) and CCE vs. EPC and FSFA (Case No. 05-1565) and related civil and administrative cases, the parties entered court-ordered mediation on July 25 and 26, 2005. The mediation resulted in an interim agreement dated July 26, 2005, that allowed for Clear Channel to file for a variance pursuant to Chapter 1-2, Rules of the EPC, while all parties agreed to stay the litigation until October 28, 2005. In accordance with the agreement, Clear Channel also was required to implement further interim measures to mitigate sound levels. After a brief extension of time, Clear Channel submitted its variance request on August 29, 2005 (see attachment 1). The parties have continued to meet. The EPC has submitted two requests for additional information, the first on September 19, 2005 (see attachment 2) and the second on October 3, 2005 (see attachment 4). Clear Channel has responded to them on September 26, 2005 (see attachment 3) and on October 11, 2005 (see attachment 5). EPC staff presented the variance request to the public in a community meeting held at Tampa Bay Tech on September 29, 2005. The majority of the speakers at the meeting indicated they did not support a variance. EPC staff also presented the request to CEAC on October 3, 2005.

Any person may ask for a variance or waiver to a rule or a rule amendment at anytime. In this case, the parties decided a variance request would be the most expeditious manner to bring a proposed settlement to the Commission. It should be noted that a variance request under administrative law, is different than a variance

requested from land use laws. This variance is requested pursuant to section 1-2.50, Rules of the EPC and states as follows:

### **1-2.50 REQUEST FOR VARIANCE OR WAIVER**

1. Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to Chapter 84-446, where the applicant demonstrates:
  - a. A substantial hardship as defined by Section 120.542, Florida Statutes, or that a violation of the principles of fairness would occur, and
  - b. The purpose of the underlying rule can be, or has been, achieved by other means, and
  - c. The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered pursuant to Section 403.201, Florida Statutes.
2. The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.
3. Notice of the application must be published by the applicant in a newspaper of general circulation summarizing the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.
4. The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a regular meeting. The Commission shall grant or deny the application by written decision supported by competent substantial evidence.

Clear Channel has argued that it qualifies for the variance because it will meet the underlying rule and that "a violation of the principles of fairness would occur" (see section 1-2.50(1)(a), Rules of the EPC). Clear Channel did not argue the legal theory of substantial hardship, thus the EPC staff analysis is limited to whether a violation of the principles of fairness would occur. This and additional analysis will be detailed in the final recommendation.

In light of the amount of time needed to process Clear Channel's most recent response to the EPC's second request for additional information, a final recommendation was not available at the time deadline for the Commission agenda items. EPC staff and consultants continue to analyze the request and associated sound level modeling. EPC staff will present its recommendation on the request to the Commission on October 20, 2005. If the Commission grants any variance, or modifies the Clear Channel request, then Clear Channel has 5 days to accept or reject the variance. If the variance is rejected, the litigation will resume. In that case, the hearing on EPC's motion for temporary injunction is scheduled to resume on December 12, 2005. If the variance is accepted, the parties will enter a final settlement, Clear Channel will implement various administrative, operational and structural modifications to the facility designed to reduce sound emissions (e.g. a sound attenuating wall and lowering the height of speakers), Clear Channel will pay the EPC \$50,000 in administrative costs, and the variance will be an enforceable standard, similar to a permit.

#### **List of Attachments:**

- 1) CCE Variance Request, 8/29/05
- 2) EPC First Request for Additional Information, 9/19/05
- 3) CCE First Response to Request for Additional Information, 9/26/05
- 4) EPC Second Request for Additional Information, 10/3/05
- 5) CCE Second Response to Request for Additional Information, 10/11/05



# FOWLER WHITE BOGGS BANKER

ATTORNEYS AT LAW

ESTABLISHED 1913

G. Donovan Conwell, Jr.  
Direct Dial: 813-222-1155  
dconwell@fowlerwhite.com

August 29, 2005

VIA HAND DELIVERY

Richard Tschantz, Esq.  
Environmental Protection Commission  
of Hillsborough County  
Roger P. Stewart Center  
3629 Queen Palm Drive  
Tampa, FL 33619

Re: Clear Channel Entertainment Music – Tampa, LLC

Dear Mr. Tschantz:

Enclosed please find the executed Application for Variance and/or Waiver made by our client, Clear Channel Entertainment Music – Tampa, LLC. We have appreciated the opportunity to work with you and the EPC staff during the mediation process and look forward to continuing to work with the EPC as you consider the enclosed Application.

If you have any questions, please do not hesitate to contact me.

Sincerely,

FOWLER WHITE BOGGS BANKER P.A.

G. Donovan Conwell, Jr.

GDC/mo  
Enclosure

**Attachment 1**

FOWLER WHITE BOGGS BANKER P.A.

WINDY SPRINGS • FORT MYERS • JACKSONVILLE • NAPLES • ORLANDO • ST. PETERSBURG • TAMPA • WINTER HAVEN

501 EAST KENNEDY BLVD., SUITE 200  
TAMPA, FLORIDA 33601

• P.O. BOX 238 • TAMPA, FL 33601  
WWW.FOWLERWHITE.COM

BEFORE THE ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY, FLORIDA

In Re:

CC ENTERTAINMENT MUSIC – TAMPA, LLC

EPC Case No. \_\_\_\_\_

APPLICATION FOR VARIANCE AND/OR WAIVER

The Applicant, CC ENTERTAINMENT MUSIC – TAMPA, LLC, a Delaware limited liability company authorized to do business in the State of Florida (“Applicant” or “CCE”), hereby files this Application for Variance and/or Waiver (“Application”) pursuant to Rule 1-2.50, Rules of the Environmental Protection Commission of Hillsborough County (“EPC Rules”), which EPC Rules have been promulgated pursuant to Chapter 84-446, Laws of Florida, as amended by Chapter 87-495, Laws of Florida (“EPC Act”), and a Confidential Interim Agreement (“Settlement Agreement”) entered into by CCE, the Environmental Protection Commission of Hillsborough County (“EPC”) and the Florida State Fair Authority (“FSFA”) on July 26, 2005 as the result of Court ordered mediation, the terms, provisions and conditions of which Settlement Agreement are confidential by law and agreement of the parties thereto. In support of this Application, CCE states and alleges:

1. Name of Applicant: CC ENTERTAINMENT MUSIC – TAMPA, LLC, a Delaware limited liability company authorized to do business in the State of Florida.
2. Address of Applicant: 4802 U.S. Hwy 301 North, Tampa, Florida 33610
3. Name of Venue: Ford Amphitheater at the Florida State Fairgrounds.
4. Rule from which Variance and/or Waiver is Requested: EPC Rule 1-10.03 (A) and (B).



5. Rule to be Applied to Applicant: EPC Rule 1-10.03 (D)(1) and (2), as modified by the terms, provisions and conditions set forth on Exhibit "A" to this Application.

6. Violation of Principles of Fairness: In order to qualify for a variance or waiver, the Applicant must demonstrate that a "...substantial hardship as defined by Section 120.542, Florida Statutes, or that a violation of the principles of fairness would occur." *Rule 1-2.50(1)(a), EPC Rules.* "Principles of fairness" are violated under Florida law, when the "...literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." *Section 120.542(2), Fla. Stat.*

The EPC Act declares that it is the "...intent and purpose of this act to designate the board of county commissioners as the environmental protection commission of Hillsborough County to provide and maintain for the citizens and visitors of said county standards which will insure...freedom from excessive and unnecessary noise which unreasonably interferes with the comfortable enjoyment of life or property or the conduct of business." *Section 2, EPC Act.* The Environmental Protection Commission is authorized to "...adopt, revise and amend from time to time appropriate rules and regulations reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of this act and to provide for the effective and continuing control and regulation of air, water and noise pollution..." *Section 5, EPC Act.*

Pursuant to this grant of power, and in furtherance of its declared intent, EPC adopted Chapter 1-10, Noise, of the EPC Rules ("Noise Rules"). The Noise Rules have been amended ten (10) times, the most recent amendment occurring in 2004. The Noise Rules, among other things, establish permissible sound level limits for differing types of land use at different times of day. This general limit ranges anywhere from 55dBA to 75dBA. *Section 1-10.03(A), EPC Rules.* In addition, it is recognized that for residential property, the permissible lower octave band limits (i.e. 63, 125, 250 and 500 Hertz) are allowed to be higher than the broadband (dBA) levels by as much as 10dB. *Section 1-10.03(B), EPC Rules.*

After setting forth the general limits, the Noise Rules begin to consider major entertainment events, including but not limited to cultural and athletic events, and venues, most of which are located near residential properties. For example, events related to Gasparilla, Fourth of July, New Year's Eve and Guavaween, are totally exempt from the Noise Rules. *Section 1-10.04(E), EPC Rules.* Regardless of the sound levels generated from any source at these events, they are exempt. In addition, the Noise Rules create an exemption for "officially authorized spectator events" which is defined as activities involving competitive sports and parades. *Section 1-10.01(19), EPC Rules.* Football and baseball games, soccer matches, tennis tournaments, etc. are all exempt, along with parades. Regardless of the sound level generated by these activities, or the time of day they occur, they are not subject to any regulation.

The exemptions discussed above were due in large part because of the fact that while it was good public policy to establish and encourage facilities and events that would enhance the quality of life to Hillsborough County residents and their families and foster economic development, the thirty (30) year old Noise Rules imposed standards that were not realistic or achievable for these types of events and facilities.

Entertainment facilities and cultural events which were not completely exempt from the Noise Rules were provided special consideration from the general sound level limits discussed above. Section 1-10.06 of the Noise Rules allows sponsors of a cultural event, which "...may not meet the noise standard and regulations..." to obtain a waiver for its event. The Noise Rules also recognize that the sound generated at car and motorcycle races will not be able to meet the general sound level limits in Section 1-10.03(A) and (B). *Section 1-10.05, EPC Rules.* Accordingly, the sound level that is now permitted at these racing venues shall not exceed 68 dBA when measured at the nearest residential property line. Moreover, East Bay Raceway has been given further consideration and latitude. Noise levels there cannot exceed 78 dBA. In previous versions of the Noise Rules, the 78 dBA was limited to Saturday night races only. However, EPC deleted Saturday nights in the 2004 amendment so that 78 dBA is the standard anytime East Bay has a race. Unlike the Ford Amphitheater, which has been cited by EPC staff for allegedly exceeding 55 dBA after 10 p.m., not only is the sound level limit as much as 23 dB higher, there is no time constraint for these other facilities mentioned in the Noise Rules.

Another exception to the general sound level limits found in the Noise Rules pertains to Ybor City. Rule 1-10.03(D) provides that "...sound levels generated by entertainment or musical events within Ybor City Entertainment District, regardless of the time of day, shall not exceed 65 dBA when received at any point on the boundary of Ybor City Entertainment District..." The sound is not measured at the boundary of the residence, but at the edge of the District notwithstanding the existence of numerous residences within the Ybor District. The maximum allowable sound levels for the lower octave bands (63, 125, 250, and 500 Hertz) shall not exceed 75 dB. And, this limit is applicable "...regardless of the time of day..."

For analysis purposes, a comparison of the differing rules and standards is shown on Exhibit "B" attached hereto and made a part hereof. As one can readily observe, the variance requested by CCE is far less than the current levels permitted at other outdoor entertainment facilities.

Without question, entertainment facilities and events, including but not limited to those for musical, cultural and athletic events, provide an economic and social benefit to the residents of Hillsborough County. The Tampa Sports Authority was created in 1965 by the Florida Legislature as an independent special district of the State in order to plan, develop, promote and maintain sports and recreation facilities in Hillsborough County for the use and enjoyment of its citizens. *Mission Statement, Tampa Sports Authority.* Its purpose and vision is "...to provide economic development and enhance the quality of life through sports and recreation." *Vision Statement, Tampa Sports Authority.* Not only is this vision accomplished through facilities such as Raymond James Stadium, St. Pete Times Forum, golf courses, Rogers Park, etc., but it is also established through the Ford Amphitheater. In fact, the Tampa Sports Authority several years ago recognized an "amphitheater" as one of six (6) facilities Hillsborough County needed but cited the lack of funding as one of its major issues. *Proposed Projects and Major Issues Facing TSA, Tampa Sports Authority brochure.* Like the other facilities mentioned above, the Ford Amphitheater satisfies the goals, objectives and policies of the Tampa Sports Authority by providing economic development to Hillsborough County and enhancing the quality of life for its residents. But, unlike many of the other facilities, it was built and is operated entirely with private funds.

From an analysis of the Noise Rule, it is readily apparent that trying to apply the general sound level limit to various entertainment and special events, including musical, cultural and athletic entertainment events, would have an enormous chilling effect on economic development and quality of life in Hillsborough County. Because EPC staff measures sound based on instantaneous readings (Lmax) instead of an average (such as Leq or L10), none of the aforementioned events are possible. Under such a stringent standard, the slamming of a car door after 10 p.m. would create an instantaneous violation of the 55 dBA sound level limit and technically result in a violation. In other words, applying the same Noise Rule that is applied to the Ford Amphitheater to other outdoor entertainment facilities would result in violation after violation and perhaps the ultimate closure of these facilities. There would be no special events and outdoor athletic and cultural facilities in Hillsborough County.

Consequently, the Noise Rules being applied to the Ford Amphitheater are substantially different from those being applied to similar facilities and events. A circus or fair at Raymond James Stadium that is directly related to Gasparilla and a concert at halftime during every Buccaneers game are completely exempt from the Noise Rules. East Bay Raceway and Ybor City Entertainment District enjoy a significantly higher permissible sound level. Yet, all provide entertainment and cultural events for the residents of Hillsborough County just like the Ford Amphitheater.

Therefore, applying rules to the Ford Amphitheater that are substantially different from those relating to similar facilities and events violates the principles of fairness.

7. Underlying Purpose of Rule will Still be Achieved: The EPC has legislatively determined that for entertainment facilities and events, including but not limited to cultural and athletic facilities and events, a blanket exemption or a substantially higher sound level limit is in keeping with the intent of the EPC Act. The Applicant is not currently seeking a blanket exemption in this Application from the Noise Rules, although previous grants of blanket exemptions by the EPC to other entertainment venues recognizes that even a blanket exemption can serve the purpose and intent of the EPC Act and EPC Rules. It is requesting that the sound level limits similar, but not as liberal, to other outdoor entertainment venues be applied to concerts and events at the Ford Amphitheater. Therefore, when considered in light of the blanket exemptions and higher permissible sound level limits, the purpose of the Noise Rules will still be achieved if the variance/waiver is granted.

The underlying purpose of the Noise Rules will also be achieved by the improvements contemplated by the Applicant. In addition to other potential physical improvements, CCE will specifically (a) consider the effect of the lawn speakers to determine whether they should be repositioned without sacrificing the quality and level of sound available on the grass berm; and (b) design and install a barrier or barriers based on the Applicant's sound consultant's recommendation that will provide effective sound attenuation while maintaining the current outdoor appeal of the Amphitheater.

8. Non-DEP Origin: The provision from which the variance and/or waiver is being sought did not originate with the Florida Department of Environmental Protection and the request hereunder does not need to be considered pursuant to Section 403.201, Fla.Stat.

9. Commissioner's Meetings: During the pendency of this Application, it is the intent of CCE, and its attorneys or agents, to meet with the individual Commissioners for the purpose of explaining the Application, responding to questions they may have, and for such other lawful purposes.

10. Non-Waiver: Nothing contained herein, or presented by the Applicant in support of this Application, or in response to EPC's Request for Additional Information ("RAI"), shall be construed, interpreted, or deemed as a waiver of CCE's rights, remedies, and privileges under the Settlement Agreement, or a waiver of the legal or equitable claims raised, or which can be raised, by CCE in the pending Actions (as defined in the Settlement Agreement) should this Application be denied or granted with conditions and modifications unacceptable to CCE in its sole opinion.

11. Publication: As required by Section 1-2.50 (3), EPC Rules, notice of this Application shall be published in a newspaper of general circulation summarizing the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

Dated this 26<sup>th</sup> day of August, 2005.

"CCE" or "Applicant"

CC ENTERTAINMENT MUSIC – TAMPA, LLC,  
a Delaware limited liability company

By: 

G. Wilson Rogers, COO

Cellar Door, South

Tel: 404-233-8889

Fax: 404-233-8884

## EXHIBIT "A"

### Monitoring Requirements and Standards

**Metric:** L10 measured over a period of 5 minutes.

**Sound Level Limits:** Broadband sound levels generated by concerts, shows and other events at the Ford Amphitheater (exclusive of crowd noise), shall not exceed 65 dBA at the receiving residential property, and 75 dBA at the receiving commercial and industrial property, from 7:00 a.m. until 11 p.m. Sound levels (exclusive of crowd noise) for the individual octave bands whose centers are 63, 125, 250 and 500 Hertz shall not exceed 75 dB at the receiving residential property, and 85 dB at the receiving commercial and industrial property, from 7:00 a.m. until 11 p.m. After 11 p.m., sound levels shall revert to as provided in the EPC Rules.

**Measurement Standards and Manufacturer's Recommendation:** The standards recommended to be used to measure sound levels and operate the sound level meters shall be in accordance with the applicable standards published by the American Society for Testing and Materials ("ASTM") from time to time, and shall include the applicable standards of the American National Standards Institute ("ANSI"). In addition, the manufacturer's recommendations for the monitoring equipment utilized by the EPC, as amended from time to time, shall also be followed. In the event such ASTM or ANSI standards do not exist, EPC shall follow the standards last in effect prior to them becoming ineffective.

