

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**COMMISSIONER'S BOARD ROOM**

**MARCH 16, 2006**

**10 AM – 12 NOON**

**AGENDA**

**INVOCATION AND PLEDGE OF ALLEGIANCE**

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

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

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FEBRUARY 16, 2006 - ENVIRONMENTAL PROTECTION COMMISSION - DRAFT MINUTES

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Thursday, February 16, 2006, at 10:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present: Chairman Ronda Storms and Commissioners Brian Blair, Jim Norman, Thomas Scott (arrived at 10:15 a.m.), and Mark Sharpe.

The following members were absent: Kathy Castor (out of State) and Ken Hagan.

Chairman Storms 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.

Dr. Richard Garrity, EPC Executive Director, deleted Item III.G., authorize EPC Chairman to execute the interlocal agreement for basin management action plans, and submitted supplemental information for Item IV., public hearing to consider amendments to Chapter 1-6, services fee schedule, and Item V.C., request authority to schedule public hearing to amend Chapter 1-2 on March 16, 2006.

TIZENS COMMENTS

EPC General Counsel Richard Tschantz said comments could be made when the pollution recovery fund (PRF) annual project approvals were discussed. (Resumed later in the meeting.)

CONSENT AGENDA

- A. Approval of minutes: January 12, 2006.
- B. Monthly activity reports.
- C. PRF.
- D. Gardinier Settlement Trust Fund report.
- E. Legal case summary.
- F. Authorize Chairman to execute the auto repair shops contract, Florida Department of Environmental Protection (FDEP).
- G. Authorize Chairman to execute the interlocal agreement for basis management action plans. **Deleted from the agenda.**
- H. Request authority to take appropriate legal action against Shell BOJ Corporation.

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- I. Authorize Chairman to execute extension for Friends of the River PRF project.

**Commissioner Norman moved the Consent Agenda, seconded by Commissioner Blair, and carried four to zero.** (Commissioner Scott had not arrived; Commissioners Castor and Hagan were absent.)

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Report From the Chairman, David Jellerson - Mr. Jellerson reported CEAC and EPC had reached agreement on recommendations for PRF applications. CEAC recommended approval of proposed rule changes for Chapter 1-6, services fee schedule, and requested approval of changes to the schedule due to problems with the structure.

CITIZENS COMMENTS - RESUMED

Mr. Richard Wagner, 14007 Lake Magdalene Boulevard, requested approval of the PRF application. Chairman Storms said staff would comment on the grant application during the PRF discussion. Commissioner Blair requested a copy of the application.

PUBLIC HEARING

Conduct Public Hearing to Consider Amendments to Chapter 1-6, Services Fee Schedule, EPC Rules - Mr. Tom Koulianos, Director, EPC Finance and Administration, distributed information, summarized discussion at the January 12, 2006, EPC meeting, reviewed proposed fees, recommended Option B, and discussed benefits. Commissioner Blair questioned whether the proposal was a fee swap from FDEP to EPC. Mr. Koulianos responded affirmatively. Noting costs would be neutral and the change would be citizen friendly, **Commissioner Norman moved approval.** Responding to Chairman Storms regarding the fee in Option A, Ms. Jadell Kerr, Director, EPC Wetlands Management Division, stated staff had looked to breakdown into size and had used the standard for mitigation criteria. Chairman Storms was concerned that reviewing the fees in one year would look like fees were raised and preferred to provide a differentiation at the outset. Commissioner Norman perceived a benefit to the taxpayer in initial costs and supported revenue neutral operational costs. Discussion ensued regarding operating at a deficit, breaking even, and Options A and B. Responding to Commissioner Norman, Mr. Koulianos said CEAC concerns were legitimate and Option B was preferred. Chairman Storms called for public comment; there was no response. **The motion was seconded by Commissioner Blair**

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and carried five to zero. (Commissioners Castor and Hagan were absent.) Dr. Garrity stated the item would be submitted to FDEP for delegation.

LEGAL DEPARTMENT

Honeywell Update - Attorney Tschantz stated Honeywell challenged FDEP remedial actions for cleanup, and EPC staff and the property owner had intervened. Issues involved whether the FDEP requirement for financial assurance money to accomplish the job was sufficient and the type of remedial action. The administrative hearing was set for April 3, 2006.

Discussion on EPC 2006 Legislative Agenda - Attorney Rick Muratti, EPC Legal Department, requested approval of four strategies that would offer guidance to staff, authorization for the EPC Chairman or Vice Chairman to send position letters to elected officials regarding concerns and authorization for the Executive Director and Public Affairs Office to lobby on behalf of the strategies as needed. Responding to Chairman Storms, Attorney Muratti stated Ms. Edith Stewart, Public Affairs Officer, approved the proposal. Commissioner Norman stated issues should come before the EPC Board, and he could not support the request. Attorney Tschantz requested the ability to take a position at EPC staff level. Dr. Garrity noted the language was established to support the basic tenets of EPC and be more responsive. Controversial items would be brought to the EPC Board.

Commissioner Sharpe supported reporting the issue to the EPC Chairman who could communicate with the EPC board. Attorney Tschantz confirmed the recommendation was to go through the EPC Chairman. Dr. Garrity stated the lobbying portion involved EPC staff and could be changed to go through the EPC Chairman. Commissioners Scott and Norman supported authorizing the EPC Chairman. Chairman Storms understood both policies would go through the EPC Chairman, suggested letters include conditional language by the EPC Board and the EPC Board be notified of action.

Attorney Tschantz reviewed the recommendation to approve the 2006 EPC legislative strategy. Regarding the second recommendation to authorize the Chairman to issue positions letters in consultation with the Executive Director, Attorney Tschantz said copies of the position letters would be provided to EPC Board members. Chairman Storms called for a motion to authorize the EPC Chairman to issue position letters in consultation with the Executive Director. **Commissioner Norman so moved, seconded by Commissioner Scott.** Commissioner Blair perceived the language was included to give two sources of protection in case the EPC Chairman was out of town. Commissioner Scott supported the motion and noted there was not a time when the EPC

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Chairman was unreachable. **The motion carried five to zero.** (Commissioners Castor and Hagan were absent.) Regarding the third recommendation to authorize the Executive Director or his designees and the Public Affairs Office or its designees to lobby in support of the 2006 EPC legislative strategy, **Commissioner Norman suggested in emergency legislative situations, authorize the EPC Chairman for lobbying in support of the EPC legislative strategy, seconded by Commissioner Scott.** Attorney Tschantz explained that would be for the 2006 session. Commissioner Norman declared that would be the recommended strategy and would change if needed. **The motion carried five to zero.** (Commissioners Castor and Hagan were absent.) Chairman Storms called for a motion to approve the 2006 EPC legislative strategy, **Commissioner Sharpe so moved, seconded by Commissioner Scott, and carried five to zero.** (Commissioners Castor and Hagan were absent.)

Request Authority to Schedule a Public Hearing to Amend Chapter 1-2, EPC Administrative Procedures Rule, on March 16, 2006 - Attorney Tschantz stated proposed changes included public noticing and rule challenges. **Commissioner Scott so moved, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioners Castor and Hagan were absent.)

#### EXECUTIVE DIRECTOR'S REPORT

EPC Staff Recognition Awards - Dr. Garrity said a new policy would be initiated to recognize staff with 20 years of service or more. Chairman Storms presented plaques to Ms. Marsha Reese for 20 years of service and Mr. Christopher Dunn for 25 years of service. Mr. Marvin Blount accepted a certificate of appreciation for service to Hillsborough County as EPC Agricultural Liaison from 2001 to 2006.

Introduction of EPC Agricultural Liaison - Dr. Garrity introduced Mr. Bob Stetler, EPC staff, who would serve as the EPC Agricultural Liaison. Mr. Stetler spoke about engaging in new technologies and working with water conservation, reduced runoff, pesticide and herbicide controls, and the basin management action plan.

Update on Kinder Morgan Ship Unloading Emissions - Dr. Garrity explained Kinder Morgan was a bulk ship unloading facility in Port Sutton. He displayed photographs of the unloading process, which involved Bauxite, pollution control equipment, and intake for combustion turbines. The dust generated from Bauxite was not toxic but had caused EPC to issue an emergency order to cease and desist. The ship was moved to another terminal to finish the unloading process, and a consent order would be developed for the activity.

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ENVIRONMENTAL RESOURCES MANAGEMENT DIVISION

PRF Annual Project Approvals - Mr. Tom Ash, EPC staff, distributed information, gave the history of the programs, and outlined the types of projects. Staff recommended approval of ten projects, denial of three, approval of the proposed timeline for the PRF cycle, and to authorize the EPC Chairman to execute individual agreements with the applicants on an annual basis, nonmaterial changes, and reasonable time extensions. Chairman Storms called for a motion for the proposed timeline for the PRF cycle and to authorize the EPC Chairman to execute individual agreements, nonmaterial changes, and individual time extensions in one cycle. **Commissioner Norman so moved, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioners Castor and Hagan were absent.) Chairman Storms called for a motion for approval of the projects. **Commissioner Scott so moved, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioners Castor and Hagan were absent.)

Regarding denial of the Lake Magdalene management plan development and restoration pilot project, Mr. Ash referenced an e-mail from Commissioner Blair regarding another lake management project, said the project should be linked to EPC staff and County stormwater staff, noted a lake management plan should have a stormwater component, discussed reasons for denial, and stated advertisement for the next cycle would start on Monday, February 20, 2006. Responding to Commissioner Norman, Mr. Ash said applications would be received until May 1, 2006, and would come before the EPC Board in October 2006, and he explained the review process. Commissioner Norman preferred to refer both projects to EPC staff and work on an interim project. Chairman Storms would support the Lake Magdalene project, but Commissioner Blair's project should go through the new PRF process. Following discussion, **Commissioner Norman moved to refer to staff, seconded by Commissioner Sharpe, and carried five to zero.** (Commissioners Castor and Hagan were absent.) Responding to Commissioner Blair, Dr. Garrity said EPC staff was working with County stormwater staff.

AIR MANAGEMENT DIVISION

Update on Ford Amphitheatre - Mr. Jerry Campbell, Director, EPC Air Management Division, reported settlement had been reached with Clear Channel Communications on November 29, 2005. The Florida State Fair Authority (Fair Authority) approved a separate settlement on December 8, 2005, and agreed to pay attorney fees and give control of concerts to Clear Channel Communications. Mr. Campbell showed photographs of lawn speakers, the permanent wall design, acoustical management system, and signage. He noted a

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citizen advisory committee had been formed, \$50,000 was paid to EPC to assist in monitoring the neighborhoods during concerts, and responding to complaints. The task force would meet on a monthly basis for several months and quarterly thereafter. Mr. Campbell discussed recent complaints and stated complaints had not been received on concerts associated with the Florida State Fair. Referencing the wall, Chairman Storms wanted that to be aesthetically pleasing.

OFF-THE-AGENDA ITEM

Commissioner Norman had met with Dr. Garrity to assign EPC staff to work with the city of Tampa, EPC, new owners, and St. Petersburg Times Forum management to implement an ordinance to eliminate future noise problems. **Commissioner Norman moved to refer to EPC staff, seconded by Commissioner Sharpe.** Chairman Storms suggested including problems associated with the industry at the Port of Tampa. **Commissioner Norman accepted that in the motion, which carried five to zero.** (Commissioners Castor and Hagan were absent.)

There being no further business, the meeting was adjourned at 11:33 a.m.

