

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
COMMISSIONER'S BOARD ROOM  
NOVEMBER 17, 2005  
9:30 – 11:30 AM**

**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: August 18, 2005 2
  - B. Monthly Activity Reports 8
  - C. Pollution Recovery Trust Fund Report 20
  - D. Gardinier Settlement Trust Fund Report 21
  - E. Legal Case Summary 22
  - F. Approve Amended Inter-local Agreement (City of Tampa) 29
  - G. Authorize Non-Procurement Purchase Order to Reimbursement HC School Board for Diesel Retrofit of 150 School Buses 33
  - H. Request Authority to Conduct Public Hearing on January 12, 2006 to Consider Adoption of Chapter 1-14, Rules of the EPC (Mangrove Trimming and Preservation) 34
- IV. LEGAL DEPARTMENT**
  - A. Consider Clear Channel's Proposed Settlement Offer 45
  - B. Authorize Executive Director to Negotiate and Execute Professional Services Contract For Outside Legal Services (Case No. 04-CA-002576) 55
- V. ENVIRONMENTAL RESOURCES MANAGEMENT DIVISION**
  - A. Update – Red Tide (Dr. Cynthia A. Heil) 56
  - B. Discussion – Proposed "Alternative Dissolved Oxygen Criteria" 57
- VI. AIR MANAGEMENT DIVISION**  
Presentation – Fish Advisory Update 63
- VII. COMMISSIONER'S REQUEST**  
Delegation of State and Federal Wetlands Permitting (Commissioner Storms) 65
- VIII. EXECUTIVE DIRECTOR'S REPORT**
  - A. Health Department MOU 77
  - B. SWFWMD MOU 84

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)*

AUGUST 18, 2005 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, August 18, 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, Ken Hagan, Jim Norman, Mark Sharpe (arrived at 10:08 a.m.), and Ronda Storms (arrived at 10:22 a.m.).

The following member was absent: Commissioner Thomas Scott (schedule conflict).

Chairman Castor called the meeting to order at 10:07 a.m. Commissioner Blair led in the pledge of allegiance to the flag and gave the invocation.

CHANGES TO THE AGENDA

Dr. Richard Garrity, EPC Executive Director, stated an item regarding the Executive Director evaluation process and additional information items were added under Item V, Executive Director's Report. **Commissioner Sharpe moved the changes, seconded by Commissioner Blair, and carried five to zero.** (Commissioner Storms had not arrived; Commissioner Scott was absent.)

SPECIAL RECOGNITION

Presentation of the You've Made a Difference Award to Rich Paul - Commissioner Norman presented the award to Mr. Paul (not present) in recognition of his efforts as manager of Audubon of Florida Coastal Island Sanctuaries, preserving the environment and ensuring the continuation of native bird species, maintaining the Alafia Bank Bird Sanctuary, and providing educational tours. Mr. Scott Emery, friend, and Ms. Laura Paul, daughter, accepted the award on behalf of Mr. Paul.

CITIZENS COMMENTS

Chairman Castor called for public comment. Ms. Dotti Groover-Zegota, director of programs, American Lung Association, stated remaining congestion mitigation and air quality grant funds were utilized for a program to help educate the community on the proper tire inflation rate, which affected gas mileage and emissions, and for air quality index advertisements on HARTline buses; noted the potential to partner with EPC in the smart driver program; and introduced Mr. Walter Niles, grant manager, steps for a healthier Hillsborough grant program, which provided diabetes, obesity, and asthma education to help citizens lead healthier lives.

THURSDAY, AUGUST 18, 2005

Ms. Ruth Fleming, representing Woodland Terrace neighborhood watch, commented on a recent spa manufacturing company permit, voiced concerns with hazardous fumes and air pollution, and requested the EPC hold a town hall meeting and provide documentation showing the air would not be hazardous. In response to Chairman Castor, EPC General Counsel Richard Tschantz explained the permit would have to be appealed to the Second District Court of Appeals by September 6, 2005, and a letter was sent to Ms. Fleming with that information. He reported a meeting had been held with citizens and Tatum Manufacturing Incorporated staff, noted a town hall meeting had been scheduled but was subsequently canceled by residents, and offered to meet with citizens to explain permitting criteria, models, and the appeals process.

Mr. Joe Rowe, president, Lake Egypt Estates Civic Association Incorporated, discussed the former Honeywell facility, environmental issues, vacant property, and impacts to the neighborhood, and requested the issues be brought to closure.

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Report From the Chairman, David Jellerson - Mr. Jellerson reported on the July and August 2005 CEAC meetings, EPC staff updates, pollution recovery fund (PRF) recipient program updates, 2005 PRF applications review, and Tampa Bay Water computer model presentation. He noted CEAC shared Water Resource Team concerns regarding the increased use of groundwater resources and encouraged future support of the Environmental Lands Acquisition and Protection Program (ELAPP), including maintenance of properties under the ELAPP fund.

CONSENT AGENDA

- A. Approval of minutes: March 7, 2005; May 4, 2005; and June 16, 2005.
- B. Monthly activity reports.
- C. PRF.
- D. Gardinier Settlement Trust Fund.
- E. Legal Department monthly reports - July and August 2005.
- F. Request authority to take appropriate legal action against Spencer Farms Incorporated (storage tank) and Haaz Investments Two LLC, also known as Presco Food Store 1, (storage tank).
- G. Authorize the Executive Director to execute a memorandum of understanding with the Southwest Florida Water Management District.

THURSDAY, AUGUST 18, 2005

**Commissioner Blair moved approval, seconded by Commissioner Norman, and carried five to zero.** (Commissioner Sharpe was out of the room; Commissioner Scott was absent.) In response to Commissioner Norman, Attorney Tschantz confirmed parties were noticed regarding legal action.

WASTE MANAGEMENT DIVISION

Present Green Yard Certifications - Mr. Hooshang Boostani, Director, EPC Waste Management Division, offered introductory remarks. Mr. Gerry Javier, EPC staff, utilized an overhead presentation to discuss the Green Yards program and presented certificates and Green Yards flags to Ms. Patty Goncalves, representing All Auto Hustlers Incorporated; Mr. Michael Gagel, representing Gagel's Auto Parts Incorporated; and Mr. Steve Sholeh, representing Japanese and European Used Auto Parts Specialists Incorporated.

Status Report on the Former Honeywell Facility - Ms. Mary Yeargan, EPC staff, noted distributed information and utilized an overhead presentation to give the status report on the contaminated site, highlighting the history of the facility, environmental summary, contaminants of concern, property vacancy, property tax abatement, and cleanup status. She explained Honeywell ceased cleanup activities for economic reasons and had filed a petition to reserve administrative rights; a meeting was planned for September 2005 with all parties to discuss issues. Staff requested the EPC send a letter to the Florida Department of Environmental Protection (FDEP) expressing concerns on the status of the property and requesting notice of the next public meeting for participation.

Dr. Garrity and Ms. Yeargan responded to queries from Commissioner Blair regarding surrounding development and contamination limited to property boundaries. Following comments on whether the site was appropriate for a Brownfields designation, **Commissioner Storms moved to direct staff to begin working with the Hillsborough County Economic Development Department to come up with a white paper on the positive effects of Brownfields development and how that might be accomplished, seconded by Commissioner Sharpe, and carried six to zero.** (Commissioner Scott was absent.)

Chairman Castor voiced concerns with the property tax abatement while resources for code and law enforcement services were used for the property. Ms. Yeargan and Attorney Tschantz responded to queries from Chairman Castor and outlined the proposed letter. **Commissioner Storms moved staff recommendation, seconded by Commissioner Blair.** Chairman Castor requested the motion include a report to the Board of County Commissioners (BOCC) from the Housing and Community Code Enforcement Department and Sheriff's Office about

THURSDAY, AUGUST 18, 2005

the ongoing problems and suggested the Property Appraiser explain how a property could remain vacant and request property tax abatement. Ms. Yeargan planned on reviewing the list of properties that paid no taxes due to environmental contamination with Property Appraiser's Office counsel to see what avenues might be available to the Property Appraiser's Office. Commissioner Storms commented on broad and aggressive environmental cleanup standards under comparative environmental risk assessment and the Comprehensive Environmental Response, Compensation, and Liability Act and requested information on who could seek relief under those statutes. Attorney Tschantz agreed. **Commissioner Storms included that in the motion.** Chairman Castor questioned whether the motion included the Housing and Community Code Enforcement Department and Sheriff's Office reports. **Commissioner Storms agreed. The motion carried six to zero.** (Commissioner Scott was absent.) In response to Chairman Castor, Attorney Tschantz confirmed the next CEAC agenda included a Brownfields discussion.

#### EXECUTIVE DIRECTOR'S REPORT

Presentation of the 2004 Annual State of the Environment Report - Dr. Garrity utilized an overhead presentation to review the report, as provided in background material, and discussed the status of surface waters, state of the air, and events that occurred over the year, including Coronet Industries closing, Green Yards program initiation, Clean Air Month, Ford Amphitheatre opening, Mosaic Phosphates Company spill, Tampa Bay Fisheries and Tampa Wholesale Nursery industrial reclaimed water reuse project, and wetlands protection management.

Commissioner Storms referenced the Florida Fish Consumption Advisories information regarding mercury levels in fish and suggested public outreach to low-income and minority citizens and women in childbearing years. Dr. Garrity agreed. Following comments on the Children's Board mission and targeting zip codes to distribute information, **Commissioner Storms moved to direct staff to get information to the Children's Board and see how they might help in distributing that, seconded by Commissioner Blair, and carried five to zero.** (Commissioner Norman was out of the room; Commissioner Scott was absent.)

Noting information was focused on fish from the bay, Commissioner Blair questioned where he could find information on freshwater fish. Dr. Garrity said freshwater fish advisory information was also available from the Florida Fish and Wildlife Conservation Commission and offered to provide that information on the EPC website. Commissioner Storms requested a public service announcement on Hillsborough Television Channel 22. Dr. Garrity agreed. In response to Chairman Castor, Dr. Garrity discussed distribution of

THURSDAY, AUGUST 18, 2005

the state of the environment report to neighborhood associations and would provide extra copies to BOCC offices.

Discuss Process for Executive Director's Evaluation - Mr. Tom Koulianos, Director, EPC Finance and Administration, stated the forms were the same as those used in the past and requested the forms be completed by September 7, 2005.

Additional Information Items - Dr. Garrity reported Commissioner Storms received a leadership award from Florida Local Environmental Resource Agencies Incorporated; Ms. Linda Herrera, EPC staff, achieved United States citizenship; and Colonel Anthony D'Aquila, EPC staff, was called to active duty. Colonel D'Aquila commented on reservists being called to active duty and voiced appreciation for the stability offered by guaranteed employment. Commissioner Sharpe offered appreciative remarks for sacrifices made by reservists.

Mr. Koulianos stated the evaluation results for the Executive Director would be presented at the September 15, 2005, EPC meeting.

LEGAL DEPARTMENT - 11:15 A.M. TIME CERTAIN

Pursuant to Section 286.011(8), Florida Statutes, Closed Session to Discuss Settlement Negotiations and Litigation Strategies Regarding EPC of Hillsborough County vs. CC Entertainment Music - Tampa LLC (CCE) and Florida State Fair Authority (FSFA), Case 04-11404, and CCE vs. EPC and FSFA, Case 05-1565 - Chairman Castor called a recess at 11:25 a.m. to convene in closed session, listed those attending the closed session, reconvened the meeting at 11:55 a.m., and announced the closed session had ended and no further action was to be taken that day.

THURSDAY, AUGUST 18, 2005

There being no further business, the meeting was adjourned at 11:56 a.m.

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

CHAIRMAN

ATTEST:

PAT FRANK, CLERK

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

Deputy Clerk

lm

MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION  
**October**

A. Public Outreach/Education Assistance:		
1. Phone Calls:		173
2. Literature Distributed:		<u>2</u>
3. Presentations:		<u>1</u>
4. Media Contacts:		<u>2</u>
5. Internet:		<u>73</u>
6. Host/Sponsor Workshops, Meetings, Special Events (Commuter Choice Week, Smart Driver and Community Meeting)		<u>0</u>
B. Industrial Air Pollution Permitting		
1. Permit Applications Received (Counted by Number of Fees Received):		
a. Operating:		<u>1</u>
b. Construction:		<u>7</u>
c. Amendments:		<u>0</u>
d. Transfers/Extensions:		<u>2</u>
e. General:		<u>2</u>
f. Title V:		<u>0</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>3</u>
b. Construction <sup>1</sup> :		<u>8</u>
c. Amendments <sup>1</sup> :		<u>0</u>
d. Transfers/Extensions <sup>1</sup> :		<u>1</u>
e. Title V Operating <sup>2</sup> :		<u>66</u>
f. Permit Determinations:		<u>1</u>
g. General:		<u>0</u>
3. Intent to Deny Permit Issued:		<u>0</u>
C. Administrative Enforcement		
1. New cases received:		<u>3</u>
2. On-going administrative cases:		
a. Pending:		<u>7</u>
b. Active:		<u>14</u>
c. Legal:		<u>5</u>
d. Tracking compliance (Administrative):		<u>26</u>
e. Inactive/Referred cases:		<u>0</u>
	Total	<u>52</u>
3. NOIs issued:		<u>3</u>
4. Citations issued:		<u>0</u>
5. Consent Orders Signed:		<u>3</u>
6. Contributions to the Pollution Recovery Fund:		<u>\$1,406.25</u>
7. Cases Closed:		<u>1</u>



D.	Inspections:	
	1. Industrial Facilities:	<u>12</u>
	2. Air Toxics Facilities:	
	a. Asbestos Emitters	<u>4</u>
	b. Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>0</u>
	c. Major Sources	<u>0</u>
	3. Asbestos Demolition/Renovation Projects:	<u>8</u>
E.	Open Burning Permits Issued:	<u>6</u>
F.	Number of Division of Forestry Permits Monitored:	<u>240</u>
G.	Total Citizen Complaints Received:	<u>54</u>
H.	Total Citizen Complaints Closed:	<u>39</u>
I.	Noise Sources Monitored:	<u>6</u>
J.	Air Program's Input to Development Regional Impacts:	<u>0</u>
K.	Test Reports Reviewed:	<u>31</u>
L.	Compliance:	
	1. Warning Notices Issued:	<u>18</u>
	2. Warning Notices Resolved:	<u>1</u>
	3. Advisory Letters Issued:	<u>6</u>
M.	AOR's Reviewed:	<u>26</u>
N.	Permits Reviewed for NESHAP Applicability:	<u>3</u>

FEES COLLECTED FOR AIR MANAGEMENT DIVISION  
October

	Total Revenue
1. Non-delegated construction permit for an air pollution source	
(a) New Source Review or Prevention of Significant Deterioration sources	\$ <u>0</u>
(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	\$ <u>0</u>
(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)	\$1,040.00
(b) Delegated operation permit for an air pollution source (20% of the amount collected is forwarded to the DEP and not included here)	\$ <u>200.00</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	\$4,000.00
(b) for structure greater than 50,000 sq ft	\$ <u>0</u>
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	\$1,200.00
(b) renovation greater than 1000 linear feet or 1000 sq ft	\$3,000.00
8. Open burning authorization	\$3,000.30
9. Enforcement Costs	\$ <u>820.32</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:** November 4, 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 OCTOBER 2005 AGENDA INFORMATION**

**A. ADMINISTRATIVE ENFORCEMENT**

1. New cases received	0
2. On-going administrative cases	103
a. Pending	2
b. Active	54
c. Legal	5
d. Tracking Compliance (Administrative)	28
e. Inactive/Referred Cases	14
3. NOI's issued	8
4. Citations issued	2
5. Consent Orders and Settlement Letters Signed	3
6. Civil Contributions to the Pollution Recovery Fund	\$7,210
7. Enforcement Costs collected	\$1,328
9. Cases Closed	2

**B. SOLID AND HAZARDOUS WASTE**

1. Permits (received/reviewed)	0
2. EPC Authorization for Facilities NOT requiring DEP permit	1
3. Other Permits and Reports	
a. County Permits	5/5
b. Reports	66/53
4. Inspections (Total)	285
a. Complaints	15
b. Compliance/Reinspections	28
c. Facility Compliance	23
d. Small Quantity Generator	218
e. P2 Audits	1
5. Enforcement	
a. Complaints Received/Closed	19/24
b. Warning Notices Issued/Closed	8/5
c. Compliance letters	59
d. Letters of Agreement	0
e. DEP Referrals	8
6. Pamphlets, Rules and Material Distributed	231

