

COMMISSION
 Joshua Wostal, *Chair*
 Harry Cohen, *Vice Chair*
 Donna Cameron Cepeda
 Ken Hagan
 Pat Kemp
 Gwendolyn “Gwen” W. Myers
 Michael Owen



Executive Director
 Janet D. Lorton

General Counsel
 Ricardo Muratti

Meeting time
 2:00 p.m.

COMMISSION AGENDA
May 18, 2023

Location
 In Person attendance: 601 E. Kennedy Blvd., Tampa
 BOCC Boardroom, County Center, 2nd Floor
 Virtual attendance: see details below

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, and INVOCATION

2. ROLL CALL

3. CHANGES TO THE AGENDA

4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, or SEPARATE VOTE

5. RECOGNITIONS and PROCLAMATIONS

- a. Recognition and farewell to Madlein Mishriki, Air Division.
- b. Recognition and farewell to Michael Thompson, Wetlands Division.

6. PUBLIC COMMENT - *Each speaker is allowed 3 minutes unless the Commission directs differently. If you wish to provide public comment, please see guidance below or on our website at: [agendas and public comment](#).*

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

- a. Approval of April 5, 2023 Special Meeting and April 20, 2023 Regular Meeting Minutes 2
- b. Monthly Activity Report FY2023 (April) 7
- c. Pollution Recovery Fund (PRF) Budget FY2023 9
- d. Legal Case Notification 11
- e. Request for Authority to take appropriate legal action against Misho Investments, LCC 13

8. PUBLIC HEARING

- a. Conduct a public hearing to consider proposed amendments to the Administrative Procedures Rule (Chapter 1-2, Rules of the EPC) 15

9. REGULAR AGENDA

- a. Overview of Air Division Environmental Program and Services 38
- b. Ozone in Hillsborough County Presentation 39
- c. Legislative Update on Environmental and Administrative Bills - 2023 Legislative Session 40
- d. Executive Director’s Report

10. DISCUSSION OF FUTURE AGENDA ITEMS

ADJOURN

Any person who might wish to appeal any decision made by the EPC 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.

Anyone who wishes to speak either virtually or in-person during the meeting may do so by completing the online Public Comment Form found at: www.epchc.org/pubcomment. The form is open 48 hours prior to the start of the meeting for both virtual and in-person appearances. Virtual speakers must submit the online public comment form at least 60 minutes prior to the start of the meeting. In-person speakers will be able to sign up using the same online form 48 hours prior to arrival or can sign up on-site via our kiosk up until the start of the meeting. Visit the EPC webpage for more details on [agendas and public comment](#). Seating inside the Boardroom may be limited. This meeting will also be available LIVE as follows: Spectrum - Channel 637, Frontier - Channel 22, Comcast - Channel 22, PC: <http://www.hcflgov.net/HTVlive>, and iOS: <http://65.49.32.149/iosvideo/ios.htm>.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.a.

Date of EPC Meeting: May 18, 2023

Subject: Approval of the April 5, 2023, EPC Special meeting minutes and the April 20, 2023, EPC meeting minutes.

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Approve the April 5, 2023, EPC Special meeting minutes and the April 20, 2023, EPC meeting minutes.

Brief Summary: Staff requests the Commission approve the meeting minutes from the Commission meetings held on April 5, 2023, and the April 20, 2023.

Financial Impact: No Financial Impact

List of Attachments: Draft copy of the April 5, 2023, EPC Special meeting minutes and the April 20, 2023, EPC meeting minutes.

Background: None

APRIL 5, 2023 - ENVIRONMENTAL PROTECTION COMMISSION SPECIAL MEETING

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Special Meeting, scheduled for Wednesday, April 5, 2023, at 10:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida, and held virtually.

The following members were present: Chair Joshua Wostal and Commissioners Donna Cameron Cepeda, Harry Cohen, Ken Hagan, Pat Kemp, Gwen Myers, and Michael Owen.

CALL TO ORDER

▶ Chair Wostal called the meeting to order at 10:29 a.m. and noted a quorum was present.