## EXHIBIT "B"

### CHART OF NOISE RULES AND SOUND LEVELS FOR HILLSBOROUGH COUNTY

#### From Least Restrictive to the Most Restrictive

**Complete Exemption from Noise Rules:** the unamplified human voice; agricultural activities; residential lawn care; school and church activities; livestock and other animal sounds; motor vehicles operating in the public rights-of-way; boats; airports, bus and train stations; military and law enforcement shooting ranges; trains, ships and aircraft; daytime construction activities; events directly related to Gasparilla, Fourth of July, New Year's Eve, Guavaween or officially authorized spectator events, including competitive sporting events and parades.

**Cultural Event Waiver from Noise Rules:** An event, which will occur infrequently, but is not expected to meet the Noise Rules, may obtain a waiver from the EPC for the event.

**East Bay Raceway:** Sound levels from racing activities at East Bay Raceway shall not exceed 78 dBA at the nearest residential property lines, regardless of the time of day. The sound limit level was previously only limited to Saturday nights. However, the rule was changed in 2004 to make it applicable to any race, at any time of day or night.

**Racing at Other Venues:** Sound levels shall not exceed 68 dBA when measured at the property line of adjacent residential properties. This sound level is applicable to any time of day or night.

**Ybor City Entertainment District:** Sound levels are 65 dBA and 75 dB for the lower octave bands, not at the nearest residential property, but at the boundary line of the Ybor City Entertainment District, notwithstanding the fact that there are numerous residences within Ybor City.

**CCE Variance Request:** 65 dBA and 75 dB for the lower octave bands until 11 pm only. Then the sound level limit reverts to the existing rule.

**Level Currently Enforced Against Amphitheater:** At residential properties, 60 dBA until 10 p. m. and 55 dBA after 10 pm. For the lower octave bands, the sound level is limited to 65 dB.

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



Roger P. Stewart, Center  
3629 Queen Palm Dr. - Tampa, FL 33619  
Ph: (813) 627-2600  
Fax Numbers (813):  
Admin. 627-2620 Waste 627-2640  
Legal 627-2602 Wetlands 627-2630  
Water 627-2670 ERM 627-2650  
Air 627-2660 Lab 272-5157

Executive Director  
Richard D. Garrity, Ph.D

September 19, 2005

Mr. G. Wilson Rogers, COO  
Cellar Door South  
359 East Paces Ferry Rd. NE, 4<sup>th</sup> Floor  
Atlanta, GA 30305

RE: First Request for Additional Information (RAI)

Dear Mr. Rogers:

This is in response to Clear Channel Entertainment Music – Tampa LLC's (CCE) Application for a Variance and/or Waiver of EPC Rule 1-10.03(A) and (B) dated August 29, 2005. Pursuant to the Interim Agreement of July 26, 2005, between CCE and the EPC, the EPC is allowed two formal RAIs, the first being due within twenty-one days of receipt of CCE's application. Be advised this letter does represent EPC's first RAI and, under the terms of the Interim Agreement, CCE has a window of five business days to respond. While the Interim Agreement does not obligate CCE to answer the RAI, we certainly feel it is in everyone's best interest that you do so.

The RAI itself is attached and titled "EPC's RAI of September 19, 2005." If for some reason you can not provide a complete response to each and every item detailed in the RAI, we encourage you to respond by the agreed upon date with the most complete response that time allows. Our intent is to try and fully understand your request and its effects upon the adjacent neighborhoods, before we render any recommendation to our Board. To the extent that CCE provides timely and complete responses to this RAI, it will directly affect EPC staff's ability to fairly and accurately evaluate it.

The Interim Agreement does allow for a second RAI prior to taking this item to our Commission on October 20<sup>th</sup>. No decision will be made on a second RAI until a later date. Also during this interim period, we will be soliciting input from the public and our Citizens Environmental Advisory Committee at scheduled open meetings.

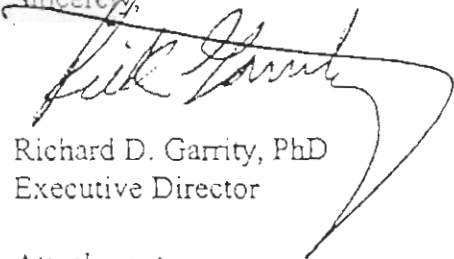
Attachment 2



Mr. G. Wilson Rogers, COO  
Cellar Door South  
September 19, 2005  
Page 2

Thank you for your attention to this matter and feel free to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rick Garrity", with a large, sweeping flourish extending to the right.

Richard D. Garrity, PhD  
Executive Director

Attachment

cag

EPC's RAI of September 19, 2005

1. Please explain how granting your request to revise the sound level limits of Sections 1-10.03(A) and (B) will not cause noise pollution and will ensure freedom from excessive and unnecessary noise which unreasonably interferes with the comfortable enjoyment of life or property or the conduct of business, pursuant to the EPC Act. Do you have any complaint data from this or any other facility which would support the proposed standards? Do you have any ambient data in the L10 5 minute format either week day or weekends for the Wexford, Staley Estates, Kings Forest, Woodlands, Eureka Springs, East Lake or Temple Terrace neighborhoods? Can you provide that data?
2. In Item 7 of the Application, you state that CCE will specifically consider repositioning the lawn speakers, and the design and installation of barriers based upon your sound consultant's recommendation. In order for us to continue to review your request, please provide the following information:
  - a. Any acoustical report or correspondence from CCE's consultant regarding these proposed changes to the amphitheatre. We are specifically looking for the predicted reductions in the dBA and the octave band dB readings as a result of any sound barriers or enclosures or other improvements offered by the consultant, and how that enables CCE to meet their proposed variance.
  - b. A copy of the acoustical modeling software used, along with the instruction manual and detailed data input for the model, including CAD files of the existing facility as it was constructed, modifications made to date, and proposed physical improvements; loudspeaker, lawn speaker, and amplifier data along with mounting details for all speakers; and operational assumptions used.
  - c. The detailed calibration procedures, and experiments for the acoustical modeling software.
  - d. CCE monitoring data taken to date with appropriate software licenses to review calibration studies.
  - e. Any measurements taken inside the amphitheatre to confirm projected sound decay models.
  - f. The maximum sound levels predicted in the following neighborhoods after the consultant's control measures are implemented: Wexford, Staley Estates, Kings Forest, Woodlands, Eureka Springs, East Lake and Temple Terrace. Please state this in the L10 5 minutes metric if you have it.
  - g. Please explain how this consultant's evaluation differs from the noise studies done prior to construction of the amphitheatre. In particular, we are interested in what measures CCE has taken to ensure the reliability of the predicted noise levels now versus the past experience.
3. Our review of several acoustical reference books indicates that reductions as high as 15 to 24 dB are possible with the use of properly designed barriers. In light of the physical improvements contemplated by CCE, why are you requesting 65/75 sound level limit when it appears you may be able to meet lower limits using a L10 5 minute metric?

4. In Exhibit A of the Application, you request sound level limits exclusive of crowd noise. Section 1-10.04(B) exempts the unamplified human voice from the requirements of the rule. Please explain how an amphitheater, which includes amplification equipment and loudspeakers, does not amplify the voices of 10,000 to 20,000 patrons (crowd), thereby making it subject to the rule.
5. In Exhibit A of the Application, you propose a 75 dBA and 85 dB low frequency octave band limit at receiving commercial and industrial property. In Table 4 of the EPA document entitled "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety", March 1974, the EPA identifies a 70 dB 24-hour  $L_{eq}$  as the limit to protect the public from hearing loss in an industrial setting. On page 29 of the EPA document, Item "d", it states that an 8-hour  $L_{eq}$  of 75 dB may be identified in situations so long as the exposure of the remaining 16 hours is low enough to result in a negligible contribution to the 24-hour average (no greater than a 16-hour  $L_{eq}$  of 60 dB). In Figure B-3 and B-4 of the same document, it lists the typical 24-hour  $L_{eq}$  noise exposure for a factory worker and a suburban office worker at 87 and 72 dB, respectively (The World Health Organization document entitled "Guidelines for Community Noise", April 1999, confirms the EPA guidelines described above). Please explain how a 75 dBA and 85 dB low frequency octave band limit at commercial and industrial receptors will be protective of human health and welfare, and not contribute to hearing loss if these workers are routinely exposed to these levels during your concerts.
6. In order to meet the sound level limits in your application, do you intend to limit the noise level at your mix area and/or the back of the lawn seats as a part of your internal controls, and if so what level is that? Be sure to include the metric.
7. Our analysis is indicating that the 31.5 Hz octave band is a significant contributor to potential complaints. What steps have you taken to mitigate or control noise levels in this particular octave band? What worst case levels would you expect following any modifications you make to the amphitheatre, in a L10 5 minute metric for this octave band?
8. Is there an upper limit to the number of performances in any given year which this variance is intended to apply too? For some of your other amphitheatres in semi-tropical climates where you have several years of operating experience, what is the range of number of performances per year?
9. What information can you provide to support the fairness issue when comparing exempting once per year events such as Gasparilla, New Year's Eve, Fourth of July and Guavaween, as opposed to the amphitheatre which operates on multiple dates year round?
10. Please compare the levels sought by CCE's variance to the 65 dBA  $L_{max}$  standard at the boundary of the Ybor City Entertainment District. Would you consider the requested variance a higher or lower limit?

11. Please compare the levels sought by CCE's variance to the 78 dBA  $L_{max}$  standard for Eastbay Raceway. Would you consider the requested variance a higher or lower limit?
12. Please detail the acoustical management plan CCE proposes to ensure compliance with the proposed variance. This will need to include the use of any slammers inside the amphitheatre, as well as any noise monitoring to be conducted in the adjacent neighborhoods during performances at the amphitheatre.
13. Please explain why a pre-and post-10 p.m. standard is not acceptable on school nights.
14. Please provide a brief analysis comparing the limits in the proposed variance versus the applicable limits controlling CCE's amphitheatres in the following locations: Chicago, IL; New Haven, CT; Baltimore, MD; Raleigh, NC and King County, WA. Do you consider the limits on these facilities more or less stringent?

September 26, 2005

REC'D

SEP 29 2005

ENV. PROT. COMM.  
OF H.C.

Richard D. Garrity, PhD, Executive Director  
Environmental Protection Commission  
HILLSBOROUGH COUNTY  
3629 Queen Palm Drive  
Tampa, FL 33619

**RE: CCE's Response to EPC's First Request for Additional Information**


Dear Dr. Garrity:

Thank you for your letter of September 19, 2005, and EPC's First Request for Additional Information. Attached please find CCE's Response to EPC's First Request for Additional Information ("RAI"). It is apparent that a number of the inquiries go beyond the fairness issue raised in CCE's Application for Variance/Waiver ("Application"). For instance, the applicability of noise standards to other venues and sound expectations at the 31.5 Hz level are not particularly germane in determining whether the noise standards are being applied differently to Ford Amphitheater than to other public entertainment and cultural facilities in Hillsborough County. Nevertheless, we have attempted to be responsive to your questions.

Our responses are to the best of our knowledge, information and belief, and, in many instances, without independent inquiry or research. Because of the time constraints (five business days) to respond, and the detail and length of your RAI, some of our responses will be partial and incomplete. In one instance, there is no response because we have not had the time to obtain the information requested. Therefore, CCE specifically reserves the right to further supplement, amend and modify its responses to the first RAI, or to elect not to provide any additional response than what is stated below. In addition, our responses are being provided pursuant to the Confidential Interim Agreement and for settlement purposes only. Notwithstanding the fact that said responses may become part of the public domain, this shall confirm the spirit, intent and understanding of the parties that any information obtained by EPC through the Variance/Waiver process shall not be admissible in a court of law or administrative proceeding should CCE's Application for Variance/Waiver ("Application") be denied, or granted with conditions unacceptable to CCE.

Thank you for this opportunity to attempt to resolve the outstanding issues. Upon receipt and review, please call with any questions.

Sincerely,



G. Wilson Rogers, COO  
Cellar Door South  
For CC Entertainment Music – Tampa, LLC

THE  
CELLAR  
DOOR  
COMPANIES

cc: Mary Stich, Chief Lit. Counsel, CCC  
Charlie Walker, COO, CCE  
John Foster, Esq.

**Attachment 3**

bcc: Peter A. Strauss  
John Ahrens  
Don Conwell  
Brad Patrick  
Mike Corcoran  
Matt Blair

THE  
CELLAR  
DOOR  
COMPANIES

## CCE'S RESPONSE TO EPC'S FIRST REQUEST FOR ADDITIONAL INFORMATION

CCE hereby responds to EPC's First Request for Additional Information ("RAI") dated September 19, 2005. For ease of review, we have restated EPC's RAI in bold and provided CCE's response below each item. Subject to the limitations and reservations contained in our cover letter of September 26, 2005 to Dr. Garrity, CCE's response is as follows:

- 1. Please explain how granting your request to revise the sound level limits of Sections 1-10.03(A) and (B) will not cause noise pollution and will ensure freedom from excessive and unnecessary noise which unreasonably interferes with the comfortable enjoyment of life or property or the conduct of business, pursuant to the EPC Act. Do you have any complaint data from this or any other facility which would support the proposed standards? Do you have any ambient data in the L10 5 minute format either week day or weekends for the Wexford, Staley Estates, Kings Forest, Woodlands, Eureka Springs, East Lake or Temple Terrace neighborhoods? Can you provide that data?**

As stated in Section 2 of the EPC Act, it is the "...intent and purpose of this act to designate the board of county commissioners as the environmental protection commission...to provide and maintain for the citizens and visitors of said county standards which will insure...freedom from excessive and unnecessary noise which unreasonably interferes with the comfortable enjoyment of life or property or the conduct of business." The commissioners are specifically authorized to "adopt, revise and amend...appropriate rules and regulations reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of this act..." *Section 5, EPC Act*. The Environmental Protection Commissioners have adopted rules and regulations for public entertainment and cultural facilities that either exempts those facilities from the Chapter 1-10 ("Noise Rules") or allows them to generate sound at higher levels than sought by CCE in its Application for Variance/Waiver ("Application"). For example, Rule 1-10.03(D) provides that "...sound levels generated by entertainment or musical events within Ybor City Entertainment District, regardless of the time of day, shall not exceed 65 dBA when received at any point on the boundary of Ybor City Entertainment District..." The sound is not measured at the boundary of the residence, but at the edge of the District notwithstanding the existence of numerous residences within the Ybor District. The maximum allowable sound levels for the lower octave bands (63, 125, 250, and 500 Hertz) shall not exceed 75 dB. Noise levels at East Bay Raceway cannot exceed 78 dBA anytime day or night, and Raymond James Stadium is exempt from the Noise Rules. Therefore, if the events at Raymond James Stadium, East Bay Raceway and Ybor City do not reasonably interfere with the comfortable enjoyment of life, then the granting of the variance request which imposes standards on the Ford Amphitheater that are less than those facilities will also not interfere with the comfortable enjoyment of life in Hillsborough County.

To the best of our knowledge, we do not have any complaint data supporting the above answer, but the information provided by EPC tends to show that complaints for performances at the Ford Amphitheater seem to begin when the decibel level is above 75

for the lower octave bands. Perhaps this is why Ybor City Entertainment District has been approved for 75 dB.

To the best of our knowledge, we do not have ambient data in the L10 5 minute format either weekday or weekends for the surrounding neighborhoods.

2. **In Item 7 of the Application, you state that CCE will specifically consider repositioning the lawn speakers, and the design and installation of barriers based upon your sound consultant's recommendation. In order for us to continue to review your request, please provide the following information:**
  - a. **Any acoustical report or correspondence from CCE's consultant regarding these proposed changes to the amphitheatre. We are specifically looking for the predicted reductions in the dBA and the octave band dB readings as a result of any sound barriers or enclosures or other improvements offered by the consultant, and how that enables CCE to meet their proposed variance.**
  - b. **A copy of the acoustical modeling software used, along with the instruction manual and detailed data input for the model, including CAD files of the existing facility as it was constructed, modifications made to date, and proposed physical improvements; loudspeaker, lawn speaker, and amplifier data along with mounting details for all speakers; and operational assumptions used.**
  - c. **The detailed calibration procedures, and experiments for the acoustical modeling software.**
  - d. **CCE monitoring data taken to date with appropriate software licenses to review calibration studies.**
  - e. **Any measurements taken inside the amphitheatre to confirm projected sound decay models.**
  - f. **The maximum sound levels predicted in the following neighborhoods after the consultant's control measures are implemented: Wexford, Staley Estates, Kings Forest, Woodlands, Eureka Springs, East Lake and Temple Terrace. Please state this in the L10 5 minutes metric if you have it.**
  - g. **Please explain how this consultant's evaluation differs from the noise studies done prior to construction of the amphitheatre. In particular, we are**



**interested in what measures CCE has taken to ensure the reliability of the predicted noise levels now versus the past experience.**

With respect to this Item and its subparts, CCE has submitted the standards contained in its Application and the intended improvements, including the barrier, to its sound consultant for modeling. As Dr. Garrity recognized in his cover letter of September 19, 2005, there may be a possibility that we would not be able to provide a complete response to all questions. In this instance, we cannot since the modeling is not complete.