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

CHAIRMAN

ATTEST:

PAT FRANK, CLERK

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

Deputy Clerk

ssg

MONTHLY ACTIVITIES REPORT  
AIR MANAGEMENT DIVISION  
February, 2006

A.	Public Outreach/Education Assistance:	247
	1. Phone Calls:	<u>10</u>
	2. Literature Distributed:	<u>3</u>
	3. Presentations:	<u>4</u>
	4. Media Contacts:	<u>71</u>
	5. Internet:	<u>1</u>
	6. Host/Sponsor Workshops, Meetings, Special Events	<u>1</u>
B.	Industrial Air Pollution Permitting	
	1. Permit Applications Received (Counted by Number of Fees Received):	
	a. Operating:	<u>9</u>
	b. Construction:	<u>8</u>
	c. Amendments:	<u>0</u>
	d. Transfers/Extensions:	<u>1</u>
	e. General:	<u>0</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>7</u>
	b. Construction <sup>1</sup> :	<u>6</u>
	c. Amendments <sup>1</sup> :	<u>0</u>
	d. Transfers/Extensions <sup>1</sup> :	<u>0</u>
	e. Title V Operating <sup>2</sup> :	<u>6</u>
	f. Permit Determinations <sup>2</sup> :	<u>0</u>
	g. General:	<u>3</u>
	3. Intent to Deny Permit Issued:	<u>0</u>
C.	Administrative Enforcement	
	1. New cases received:	<u>2</u>
	2. On-going administrative cases:	
	a. Pending:	<u>8</u>
	b. Active:	<u>19</u>
	c. Legal:	<u>5</u>
	d. Tracking compliance (Administrative):	<u>25</u>
	e. Inactive/Referred cases:	<u>0</u>
	Total	<u>57</u>
	3. NOIs issued:	<u>0</u>
	4. Citations issued:	<u>1</u>
	5. Consent Orders Signed:	<u>1</u>
	6. Contributions to the Pollution Recovery Fund:	<u>\$3,231.25</u>
	7. Cases Closed:	<u>2</u>

D.	Inspections:	
	1. Industrial Facilities:	<u>12</u>
	2. Air Toxics Facilities:	
	a. Asbestos Emitters	<u>0</u>
	b. Area Sources (i.e. Drycleaners, Chrome Platers, etc...)	<u>5</u>
	c. Major Sources	<u>0</u>
	3. Asbestos Demolition/Renovation Projects:	<u>18</u>
E.	Open Burning Permits Issued:	<u>9</u>
F.	Number of Division of Forestry Permits Monitored:	<u>240</u>
G.	Total Citizen Complaints Received:	<u>78</u>
H.	Total Citizen Complaints Closed:	<u>48</u>
I.	Noise Sources Monitored:	<u>15</u>
J.	Air Program's Input to Development Regional Impacts:	<u>3</u>
K.	Test Reports Reviewed:	<u>80</u>
L.	Compliance:	
	1. Warning Notices Issued:	<u>11</u>
	2. Warning Notices Resolved:	<u>20</u>
	3. Advisory Letters Issued:	<u>8</u>
M.	AOR's Reviewed:	<u>0</u>
N.	Permits Reviewed for NESHAP Applicability:	<u>3</u>

FEES COLLECTED FOR AIR MANAGEMENT DIVISION  
February, 2006

	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)	\$ <u>5,600.00</u>
(b) Delegated operation permit for an air pollution source (20% of the amount collected is forwarded to the DEP and not included here)	\$ <u>6,000.00</u>
(c) Delegated General Permit (20% is forwarded to DEP and not included here)	\$ <u>0</u>
4. Non-delegated permit revision for an air pollution source	\$ <u>0</u>
5. Non-delegated permit transfer of ownership, name change or extension	\$ <u>0</u>
6. Notification for commercial demolition	
(a) for structure less than 50,000 sq ft	\$ <u>3,000.00</u>
(b) for structure greater than 50,000 sq ft	\$ <u>300.00</u>
7. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	\$ <u>2,100.00</u>
(b) renovation greater than 1000 linear feet or 1000 sq ft	\$ <u>2,000.00</u>
8. Open burning authorization	\$ <u>3,600.00</u>
9. Enforcement Costs	\$ <u>683.81</u>

## M E M O R A N D U M

**DATE:** March 7, 2006

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

**FROM:** Mary Jo Howell, Executive Secretary, Waste Management Division  
through  
Hooshang Boostani, Director of Waste Management

**SUBJECT:** **WASTE MANAGEMENT'S FEBRUARY 2006  
AGENDA INFORMATION**

### A. ADMINISTRATIVE ENFORCEMENT

1. New cases received	7
2. On-going administrative cases	104
a. Pending	11
b. Active	44
c. Legal	5
d. Tracking Compliance (Administrative)	30
e. Inactive/Referred Cases	14
3. NOI's issued	0
4. Citations issued	0
5. Consent Orders and Settlement Letters Signed	1
6. Civil Contributions to the Pollution Recovery Fund	17875
7. Enforcement Costs collected	713
9. Cases Closed	3

**B. SOLID AND HAZARDOUS WASTE**

1. Permits (received/reviewed)	61/63
2. EPC Authorization for Facilities NOT requiring DEP permit	0
3. Other Permits and Reports	
a. County Permits	4
b. Reports	56
4. Inspections (Total)	471
a. Complaints	22
b. Compliance/Reinspections	18
c. Facility Compliance	27
d. Small Quantity Generator	403
e. P2 Audits	1
5. Enforcement	
a. Complaints Received/Closed	22/19
b. Warning Notices Issued/Closed	2/1
c. Compliance letters	50
d. Letters of Agreement	1
e. Agency Referrals	7
6. Pamphlets, Rules and Material Distributed	201

**C. STORAGE TANK COMPLIANCE**

1. Inspections	
a. Compliance	120
b. Installation	18
c. Closure	7
d. Compliance Re-Inspections	12
2. Installation Plans Received/Reviewed	6/9
3. Closure Plans & Reports	
a. Closure Plans Received/ Reviewed	4/8
b. Closure Reports Received/Reviewed	5/8
4. Enforcement	
a. Non-compliance Letters Issued/Closed	73/16
b. Warning Notices Issued/Closed	1 /2
c. Cases referred to Enforcement	3
d. Complaints Received/Investigated	1/1
e. Complaints Referred	00
5. Discharge Reporting Forms Received	06
6. Incident Notification Forms Received	02
7. Cleanup Notification Letters Issued	01
8. Public Assistance	200+

**D. STORAGE TANK CLEANUP**

1. Inspections	26
2. Reports Received/Reviewed	98/108
a. Site Assessment	17/18
b. Source Removal	2/1
c. Remedial Action Plans (RAP's)	8/9
d. Site Rehabilitation Completion Order/ No Further Action Order	3/3
e. Active Remediation/Monitoring	28/40
f. Others	40/37
3. State Cleanup	
a. Active Sites	NO LONGER ADMINISTERED
b. Funds Dispersed	

**E. RECORD REVIEWS - 20**

**F. PUBLIC INFORMATION PROJECTS - 4**

**ACTIVITIES REPORT  
WATER MANAGEMENT DIVISION  
FEBRUARY, 2006**

**A. ENFORCEMENT**

1. New Enforcement Cases Received:	1
2. Enforcement Cases Closed:	4
3. Enforcement Cases Outstanding:	46
4. Enforcement Documents Issued:	3
5. Recovered costs to the General Fund:	\$1,250.00
6. Contributions to the Pollution Recovery Fund:	\$5,297.00

<u>Case Name</u>	<u>Violation</u>	<u>Amount</u>
a. Grandview MHP	Effluent discharge/Placement of c/s in service without acceptance letter	\$2,500.00
b. Rubber Products, Inc.	Ind. wastewater discharge/ Unpermitted discharge	\$1,797.00
c. Middle School	Construction w/out a permit	\$1,000.00

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

1. Permit Applications Received:	44
a. Facility Permit:	5
(i) Types I and II	1
(ii) Types III	4
b. Collection Systems-General	21
c. Collection Systems-Dry Line/Wet Line:	18
d. Residuals Disposal:	0
2. Permit Applications Approved:	13
a. Facility Permit:	1
b. Collection Systems-General:	18
c. Collection Systems-Dry Line/Wet Line:	12
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:	1
a. Facility Permit:	0
b. Collection Systems-General:	0
c. Collection Systems-Dry Line/Wet Line:	1
d. Residuals Disposal:	0
6. Permit Applications Outstanding:	87
a. Facility Permit:	18
b. Collection Systems-General:	43
c. Collection Systems-Dry Line/Wet Line:	26
d. Residuals Disposal:	0
7. Permit Determination:	4
8. Special Project Reviews:	0
a. Reuse:	0
b. Residuals/AUPs:	0
c. Others:	0
<b>C. INSPECTIONS - DOMESTIC</b>	
1. Compliance Evaluation:	11
a. Inspection (CEI):	1
b. Sampling Inspection (CSI):	8
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	2
2. Reconnaissance:	58
a. Inspection (RI):	25
b. Sample Inspection (SRI):	0
c. Complaint Inspection (CRI):	32
d. Enforcement Inspection (ERI):	1
3. Engineering Inspections:	40
a. Reconnaissance Inspection (RI):	4
b. Sample Reconnaissance Inspection (SRI):	0
c. Residual Site Inspection (RSI):	0
d. Preconstruction Inspection (PCI):	12
e. Post Construction Inspection (XCI):	23
f. On-site Engineering Evaluation:	1
g. Enforcement Reconnaissance Inspection (ERI):	0

<b>D. PERMITTING/PROJECT REVIEW - INDUSTRIAL</b>	60
1. Permit Applications Received:	2
a. Facility Permit:	0
(i) Types I and II	0
(ii) Type III with Groundwater Monitoring:	1
(iii) Type III w/o Groundwater Monitoring:	1
b. General Permit:	0
c. Preliminary Design Report:	0
(i) Types I and II	0
(ii) Type III with Groundwater Monitoring:	0
(iii) Type III w/o Groundwater Monitoring:	0
2. Permits Recommended to DEP for Approval:	0
3. Special:	0
a. Facility Permits:	0
b. General Permits:	0
4. Permitting Determination:	0
5. Special Project Reviews:	58
a. Phosphate:	6
b. Industrial Wastewater:	9
c. Others:	43
<b>E. INSPECTIONS - INDUSTRIAL</b>	
1. Compliance Evaluation:	17
a. Inspection (CEI):	17
b. Sampling Inspection (CSI):	0
c. Toxics Sampling Inspection (XSI):	0
d. Performance Audit Inspection (PAI):	0
2. Reconnaissance:	16
a. Inspection (RI):	10
b. Sample Inspection (SRI):	1
c. Complaint Inspection (CRI):	5
d. Enforcement Reconnaissance Inspections (ERI):	0
3. Engineering Inspections:	1
a. Compliance Evaluation (CEI):	1
b. Sampling Inspection (CSI):	0
c. Performance Audit Inspection (PAI):	0
d. Complaint Inspection (CRI):	0
e. Enforcement Reconnaissance Inspections (ERI):	0

<b>F. INVESTIGATION/COMPLIANCE</b>	
1. Citizen Complaints:	43
a. Domestic:	38
(i) Received:	24
(ii) Closed:	14
b. Industrial:	5
(i) Received:	3
(ii) Closed:	2
2. Warning Notices:	12
a. Domestic:	9
(i) Received:	7
(ii) Closed:	2
b. Industrial:	3
(i) Received:	3
(ii) Closed:	0
3. Non-Compliance Advisory Letters:	40
4. Environmental Compliance Reviews:	118
a. Industrial:	31
b. Domestic:	87
5. Special Project Reviews:	0
<b>G. RECORD REVIEWS</b>	10
1. Permitting:	9
2. Enforcement:	1
<b>H. ENVIRONMENTAL SAMPLES ANALYZED/REPORTS REVIEWED FOR:</b>	
1. Air Division:	127
2. Waste Division:	0
3. Water Division:	13
4. Wetlands Division:	0
5. ERM Division:	126
6. Biomonitoring Reports:	2
7. Outside Agency:	25
<b>I. SPECIAL PROJECT REVIEWS:</b>	6
1. DRIs:	0
2. ARs:	2
3. Technical Support:	3
4. Other:	1

**EPC WETLANDS MANAGEMENT DIVISION  
BACKUP AGENDA  
February 2006**

A. General	Totals
1. Telephone Conferences	914
2. Unscheduled Citizen Assistance	112
3. Scheduled Meetings	204
4. Correspondence	565
B. Assessment Reviews	
1. Wetland Delineations	59
2. Surveys	44
3. Miscellaneous Activities in Wetland	18
4. Impact/ Mitigation Proposal	37
5. Tampa Port Authority Permit Applications	38
6. Wastewater Treatment Plants (FDEP)	3
7. DRI Annual Report	4
8. Land Alteration/Landscaping	1
9. Land Excavation	1
10. Phosphate Mining	2
11. Rezoning Reviews	47
12. CPA	0
13. Site Development	67
14. Subdivision	84
15. Wetland Setback Encroachment	5
16. Easement/Access-Vacating	2
17. Pre-Applications	41
18. On-Site Visits	188
C. Investigation and Compliance	
1. Complaints Received	28
2. Complaints Closed	58
3. Warning Notices Issued	24
4. Warning Notices Closed	14
5. Complaint Inspections	53
6. Return Compliance Inspections	45
7. Mitigation Monitoring Reports	20
8. Mitigation Compliance Inspections	40
9. Erosion Control Inspections	74
D. Enforcement	
1. Active Cases	36
2. Legal Cases	3
3. Number of "Notice of Intent to Initiate Enforcement"	3
4. Number of Citations Issued	0
5. Number of Consent Orders Signed	7
6. Administrative - Civil Cases Closed	0
7. Cases Referred to Legal Department	0
8. Contributions to Pollution Recovery	\$24,397.00
9. Enforcement Costs Collected	\$1,915.00

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
POLLUTION RECOVERY TRUST FUND  
AS OF 02/28/06**

Balance as of 10/01/05	*	\$1,491,768
Interest Accrued		25,972
Deposits	FY06	162,713
Disbursements	FY06	133,099
Pollution Recovery Fund Balance		\$1,547,354

**Old Encumbrances**

Remedial Illegal Dump Asbestos (66)		4,486
USF Seagrass Restoration (99)		1,549
HCC Seagrass Restoration		3,319
Agr Pesticide Collection (100)		18,355
Riverview Library Invasive Plant Removal		10,000
Simmons Park Invasive Plant Removal		60,000
Water Drop Patch/Girl Scouts		7,350
Artificial Reef Program		103,230
Pollution Prevention/Waste Reduction (101)		24,225
PRF Project Monitoring		28,110
Total		260,624