**C. STORAGE TANK COMPLIANCE**

1. Inspections	
a. Compliance	89
b. Installation	27
c. Closure	11
d. Compliance Re-Inspections	15
2. Installation Plans Received/Reviewed	12/15
3. Closure Plans & Reports	
a. Closure Plans Received/ Reviewed	6/6
b. Closure Reports Received/Reviewed	5/4
4. Enforcement	
a. Non-compliance Letters Issued/Closed	51/29
b. Warning Notices Issued/Closed	3/1
c. Cases referred to Enforcement	0
d. Complaints Received/Investigated	3/3
e. Complaints Referred	0
5. Discharge Reporting Forms Received	1
6. Incident Notification Forms Received	8
7. Cleanup Notification Letters Issued	4
8. Public Assistance	200+

**D. STORAGE TANK CLEANUP**

1. Inspections	43
2. Reports Received/Reviewed	140/139
a. Site Assessment	26/27
b. Source Removal	2/6
c. Remedial Action Plans (RAP's)	15/13
d. Site Rehabilitation Completion Order/ No Further Action Order	5/5
e. Others	92/88
3. State Cleanup	
a. Active Sites	NO LONGER ADMINISTERED
b. Funds Dispersed	

**E. RECORD REVIEWS**

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

**A. ENFORCEMENT**

1. New Enforcement Cases Received:	4
2. Enforcement Cases Closed:	2
3. Enforcement Cases Outstanding:	58
4. Enforcement Documents Issued:	4
5. Recovered costs to the General Fund:	\$225.00
6. Contributions to the Pollution Recovery Fund:	\$2,150.00

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. Fishhawk Ranch Comm.	Placement of CS in service without acceptance letter	500
b. Tampa Bay Village	Placement of CS in service without acceptance letter	500
c. Temple Terrace Church of Christ	Placement of CS in service without acceptance letter	150
d. Gandy Sherwood LLC Townhomes	Construction without permit	1000

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

1. Permit Applications Received:	35
a. Facility Permit:	7
(i) Types I and II	0
(ii) Types III	7
b. Collection Systems-General	16
c. Collection Systems-Dry Line/Wet Line:	12
d. Residuals Disposal:	0
2. Permit Applications Approved:	25
a. Facility Permit:	5
b. Collection Systems-General:	9
c. Collection Systems-Dry Line/Wet Line:	11
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:	64
a. Facility Permit:	9
b. Collection Systems-General:	41
c. Collection Systems-Dry Line/Wet Line:	14
d. Residuals Disposal:	0
7. Permit Determination:	6
8. Special Project Reviews:	1
a. Reuse:	0
b. Residuals/AUPs:	0
c. Others:	1
<b>C. INSPECTIONS - DOMESTIC</b>	
1. Compliance Evaluation:	14
a. Inspection (CEI):	1
b. Sampling Inspection (CSI):	12
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	1
2. Reconnaissance:	41
a. Inspection (RI):	10
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	29
d. Enforcement Inspection (ERI):	2
3. Engineering Inspections:	50
a. Reconnaissance Inspection (RI):	6
b. Sample Reconnaissance Inspection (SRI):	0
c. Residual Site Inspection (RSI):	0
d. Preconstruction Inspection (PCI):	18
e. Post Construction Inspection (XCI):	26
f. On-site Engineering Evaluation:	0
g. Enforcement Reconnaissance Inspection (ERI):	0

<b>D. PERMITTING/PROJECT REVIEW - INDUSTRIAL</b>	81
1. Permit Applications Received:	0
a. Facility Permit:	0
(i) Types I and II	0
(ii) Type III with Groundwater Monitoring:	0
(iii) Type III w/o Groundwater Monitoring:	0
b. General Permit:	2
c. Preliminary Design Report:	0
(i) Types I and II	0
(ii) Type III with Groundwater Monitoring:	0
(iii) Type III w/o Groundwater Monitoring:	0
2. Permits Recommended to DEP for Approval:	2
3. Special:	2
a. Facility Permits:	1
b. General Permits:	1
4. Permitting Determination:	0
5. Special Project Reviews:	75
a. Phosphate:	39
b. Industrial Wastewater:	17
c. Others:	19
<b>E. INSPECTIONS - INDUSTRIAL</b>	25
1. Compliance Evaluation:	9
a. Inspection (CEI):	9
b. Sampling Inspection (CSI):	0
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	0
2. Reconnaissance:	11
a. Inspection (RI):	4
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	7
d. Enforcement Reconnaissance Inspections (ERI):	0
3. Engineering Inspections:	5
a. Compliance Evaluation (CEI):	5
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>	221
1. Citizen Complaints:	33
a. Domestic:	23
(i) Received:	11
(ii) Closed:	12
b. Industrial:	10
(i) Received:	6
(ii) Closed:	4
2. Warning Notices:	20
a. Domestic:	12
(i) Received:	7
(ii) Closed:	5
b. Industrial:	8
(i) Received:	0
(ii) Closed:	8
3. Non-Compliance Advisory Letters:	20
4. Environmental Compliance Reviews:	152
a. Industrial:	36
b. Domestic:	116
5. Special Project Reviews:	6
<b>G. RECORD REVIEWS</b>	4
1. Permitting:	4
2. Enforcement:	0
<b>H. ENVIRONMENTAL SAMPLES ANALYZED/REPORTS REVIEWED FOR:</b>	
1. Air Division:	56
2. Waste Division:	0
3. Water Division:	17
4. Wetlands Division:	0
5. ERM Division:	127
6. Biomonitoring Reports:	4
7. Outside Agency:	86
<b>I. SPECIAL PROJECT REVIEWS:</b>	16
1. DRIs:	2
2. ARs:	4
3. Technical Support:	3
4. Other:	7

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

<b>A. General</b>	<b>Totals</b>
1. Telephone Conferences	875
2. Unscheduled Citizen Assistance	98
3. Scheduled Meetings	248
4. Correspondence	66
<b>B. Assessment Reviews</b>	
1. Wetland Delineations	75
2. Surveys	75
3. Miscellaneous Activities in Wetland	45
4. Impact/ Mitigation Proposal	19
5. Tampa Port Authority Permit Applications	41
6. Wastewater Treatment Plants (FDEP)	2
7. DRI Annual Report	6
8. Land Alteration/Landscaping	1
9. Land Excavation	0
10. Phosphate Mining	3
11. Rezoning Reviews	25
12. CPA	0
13. Site Development	51
14. Subdivision	85
15. Wetland Setback Encroachment	10
16. Easement/Access-Vacating	1
17. Pre-Applications	29
18. On-Site Visits	171
<b>C. Investigation and Compliance</b>	
1. Complaints Received	32
2. Complaints Closed	35
3. Warning Notices Issued	10
4. Warning Notices Closed	16
5. Complaint Inspections	43
6. Return Compliance Inspections	40
7. Mitigation Monitoring Reports	46
8. Mitigation Compliance Inspections	33
9. Erosion Control Inspections	55
<b>D. Enforcement</b>	
1. Active Cases	42
2. Legal Cases	3
3. NOI's	8
4. Number of Citations Issued	0
5. Number of Consent Orders Signed	3
6. Administrative - Civil Cases Closed	7
7. Cases Referred to Legal Department	3
8. Contributions to Pollution Recovery	\$500.00
9. Enforcement Costs Collected	\$1,250.00

## EPC WETLANDS MONTHLY WORKSHEET

General	Enforcement	Compliance	Assessment	Engineering	Admin	Totals
Telephone Conferences			353	30	492	875
Unscheduled Citizen Assistance		4	63	4	27	98
Scheduled Meetings			134	49	65	248
Correspondence		28		38		66
<b>Assessment Reviews</b>						
Wetland Delineations			75			75
Surveys			75			75
Miscellaneous Activities in Wetland			45			45
Impact/ Mitigation Proposal			19			19
Tampa Port Authority Permit Applications			41			41
Wastewater Treatment Plants (FDEP)			2			2
DRI Annual Report			6			6
Land Alteration/Landscaping			1			1
Land Excavation						0
Phosphate Mining			3			3
Rezoning Reviews			25			25
CPA						0
Site Development			51			51
Subdivision			85			85
Wetland Setback Encroachment			10			10
Easement/Access-Vacating			1			1
Pre-Applications			29			29
On-Site Visits		8	162	1		171
<b>Investigation and Compliance</b>						
Complaints Received		32				32
Complaints Closed		35				35
Warning Notices Issued		10				10
Warning Notices Closed		16				16
Complaint Inspections		43				43
Return Compliance Inspections		39		1		40
Mitigation Monitoring Reports		40		6		46
Mitigation Compliance Inspections		33				33
Erosion Control Inspections		55				55
<b>Enforcement</b>						
Active Cases	42					42
Legal Cases	3					3
NOI's	8					8
Number of Citations Issued						0
Number of Consent Orders Signed	3					3
Administrative - Civil Cases Closed	7					7
Cases Referred to Legal Department	3					3
Contributions to Pollution Recovery	\$500					\$500.00
Enforcement Costs Collected	\$1,205					\$1,205.00

ENVIRONMENTAL PROTECTION COMMISSION  
 OF HILLSBOROUGH COUNTY  
 POLLUTION RECOVERY TRUST FUND  
 AS OF 10/31/05

Balance as of 10/01/05		\$1,491,768 *
Interest Accrued		-
Deposits	FY06	13,566
Disbursements	FY06	5,151

Pollution Recovery Fund Balance \$1,500,183

Encumbrances:		
Remedial Illegal Dump Asbestos (66)		4,486
USF Seagrass Restoration (99)		4,303
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 Adopa a Shor Vol Restoration		10,416
Water Drop Patch/Girl Scouts		7,350

Artificial Reef Program		150,369
Pollution Prevention/Waste Reduction (101)		27,649
PRF Project Monitoring		\$ 41,625
Total of Encumbrances		\$ 388,573

Minimum Balance (Reserve) \$ 120,000

Balance Available 10/31/05 \$ 991,610

* 10-002-910 Included		
Brazilian Pepper (92)		\$ 26,717
COT Parks Dept/Cypress Point (97)		100,000
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>\$ 683,627</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.

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

Fund Balance as of 10/01/05	\$ 608,646
Interest Accrued	- 0 -
Disbursements FY06	- 0 -

Fund Balance	\$ 608,646
--------------	------------

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	240,998
 Total of Encumbrances	 \$ 608,646

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



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2005

**Subject:** Legal Case Summary for November 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 November 2005 legal case summary. The summaries generally detail pending civil and administrative cases where one party has initiated some form of civil or administrative litigation, as opposed other Legal Department cases that have not risen to that level. There is also a listing of 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:** November 2005 EPC Legal Case Summary

**EPC LEGAL DEPARTMENT MONTHLY REPORT**  
**November 2005**

**A. ADMINISTRATIVE CASES**

**NEW CASES** | 0 |

**EXISTING CASES** | 6 |

**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. Hillsborough County denied the re-zoning application and the EPC staff is waiting to see what new action the applicant takes. (AZ)

**IMC Phosphates, Inc. v. EPC** [LMC04-007]: 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. The parties are negotiating settlement. (RT)

**EPC vs. USACOE and Florida Department of Environmental Protection** [LEPC05-005]: On February 11, 2005 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 [ 1 ]**

**Jozsi, Daniel A. and Celina v. EPC and Winterroth** [LEPC04-025]: Daniel A. and Celina Jozsi timely requested an extension of time to file an appeal challenging the approval of a wetland survey line for the Winterroth Property located on Lake Hills Drive, Riverview, 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. Mr. Winterroth and the EPC Executive Director have withdrawn the delineation and the Hearing Officer has closed the case. (AZ)

### **B. CIVIL CASES**

#### **NEW CASES [ 0 ]**

#### **EXISTING CASES [ 16 ]**

**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. On October 31, 2005, the EPC also 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. On November 1, 2005, the Legal Department filed a Motion for Default for failure to timely respond. The staff is in negotiations with a prospective purchaser of the facility. (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)

**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 was denied on October 20, 2005. The parties will bring a proposed settlement proposal to the November 17, 2005 meeting. There is also a consolidated administrative challenge to EPC citations which is a separate matter and is described above. (RT)

**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 was due on October 12, 2005. The EPC Legal Department filed a motion for default against Ahmed Lakhani on October 18, 2005. The other Defendant, L& D Petroleum has filed for bankruptcy protection. (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)

**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 above*). The City of Tampa is seeking to acquire a portion of the property through eminent domain. The EPC filed its answer on October 21, 2005. The Court entered an order for disbursement of funds from the City of Tampa to pay the EPC for its prior liens. (AZ)

## RESOLVED CASES [ 3 ]

**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. On October 10, 2005 the responsible party and the EPC entered into a settlement to resolve the violations. The matter has been closed. (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 new owner has completed all corrective actions. The EPC Legal Department has decided to close out the case based on compliance of EPC waste management rules at the site and the bankruptcy filing by the responsible party. The EPC staff will reserve the right to take enforcement in the future for the prior violations but at this time is closing the matter. (AZ)

**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 agreed to perform all corrective actions at the site. The Waste Management Division has confirmed all corrective actions have been completed and has decided not to take action against the previous owner for the violations because he is insolvent. The matter has been closed. (AZ)

### C. OTHER OPEN CASES [ 14 ]

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. A Consent Order was signed on October 7, 2005 and no further legal action is required at this time. (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. Rentokil Initial Environmental Services, Inc. signed a proposed Consent Order on November 4, 2005 and the case has been closed. (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)

**Tampa Bay Shipbuilding and Repair Company, Inc.** [LEPC05-019]: On July 22, 2005 Tampa Bay Shipbuilding and Repair Company, Inc. filed at request for extension of time to file a petition for administrative hearing regarding a Title V Draft Permit. The Legal Department approved the request and provided the Petitioner with a deadline of September 20, 2005 to file a petition. A second request for an extension of time was filed on September 15, 2005. The Legal Department approved the second request and provided a deadline of November 21, 2005. (RT)

**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. The applicant timely filed a second request for extension of time which is currently being reviewed. (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. The applicant timely filed a second request for extension of time which is currently being reviewed. (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. The Legal Department granted a second extension until November 7, 2005 in response to a request filed on September 14, 2005. On October 27, 2005, a third request for an extension of time was filed. The Legal Department determined that the request was timely and showed good cause and granted the extension with a December 15, 2005 deadline. (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.

**Jozsi, Daniel A. and Celina v. EPC and Winteroth** [LEPC05-032]: Daniel A. and Celina Jozsi requested an extension of time to file an appeal challenging a Consent Order entered into between James Winteroth and the EPC regarding corrective actions on an alleged wetland violation. The Request has been denied based on the untimely filing of the request. The Jozsi's have been given until October 31, 2005 to explain why the request should be considered timely. (AZ).

**Citgo Petroleum Corporation** [LEPC05-031]: On October 13, 2005 Citgo Petroleum Corporation filed a request for an extension of time to file a petition for administrative hearing regarding a Title V Draft Permit. The Legal Department has approved the request and provided the petitioner with a deadline of December 12, 2005 to file a petition. (AZ)

**DiMare Ruskin, Inc.** [LEPC05-034] On November 3, 2005, DiMare Ruskin, Inc. filed a request for an extension of time to file a petition for administrative hearing regarding the denial of a notice general permit for an expansion to a tomato wash water disposal facility. The Legal Department has approved the request and provided the petitioner with a deadline of January 6, 2006, to file a petition. The parties are seeking resolution of the matter. (RM)



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2005

**Subject:** Amended Interlocal Agreement with City of Tampa to continue assisting the City with compliance with its National Pollutant Discharge Elimination System (NPDES) Permit

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

**Division:** Waste Management Division

**Recommendation:** Approve Amended Interlocal Agreement for Chair's signature

**Brief Summary:** The City of Tampa and the EPC entered into an Interlocal Agreement dated January 9, 2003. The agreement provides for the EPC to assist the City in complying with the City's stormwater pollution ordinance and the City's NPDES permit. The existing Interlocal Agreement provides for funding the EPC in the amount of \$30,000 annually. The Amended Interlocal Agreement will change some of the tasks related to the Agreement and amend the annual funding to \$20,000 accordingly.

**Background:** The City is required, pursuant to its National Pollution Discharge Elimination Source (NPDES) permit from the Department of Environmental Protection, to ensure that facilities in the City which connect to and discharge into the City stormwater system, meet pollution standards. To ensure enforcement of the aforementioned pollution requirements and laws, the City of Tampa and the Environmental Protection Commission of Hillsborough County (EPC) entered into an Interlocal Agreement dated January 9, 2003. The City utilizes the EPC enforcement expertise in water pollution matters to manage, in part, the pollution and environmental portions of the permit conditions. The tasks associated with the amended Agreement are as follows: providing the City information gathered during investigations of water pollution related complaints, data from EPC's collection and analysis of waster samples collected throughout Tampa and Tampa Bay, and providing background and incident specific information on water quality.