- 3. Our review of several acoustical reference books indicates that reductions as high as 15 to 24 dB are possible with the use of properly designed barriers. In light of the physical improvements contemplated by CCE, why are you requesting 65/75 sound level limit when it appears you may be able to meet lower limits using a L10 5 minute metric?**

Unfortunately, CCE is at a disadvantage as we have not been provided the reference material to which the question refers. However, the variance that is being sought, and the levels proposed in CCE's Application, are reflective of two things. First and foremost, we simply want to be treated similar to other outdoor and cultural facilities and activities in Hillsborough County. This will be discussed in more detail below. Second, CCE is confident that the standards requested are not only reasonable in light of other local facilities, but are achievable. In fact, it is predicted that with the barriers planned, we will often be below the standards we are requesting at the dBA levels.

The fact of the matter is that actual barriers rarely achieve attenuation values of 15 to 24 dB, especially at low frequencies. The attenuation of a properly constructed sound wall is based on factors such as its composition, width, height and distance from the sound source. In addition, propagation losses and meteorological phenomena influence sound levels to a greater extent than does the wall.

- 4. In Exhibit A of the Application, you request sound level limits exclusive of crowd noise. Section 1-10.04(B) exempts the unamplified human voice from the requirements of the rule. Please explain how an amphitheater, which includes amplification equipment and loudspeakers, does not amplify the voices of 10,000 to 20,000 patrons (crowd), thereby making it subject to the rule.**

Your question highlights the difference between the music industry and sporting events. Musicians do not want to hear background noise, including crowd noise in their systems. So, they opt for unidirectional microphones and place them on an elevated stage away from the crowd. Sporting events, on the other hand, opt for omnidirectional microphones which are great for picking up crowd noise. For the 1999 Superbowl between Denver and Atlanta, Fox Sports used eight microphones to pick up crowd noise. For the 2005 Superbowl, Fox Sports used field microphones to pick up the crowd noise and halftime entertainment. In the concert business, the cardioid, hypercardioid and shotgun microphones are used because they are directional and offer the highest degree of side noise rejection. For example, Garth Brooks, Britney Spears and Janet Jackson have used

the Crown CM-311A Differoid headworn microphone. According to its specifications, "...its cardioid pickup pattern rejects sounds from the rear, such as floor monitors. Its noise-canceling ability rejects sounds at a distance, such as instruments on stage and crowd noise." Therefore, the existence of "amplification and loudspeakers" in the Amphitheater is not conclusive that patron singing and cheering is "amplified" especially in light of the microphones used to eliminate all crowd noise. Contrast that to a game at Raymond James stadium where microphones are used to pick up crowd noise, or an entertainment function in Ybor City where less sophisticated sound equipment is used.

- 5. In Exhibit A of the Application, you propose a 75 dBA and 85 dB low frequency octave band limit at receiving commercial and industrial property. In Table 4 of the EPA document entitled "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety", March 1974, the EPA identifies a 70 dB 24-hour  $L_{eq}$  as the limit to protect the public from hearing loss in an industrial setting. On page 29 of the EPA document, Item "d", it states that an 8-hour  $L_{eq}$  of 75 dB may be identified in situations so long as the exposure of the remaining 16 hours is low enough to result in a negligible contribution to the 24-hour average (no greater than a 16-hour  $L_{eq}$  of 60 dB). In Figure B-3 and B-4 of the same document, it lists the typical 24-hour  $L_{eq}$  noise exposure for a factory worker and a suburban office worker at 87 and 72 dB, respectively (The World Health Organization document entitled "Guidelines for Community Noise", April 1999, confirms the EPA guidelines described above). Please explain how a 75 dBA and 85 dB low frequency octave band limit at commercial and industrial receptors will be protective of human health and welfare, and not contribute to hearing loss if these workers are routinely exposed to these levels during your concerts.**

Workers at commercial and industrial properties around the Fairgrounds will not be exposed to the levels as set forth in our Application since the concerts are primarily in the evenings. Even if the workers were on the job at night, the sound limit levels inside the buildings and structures for commercial and industrial properties will be far less than the 75 dBA and 85 dB levels proposed. In addition, CCE knows of no data or information for the surrounding commercial or industrial uses that demonstrates that any of the workers in those environments are exposed to anywhere near the thresholds identified in the EPA document, the WHO document, or OSHA regulations. Finally, occupational sound thresholds are normally contemplated for workers who are constantly exposed to high sound levels, such as 5 days per week for 52 weeks per year. No such situation exists close enough to the Fairgrounds where the occasional concert sounds 30 to 40 nights per year would be injurious to workers.

- 6. In order to meet the sound level limits in your application, do you intend to limit the noise level at your mix area and/or the back of the lawn seats as a part of your internal controls, and if so what level is that? Be sure to include the metric.**

Yes. CCE has installed and implemented an acoustical management system that includes microphones in the mixing area and at the far edge of the lawn seating to record sound

levels; visual display of the A-scale and low frequency octave bands listed in the Noise Rules with warning lights when the noise levels become elevated; targeted limits of 102 dBA at the L10 5 minute metric with signage in the mix areas and backstage advising performers of these control measures and cautionary statements in performance contracts. In addition, lowering the berm speakers is presently being studied by CCE's sound consultant.

- 7. Our analysis is indicating that the 31.5 Hz octave band is a significant contributor to potential complaints. What steps have you taken to mitigate or control noise levels in this particular octave band? What worst case levels would you expect following any modifications you make to the amphitheatre, in a L10 5 minute metric for this octave band?**

The Noise Rules for Hillsborough County address only four octave bands – 63, 125, 250 and 500 Hz. Accordingly, we have not analyzed a band that is not in the Noise Rules.

- 8. Is there an upper limit to the number of performances in any given year which this variance is intended to apply too [sic]? For some of your other amphitheatres in semi-tropical climates where you have several years of operating experience, what is the range of number of performances per year?**

No upper limit is proposed in the Application. However, excluding the Fair concerts, our experience from all of CCE's venues clearly indicates that there will be a range of 30-40 shows per year. For residential properties adjacent to venues in warmer or semi-tropical climates, most of these shows occur during the summer or warmer months when people have their windows and doors to their houses closed and the air conditioning on and running.

- 9. What information can you provide to support the fairness issue when comparing exempting once per year events such as Gasparilla, New Year's Eve, Fourth of July and Guavaween, as opposed to the amphitheatre which operates on multiple dates year round?**

Undoubtedly, a distinction can be made between a facility that hosts 10, 20, 30 or even 40 events per year, and an annual event. While our application mentions those four events, the foundation of our argument is that the Noise Rules do not stop there. They make a complete exemption for "officially authorized spectator events" which is defined as activities involving competitive sports events and parades. These events can literally occur every weekend, and on many weekdays. Football games, baseball games, soccer matches, tennis tournaments, etc. are all exempt. In addition, Raymond James stadium boasts of as many as 25 events being held throughout the year such as motor sports activities, concerts, carnivals, car shows, festivals, circuses and fairs. Yet, there is no record of sound being monitored at any one of these events. Ybor City functions year round. Music cascades from its streets every weekend and more. East Bay Raceway is even more intense. According to its website, the regular season begins the last Saturday in February and runs through the end of September. There are 48 events scheduled for

2005, and racing for the weekly shows begins at 6:30 p.m. But, there are also special events such as the Winter Nationals that run for 17 straight days at the end of January and into February.

The “once per year events” may appear rather benign, but when considered with other factors, they are not. First, many of the events takes place in multiple locations throughout the county. The Ford Amphitheater is a single location affecting a limited number of people. Second, the other events, when grouped together, add up to a significant number of days and nights. The exempt events and activities should be viewed as a whole and not as single events because they all enjoy the exemption. Another way of looking at this would be to treat each concert as a single, annual event. Third, the other events have no ending time and are loosely defined. Gasparilla in Tampa seems to be celebrated for a month, although there is one Gasparilla Day. There are a lot of pre-Gasparilla celebrations that take place for weeks before the main day. Fourth, these other events take place in the streets and in the middle of neighborhoods. There is nothing to buffer the sound. The Amphitheater is away from the neighborhoods and has some barriers in place already.

So, whether one looks at the cumulative effects of the “once per year events” or the other activities which take place throughout the year but enjoy an exemption or standards that are far less restrictive than those being applied to the Ford Amphitheater, the bottom line is that CCE is treated differently from all other entertainment and cultural facilities and activities in Hillsborough County.

- 10. Please compare the levels sought by CCE’s variance to the 65 dBA  $L_{max}$  standard at the boundary of the Ybor City Entertainment District. Would you consider the requested variance a higher or lower limit?**

CCE considers its requested variance limit lower than Ybor City when all relevant factors are considered. First, and most importantly, the limit applicable to Ybor City Entertainment District is at its boundary, not the closest residential property. There are many residential units in Ybor City. In fact, several news reports indicate that there is a movement to develop additional residential property in Ybor City. The sound level limits applicable to the Ford Amphitheater will apply to the closest residential property. No residential property will be excluded. Second, the sound level limit for Ybor City is applicable anytime of day or night. The Ford Amphitheater is imposing a curfew and will schedule no concert to perform past 11 pm. For the Ybor City Entertainment District, sound levels from amplified music could equal 80 dBA at a residential property within the District at 3 a.m. in the morning as long as it does not exceed 65 dBA at the District boundary line. CCE’s Application for Variance/Waiver is seeking standards more restrictive than what is currently authorized and allowed in Ybor City.

- 11. Please compare the levels sought by CCE’s variance to the 78 dBA  $L_{max}$  standard for Eastbay Raceway. Would you consider the requested variance a higher or lower limit?**

The levels in the variance requested by CCE is lower than the levels at East Bay Raceway when all relevant factors are considered. The 78 dBA sound level limit applicable to East Bay applies to any day of the week and at any time of the day or night. As shown above, the variance sought by CCE is 13 dB less and ends at 11 p.m. It should also be noted that most concerts occur over a shorter time period in a day than motor sports events.

- 12. Please detail the acoustical management plan CCE proposes to ensure compliance with the proposed variance. This will need to include the use of any slammers inside the amphitheatre, as well as any noise monitoring to be conducted in the adjacent neighborhoods during performances at the amphitheatre.**

In addition to the response set forth in Item 6 above, CCE will continue to maintain its "800" hotline for complaints which number is currently 800-936-5064 and periodically monitor and record sound levels in adjacent neighborhoods.

- 13. Please explain why a pre-and post-10 p.m. standard is not acceptable on school nights.**

The music industry generally plans its production schedule around an 11 pm curfew for outdoor venues. Given the fact that many headliner acts tour with backup acts, starting a concert earlier, such as 5 pm, to accommodate all of the acts creates a burden on the citizens of Hillsborough County by requiring them to leave work early to go home and get ready for the show. Therefore, it is reasonable to start most shows between 7 and 8 pm, with the headline act coming on stage around 9 to 9:30 pm. This is the predominant nationwide industry standard whether the performance is on a school night or a weekend. Second, as noted above, entertainment facilities such as Ybor City and East Bay Raceway have no curfew at all. In fact, the sounds in Ybor City typically go on well past midnight, even on school nights. So, from a fairness standpoint, is it appropriate to require something of Ford Amphitheater that is not required of other entertainment and cultural facilities?

- 14. Please provide a brief analysis comparing the limits in the proposed variance versus the applicable limits controlling CCE's amphitheatres in the following locations: Chicago, IL; New Haven, CT; Baltimore, MD; Raleigh, NC and King County, WA. Do you consider the limits on these facilities more or less stringent?**

If EPC were considering a rule change, an analysis of other jurisdictions is appropriate. However, in the context of CCE's Application for Variance, the EPC Rules limit us to demonstrating a substantial hardship or that a violation of the principles of fairness would occur. We have elected to proceed under the "principles of fairness" criterion which simply means that the literal application of the rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Accordingly, any comparison should be limited to what standards other public entertainment and cultural facilities in Hillsborough County are held.

Notwithstanding the foregoing, a few observations concerning the differences in the five venues referenced in Question 14 and the Ford Amphitheater are warranted. First, the

Chicago and Baltimore venues are boutique amphitheaters that do not have the same acoustical issues as the large sheds. Some are in urban areas with dense clusters of residential communities and noise sensitive facilities such as hospitals. Alltel Pavilion in Raleigh was once an isolated site but development grew up around it. However, the limits applicable to it have been determined by contract. The White River Amphitheater is on Native American Indian property and enjoys sovereign immunity from governmental regulation although there are contractual limitations. Finally, none of the amphitheaters mentioned are on fairgrounds, which for most communities, have become a year-round entertainment hub generating millions of dollars in economic impact.

In addition to considering other jurisdictions, none of which are in Florida and with the exception of one, none are in the Southeast, a look at several Florida noise ordinances is helpful. For example, the Miami-Dade County Ordinance requires a permit for open-air concerts and musical broadcasts but specifically provides that the performance shall not "...continue beyond the hour of 11:00 p.m..." *Section 21-28.1, Miami-Dade County Code*. The Jacksonville noise ordinance provides an exception for "athletic contests, open-air festivals, fairs, outdoor musical entertainment...and speedways..." *Section 368.105, Jacksonville Code*. However, the exemption for outdoor musical entertainment requires that it be allowed and permitted under Chapter 191 dealing with Special Events. Section 191.103 of the Jacksonville Code exempts "...any gathering, athletic, sporting, cultural or entertainment event at the Jacksonville Veterans Arena, Alltel Stadium, The Equestrian Center...the Jacksonville Fairgrounds, the Jacksonville Landing, or the Baseball Grounds of Jacksonville." If the Ford Amphitheater were in Jacksonville on the fairgrounds, it would be exempt.

Martin County's Noise Control Ordinance specifically exempts "...community events such as fairs, sporting events, school activities, community festivals, etc, which do not extend their activities beyond 11 p.m..." *Sec. 67.307, Martin County Code*. Again, we see an exemption for the fairgrounds and the 11 p.m. curfew.

Other Florida ordinances are also instructive in terms of how sound should be measured and applicable time periods. For example, the St. Petersburg Noise Pollution Ordinance limits the amplification of music at a privately owned outdoor facilities from 6:00 p.m. until 11:00 p.m. on Sunday through Thursday to 70 dBA. On Friday and Saturday, the 70 dBA limit extends until midnight. Moreover, the sound is based on L50 with measurement periods of not less than eight minutes. *Sec. 11-65, St. Petersburg Code*. In our Application for Variance/Waiver, CCE is seeking 65 dBA until 11 pm as measured by L10 for 5 minutes.

The Orange County, Florida Noise Ordinance allows 65 dBA and requires the measurement period not be less than 15 minutes. *Sec. 15-183, Orange County Code*. And, Palm Beach County requires the measurement period to be no less than 10 minutes. *Section 3, Article 5, ULDC, Palm Beach County*.

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



Roger P. Stewart Center  
3629 Queen Palm Dr. • Tampa, FL 33619  
Ph: (813) 627-2600  
Fax Numbers (813):  
Admin. 627-2620 Waste 627-2640  
Legal 627-2602 Wetlands 627-2630  
Water 627-2670 ERM 627-2650  
Air 627-2660 Lab 272-5157

Executive Director  
Richard D. Garrity, Ph.D.

October 3, 2005

Mr. G. Wilson Rogers, COO  
Cellar Door South  
359 East Paces Ferry Road NE, 4<sup>th</sup> Floor  
Atlanta, GA 30305

RE: Second and Final Request for Additional Information (RAI)

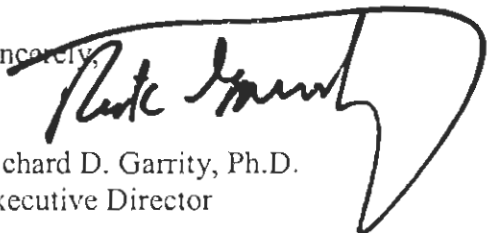
Dear Mr. Rogers:

This is in regard to Clear Channel Entertainment Music – Tampa LLC’s (CCE) Application for a Variance and/or Waiver of Environmental Protection Commission’s (EPC) Rule 1-10.03 (A) and (B) dated August 29, 2005. Pursuant to the Interim Agreement of July 26, 2005, between CCE and EPC, EPC is allowed two RAIs. We wish to acknowledge receipt of CCE’s response dated September 26, 2005 to our first RAI, and advise you that this shall serve as EPC’s second and final RAI. Under the terms of the Interim Agreement, CCE has five business days to respond.

Our final RAI is attached and labeled “EPC’s RAI of October 3, 2005.” You will find that it is much shorter than the initial RAI, and reduced to what we feel are the essential items necessary for the Agency to evaluate CCE’s request. If we do not receive a detailed description of the proposed physical changes to the amphitheatre as described in Item 2 of EPC’s RAI of October 3, 2005, and the accompanying acoustical modeling demonstrating compliance with the requested limitations as described in Item 1 of the RAI, it will not be possible for staff to render any recommendation to our Board other than for denial of the application due to lack of information. Staff must receive this information in a timely manner or we will not have the opportunity to fairly evaluate CCE’s application.

Thank you in advance for your attention to this matter.