**FY2006 Approved Projects**

HCC Land Based Sea Grass Nursery		20,000
Seagrass Restoration & Longshore Bar Recovery		75,000
Nature's Classroom Phase III		188,000
2005 State of the River		4,727
Seawall Removal Fort Brooke Park		100,000
Analysis of Sources of Fecal Indicator Bacteria		125,000
Pollution Monitoring Pilot Project		45,150
Industrial Facilities Stormwater Inspection Program		28,885
Agriculture Pesticide Collection		24,000
Agriculture Best Mgmt Practice Implementation		150,000
Total		760,762

**Total of Encumbrances**

\$1,021,386

**Minimum Balance**

120,000

**Balance Available 2/28/06**

\$405,968

**\* 10-002-910 Projects included in 10/1/05 Balance**

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		\$ 683,627

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  
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 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 FEBRUARY 28, 2006

Fund Balance as of 10/01/05	\$ 608,646
Interest Accrued	7,232
Disbursements FY06	150,000

Fund Balance	\$ 465,878
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Encumbrances Against Fund Balance:

SP625 Marsh Creek/Ruskin Inlet	\$ 47,500
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	248,230

Total of Encumbrances	\$ 465,878
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Fund Balance Available February 28, 2006	\$ - 0 -
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## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** Legal Case Summary for March 2006

**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 March 2006 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:** March 2006 EPC Legal Case Summary

**EPC LEGAL DEPARTMENT MONTHLY REPORT**  
**March 2006**

**A. ADMINISTRATIVE CASES**

**NEW CASES** [ 2 ]

**Gulf Coast Recycling v. EPC and DEP** [LCHP06-002]: On January 4, 2006, the EPC received a petition for hearing from Gulf Coast Recycling regarding certain conditions in a draft air operations permit the EPC issued to them. The parties are meeting to try to agree upon appropriate conditions to minimize the release of lead to the environment. (RM)

**Florida Veal Processors v. EPC** [LCHP06-004]: Florida Veal Processors, located in Wimauma, operates a waste water treatment system associated with the meat processing facility. The EPC issued a Notice of Violation, under its state delegated authority, for multiple long standing violations. Florida Veal Processors filed a petition for hearing to dispute the allegations. (RM)

**EXISTING CASES** [ 4 ]

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

**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 April 11, 2006. The parties have sought an additional extension of time to continue negotiations. The parties are in negotiations to resolve the case. (AZ)

**Debartolo Development, LLC** [LEPC05-037]: On December 5, 2005, the Legal Department received a request for an extension of time to file an appeal of the decision denying proposed wetland impacts for Riverview Bell Plaza. The Legal Department has approved the request and provided the Appellant with a deadline of January 5, 2006 to file an appeal. The Appellant filed an appeal on January 4, 2006 challenging the denial of wetland impacts. The matter has been referred to a Hearing Officer and the parties are progressing through discovery. (AZ)

## RESOLVED CASES [ 0 ]

### B. CIVIL CASES

## NEW CASES [ 1 ]

**BOJ Corporation** [LEPC06-005]: Authority was granted in February 2006 to take appropriate action against BOJ Corporation for violations concerning the operation of underground storage tanks on a property used for a gasoline service station. The EPC is preparing to file a lawsuit for the referenced violations. (AZ)

## 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)

**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' lawsuit, 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 EPC Commission approved the settlement proposal on November 17, 2005 meeting. The EPC settled the cases on November 29, 2005, with CCE and December 8, 2005, with the Fair. The parties moved to dismiss the cases. (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. Per the above description, all Amphitheatre matters are settled and pending dismissal. (RT)

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

**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)

**Jozsi, Daniel A. and Celina v. EPC and Winterroth** [LEPC05-025]: Daniel A. and Celina Jozsi requested an appeal of a Consent Order entered into between James Winterroth and the EPC Executive Director. The appeal was not timely filed and the EPC dismissed the appeal. On December 8, 2005, the Jozsis appealed the order dismissing the appeal to the circuit court. The EPC is waiting to hear from the circuit court regarding further actions. (AZ)

#### **RESOLVED CASES [ 0 ]**

#### **C. OTHER OPEN CASES [ 15 ]**

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.

**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. The suit could have been filed October 2005 but has not yet been filed. (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. On November 4, 2005 the Appellant filed a second request for extension of time. The Legal Department granted the request and provided the Appellant with a deadline for December 9, 2005 to file an appeal. On December 5, 2005, the Appellant once again requested an extension and the Legal Department granted a third extension of time. The Appellant has until June 5, 2006 to file an appeal in this matter. (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. On August 10, 2005, a third extension of time was provided to Mosaic to file the appeal before December 7, 2005. Finally, on December 1, 2005, Mosaic Phosphates filed a fourth request for an extension of time which has been granted. The Appellant shall have until January 31, 2006 to file an appeal. 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. A third request was filed on November 15, 2005 and the Legal Department provided the petitioner with a deadline of February 20, 2006 to file a petition. (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. On November 8, 2005 the Appellant filed a second request for extension of time. The Legal Department granted the request and provided the Appellant with a deadline for December 9, 2005 to file an appeal. On December 8, 2005, the Appellant once again requested an extension and the Legal Department granted a third extension of time. The Appellant has until June 5, 2006 to file an appeal in this matter. (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. On November 8, 2005 the Appellant filed a second request for extension of time. The Legal Department granted the request and provided the Appellant with a deadline for December 9, 2005 to file an appeal. On December 8, 2005, the Appellant once again requested an extension and the Legal Department granted a third extension of time. The Appellant has until June 5, 2006 to file an appeal in this matter. (AZ)

**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. On November 23, 2005, Mr. Grimaldi filed a fourth request for an extension of time which was approved by the Legal Department. The Appellant shall have until March 1, 2006 to file an appeal. (AZ)

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

**Murphy Oil, Inc.** [LEPC05-030]: On October 4, 2005, Murphy Oil USA, Inc. filed a request for an extension of time to file a petition for administrative hearing regarding a revised draft construction permit. The Appellant requested additional time to review and respond to EPC comments. The Legal Department has approved the request and provided the Appellant with a deadline of January 2, 2006. The Petitioner filed a second request for extension on December 21, 2005 which was granted by the Legal Department. The Petitioner has until April 3, 2006 to file a petition in this matter. (RT)

**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 approved the request and provided the petitioner with a deadline of December 12, 2005 to file a petition. On December 7, 2005, the petitioner filed a second request for extension of time which was granted. The Petitioner had until February 10, 2006 to file a petition. On January 27, 2006, the Petitioner filed a third request for extension of time. The request was granted and the Petitioner has until April 11, 2006 to file a petition in this matter.. (AZ)

**DiMare Ruskin, Inc.** [LEPC05-034] : On November 3, 2005, DiMare Ruskin, Inc. filed a second 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 March 6, 2006, to file a petition. The parties are seeking resolution of the matter and DiMare filed an additional extension request. (RM)

**America's Body Company** [LEPC05-035] : On November 23, 2005 the Legal Department received a request for an extension of time to file a petition for administrative hearing concerning a draft permit. The Legal Department has approved the request and provided the petitioner with a deadline of January 30, 2006 to file a petition in this matter. The Company filed an untimely second request for extension which the EPC dismissed, but they are now seeking to have the request deemed timely due to excusable neglect. (RM)

**Eastern Associated Terminals, Inc.** [LEPC05-38] : On December 15, 2005, the Legal Department received a request for an extension of time to file a petition for administrative hearing concerning a Title V permit renewal. The Legal Department has approved the request and provided the petitioner with a deadline for February 13, 2006 to file a petition. The Company filed an untimely second request for extension which the EPC dismissed with leave to amend and they are now seeking to have the request deemed timely due to excusable neglect. (RT)

**Master Packaging** [LEPC05-039]: On December 22, 2005 the Legal Department received a request for an extension of time to file a petition for an administrative hearing concerning a Title V permit renewal. The Legal Department granted the request and provided the petitioner with a deadline of March 22, 2006 to file a petition. (RT)

**Kinder Morgan v. EPC** [LCHP06-003]: On February 3, 2006, the EPC issued an emergency order to Kinder Morgan to immediately cease all material handling that may result in excessive dust emissions or runoff to Waters of the County. Kinder Morgan filed an extension of time request to challenge the order. Kinder Morgan handles all types of dry goods and mineral at the Port of Tampa, adjacent to the TECO Gannon Station. Their recent handling of bauxite led to fouling of the TECO facility. The EPC and Kinder Morgan are seeking to resolve the matter via a Consent Order. (RT)



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 15, 2006

**Subject:** Amendment to the bylaws of the Citizens Environmental Advisory Council (CEAC)

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

**Division:** Legal Department

**Recommendation:** Approve proposed changes to the CEAC Bylaws.

**Brief Summary:** In accordance with Article V, Section 1 of the CEAC Bylaws, the EPC must approve any proposed changes to the CEAC Bylaws. The CEAC members proposed amendments that would delete the provision regarding dismissing appointees who miss three meetings in a row and it would streamline the Chair and Vice-Chair nomination procedures by having it all conducted during one meeting at the beginning of the calendar year.

**Background:** In accordance with Article V, Section 1 of the CEAC Bylaws, the EPC must approve any changes to the CEAC Bylaws that the CEAC membership has approved. At the CEAC meeting on March 6, 2006, the members approved by in excess of a two-thirds vote three amendments. The first change is to Article II, Section 3. This proposed amendment would delete the provision regarding dismissing members who miss three meetings in a row, but it maintains that missing four meetings in a year is grounds for dismissal unless the appointing Commissioner or City reappoints the person. The second amendment just clarifies the proper name and new address of the EPC Legal Department in Article III, Section 4. The final change is to Article IV, Sections 1 and 6. This change deletes the two-month, two-part nomination process for Chair and Vice-Chair that is conducted in October and November of each year by a sub-committee prior to a full CEAC vote. The new proposal just requires the nomination and election of a Chair and Vice-Chair at the first meeting of CEAC during every calendar year.

**List of Attachments:** Proposed Amended CEAC Bylaws

**HILLSBOROUGH COUNTY  
CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE  
BYLAWS**

**ARTICLE I**

**NAME AND PURPOSE**

- SECTION 1. The name of this organization shall be the Hillsborough County Citizens Environmental Advisory Committee. This Committee was established by the members of the Environmental Protection Commission (EPC), Hillsborough County, Florida in March, 1988.
- SECTION 2. The purposes and scope of the activities of this Committee shall be the following:
- A. To review and evaluate county environmental issues as requested by the EPC.
  - B. To initiate proposals and forward them to the EPC as recommendations for action.

**ARTICLE II**

**MEMBERSHIP**

- SECTION 1. The Committee shall be made up of a cross-section of citizens throughout Hillsborough County. The membership of the Hillsborough County Citizens Environmental Advisory Committee shall consist of a maximum of seventeen (17) members, two to be appointed by each EPC member, and one each to be appointed by the Mayors or City Council of the cities of Tampa, Plant City and Temple Terrace.
- SECTION 2. All members of this Committee shall serve for a two-year term, beginning January 1 and terminating December 31 of the second calendar year or at the pleasure of the EPC or the applicable City pursuant to appointments made by the individual EPC members and City Officials.
- SECTION 3. Any member who ~~misses more than 3 meetings three consecutive meetings or four in the calendar year, would be ineligible to continue serving on the Committee, at which time the Chairman of the Committee shall notify the appointing commissioner about the member's ineligibility will result in a request to the appointing commissioner (or city) to appoint a new member.~~ misses more than 3 meetings three consecutive meetings or four in the calendar year, would be ineligible to continue serving on the Committee, at which time the Chairman of the Committee shall notify the appointing commissioner about the member's ineligibility will result in a request to the appointing commissioner (or city) to appoint a new member. The appointing commissioner (or city) will ~~may~~ appoint a replacement member or may reappoint the member who has become ineligible due to extenuating circumstances.

**ARTICLE III**

**MEETINGS**

- SECTION 1. Notice of the time, place and purpose of all regular and special meetings shall be mailed to each member of the Committee, not less than five days before such meeting.
- SECTION 2. A majority of the total members of the entire Committee shall constitute a quorum for the transaction of any business at any regular meeting of the Committee. A majority of those Committee members designated by the Chairman of the Committee to attend any special meeting shall constitute a quorum for the transaction of business at any special meeting of the Committee.
- SECTION 3. Only the appointed members shall be entitled to vote at any meeting of the Committee.
- SECTION 4. CEAC will designate a person to be in charge of taking minutes at their meetings. The liaison from EPC's Legal Department Office of Legal Affairs and Coordination shall assist with recording equipment and will maintain all Committee records at 3629 Queen Palm Drive Tampa, FL 33619 ~~900 9<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Tampa, FL 33605.~~

## ARTICLE IV

### OFFICERS

SECTION 1. The members of the Committee shall elect from their own membership, the following officers at the last first regular meeting of the calendar year.