1. Consider Tampa Bay Water's proposed application to the Southwest Florida Water Management District for a Water Use Permit in Southern Hillsborough County and receive public comment regarding this agenda item.

▶ EPC General Counsel Rick Muratti introduced the item. Chair Wostal called for public comment; there was no response. ▶ **Commissioner Myers moved for approval, seconded by Commissioner Cohen, and carried six to zero.** (Commissioner Kemp was out of the room.)

▶ There being no further business, the meeting was adjourned at 10:31 a.m.

READ AND APPROVED: _____
CHAIR

ATTEST:
CINDY STUART, CLERK

By: _____
Deputy Clerk

rs

APRIL 20, 2023 - ENVIRONMENTAL PROTECTION COMMISSION

The Environmental Protection Commission (EPC), Hillsborough County, Florida, met in Regular Meeting scheduled for Thursday, April 20, 2023, at 9:00 a.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida, and held virtually.

The following members were present: Chair Joshua Wostal and Commissioners Donna Cameron Cepeda, Harry Cohen, Ken Hagan, Pat Kemp, Gwen Myers, and Michael Owen.

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND INVOCATION

▶ Chair Wostal called the meeting to order at 9:00 a.m. ▶ Commissioner Cameron Cepeda led in the pledge of allegiance to the flag and gave the invocation.

2. ROLL CALL - **None.**

3. CHANGES TO THE AGENDA

▶ Ms. Janet Lorton, EPC Executive Director, stated there were no changes to the agenda.

4. REMOVAL OF CONSENT ITEM FOR QUESTION, COMMENT, OR SEPARATE VOTE - ▶ **None.**

5. RECOGNITIONS AND PROCLAMATIONS - **None.**

6. PUBLIC COMMENT

▶ Mr. Dave Coleman spoke on Tampa Electric Company (TECO) coal ash waste piles and the impacts from a hurricane/storm.

7. APPROVAL OF CONSENT AGENDA

Consent Agenda Items

- a. Approval of EPC Meeting Minutes for February 16, 2023
- b. Monthly Activity Report Fiscal Year (FY) 2023 (February and March)
- c. Pollution Recovery Fund Budget FY 2023
- d. Select Performance Measure Goals Quarterly Update

▶ Chair Wostal sought a motion to approve the Consent Agenda. **Commissioner Cohen so moved, seconded by Commissioner Myers, and carried seven to zero.**

8. PUBLIC HEARING - ▶ **None.**

THURSDAY, APRIL 20, 2023

9. REGULAR AGENDA

a. Overview of Environmental Programs and Services

▶ Ms. Lorton and Mr. Sam Elrabi, Director, EPC, spoke to the item. ▶ Commissioner Owen questioned possible seagrass restoration/solutions. Commissioner Cohen asked if the seagrass problem was worse in Upper Tampa Bay and observed citizens reaching out to EPC for potential problems.

b. Legislative Update - 2023 Legislative Session

▶ Attorney Beth Le, EPC, gave an overview.

c. Red Tide Update

▶ Mr. Christopher Pratt, EPC, talked about the item.

d. Petroleum Cleanup Program - Expansion Services

▶ Ms. Andrea Murley, EPC, shared a presentation. ▶ Chair Wostal inquired if the new positions were based on receiving the new contract and funding was not part of the General Fund. ▶ **Commissioner Myers moved for approval of the three new positions, seconded Commissioner Cohen, and carried six to zero.** (Commissioner Hagan was out of the room.)

e. Executive Director's Report

▶ Ms. Dougherty supplied a report.

10. DISCUSSION OF FUTURE AGENDA ITEMS

▶ Commissioner Kemp wanted EPC to provide a report regarding ash waste piles generated by TECO and the impacts due to hurricanes.

▶ Commissioner Wostal addressed future EPC meeting dates/times.

THURSDAY, APRIL 20, 2023

ADJOURN

▶ There being no further business, the meeting was adjourned at 10:19 a.m.