Sincerely,

  
Richard D. Garrity, Ph.D.  
Executive Director

**Attachment 4**

### EPC's RAI of October 3, 2005

1. In Item 7 of the Application of August 29, 2005, you state that CCE will specifically consider repositioning the lawn speakers, and the design and installation of barriers based upon your sound consultant's recommendation. In order for us to continue to review your request, please provide the following information:
  - a. Any acoustical report or correspondence from CCE's consultant regarding these proposed changes to the amphitheatre. We are specifically looking for the predicted reductions in the dBA and the octave band dB readings as a result of any sound barriers or enclosures or other improvements offered by the consultant, and how that enables CCE to meet their proposed variance.
  - b. A copy of the acoustical modeling software used, along with the instruction manual and detailed data input for the model, including CAD files of the existing facility as it was constructed, modifications made to date, and proposed physical improvements; loudspeaker, lawn speaker, and amplifier data along with mounting details for all speakers; and operational assumptions used.
  - c. A detailed description of the experiments and procedures used to calibrate the acoustical modeling software.
  - d. CCE monitoring data taken to date with appropriate software licenses to review calibration studies.
  - e. Any measurements taken inside the amphitheatre to confirm projected sound decay models.
  - f. The maximum sound levels predicted in the following neighborhoods after the consultant's control measures are implemented: Wexford, Staley Estates, Kings Forest, Woodlands, Eureka Springs, East Lake and Temple Terrace. Please state this in the  $L_{10}$  5 minutes and the  $L_{max}$  1 second metric if you have it.
2. State the physical and operational changes to the amphitheatre that CCE is committing to in order to meet the sound levels of the proposed variance. This may or may not include all the proposals detailed in above Item 1. from your consultant. If you are committing to all the proposed control measures from your consultant and nothing more, then you just need to state that.
3. Are we to understand from your answer to question 12 in our first RAI that CCE proposed only to periodically monitor and record sound levels in adjacent neighborhoods. Please describe how CCE plans to comply with EPC Rule 1-1.04 which requires among other things for facilities to upon request provide continuous automatic monitoring, test and records of pollutants being emitted or discharged from any facility that may be a source of air, water, or noise pollution.



October 11, 2005

Richard D. Garrity, PhD, Executive Director  
Environmental Protection Commission  
HILLSBOROUGH COUNTY  
3629 Queen Palm Drive  
Tampa, FL 33619

**RE: CCE's Response to EPC's Second Request for Additional Information**

Dear Dr. Garrity:

• Thank you for your letter of October 3, 2005, and EPC's Second Request for Additional Information. Attached please find CCE's Response to EPC's Second Request for Additional Information ("RAI").

Our responses are to the best of our knowledge, information and belief, and, in many instances, without independent inquiry or research. Because of the time constraints (five business days) to respond, some of our responses may be partial and incomplete. Therefore, CCE specifically reserves the right to further supplement, amend and modify its responses to the first and/or second RAI, or to elect not to provide any additional response other than what is stated below. In addition, our responses are being provided pursuant to the Confidential Interim Agreement dated July 29, 2005, and for settlement purposes only. Accordingly, any information, data, assumptions or admissions obtained by EPC through the Variance/Waiver process, including, without limitation, CCE's responses to the RAI's, is for settlement purposes only shall not be admissible in a court of law, quasi-judicial proceeding or administrative proceeding should CCE's Application for Variance/Waiver ("Application") be denied, or granted with conditions unacceptable to CCE.

Thank you for this opportunity to attempt to resolve the outstanding issues. Upon receipt and review, please call with any questions.

Sincerely,

G. Wilson Rogers, COO  
Cellar Door South  
For CC Entertainment Music – Tampa, LLC

cc: Mary Stich, Chief Lit. Counsel, CCC  
Charlie Walker, COO, CCE  
John Fenn Foster, Esq.

**Attachment 5**

## CCE'S RESPONSE TO EPC'S SECOND REQUEST FOR ADDITIONAL INFORMATION

1. In Item 7 of the Application of August 29, 2005, you state that CCE will specifically consider repositioning the lawn speakers, and the design and installation of barriers based upon your sound consultant's recommendation. In order for us to continue to review your request, please provide the following information:

- a. - Any acoustical report or correspondence from CCE's consultant regarding these proposed changes to the amphitheatre. We are specifically looking for the predicted reductions in the dBA and the octave band dB readings as a result of any sound barriers or enclosures or other improvements offered by the consultant, and how that enables CCE to meet their proposed variance.

CCE's sound consultant's report on the modeling of sound impact from the facility, with and without mitigation construction at various sound levels is attached.

- b. A copy of the acoustical modeling software used, along with the instruction manual and detailed data input for the model, including CAD files of the existing facility as it was constructed, modifications made to date, and proposed physical improvements; loudspeaker, lawn speaker, and amplifier data along with mounting details for all speakers; and operational assumptions used.

The sound modeling software is SoundPLAN. CCE is not able to provide a copy due to copyright restrictions and the substantive cost of obtaining an additional license. EPC will need to purchase a copy for their use or its sound consultant should have a copy. CCE can provide EPC with the input data. Any design drawings or CAD files, if available, of the proposed modifications that CCE wishes to present can be provided by the project architect through John Ahrens, CCE Design Director. The assumptions for the lawn speakers are that they would be placed on the columns at a lower elevation and electronically limited so that their community noise impact is non-existent, due to the relative power levels between the stage speakers and the lawn speakers. As all can appreciate, the stage (front of house or "FOH") speakers play at higher power levels to project sound over a longer distance and over a greater area than the lawn speakers. This creates the condition, over distance, of the FOH speakers having a greater neighborhood impact than properly adjusted lawn speakers.

- c. The detailed calibration procedures, and experiments for the acoustical modeling software.

The calibration procedures and "experiments" for the modeling software can be obtained from the vendor, SoundPLAN, LLC and Braunstein + Berndt GmbH. How the modeling for the amphitheater was calibrated using measured data is included in the modeling report.

- d. CCE monitoring data taken to date with appropriate software licenses to review calibration studies.

CCE's sound consultant has performed no on-site measurements. Historical measurements have been made on CCE's behalf by Veneklasen (as part of its initial sound study), Signalysis and David Fagen. As stated above in response to question 1b, input data is available.

- c. **Any measurements taken inside the amphitheatre to confirm projected sound decay models.**

See response to Item d above. This would presumably be the SLAM data.

- f. **The maximum sound levels predicted in the following neighborhoods after the consultant's control measures are implemented: Wexford, Staley Estates, Kings Forest, Woodlands, Eureka Springs, East Lake and Temple Terrace. Please state this in the L10 5 minutes metric if you have it.**

This information is included in CCE's existing modeling report attached. To our knowledge, all of the neighborhoods listed currently experience and are expected to be subject to amphitheatre sound levels below any proposed sound level limits currently under consideration as part of the Application for Variance and/or Waiver, due to their distance from the facility. Lmax 1 second data is not provided, as it was not requested to be part of the analytical model and because it is a poor predictor of community response.

2. **State the physical and operational changes to the amphitheater that CCE is committing to in order to meet the sound levels of the proposed variance. This may or may not include all the proposals detailed above in Item 1 from your consultant. If you are committing to all the proposed control measures from your consultant and nothing more, then you just need to state that.**

The physical changes are the construction of a wall and repositioning of the lawn speakers as set forth above. The operational changes are as detailed in Items 6 and 12 of CCE's Response to EPC's First Request for Additional Information, and as suggested in the Application for Variance and/or Waiver.

3. **Are we to understand from your answer to question 12 in our first RAI that CCE proposed only to periodically monitor and record sound levels in adjacent neighborhoods? Please describe how CCE plans to comply with EPC Rule 1-1.04 which requires, among other things, for facilities to upon request provide continuous automatic monitoring, test and records of pollutants being emitted or discharged from any facility that may be a source of air, water or noise pollution.**

Automated, continuous noise monitoring of sound being emitted or discharged from the Ford Amphitheater will occur by virtue of the SLAM sound recording system. Neighborhood monitoring will occur initially after installation/construction of the contemplated physical improvements; and, periodically thereafter at CCE's reasonable discretion.

THE INFORMATION, DATA, ASSUMPTIONS AND ADMISSIONS SUBMITTED IN CCE'S RESPONSE TO EPC'S FIRST AND SECOND REQUEST FOR ADDITIONAL INFORMATION, AND TO BE LATER SUBMITTED IN FURTHERANCE OF CCE'S APPLICATION FOR VARIANCE AND/OR WAIVER, IS FOR SETTLEMENT PURPOSES ONLY PURSUANT TO THE CONFIDENTIAL INTERIM AGREEMENT DATED JULY 29, 2005, AND JUDGE HONEYWELL'S EXPLICIT DIRECTION THAT THE PARTIES NEGOTIATE IN GOOD FAITH TO TRY AND ACHIEVE A SETTLEMENT OF THE PENDING LAWSUITS AND ADMINISTRATIVE ACTIONS, AND SHALL NOT BE OFFERED AS PROOF OF ANY FACT, OR AS EVIDENCE IN ANY LEGAL, QUASI-JUDICIAL OR ADMINISTRATIVE PROCEEDING, NOTWITHSTANDING THAT SUCH INFORMATION MAY BE IN THE PUBLIC DOMAIN.

# Ford Amphitheater Computer Noise Modeling Methodology and Results

Prepared by:



Wrightson, Johnson, Haddon & Williams, Inc.  
4801 Spring Valley Road  
Suite 113  
Dallas TX 75244  
972.934.3700 voice  
972.934.3720 fax

11 October 2005

Modeling Methodology .....	3
Geographical Database .....	3
Sources .....	3
Calibration of Model .....	4
MITIGATION CONSTRUCTION OPTIONS .....	4
Noise Barrier .....	4
Roof .....	4
COMMUNITY NOISE LEVEL PREDICTION .....	5
Metric .....	5
Results .....	5

## Modeling Methodology

Numerous elements comprise a noise modeling project of this scope. WJHW used SoundPlan Version 6.2 for the sound contour predictions. SoundPlan is a software package for community noise simulations, mapping and assessment. SoundPlan is an industry standard program that fulfills most of the major international standards for community noise prediction. Additional information on SoundPlan can be found at [www.soundplan.com](http://www.soundplan.com).

### *Geographical Database*

The first step in creating the model is to establish the topography of both the site and the surrounding environment. For the area surrounding the amphitheater, this is done by importing a Digital Elevation Model (DEM). DEMs are digital files produced by the United States Geological Survey consisting of points of elevations, sampled systematically at equally spaced intervals and referenced to Latitude/Longitude data. For the amphitheater itself, the contours lines provided in the grading plan included in the amphitheater construction set are imported and then traced and identified as elevation lines in SoundPlan. Once these items are imported a digital ground model is calculated which provides a very accurate representation of the topography for the entire area modeled.

The last step in creating the geographical database is to import the amphitheater structure, noise barriers and surrounding buildings. This is done with an AutoCAD file. In this case, the electronic file is based on the architectural drawing of the facility and the architect's electronic drawings of the proposed improvements. Outside of the amphitheater grounds, shielding from other buildings or barriers were not modeled, other than the topography. Over the distances involved, it can be expected that these effects will average out.

### *Sources*

Two typical, full range touring line arrays of speakers (12 cabinets high) were positioned in the model at 30 feet on center above stage left and stage right (60 ft. apart). These arrays were created in EASE, a speaker/room acoustics modeling program, and the directionality data was then imported into SoundPlan to ensure that the radiation patterns of the speakers are as close to a "real life" condition as possible. The modeling of this source is very important, and is one of the reasons many contours of predicted amphitheatre noise underestimate the community noise impact, due to inappropriate assumptions about the nature, size and location of the "front of house" stage speakers. The spectrum (frequency response of the source) chosen for the model is based on actual measurement data from multiple hard rock concerts and is in agreement with other spectra we have in our library from similar hard rock acts. The sound power of the line arrays are calibrated based on the measured levels, as requested, at the mix position of 105 dBA and 102 dBA. The associated spectrum can be seen in the attached plots. As you can see the low frequency (bass) energy is very prominent. This is assumed to represent a worst case (highest community noise) scenario. Using field data for this variable is very important in this case due to the low frequency, octave band noise level limits.

It is assumed in this model that the lawn speakers are sufficiently limited electronically in level and frequency as to not influence the community noise predictions. This assumption was field verified by previous measurements. This conclusion is also supported by our measurements from other facilities. Due

to the shorter “throw” distances of the lawn speakers and their decreased size and quantity, their overall power level is substantially less than the stage speakers. The purpose of these speakers is not to increase sound levels for the lawn patrons, but rather to “fill in” high frequency musical information that is lost due to distance or the lawn seats being off axis of the main stage speaker arrays.

Properly limited (these speakers are under the complete control of the facility operator) they do not contribute to overall sound levels at the distances being modeled for compliance. The proposed relocation of the speakers to a lower mounting position on the roof columns will only serve to lower the sound power from the lawn speakers radiating outside the facility. Contours of this modeling, completed in EASE, are included herein.

### *Calibration of Model*

With these elements in place, further calibration of the model is carried out using reliable data reduced from the multiple sources of available field measurements. A summary of the data used is included in the attached spreadsheet. First, the sound power of the sources is adjusted until it meets the level and spectrum that is best agreement with the SLAM (the continuous, in-house sound level monitoring system) Data recorded at the mix position. In the current study, we examined 102 dBA and 105 dBA with the respective spectra shown in the attached charts.

## MITIGATION CONSTRUCTION OPTIONS

### *Noise Barrier*

The following assumptions were made regarding the noise barrier. Several options were studied by the Owner's architectural team. The option shown in the attached figure is the design selected by the Owner for study, known as “Option 2”.

- ◆ Continuous, openings baffled with wing wall or vestibule detail.
- ◆ Height of all panels level to the underside of the delta roof truss or at 98.39 feet above sea level
- ◆ Sound absorbing material on the inside of the barrier with an NRC of 0.75 or greater
- ◆ Basis of design wall material - Durisol or equal

### *Roof*

Two scenarios were modeled for the roof:

- ◆ Existing condition
- ◆ Arched portions turned down to level with delta roof truss
- ◆ 0.5 pound density barrier composite applied to front of roof

## COMMUNITY NOISE LEVEL PREDICTION

As can be seen in the plot text, no unusual meteorological conditions were modeled. No ambient corrections were applied and no other "ambient", community noises (roadway, aircraft, etc.) were input into the model.

Many standards and methods exist for the prediction of environmental noise. The CONCAWE (report No. 4/82) standard used in this study is most suited for propagation over long distances, allows for discrete frequency calculations and had the best agreement with measured values from Ford Amphitheatre.

### *Metric*

As of the creation of this report, the proposed metric for enforcement of amphitheater noise is  $L_{10}$  - 5 minutes, and has been used in all of the computer modeling.

A review of the data collected during concerts indicates that the time exceedance measurement of 10% ( $L_{10}$ ) exhibits much greater variability than do other, more commonly used noise measurement metrics for community noise analysis such as  $L_{eq}$ , which averages sound levels over a given time. For this reason, successive  $L_{10}$  measurements during a concert can vary by several dB, where  $L_{EQ}$  and other metrics provide more consistent values. For this reason, the worst case has been modeled for the  $L_{10}$  metric. A similar model of the  $L_{EQ}$  at the same relative level would show levels of 3-6 decibels less due to the increased repeatability of the  $L_{EQ}$  metric. The bulk of the reliable data from actual concerts is in  $L_{EQ}$  and predicting percentage exceedance levels is difficult due the variability of sound levels as measured by  $L_{10}$  and would likely require more field data to define the time fluctuating energy levels and statistical analysis to arrive at a "typical" level given a set musical source level inside the facility.

Even with extensive field data it is doubtful that  $L_{MAX}$  or a short duration percentile exceedance levels could be reliably predicted with the accuracy and consistency that can be obtained with the  $L_{EQ}$ .  $L_{MAX}$  and similar metrics have large variability from moment to moment during a show. Currently, the data does not exist which indicates if, for example, the recorded  $L_{MAX}$  values at the mix position are due to a brief spike in concert sound, audience response, someone bumping the microphone, etc. The longer term equivalent measurements (even as short as 5 minutes) provide a much more consistent, reliable indication of the actual concert, rather than incidental/transient, sound levels.

For this reason, it is necessary, for purposes of potential enforcement, to assume a higher noise level than what actually occurs, from the perceptual perspective of the community. Were a different metric to be employed, a lower numerical value could be used for the enforcement standard.

### *Results*

As can be seen from a review of the contours, the noise barrier provides significantly reduced community sound levels in comparison with the no wall condition. Communities that fall outside of these maps are well below any of the proposed metrics.

Note that the wall is much more effective for reducing community sound levels for the dBA metric in comparison with the 63 Hz octave band. This is due to the fact that the wall is not as effective in acting as a



barrier to low frequency, long wavelength sounds as it is at the higher frequencies which contribute more to the broadband a-weighted metric.



63 Hz is the only octave band shown as this frequency represents a worst case scenario for the octave band measurements. This is due to the fact that source sound levels are higher at 63 Hz than at 125 Hz, 250 Hz, etc. In addition, the proposed wall is more effective at the shorter wavelengths of the higher octave bands. For this reason, sound levels are lower at frequencies higher than 63 Hz. If the 63 Hz octave band is in compliance, there is every reason to believe that the higher frequency octave bands will also be in compliance.

Extending the trailing edge of the roofline (at the lawn edge) downward and applying a composite noise barrier, provides no measurable improvement in noise reduction over the range of area studied in the computer noise model.



## **Ford Amphitheater Sound Level Data Summary**

The following tables are summaries of concert sound level measurements. Additional raw data is available, but not reproduced here.



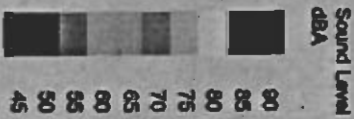
Loc B = Deleuil And Lenox  
 Loc C = Woodlands (Due North of Amp.)