- A. Chairman
- B. Vice-Chairman

SECTION 2. The terms of office for all officers shall be one year beginning at the first regular Committee meeting of the year and terminating at the last regular Committee meeting of the year, or until their successors are elected at the next regular meeting of the Committee.

SECTION 3. Any officer may be re-elected for the same office.

SECTION 4. A vacancy in any office may be filled by the Committee at any regular meeting.

SECTION 5. Duties:

- A. Chairman: The Chairman shall preside at all meetings of the Committee and conduct all meetings of the Committee. He or she shall forward action taken by the Committee to the EPC for whatever action the EPC deems appropriate. The Chairman shall appoint subcommittees as appropriate and deemed necessary by the Committee, and notify the EPC of such appointments.
- B. Vice-Chairman: In the absence of the Chairman or in the event of his or her inability to act, the Vice-Chairman shall exercise all powers and duties of the Chairman.

SECTION 6. Nominations and elections of the Chairman and Vice-Chairman shall be conducted at the first regularly scheduled meeting of each calendar year. ~~The Chairman shall appoint a Nominating Committee for the purpose of nominating officers. This Committee shall be composed of not less than three (3) members and they shall elect their own Chairman. The Committee shall be appointed at the October meeting and shall make their nominations public at the November meeting.~~

## ARTICLE V

### AMENDMENTS

SECTION 1. These bylaws may be amended by the two-thirds vote of the membership present and voting at any regular meeting of the Committee after notice of such proposals for an amendment has been given to all members as provided in these bylaws. All such amendments shall be subject to approval by the EPC.

## ARTICLE VI

### RULES OF PROCEDURE

SECTION 1. All meetings of the Committee shall be conducted in an informal manner unless otherwise specified in these bylaws.

SECTION 2. Agenda items are to be determined by priorities as set by the full Committee. All requests from the EPC shall be honored.

**ARTICLE VII**

**RIGHTS AND PRIVILEGES**

SECTION 1. No individual member shall possess any right, interest, or privilege which may be transferable by that member or which shall continue in any manner if the membership of such individual member ceases.

(eeac\bylaws.amd)  
amended 7/24/95  
amended 5/18/00  
amended 3/16/06



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** Conduct a public hearing to approve amendments to Chapter 1-2 (Administrative Procedures Rule), Rules of the EPC

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

**Division:** Legal Department

**Recommendation:**

Conduct a public hearing to consider amendments to Chapter 1-2 (Administrative Procedures Rule), Rules of the EPC.

**Brief Summary:**

Pursuant to the EPC Act, the EPC Board must hold a noticed public hearing to approve a rule amendment. The EPC staff requests that the EPC Board approve the amendments in the attached Chapter 1-2 (Administrative Procedures Rule), Rules of the EPC, at the regularly scheduled meeting on March 16, 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. On February 16, 2006, the EPC Board approved EPC staff's request to hold a rule amendment public hearing at the regularly scheduled meeting on March 16, 2006.

As discussed with the EPC Board in previous meetings, the EPC Legal Department has reviewed its Administrative Procedures Rule Chapter 1-2 and determined that amendments must be made to update the rule in accordance with state administrative law principles. The rule amendment will provide for more effective procedural due process for potentially adversely affected parties. The rule amendments track more closely the state Administrative Procedures Act in chapter 120, Florida Statutes. The proposed rule is attached and will be fully discussed at the March EPC Board meeting. The staff has issued appropriate notices of the rule adoption process and held a public workshop on February 24, 2006. CEAC reviewed and approved the amendments on March 6, 2006.

**List of Attachments:** Draft proposed Chapter 1-2, Rules of the EPC

- DRAFT Rule – March 7, 2006 -

**RULES OF THE  
ENVIRONMENTAL PROTECTION  
COMMISSION**

**CHAPTER 1-2  
ADMINISTRATIVE PROCEDURES**

**PART I GENERAL PROVISIONS**

**(Applicable to all Parts)**

**1-2.00 Intent**

**1-2.001 Definitions**

**1-2.01 Documents**

**1-2.02 Legal Representation**

**1-2.03 Discovery**

**1-2.04 Options for Administrative Review**

**1-2.05 Request for Decision of the Executive  
Director**

**1-2.051 Public Notice Requirements**

**1-2.06 Petitions Invoking Several Procedural  
Processes (~~repealed~~)**

**1-2.07 Appointment of Hearing Officers,  
Mediators and Special Masters**

**1-2.08 Judicial Review**

**PART II (Informal Process)**

**1-2.10 Pre-Application Meetings**

**1-2.11 Request for Mediation**

**1-2.12 Mediation Process**

**PART III (Estoppel)**

**1-2.20 Request for Hearing to Determine  
Estoppel**

**PART III IV (Chapter 84-446 Appeal)**

**1-2.30 Administrative Review**

**1-2.31 Filing, Service**

**1-2.32 Process Before the Hearing Officer**

**1-2.33 Administrative Hearing**

**1-2.34 Report and Recommendation**

**PART IV (Chapter 120 Delegated Programs)**

**1-2.40 Appeal Petition of Permitting Chapter  
120 Delegated Action Decision**

**PART VI (Variance or Waiver)**

**1-2.50 Request for Variance or Waiver**

**PART VII (Private Property Rights)**

**1-2.60 Claim Under the Bert Harris Act**

**1-2.61 Claim Under the Dispute Resolution  
Act**

**PART VIII (Rulemaking)**

**1-2.70 General Provisions**

**1-2.71 Adoption Procedures**

**1-2.72 General Procedures for Challenging the  
Validity of an Existing Rule or  
Proposed Rule**

**1-2.73 Challenging Proposed Rules; Special  
Provisions**

**1-2.74 Challenging Existing Rules; Special  
Provisions**

**PART I GENERAL PROVISIONS**

**(Applicable to all parts)**

**1-2.00 INTENT GENERAL PROVISIONS  
(Applicable to all parts)**

It is the Commission's intent to encourage non-adversarial resolution of disputes whenever possible, and to facilitate prompt and efficient solutions for the protection of the environment. It is recognized that diverse environmental concerns and coordinating mechanisms between agencies, federal, state, regional and local, require and provide differing procedures for dispute resolution that in themselves can cause confusion. The following rule attempts to identify the available processes and clarify the procedures for their application.

**Section History - amended \_\_\_\_\_, 2006**

**1-2.001 DEFINITIONS**

**For the purposes of this Chapter, the term:**

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

**(b) Executive Director means the  
environmental director appointed by the  
Commission pursuant to Section 7 of Chapter  
84-446, Laws of Florida or staff authorized in**

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writing to sign agency actions on his or her behalf.

Section History - adopted \_\_\_\_\_, 2006

### 1-2.01 DOCUMENTS

1. (a) All documents filed pursuant to the procedures in this rule shall contain the name of the person filing, his their address and telephone number, his their signature, the file number to which the request applies if any, and a certificate of service attesting to having simultaneously provided copies of the document to all known parties involved in the proceeding. The Executive Director or the Legal Department shall be served with a copy of all documents, except as may be filed pursuant to Part II below.

2. (b) All documents received after 5 P.M., including facsimile documents where permitted, shall be entered as received the following regular business day.

3. (c) The original initiating document for all processes shall be served upon the Commission or the Executive Director as provided in each part. The original of subsequent documents shall be provided to the appropriate Hearing Officer, mediator or party.

Section History - amended \_\_\_\_\_, 2006

### 1-2.02 LEGAL REPRESENTATION

It is not required that a party have legal counsel, although in some cases it may be advisable. It is intended that these procedures be as informal as possible, without prejudicing any party's rights, so that prompt and non-adversarial resolution can be achieved.

Section History - adopted August 21, 1997

### 1-2.03 DISCOVERY

Public Records Act requests shall be processed according to the requirements of law.

Any person may arrange directly with staff to view the administrative files of the agency during regular business hours. Copies will be made upon payment of cost. Each party to any of the proceedings below may avail himself itself of discovery at his its own expense as allowed by the Rules of Civil Procedure or as permitted by the Hearing Officer, Administrative Law Judge or mediator.

Section History - amended \_\_\_\_\_, 2006

### 1-2.04 OPTIONS FOR ADMINISTRATIVE REVIEW

**Pre-Application Meeting.** If an applicant citizen is uncertain regarding the applicable regulations or requirements for compliance with environmental regulations, he the applicant may request a pre-application meeting with staff as provided in Part II below.

**Mediation.** If a regulated—entity substantially affected party disputes a fact or interpretation of the regulations asserted by staff, it may request mediation as provided in Part II below.

**Estoppel Rights.** If an applicant for a permit or Director's authorization alleges that EPC the Commission or staff is estopped from taking a certain position in a matter because of a prior act of the EPC Commission or staff, he the applicant may request review to determine applicability of estoppel as provided in Part III below.

**84-446 Appeal.** If a regulated—entity substantially affected party challenges the correctness of a decision or order of the Executive Director issued pursuant to Chapter 84-446 and the rules adopted thereunder, it may file an appeal for administrative hearing pursuant to Part III IV below.

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**Appeal Petition Under Chapter 120 Delegated Program.** If a ~~regulated entity~~ substantially affected party challenges the correctness of a permit decision or order of the Executive Director issued pursuant to delegation from the Florida Department of Environmental Protection (DEP) or the Southwest Florida Water Management District, it may file a Chapter 120, Florida Statutes (F.S.) appeal petition as provided in Part IV below.

**Variance or Waiver.** If a regulated entity seeks a variance or waiver from existing regulations and ~~can demonstrate that the purpose of the regulation will otherwise be met,~~ it may apply as provided in Part VI below.

**Private Property Rights.** If a regulated entity seeks relief as provided by ~~Ssection~~ Section 70.001, Florida Statutes F.S. because an existing use or vested right is inordinately burdened by the application of law, or that its use is unreasonably or unfairly burdened, it may request review pursuant to Part VII.

**Dispute Resolution.** If a regulated entity seeks relief as provided by ~~Ssection~~ Section 70.51, Florida Statutes F.S. because an enforcement action or development order unreasonably or unfairly burdens the use of its land or property, it may request review pursuant to Part VII.

Section History - amended , 2006

#### **1-2.05 REQUEST FOR DECISION OF THE EXECUTIVE DIRECTOR**

Any person ~~denied permission to engage in proposed activity upon his property because of~~ substantially affected by the application of Chapter 84-446, Laws of Florida, and the rules promulgated thereby, may request a ~~W~~ written ~~D~~ decision of the Executive Director. Except where a different time is provided by another rule, the Executive Director shall issue a written

decision setting forth ~~his~~ the position and reasons within 30 calendar days of a written request therefore. The written decision shall include a point of entry to challenge the decision pursuant to section 1-2.30.

Section History - amended , 2006

#### **1-2.051 PUBLIC NOTICE REQUIREMENTS**

**(a) General Noticing.** Any applicant for any initial permit or initial authorization, which includes enforceable conditions, from the Executive Director shall provide notice to citizens who may be affected by the issuance of the permit or authorization. Unless otherwise specified in the Rules of the Commission or under Chapter 120, F.S., the following notice shall be provided at a minimum. The notice must include posting a sign in a conspicuous place upon the property which is the subject of the permit or authorization. The posted sign must be no smaller than a 8.5 inch by 11 inch sign and must be legible from the nearest public road. The notice format shall be provided by the staff but shall be posted by the applicant and at the applicant's expense, no later than 15 calendar days after submittal of any application to the Executive Director. Signage must remain on the property for at least 30 calendar days but must be removed by the applicant within 30 calendar days of the issuance or denial of the permit or authorization sought. The notice must include the following: the location of the proposed site for permit or authorization; the type of permit or authorization requested; and how to obtain additional information from the staff regarding the proposed permit or authorization. Notice under this subsection (a) is not required for the following: renewals, modifications, transfers, state-delegated general/generic permits, authorizations provided under Chapters 1-4 and 1-14, permits issued for sewage collection systems with a gravity connection, those authorizations that meet the

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criteria of section 1-11.09(1)(c) of the Rules of the Commission, and those initial operating permits following a construction permit.

**(b) Projects of Heightened Concern.**

As further conditioned below, subsection (b) applies to initial permits and initial authorizations, and also to renewals, modifications, transfers, and other similar authorizations (collectively referred to as "activity"). For those activities which, because of their size, potential effect on the environment or the public, controversial nature, or location, are reasonably expected by the Executive Director to result in a heightened public concern or likelihood of request for a Chapter 120 petition or an appeal pursuant to section 9 of Chapter 84-446, Laws of Florida, the following is required:

(1) Within 20 calendar days of notice from the Executive Director of the potential for heightened concern, the applicant shall provide additional notice at the applicant's expense by mail or hand delivery to the following: (i) immediately adjacent property owners; (ii) all neighborhoods included in the Registry of Neighborhood Organizations pursuant to the Hillsborough County Neighborhood Bill of Rights, adopted in the Land Development Code in section 10.03.02 that are located within one mile of the activity; and (iii) all neighborhood organizations registered with the Commission, which lie within one mile of the activity. The staff will provide the applicant with both potentially affected neighborhood organization lists, and within 10 calendar days of receipt of the lists, the applicant shall provide the staff written evidence that the adjacent property owners and neighborhood organizations were notified. The notice must include the following: the location of the proposed site for the activity; the type of activity requested; and how to obtain additional information from the staff regarding the proposed activity.