The City has already approved and signed the amended Agreement.

**List of Attachments:** Amended Interlocal Agreement

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

THIS INTERLOCAL AGREEMENT, hereinafter referred to as the "Agreement," made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the City of Tampa ("City") and the Environmental Protection Commission of Hillsborough County ("EPC"), a local government agency.

WITNESSETH:

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

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

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

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

**WHEREAS**, the City currently benefits from EPC's existing ambient water quality monitoring program, and receives assistance in the elimination of illicit discharges by EPC's sharing of data and information regarding complaint investigations with the City; and

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

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

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

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

#### **PART I**

1. The EPC shall, as it has in the past, provide data to the City for purposes of tracking certain compliance efforts required by the City's MS4 NPDES permit. Specifically:
  - a) EPC shall provide the City information gathered during investigations of water pollution related complaints and
  - b) EPC shall provide the City data from its collection and analysis of water samples collected throughout Tampa and Tampa Bay, providing background and incident specific information on water quality; and
2. EPC will notify recipients of enforcement notices within the jurisdiction of the City that they may also be the subject of independent enforcement actions by the City. EPC will provide the City with copies of all such notices.
3. All of the foregoing information shall be provided to the City on an as-needed basis with, at a minimum, an annual summary of each activity.

#### **PART II**

1. As consideration for EPC's coordination and implementation of activities relating to the City's NPDES compliance and enforcement, pollution prevention, and other services referenced in this Agreement, the City shall pay \$20,000 annually for a five year period to defray the costs associated with these programs. The fee shall be paid each year on the annual date of the effective date of this Agreement.
2. Prior to the conclusion of the five year period of this Agreement, EPC and the City shall reevaluate the terms of the Agreement to ensure the needs of the City are being satisfactorily met and that EPC is being adequately compensated.
3. The initial term of this agreement shall be for a period of not less than one year and is thereafter automatically renewed in two year increments corresponding to each County and City budgeting cycle unless written notice is provided at least 180 days prior to the termination of each renewal period by one of the parties hereto.
4. Modifications to this Agreement may be presented at any time and if mutually agreed upon, the modifications shall be stated in writing and signed by both parties.

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

ATTEST

CITY OF TAMPA, FLORIDA

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

By: \_\_\_\_\_  
Pam Iorio, Mayor

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOORUGH  
COUNTY

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

By: \_\_\_\_\_  
Chairman EPC

APPROVED AS TO FORM

By: \_\_\_\_\_  
Julie I. Brown  
Assistant City Attorney





## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2005

**Subject:** School Bus Retrofit Grant

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

**Division:** Air Management

**Recommendation:**

Direct staff to create a non-procurement purchase order to reimburse the School District of Hillsborough County (SDHC) for the purchase and installation of diesel oxidation catalysts.

**Brief Summary:**

In June 2004 the Air Division, in partnership with the SDHC, was awarded a \$200,000 EPA grant to retrofit approximately 150 diesel school buses with diesel oxidation catalysts. These catalysts will serve to reduce school bus exhaust emissions. In August of that same year a presentation was given to the Board recognizing this action.

The purchase and installation of the diesel oxidation catalysts will be performed by an SDHC contractor, and SDHC will be reimbursed for their expenditures from grant money. The County Purchasing Department has advised the EPC administrative staff to create a non-procurement purchase order to accommodate the reimbursement.

**Background:**

EPA's Clean School Bus USA program is a federal initiative established to reduce children's exposure to harmful diesel exhaust. Air Management staff applied for, and received a grant to implement this emissions control program in Hillsborough County. It is the only program of its kind in the State of Florida.

**List of Attachments:** None



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 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:**

Staff requested 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). Staff revises its request and recommends holding the public hearing at the January 12, 2006 EPC Board Meeting.

**Brief Summary:**

Pursuant to the EPC Act, the EPC Board must hold a noticed public hearing to approve a rule. In order to receive additional comment from recent public meetings, 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 January 12, 2006.

**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 originally requested to have a rule adoption public hearing at the regularly scheduled meeting on November 17, 2005. In order to receive additional comment from recent public meetings, the EPC staff now requests that the Board approve holding the rule adoption public hearing at the regularly scheduled meeting on January 12, 2006

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 January EPC Board meeting. The staff has issued extensive notices of the rule adoption process, and held 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 Chapter 1-14, Rules of the EPC

**RULES OF THE  
ENVIRONMENTAL PROTECTION  
COMMISSION  
OF HILLSBOROUGH COUNTY**

**CHAPTER 1-14**

**MANGROVE TRIMMING AND  
PRESERVATION**

- 1-14.01 Findings
- 1-14.02 Intent
- 1-14.03 Authority
- 1-14.04 Definitions
- 1-14.05 Exemptions
- 1-14.06 Trimming of mangroves; permit requirement
- 1-14.07 Other trimming and alteration of mangroves; permit Requirement
- 1-14.08 Professional mangrove trimmers
- 1-14.09 Enforcement
- 1-14.10 Fees
- 1-14.11 Administration

**1-14.01 FINDINGS**

(a) The Environmental Protection Commission of Hillsborough County (Commission) finds that there are over 555,000 acres of mangroves now existing in Florida. Of this total, over 80 percent are under some form of government or private ownership or control and are expressly set aside for preservation or conservation purposes.

(b) The Commission finds that mangroves play an important ecological role as habitat for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; as shoreline stabilization and storm protection; and for water quality protection and maintenance; and as food-web support. The mangrove forest is a tropical ecosystem that

provides nursery support to the sports and commercial fisheries. Through a combination of functions, mangroves contribute to the economies of many coastal counties in the state, including Hillsborough County, which has as an economy strongly dependent on tourism and a variety of marine-related industries, most of which are closely correlated to a healthy natural environment and strong fisheries. In addition, Hillsborough County's coastal environment and natural resources are a strong attractant for both businesses and residents.

(c) The Commission finds that since 1950, approximately half of the Tampa Bay area's natural shoreline has been adversely impacted, with some areas of Hillsborough County having lost almost half of their mangroves in that same time frame.

(d) The Commission finds that both the City of Tampa and the Hillsborough County Comprehensive Plans designate mangrove swamps as preservation areas in Hillsborough County. In addition, the Tampa Bay National Estuary Program's Comprehensive Conservation and Management Plan for Tampa Bay ("Charting the Course") supports the protection, conservation and restoration of marine resources and habitats, including mangroves.

(e) The Commission finds that the trimming and alteration of mangroves can affect their productivity and habitat value.

(f) The Commission finds that the trimming of mangroves by professional mangrove trimmers following the criteria in these rules has a potential to maintain the beneficial attributes of mangrove resources and that professional mangrove trimmers should be authorized to conduct mangrove trimming, as contained herein.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

- DRAFT Mangrove Rule Ch. 1-14 -

1-14.02 INTENT

(a) It is the intent of the Commission to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.

(b) It is the intent of the Commission that no trimming or alteration of mangroves may be permitted on uninhabited islands which are publicly owned or on lands set aside for mitigation or on certain lands set aside for conservation and preservation, except where necessary to protect the public health, safety, and welfare, or to enhance public use of, or access to, these areas in accordance with management plans approved by the State, County or Municipality.

(c) It is the intent of the Commission to acknowledge waterfront property owners their riparian rights as recognized by section 253.141, Florida Statutes (F.S.) and any other provision of law.

(d) It is the intent of the Commission to also allow mangrove trimming at waterfront properties with mangroves where such trimming can be done consistent with the specific criteria of the Commission.

(e) It is the intent of the Commission to encourage waterfront property owners to voluntarily preserve mangroves, encourage mangrove growth, and plant mangroves along their shorelines.

(f) It is the intent of the Commission that all trimming of mangroves pursuant to this rule on parcels having multifamily residential units be conducted so as to result in an equitable distribution of the riparian rights.

1-14.03 AUTHORITY

(a) The Commission obtains the authority to implement this rule pursuant to sections 4, 5, and 8 of the Hillsborough County

Environmental Protection Act, chapter 84-446, Laws of Florida, as amended, the Mangrove Trimming and Preservation Act, sections 403.9321-403.9333, F.S., and section 403.182, F.S..

(b) The Florida Department of Environmental Protection (FDEP) has delegated its authority under chapter 403, F.S. to regulate the trimming and alteration of mangroves to the Commission, which requested such delegation and demonstrated to the FDEP that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove-regulatory program. In no event shall more than one permit for the alteration or trimming of mangroves be required within the jurisdiction of the Commission.

1-14.04 DEFINITIONS

For the purposes of this chapter, the term:

(a) *Alter* means anything other than trimming of mangroves including removal, destruction or defoliation of mangroves or the cutting of prop roots and pneumatophores.

(b) *Commission* means the Environmental Protection Commission of Hillsborough County.

(c) *Defoliate* means the removal of leaves by cutting or other means to the degree that the plant's natural functions have been severely diminished or which results in the death of all or part of the mangrove.

(d) *Executive Director* means the appointed Environmental Director of the Environmental Protection Commission of Hillsborough County or authorized staff.

(e) *Maintenance* means trimming intended to maintain the height and configuration of a mangrove area that was legally trimmed either pursuant to a valid exemption or a previously issued permit from the appropriate governmental agency. However, where a pattern of trimming has

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

- DRAFT Mangrove Rule Ch. 1-14 -

- stopped such that the use intended and obtained by the trimming has been broken or lost for a sustained period of time, further trimming will not be considered maintenance.
- (f) Mangrove means any specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).
- (g) Mangroves on lands that have been set aside as mitigation means mangrove areas on public or private land which have been created, enhanced, restored, or preserved as mitigation under a Mitigation Agreement pursuant to chapter 1-11, Rules of the Commission, or a permit issued under section 403.9328, F.S., or a dredge and fill permit issued under sections 403.91-403.929, F.S. (1984 Supplement, as amended), or a dredge and fill permit, management and storage of surface waters permit, or environmental resource permit issued under part IV of chapter 373, F.S., applicable dredge and fill licenses or permits issued by any other local regulatory agency, a resolution of an enforcement action, or a conservation easement that does not provide for trimming.
- (h) Professional mangrove trimmer means a person who meets the qualifications set forth in section 1-14.08, Rules of the Commission.
- (i) Public lands set aside for conservation or preservation means: (1) Conservation and recreation lands under chapter 259, F.S.; (2) County, State and national parks; (3) State and national reserves and preserves, except as provided in section 403.9326(3), F.S.; (4) State and national wilderness areas; (5) National wildlife refuges (only those lands under Federal Government ownership); (6) Lands acquired through
- the Water Management Lands Trust Fund, Save Our Rivers Program; (7) Lands acquired under the Save Our Coast program; (8) Lands acquired by the Hillsborough County Environmental Lands Acquisition and Protection Program; (9) Lands acquired under any environmentally endangered lands bond program; (10) Public lands designated as conservation or preservation under a local government comprehensive plan; (11) Lands purchased by a water management district, the Fish and Wildlife Conservation Commission, or any other governmental agency for conservation or preservation purposes; (12) Public lands encumbered by a conservation easement that does not provide for the trimming of mangroves; and (13) Public lands designated as critical wildlife areas by the Fish and Wildlife Conservation Commission.
- (j) Riparian mangrove fringe means mangroves growing along the shoreline of a private property, the depth of which does not exceed 50 feet as measured waterward from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline to the trunk of the most waterward mangrove tree. Riparian mangrove fringe does not include mangroves on uninhabited islands, or any public lands, including sovereign submerged lands in Hillsborough County, or mangroves on lands that have been set aside as mitigation, if the permit, mitigation agreement, enforcement instrument, or conservation easement establishing the mitigation area did not include provisions for the trimming of mangroves.
- (k) Trim means to cut mangrove branches, twigs, limbs, and foliage, but does not

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

- DRAFT Mangrove Rule Ch. 1-14 -

mean to cut prop roots or pneumatophores or to remove, defoliate, or destroy the mangroves.

**1-14.05 EXEMPTIONS**

(a) Upon at least 10 days and no more than 30 days prior written notice being provided to the Executive Director the following activities are exempt from the permitting requirements of the Executive Director and any other provision of law if no herbicide or other chemical is used to remove mangrove foliage:

(1) Mangrove trimming in riparian mangrove fringe areas that meet the following criteria:

(i) The riparian mangrove fringe must be located on lands owned or controlled by the person who will supervise or conduct the trimming activities.

(ii) The mangroves that are the subject of the trimming activity may not exceed 10 feet in pretrimmed height as measured from the substrate and may not be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate. This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.

(2) Mangrove trimming supervised or conducted exclusively by a professional mangrove trimmer in riparian mangrove fringe areas that meet the following criteria:

(i) The riparian mangrove fringe must be located on lands owned or controlled by the professional mangrove trimmer or by the person contracting with the professional mangrove trimmer to perform the trimming activities.

(ii) The mangroves that are the subject of the trimming activity may not exceed 24 feet in pretrimmed height and may not be trimmed so

that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate.

(iii) The trimming of mangroves that are 16 feet or greater in pretrimmed height must be conducted in stages so that no more than 25 percent of the foliage is removed annually.

(iv) A professional mangrove trimmer that is trimming red mangroves for the first time under the exemption provided by this paragraph must notify the Executive Director or authorized staff in writing at least 10 days before commencing the trimming activities.

(v) This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.

(3) Mangrove trimming in riparian mangrove fringe areas which is designed to reestablish or maintain a previous mangrove configuration if the mangroves to be trimmed do not exceed 24 feet in pretrimmed height. The reestablishment of a previous mangrove configuration must not result in the destruction, defoliation, or removal of mangroves. Documentation of a previous mangrove configuration may be established by affidavit of a person with personal knowledge of such configuration, through current or past permits from the state or local government, or by photographs of the mangrove configuration. Trimming activities conducted under the exemption provided by this paragraph shall be conducted by a professional mangrove trimmer when the mangroves that are the subject of the trimming activity have a pretrimmed height which exceeds 10 feet as measured from the substrate. A person trimming red mangroves for the first time under the exemption provided by this paragraph must notify the Executive Director in writing at least 10 days before commencing the trimming activities.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(4) The maintenance trimming of mangroves that have been previously trimmed in accordance with an exemption or government environmental regulatory authorization, including those mangroves that naturally recruited into the area and any mangrove growth that has expanded from the area subsequent to the authorization, if the maintenance trimming does not exceed the height and configuration previously established. Historically established maintenance trimming is grandfathered in all respects, notwithstanding any other provisions of law. Documentation of established mangrove configuration may be verified by affidavit of a person with personal knowledge of the configuration or by photographs of the mangrove configuration.

(b) The following activities are exempt from the permitting requirements of the Executive Director and any other provision of law if no herbicide or other chemical is used to remove mangrove foliage

(1) The trimming of mangrove trees by a state-licensed surveyor in the performance of her or his duties, if the trimming is limited to a swath of 3 feet or less in width.

(2) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company, or by a federal, state, county, or municipal agency, or by an engineer or a surveyor and mapper working under a contract with such utility company or agency, when the trimming is done as a governmental function of the agency.

(3) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company in or adjacent to a public or private easement or right-of-way, if the trimming is limited to those areas where it is necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its

customers and if work is conducted so as to avoid any unnecessary trimming of mangrove trees.

(4) The trimming of mangrove trees by a duly constituted communications, water, sewerage, or electrical utility company on the grounds of a water treatment plant, sewerage treatment plant, or electric power plant or substation in furtherance of providing utility service to its customers, if work is conducted so as to avoid any unnecessary trimming of mangrove trees.

(5) Minor mangrove trimming pertaining to construction of docks and associated structures permitted by another appropriate regulatory agency when such application for construction has been reviewed and specifically approved in writing by EPC staff; and regular maintenance trimming necessary to maintain the footprint of the permitted structure.

(c) Any rule, regulation, or other provision of law must be strictly construed so as not to limit directly or indirectly the exemptions provided by this section for trimming in riparian mangrove fringe areas except as provided in section 403.9329(7)(b), F.S.. Any rule or policy of the FDEP, or Commission, that directly or indirectly serves as a limitation on the exemptions provided by this section for trimming in riparian mangrove fringe areas is invalid.

(d) The designation of riparian mangrove fringe areas as aquatic preserves or Outstanding Florida Waters shall not affect the use of the exemptions provided by this section.

(e) Trimming that does not qualify for an exemption under this section requires a permit as provided.