Event	Date	Trig Time	Loc	Metric	Interval	A	L	63 Hz	125 Hz	250 Hz	500 Hz
Linkin Park	8/18/04	18:50	Loc B	LEQ	5 min	58	62	69	62	61	
Linkin Park	8/18/04	19:50	Loc B	Lo1(F)	5 min	69	71	74	71	74	
Linkin Park	8/18/04	19:50	Mix	LEQ	5 min	104	108	122	108	98	
Linkin Park	8/18/04	19:50	Mix	Lo1(F)	5 min	109	112	126	112	104	
Linkin Park	8/18/04	22:00	Loc B	LEQ	6 min	58	63	67	63	55	
Linkin Park	8/18/04	22:00	Loc B	Lo1(F)	5 min	64	68	72	68	60	
Linkin Park	8/18/04	22:00	Mix	LEQ	5 min	105	107	121	107	98	
Linkin Park	8/18/04	22:00	Mix	Lo1(F)	5 min	109	114	124	114	101	
Linkin Park	8/18/04	20:30	Loc C	LEQ	5 min	55	64	67	64	57	
Linkin Park	8/18/04	20:30	Loc C	Lo1(F)	5 min	60	70	69	70	61	
Linkin Park	8/18/04	20:30	Mix	LEQ	5 min	105	110	123	110	101	
Linkin Park	8/18/04	20:30	Mix	Lo1(F)	5 min	109	115	126	115	105	
Linkin Park	8/18/04	22:16	Loc C	LEQ	5 min	59	68	73	68	57	
Linkin Park	8/18/04	22:15	Loc C	Lo1(F)	5 min	63	76	81	76	64	
Linkin Park	8/18/04	22:15	Mix	LEQ	5 min	103	106	120	106	98	
Linkin Park	8/18/04	22:16	Mix	Lo1(F)	5 min	108	111	125	111	102	
Toby Keith	10/2/04	22:03:47	Loc C	LEQ	4.5 min		69.5	64.6	61.1	56.0	52.1
Toby Keith	10/2/04	22:03:47	Loc C	Max (F)	4.5 min		78.5	71.1	69.6	64.0	62.1
Toby Keith	10/2/04	22:03:21	Mix	LEQ	1 min	102.4					
Toby Keith	10/2/04	22:04:21	Mix	LEQ	1 min	103.6					
Toby Keith	10/2/04	22:05:21	Mix	LEQ	1 min	104.4					
Toby Keith	10/2/04	22:06:21	Mix	LEQ	1 min	104.0					
Toby Keith	10/2/04	22:07:21	Mix	LEQ	1 min	103.1					
Toby Keith	10/2/04	22:17:09	Loc B	LEQ	4.5 min		68.3	62.0	51.2	54.7	
Toby Keith	10/2/04	22:17:09	Loc B	Max (F)	4.5 min		77.0	70.8	57.2	65.4	
Toby Keith	10/2/04	22:17:21	Mix	LEQ	1 min	103.3					
Toby Keith	10/2/04	22:18:21	Mix	LEQ	1 min	103.7					
Toby Keith	10/2/04	22:19:21	Mix	LEQ	1 min	101.5					
Toby Keith	10/2/04	22:20:21	Mix	LEQ	1 min	97.1					
Toby Keith	10/2/04	22:21:21	Mix	LEQ	1 min	98.0					

Toby Keith	10/2/04	21:48:46	Loc B	LEQ	4.5 min	70.1	65.6	63.5	53.4	61.8
Toby Keith	10/2/04	21:48:46	Loc B	Max (F)	4.5 min	77.6	71.4	72.5	60.4	72.0
Toby Keith	10/2/04	21:48:21	Mix	LEQ	1 min	102.8				
Toby Keith	10/2/04	21:48:21	Mix	LEQ	1 min	103.9				
Toby Keith	10/2/04	21:50:21	Mix	LEQ	1 min	105.5				
Toby Keith	10/2/04	21:51:21	Mix	LEQ	1 min	103.3				
Toby Keith	10/2/04	21:52:21	Mix	LEQ	1 min	104.8				
Sling	10/22/04	21:28:33	Mix	LEQ	1 min	102.1				
Brooks & Dunn	10/23/04	19:00:29	Mix	LEQ	1 min	104.9				
Alan Jackson	11/6/04	22:29:12	Mix	LEQ	1 min	102.4				
Alan Jackson	11/6/04	23:16:23	Deerwood	LEQ	4.5 min	70.6	62.0	59.0	56.0	53.0
Alan Jackson	11/6/04	23:16:23	Deerwood	Max (F)	4.5 min	85.0	75.0	68.0	66.0	62.0
Alan Jackson	11/6/04	23:08:27	Loc B	LEQ	4.5 min	67.5	58.0	57.0		
Ambient	11/11/04	22:03:19	Downing	LEQ	1 min	51.0				
Ambient	11/11/04	22:03:19	Downing	L01(F)	1 min	63.6				
Ambient	11/11/04	22:03:19	Downing	Max (I)	1 min	65.1				
Norah Jones	11/12/04	22:04:17	Mix	LEQ	1 min	101.2				
Norah Jones	11/12/04									
Norah Jones	11/12/04	22:15:30	Deerwood	LEQ	1 min	49.6				
Norah Jones	11/12/04	22:15:30	Deerwood	Max (I)	1 min	67.1				
Norah Jones	11/12/04	22:15:30	Deerwood	L01(F)	1 min	57.0				
Hank Williams	1/29/05	19:10:51	Mix	LEQ	10 s	105.3				
Ambient	2/5/05	19:10:05	Loc B	LEQ	10 min	46.5	64.3	63.2	51.3	50.0
Ambient	2/5/05	19:10:05	Loc B	L01(F)	10 min	60.7	72.8	75.1	58.5	53.5
Ambient	2/5/05	19:10:05	Loc B	L10(F)	10 min	60.5	63.8	61.6	50.4	44.6
Ambient	2/5/05	19:10:05	Loc B	L90(F)	10 min	48.0	53.7	49.5	42.0	40.4
Ambient	2/5/05	21:56:32	Loc B	LEQ	10 min	46.5	61.8	56.0	46.1	42.4
Ambient	2/5/05	21:56:32	Loc B	L01(F)	10 min	48.5	70.9	63.6	48.2	44.3
Ambient	2/5/05	21:56:32	Loc B	L10(F)	10 min	45.8	60.5	55.0	45.6	41.1

Ambient	2/5/05	20:10:50	Loc C	LEQ	10 min	48.0	58.2	56	45.1	44.6
Ambient	2/5/05	20:10:50	Loc C	L10(F)	10 min	50.0	58.4	57.2	47.5	46.2
Travis Tritt	2/10/05	21:39:45	Mix	LEQ	10 s	101.1				
Neville Bros	2/14/05	19:44:01	Mix	LEQ	10 s	101.1				
Newsboys	2/21/05	18:53:25	Mix	LEQ	10 s	105.1				
Jimmy Buffett	2/26/05	21:05:09	Mix	LEQ	10 s	107.0				
Reba	4/23/05	23:15:00	Mix	LEQ	5 min	103.5	100.9	96.7	100.3	99.5
Reba	4/23/05	23:15:00	Mix	L10(F)	5 min	106.7	103.7	101.5	103.1	102.3
Reba	4/23/05	23:15:00	Mix	L0.5(F)	5 min	108.4	107.7	106.4	108.1	105.7
98 Rock	4/30/05	18:16:14	Loc B	LEQ	4 hr 32 m	62.2	66.4	58.9	50.6	48.4
98 Rock	4/30/05	18:16:14	Loc B	L01(F)	4 hr 32 m	59.5	76.2	66.3	57.6	55.2
98 Rock	4/30/05	18:16:14	Loc B	L10(F)	4 hr 32 m	54.3	67.4	60.4	52.1	50.8
98 Rock	4/30/05	18:16:14	Loc B	Max	4 hr 32 m	74.3	87.3	86.6	77.7	63.3
98 Rock	4/30/05	18:16:14	Loc B	L90(F)	4 hr 32 m	47.4	57.7	53.7	45.6	43.7
98 Rock	4/30/05	21:55:00	Mix	LEQ	5 min	103.8	115.9	106.3	99.1	96.8
98 Rock	4/30/05	21:55:00	Mix	L0.5(F)	5 min	108.9	122.2	133.4	106.2	106.3
98 Rock	4/30/05	21:55:00	Mix	L10(F)	5 min	105.8	118.9	108.8	102.4	99.3
98 Rock	4/30/05	21:55:00	Mix	LEQ	4 hr 32 m	102.3	109.0	102.0		
98 Rock	4/30/05	21:55:00	Loc B	LEQ	5 min	50.2				
98 Rock	4/30/05	21:55:00	Loc B	Max	5 min	50.5				
98 Rock	4/30/05	18:17:30	Loc C	LEQ	4 hr 32 m	52.6	66.9	59.6	54.4	51.0
98 Rock	4/30/05	18:17:30	Loc C	L01(F)	4 hr 32 m	81.8	76.8	68.3	64.4	60.6
Allman Bros	5/21/05	20:30:00	Mix	LEQ	5 min	105.3	101.9	105.2	100.7	100.2
Allman Bros	5/21/05	20:30:00	Mix	L10(F)	5 min	106.8	104.7	108.1	103.3	102.4
Allman Bros	5/21/05	20:30:00	Mix	L0.5(F)	5 min	108.8	107.1	110.9	105.8	105.0
				ATT @C		49.7	42.1	42.4	38.0	38.7
							42.1	40.5		

# FORD AMPHITHEATER Broadband Noise Contours (65 dBA) Noise Barrier Option 2

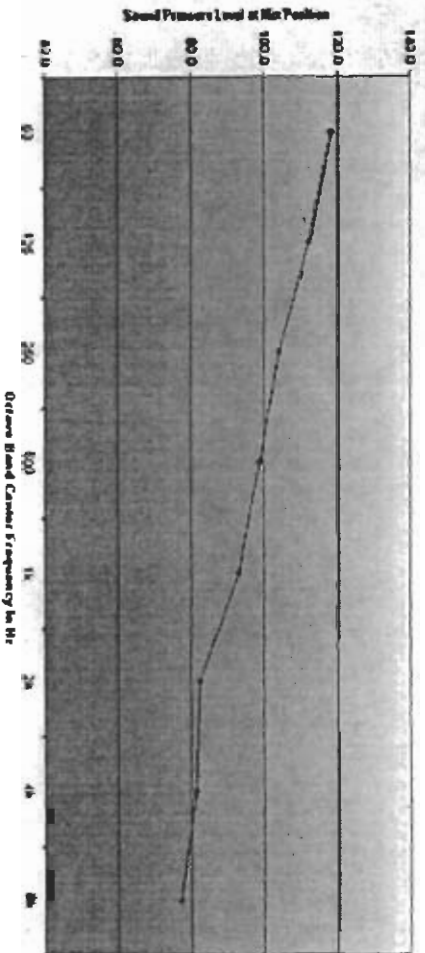


**SOURCE:**  
3 Line Arrays  
suspended @ 30 feet  
above stage  
calibrated to 102 dBA  
at Mitz Position

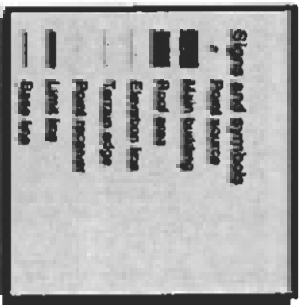
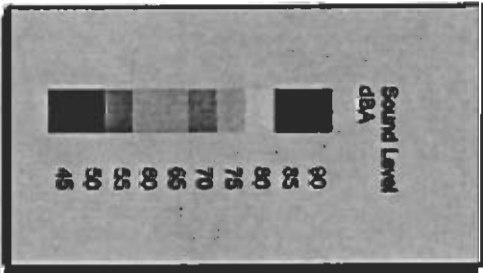
Contours generated in  
SoundPlan Vers 6.2  
Prediction based on the  
CONCAWE method  
with ISO9901 Standard  
for Air Absorption

**Environment:**  
Air Pressure: 1013 mbar  
Rel Humidity: 70%  
Temperature: 10 deg Cel  
Wind Speed: 10 mph

Spectrum Used in Model  
Based on 5 minute Lw  
102 dBA at Mitz Position  
Legend Contour Interval 10m dBA



# FORD AMPHITHEATER Broadband Noise Contours (65 dBA) No Mitigation



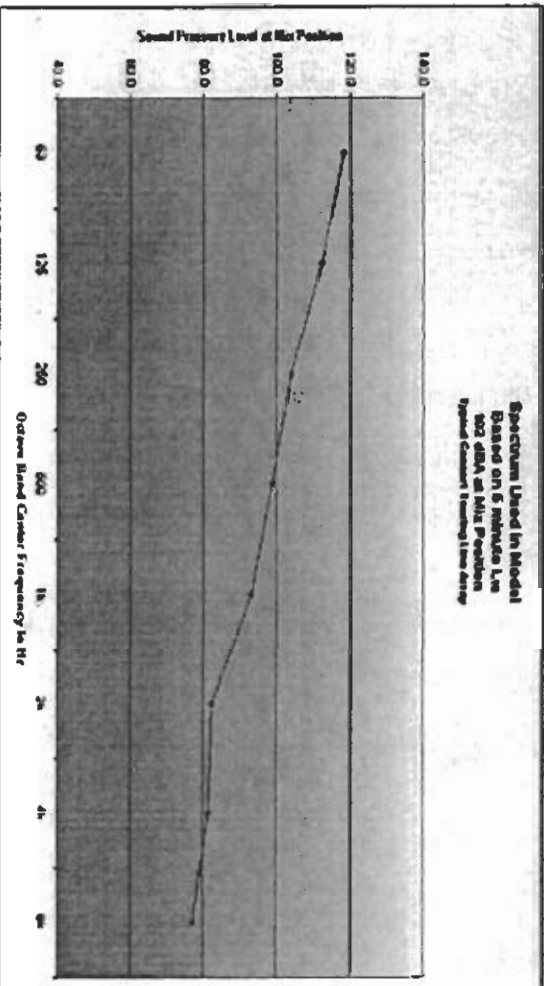
**SOURCE:**  
2 Line Arrays  
suspended @ 30 feet  
above stage  
calibrated to 102 dBA  
at Mix Position

**Contours generated in  
SoundPlan Vers 6.2**

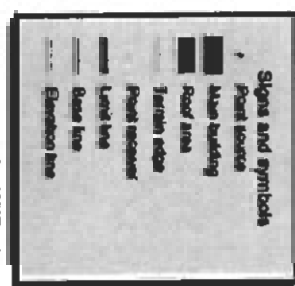
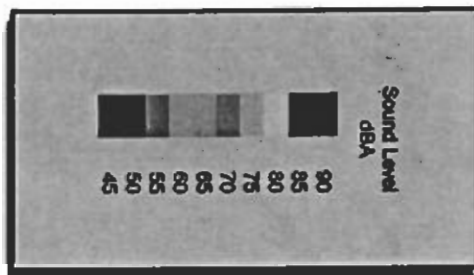
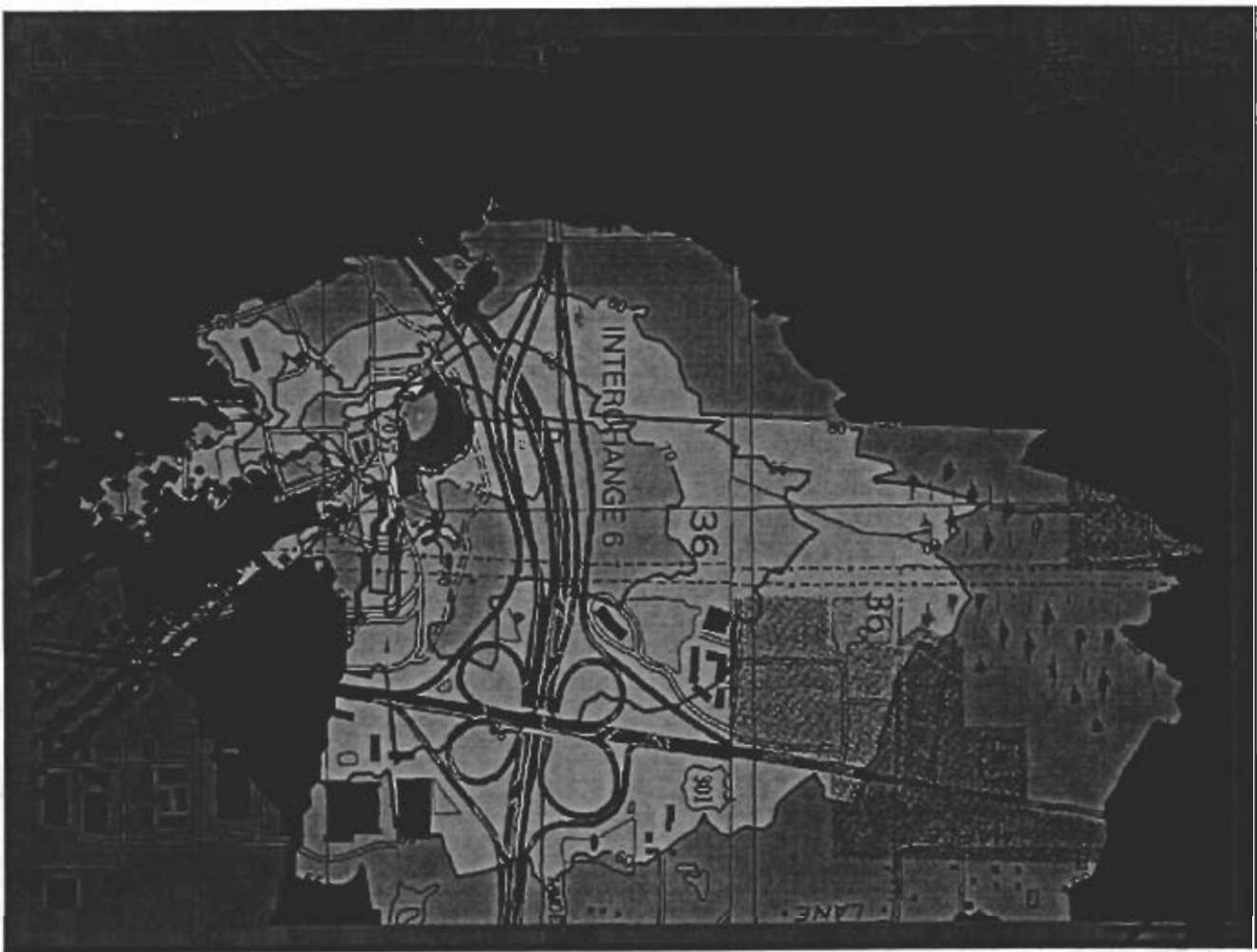
Production based on the  
CONCAWE method  
with ISO3881 Standard  
for Air Absorption