(2) Within 20 calendar days of notice from Executive Director of the potential for heightened concern, the applicant shall also post

additional signage that meets the following criteria: the posted sign must be no smaller than a 30 inch by 48 inch sign and must be legible from the nearest public road. The notice format shall be provided by the staff but shall be posted by the applicant and at the applicant's expense. Signage must remain on the property for at least 30 calendar days but must be removed by the applicant within 30 calendar days of the denial or issuance of the activity being sought. The notice must include the following: the location of the proposed site for the activity; the type of activity requested; and how to obtain additional information from the staff regarding the proposed activity.

(3) Upon request from any substantially affected person or the Executive Director, the staff may also conduct a public workshop to be held no later than 10 calendar days before the intended agency action is issued.

(4) Upon issuance of the agency action from the Executive Director the applicant shall publish at the applicant's expense, in a newspaper of general circulation, as defined in Chapter 50, F.S., within the affected area a notice of agency action or intended agency action. The notice must include the notice of rights so that substantially affected parties may have the opportunity to file a petition or appeal. The requirements in this subsection are in addition to any other requirements contained in any other rules or laws.

Section History – adopted \_\_\_\_\_, 2006

## 1-2.06 PETITIONS INVOKING SEVERAL PROCEDURAL PROCESSES

~~1. A petitioner may preserve his right to appeal under Parts III or IV by filing a notice with a request to stay processing pending resolution under one of the other parts of this rule. If the petitioner or EPC believes that resolution is unlikely, either party may recommence the appeal proceedings with written notice of 30 days to the other party.~~

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~~2. When a petitioner requests several separate procedures as outlined in Parts II through VI below, the Legal Department will request a meeting to reach agreement as to the order and process by which they will be most efficiently handled.~~

Section History - repealed \_\_\_\_\_, 2006

### 1-2.07 APPOINTMENT OF HEARING OFFICERS, MEDIATORS AND SPECIAL MASTERS

1. (a) Upon recommendation of the Executive Director, EPC the Commission will appoint as many Hearing Officers as needed to hear appeals pursuant to section 9 of Chapter 84-446, and such other matters as designated by the Commission. Except as provided in paragraphs ~~2 and 3~~ (b) below, cases will be assigned to ~~the~~ Hearing Officers on rotation and upon determination that no conflict of interest exists.

~~2. (b) In the case of claims filed under Part II, the Hearing Officer will be those assigned may be a Hearing Officer regularly assigned by the County pursuant to Section 3.8.3.5 of the Hillsborough County Land Development Code.~~

3. In the case of claims legally sufficient petitions filed under Part IV, Hearing Officers Administrative Law Judges will be those assigned by the Division of Administrative Hearings.

4. (c) Mediators will be appointed by the Executive Director as provided in Section 1-2.11. Special Masters will be appointed by the Executive Director upon mutual agreement of the parties as provided in Section 1-2.621.

Section History - amended \_\_\_\_\_, 2006

### 1-2.08 JUDICIAL REVIEW

1. (a) Upon the conclusion of a section 9, Chapter 84-446, Laws of Florida administrative appeal process, any Any person aggrieved by

the final administrative decision (Final Order) of the Commission pursuant to Chapter 84-446 may seek judicial review by filing an appeal by Petition of Writ of Certiorari with the Second District Court of Appeal.

2. (b) Upon conclusion of a Chapter 120 administrative petition process, any Any person aggrieved by the final administrative decision Final Order pursuant to a delegation from the Department DEP or the Southwest Florida Water Management District may seek judicial review by filing an appeal with the Second District Court of Appeal.

Section History - amended \_\_\_\_\_, 2006

## PART II (Informal Process)

### 1-2.10 PRE-APPLICATION MEETING

Any applicant may seek assistance from EPC staff by arranging a pre-application meeting with appropriate staff handling the proposed project. EPCStaff will assist the applicant by explaining the type of information that will be reviewed and the standards and rules which may apply. Upon request, EPC staff will make every reasonable effort to include other agency staff as appropriate.

Section History - amended \_\_\_\_\_, 2006

### 1-2.11 REQUEST FOR MEDIATION

1. (a) Any person ~~wishing to avail himself of~~ desiring mediation to resolve a perceived dispute of fact or interpretation of law prior to or following a ~~Written Decision~~ of the Executive Director, may do so upon written request ~~therefor~~ to the Executive Director. If an appropriate request is made hereunder, and the Executive Director agrees to using mediation, the following procedures shall apply. This option shall not be construed to limit efforts at any time to resolve or settle decisions or

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concerns through meetings and negotiation with appropriate staff or the Executive Director. If the written decision of the Executive Director states that mediation is not available, then sections 1-2.11 and 1-2.12 shall not apply. A request for mediation alone shall not toll the time for filing an appeal or petition of the written decision of the Executive Director.

~~2. (b)~~ Mediation may consist of engaging the services of a trained mediator, ~~with each party paying for half of the cost, or may involve asking a mutually acceptable person uninvolved in the dispute (collectively referred to as "mediator")~~ to listen to each side and assist in facilitating a resolution.

~~3. Unless a Notice of Appeal under Parts III or IV affirmatively states that mediation would be futile, a mediation process will be attempted prior to setting an appeal with a Hearing Officer.~~

~~a. (1)~~ Upon receipt of a request for mediation and an appeal or petition which cannot be resolved directly with staff or the Executive Director, the Executive Director will forward the names of three ~~M~~mediators certified by the Circuit Court for the petitioner or appellant's review, and appropriate information regarding cost. The Executive Director shall also advise of the possibility of selecting an uninvolved person acceptable to both parties to assist in dispute resolution.

~~b. (2)~~ If appellant does not make a selection within 5 five business days of receipt of a list of three mediators, the Executive Director shall select a mediator and schedule the matter for mediation or the Executive Director may cancel the mediation with a person of his choice.

Section History - amended \_\_\_\_\_, 2006

### 1-2.12 MEDIATION PROCESS

~~1. (a)~~ The mediation process shall be subject to Chapter 44, F.S. The Mediator shall schedule the mediation a preliminary meeting with the

parties within 10 calendar days of the Mediator's selection and shall commence the mediation within 25 calendar days of the Mediator's selection, unless all parties agree to an extension. , and any subsequent meetings deemed advisable. The Mediator may request the parties submit position papers or other documentation to assist in preparing the Mediator.

~~a. (1)~~ The mediation meetings shall be informal, should foster open communications between the parties to clarify facts and resolve the dispute, and should determine whether resolution can be achieved by agreement.

~~b. (2)~~ Statements and settlement documents made at or in preparation for any mediation meeting shall not be used as evidence in any subsequent proceeding, unless agreed and signed by both parties.

~~c. The purpose of any such meeting is to open communication, clarify the facts and issues in dispute, identify options that may resolve all parties' concerns, and determine whether resolution can be achieved by agreement.~~

~~d. Any party or the Mediator may request that specific persons be available at the meetings to assist in the discussions. If a party refuses, the mediation may be deemed futile.~~

~~e. The Mediator shall control the conduct of the meetings and shall prohibit emotional confrontations.~~

~~2. The Mediator shall first attempt to identify each of the issues in dispute. If agreement on identifying the issues is reached, they shall be written and signed by the Appellant and the Executive Director, and shall establish the framework for the balance of the proceeding before the Mediator.~~

~~(b) 3. The Mediator shall then assist the parties in identifying options for resolving each party's concerns, and in reaching settlement if possible. If settlement is reached, all terms and conditions shall be written and signed by the Appellant or petitioner and the Executive Director and shall be binding in any subsequent~~

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proceeding. If all issues in dispute are resolved, any pending appeal or petition shall be dismissed.

(c) 4. Unless agreed otherwise, the costs of mediation shall be ~~split~~ divided and paid equally between by the parties.

(d) 5. If at any time, any party or the ~~M~~mediator believes that additional efforts of at mediation will be futile in identifying issues or achieving settlement, written notice of termination of mediation will shall be provided to the parties and the ~~M~~mediator.

(e) 6. If mediation does not achieve settlement of an issue in a pending and timely filed appeal or petition, the Executive Director will immediately arrange for the Commission Chair ~~Chairman~~ to appoint a Hearing Officer pursuant to section 1-2.07 Part VII, or will refer the matter to the ~~Department~~ Division of Administrative Hearings pursuant to Part ~~H~~ V, with notice thereof provided to each party.

Section History - amended, 2006

### PART III (Estoppel)

#### 1-2.20 REQUEST FOR HEARING TO DETERMINE ESTOPPEL

~~1.~~ (a) Any applicant for a permit or Director's authorization who claims that the Commission is estopped from implementing its regulations because of prior actions of the Commission, staff, or the Executive Director, may file a request for relief under this part with the Executive Director.

2. (b) A request for relief under this part shall contain information sufficient to permit a determination by the Commission pursuant to the following criteria:

a. (1) There was a valid, unexpired act of the Commission, ~~EPC~~ the staff, or the Executive Director, upon which the applicant reasonably relied in good faith; and that

b. (2) The applicant made a substantial change in position or incurred extensive obligations or expenses in reliance upon that valid, unexpired act; and that

e. (3) Denying the applicant a permit or approval under the rules adopted pursuant to Chapter 84-446, or issuing a permit or approval consistent with the criteria and standards of said rules, would destroy his rights and be inequitable, unjust or fundamentally unfair.

3. (c) If the Executive Director cannot resolve the matter to the applicant's satisfaction following reasonable efforts to address the concerns regarding application of the Commission's rules, the Executive Director shall review the request for compliance with the criteria set forth above, prepare a written report, and assign the request for hearing to a Hearing Officer within 30 calendar days of receipt, unless a different time is agreed to by the parties.

4. (d) The Hearing Officer shall determine procedural matters. Following a hearing and such review as necessary, the Hearing Officer shall render a recommendation to the Commission regarding estoppel by employing the criteria in subsection 2 above. The applicant has the burden of demonstrating that the criteria are met. Upon receipt of the recommendation, the Commission will render a final administrative decision Final Order at its next regular meeting. If the recommendation is received within 15 calendar days or less of the next meeting, then the Commission may hear it at the following meeting.

5. (e) The Hearing Officer assigned to hear the request may shall be a Hearing Officer appointed by the County Commission pursuant to Section 1-2.07(21) above, ~~if acceptable to the Executive Director, the applicant, the County, and the Hearing Officer.~~

6. (f) Notwithstanding anything in EPC's the Commission's regulations to the contrary, if the Hearing Officer determines that a finding of estoppel would result in a threat of peril to public health, safety or welfare of the residents

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of the county, the request for relief under this part may be denied by the Commission.

Section History - amended , 2006

**PART III IV**  
**(Chapter 84-446 Appeal)**

**1-2.30 ADMINISTRATIVE REVIEW**

~~1.~~ (a) Any person who has received a Citation of Violation, Order to Correct, or ~~Written~~ Decision of the Executive Director pursuant to Chapter 84-446, and any person whose interests protected by Chapter 84-446 are adversely affected by an action or decision of the Executive Director, may obtain administrative review of the basis for the action or decision by appealing to the Commission.

~~2.~~ (b) To be accepted and processed, a Notice of Appeal must be received by the ~~Chairman of the~~ Commission Chair within ~~twenty (20) calendar days after receipt of notice of the disputed action or date of publication, whichever is earlier, unless the adversely affected person specifically requested such notice, then such date shall be 20 calendar days from receipt of notice, after receipt or notice of the action or decision complained of, state specifically what part of the action or decision is appealed, and must specifically state each reason or ground for the appeal.~~

(c) All Notices of Appeal filed under these rules shall contain:

(1) The name, address, and telephone number of the Appellant; the name, address, and telephone number of the Appellant's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the Appellant will be aggrieved or how his or her interests will be adversely affected by the Executive Director's determination;

(2) A statement of when and how the Appellant received notice of the agency decision;

(3) A statement of all disputed issues of material fact. If there are none, the Notice of Appeal must so indicate;

(4) The specific facts the Appellant contends warrant reversal or modification of the Executive Director's proposed action;

(5) A statement of the specific laws or rules the Appellant contends require reversal or modification of the Executive Director's proposed action; and

(6) A statement of the relief sought by the Appellant, stating precisely the action Appellant wishes the Commission to take with respect to the Executive Director's proposed action or decision.

(d) Upon receipt of a Notice of Appeal involving disputed issues of material fact, the Commission's Legal Department shall accept or dismiss the Notice of Appeal, and if accepted shall, unless otherwise provided by law, refer the matter to the assigned Hearing Officer. The Notice of Assignment of the Hearing Officer shall be accompanied by a copy of the Notice of Appeal and a copy of the Executive Director's proposed action or decision.