#### 1-14.06 TRIMMING OF MANGROVES; PERMIT REQUIREMENTS

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



- DRAFT Mangrove Rule Ch. 1-14 -

(a) For those projects that do not qualify under the provisions of section 1-14.05, Rules of the Commission the Executive Director shall authorize mangrove trimming via a permit issued pursuant to this section, provided the trimming is consistent with the following criteria:

(1) The mangroves to be trimmed are located on lands owned or controlled by the applicant or on sovereign submerged lands immediately waterward and perpendicular to such lands.

(2) The mangroves to be trimmed are located immediately waterward of the shoreline.

(3) The mangroves to be trimmed are not located on any of the following areas, except where necessary to protect the public health, safety, and welfare, or to enhance public use of, or access to, conservation areas in accordance with management plans approved by the State, County or Municipality:

(i) uninhabited islands; or

(ii) lands that have been set aside for mitigation; or

(iii) public lands set aside for conservation and preservation, except those as set forth solely pursuant to sub-section 1-14.04(i)(10), Rules of the Commission.

(4) The trimming of mangroves is supervised on-site or conducted exclusively by a professional mangrove trimmer or designee.

(5) The mangroves subject to trimming under the permit do not extend more than 500 feet waterward of the wetland jurisdictional line as established in chapter 1-11, Rules of the Commission, in a direction perpendicular to the shoreline.

(6) No more than 33 percent of the drip line area (footprint) of mangroves eligible for trimming under this subsection at the property will be trimmed.

(7) No mangrove will be trimmed so that the overall height of any mangrove is

reduced to less than 6 feet as measured from the substrate.

(8) No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove.

(9) The trimming does not result in the alteration of the mangroves.

(10) All trimming of live mangroves must be conducted in stages so that no more than 25 percent of the pretrimmed foliage or height of the trees is removed annually. Regrowth from the previous year's trimming may be trimmed in addition to the 25 percent mentioned above.

(11) Trimming may only be conducted from April 1 through November 1.

(12) Only non-petroleum based lubricants must be used in chainsaws.

(13) All species listed as a noxious weed or invasive plant pursuant to the Florida Statutes or Florida Administrative Code that are within 25 feet of the mangrove canopy to be trimmed must be removed from the applicant's property. Where the removal is to a degree that a potential for erosion is created, the area must be re-stabilized. Stumps and roots may be killed and left in place if desired.

(14) All trimmed branches and trunks shall be removed from the wetlands and disposed of, as provided by law, unless otherwise permitted in an authorization from the Executive Director.

(b) Requests for permits to trim mangroves must be submitted on the Executive Director's application form and must contain sufficient information to enable the Executive Director to determine the scope of the proposed trimming and whether the activity will comply with the conditions of this section.

(c) Requests to trim mangroves that exceed any of the requirements as set forth above shall be reviewed in accordance with section 1-14.07.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



**1-14.07 OTHER TRIMMING AND ALTERATION OF MANGROVES; PERMIT REQUIREMENT**

(a) The Executive Director, when deciding to issue or deny a permit for mangrove trimming that exceeds the requirements set forth in sections 1-14.05 and 1-14.06, Rules of the Commission or mangrove alteration under this section, shall use the criteria in section 373.414(1) and (8), F.S., as follows: (1) Whether the activity will adversely affect the public health, safety, or welfare or the property of others; (2) Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats; (3) Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling; (4) Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity; (5) Whether the activity will be of a temporary or permanent nature; (6) Whether the activity will adversely affect archaeological resources under the provisions of section 267.061, F.S.; (7) The current condition and relative value of functions being performed by areas affected by the proposed activity; and (8) The cumulative impact of similar activities pursuant to section 373.414(8), F.S..

(b) If the applicant is unable to meet these criteria, the Executive Director and the applicant shall first consider measures to reduce or eliminate the unpermittable impacts. If unpermittable impacts still remain, the applicant may propose, and the Executive Director shall consider, measures to mitigate the otherwise unpermittable impacts.

(c) The request must be made with sufficient specificity to enable the Executive Director to determine the scope and impacts of the proposed alteration activities.

(d) A request for a permit for trimming that exceeds the requirements set forth in sections 1-

14.05 and 1-14.06, Rules of the Commission shall be reviewed pursuant to Section 1-11.08, Rules of the Commission and this rule chapter.

(e) A request for a permit for the alteration of mangroves will be reviewed pursuant to both the entire chapter 1-11, Rules of the Commission and this rule chapter.

(f) The use of herbicides or other chemicals for the purposes of removing leaves from a mangrove is strictly prohibited.

**1-14.08 PROFESSIONAL MANGROVE TRIMMERS**

(a) For purposes of the Executive Director, the following persons are considered professional mangrove trimmers: (1) Certified arborists, certified by the International Society of Arboriculture; (2) Professional wetland scientists, certified by the Society of Wetland Scientists; (3) Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals; (4) Certified ecologists certified by the Ecological Society of America; (5) Landscape architects licensed under part II of chapter 481, F.S.. Only those landscape architects who are certified in the state may qualify as professional mangrove trimmers under this chapter, notwithstanding any reciprocity agreements that may exist between this state and other states; (6) Persons who have conducted mangrove trimming as part of their business or employment and who are able to demonstrate to the Executive Director, as provided in subsection (b), a sufficient level of competence to assure that they are able to conduct mangrove trimming in a manner that will ensure the survival of the mangroves that are trimmed; and (7) Persons who have been qualified by any delegated local government and meet the standards set forth in subsection (b).

- DRAFT Mangrove Rule Ch. 1-14 -

(b) A person who seeks to assert professional mangrove trimmer status under paragraphs (a)(6) or (7) to trim mangroves under the exemptions in section 1-14.05, Rules of the Commission and permits provided in sections 1-14.06 and 1-14.07, Rules of the Commission, must request in writing professional mangrove trimmer status from the Executive Director. The Executive Director shall grant or deny any written request for professional mangrove trimmer status within 60 days after receipt of a complete application. If professional mangrove trimmer status has been granted by the Executive Director, no additional requests for professional mangrove trimmer status need be made to the Executive Director to trim mangroves under the exemptions provided. Persons applying for professional mangrove trimmer status must provide to the Executive Director a notarized sworn statement attesting: (1) that the applicant has successfully conducted trimming on a minimum of 10 mangrove-trimming projects authorized by the Florida Department of Environmental Protection or a local government program. Each project must be separately identified by project name, professional mangrove trimmer and permit number where applicable; (2) That a mangrove-trimming or alteration project of the applicant is not in violation of sections 403.9321-403.9333, F.S., chapters 1-11 and 1-14, Rules of the Commission, or any lawful rules adopted thereunder; and (3) That the applicant possesses the knowledge and ability to correctly identify mangrove species occurring in this state.

(c) The Executive Director may deny a request for professional mangrove trimmer status if the Executive Director finds that the information provided by the applicant is incorrect or incomplete, or if the applicant has demonstrated a past history of noncompliance with the provisions of sections 403.9321-403.9333, F.S.,

chapters 1-11 and 1-14, Rules of the Commission, or any adopted mangrove rules.

(d) A professional mangrove trimmer status granted by the Executive Director may be revoked by the Executive Director for any person who is responsible for any violations of sections 403.9321-403.9333, F.S., chapters 1-11 and 1-14, Rules of the Commission, or any adopted mangrove rules.

(e) The Executive Director's decision to grant, deny, or revoke a professional mangrove trimmer status is subject to appeal pursuant to section 1-2.30, Rules of the Commission.

(f) All professional mangrove trimmers working in Hillsborough County must register with the Executive Director by paying an annual registration fee as provided in chapter 1-6, Rules of the Commission and by demonstrating that they meet the criteria of this section.

(g) All professional mangrove trimmers working in Hillsborough County must notify in writing the Executive Director prior to conducting any mangrove trimming or alteration including those activities authorized under the exemptions provided.

(h) All professional mangrove trimmers or their designee working in Hillsborough County must be on site when mangrove trimming activities are performed under their supervision.

**1-14.09 ENFORCEMENT**

(a) A person may not alter or trim, or cause to be altered or trimmed, any mangrove within the landward extent of wetlands and other surface waters, as defined in sections 1-11.03 and 1-11.04, Rules of the Commission and section 62-340.200(19), Florida Administrative Code, using the methodology in section 373.4211, F.S., and chapter 62-340, Florida Administrative Code, except as applicable under the exemptions of section 1-14.05, Rules of the Commission, or under a permit issued under sections 1-14.06 or 1-14.07, Rules of the

- DRAFT Mangrove Rule Ch. 1-14 -

Commission by the Executive Director. Any violation of this chapter is presumed to have occurred with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property, including the upland riparian property, upon which the violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.

(b) Any area of mangroves that have been trimmed or altered in violation of this rule must be restored. Restoration must be accomplished by replanting mangroves within six months of the initial violation, in the same location and of the same species as each mangrove altered or trimmed, to achieve within 5 years a canopy area equivalent to the area altered or trimmed. Where all or a portion of the restoration is not practicable, as determined by the Executive Director, the impacts resulting from the alteration or trimming of the mangroves must be offset by mitigation. Mitigation must be accomplished pursuant to section 1-11.08, Rules of the Commission. Finally, where all or a portion of the mitigation is not practicable, as determined by the Executive Director, the impacts resulting from the alteration or trimming of the mangroves must be offset by purchasing credits from an approved mitigation bank created under section 373.4135, F.S., at a mitigation ratio of no less than 2-to-1 and no greater than 5-to-1 credits to affected area. To be accepted by the Executive Director, mitigation credits must be specifically obtained for any of the following: creation; restoration; and/or enhancement of mangrove wetlands located in Hillsborough County.

(c) In all cases, the applicant, permittee, landowner and/or upland riparian owner, and person responsible for performing the trimming are jointly and severally liable for performing

restoration or mitigation under paragraph (b) and for ensuring that the restoration or mitigation successfully results in a mangrove community that will offset the impacts caused by the trimming or alteration of mangroves. The applicant, landowner and/or upland riparian owner, and person responsible for performing the trimming or alteration are also jointly and severally subject to penalties.

(d) Any replanting for restoration under this subsection must result in at least 85 percent documented survival of the planted mangroves 1 year after planting. Replanting must be sufficient to achieve a canopy area equivalent to the area altered or trimmed within 5 years of the alteration or trimming.

(e) Pursuant to Section 403.9332, F.S., the Executive Director shall enforce the provisions of this chapter in the same manner and to the same extent provided for in sections 17, 18 and 19 of the Hillsborough County Environmental Protection Act, chapter 84-446, Laws of Florida, as amended and/or sections 403.121, 403.141, and 403.161, F.S., for the first violation, which includes, but is not limited to, the imposition of a civil penalty in an amount of not more than \$10,000 per offense along with restoration of the mangroves consistent with the criteria of subsection (b) above.

(f) Pursuant to subsection 403.9332(3), F.S. for second and subsequent violations, the Executive Director, in addition to the provisions of sections 403.121, 403.141 and 403.161, F.S., shall impose additional monetary penalties for each mangrove illegally trimmed or altered as follows: (1) Up to \$100 for each mangrove illegally trimmed; or (2) Up to \$250 for each mangrove illegally altered.

(g) In addition to the penalty provisions provided in subsections (b)-(f), pursuant to subsection 403.9332(4), F.S., for second and all subsequent violations by a professional mangrove trimmer, the Executive Director shall impose a separate penalty upon the professional

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

- DRAFT Mangrove Rule Ch. 1-14 -

mangrove trimmer up to \$250 for each mangrove illegally trimmed or altered.

Adopted xx/xx/05

Effective date: xx/xx/xx

**1-14.10 FEES**

(a) All applications for mangrove trimming permits shall be accompanied by a fee as provided for in Chapter 1-6, Rules of the Commission.

**1-14.11 ADMINISTRATION**

(a) Permits issued shall expire one year from permit issuance if the project has not been completed, or if the initial trim has not been completed for those projects where trimming is to be phased in annually. Extensions may be granted by the Executive Director for good cause shown.

(b) The Executive Director may revoke any permit issued, for fraud, misrepresentation or violation of the conditions imposed on the permit. Written notice of the intent of the Executive Director to revoke a permit shall be provided to the applicant, setting forth the specific reasons for the revocation. Upon notice of the Executive Director's intent to revoke the permit, the applicant shall immediately cease all trimming and alteration activities on site. The applicant shall have thirty days to show cause why the permit should not be revoked.

(c) The Executive Director may issue either a citation to cease and order to correct or a notice of violation for any site where trimming or alteration has commenced and a permit has not been obtained but is required pursuant to this chapter. Any person receiving such an order for cessation of operations shall immediately comply with the requirements thereof. It shall be a violation of this chapter for any person to fail or to refuse to comply with a citation to cease and order to correct or a notice of violation issued under the provisions of this section.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Page 10



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2005

**Subject:** CC Entertainment Music – Tampa, LLC's (Clear Channel) Proposed Settlement Agreement Regarding the Ford Amphitheatre.

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

**Division:** Legal Department

**Recommendation:** Consider Clear Channel's proposed settlement offer.

**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 and Clear Channel filed a variance request pursuant to Chapter 1-2, Rules of the EPC. On October 20, 2005, the Commission denied the request, and instructed Clear Channel to construct a sound barrier and attempt to comply with the EPC noise standards. If they still were unable to comply after demonstrating reasonable good faith efforts, then they could re-apply for a variance. With that direction, Clear Channel proposes a settlement to meet the intent of the Commission vote. Among other measures, Clear Channel proposes to build a sound attenuating wall and the EPC would dismiss the litigation as it relates to Clear Channel. The Fair has not joined in the settlement proposal.

**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 (Clear Channel) 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 Clear Channel 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. Clear Channel submitted its variance request on August 29, 2005.

The EPC considered Clear Channel's variance request on October 20, 2005, and upon Commissioner Scott's motion, the Commission voted to deny the request but with the proviso that Clear Channel construct a sound barrier (wall) to reduce the sound emanating from the Ford Amphitheatre and to make reasonable good faith efforts comply with EPC's current noise standards. The motion further provided that once Clear Channel has demonstrated to the community that they have made reasonable good faith efforts to comply with Ch. 1-10, Rules of the EPC, and have failed, then Clear Channel may come back before the EPC and renew the application for a variance.

With that direction from the Commission, Clear Channel proposes a settlement to meet the intent of the Commission. Clear Channel proposes to build a sound attenuating wall and the EPC would dismiss the litigation as it relates to Clear Channel. The Fair has not joined in the settlement proposal. Key points in the settlement agreement include the following:

- Clear Channel agrees to design and construct a \$2,500,000 sound barrier wall by September 30, 2006 (subject to labor/material shortages, etc.) and to lower and install electronic limiters on the house lawn speakers.
- Clear Channel also agrees to monitor the height individual performers place speakers on the main stage and consider the effects that will have on the neighborhood, and evaluate the sound levels generated for both the A scale and individual octave bands at the mix position.
- If, after the wall is constructed and Clear Channel complies with the requirements of this Agreement, and a minimum of ten (10) concerts have occurred in the Ford Amphitheater that are monitored to evaluate the wall's effectiveness, the sound emanating from the Ford Amphitheater does not comply with the EPC Rules, Clear Channel may, at its election and discretion, petition the EPC for a variance pursuant to Rule 1-2.50, EPC Rules.
- Clear Channel shall make a voluntary contribution of \$50,000.00 for use in future monitoring of the concerts at Ford Amphitheater by EPC
- Clear Channel will establish a Community Advisory Committee.
- Clear Channel acknowledges the jurisdiction of EPC over it concerning the EPC Act and EPC Rules.
- Pursuant to Judge Honeywell's order entered at the status hearing on Thursday, November 3, 2005, the 04 Action is stayed until Wednesday, January 4, 2006, at which time Clear Channel shall be required to file responsive pleadings to the Second Amended Complaint filed by EPC if this agreement is denied.
- If interim sound mitigation measures are implemented and EPC is given access to the sound data, EPC will not pursue enforcement actions against Clear Channel until after the wall is built and actual concerts are monitored, or December 31, 2006, which ever comes first.

If the settlement is approved by both parties, all Actions by and between EPC and Clear Channel shall be dismissed without prejudice (preserving the right to refile) within ten business days of the approval of the agreement by the Commission. The lawsuit against the Fair would remain, unless a similar settlement is reached.