READ AND APPROVED: _____
CHAIR

ATTEST:
CINDY STUART, CLERK

By: _____
Deputy Clerk

ad

DRAFT



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.b.

Date of EPC Meeting: May 18, 2023

Subject: Agency Monthly Activity Report

Agenda Section: Consent Agenda

Division: All five EPC Divisions

Recommendation: None. Informational report.

Brief Summary: The agency-wide report represents the total number of select divisional activities that were tracked within a specific month.

Financial Impact: No financial impact.

List of Attachments: Agency monthly report for April FY23

Background: Select data that is associated with the EPC's five core functions; citizen support, air and water monitoring, permitting, compliance and enforcement, is tracked monthly by each Division. These monthly activity reports are then tallied to generate one final agency-wide report.

EPC STAFF ACTIVITIES - AGENCY-WIDE
Monthly Activity Report
FY23

		<u>April</u>	<u>FISCAL YEAR TO DATE</u>
A.	<u>Core Function: Citizen Support</u>		
1	Environmental Complaints Received	126	849
2	Agency-wide Public Record Request (Note: does not include division-specific record requests)	30	160
B.	<u>Core Function: Air & Water Monitoring</u>		
1	Air Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	96.8%	N/A
2	Water Quality Monitoring Data Completeness (Note: reflects previous month due to data acquisition delay)	99.7%	N/A
3	Number of Noise Monitoring Events	2	18
C.	<u>Core Function: Environmental Permitting</u>		
1	Permit/Authorization Applications Received	158	1036
2	Applications In-house >180 days	54	N/A
3	Permits/Authorizations Issued	115	939
4	Petroleum Cleanup Cases	68	573
D.	<u>Core Function: Compliance Assurance</u>		
1	Compliance Inspections	394	2469
2	Compliance Test Reviews (NOTE: Wetlands reviews included under D.1)	81	885
3	Compliance Assistance Letters Issued	151	1109
4	Warning Notices Issued	24	130
E.	<u>Core Function: Enforcement</u>		
1	New Cases Initiated	8	31
2	Active Cases	78	N/A
3	Tracking Cases	47	N/A



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.c.

Date of EPC Meeting: May 18, 2023

Subject: Pollution Recovery Fund Budget

Agenda Section: Consent Agenda

Division: Administration Division

Recommendation: Informational Report Only

Brief Summary: The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund.

Financial Impact: No Financial Impact

List of Attachments: PRF Budget Spreadsheet

Background: The EPC staff provides a monthly summary of the funds allocated and available in the Pollution Recovery Fund (PRF). The PRF funds are generated by monetary judgments and civil settlements collected by the EPC staff. The funds are then allocated by the Commission for restoration, education, monitoring, the Artificial Reef Program, and other approved uses.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
FY 23 POLLUTION RECOVERY FUND
10/1/2022 through 4/30/2023**

REVENUE		EXPENDITURES		RESERVES		NET PRF
Beginning Balance	\$ 1,136,503	Artificial Reef	\$ 33,852	Minimum Balance	\$ 120,000	
Interest	\$ 12,201	Open Projects	\$ 345,259	Est. FY 24 Budget	\$ 33,852	
Deposits	\$ 210,710			Asbestos Removal	\$ 5,000	
Total	\$ 1,359,414	Total	\$ 379,111	Total	\$ 158,852	\$ 821,451

PROJECT		Project Amount	Project Balance
FY21 Projects			
TBW 2D Island Living Shoreline	10131.102063.582990.5370.1350	\$ 49,560	\$ 30,541
UNF Multidrug Resistant Bacteria	10131.102063.581990.5370.1353	\$ 50,000	\$ 33,830
USF Fecal Source Detection	10131.102063.581990.5370.1355	\$ 50,000	\$ 13,322
ERI MacDill AFB Saltern Restoration	10131.102063.582990.5370.1356	\$ 37,000	\$ 21,950
UF/IFAS Florida Friendly Landscaping	10131.102063.581990.5370.1358	\$ 8,600	\$ 8,600
		\$ 195,160	\$ 108,243
FY22 Projects			
DOH/EPC Radon Study	10131.102063.534990.5370.1359	\$ 20,860	\$ 5,515
DOH/EPC Radon Study	10131.102063.552001.5370.1359	\$ 14,000	\$ 8,197
Heckman Petro. Assess.	10131.102063.531001.5370.1297	\$ 15,000	\$ 15,000
		\$ 49,860	\$ 28,712



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.d.