(e) A Notice of Appeal shall only be dismissed if it is not in substantial compliance with subsection 3 of this rule section or it has been untimely filed. Dismissal of a Notice of Appeal shall, at least once, be without prejudice to Appellant's filing a timely amended Notice of Appeal curing the defect, unless it conclusively appears from the face of the Notice of Appeal that the defect cannot be cured. The Order dismissing an appeal with prejudice shall be reviewed in accordance with a non-final order pursuant to Rule 9.030(c)(2), Florida Rules of Appellate Procedure by filing a petition for writ of certiorari in a court of competent jurisdiction.

(f) The Commission's Legal Department shall promptly give written notice to all parties of the action taken on the Notice of Appeal, shall state with particularity its reasons if the Notice of Appeal is not granted, and shall state the deadline for filing an amended Notice of Appeal, if applicable.

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(g) The Appellant may amend the Notice of Appeal prior to the appointment of the Hearing Officer by filing and serving an amended Notice of Appeal in the manner prescribed for filing and serving an original Notice of Appeal. The Appellant may amend the Notice of Appeal after the designation of the Hearing Officer only upon order of the Hearing Officer.

Section History - amended \_\_\_\_\_, 2006

### 1-2.31 FILING, SERVICE

1- (a) A Notice of Appeal shall be served and filed by certified mail or hand delivery with the ~~Chairman of the~~ Commission Chair, and a copy served on the ~~Executive Director~~ Legal Department.

2- (b) Original pleadings, papers, documents or notices shall be filed with the Hearing Officer, until such time as the Hearing Officer issues his or her report and recommendation to the Commission, or the matter is otherwise resolved. Copies of any pleadings, papers, documents, motions, or notices filed with the Hearing Officer shall be provided to the Legal Department and any other party of record. Exceptions to a Hearing Officer's report shall be filed with the Chairman, with a copy to the Executive Director.

3- (c) Except for a Notice of Appeal, service of any pleadings, papers, documents or notices may be by regular United States mail or facsimile if desired. If a party is represented by an attorney of record, service may be had by serving his the party's attorney.

(d) The Commission's Legal Department may, for good cause shown, grant a request for an extension of time for filing the Notice of Appeal or any initial pleading. Requests for extension of time must be filed with the Legal Department prior to the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a Notice of Appeal until the request is acted upon.

(e) Any person who receives notice of an Executive Director decision and who fails to file a written request for a hearing within 20 calendar days waives the right to request a hearing on such matter and the decision shall become final.

Section History - amended \_\_\_\_\_, 2006

### 1-2.32 PROCESS BEFORE THE HEARING OFFICER

1- (a) For each timely and appropriate appeal raising factual or legal issues that cannot otherwise be resolved, a Hearing Officer shall be appointed as provided in Section 1-2.07 and notice thereof provided to each party.

2- (b) The Hearing Officer shall set each appeal for hearing at the earliest reasonable date, and cause notice thereof to be served upon the Appellant and the Executive Director.

3- (c) Each party may avail himself itself of discovery at his its own expense as allowed by the Rules of Civil Procedure. Hearings and the timing of any discovery shall be at the discretion of the Hearing Officer. Procedural motions may be decided by the Hearing Officer, without hearing, using the Rules of ~~the~~ Civil Procedure as guidance. Requests for reconsideration or rehearing made within 10 calendar days of a ruling on a motion may be granted.

4- (d) The Hearing Officer shall have the power to issue notices of hearings, subpoenas, and requiring to require the attendance of witnesses, and the production of evidence, to administer oaths, and take testimony as may be necessary. ~~He~~ The Hearing Officer shall rule upon offers of proof, receive relevant evidence, dispose of procedural requests or similar matters, and in general, regulate the course of the hearings. The Hearing Officer may dismiss an appeal upon the Executive Director's written withdrawal of the ~~decision~~ appealed decision, or the Appellant's written withdrawal of his appeal.

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

5. (e) The Hearing Officer shall require the parties to prepare pre-hearing statements of the facts and issues in dispute, and may request written briefs or memoranda of law be furnished ~~him~~ when deemed necessary.

(f) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing and the Hearing Officer allows the introduction of an oral motion, and any motion shall fully state the action requested and the grounds relied upon. When time allows, the other parties may, within seven business days of service of a written motion, file a response in opposition. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The Hearing Officer may conduct such proceedings and shall enter such orders as are deemed necessary to dispose of issues raised by the motion without the need for a hearing. Allowing hearings on motions shall be at the discretion of the Hearing Officer.

(g) Unless prohibited by law, all motions may be decided by the Hearing Officer. In the event the Hearing Officer enters any order granting a motion disposing the case other than an Order Relinquishing Jurisdiction pursuant to a voluntary dismissal or similar reason, the matter will be referred to the Commission as a recommendation and will be subject to sections 1-2.34 and 1-2.35.

(h) Motions, other than a motion to dismiss, shall include a statement that the party making the motion has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion.

(i) Any party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven business days of service, file a response in opposition, with or without supporting affidavits. A party moving for summary final order less than 12 calendar

days prior to the final hearing waives any objection to the continuance of the final hearing.

(j) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended, shall state good cause for the request, and may be granted at the discretion of the Hearing Officer.

(k) At any time after a matter has been filed with the Commission, the Hearing Officer may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a pre-hearing stipulation. The Hearing Officer may also request the parties to meet at a case management conference at any reasonable time after the Notice of Appeal has been transferred to the Hearing Officer.

(l) The Hearing Officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five business days prior to the date noticed for the hearing.

(m) If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated by the Hearing Officer if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

Section History - amended \_\_\_\_\_, 2006

### 1-2.33 ADMINISTRATIVE HEARING

1. (a) All hearings shall be public.

2. (b) The Hearing Officer shall afford all parties properly appearing before him or her the requisite due process of law including, but not limited to, the right to:

a. (1) Present ~~his~~ the case by oral and documentary evidence.

b. (2) Submit rebuttal evidence and conduct such cross examination as may be

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required, subject, however, to the ruling of the Hearing Officer.

e. (3) Be accompanied, represented and advised by counsel, or to represent oneself ~~himself~~.

3. (c) All testimony taken at any hearing before the Hearing Officer shall be under oath or affirmation.

4. (d) The burden of proof shall be on the Executive Director to establish each material fact reasonably raised in the appeal of a Citation. The burden of proof shall be on the Appellant to establish entitlement to a permit, order, authorization or exception allowed by the rules. Fact issues not raised by the Notice of Appeal shall be accepted as undisputed.

5. (e) The Hearing Officer shall give probative effect to evidence which would be admissible in civil proceedings in Florida courts, but in receiving evidence due regard shall be given to the technical and highly complicated subject matter which the Commission and Executive Director must handle, and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise, effect shall be given to the rules of evidence recognized by Florida law.

6. (f) A full and complete record of all proceedings and testimony presented shall be taken by stenographic or mechanical device and accurately and completely preserved and filed, together with any exhibit or documentary evidence admitted during any hearing. Upon payment and receipt of all costs or fees necessary in producing same, a certified transcript of the whole, or any part of the record, shall be furnished to any party in such proceeding requesting the same.

Section History - amended , 2006

## 1-2.34 REPORT AND RECOMMENDATION

1. (a) The Hearing Officer shall hear and determine all factual disputes properly raised by the Notice of Appeal concerning actions or decisions of the Executive Director ~~relating to compliance with~~ pursuant to Chapter 84-446, and ~~the rules and regulations~~ promulgated by the Commission.

2. (b) All parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the Hearing Officer.

(c) The Hearing Officer shall within 30 calendar days after the hearing or receipt of the hearing transcript, whichever is later, file a report titled the "recommended order." The recommended order to be considered by the Commission shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law (separately numbered and stated), and a recommendation for final agency action ~~render a written report containing individually numbered findings of fact based upon the evidence submitted to him the Hearing Officer and based upon applicable laws and rules. The Hearing Officer shall also separately offer conclusions regarding application of Chapter 84-446 and the rules and regulations to the facts as found, with a recommended draft Final Administrative Order for the Commission's consideration. The Hearing Officer shall not reach rule on constitutional issues, where unnecessary to make a recommendation except when the law allows the Hearing Officer to make such a ruling and when the ruling is necessary for making a conclusion of law. The report shall be submitted as promptly as possible to the Chairman and a copy thereof served on each party at the same time.~~

3. (d) When a Hearing Officer issues his report and recommendation the recommended order, the file maintained by the Hearing Officer in that matter shall be forwarded to the Commission Chair ~~Chairman~~, and the Hearing Officer shall have no further responsibility in

the matter unless the Commission refers it back for additional review.

Section History - amended , 2006

### 1-2.35 EXCEPTIONS AND FINAL ORDER

~~1-~~ (a) The parties may file ~~with the Chairman written exceptions to the Hearing Officer's report on or before ten (10) days of the report's service on them~~ exceptions to findings of fact and conclusions of law contained in the Hearing Officer's recommended order with the Commission Chair and copies to each of the other commissioners within 10 calendar days of entry of the recommended order. Exceptions shall be limited to challenge of the Hearing Officer's determination of facts with specific reference to evidence in the record, or to the Hearing Officer's application of the existing laws and rules to the facts as found. Copies shall be served on all parties.

(b) Any party may file responses to another party's exceptions within 10 calendar days from the date the exceptions were served.

~~2~~ (c) If no exceptions are timely filed ~~within the period,~~ the Commission shall adopt the Hearing Officer's finding's of fact, and shall make appropriate conclusions of law, and render a Final Order.

~~3~~ (d) If exceptions are timely filed, they shall be heard by the Commission on reasonable notice. In such proceeding to review exceptions the Commission may hear argument from both all parties on issues reasonably raised by the exceptions. No evidence will be taken, although opinions of the public may be heard at the Commission's discretion. If opinions of the public are heard, the parties will be allowed ~~5 minutes for a brief~~ 5 minutes for a brief closing argument. Material questions of fact necessary to final application of the laws and rules, will be referred back to the Hearing Officer for review.

4 (e) The Commission may reject, reverse or modify a finding of fact only if it finds that the

fact is not supported by substantial competent evidence in the record.

5 (f) The Commission shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of Chapter 84-446 or the rules enacted pursuant to said act.

Section History - amended , 2006

### PART IV (Delegated Programs)

#### 1-2.40 APPEAL PETITION OF PERMITTING CHAPTER 120 DELEGATED ACTION DECISION

~~1-~~ (a) Any person who files a timely ~~notice of appeal petition~~ notice of appeal petition of the Executive Director's decision on a state permit, notice of violation, or other decision in a regulatory program for which EPC the Commission has delegation from the ~~Florida Department of Environmental Protection~~ (DEP) or the Southwest Florida Water Management District, and which by the terms of the delegation agreement requires administrative review pursuant to Chapter 120, ~~Florida Statutes~~ F.S., such petition shall be subject to the applicable procedures of Chapter 120, F.S. and the rules promulgated thereunder.

~~2-~~ (b) Any such ~~Notice of Appeal~~ Notice of Appeal petition shall be filed with the Executive Director and be copied to DEP Office of General Counsel, and shall meet the applicable requirements of Chapter 120, F.S. and Chapters 62-4, Florida Administrative Code.

~~3-~~ (c) If timely, and if resolution cannot be obtained through other process such as mediation, ~~the appeals a petition~~ the appeals a petition under this part will be referred to the Department Division of Administrative Hearings for processing pursuant to Chapter 120, F.S. and the rules promulgated thereunder.

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4. (d) Upon receipt of the ~~Hearing Officer's report and recommendation~~ Administrative Law Judge's recommended order, the Executive Director or the Secretary of DEP, as required by the delegation agreement, shall issue a ~~final administrative order~~ Final Order according to Chapter 120, F.S., the rules promulgated thereunder, the requirements of the delegation order, and any applicable operating agreements.  
Section History - amended \_\_\_\_\_, 2006

## **PART VI**

### **(Variance or Waiver)**

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

1. (a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted ~~from~~ from the provisions of the rules adopted pursuant to Chapter 84-446, where the applicant demonstrates:

a. (1) A substantial hardship as defined by ~~Section~~ Section 120.542, ~~Florida Statutes~~ F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

b. (2) The purpose of the underlying rule can be, or has been, achieved by other means, and

e. (3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to Section 403.201, Florida Statutes F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

2. (b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the

reasons why and the manner by which the purposes of the underlying rule would still be met.

3. (c) Notice of the application must be published by the applicant in a newspaper of general circulation summarizing the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

4. (d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a public hearing during a Commission regular meeting. The Commission shall grant, in whole or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

Section History - amended \_\_\_\_\_, 2006

## **PART VII**

### **(Private Property Rights)**

#### **1-2.60 CLAIM UNDER THE BERT HARRIS ACT**

1. (a) Any person claiming that a specific action of the Commission or Executive Director in implementing regulations subject to ~~Section~~ Section 70.001, ~~Florida Statutes~~ F.S., has inordinately burdened an existing use or vested right in his property as defined in ~~Section~~ Section 70.001(3), ~~Florida Statutes~~ F.S., must present a written claim to the ~~EPC~~ the Commission Chair ~~Chairman~~, with a copy to the Executive Director, within one ~~(1)~~ year of the challenged action. The claim must specifically identify the action taken by ~~EPC~~ the Commission or staff, the property affected, the use or right claimed to be vested, the manner by which the action inordinately burdens the use or vested right, and must include an appraisal demonstrating the alleged loss in fair market value.