**Attachment: Proposed Settlement Agreement**

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of November, 2005, by and among the Environmental Protection Commission of Hillsborough County, Florida (“EPC”) and CC Entertainment Music – Tampa, LLC (“CCE”), collectively, “the Parties”;

### RECITALS

WHEREAS, EPC issued a Citation to Cease and Order to Correct Violation (the “Citation”) dated August 27, 2004 to CCE and the Florida State Fair Authority (“FSFA” or “Fair Authority”) pursuant to Chapter 84-446, Laws of Florida, as amended, (the “EPC Act”) and Chapter 1-10, Noise Rules of the Environmental Protection Commission of Hillsborough County, as amended, (the “EPC Rules”); and

WHEREAS, CCE filed a pleading titled “Notice of Appeal” regarding the Citation in an administrative action titled *CC Entertainment Music – Tampa LLC v. Environmental Protection Commission of Hillsborough County* No. LEPC 04-022, (which may have been referred to at different times by different case numbers) which is pending before the Environmental Protection Commission of Hillsborough County, Florida (the “CCE Administrative Action”); and

WHEREAS, EPC filed a civil lawsuit against CCE and the FSFA in an action titled *Environmental Protection Commission of Hillsborough County v. CC Entertainment Music – Tampa, LLC and Florida State Fair Authority*, Civil Action 04-11404, pending in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida and CCE filed counterclaims against the EPC (the “04 Action”); and

WHEREAS, EPC brought a Motion for Temporary Injunction (“Temporary Injunction”) in the 04 Action seeking to enjoin CCE and the Fair Authority from holding any concerts at the Ford Amphitheater; and

WHEREAS, CCE has filed a civil lawsuit against EPC and the FSFA in an action titled *CC Entertainment Music – Tampa LLC v. Environmental Protection Commission of Hillsborough County and Florida State Fair Authority*, Civil Action 05-1565 pending in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the “CCE Action”); and

WHEREAS, the Parties (and their respective counsel) have met on no less than ten (10) separate occasions between September 2, 2004 and October 20, 2005 for the express purpose of negotiating a settlement to the issues raised in the CCE Administrative Action, the 04 Action, and the CCE Action (collectively the “Actions”); and

WHEREAS, the Parties entered into a Confidential Interim Agreement dated July 26, 2005 that contemplated, among other things, that CCE would submit an Application for Variance and/or Waiver (“Application”) to the EPC and that the Board of County Commissioners, sitting as the EPC, would consider said Application and either approve it, deny it or approve it with conditions; and

WHEREAS, as part of its Application, CCE committed to build a sound barrier (wall) estimated and budgeted to cost \$2.5 Million, and to consider the installation of electronic limiters and lowering the speakers serving the grass berm of the Ford Amphitheater as a means of providing sound mitigation; and

WHEREAS, the EPC considered the Application of CCE at its regular meeting on October 20, 2005, and upon Motion duly made by Commissioner Scott and seconded by Commissioner Storms, voted to deny the Application but with the proviso that CCE construct a sound barrier (wall) to reduce the sound emanating from the Ford Amphitheatre and attempt to comply with EPC’s current noise standards. The motion further provided that once CCE has demonstrated to the community that they have made reasonable good faith efforts to comply with Ch. 1-10, EPC Rules, and have failed, then CCE may come back before the EPC and renew the Application and seek a variance; and

WHEREAS, the Parties desire to settle all claims raised in the Actions above:

NOW THEREFORE, in consideration of the mutual obligations of the Parties as contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree upon the terms as set forth below:

1. The above recitals are true and correct and incorporated herein.
2. CCE agrees to implement interim measures as set forth on Attachment “A” that is attached hereto and made a part hereof.
3. CCE agrees to design and construct a sound barrier (wall) and to lower and install electronic limiters on the house lawn speakers. The cost of the design and construction of the wall has been represented by CCE of having a budget of \$2,500,000.00. CCE shall make every reasonable effort to design and construct a wall to comply with EPC Rules, as amended from time to time, within the aforestated budget. CCE also agrees to monitor the height individual performers place speakers on the main stage and consider the effects that will have on the neighborhood, and evaluate the sound levels generated for both the A scale and individual octave bands at the mix position. If, after the wall is constructed and CCE complies with the requirements of this Agreement, and a minimum of ten (10) concerts have occurred in the Ford Amphitheater that are monitored to evaluate the wall’s effectiveness, the sound emanating from the Ford Amphitheater does not comply with the EPC Rules, CCE may, at its election and discretion, petition the EPC for a variance pursuant to Rule 1-2.50, EPC Rules.



Prior to petitioning for a variance, CCE will provide written documentation of all measures taken in their attempt to comply with the existing noise standards including the data from a minimum of ten (10) performances. Notwithstanding the foregoing, or the number of concerts held after the wall is built, CCE may petition EPC for a variance anytime after December 31, 2006, unless such date is extended by the Parties' agreement as provided in Section 9 hereof. If such extension is agreed to, CCE may file an application for variance anytime after ten (10) concerts have been monitored, or the date of the extension, whichever first occurs. The variance sought by CCE, if necessary, may be on the same grounds, justification, terms and provisions as contained in the original Application notwithstanding EPC's consideration, finding of fact, determination and denial thereof. Any EPC staff recommendation to the EPC Commission regarding CCE's application for variance shall not be unreasonably withheld or unreasonably conditioned.

4. Subject to Acts of God, natural disasters, hurricanes, labor and/or material shortages, and any other delays beyond the direct control of CCE, it is anticipated that the modeling of the wall by the sound consultants, the architectural design and engineering studies, the bidding out of the construction contract, and the construction of the wall will take until September 30, 2006. CCE has already engaged a sound consulting firm and has commenced the modeling and preliminary design of the wall and will proceed with reasonable diligence in completing the project. Updates and status reports will be provided to EPC staff on no less than a monthly basis.
5. All Actions by and between EPC and CCE shall be dismissed without prejudice within ten (10) business days of the approval of this Agreement by the EPC. EPC shall also, in writing, close out all Warning Notices and withdraw all Citations issued by EPC to CCE.
6. Each party shall bear its own attorney's fees and costs of the Actions.
7. CCE shall make a voluntary contribution of \$50,000.00 for use in future monitoring of the concerts at Ford Amphitheater by EPC. The check or money order shall be made payable to the "Environmental Protection Commission of Hillsborough County" and submitted to the Air Management Division, 3629 Queen Palm Dr., Tampa, FL 33619. This sum shall be paid within thirty (30) days of EPC's decision approving this Agreement. All monitoring by EPC shall occur in accordance with the suggestions and/or recommendations of the American Society for Testing and Materials ("ASTM"), as amended from time to time, and shall include the applicable standards and/or recommendations of the American National Standards Institute ("ANSI"). In addition, the manufacturer's recommendations for the monitoring equipment utilized by the EPC shall also be followed.

8. CCE acknowledges the jurisdiction of EPC over it concerning the EPC Act and EPC Rules. However, this acknowledgment is only on behalf of CCE and not the Fair Authority.
9. Provided all interim measures are in place and EPC is given reasonable access to the data from the Acoustical Management System described in Attachment "A", EPC agrees not to issue any citations or warning notices, or use any of the data and readings collected to institute any legal or administrative proceeding against CCE under the EPC Act or EPC Rules with regard to sound propagated from the Ford Amphitheater for the period of time from the date of this Agreement until such time as the (a) sound barrier (wall) is built and a certificate of completion or engineer's certification is issued and provided to EPC that the wall is complete, and (b) a monitoring period of a minimum of ten (10) performances have occurred in which the effectiveness of the mitigation measures have been evaluated. In no event however, shall the provisions of this paragraph apply beyond December 31, 2006 unless extended upon mutual agreement of the Parties in writing. Such agreement shall not be unreasonably withheld.
10. CCE agrees to establish a Community Advisory Committee that will involve people from the neighboring communities around the Ford Amphitheater to meet and discuss issues relating to the amphitheater.
11. Pursuant to Judge Honeywell's order entered at the status hearing on Thursday, November 3, 2005, the 04 Action is stayed until Wednesday, January 4, 2006, at which time CCE shall be required to file responsive pleadings to the Second Amended Complaint filed by EPC, unless this Agreement is earlier approved by the EPC Board, in which case the Actions shall be dismissed as provided in Section 5 above.
12. Notwithstanding any of the foregoing, sound monitoring data and related materials collected and maintained by EPC and/or CCE or their attorneys and agents are acknowledged by the Parties to be attorney work product and attorney client privileged and nothing in this Agreement shall be construed to waive any work product or attorney client privilege related thereto. Any of such data and materials shared by the Parties shall be considered for settlement purposes only and it shall not be used or offered as evidence or proof of any fact against either Party.
13. It is agreed and expressly understood by the Parties that the entry into and consummation of this Agreement shall not be construed as any admission of liability or culpability whatsoever (including, but not limited to, with respect to any facts, claims or defenses that were or could have been the subject of the Actions) on behalf of either Party hereto, including their current and former directors, officers, agents, employees and representatives, notwithstanding any other provision of this Agreement. This Agreement shall not be construed as an admission of the validity of, or any strength or weakness in, the claims or

defenses that were or could have been asserted by the Parties. CCE and EPC shall not argue in any proceeding that this Agreement or the settlement described herein shows or evidences in any way that the Parties violated any laws or legal obligation or that there is any strength or weakness in the claims or defenses that were or could have been the subject of the Actions.

14. This Agreement is expressly subject to approval of EPC which is contemplated to occur at its meeting on November 17, 2005.
15. Upon approval of this Agreement by the EPC Board as set forth in Section 14 above, the Confidential Interim Agreement previously entered into by the Parties on July 26, 2005 is hereby terminated as between EPC and CCE.
16. This Agreement is an enforceable order of the EPC and is binding on any and all successors and/or assigns of CCE, except the Fair Authority.

[Signatures appear on the next page]

**FOR CC ENTERTAINMENT MUSIC – TAMPA, LLC:**

Signature \_\_\_\_\_

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

Print \_\_\_\_\_

Title \_\_\_\_\_

**FOR ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY:**

Signature \_\_\_\_\_

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

Print \_\_\_\_\_

Title \_\_\_\_\_

## ATTACHMENT "A" INTERIM MEASURES

The following measures will be utilized and/or implemented by CCE, effective immediately, for each and every CCE concert at the Ford Amphitheatre until final noise mitigation actions (i.e. wall) are fully implemented.

- i. Install, operate and maintain an Acoustical Management System to include:
  - a. A microphone in the mixing area and at the far edge of the lawn seating.
  - b. Must record  $L_{eq}$  on the slow setting for the A-scale and low frequency octave bands listed in the Chapter 1-10 at one-second intervals for both microphones.
  - c. Must have a visual display of the A-scale and low frequency octave bands for the mixing area microphone within the line of sight of the sound engineer monitoring the noise level of the performance.
  - d. Visual display must include individual readings plus warning lights as the noise levels become elevated.
  - e. The targeted upper limit in the mixing area is a one second  $L_{eq}$  or  $L_{max}$  (slow) of 102 dBA, which EPC and CCE agree are substantively equivalent. Environmental Protection Commission (EPC) shall be notified if this target changes.
  - f. Hotline. CCE agrees to maintain its "800" hotline service. That number currently is (800) 936-5064. CCE shall promptly notify EPC of any change in the number of the hotline. The established communication channel of EPC calling the CCE Executive Director, or his/her designee, as its primary point of contact shall remain in place. On a weekly basis, or upon request, EPC agrees to make available for inspection and copying at EPC's office, complaint data including the Complainant's name, address, phone number, nature of complaint, and date and time of complaint.
- ii. Data from the Acoustical Management System will be used as a resource to assist prediction of neighborhood sound levels.
- iii. Monitor and record noise for both A-scale and low frequency octave bands in the neighborhoods adjacent to the amphitheatre using a Type II or Type I noise monitor. At a minimum, this should involve one monitor. The individual taking the readings shall communicate directly with the CCE representative in the mixing area to advise the sound engineer of the readings and request adjustments to the sound levels as necessary. After each concert, CCE shall review and correlate their monitoring data from the neighborhoods, mixing area and lawn seating.

iv. Implement the following administrative controls:

- a. Post signage in the mix area and backstage advising performers of control measures.
- b. List noise control measures cautionary statement in all performance contracts.

v. CCE shall not contract for any performances that are scheduled beyond 11:00 p.m. for any given Concert.

vi. Maintain the current noise blankets and the hay barrier along the northern and western perimeter of the amphitheatre grounds.

vii. Allow EPC personnel reasonable access upon request for the purpose of verifying the control measures listed above at sections i.a - i.e and v. are being utilized.

viii. CCE shall report to EPC any concerts that have performances that continue past 11:00 p.m.

ix. Within three days of implementation, CCE shall also submit a written report to EPC detailing any other noise mitigation measures implemented by CCE.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2005

**Subject:** Shannon Franco, et al. v. Coronet Industries, Inc. et al. Case No. 04-CA-002576

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

**Division:** Legal

**Recommendation:** Authorize the Executive Director to negotiate and execute a professional service contract for outside legal services to defend the above-referenced legal action at an hourly rate not to exceed \$225.00.

**Brief Summary:** On May 9, 2005 the EPC Legal Department received a Notice of Intent to Initiate Litigation Against Governmental Entity Re: Hillsborough County Environmental Protection Commission, from the law firm of McCurdy & McCurdy, L.L.P. in Arlington, Texas. The notice claims damages for injuries suffered by the claimant, Billy Williams, among other things, due to the failure of EPC to ensure that Coronet Industries, Inc. maintained its facility in a proper manner. The notice is a prerequisite pursuant to Section 768.28, F.S. to filing suit against a governmental entity. If the claim is not disposed of within six months after the notice is filed, the action may then be instituted. The claim has not been disposed of and the six month time period expired on November 9, 2005. A lawsuit has not yet been filed.

**Background:** The Texas law firm of McCurdy & McCurdy, L.L.P. has previously filed a lawsuit on behalf of a number of residents surrounding the Coronet Industries, Inc. site located in Plant City, FL. The lawsuit is not yet a class action lawsuit but is filed directly on behalf of individuals who claim to have suffered injuries as a result of contamination related to the operation of the plant. The plant has since ceased operations. To date, the suit has included a number of previous owners of the property and entities related to Coronet, but has not included any regulatory agencies as defendants. On May 9, 2005 the EPC Legal Department received a Notice of Intent to Initiate Litigation Against Governmental Entity Re: Hillsborough County Environmental Protection Commission. The notice claims damages in the amount of \$2,435,000.00 for injuries suffered by the claimant, Billy Williams, among other things, due to the failure of EPC to ensure that Coronet Industries, Inc. maintained its facility in a proper manner. The notice is a prerequisite pursuant to Section 768.28, F.S. to filing suit against a governmental entity. If the claim is not disposed of within six months after the notice is filed, the action may then be instituted, which would add EPC as a defendant. The Florida Department of Environmental Protection has received a similar notice.

Staff has interviewed qualified law firms and must be prepared to respond within 30 days once suit is filed. Any contract entered will be brought back to the Commission for ratification.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** Nov. 17, 2005

**Subject:** Update by Dr. Cynthia A. Heil, Florida Wildlife Research Institute, on the recent Red Tide bloom in Tampa Bay and the Gulf of Mexico

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

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

**Recommendation:** This item is for information only. No Board action is requested.

**Brief Summary:** Dr. Heil, a scientist at the Florida Wildlife Research Institute in St. Petersburg, will provide an overview of the organism that causes Red Tide blooms, and the causes and impacts of the 2005 bloom.

### **Background:**

Red Tides are caused by *Karenia brevis* ( or *K. brevis*), a microscopic plant-like organism that produces toxic chemicals (called "brevetoxins") which can kill fish, sea birds, turtles and marine mammals. The organism is a year-round resident in the Gulf of Mexico, and occasionally reaches "bloom" levels that cause widespread mortality in fish and other wildlife. The causes of these blooms are complex, and are not yet well understood. A particularly severe bloom occurred in Tampa Bay and nearby estuarine and Gulf waters during 2005.

The Florida Wildlife Research Institute (FWRI), which is an arm of the Florida Fish and Wildlife Conservation Commission (FWC), is the lead agency in Florida for Red Tide research. Dr. Cynthia A. Heil, a research scientist at FWRI, will provide the Board with an overview of the Red Tide organism and a brief summary of current understanding of the 2005 Red Tide bloom.

**List of Attachments:** None





## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** Nov. 17, 2005

**Subject:** Proposed "alternative dissolved oxygen criteria" (ADOCs) for the Lower Hillsborough River and Palm River/McKay Bay

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

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

**Recommendation:** This item is for information only. No Board action is requested.

**Brief Summary:** Tampa Bay Water (TBW) is currently preparing "alternative dissolved oxygen criteria" ADOCs for the Lower Hillsborough River and Palm River/McKay Bay, which will be proposed for adoption by the Florida Department of Environmental Protection (DEP). EPC staff has requested that DEP provide opportunities for local technical review of the proposed ADOCs before taking action to either adopt or deny them. DEP has agreed to that request, and it appears that the local technical reviews will be organized by the Tampa Bay Estuary Program (TBEP) and the Regional Planning Council's Agency on Bay Management (ABM).