**Environment:**  
Air Pressure: 1013 mbar  
Rel Humidity: 70%  
Temperature: 10 deg C  
Wind Speed: .0 mph

Prepared By:  
WJHV, Inc  
4901 Spring Valley Rd  
Suite 113  
Dallas, TX 75244



# FORD AMPHITHEATER Broadband Noise Contours (65dBA) Noise Barrier - Option 2

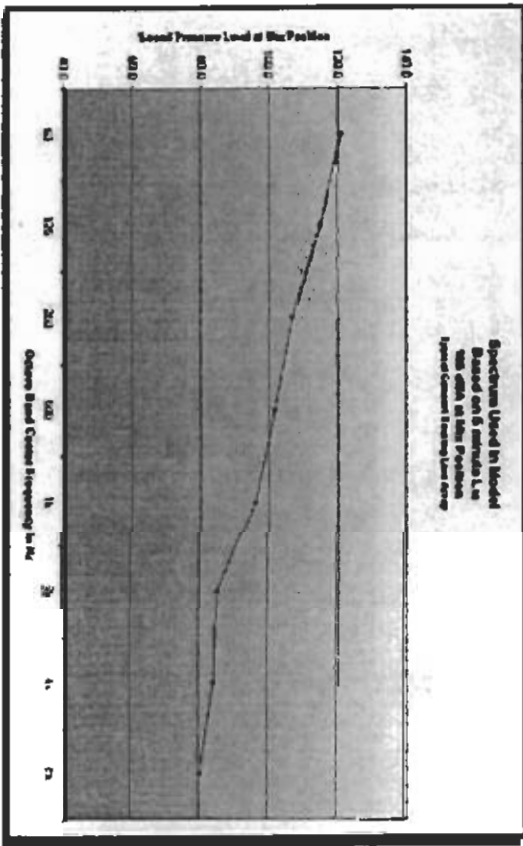


**SOURCE:**  
2 Lane Arroyo  
suspended @ 30 feet  
above stage  
Calibrated to 105 dBA  
at Mils Position

Contours generated in  
SoundPlan Vers 8.2  
Prediction based on the  
CONCAWE method  
with ISO2891 Standard  
for Air Absorption

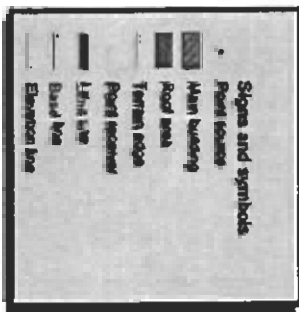
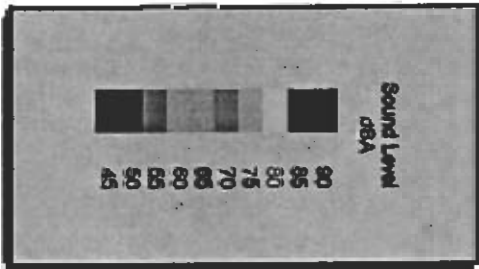
**Environment:**  
Air Pressure: 1013 mbar  
Rel Humidity: 70%  
Temperature: 10 deg Cel  
Wind Speed: 0 mph

**Prepared By:**  
WJHW, Inc  
4901 Spring Valley Rd  
Suite 115  
Dallas, TX 75244





# FORD AMPHITHEATER Broadband Noise Contours (65dBA) Existing - No Mitigation



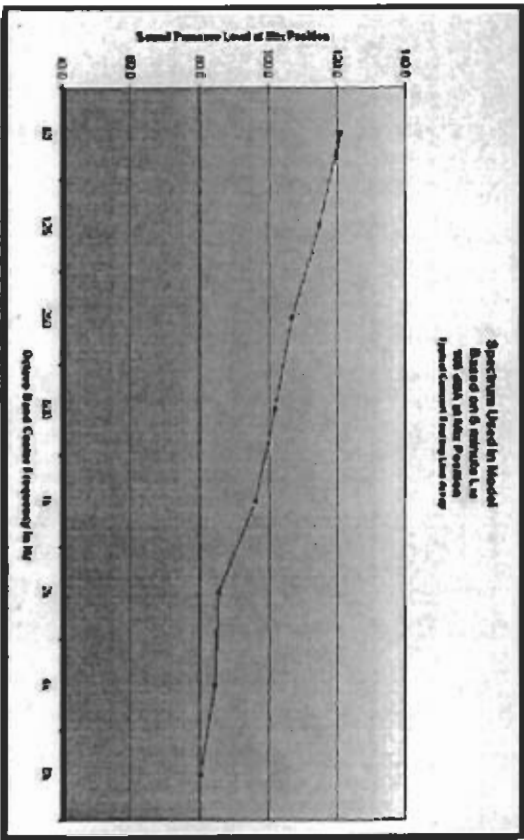
**SOURCE:**  
3 Line Arrays  
suspended @ 30 feet  
above stage  
calibrated to 105 dBA  
at Mix Position

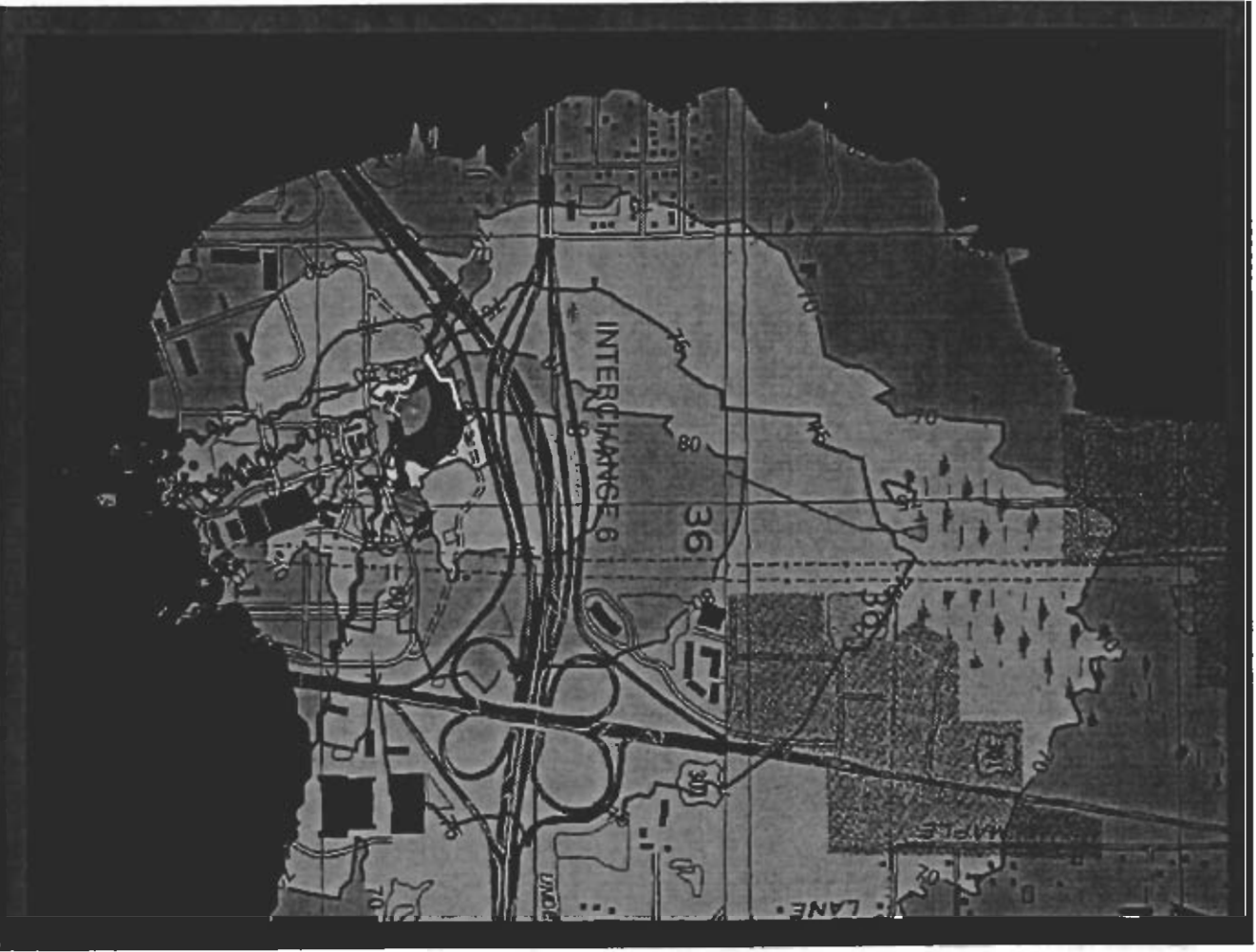
Contours generated in  
SoundPlan Vers 8.2

Prediction based on the  
COMCAME method  
with ISO9001 standard  
for Air Absorption

**Environment:**  
Air Pressure: 1013 mbar  
Rel Humidity: 70%  
Temperature: 10 deg Cel  
Wind Speed: 0 mph

Prepared By:  
WJHW, Inc  
4001 Spring Valley Rd  
Suite 113  
Dallas, TX 75244

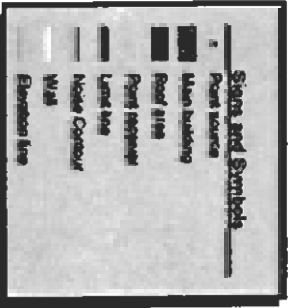
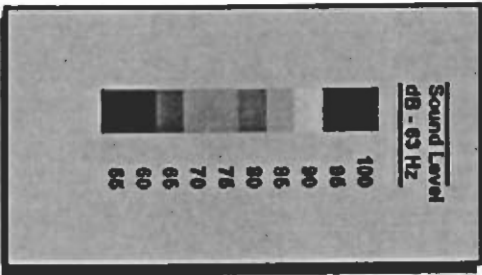




## FORD AMPHITHEATER

### 63 Hz Octave Band Noise Contours (75 dB Limit)

#### Option 2



**SOURCE:**  
2 Lane Arrays  
suspended @ 30 feet  
above stage  
Calibrated to 102 dBA  
at Mix Position

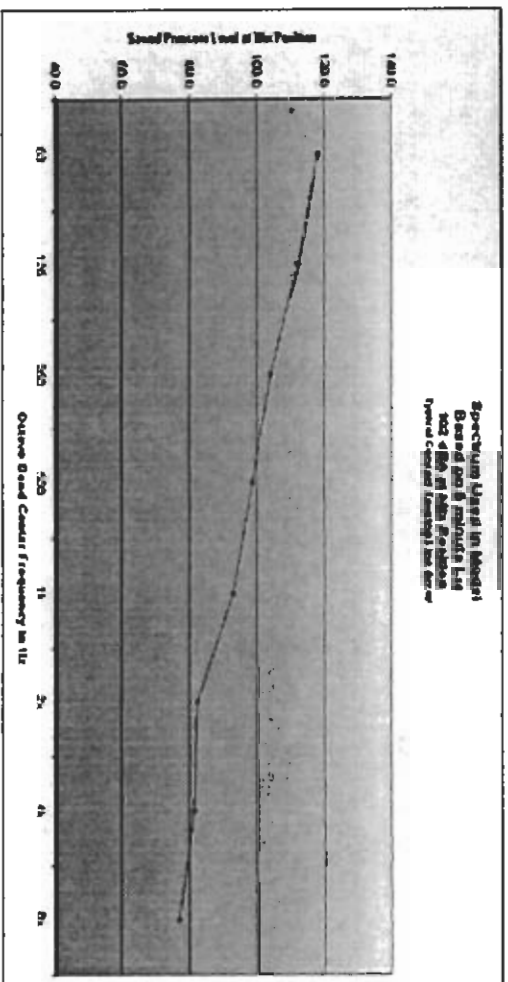
Contours generated in  
SoundPlan Vers 6.2

Prediction based on the  
CONCAWE method  
with ISO9091 Standard  
for Air Absorption

**Environment:**  
Air Pressure: 1013 mbar  
Rel Humidity: 70%  
Temperature: 10 deg Cel  
Wind Speed: 10 mph

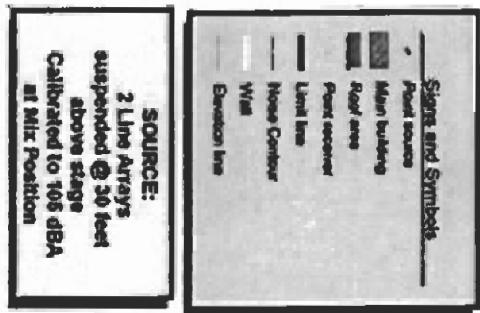
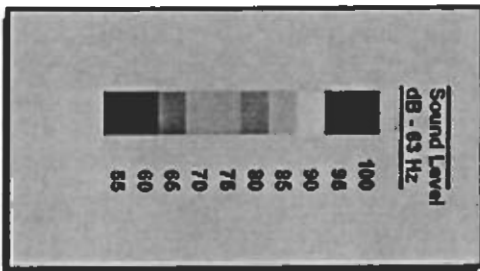
Prepared By:  
WJHW, Inc  
4001 Spring Valley Rd  
Suite 113  
Dallas, TX 75244

-6-





## FORD AMPHITHEATER 63 Hz Octave Band Noise Contours (75 dB Limit) Option 2

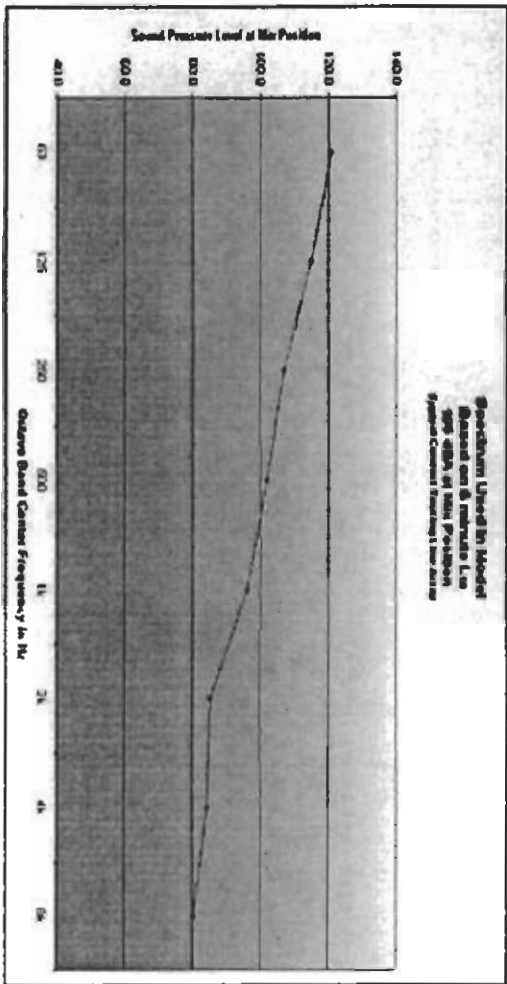


Contours generated in SoundPlan Vers 6.2  
Prediction based on the CONCAWE method with ISO9911 Standard for Air Absorption

**Environment:**  
Air Pressure: 1013 mbar  
Rel Humidity: 70%  
Temperature: 10 deg Cel  
Wind Speed: 0 mph

Prepared By:  
WJHV, Inc  
4601 Spring Valley Rd  
Suite 113  
Dallas, TX 75244

-1-

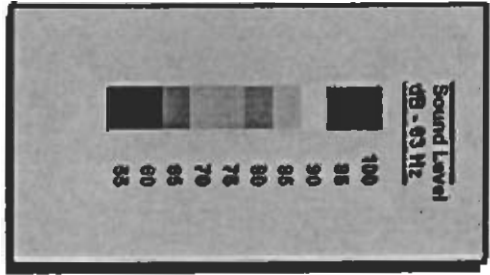




# FORD AMPHITHEATER

## 63 Hz Octave Band Noise Contours (75 dB Limit)

### No Mitigation



**Signs and Symbols**

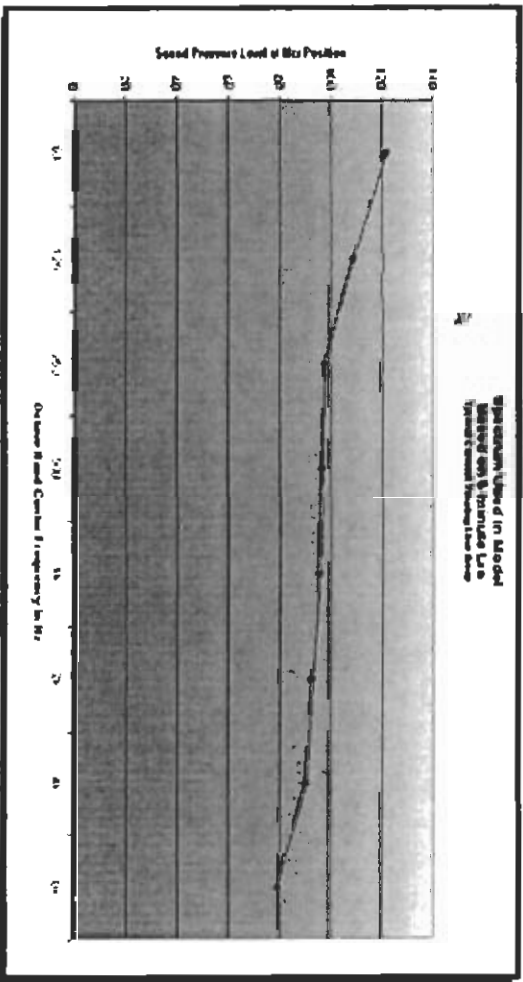
- Point source
- Main building
- Road area
- Point receiver
- Line line
- Noise Contour
- Elevation line
- Terrain edge