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2. (b) The Executive Director will provide written notice of the claim by certified mail to the address kept on file by the County Property Appraiser to all owners of real property contiguous to the subject property, and to any substantially affected party who submitted testimony in support or opposition to the challenged action and who requests notice of any subsequent proceeding.

3. (c) The Executive Director will submit to the claimant, within 180 calendar days of receiving the claim or as may be agreed by the parties, a settlement offer which addresses any identified inordinate burden, if any, and which continues to protect the public interest served by the questioned regulation.

4. (d) If the settlement is accepted, the parties will proceed to implement the agreement. If the settlement contravenes an existing statute, the parties will jointly file a suit in circuit court to obtain judicial approval.

5. (e) If the settlement is rejected, the Executive Director will issue a No Further Administrative Action Letter (i.e., ripeness decision), identifying the allowable uses for the subject property.

6. (f) a. (1) If a judicial decision subsequently requires that ~~EPC the Commission~~ compensate a claimant for an inordinate burden to his property, EPC the Commission will seek legal title to that property interest.

b. (2) If the court finds that ~~EPC the Commission~~ made a bona fide settlement offer and ripeness decision pursuant to ~~Section 70.001(6)c, Florida Statutes F.S.~~, which the claimant failed to accept, EPC the Commission will seek attorneys' fees and costs.

Section History - amended, 2006

## 1-2.61 CLAIM UNDER THE DISPUTE RESOLUTION ACT

1. (a) Any person claiming that an ~~EPC a Commission or Executive Director~~ enforcement action, permit, authorization, or other

development order unfairly burdens the use of his land or real property, may seek relief as allowed by ~~Section 70.51, Florida Statutes F.S.~~ by filing a written request for appointment of a special master to the ~~EPC the Commission Chair~~ Chairman, with a copy to the Executive Director, within 30 calendar days of the challenged action (~~Caution: the filing deadlines under parts III and IV are not automatically stayed~~). The request must specifically identify the action taken by ~~EPC the Commission or Executive Director~~, the property affected, and must explain how the action taken is alleged to be unreasonable or to unfairly burden the claimant's property.

2. (b) If all administrative appeals have not been exhausted at the time of the request, the Executive Director may:

a. (1) Treat the request for a special master as an administrative appeal under Chapter 84-446, Laws of Florida, as provided in Part ~~III~~ IV above if made within the 20 calendar days of the challenged action, granting the claimant the option to submit a new request at the conclusion of the appeal;

b. (2) Convert an ongoing administrative appeal to the special master process; or

e. (3) Suspend the request for a special master pending conclusion of an ongoing administrative appeal or expiration of 4 months, whichever occurs first.

3. (c) Within 10 calendar days of the filing or decision to proceed as described above, the Executive Director will forward the request to a mutually agreed upon special master.

4. (d) The Executive Director will provide written notice of the request by certified mail to the address kept on file by the County Property Appraiser to all owners of real property contiguous to the subject property, and to any substantially affected party who submitted testimony in support or opposition to the ~~EPC Commission or Executive Director~~ action and who requests notice of any subsequent proceeding.

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a. Within 21 calendar days of the filing of the request or decision to proceed as described above, any property owner or substantially affected person receiving notice from EPC the Commission or Executive Director, may request permission to participate in the special master proceeding, but not as a party or intervenor.

5. (e) Within 15 calendar days of the filing of the request or decision to proceed as described above, the Executive Director will respond to the claimant setting forth EPC's the Commission's position regarding the allegations, and include a statement explaining the public purpose of the regulations upon which the action or development order is based

6. (f) Within 45 calendar days of receipt of the request or as agreed by the parties, the special master must hold a hearing. The purpose of the hearing is to focus attention on the impact of the challenged EPC action, and to explore alternative.

a. (1) The special master will provide at least 40 calendar days notice prior to the hearing.

b. (2) The hearing will be informal and not require the services of an attorney. The hearing will be open to the public.

c. (3) ~~the~~ The special master may subpoena any nonparty witness in the state to aid in the disposition of the matter.

d. (4) Actions or statements made by participants in the special master hearing are inadmissible in any subsequent judicial or administrative proceeding.

e. (5) The special master may hear from all parties and witnesses necessary to understand the matter, and must weigh all information offered at the hearing, in the request for relief, and any responses.

7. (g) The parties may settle the issues at any time and end the proceedings. If an acceptable solution is not reached after the special master's attempt at mediation, the special master must determine whether the EPC action is unreasonable or unfairly burdens the real property. The circumstances to be examined in

making this determination include those set forth in Section 70.51(18), Florida Statutes F.S.

8. (h) Within 14 calendar days after the conclusion of the hearing, the special master must prepare and submit a written recommendation to the parties.

a. (1) If the special master determines that the EPC action is not unreasonable or unfairly burdens the real property, the proceeding ends and the claimant may pursue other available remedies;

b. (2) If the special master determines that the EPC action is unreasonable or unfairly burdens the real property, the special master may, with the claimant's consent, recommend one or more alternative solutions. The selected alternatives must protect the public interest served by the underlying regulation and also allow for reduced restraints on the use of the real property.

9 (i) Within 45 calendar days of receipt of the special master's recommendation, the Commission will accept, modify through agreement, or reject the recommendation. Failure to act is a rejection.

a. The Executive Director will issue a written No Further Administrative Action Letter (i.e., ripeness decision) within 30 calendar days if the Commission rejects the recommendation, or if the claimant rejects the Commission's decision on the recommendation. The ripeness decision will describe the uses available to the real property.

10. (j) Fees, costs and expenses of the special master process are to be shared equally between all governmental parties and the claimant. EPC The Commission or Executive Director shall estimate the costs and shall submit the analysis and allocation to the claimant at the time of submitting its response to the initial request. Payment shall be submitted to the special master or otherwise arranged for prior to the hearing being held.

Section History - amended \_\_\_\_\_, 2006

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**PART VIII**  
**(Rulemaking)**

**1-2.70 GENERAL PROVISIONS**

(a) Any person may file a written request with the Commission's Legal Department to be given advance notice of Commission proceedings to adopt, amend, or repeal a rule, as provided in section 5 of Chapter 84-446, Laws of Florida. The written request may specify that advance notice is requested of all Commission rulemaking proceedings, or of only those Commission rulemaking proceedings involving specific subjects.

(b) Any person may file a written request to the Commission's Legal Department to adopt, amend, or repeal a rule.

(c) After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

Section History - adopted \_\_\_\_\_, 2006

**1-2.71 ADOPTION PROCEDURES**

(a) Pursuant to section 5 of Chapter 84-446, the Commission may adopt, amend, or repeal appropriate rules reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of Chapter 84-446.

(b) Staff may conduct rule workshop(s) any time prior to the Commission hearing.

(c) No rule, rule amendment, or rule repeal shall be adopted or become effective without a noticed public hearing being held by the Commission. The notice of public hearing to adopt, amend, or repeal a rule shall generally explain the subject matter of the rulemaking at issue and the date, time, and location of the Commission's public hearing. The notice shall be published in a newspaper of general circulation, as defined in Chapter 50, F.S., in the County at least 10 calendar days prior to the

hearing. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice by contacting the Commission's Legal Department. The latest revisions of the proposed rule may also be available on-line on the Commission's internet site.

(d) The notice shall be mailed or electronically mailed to all persons specifically named in the proposed rulemaking and to all persons who have made requests of the Commission as described in section 1-2.70(a) for advance notice of its proceedings if requested at least 14 calendar days prior to such hearing.

(e) At the Commission's public hearing, the Commission may adopt, revise and adopt, or reject the proposed rule, rule amendment, or rule repeal. Immediately after adoption, the staff shall file the adopted action with the Clerk of the Circuit Court and the rule or repeal shall become effective upon filing, unless timely challenged pursuant to section 1-2.73. For the limited purposes of this subsection, "filing" shall mean delivery to the Clerk of the Circuit Court - Board of County Commissioners Records Department.

Section History - adopted \_\_\_\_\_, 2006

**1-2.72 GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF AN EXISTING RULE OR PROPOSED RULE**

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the validity of the rule on the grounds that the rule is an invalid exercise of delegated legislative authority.

(b) The petition seeking an administrative determination must state with particularity the provisions alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show

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that the person challenging the rule is substantially affected by it, or that the person challenging the proposed rule would be substantially affected by it.

(c) The petition shall be filed with the Commission Chair and the Commission's Legal Department. Upon receipt of the petition on the existing rule or proposed rulemaking, the Commission's Legal Department shall accept or dismiss the petition, and if accepted shall, unless otherwise provided by law, refer the matter to the assigned Hearing Officer within 30 calendar days.

(d) The petition shall only be dismissed if it is not in substantial compliance with this Part or it has been untimely filed as to a proposed rule. Dismissal of a petition shall, at least once, be without prejudice to the party's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The Order dismissing with prejudice a petition filed under this Part shall be reviewed in accordance with a non-final order pursuant to Rule 9.030(c)(2), Florida Rules of Appellate Procedure by filing a petition for writ of certiorari in a court of competent jurisdiction.

(e) The Hearing Officer shall conduct a hearing within 60 calendar days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. The Commission shall follow the applicable rulemaking procedures set forth in this Part. In the event the Commission fails to follow any applicable procedure in this Part, the rule shall not be subject to invalidation if the Commission shows that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(f) Within 30 calendar days after the hearing, the Hearing Officer shall render a final decision and state the reasons in writing. The Hearing Officer shall forthwith transmit copies of the decision to the Commission.

(g) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided for in Part IV of this chapter, except that the Hearing Officer's order shall be final agency action. The petitioner and the Commission acting through its Executive Director shall be adverse parties. At the discretion of the Hearing Officer, substantially affected persons may petition to join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings, and the intervenors may not raise new issues in the case. Any petition to intervene must be filed no later than 20 days before the hearing.

(h) "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

- (1) The agency has exceeded its grant of rulemaking authority;
- (2) The rule contravenes the specific provisions of law implemented;
- (3) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; or
- (4) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational.

(i) Within 30 calendar days of issuance of the Hearing Officer's final decision, a substantially affected party may seek judicial review of the final decision by filing a writ of certiorari with the Thirteenth Judicial Circuit Court.

Section History - adopted \_\_\_\_\_, 2006

### 1-2.73 CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS

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

(a) In accordance with section 1-2.72, any substantially affected person may seek an administrative determination of the validity of any proposed rule by filing a petition seeking such a determination with the Commission. In accordance with section 1-2.72, the petition must be filed with the Commission Chair and Commission's Legal Department within 20 calendar days after the public hearing approving the proposed rulemaking. The petition shall state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward. The Commission then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. Any person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.

(b) The Hearing Officer may declare in the final decision the proposed rule to be valid or wholly or partly invalid. The proposed rule or provision of a proposed rule declared invalid shall be withdrawn by the Commission and shall not be adopted. The Commission may proceed with all other steps in the rulemaking process as to the valid portions of the rule. If the Commission chooses to file the rule pursuant to the Hearing Officer's final decision, it shall immediately file it pursuant to section 1-2.71(e). In the event part of a proposed rule is declared invalid, the Commission may, in its sole discretion, withdraw the proposed rule in its entirety. If the rule is invalidated in whole or part or if the Commission chooses to withdraw the proposed rule, the Commission shall give notice of the decision in a newspaper of general circulation in the County within 10 calendar days.

(c) When any substantially affected person seeks determination of the validity of a proposed

rule pursuant to this section, the proposed rule is not presumed to be valid or invalid.

Section History - adopted \_\_\_\_\_, 2006

#### 1-2.74 CHALLENGING EXISTING RULES; SPECIAL PROVISIONS

(a) In accordance with section 1-2.72, a substantially affected person may seek an administrative determination of the validity of an existing rule at any time during the existence of the rule. The petitioner has the burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority as to the objections raised.

(b) The Hearing Officer may declare all or part of a rule invalid. Unless the Hearing Officer's decision is reversed in whole or part by a court of competent jurisdiction, the rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The Commission shall give notice of the decision in a newspaper of general circulation, as defined in Chapter 50, F.S., in the County within 10 calendar days.

Section History - adopted \_\_\_\_\_, 2006

Adopted 4/25/85

Substantially Amended 8/21/97

Amended Referenced Sections XX/XX/XX



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** Legislative Update and Request for Position on Two Bills – **AMENDED AGENDA ITEM**

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

**Division:** Legal Department

**Recommendation:** Authorize the Chair to issue a letter to our local Legislative Delegation voicing our opposition to the two noted bills.