### **Background:**

EPC staff has been informed that "alternative dissolved oxygen criteria" (ADOCs) are currently being considered for the Palm River and lower Hillsborough River, and will be evaluated for potential adoption by DEP in the near future.

It is staff's understanding that the draft ADOCs are being prepared in association with a "downstream augmentation" project that is being proposed by Tampa Bay Water (TBW). The proposed TBW project would involve the discharge of treated effluent from the City of Tampa's Howard F. Curren advanced wastewater treatment plant (AWTP) into the tidal reaches of one or both of those rivers.

The sections of both rivers that would receive the AWTP effluent are currently designated as "impaired" by FDEP and the U.S. EPA under section 303[d] of the federal Clean Water Act, in part because their existing dissolved oxygen levels do not meet state water quality standards. Additional effluent discharges to such water bodies may not be permissible, under the National Pollution Discharge Elimination System (NPDES) permitting program that is administered by FDEP and U.S. EPA, unless their water quality impacts are offset in some way. The apparent purpose of the ADOCs that are being proposed by TBW is to lower the dissolved oxygen standards for these areas – to levels below existing state standards – so that

the additional effluent discharges might then be deemed permissible by FDEP and U.S. EPA without the usual offset.

EPC staff has a number of concerns regarding the draft ADOCs that have been provided for review to date. In light of those concerns, staff has requested that DEP take the following steps:

1. That upon receipt of the proposed ADOCs, DEP will schedule a technical workshop in the Tampa Bay area to initiate the review process;
2. That the workshop be held in conjunction with the Tampa Bay Regional Planning Council's Agency on Bay Management (ABM), and the Tampa Bay Estuary Program's Technical Advisory Committee (TAC);
3. That the workshop participants be provided with the proposed ADOCs and supporting technical documents at least two weeks prior to the workshop, to allow adequate time for technical review;
4. That following the workshop, the participants be provided a minimum of three weeks to provide comments to DEP regarding the proposed ADOCs; and
5. That DEP staff take those comments into consideration when preparing recommendations for your consideration on the approval or denial of the proposed ADOCs.

DEP staff has responded positively to these requests.

Because this topic is also relevant to the Hillsborough County Watershed Management Initiative (WMI) – and to the proposed interlocal agreement regarding the development of Basin Management Action Plans (BMAPs) to implement Total Maximum Daily Loads (TMDLs) that was conceptually approved by the EPC Board and the BOCC in October, 2005 – EPC staff are recommending that potential participants in the WMI also participate in the ADOCs review process.

**List of Attachments:** Correspondence (letters dated Oct. 18 and Nov. 1, 2005) between EPC and DEP staff regarding the development and review of the proposed ADOCs

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.

October 12, 2005

Ms. Mimi Drew  
Director, Division of Water Resource Management  
Florida Department of Environmental Protection  
2600 Blair Stone Road  
Tallahassee, FL 32399

Dear Ms. Drew:

Environmental Protection Commission of Hillsborough County (EPC) staff has been informed that "alternative dissolved oxygen criteria" (ADOCs) are currently being considered for the Palm River and lower Hillsborough River, and will be evaluated for potential adoption by FDEP in the near future.

It is our understanding that the draft ADOCs are being prepared in association with a "downstream augmentation" project that is being proposed by Tampa Bay Water (TBW). The proposed TBW project would involve the discharge of treated effluent from the City of Tampa's Howard F. Curren advanced wastewater treatment plant (AWTP) into the tidal reaches of one or both of those rivers.

The sections of both rivers that would receive the AWTP effluent are currently designated as "impaired" by FDEP and the U.S. EPA under section 303[d] of the federal Clean Water Act, in part because their existing dissolved oxygen levels do not meet state water quality standards. Additional effluent discharges to such water bodies may not be permissible, under the National Pollution Discharge Elimination System (NPDES) permitting program that is administered by FDEP and U.S. EPA, unless their water quality impacts are offset in some way. The apparent purpose of the ADOCs that are being proposed by TBW is to lower the dissolved oxygen standards for these areas – to levels below existing state standards – so that the additional effluent discharges might then be deemed permissible by FDEP and U.S. EPA without the usual offset.

EPC staff has the following concerns regarding the ADOC review and adoption process in this case:

1. This would be the first adoption of ADOCs for significant expanses of Hillsborough County waters, potentially setting precedents that would be applied in the future to other surface waters within the County;
2. If ADOCs are adopted now which prevent water quality in the Palm River and lower Hillsborough River from being improved to the point that they are able to meet state standards in the future, such an outcome would have important implications for environmental quality and management of the rivers' living resources;

Ms. Mimi Drew  
October 12, 2005  
Page 2

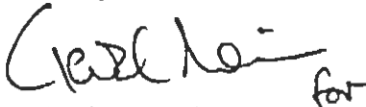
3. Some of the scientific and technical methods that are being used in the draft ADOCs reviewed to date were developed for use in other regions of the U.S., and may not be applicable to the subtropical environment of west-central Florida;
4. Given the precedent-setting nature and potential environmental significance of these particular ADOCs, the administrative review process typically followed by permitting agencies (pursuant to Chap. 120, FAC) may not provide the opportunities for broad review and input by the local technical community that would be most desirable for EPC, FDEP, TBW and other stakeholders.

With those points in mind, we would respectfully request the following:

1. That upon receipt of the proposed ADOCs, the Department schedule a technical workshop in the Tampa Bay area to initiate the review process;
2. That the workshop be held in conjunction with the Tampa Bay Regional Planning Council's Agency on Bay Management (ABM), and the Tampa Bay Estuary Program's Technical Advisory Committee (TAC);
3. That the workshop participants be provided with the proposed ADOCs and supporting technical documents at least two weeks prior to the workshop, to allow adequate time for technical review;
4. That following the workshop, the participants be provided a minimum of three weeks to provide comments to FDEP regarding the proposed ADOCs; and
5. That FDEP staff take those comments into consideration when preparing recommendations for your consideration on the approval or denial of the proposed ADOCs.

Thank you for your attention to this issue. EPC staff looks forward to working with you and your staff to address it.

Sincerely,



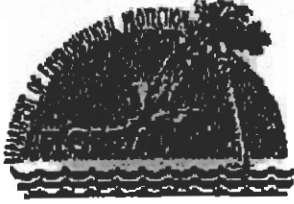
Richard D. Garrity, Ph.D.  
Executive Director

cc:

Comm. Kathy Castor, EPC Chair  
Ms. Suzanne Cooper, TBRPC  
Ms. Paula Dye, TBW  
Mr. Richard Eckenrod, TBEP  
Ms. Lizanne Garcia, SWFWMD  
Ms. Deborah Getzoff, FDEP  
Mr. George Henderson, FFWCC  
Mr. Eric Livingston, FDEP  
Mr. Ralph Metcalf, City of Tampa  
Mr. Tom Welborn, EPA

NOV-03-2005 16:16

850 245 8356 P.02



Jeb Bush  
Governor

## Department of Environmental Protection

Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Colleen M. Castilla  
Secretary

November 1, 2005

Richard D. Garrity, Ph. D.  
Executive Director  
Environmental Protection Commission  
Hillsborough County  
Roger P. Stewart Center  
3689 Queen Palm Drive  
Tampa, Florida

Dear Dr. Garrity:

Thank you for your October 12 letter regarding the alternative dissolved oxygen criteria (ADOC) for the Lower Hillsborough River, Palm River, and McKay Bay that are currently under development by Tampa Bay Water (TBW). Please be assured that your agency, and other interested parties, will be provided ample opportunity to participate in the review of this ADOC.

Opportunities for your agency's and general public participation will include:

- 1) Upon receipt of the ADOC submittal from TBW, we will forward copies of the documentation to you and other attendees of the October 5 meeting, with a three-week comment period.
- 2) We will consider all comments received in our preparation of our response to TBW and copy all commenting parties on our response to TBW.
- 3) Assuming changes are necessary to the ADOC documentation, we will provide copies of the revised documentation to you and other commenting parties, with a two-week comment period, if required.
- 4) Once TBW has addressed our concerns, we will hold a public meeting on the draft ADOC to solicit additional public comment. The draft ADOC will be made available at least two weeks before the public meeting, and comments will be accepted either at the meeting or for two weeks after the meeting. We would be glad to hold this meeting in conjunction with the Tampa Bay Regional Planning Council's Agency on Bay Management and the Tampa Bay Estuary Program's Technical Advisory Committee.

*"More Protection, Less Process"*

*Printed on recycled paper.*

NOV-03-2005 16:16

850 245 8356 P.03

Richard D. Garrity, Ph.D.  
Page Two  
November 1, 2005

5) And finally, if the Department decides to adopt the ADOCs, the Department will notice the adoption and provide a 21-day opportunity for interested parties to challenge the decision.

As you can see, we agree with the importance of public participation in this process. We want to ensure that any ADOCs (or Site-specific Alternative Criteria) adopted by the Department are scientifically sound and will protect the designated uses of the waters for which they are established.

Thank you again for your active participation in this important process. If you have any questions about the processing of the ADOC submittal, please call Kevin Petrus of the Watershed Assessment Section at (850) 245-8459.

Sincerely,



Mimi A. Drew, Director  
Division of Water Resource Management

MAD/dj/h

cc: Kathy Castor, EPC Chair, Hillsborough County Commission  
Ms. Deborah Getzoff, FL DEP  
Mr. Richard Eckenrod, Tampa Bay Estuary Program  
Ms. Lizanne Garcia, SWFWMD  
Mr. George Henderson, FFWCC  
Mr. Eric Livingston, FL DEP  
Mr. Ralph Metcalf, City of Tampa  
Mr. Tom Welborn, EPA  
Ms. Suzanne Cooper, Tampa Bay Regional Planning Council  
Ms. Paula Dyc, TBW

TOTAL P.03



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2005

**Subject:** Fish Advisory Update

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

**Division:** Air Management

**Recommendation:**

Receive briefing and give direction as necessary.

**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 a section on mercury toxicity and Florida fish advisories. The Board recommended that staff expand the advisory information to include fresh water fish and promote an outreach plan for at risk groups. 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. Because of the mercury issue, sensitive groups, such as woman of child bearing age and children, 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 public, the EPC has undertaken an outreach program that includes forming a workgroup and producing a public service announcement. 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:** October 11, 2005 St Pete Times Article

# 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.





**Consolidation of State and Federal Wetland Permitting Programs  
Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)  
Florida Department of Environmental Protection  
September 30, 2005**

**Consolidation of State and Federal Wetland Permitting Programs**  
**September 30, 2005**

**Introduction**

The Florida Department of Environmental Protection is fully committed to implementing the most effective, efficient, and comprehensive wetlands protection in the United States. Florida's efforts to streamline wetlands permitting go back to 1992, when DEP first attempted to obtain the authority to administer some or all of the federal wetlands regulatory program, including testimony before the United States Congress.

Section 3 of House Bill 759 (chapter 2005-273, Laws of Florida, attached), requires the Department of Environmental Protection (DEP) to report on the federal and state statutory changes that would be required to consolidate, "to the maximum extent practicable," federal and state wetland permitting programs. The Legislature expresses its intent in the law that, "all dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, be processed by the state as part of the environmental resource permitting program implemented by the department and the water management district."

This report, required by section 3 of chapter 2005-273, Laws of Florida (House Bill 759 during the 2005 Legislative Session), identifies options and outlines necessary next steps to streamline the federal and state wetlands permitting programs. The report analyzes two options: 1) "assumption" of the federal permitting program and 2) an expanded State Programmatic General Permit (SPGP).

**Background: Federal and State Wetland Permitting Authorities**

The federal wetland regulatory program is administered under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The Rivers and Harbors Act is focused on maintaining navigable waters while the Clean Water Act governs the discharge of potential pollutants, including fill, into the nation's waters. The scope of federal wetlands authority has historically been broad, encompassing all wet landscapes. However, the U.S. Supreme Court's SWANCC (Solid Waste Agency of Northern Cook County) decision in January 2001 has narrowed this scope uncertainly, removing some isolated and headwaters wetlands from Clean Water Act jurisdiction, and confused the issues relative to navigable waters.

The U.S. Army Corps of Engineers (COE) administers the permitting provisions of both federal laws, with Environmental Protection Agency (EPA) oversight, in effect combining Clean Water Act and Rivers and Harbors Act permits into a single action. The Clean Water Act provides two mechanisms by which a state may obtain authority to issue permits under its provisions (the Rivers and Harbors Act has no mechanism to grant state authority):

- **Assumption**, whereby the state permit replaces the federal Clean Water Act permit. As noted, there is no similar provision relating to the Rivers and Harbors Act. Because all coastal waters and a significant number of inland waters in Florida are deemed navigable, they would be excluded from state assumption under current federal law with respect to issues bearing on federal navigation concerns.

- **State Programmatic General Permit**, whereby the COE issues an SPGP to a state that effectively authorizes the state to issue Clean Water Act and most Rivers and Harbors Act permits on the COE's behalf. The COE also could authorize a state to issue Regional General Permits on its behalf.

Florida's wetland regulatory program is administered primarily under part IV of chapter 373, F.S., and is commonly referred to as the Environmental Resource Permit (ERP) program. The single ERP permit addresses dredging and filling in all wetlands and other surface waters, including waters no longer subject to federal jurisdiction under the SWANCC decision. It also covers activities that impact the flow of water, such as stormwater, across the surface of the land.

In Northwest Florida, the state program regulates dredging and filling only in connected wetlands and other surface waters, excluding isolated wetlands, and regulates stormwater quality (but not quantity, i.e., flooding) using rules from the 1970s. The boundaries of wetlands and other surface waters everywhere in Florida are determined by the statewide delineation rule (chapter 62-340, F.A.C.), which is binding on all levels of Florida government.

### Assumption

Effective consolidation of federal and state wetland permitting requires amendments to the federal Clean Water Act, Rivers and Harbors Act, and state law. The necessary changes are outlined below, while the specific amendatory language is included in the attachment.

### Federal statutory changes

- Remove the prohibition that prevents states from assuming the entire Section 404 program so that DEP could assume the program for wetlands and surface waters throughout Florida.
- Change the Rivers and Harbors Act to allow state assumption of the Section 10 navigation-related permits.
- Remove the five-year limitation on state-issued Section 404 permits. There is no similar limitation on the COE's issuance of Section 404 permits and no compelling reason to limit states in this manner. Florida law allows issuance of up to 25-year permits, with an important five-year review cycle, which is critical to planning and permitting many large-scale multi-year developments.
- Delete the federal "clean break" provision, which requires transfer of all pending applications to the state at the time of assumption and instead require the COE to finish processing such permits. The wholesale transfer of pending applications could overwhelm the state, resulting in delays for applicants while state personnel became familiar with the applications (all the while accepting new applications). This change would make the state responsible only for applications received after assumption is approved.
  - This change to the "clean break" provision would be necessary unless substantial staff resources were provided to or secured by DEP and the water management districts in advance of assumption to manage the transferred federal permitting workload, which would amount to more than 9,700 permitting actions based on the number of actions in process at the COE at the present time, which is representative of the workload at any one time. (It is roughly estimated that 3,000

permit actions would transfer to DEP with the remaining 6,700 transferring to the water management districts.) These resources would be over and above the basic resources necessary to implement the assumed program, with its additional federal responsibilities, into the future.

- Require the COE to continue monitoring, enforcing and issuing modifications to previously issued COE permits, including Clean Water Act general permits. Retaining COE responsibility for these activities would afford applicants better continuity and prevent an excessive workload burden on the state.
  - This change would be necessary unless substantial staff resources were provided to the DEP and water management districts in advance of assumption to address the transferred federal compliance and enforcement workload relative to the permits issued by the COE over the last 30 years. These resources would be over and above the basic resources necessary to implement the assumed program, with its additional federal responsibilities, into the future.
- Allow the EPA Administrator, when considering authorizing state assumption, to discount minor differences between the federal and state programs as long as waters of the United States would be equally well protected. (For example, Florida's wetland methodology is ecologically equivalent, in the field, to use of the COE's 1987 wetland manual and should be accepted as such.)

State statutory changes – To assume the federal program the following changes are needed to state law, generally to part IV of chapter 373, F.S.