Date of EPC Meeting: May 18, 2023

Subject: Legal Case Notification

Agenda Section: Consent Agenda

Division: Legal Department

Recommendation: None. Informational.

Brief Summary: This notification is to assist Commissioners in identifying potential conflicts of interest that may exist and that may require disclosure prior to taking action in a quasi-judicial administrative matter. It is also intended to assist Commissioners in avoiding discussing matters with parties during administrative or civil litigation.

Financial Impact: Standard litigation costs are included in the Legal Department's operating budget, but any individual case may require a future budget amendment.

List of Attachments: None

Background: The EPC Legal Department primarily handles litigation in administrative and civil forums. A list of new cases the EPC opened since the previous Commission meeting is provided below. Occasionally, a new case or cases, may be disposed of in between the prior and current EPC meetings, yet this list will still be provided for continuity and consistency.

Administrative appeals (a/k/a administrative hearings, petitions, challenges, or Section 9 Appeals) involve challenges to agency actions such as permit application decisions or administrative enforcement actions (e.g. – citation or consent order). These proceedings are conducted before an appointed hearing officer who enters a recommended order after an evidentiary hearing. After the hearing officer issues the recommendation, the administrative appeal is transferred back to the Commission to render a final order. Acting in this quasi-judicial capacity, the Commission and all parties are subject to ex-parte communication restrictions. After receipt of an appeal or a request for an extension of time to file an appeal, the Commission should avoid discussing those cases. The chart below generically refers to these cases as “Administrative Appeal,” but it could also be an extension of time to file an appeal.

The purpose of providing notice of new cases is to assist Commissioners in identifying persons or entities that may present a conflict of interest. Certain conflicts may require the Commission to recuse themselves from voting on a final order. Please note, the Legal Department provides notice of sufficient

appeals to the Commission via e-mail to assist in the conflict check process and as a reminder to limit communications; therefore, the Commission may have already received prior notification of the administrative case(s) listed below.

If the EPC becomes a party in civil litigation either through an approved Request for Authority to Initiate Litigation or by receipt of a lawsuit, the case will also be listed below. Any attorneys representing opposing party(ies) must communicate through the EPC counsel and should not contact the Commission directly. It also recommended that the Commissioners avoid discussing litigation prior to consulting with EPC counsel.

Please direct any calls or e-mails concerning administrative or civil litigation to the EPC Legal Department.

NEW LITIGATION CASES OPENED SINCE LAST EPC COMMISSION MEETING:

EPC Case No.	Date Opened	Case Type	Case Style	Division
23-EPC-003	04/27/23	Administrative	Gregory Hart and Karin Hart v. EPC	Wetlands



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 7.e.

Date of EPC Meeting: May 18, 2023

Subject: Request for authority to take appropriate legal action against Misho Investments, LLC.

Agenda Section: Consent Agenda

Division: Waste Division

Recommendation: Grant authority to pursue appropriate legal action and grant Executive Director or designee settlement authority.

Brief Summary: The Respondent Misho Investments, LLC owns property located at 7501 West Hillsborough Avenue, Tampa, Florida, folio #008095.0000 (Property). Inspections of the Property on December 11, 2019, March 16, 2021, June 16, 2022, and January 17, 2023 revealed numerous violations of applicable Underground Storage Tank (UST) rules under which the EPC has State FDEP contracted authority. The required work to correct the violations has not been completed and the Property owner remains responsible for corrective actions. On February 15, 2023, a Citation of Violation and Order to Correct was issued against the Respondent for the failure to address the UST rule violations. The Respondent is currently not in compliance with the Citation and the applicable UST rules, thus staff recommends litigation to enforce the Citation.