**SOURCE:**  
2 Line arrays  
suspended @ 30 feet  
above stage  
Calibrated to 106 dBA  
at Mix Position

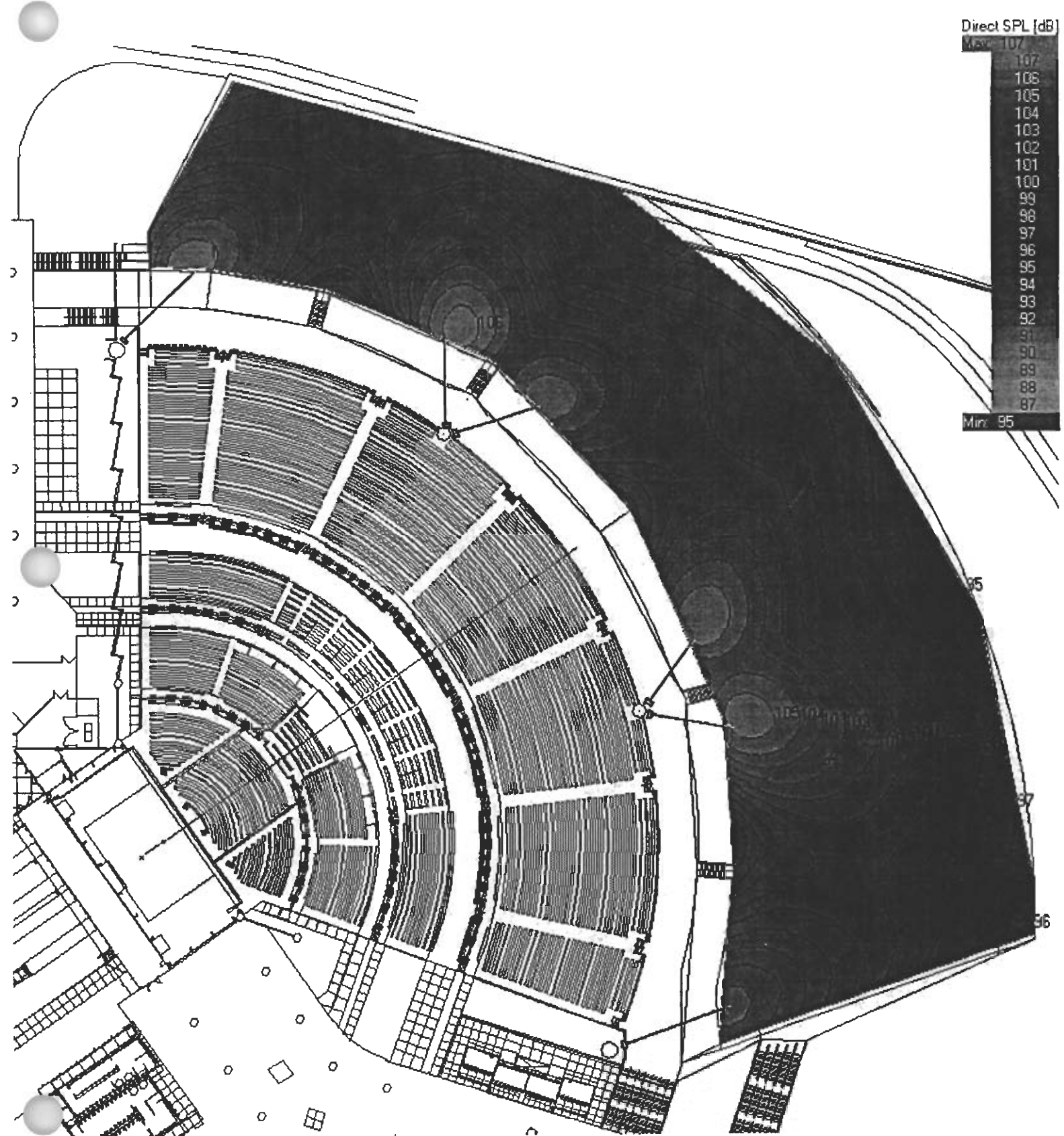
Contours generated in SoundPlan Ver 6.2  
Prediction based on the CONCAWE method with ISO9091 Standard for Air Absorption

**Environment:**  
Air Pressure: 1013 mbar  
Rel Humidity: 70%  
Temperature: 10 deg Cel  
Wind Speed: 0 mph

**Prepared by:**  
WJHV, Inc  
4001 Spring Valley Rd  
Suite 113  
Dallas, TX 75244







Direct SPL [dB]

Max: 107
107
106
105
104
103
102
101
100
99
98
97
96
95
94
93
92
91
90
89
88
87
Min: 95



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** Oct. 20, 2005

**Subject:** Authorization of EPC staff to negotiate an Interlocal Agreement addressing watershed management, the development of Basin Management Action Plans (BMAPs) and implementation of TMDLs

**Consent Agenda** \_\_\_\_\_ **Regular Agenda** X **Public Hearing** \_\_\_\_\_

**Division:** Environmental Resources Management (ERM)

**Recommendation:** Authorize EPC staff to negotiate a multi-party Interlocal Agreement addressing watershed management and the development of Basin Management Action Plans (BMAPs) to implement TMDLs, and bring a finalized Interlocal Agreement back to the Board at a later date for approval and execution.

**Brief Summary:** Staff request Board approval to negotiate an Interlocal Agreement involving EPC, the County, the City of Tampa, the Tampa Bay Estuary Program and the Florida Department of Environmental Protection to implement the county-wide Watershed Management Initiative and develop BMAPs to address TMDLs

**Background:** The Florida Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency (EPA) have determined that a number of County water bodies are not currently meeting state and federal water quality standards, and have designated those waters as "impaired" pursuant to Section 303(d) of the Federal Clean Water Act. The State Legislature, through the Florida Watershed Restoration Act (Section 403.067 Florida Statutes), has identified a process for the development and implementation of Total Maximum Daily Loads (TMDLs) in order to reduce pollutant loading to impaired waters and allow them to meet applicable water quality standards. DEP, through its Impaired Waters Rule (Chapter 62-303 F.A.C.), has identified a process for developing Basin Management Action Plans (BMAPs) in order to achieve TMDLs.

EPC, the County (Public Works, Water, and Planning & Growth Management Departments), the City of Tampa, and the Tampa Bay Estuary Program have begun discussions amongst themselves and with DEP regarding a Hillsborough County Watershed Management Initiative (WMI) which will take a proactive approach to developing BMAPs for impaired waters within Hillsborough County. A draft framework for the development of BMAPs has been prepared as well as a draft Interlocal Agreement outlining the participants' responsibilities (see attachment). The framework envisions a core steering committee – which will include EPC, the County, City of Tampa, Plant City, Temple Terrace, the TBEP and the DEP – working with a broader stakeholder group made up of other agencies and other interested parties. The process will be facilitated by the TBEP and a consultant who will be hired through the TBEP and funded by the DEP to help develop BMAPs for Hillsborough County. Three BMAPs are envisioned to be developed, covering regions corresponding to the Southwest Florida Water Management District Basin Board boundaries within the County.

Once the Interlocal Agreement has been finalized, it will be brought back to the EPC Board and the BOCC for approval and execution. This is anticipated to be completed by February 2006.

**List of Attachments:** Draft interlocal agreement

**INTERLOCAL AGREEMENT**  
by and among  
**HILLSBOROUGH COUNTY,**  
**THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH**  
**COUNTY,**  
**THE CITY OF TAMPA,**  
**THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,**  
and the  
**TAMPA BAY ESTUARY PROGRAM**

**ESTABLISHING A WATERSHED MANAGEMENT INITIATIVE ADDRESSING**  
**WATER QUALITY IMPAIRMENTS AND THE DEVELOPMENT AND**  
**IMPLEMENTATION OF BASIN MANAGEMENT ACTION PLANS FOR**  
**HILLSBOROUGH COUNTY WATERS**

**THIS INTERLOCAL AGREEMENT**, hereinafter referred to as the "Agreement," is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and among **Hillsborough County**, a political subdivision of the State of Florida ("COUNTY"), located at 601 E. Kennedy Blvd., Tampa, Florida 33602, the **Environmental Protection Commission of Hillsborough County**, a political subdivision of the State of Florida created by Special Act ("EPC"), located at 3629 Queen Palm Drive, Tampa, Florida 33619, the **City of Tampa**, a municipal corporation of the State of Florida ("City"), located at 306 East Jackson Street, Tampa, Florida 33602, the **Florida Department of Environmental Protection**, an agency of the State of Florida ("FDEP"), located at 2600 Blair Stone Road, Tallahassee, Florida 32399, and the **Tampa Bay Estuary Program**, an Interlocal Entity, ("TBEP"), located at 100 8<sup>th</sup> Avenue S.E., MS I-1/NEP, St. Petersburg, Florida 33701; hereinafter collectively referred to as "the PARTIES."

**WITNESSETH:**

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

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

**WHEREAS**, the Parties to this Agreement wish to improve and protect the water quality and ecology of Hillsborough County's surface water bodies; and

**WHEREAS**, the Florida Department of Environmental Protection and the U.S. Environmental Protection Agency have determined that a number of County waters are not currently meeting state and federal water quality standards and have designated those waters as "impaired" pursuant to Sect. 303[d] of the Federal Clean Water Act; and

**WHEREAS**, the Florida Legislature, through the Florida Watershed Restoration Act (Sect. 403.067 Florida Statutes), has identified a process for the development of "total maximum daily loads" (TMDLs), implementation of which is intended to allow impaired waters to meet applicable water quality standards; and

**WHEREAS**, the Florida Department of Environmental Protection, through its Impaired Waters Rule (Chap. 62-303, Florida Administrative Code) has identified a process for the development of basin management action plans (BMAPs), through which TMDLs will be implemented; and

**WHEREAS**, the PARTIES to this Agreement recognize that a comprehensive watershed management initiative is needed to develop and implement appropriate BMAPs to address the existing water quality issues; and

**WHEREAS**, a substantial level of local, state, federal and private resources will be committed to this effort, and the watershed management initiative will be required to coordinate these resources to ensure their efficient use; and

**WHEREAS**, a number of regulatory, restoration, research, technical assistance and public outreach programs will also be committed to the effort, and will be used in combination with incentives and other non-regulatory tools to form a comprehensive approach to address water quality impairments within County waters; and

**WHEREAS**, the PARTIES agree that a contractual agreement evidencing their understanding and efforts to their respective contractual obligations or monitoring activities will benefit all PARTIES, as well as facilitate a more efficient allocation of resources to achieve their common goals;

**NOW, THEREFORE**, the PARTIES hereby agree as follows:

**1. PURPOSE:** The PARTIES agree to work cooperatively to assess the causes of water quality impairments within Hillsborough County waters and to develop basin management action plans to address those impairments, following the outline attached as Appendix 1. The action plans will emphasize voluntary, incentive-based programs for improving, restoring and maintaining water quality and protecting public health.



2. **GUIDING PRINCIPLES:** The PARTIES agree to adopt the following guiding principles in achieving the purpose of the Agreement:

- a) Implement water quality measures to the greatest extent practicable throughout Hillsborough County's watersheds to achieve applicable (Class I, II or III) surface water standards.
- b) Minimize duplication of effort and maximize the efficient coordination of agency resources and programs, including consolidation and coordinated funding of projects.
- c) Use a comprehensive watershed management approach to address the achievement of water quality standards.
- d) Seek reasonable, incentive based solutions that can be embraced by leaders and stakeholders at all levels of government and the community.
- e) Focus on management approaches which are technically feasible, economically practicable, and protective of the environment and public health.
- f) Develop consensus measures of success.
- g) Achieve results that satisfy regulatory requirements.
- h) Perform an adequate level of water quality monitoring to assess water quality impairments and measure the effectiveness of water quality improvement measures.
- i) Continue to make good faith efforts in funding incentive-based programs.

3. **ORGANIZATION:** The PARTIES agree to create and participate as a Steering Committee guiding the progress of the Hillsborough County Watershed Management Initiative (WMI), which shall be chaired by the Tampa Bay Estuary Program (TBEP). The WMI Steering Committee shall meet as agreed upon by the members, or at the call of the chair.

4. **EDUCATION AND OUTREACH:** In order for the WMI to accomplish its mission, public outreach and education on the issues and solutions affecting water quality impairments, including effective transfer of knowledge and technology, are essential components of the overall work effort.

5. **STAKEHOLDER INVOLVEMENT:** In order for the WMI to be successful, the involvement of additional stakeholders is critical. A process for stakeholder involvement will be developed and implemented by the PARTIES as outlined in Appendix A.

6. **MEASURES OF SUCCESS:** Impairments of Hillsborough County waters have developed as a result of numerous pollution sources and inputs that have occurred over an extended period of time. Successfully addressing these issues will require sufficient time to implement management changes and evaluate their effects. The PARTIES will make a good

faith effort in developing and implementing the recovery projects referenced in the basin management action plans to restore and maintain water quality conditions to the levels set forth in the Impaired Waters Rule (Chapter 62-303, FAC). As outlined in Appendix A, the PARTIES will also identify the water quality indicators that will be used to assess the success of their management activities, and to support and implement a water quality monitoring program to track the selected indicators.

**7. AGREEMENT DURATION:** The initial term of this agreement shall be for a period of not less than five years from execution of this Agreement and is thereafter automatically renewed each year corresponding to the COUNTY's fiscal year budgeting cycle unless written notice is provided at least 180 days prior to the termination of each renewal period by one or more of the PARTIES hereto. Any PARTY may withdraw from individual participation in this agreement without terminating the entire Agreement with 180-day written notice of intent to terminate to all PARTIES.

**8. MISCELLANEOUS:**

a) Modifications to this Agreement may be presented at any time and if mutually agreed upon, shall be placed in writing and executed by all PARTIES.

b) Key personnel are as follows and any written notices should be provided via U.S. mail or hand deliver to the following:

i. COUNTY: [insert contact info]

ii. EPC: Gerold Morrison, Ph.D., Environmental Resources Management Division, 3629 Queen Palm Drive, Tampa, FL 33619, (813) 627-2600 x1025.

iii. CITY OF TAMPA: [insert contact info]

iv. FDEP: [insert contact info]

v. TBEP: Holly S. Greening, Senior Scientist, Tampa Bay Estuary Program, 100 8<sup>th</sup> Avenue SE, St. Petersburg, FL 33701, (727) 893-2765

c) Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its respective officers, agents, and employees arising from the duties related to this Agreement. Notwithstanding any provision in this Agreement, all issues relating to liability, including but not limited to waivers or assumptions of liability, in this Agreement are subject to, may not be contrary to, and are limited by the sovereign immunity laws, including but not limited to section 768.28, Florida Statutes.

d) If any provision of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this Agreement which shall continue in full force and effect, provided the rights and obligations of the parties contained herein are

not materially prejudiced and that the intentions of the parties can continue to be effected. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

e) The PARTIES agree to comply with the requirements of all applicable state, federal, and local laws, rules, regulations, ordinances and Executive Orders prohibiting and/or relating to discrimination, including but not limited to, Executive Order 11246, as amended and supplemented and 41 CFR § 60-1.4. All such applicable state, federal and local laws, rules, regulations, ordinances and Executive Orders, including but not limited to Executive Order 11246, as amended and supplemented, and 41 CFR § 60-1.4, are incorporated by reference herein.

f) The PARTIES shall allow public access to all documents, papers and letters made or received by the PARTIES in connection with this Agreement that are public records pursuant to Chapter 119, Florida Statutes.

g) The PARTIES will keep adequate records and supporting documentation applicable to this contractual matter. Said records and documentation will be retained by the PARTIES for a minimum of six (6) years from the date of termination of this Agreement.

**9. ADDITIONAL SIGNATORIES.** This Agreement may be joined and signed by additional entities in the future. The key personnel from each of the original PARTIES must agree in writing under their letterhead that the new entity may join the Agreement. If an additional entity chooses to sign this Agreement, without any changes to the Agreement, the entity must only execute a signature page and this Agreement will be automatically amended to add the new entity as a PARTY. The signature page should include the entity's name, organizational status (e.g. - "political subdivision" or "corporation"), address, and point of contact. Upon execution, the Agreement will automatically add the new PARTY without the requirement of each existing party signing an amendment.