- Provide DEP, in its role as Florida's lead state agency for wetland permitting, the authority to modify, revoke or rescind permits issued by the water management districts or any delegated local program. Such a provision previously existed in Florida law but was repealed by the Legislature in 1994; it would need to be recreated in statute.
- Amend Florida law to contain a clear "recapture" provision, equivalent to that contained in the Clean Water Act, addressing agriculture activities that convert wetlands to upland; and amend Florida law to be consistent with the Clean Water Act to exempt from permitting only agriculture closed systems—those that do not discharge to surface waters—constructed from uplands.
- Amend Florida law to explicitly address the same federal project criteria contained in 404(b)(1) Clean Water Act guidelines. (As a practical matter, Florida's review criteria are quite similar.) For example, state law would have to be revised to include consideration of project alternatives, including a "no project alternative," and account for economic considerations in the review of alternatives.
- Amend Florida law to eliminate the automatic "default" issuance of permits that are not processed within the state's generic 90-day permitting clock. The Clean Water Act prohibits default permits. This same change has been made for other federally delegated or authorized programs; and, in reality, very few permits are issued by default.
- Revise the dock exemptions in s. 403.813(2), F.S., to account for water depth, endangered species protection, protection of on-site submerged resources, and other requirements of the COE and federal resource agencies or replace them with General Permits that contain the appropriate requirements.

Additional considerations

- Federal funding to the state or additional state funding would be needed to support the program.
- To ensure a truly streamlined process, amendments may be needed to the federal Endangered Species Act. Under Section 7 of the federal Endangered Species Act, impacts to listed species are addressed through a consultation process that results in "take" issues being addressed in the COE permit at the federal District level. If a state assumes the Section 404 program, this consultation process would no longer be available and applicants whose projects involve an actual or potential "take" would be required to apply to the applicable federal resource agency Regional office for authorization under Section 10 of the federal Endangered Species Act. The Section 10 process is substantially more time consuming than the process under Section 7.

### State Programmatic General Permit — Activity Based permit

The COE may issue an SPGP to authorize a state to issue Clean Water Act and Rivers and Harbors Act permits in limited circumstances:

- An SPGP is limited to similar classes of projects that have minimal individual and cumulative impact. For example, an SPGP may cover boat ramp construction as a specific activity but may not cover the mere act of placing fill where no consideration is given to what activity is supported by that fill. Because projects authorized under the SPGP are limited to minimal individual and cumulative impacts, the complexity and physical size of projects are limited as well. Typical wetland impacts allowed in SPGPs range from 5,000 square feet to one acre. The Maryland SPGP at one time allowed impacts of up to three acres in tidal waters and five acres in non-tidal waters, but was revised in 2001 to reduce the amount of authorized impact.
- The SPGP authorizes the issuance of federal permits, which means federal resource agency coordination requirements remain. The net effect is that individual permits deemed likely to result in impacts to listed species must be forwarded to the COE for coordination with federal resource agencies. This coordination is often lengthy and cannot be accommodated within Florida's chapter 120, F.S., time clocks; therefore, the state does not take final action under the SPGP but must elevate the permit to the COE.

### Florida's Experience with SPGP

The COE issued a pilot SPGP to the State of Florida covering Duval, Nassau, Clay, and St. Johns counties in August, 1995 (SPGP I). This SPGP was limited to four categories of activities: docks, piers, and marinas; shoreline stabilization; boat ramps; and maintenance dredging. The pilot SPGP was expanded to the balance of DEP's Northeast District in September 1996 (SPGP II) and to the areas of the other DEP Districts, except Northwest Florida and Monroe County, in September 1997 (SPGP III). This authorization included the addition of most state exemptions and noticed general permits. SPGP III remains in effect until December 2005 and covers a variety of activities, including:

- Construction of shoreline stabilization activities, such as riprap and seawalls; groins, jetties, breakwaters, and beach nourishment/re-nourishment are excluded;
- Boat ramps and launch areas and structures associated with such ramps or launch areas;
- Docks, piers, marinas, and associated facilities;

- Maintenance dredging of canals and channels;
- Most regulatory exemptions; and
- ERP noticed general permits.

Applications received for these activities by DEP are reviewed to determine if they meet all SPGP conditions. For those that meet the conditions, DEP's issuance of a permit constitutes issuance of the corresponding federal Clean Water Act and Rivers and Harbors Act permit. DEP forwards a copy of all applications that do not meet the SPGP conditions, or meet certain "kick-out" provisions, to the COE. The COE may return the permit application to DEP for processing, with or without additional federal conditions, or retain and process it at the federal level.

DEP has issued more than 28,000 authorizations under SPGPs I through III. However, federal endangered species coordination, including that required for manatees, has resulted in a substantial decline (1/3 or more) in the number of SPGP authorizations issued by the state over the last five years. It is worthwhile to note that any increase in the scope or volume of the current SPGP will require additional state resources to implement due to the additional actions and review criteria that are not part of Florida's normal ERP process and the corresponding increase in DEP's ERP permit workload (more than 50% since the late 1990s).

Recently the COE issued a public notice to replace SPGP III with a revised SPGP IV that substantially reduces the scope of projects covered based on the stated rationale that threatened and endangered species and fish habitat issues are consuming an unacceptable amount of COE staff time. The new SPGP IV reduces coverage to only the original four project categories (docks, piers, and marinas; shoreline stabilization; boat ramps; and maintenance dredging) contained in the 1995 pilot SPGP and the exemptions and noticed general permits directly associated with those activities. This change is an obstacle to streamlining wetland permitting and DEP believes its recommendations, below, can solve a variety of problems and allow expansion rather than narrowing of the SPGP.

### Recommendations

Florida is committed to streamlining state and federal wetlands permitting programs to increase protection for our sensitive natural resources. To meet that goal and the specific objectives of House Bill 759, DEP recommends pursuing a greatly expanded SPGP in the short-term, which will not require legislative action, while also pursuing federal and state legislative actions to obtain assumption for the long-term.

#### Next steps:

- Continue to reduce differences between state and federal wetland delineations without altering the statutory definition of wetlands.
  - As a first step, DEP has initiated rulemaking to list slash pine and gallberry as "facultative" (neutral) in the state's delineation rule (62-340, F.A.C.), which is scientifically appropriate and would make the state and federal wetland boundary lines ecologically equivalent. While DEP has not received a formal federal response to its previous (1997) initiative along these lines, field-testing by state and federal agency staff and Phoenix Environmental at that time supports this conclusion. The proposed rule changes will require approval of the

Environmental Regulation Commission and ratification by the Legislature under s. 373.4211(26), F.S.

- Request the COE to expand the SPGP to a comprehensive list of activities with impacts to no more than a specified acreage of non-tidal wetlands based on Florida's wetland delineation methodology.
  - Discussions with the COE have indicated that the 10-acre upper limit proposed in HB 759 would be overly ambitious, at least initially.
  - Any expanded SPGP would require state applicants to waive the chapter 120, F.S., completeness review time clock to allow for federal coordination on endangered species.
- Request that the expanded SPGP include projects reviewed by the water management districts and local delegated programs.
- Review existing state statutory and rule exemptions and noticed general permits for modifications necessary to ensure that qualification for these authorizations would meet the requirements for authorization under the SPGP with no federal agency coordination requirements.
- Extend SPGP in Northwest Florida by expanding the state wetlands program to the Northwest Florida Water Management District.
- Seek the support of the Florida congressional delegation for streamlining the federal program and encouraging federal agencies to work productively with the states to make the SPGP effective.
- Consult with the Florida Congressional delegation on opportunities to amend the federal Clean Water Act and Rivers and Harbors Act to make assumption of the federal wetlands program viable.
- Consult with the Florida Legislature on the potential for appropriating to DEP the additional resources that would be necessary to assume the federal wetlands permitting program, and the transferred federal permitting and compliance workload, should assumption become a viable option. (Additional resources would also be necessary for the water management districts.)

**Attachment**  
**Federal and State Statutory Changes Necessary to Enable Assumption of Federal Wetland Permitting**

**Federal Statutory Changes**

Florida has proposed amendments to the Clean Water Act (CWA) in past Congressional testimony to address the CWA legal issues as follows:

1. Amend Section 404(g)(1) to remove the prohibition on states assuming the entire Section 404 program. Without this amendment, Florida is not able to assume the federal program in large portions of the state. In addition, because the boundaries between navigable and non-navigable waters are not clearly defined in many waters, assumption would require a determination of which agency has jurisdiction. Both factors severely impede the goal of establishing a procedurally simplified program. The following changes are recommended:

Section 404(g)(1) is amended by striking language as follows:

(g)(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters ~~(other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto)~~, within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

2. Amend the CWA to remove the current five-year limitation on state-issued Section 404 permits. There is no similar limitation on the issuance of Section 404 permits by the COE and no compelling reason to limit states in this manner. Florida law allows issuance of up to 25-year permits, with an important five-year review cycle, which is critical to planning and permitting many large-scale multi-year developments. The following changes are recommended:

Clause (ii) of Section 404(h)(1)(A) is amended to read as follows:

"(ii) shall be -

"(I) issued for fixed terms not exceeding 25 years; and

"(II) if issued for a term that exceeds 5 years, reviewed by the State not later than 5 years after the date of issuance and every 5 years thereafter for the duration of the term to ensure that the conditions of the permit are being met by the permittee and to consider, and include as permit conditions where



appropriate, all applicable rule requirements adopted during the prior 5 year period.

3. Amend the CWA to delete the "clean break" provision that requires transfer of all pending applications to the state at the time of assumption. This wholesale transfer has adverse impacts on the state, the Corps of Engineers and applicants. The immediate transfer of large numbers of permits, already partially processed by the COE, to new processors could overwhelm the state system. This would result in delays for applicants, while the state processors become familiar with applications on which COE personnel have already spent considerable amount of time. In addition, the sudden transfer of the permits would not allow the Corps of Engineers adequate time to adjust personnel to other tasks and allow for phase out of positions, should that be necessary. This proposed provision would allow the COE to complete the processing on applications already before the agency, with the state being responsible for applications only after assumption is approved. This is especially important in states such as Florida, where there is a large number of permit applications pending at any one time.

In addition, the same section of the CWA would need to be amended to provide for the COE to continue monitoring, enforcing and issuing any modifications of previously issued COE permits. Allowing the COE to retain responsibility for such activities would relieve the potentially excessive burden on the state in enforcing unfamiliar permits, provide for a smoother transition for the COE, and afford applicants better continuity by allowing them to deal with the original permitting agency. The following changes are recommended:

Paragraph (4) of Section 404(h) is amended by striking and adding language as follows:

(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits subject before the Secretary for activities with respect to which a permit may be issued pursuant to such State program and received after such notification to such State for appropriate action. The Secretary shall retain the authority to administer and enforce the permits issued by the Secretary, including the authority to issue and enforce modifications thereto.

4. On a related issue, the CWA general permit language should also be amended to allow the COE to enforce and administer previously issued permits. The following changes are recommended:

Paragraph (5) of Section 404(h) is amended by striking and adding language as follows:

(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the issuance administration and enforcement of such general permit with respect to such activities but shall retain the authority

to administer and enforce the general permits previously issued by the Secretary with respect to such activities.

5. Finally the CWA should be amended to allow the Administrator the ability to discount minor differences in the proposed state program so long as the effectiveness of the protection of waters of the United States is not impaired. The following addition is suggested:

Paragraph (6) is added to section 404(h) to read:

"The Administrator may approve a program submitted under subsection (g)(1) that varies in minor respects from the requirements of this section if the Administrator determines, after review of the proposed state program, that the proposed state program will afford the same or greater degree of protection to waters of the United States as the federal program affords."

6. Changes to the federal Rivers and Harbors Act have not been proposed in the past. However, in order to make assumption of the federal wetlands program complete so that it results in streamlining, Section 10 of that law (33 U.S.C. 403) would have to be amended along the following lines:

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor or refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same. However, authority to issue authorizations on behalf of the Secretary of the Army shall be delegated to any state or tribe that assumes authority to administer Section 404 of the Clean Water Act.

## State Statutory Changes

1. EPA in its capacity as the federal agency in charge of reviewing proposals to assume the CWA program and under its authority to review COE permits, such as an SPGP, has expressed a concern that DEP, in its role as the lead state agency for wetland permitting, lacks the authority to modify, revoke or rescind permits issued by the water management districts or any delegated local program. Such a provision previously existed in Florida law but was repealed by the Legislature in 1994. Therefore, a new paragraph (20) would need to be added to s. 373.414, F.S., reading "(20) The department shall have the authority to review and modify any district order to ensure consistency with federal law." EPA has, in the past, expressed a preference that delegated local programs be limited to permit review functions with actual final agency action and any subsequent enforcement authority be reserved to DEP or the applicable water management district. However, at this time it is by no means certain if this is EPA's final position.
2. Florida law does not clearly contain a "recapture" provision, equivalent to that contained in the CWA, addressing agriculture activities that convert wetlands to upland nor is it clear in Florida law, as provided in the CWA, that only agriculture closed systems constructed from uplands that do not discharge to surface waters are exempt from permitting. To address these concerns, amendments to portions of s. 373.406, F.S., would be necessary similar to the following:
  - (2) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land for purposes consistent with the practice of such occupation. However, such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters. This section shall not be construed to allow the conversion of a surface water or wetland to upland without an environmental resource permit.
  - (3) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to be applicable to construction, operation, or maintenance of any agricultural closed system that is constructed entirely from uplands and does not discharge to surface waters of the state. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such agricultural closed system. This subsection shall not be construed to eliminate the necessity to meet generally accepted engineering practices for construction, operation, and maintenance of dams, dikes, or levees.
3. As a practical matter the wetland permitting review criteria in Florida law are very similar to the federal review criteria in 404(b)(1) CWA guidelines. However, Florida law does not explicitly spell out these federal criteria. In particular, EPA and the COE have stated that the review by the state must include a consideration of alternatives, a presumption of an alternative for non-water dependent projects (e.g., the "no project alternative") and the inclusion of economic considerations in the review of alternatives. In order to address these issues a new s. 373.414(l)(d), F.S., would have to be created to read:

(d) An activity, which is in, on or over surface waters or wetlands, as delineated in s. 373.421(1), and is regulated under this part, is not contrary to the public interest, or is clearly in the public interest, only if:

1. the governing board or the department determines there are no practicable alternatives to dredging or filling in surface waters or wetlands. Alternatives considered shall include not dredging or filling in surface waters or wetlands, or dredging or filling in another area of surface waters or wetlands which will have less damaging consequences, so long as the alternative does not have significant adverse environmental consequences. For dredging or filling in wetlands, mud flats, vegetated shallows, coral reefs, or riffle and pool complexes, all as defined in 40 CFR 230.41 through 40 CFR 230.45, practical alternative sites are presumed to exist unless the activity associated with the dredging or filling requires access or proximity to, or siting within, that surface water or wetland to fulfill its basic purpose, i.e., is water dependent. An alternative is practicable if it is available and capable of being done considering the cost, existing technology, and logistics in light of overall project purposes; and -

2. the applicant has made all appropriate and practicable changes to the project plan to minimize the environmental impact of the project. The applicant shall have the burden of proof of showing that there are no practicable alternatives. The department, in consultation with the districts, shall adopt rules by which the department and the districts shall implement this subsection.

4. The CWA does not contain provision that result in the issuance of a permit if the reviewing agency defaults on (i.e., does not meet) certain review time clock requirements as does Florida law. Therefore, where the state has authority to administer a federal program (Underground Injection Control, National Pollutant Discharge Elimination System, Air permitting, etc.), state legislation has been adopted to overcome the federal government's objection to the default permit provisions in Florida law. The simplest provisions are those adopted for the UIC program (s. 403.0876(2)(b), F.S.), which supersede the default permit provisions without further complications. Similar provisions should be adopted in s. 373.414, F.S., for the ERP program under Part IV of Chapter 373, F.S.
5. The COE and federal resource agencies have expressed concern regarding the dock exemptions contained in s. 403.813(2), F.S. These exemptions lack provisions for water depth, endangered species protection, protection of on-site submerged resources, etc. It is recommended that these exemptions be revised or repealed and replaced with General Permits with appropriate conditions.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** November 17, 2005

**Subject:** Memorandum of Understanding between the EPC and the Hillsborough County Health Department.

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

**Division:** Administration

**Recommendation:** This item is for the Board's information and there is no action required.

**Brief Summary:** In October 2005, in order to improve and enhance coordination with our regulatory partners, a Memorandum of Understanding was entered into between the Environmental Protection Commission and the Hillsborough County Health Department.