Financial Impact: There is no immediate financial impact anticipated for this item. Funding for litigation may utilize general fund and Waste Division contract funds. EPC will seek to recover the costs of any litigation.

List of Attachments: None

Background: The EPC, through a contracted program with the FDEP, conducts compliance and enforcement actions in Hillsborough County concerning Underground Storage Tank (UST) inspections and enforcement. The EPC also has authority for this action under its Enabling Act, Chapter 84-446, Laws of Florida, as amended and the EPC has adopted in EPC Rule Chapter 1-7, Waste Management Rule, the standards and criteria from FDEP Rule Chapter 62-761, F.A.C. to address this type of UST violation.

The Respondent Misho Investments, LLC owns property located at 7501 West Hillsborough Avenue, Tampa, Florida, folio #008095.0000 (Property). A retail gasoline station is located on the Property. Inspections of the Property on December 23, 2019, March 16, 2021, and June 16, 2022, revealed numerous violations of applicable Underground Storage Tank (UST) rules under which the EPC has State FDEP contracted authority. Specifically, the Respondent has failed to comply with the following rules:

- a. Section 62-761.405(3), F.A.C. – Incident Notification Form was not submitted to EPC for the unexplained L1 Regular Unleaded STP Sump Fuel Alarm on February 7, 2022.
- b. Section 62-761.430(4), F.A.C. – Investigation results not submitted to EPC for the unexplained

L1 Regular Unleaded STP Sump Fuel Alarm on February 7, 2022.

- c. Section 62-761.700(1)(d), F.A.C. – Integrity testing of dispenser 1 not completed after release.
- d. Section 62-761.420(2), F.A.C. – Failure to maintain and demonstrate financial responsibility.
- e. Section 62-761.700(1)(c), F.A.C. – Failure to properly maintain or operate a storage tank system, major rust noted on premium STP head and components.
- f. Section 62-761.700(3)(a), F.A.C. – Failure to perform integrity testing of secondary containment systems and interstitial spaces.

The required work to correct the violations has not been completed and the Property owner remains responsible for corrective actions. On February 15, 2023, a Citation of Violation and Order to Correct was issued against the Respondent for the failure to address the UST rule violations. The Property remains out of compliance with the Citation and the applicable laws and rules concerning petroleum contamination.

The EPC staff request the Commission grant staff authority to take appropriate legal action, including but not limited to filing a civil lawsuit, and also authorize the Executive Director to enter into any potential settlement.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 8.a.

Date of EPC Meeting: May 18, 2023

Subject: Rule Adoption Public Hearing to consider amendments to the EPC's Administrative Procedures Rule, Chapter 1-2, Rules of the EPC

Agenda Section: Public Hearing

Division: Legal Department

Recommendation: Approve adoption of rule amendments to Chapter 1-2, Rules of the EPC, and authorize staff to make typographic corrections as needed.

Brief Summary: Pursuant to EPC Act and Chapter 1-2, Rules of the EPC, a noticed Public Hearing shall be held by the Commission to adopt or amend a rule. EPC staff drafted proposed amendments to Chapter 1-2 to address various updates including requiring electronic filing of legal documents, clarifying administrative appeal procedures, adopting updated rules of judicial procedure, and providing permit application completeness criteria. Two public workshops were held.

Financial Impact: None anticipated.

List of Attachments: Proposed Amended Chapter 1-2, Rules of the EPC (Draft version dated April 25, 2023)

Background:

Pursuant to the Hillsborough County Environmental Protection Act (EPC Act) Section 5(2), the EPC must hold a noticed public hearing to approve a rule or rule amendment. On August 18, 2022, the EPC Commission was informed that EPC staff began drafting amendments to the Administrative Procedures Rule Chapter 1-2. Chapter 1-2 provides the procedures on how to challenge EPC agency actions (e.g., permits), how to apply for a variance, public noticing of EPC actions, and rulemaking procedures. The rule was last revised in August of 2012.