The County Clerk of HILLSBOROUGH COUNTY is hereby authorized and directed, after approval of this Agreement by the respective governing bodies of the PARTIES and the execution thereof by the duly qualified and authorized representatives of each, to file this Agreement with the Clerk of the Circuit Court of Hillsborough county, Florida, for recording in the public records of Hillsborough County, Florida.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed as of the date first stated above.

ATTEST:

CITY OF TAMPA

By: \_\_\_\_\_  
WITNESS

By: \_\_\_\_\_

ATTEST:

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH  
COUNTY

By: \_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
EPC Chair

ATTEST:

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:  
PAT FRANK  
CLERK OF CIRCUIT COURT

HILLSBOROUGH COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman Board of County  
Commissioners

ATTEST:

TAMPA BAY ESTUARY PROGRAM

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

## APPENDIX A

### **Proposed Framework for Watershed Management Initiative/BMAP Development, for Hillsborough County Impaired Waters**

**1. Organize committee structure and define strategic approach (by Oct. 20, 2005)**

The BMAP development and implementation team structure is 3-tiered, consisting of a Steering Committee, a somewhat broader Working Group, and a much broader set of Basin Stakeholders Groups (with one BSG for each of the three BMAP areas).

The Steering Committee includes the local government entities that will be most directly involved in BMAP implementation (Hillsborough County, EPCHC, and the City of Tampa), as well as FDEP (the state agency responsible for BMAP development and implementation) and TBEP (acting as a facilitator). The incorporated cities of Temple Terrace and Plant City would be given the option to be either Steering Committee members or Working Group members. All Steering Committee members will be asked to sign the Interlocal Agreement committing to participation throughout the process.

The Working Group consists of the Steering Committee plus other local, regional, state and federal entities that will have some direct involvement in BMAP implementation. This group would include organizations such as the HC Health Department, HC Agricultural Economic Development Council, City-County Planning Commission, SWFWMD, Tampa Bay Water, TBRPC, FDACs, the TBEP Nitrogen Management Consortium, FWRI, Tampa Port Authority, the counties of Polk and Pasco, and USEPA. The incorporated cities of Plant City and Temple Terrace will be given the option to be either Steering Committee or Working Group members. Members of the Working Group would be asked to participate in the development of specific elements (for example, the HC Health Department with human health elements) and would be invited to review all draft products, but may not be involved with every issue throughout the process.

The Basin Stakeholders Groups would be open to all other groups and private citizens with an economic or other interest in BMAP development and implementation within a particular basin.

**2. Identify strategy to address adopted TMDLs and potential impaired waters (by Nov. 5, 2005)**

For the purpose of BMAP development, an "adaptive management and monitoring strategy" is proposed, in which the SC will provisionally accept FDEP and USEPA's existing load reduction estimates and TMDLs (for the WBIDs that all agree are impaired), and begin working to achieve them. This approach avoids the costs that would be incurred if the parties elected to conduct additional water quality modeling and data analysis in order to develop more detailed TMDLs or load reduction allocations that are more detailed than the estimates already developed and currently under development by FDEP and USEPA.

**3. Define geographic areas and strategy for BMAP development (completed)**

BMAPs will be developed for three geographic areas, which are based (as closely as possible) on SWFWMD Basin Board boundaries:

- 1) Northwest Hillsborough County and ungaged areas draining to Old Tampa Bay (corresponding as closely as possible to the SWFWMD Northwest Hillsborough Basin)

- 2) Hillsborough River watershed, including the Tampa Bypass Canal and the Palm River, and portions of City of Tampa and MacDill Peninsula draining to western Hillsborough Bay (corresponding as closely as possible to the SWFWMD Hillsborough River Basin)
- 3) Alafia River and Little Manatee River watersheds (corresponding as closely as possible to the SWFWMD Alafia River Basin)

BMAPS will use a watershed approach to address both adopted TMDLs and proposed impairments identified by FDEP and USEPA in each of the three areas.

**Bacteriological Impairments:** As part of each of the above BMAPs, management efforts to address bacteriological impairments will focus on:

- a) the need for better monitoring indicators to identify true human health risks and water quality impairment;
- b) projects that will be undertaken to identify local "hot spots" where human pathogens are present in surface waters at levels that pose a threat to public health; and
- c) projects that will be undertaken to reduce/eliminate the sources of those pathogens.

**Resource-Based Management:** It is anticipated that, as additional research and monitoring results become available, alternative water quality management targets based on the needs of specific living resources may be developed for Hillsborough County waters (although they will most likely not be available in time to be included in this initial round of BMAPs). A local Tidal Tributaries Initiative, for example, which has recently been undertaken with coordination by the TBEP, will evaluate conditions needed to support fish and benthic productivity in small tidal systems. This initiative may develop recommendations for site-specific alternative chlorophyll *a* targets (SSACs) for Tampa Bay tributaries. As resource-based targets such as these are developed, alternative water quality targets may be proposed and considered, over the next several years, through an adaptive management process similar to the one used to develop chlorophyll *a* targets to support seagrass recovery in the open waters of Tampa Bay.

4. **Identify local issues involving WBID boundaries and existing TMDLs, and develop and implement resolution process with FDEP and EPA**
  - a) Prepare GIS maps of existing WBIDs (by Oct. 1, 2005)
  - b) Prepare tables summarizing existing TMDLs, including existing sources and loads of pollutants of concern (POCs) (by Oct. 1, 2005)
  - c) Prepare GIS maps of WBID changes recommended by local partners (by Oct. 20, 2005)
  - d) Summarize changes to TMDLs suggested by local partners (by Jan. 2006)
  - e) Develop and implement resolution process with FDEP and EPA (by March 2006)
5. **Secure funding sources for facilitation of SC and stakeholder meetings and for BMAP development; select contractor for BMAP development support. (by Nov. 2005)**
  - a) Secure funding support for facilitation of stakeholder meetings, technical analysis and BMAP development
  - b) Through TBEP RFP process, select contractor. (SC members will comprise the contractor selection committee.)
6. **Develop and adopt interlocal agreement (ILA) summarizing responsibilities of Steering Committee members. (document drafted by Oct. 15, 2005; adopted by Feb. 1, 2006)**
7. **Characterize existing BMAP areas, for both the SC and stakeholder groups. (by Feb. 1, 2006)**

Summarize physical characteristics of the three BMAP areas (climate, land use, soils, rainfall, hydrology, natural systems, habitats etc.) using information available from FDEP Basin Characterization reports, SWFWMD CWM reports, Hillsborough County stormwater management plans, and other readily available references.

**8. Identify and prioritize water quality and natural systems problem areas.**

- a) Summarize known problem areas, using available information (e.g., sources identified in item 6). **(by Feb. 1, 2006)**
- b) Obtain SC input on problem area identification and prioritization. **(by Mar. 1, 2006)**

**9. Organize and convene stakeholder groups (by Feb. 1, 2006)**

- a) Identify stakeholder groups and representatives

Potential stakeholder groups include, but are not limited to:

- City of Plant City
- City of Temple Terrace
- Florida Department of Agriculture and Consumer Services (FDACS)
- Hillsborough County Agriculture Industry Development Program
- Hillsborough County City/County Planning Commission
- Pasco County
- Polk County
- TBEP Nitrogen Management Consortium members
- Tampa Bay Regional Planning Council
- Tampa Bay Water
- U.S. Environmental Protection Agency

- b) Convene Stakeholder Committee for review and recommendations regarding steps 7 and 8.

**10. Identify appropriate level of TMDL allocation**

- a) determine if the existing level of allocation (through existing TMDLs) is appropriate for the development and implementation of the initial round of BMAPs. **(by Feb. 1, 2006)**
- b) if needed, develop alternative or more detailed allocations for POCs. [Note: if undertaken, this step will be funded by individual SC or stakeholder committee members, rather than by the TBEP contractor.] **(by June 1, 2006)**

**11. Identify and prioritize load reductions actions and projects, and responsibilities of the participants for project implementation**

- a) Evaluate potential load reduction projects and activities, and prepare a ranked priority list based on projected load reductions, cost-effectiveness, permitting requirements, etc. **(by June 1, 2006)**
- b) Convene stakeholder committee for review and recommendations **(by July 1, 2006)**

**12. Estimate future pollutant loads, given the projected effects of proposed load reduction projects and activities, and the effects of anticipated population growth (by Dec. 1, 2006)**

Using the results of the previous step, along with population-based estimates of future loads of TN, TP and TSS (provided by existing TBEP empirical model and technical reports), estimate the net load reductions that would occur as a result of the proposed projects and activities given anticipated rates of population growth.

**13. Identify responsible parties, timetables and funding needs for implementation of load reduction projects and activities**

- a) Identify responsible parties and timetables **(by Jul. 1, 2006)**
  - b) Identify funding needs (with stakeholder as well as SC input) **(by Dec. 1, 2006)**
- 14. Establish monitoring, evaluation and reporting strategy (by Mar. 1, 2007)**
- a) Identify indicators, methods and parties responsible for tracking water quality status and trends
  - b) Identify targets (interim and final) for evaluating water quality improvements
  - c) Provide description of and schedule for implementation of agricultural BMPs
  - d) Identify indicators, methods and responsible parties for tracking cost-effectiveness of management actions
  - e) Identify frequency and formats of progress reports, for technical (agency) audiences and the public
  - f) Convene stakeholders for review and recommendations
- 15. Identify adaptive management measures (by June 1, 2007)**
- a) Provide schedule for reviewing monitoring results and evaluating success of management effort
  - b) Set criteria for determining need to revise plan components based on effectiveness, cost, social or environmental impacts, local watershed conditions, or other factors
  - c) Describe procedures that will be followed if plan implementation schedules are not met
  - d) Describe procedures that will be followed if anticipated water quality improvements do not occur
  - e) Convene Stakeholders (coincides with stakeholders meeting in previous step).
- 16. Prepare, obtain local reviews and approvals, and submit BMAP documents to DEP (by July 1, 2007)**
- 17. DEP review and approval of BMAP documents**





## EPC Agenda Item Cover Sheet

Date of EPC Meeting: October 13, 2005

Subject: Proposed Connection of ten homes to the Public Water System, Buster Bean Road

Consent Agenda  Regular Agenda  Public Hearing

Division: Waste Management

Recommendation: Recommend the EPC endorse the "Proposed Plan of Action" and forward to County Administrator for review and implementation.

**Brief Summary:** The County conducts monthly sampling and analysis of the groundwater along Buster Bean Road. Ms. Cam Oberting on behalf of the residents of the area approached the County and EPC to express interest in having the homes along Buster Bean Road connected to the public water supply. Currently, the County Solid Waste Management Department spends approximately \$20,000 per year on the private well sampling program. If the two supply wells that are currently sampled on Buster Bean Road and two other wells that are no longer used for potable supply are eliminated from the program and if the remaining six wells are sampled on a reduced semi-annual schedule, the annual cost for the program would be substantially decreased to approximately \$2,000. The County would see the project "break even" with the estimated expenses within two years. Thereafter the County Solid Waste Management Department would save approximately \$18,000 per year. The residents of Buster Bean Road would pay their monthly water bills.

**Background:** In an effort to ensure protection of the public health and safety, the Hillsborough County Solid Waste Management Department (the County) has been conducting monthly sampling and laboratory analysis of the groundwater from up to ten private supply wells for over twenty years in the area west of the Taylor Road Landfill. This private well sampling program was negotiated and agreed to between the County and the Florida Department of Environmental Protection (FDEP) to address the potential impacts from the Taylor Road Landfill, a closed County facility.

Ms. Cam Oberting, on behalf of the residents of the area, approached the County and EPC to express interest in having the homes along Buster Bean Road connected to the public water supply. The County and EPC subsequently spoke with both the USEPA and the FDEP to determine whether the private well sampling program could be completely eliminated or significantly reduced if the wells on Buster Bean Road were no longer used as potable water sources. Both the USEPA and the FDEP have indicated that they would support eliminating or reducing the potable well sampling along Buster Bean Road if the homes were connected to the public water supply. Additionally, the

connections would warrant a reduction in the frequency of sampling the remaining wells in the program that continue to be utilized for potable supply.

This option has been investigated and discussed with the Hillsborough County Water Department. Buster Bean is a private road and therefore has no right of way for placement of water meters. As part of the implementation of the USEPA's Selected Remedy prescribed within the Record of Decision for the Taylor Road Landfill Superfund Site in 1998, four residents in the area of Buster Bean Road and CR 579 were connected to the public water supply and the meters were placed in the right of way of County Road 579. This same approach could be applied for the remaining homes along Buster Bean.

#### Proposed Plan of Action

The placement of each meter would require a Capacity Fee of \$1,750 and the meter set charge is \$200. So covering the fee and setting the meters would cost approximately \$20,000. Then, based on previous costs for a plumbing contractor to complete the connections, an estimate of \$1000 per house would extend the lines from the meters to the homes. Therefore, the proposed project could be accomplished for approximately \$30,000.

Currently, the County Solid Waste Management Department spends approximately \$20,000 per year on the private well sampling program. If the two supply wells that are currently sampled on Buster Bean Road and two other wells that are no longer used for potable supply are eliminated from the program and if the remaining six wells are sampled on a reduced semi-annual schedule, the annual cost for the program would be substantially decreased to approximately \$2,000. The County would see the project "break even" with the estimated expenses within two years. Thereafter the County Solid Waste Management Department would save approximately \$18,000 per year. The residents of Buster Bean Road would pay their monthly water bills.

Ms. Oberling and the residents of Buster Bean Road have indicated to the EPC and the County that they would support this approach and they have concluded that petitioning the BOCC to direct staff to accomplish this cost saving measure is mutually beneficial to the residents of Buster Bean Road and the interests of Hillsborough County.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** October 20, 2005

**Subject:** Fish Advisory Update

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

**Division:** Air Management

**Recommendation:**

Receive briefing.

**Brief Summary:**

At the August 18, 2005, EPC Board meeting, Dr. Garrity introduced the EPC's "2004 State of the Environment." Incorporated into the tri-fold brochure was an article on mercury toxicity and Florida fish advisories. The Commissioners recommended that staff expand the fish advisory to include fresh water fish and assist the Department of Health with an outreach plan. In particular, we were to look at getting the word out to those who are most sensitive to mercury poisoning – children and women of child bearing age. The outreach plan will be discussed.

**Background:**

Mercury is a toxic metal that persists in the body and may cause unhealthy effects on the growing brains of fetuses and children. As recently as October 11, 2005, a local newspaper (St. Petersburg Times) had an article about eating fish to stay healthy and slow the progression of age-related mental decline. However, as the article explains, while it is healthy to eat fish, there is a caveat included in that health statement. If you are a pregnant woman or child, you need to limit the intake of certain large fish.

Since the August EPC Board Meeting, where the "2004 State of the Environment" was released to the Commissioners, staff has undertaken an outreach program that includes forming a multi-agency workgroup and producing a Public Service Announcement in conjunction with HTV. Members of the workgroup include the Hillsborough County Health Department, the Florida Department of Health, the Tampa Bay Estuary Program, the City of Tampa Fire Department and the Fish & Wildlife Research Institute.

**List of Attachments:** Related St. Petersburg Times Article dated October 11, 2005.

# Study: Eating fish keeps brain sharp

Compiled from Times wires

CHICAGO — Eating fish at least once a week is good for the brain, slowing age-related mental decline by the equivalent of three to four years, a study suggests.

## HEALTH NOTEBOOK

The research adds to the growing evidence that a fish-rich diet helps keep the mind sharp. Previous studies found that people who ate fish lowered their risk of Alzheimer's disease and stroke. Fish such as salmon and tuna that are rich in omega-3 fatty acids also have been shown to prevent heart disease.

For the new study, researchers measured how well 3,718 people did on simple tests, such as recalling details of a story. The participants, all Chicago residents 65 and older, took the tests three times over six years. They also filled out a questionnaire about what they ate that included 139 foods.

"We found that people who ate one fish meal a week had a 10 percent slower annual decline in thinking," said co-author Martha Clare Morris, an epidemiologist at Rush University Medical Center. "Those who ate two fish meals a week showed a 13 percent slower annual decline."

At the same time, the Food and Drug Administration warns pregnant women, nursing mothers and children to avoid certain types of fish with high levels of mercury — shark, swordfish, king mackerel or tilefish. Mercury can damage the growing brains of fetuses and children.

The study of fish and mental sharpness was posted Monday on the Web site of the *Archives of Neurology* and will appear in the journal's December issue. It was published early online because of its general interest.

## Study: Exercise may keep senility at bay

People who exercise in middle age are far less likely to develop Alzheimer's disease and other types of dementia when they are older, a new study has found.

Doctors have long realized that regular exercise could prevent and control high blood pressure, diabetes and heart disease. But a few recent studies, including the newest one, have pointed to the more startling finding that exercise can protect against the development of senility, even years later.

In a study published last week online by the journal *Lancet Neurology*, researchers from the Karolinska Institute checked for dementia or Alzheimer's in a group of nearly 1,500 patients 65 and older whose exercise habits have been monitored for nearly 35 years.

To researchers' surprise, they found that people who engaged in leisure-time physical activity at least twice a week as they passed through middle age had a 50 percent lower chance of developing dementia and a 60 percent lower chance of developing Alzheimer's disease, compared with sedentary people.

"If an individual adopts an active lifestyle in youth and at midlife, this may increase their probability of enjoying both physically and cognitively vital years later in life," said Dr. Miia Kivipelto of the Aging Research Center of Karolinska Institute in Stockholm and the main author of the study.

Such retrospective studies do not prove cause and effect, and it is possible that people who are predisposed to Alzheimer's exercised less for some reason connected to the disease. But the finding confirms what has been hinted at by previous studies in animals and humans.