The Memorandum of Understanding delineates responsibilities between the two agencies on matters regarding environmental events and the resulting health issues. It covers air, water and waste programs.

**Background:**

Over 10 years ago, the EPC and the Hillsborough County Health Department (HCHD) developed a Memorandum of Understanding (MOU) that proposed a working relationship between the two agencies, but was limited in scope to water issues.

Both agencies, as well as their working relationship, have grown tremendously in the past few years. In light of that growth, Dr. Garrity and Dr. Holt initiated the steps that culminated in a new instrument that encompasses all divisions of the EPC and the HCHD. That instrument, the MOU, has as its core, a strong inter-agency partnership. This will result in a closer more coordinated relationship between the two organizations.

**List of Attachments:** Memorandum of Understanding.

# MEMORANDUM OF UNDERSTANDING

## Hillsborough County Health Department and Environmental Protection Commission of Hillsborough County

This Memorandum of Understanding (MOU) is entered into between the Hillsborough County Health Department (HCHD), a political subdivision of the State of Florida Department of Health (FDOH), located at 1105 E. Kennedy Blvd. Tampa, Florida 33602 and the Environmental Protection Commission of Hillsborough County (EPC), a local environmental regulatory agency and political subdivision of the State, located at 3629 Queen Palm Drive, Tampa, Florida 33619.

**Purpose:** To facilitate a coordinated response for services by two local governmental agencies which both have the responsibility to protect the public health and welfare.

**Responsibilities:** The HCHD is responsible for all Onsite Sewage Treatment Disposal Systems (OSTDS) as provided by Florida Statute 381 and Florida Administrative Code (F.A.C.) 64E-6, such as septic systems and septage land application. HCHD is responsible as described by law for enforcing Chapter 386 Florida Statutes concerning sanitary nuisance conditions capable of affecting public health. HCHD is also responsible for ensuring that drinking waters meet minimum drinking water quality standards pursuant to Chapters 62-532, 62-550, 62-555, 62-560 and 64E-8, F.A.C. HCHD is responsible for designating approved swimming areas and monitoring them for public health and safety purposes. HCHD is responsible for ensuring that facilities that generate, transport, store, or treat biomedical waste dispose of such waste in an approved manner pursuant to Chapter 64E-16, FAC. The EPC is responsible for monitoring of, and delineation and protection of, Wetlands and Waters of the County pursuant to Chapter 84-446, Laws of Florida, and Chapters, 1-5 and 1-11, Rules of the EPC. The EPC is also responsible for providing the public with information about proper waste management practices, including: fuel sludge, waste paint and solvents, parts washer fluids, dry cleaning waste, pesticides, poorly managed petroleum products, and industrial and domestic wastewater treatment facilities. And, finally, the EPC is responsible for providing daily air pollution monitoring, asbestos abatement activities (40 CFR 63), noise monitoring, and permitting and compliance of industrial sources.

The following are general descriptions of duties performed by the HCHD and the EPC, but are not all inclusive. The descriptions are meant to inform the public of the tasks that both agencies perform, in an effort to make the process as straightforward as possible when contacting the agencies. The sections are divided into water, waste, air and miscellaneous issues that do not fit into one of the three media. Sections are further divided into EPC and/or HCHD responsibilities.

## 1. Water Issues:

**a. Wastewater Treatment Facilities (WWTF):** The EPC permits and investigates complaints and takes appropriate action for wastewater treatment facilities; pump stations and associated collection systems permitted under Chapter 403 F.S., Chapter 62-620, and 62-604 F.A.C

**b. Wastewater Releases and Spills:** Spills and releases of wastewater from the WWTF and pump stations are reported to the EPC. Most of these releases are relatively small and have little impact on the environment or public health. Releases of this type are handled based on best professional judgment. However, in the case of releases/spills which meet criteria set forth in EPC's Wastewater Spill Protocol (attached) specific actions defined by the protocol shall be initiated, including providing notification of such releases/spills to the HCHD and coordination of press releases, as necessary. In addition, as a courtesy, releases/spills reported through the State Warning Point system will be forwarded to the HCHD. All notifications made to the HCHD will be provided within one business day of EPC receiving release/spill notification.

**c. Land Application Sites:** Permitting and compliance activities related to the land application of septage (septic sludge, food greases, and portable toilets) are the responsibility of the HCHD. Permitting and compliance activities related to domestic and industrial residuals is the responsibility of the EPC. Each agency will share information related to their respective land application sites. Complaints related to land application will be referred to the appropriate agency. Where the land application of septage causes water pollution, the EPC will coordinate with the HCHD to resolve the problem. This may include joint inspections and enforcement action.

**d. On Site Sewage Treatment and Disposal Systems (OSTDS):** EPC will refer all instances of alleged or suspected sanitary nuisance and complaints pertaining to Onsite Sewage Treatment Disposal Systems (OSTDS) permitted pursuant to Chapter 381 F.S. and Chapter 64E-6 F.A.C. to the HCHD. The HCHD will advise EPC of any such sanitary nuisance suspected to be polluting waters of the County or State, either directly or indirectly, so that joint enforcement may be taken.

**e. Sanitary Nuisances:** A sanitary nuisance is defined as the "commission of any act, by an individual, municipality, organization, or corporation, or the keeping, maintaining, propagation, existence, or permission of anything, by an individual, municipality, organization, or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused." EPC will refer appropriate instances of alleged or suspected sanitary nuisances from an OSTDS facility or other sanitary nuisance conditions capable of affecting public health to HCHD for investigation and enforcement. HCHD will advise EPC of any such sanitary nuisance suspected to be polluting waters of the County or State, either directly or indirectly, so that joint enforcement may be taken.

**f. Drinking Water:** EPC will notify HCHD of all drinking water alleged or suspected of not meeting minimum drinking water standards. If it is determined upon inspection by HCHD that the drinking water is contaminated by a source known or suspected to be under EPC jurisdiction, HCHD will report back to EPC for further investigation. The EPC will notify the HCHD when groundwater monitoring well data associated with facilities permitted pursuant to Chapter 403 F.S. exhibit exceedences of primary drinking water standards, indicate offsite migration, and have a reasonable potential to impact downstream drinking water wells. HCHD would address public health concerns and notify appropriate parties.

**g. Swimming Pools:** EPC will refer all potential public health complaints regarding public swimming pools to the HCHD. As appropriate, the EPC may investigate discharge of public swimming pool discharges to surface water.

**h. Swimming Areas:** The HCHD is responsible for designating approved swimming areas and monitoring them for public health and safety purposes. The HCHD is responsible for conducting beach water sampling and issuing health advisories. Contamination of swimming areas caused by the release of sewage, or other pollutants, is addressed under EPC's spill protocol referenced above.

**i. Algae Blooms and Fish kills:** Pursuant to monitoring schedules or during times of concern, water samples are collected by EPC staff and analyzed by the EPC's laboratory, with the data passed onto HCHD as necessary. HCHD/DOH would address public health concerns.

**j. Surface Water:** The EPC Surface Water Quality Monitoring Program routinely samples a broad array of water quality indicators, including bacteriological, throughout Hillsborough County and Tampa Bay. The HCHD is and will continue to be routinely notified when concentrations of these indicator contaminants or organisms exceed federal or state water quality standards.

**k. Sediment Monitoring:** The EPC Sediment Monitoring Program provides information on concentrations of metals, hydrocarbons, PCB's, pesticides and biological organisms in aquatic sediments in Tampa Bay and its tributaries. These data are available to HCHD and other agencies upon request.

## **2. Waste Management Issues:**

**a. Petroleum Cleanup:** Pursuant to Chapters 62-770, 62-773, and 62-777, F.A.C., and Chapter 373, F.S. (containing the State Underground Petroleum Environmental Response (SUPER) Act), a voluntary petroleum cleanup program is conducted with the Florida Department of Environmental Protection (FDEP) for oversight of rehabilitation activities performed at petroleum-contaminated sites within the County.

**b. Small Quantity Generator (SQG):** The SQG Program conducts inspections of businesses and government facilities that typically generate small amounts of hazardous waste. The SQG staff works with facilities for the correction of environmental problems. EPC



will provide these reports to HCHD, as requested. All facilities on septic systems are referred to the HCHD for appropriate permitting.

**c. Solid and Hazardous Waste:** The Solid and Hazardous Waste Section of the EPC monitors and regulates most types of waste that are discarded or intended for recycling. Other inspections included old and abandoned dump sites. If potable well(s) are located near a landfill, sampling is conducted by an appropriate agency as needed. Landfill gas and groundwater monitoring wells are sampled under the auspices of EPC. HCHD will address public health concerns and notify appropriate parties.

**d. Storage Tanks:** The EPC Storage Tank Compliance Department inspects pollutant storage tank facilities to ensure that the facility is in compliance with regulatory standards.

### **3. Air Issues:**

**a. Outdoor Air Pollution Monitoring:** In outside areas in which the public has access, the EPC is responsible for monitoring air pollution. On an annual basis, EPC will submit a summary of air quality data to the Environmental Health Administrator of the HCHD for review. EPC staff shall meet as needed with the Environmental Health Administrator of the HCHD or designee to discuss local air quality trends, and seek HCHD input to any proposed changes to the ambient monitoring network (both pollutants being monitored and monitoring locations).

**b. Air Quality Index (AQI):** AQI reporting shall be the responsibility of the EPC. EPC will maintain an air pollution hotline (813-627-2626) for the public to inquire about same day air quality as related to the AQI. This information will also be made available to the media. When the AQI reaches a reading of 100 (or is projected to be), the EPC staff will issue an air quality advisory and immediately notify the HCHD.

**c. Indoor Air Issues:** Other than asbestos, generally, indoor air issues are not the responsibility of the EPC. The HCHD assists with illness complaints involving indoor air quality and refers inquiries concerning radon testing to FDOH as appropriate. Workplace air quality issues will be referred to OSHA. Restaurant indoor smoking issues will be referred to the Department of Business and Professional Regulation. All other indoor smoking issues will be referred to the FDOH Clean Indoor Air Hotline (800-337-3742). Both the EPC and the HCHD shall attempt to assist the public on indoor air issues, including mold, when practical by either, such as making a referral to the proper agency, making technical literature available for review, and distributing fact sheets.

**d. Asbestos:** Asbestos abatement activities shall be the responsibility of the EPC. The EPC shall fully implement the Federal Asbestos Program (40 CFR 63) in Hillsborough County. This does not include the Federal Asbestos Program for schools K-12. The Asbestos Hazard Emergency Response Act (AHERA) program issues shall be referred to the Department of Education in Tallahassee and/or the US EPA.

**e. Accidental Air Releases:** In the event of an accidental release of a toxic or nauseous gas to the outside air, the EPC may be notified and asked to follow up. The EPC is not a first-

responder in these types of emergencies, but will respond to provide support to the first-responders (ie. Hazmat teams). Typically this would involve an ammonia or chlorine gas release where hazmat would be in control of the scene. HCHD would address public health concerns.

**f. Smoke From Wildfires:** Smoke from wildfires may cause difficulty in breathing for sensitive individuals. Wildfires may or may not register on EPC's air quality monitors, but still push the AQI to unhealthy levels. The EPC will be responsible for monitoring this effect and notifying the public.

**g. Mold and Pollen Counts:** The HCHD and EPC will refer all inquiries regarding mold spore and pollen counts to the appropriate web site (<http://www.aaaai.org/nab/index.cfm?p=allergenreport>).

#### **4. Miscellaneous:**

**a. Citizen Complaints and Response:** Both parties are responsible for providing verbal and/or written responses to citizen complaints, where appropriate. When either party feels it is necessary, the complaint will be forwarded to the other party, in order to make informed decisions and intelligent choices regarding their complaint.

**b. Health Assessment:** Health Assessment studies and the determination of their need shall be the responsibility of the HCHD and the FDOH. EPC shall be responsible for full cooperation in making environmental data available to the health officials.

**c. Outreach Activities:** The EPC and the HCHD have the responsibility of educating the public of potential hazards in their environment by promoting environmental and/or public health issues through various mediums. These efforts are essential for fostering awareness so that citizens can make more informed choices about their environment and health. Where appropriate, either party, or jointly, may issue press releases to notify the public of health or environmental concerns.

**d. Environmental Health Team:** A team shall be established within 90 days of entry into the MOU and both agencies shall provide staff to serve on it. The team will be tasked to look for any correlation between environmental data and health trends, identify populations or areas at risk because of their local environment, share information, discuss ongoing cases, and provide agency cross training. The team shall meet and prepare a written summary of their findings and issue a formal report as needed. As appropriate, the summary shall be presented to the agency heads for their action and follow up. A liaison from each agency will be responsible for coordinating information on behalf of the agencies. EPC and HCHD staff will review the MOU at these meetings to determine whether additional coordination might improve the effectiveness of the program.

HCHD point of contact shall be: Cindy Morris, (or other designee) 813-307-8015

EPC point of contact shall be: Debra J. Price, Ph.D., (or other designee) 813-627-2600

**e. Coordination with Other Agencies:** As appropriate, the EPC and HCHD are encouraged to attend meetings with the Hillsborough County Sheriff's Office, Hillsborough County Watershed Initiative, the DEP (including their Criminal Task Force), and others, in order to communicate and coordinate with the other agencies any potential environmental or public health threat.

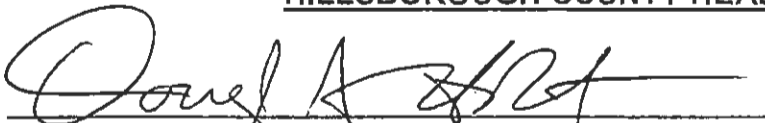
**f. Legal Issues:** Both agencies will make best efforts to coordinate any joint enforcement or litigation so as to minimize any duplication of efforts and to save costs. Where appropriate, the agencies will make their experts and their analysis available to the other agency.

Nothing in the Memorandum of Understanding excludes or prohibits either agency from taking independent action to address health and environmental concerns as allowed by applicable law.

**g. Termination and Modification:** This MOU may be terminated by either party with 30 days written notice. Modifications to this MOU may be presented at any time and if mutually agreed upon, shall be placed in writing and executed by both parties.

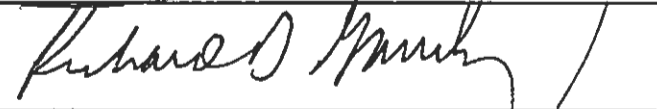
IN WITNESS WHEREOF, the HCHD and EPC have caused this MOU to be executed as of the last date signed below.

**HILLSBOROUGH COUNTY HEALTH DEPARTMENT**

  
\_\_\_\_\_  
Douglas Holt, M.D., Director

Date: 10-20-05

**ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

  
\_\_\_\_\_  
Richard Garrity, Ph.D., Executive Director

Date: 10/25/05

## AGENDA ITEM COVER SHEET

**Date:** November 9, 2005

**Agenda Item:** Memorandum of Understanding Between the Southwest Florida Water Management District and the Environmental Protection Commission of Hillsborough County Regarding Coordination of Regulatory Activities

---

**Description/Summary:**

In an effort to effect regulatory streamlining, on or about May 1, 1997 the Southwest Florida Water Management District ("SWFWMD") and the Environmental Protection Commission of Hillsborough County ("EPC") entered into a Memorandum of Understanding Regarding Coordination of Regulatory Activities ("MOU"). The MOU, in summary, provided for coordination of the following activities between the agency staffs:

- Provided that each of the signatory agencies would accept wetland delineations performed by either agency's staff for environmental resource permitting ("ERP") review and evaluation purposes;
- Provided that SWFWMD staff would forward complaints regarding unpermitted activities in Hillsborough County related to wetlands and surface waters to EPC staff for investigation and potential enforcement actions; and,
- Provided that the agency staffs would coordinate site investigations and meetings regarding mitigation compliance, and that the agencies would strive to effect a delegation of ERP mitigation compliance responsibilities to EPC.

EPC and SWFWMD staff have drafted amendments to the MOU to further coordinate regulatory activities between the signatory agencies and to effect the delegation of ERP mitigation compliance responsibilities to the EPC as provided in the original MOU. The amendments to the MOU will:

- Limit EPC's acceptance of wetland delineations to formal determinations pursuant to chapter 373.421, Florida Statutes; and,

- Effect the delegation of ERP mitigation compliance responsibilities to the EPC and establish conditions for such delegation.

The amended MOU was formally adopted as a rule pursuant to chapter 120, Florida Statutes.

**Commission Action Recommended:**

This item is informational only. The MOU was signed by Richard Garrity, Ph.D., Executive Director of the EPC, and David Moore, Executive Director of the SWFWMD, and became effective October 19, 2005.