**Brief Summary:** The EPC staff has been reviewing dozens of environmental and procedural bills, and currently two stand out that may impact the EPC's and/or the County's functions. The EPC staff requests that the Commission authorize the Chair to send a letter to our local Legislative Delegation voicing our opposition to the following two bills: County Preemption - SB 1608 and HB 949 and Performance Based Permitting – SB 1906, 2510 and HB 261.

**Background:** In conjunction with the County's Office of Public Affairs, the EPC staff has reviewed dozens of environmental and procedural bills that are currently proposed in the Florida Legislature. Currently two pieces of legislation stand out that may impact the EPC's and/or the County's functions.

First is the **County Preemption** bill proposed in **Senate Bill 1608 and House Bill 949** which are almost identical bills that propose to eliminate county regulations and special acts governing land use and annexation as it applies within city boundaries, unless the majority of the voters in the county and the city separately vote to have those regulations apply in the city. The bill is supported by the Florida League of Cities and sponsored by Sen. Bennet and Rep. Arza. The cities are supporting this bill in an effort to limit county authority on land use matters in the cities; specifically cities opposed to county efforts to regulate municipal land-use decisions and the cities' ability to address urban redevelopment. The EPC Special Act is not designed to regulate land use or annexation, thus we have a strong argument that the bill does not affect EPC. In fact, the word "land" does not appear in the EPC Act; nonetheless, the bill also nullifies "county land development regulation[s]" in cities. One may argue EPC's wetland or landfill regulations are "land development regulation[s]." EPC staff would disagree, but in an abundance of caution, staff recommends the Commission voice its opposition to any bill that would limit the EPC from regulating environmental impacts within city boundaries.

The second bill is the **Incentive-based Permitting Act** (or Performance-based Permitting Act) in **House Bill 261 and Senate Bills 1906 and 2510**. This House bill is not the same as the DEP has proposed the past few years and has some positive ideas, but overall it adds more burdens to the DEP and delegated programs (e.g. – the EPC) without giving staff better grounds or disincentives to deny

entities permits or add additional conditions to permits for bad actors as the DEP has proposed in the past. As the title indicates, the bill provides incentives to the regulated community for having a good environmental enforcement history, thus giving them the opportunity to expedite permitting, minimize agency requests for additional information, receive automatic permit renewals, and potentially avoid some permit challenges (via longer permits or automatic renewals).

The bill makes it harder to revoke State permits because it would only allow the DEP or EPC to revoke if the permittee "knowingly" violates the laws, orders, regulations, or knowingly submits false information that is material to the permitting decision or violated a rule or order related to the specific permit. Also, the entity can violate laws at an unrelated facility, but those can't be used against them to revoke at a different facility. The bill could be amended to be more palatable and to provide disincentives for persistent violators.

Under SB 1906, being eligible for incentives is predicated on having some past history of operating facilities, and not having any formal enforcement action that was fully adjudicated or two or more violations wherein the violation resulted in the potential for harm to human health or the environment. Thus, the Senate bill makes the list of potential incentive recipients greater because it limits those who are not eligible mainly to entities which have a full adjudication against them. In litigation, most cases settle, thus many bad actors that settle cases will still be eligible for incentives. Thus, the Senate bill is more lenient than the House version.

The EPC staff requests that the Commission authorize the Chair to send a letter to our local Legislative Delegation voicing our opposition to the aforementioned bills.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** EPC Environmental Merit Award

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

**Division:** Executive Director's Report

**Recommendation:** N/A - for informational purposes only

**Brief Summary:** Staff of the EPC wish to recognize middle school students who received EPC's Environmental Merit Award at the 26<sup>th</sup> annual Hillsborough Regional Science Fair competition on February 15, 2006 at the USF Sundome.

**Background:** N/A

**List of Attachments:** N/A



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** Pollution Recovery Fund Project Recommendation for Knights PRESERVE

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

**Division:** Environmental Resources Management

**Recommendation:** Concur with EPC Staff and recommend approval of the Knights PRESERVE application for Pollution Recovery Funds.

**Brief Summary:** The EPC staff and CEAC have met to discuss this project once again and are both in agreement that this project involving the restoration of freshwater wetlands on sight for both ecological and educational purposes for Knights Elementary School in Plant City should be approved. The specific funding level will be presented to the board during the presentation.

**Background:** EPC staff and CEAC have reviewed this Fiscal Year 2006 Pollution Recovery Fund project application. The application has been reviewed for legal sufficiency (compliance with the EPC Act and Chapter 1-9 Rules of the EPC), technical merit (can the project get permitted and is it based on sound scientific knowledge) and financial requirements. The Knights PRESERVE project, was held-over for further consideration by both staff and CEAC and was subsequently scheduled to come before the Commission on March 16, 2006.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** Pollution Recovery Fund Project – Lake Magdalene Management Plan Update

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

**Division:** Environmental Resources Management

**Recommendation:** Authorize staff to continue to coordinate with the Lake Magdalene Special Dependent District Board members and to act as liaisons with County staff and outside agencies to find the most appropriate and timely means of accomplishing and funding their project.

**Brief Summary:** This project was recommended for denial during the Fiscal year 2006 Pollution Recovery Fund application process. Both staff and CEAC felt the application was heavy on implementation and vegetation removal without a full understanding of the hydrology or pollutant inputs for the lake or its watershed. Staff has committed to working with the Special Dependent District Board members, as a liaison agency, to help them coordinate with County and/or SWFWMD staff as necessary.

**Background:** EPC staff and CEAC reviewed this Fiscal Year 2006 Pollution Recovery Fund project application. The application was been reviewed for legal sufficiency (compliance with the EPC Act and Chapter 1-9 Rules of the EPC), technical merit (can the project get permitted and is it based on sound scientific knowledge) and financial requirements. The project was recommended for denial by EPC staff and CEAC but, staff is now referring the applicant to work with County Stormwater Department to develop a lake management plan similar to the ongoing plan for the Forest Hills area. EPC staff will provide an update on its progress to date.



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** Seagrass Awareness Month

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

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

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

**Brief Summary:** Gov. Jeb Bush has designated March, 2006 as Seagrass Awareness Month in the State of Florida. For the reasons outlined in the Governor's proclamation (attached), seagrasses are a vital environmental resource for Tampa Bay. EPC and Tampa Bay Estuary Program staff will provide a brief overview of seagrass protection and management efforts currently underway in Tampa Bay.

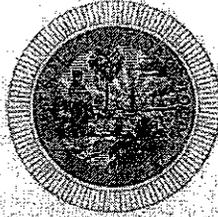
**Background:** Seagrasses are flowering plants that live underwater. Like land plants, seagrasses produce oxygen. The depth at which seagrasses are found is limited by water clarity because they require sunlight. Seagrasses occur throughout the coastal areas of Florida, and are most abundant from Tarpon Springs northward to Apalachee Bay. They occur in protected bays and lagoons and some nearshore areas of the Gulf of Mexico.

Florida's estimated 502,000 acres of seagrasses are important natural resources that perform many significant functions: 1) they help maintain water clarity by trapping fine sediments and particles with their leaves; 2) they can stabilize the bottom with their roots and rhizomes in much the same way that land grasses retard soil erosion; 3) they provide habitat for many fishes, crustaceans, and shellfish; 4) seagrasses and the organisms that grow on them are food for many marine animals, and most importantly; 5) they are nursery areas for much of Florida's recreationally and commercially important marine life.

Seagrass leaves provide excellent protection for young marine animals from larger open-water predators. Some animals, such as manatees, eat seagrass blades. Other animals derive nutrition from eating algae and small animals that colonize seagrass leaves. These colonizing organisms provide an additional link in the marine food chain.

Seagrass meadows are a valuable part of Florida's marine environment, but have been reduced in size in many areas of the state. Dredge and fill projects and degraded water quality, as well as other activities, have been responsible for these losses. In Tampa Bay, seagrass coverage is currently about 35% lower than it was in the early 1950s. A primary goal of the bay management effort is the recovery of seagrass acreage to early-1950s levels.

**List of Attachments:** Governor's proclamation



JEB BUSH  
GOVERNOR OF THE STATE OF FLORIDA

## Seagrass Awareness Month

WHEREAS, the seagrass community of Florida is the largest seagrass meadow in the world; and

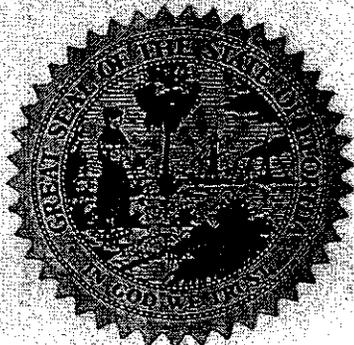
WHEREAS, the seagrass community supports hundreds of species of fish, sea turtles, manatees and other wildlife throughout various stages of their development; and

WHEREAS, in 2004, seagrass communities in Florida supported an estimated harvest of nearly \$110 million of seagrass-dependant, commercial species of fish and shellfish; and

WHEREAS, seagrass stabilizes bottom sediments and helps absorb excess nutrients from land run-off, which can further damage the quality of our waters; and

WHEREAS, awareness of the problems facing this vital natural resource fosters an understanding of the ways seagrass damage impacts both the economic and ecological value of our marine resources;

NOW, THEREFORE, I, Jeb Bush, Governor of the state of Florida, do hereby extend greetings and best wishes to all celebrating March 2006 as Seagrass Awareness Month.



IN WITNESS WHEREOF, I  
have hereunto set my hand  
and caused the Great Seal of  
the state of Florida to be  
affixed at Tallahassee, the  
Capital, this 28<sup>th</sup> day of  
February in the year  
two thousand six.

*Jeb Bush*  
GOVERNOR



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** Environmental Justice Program Overview (Comm. Castor request)

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

**Division:** Legal Department

**Recommendation:** For information only.

**Brief Summary:** After the January 12, 2006 EPC meeting Commissioner Castor requested staff to investigate the U.S. EPA's Environmental Justice Program and provide the Commission with a summary of the program. Staff will present the overview for the Commission's information.

**Background:** In an effort to focus more awareness to the issue of low-income and minority populations being more likely to be located close to hazardous waste sites or polluting industrial sites, the Office of Environmental Justice was created in 1992, and in 1994 a Presidential "Environmental Justice" Order was issued which required federal agencies to develop strategies to address the disproportionate environmental effects of their programs on minority and low-income populations. The goal of the executive Order was to prevent discrimination in federal environmental programs and provide minorities and low-income communities with equal access to public information and public participation in decisions affecting human health and the environment.

Staff will present an overview of the Environmental Justice program and how the policy may assist local community groups.

**List of Attachments:** None



## EPC Agenda Item Cover Sheet

**Date of EPC Meeting:** March 16, 2006

**Subject:** Curiosity Creek Watershed and Blue Sink Complex Remediation/Restoration (Comm. Castor request)

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

**Division:** Environmental Resource Management Division

**Recommendation:** 1. Direct staff to seek partnering with City of Tampa and Hillsborough County Stormwater Divisions to work cooperatively to develop and submit grant application for Curiosity Creek Watershed and Blue Sink Complex Remediation/Restoration Project. 2. Provide EPC Board recommendation to the County Administrator to present this subject to the BOCC for their endorsement. 3. Authorize letter from EPC Chair to Mayor, City of Tampa recommending the City of Tampa endorse this undertaking.

**Brief Summary:** Reconnecting the Blue Sink/Curiosity Creek system to Sulphur Springs and the Hillsborough River has the potential to add much-needed freshwater flow, while also restoring a natural flow-way to the river. Besides the benefits of improved water quality, there are potential benefits to potable water supply and minimum flow requirements. The staff recommendation supports an integrated watershed management-based approach, focused on basin management action plans and achieving compliance with TMDL requirements. The challenge will be to restore water quality in the Curiosity Creek system, and the series of relic sinkholes that are receiving untreated stormwater, prior to the water discharging to Sulphur Springs and the Hillsborough River.

**Background:** The Curiosity Creek and associated springs/sinks are located generally from Sulphur Springs north, with the sinks running parallel to Florida/Nebraska Avenues to Fowler Avenue. Curiosity Creek flows through the Forest Hills area in northwest Hillsborough County. Where the creek flows under Country Club Drive (Fowler Avenue) near its intersection with Florida Avenue, it is joined by Ewanowski Spring, and both the creek and the spring then flow into a group of old sinkholes known collectively as Blue Sink. There is historical evidence that Curiosity Creek and the affiliated series of springs and sinks were geologically connected, providing both surficial and groundwater flow to Sulphur Springs. Over time, both the surficial flow and groundwater flow were compromised, as development and other impacts clogged or diverted these flows.

The USGS has reported a long term decreasing trend in the flow of water from Sulphur Springs to the lower Hillsborough River, and has partly attributed this decrease in flow to a reduction in surficial and groundwater flow to Sulphur Springs.

The concept of developing methods to "reconnect" Curiosity Creek and the Blue Sink complex to Sulphur Springs is being viewed by EPC Staff as a conceptual plan to restore a historical source of water for Sulphur Springs, which may offer significant benefit to the ecology of the spring and the lower Hillsborough River.

**List of Attachments:** None (Staff Report will be provided on March 16)