It has been over 10 years since the last rule amendments were made to Chapter 1-2 and these changes are necessary to address electronic filing of documents, clarify administrative appeal procedures, and adopt updated rules of judicial procedure. Most changes are non-substantive cleanup language. EPC staff propose one substantive change to help close applications where the applicant is not responding to the EPC.

Below is a summary of the main proposals:

1. Creates a uniform definition for "permit" that includes permits, authorizations, or EDAs.

2. Requires administrative litigation documents be filed via e-mail instead of hard copy, and leaves open the opportunity for EPC to create a legal filing portal in the future.
3. Adopts the Florida Rules of Judicial Administration mainly to provide rules for computation of litigation deadlines.
4. Allows EPC to deny a permit application for failure to respond to a request for additional information (RAI). At a minimum the applicant must be given 30 days to respond to the RAI. This change is similar to how the Florida Department of Environmental Protection and Tampa Port Authority can deny or cancel permit applications for lack of a reply.
5. Codifies case law and current practice that if the EPC amends its position during a challenge, EPC can issue a change of agency action.
6. Codifies case law and current practice that if a permit is modified, only the modified parts can be challenged, not the underlying original permit.

EPC staff have conducted two public workshops with stakeholders to review the proposed amendments and seek feedback. The workshops were held on April 28, 2023 at 11:00 a.m. and on May 2, 2023 at 5:30 p.m. Additionally, EPC staff announced the workshops and public hearing, and provided a brief overview of the changes at a Hillsborough County Bar Association environmental and land use conference on April 27, 2023. The rule drafts, notice of workshops, and notice of opportunity to send comments were provided via group e-mails, social media postings, and website postings over the last four weeks.

Pursuant to noticing requirements in the EPC Act and Chapter 1-2, Rules of the EPC, this public hearing was noticed in the Tampa Bay Times Hillsborough County Edition on May 3, 2023. The draft rule was placed on the EPC website and the most current draft was updated by April 25, 2023.

EPC staff requests the Commission conduct a public hearing, approve adoption of the rule amendments, and in the event any typographical errors are discovered after the hearing, make the necessary non-substantive corrections, prior to filing the rule with the Clerk.

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

**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 and Public Records
- 1-2.04 Options for Administrative Review
- 1-2.05 Request for Decision of the Executive Director
- 1-2.051 Public Notice Requirements
- 1-2.052 Repeal of Decision of the Executive Director
- 1-2.053 Request for Additional Information
- 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 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 V (Chapter 120 Delegated Programs)

- 1-2.40 Petition of Chapter 120 Delegated Action

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

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

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

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 3/16/06 and effective 3/17/06.

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 the Special Act Chapter 84-446, Laws of Florida as Amended by Chapter 87-495 (EPC Act) or staff authorized in writing to sign agency actions on his or her behalf.

(c) *Permit* means written approval from the Executive Director to conduct an activity regulated by the EPC. This is also referred to as an authorization or Executive Director Authorization.

Section History - adopted 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

1-2.01 DOCUMENTS

(a) All documents filed pursuant to the procedures in this rule shall contain the name of the person filing, their address and telephone number, e-mail address, ~~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.

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

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

(c) The original initiating document for all processes shall be served upon the Commission or the Executive Director through delivery of an e-mail to the Legal Department or any other electronic filing method expressly provided by the Executive Director, unless stated differently as provided in each part. The original of subsequent documents shall be provided via e-mail to the appropriate Hearing Officer, mediator or party.

(d) The e-mail used in any initial pleading shall be the e-mail contact for future service of pleadings and correspondences in the matter unless a party files a separate Notice of E-Mail Designation identifying an alternate e-mail for service in any matter.

(e) A representative must file a notice of appearance if there is an addition or change in representation during any administrative proceeding.

Section History - amended 3/16/06 and effective 3/17/06; amended 5/xx/23 and effective 5/xx/23.

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 and effective 8/21/97.

1-2.03 DISCOVERY and PUBLIC RECORDS

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 itself of discovery at its own expense as allowed by the Florida Rules of Civil Procedure, the Florida Rules of Judicial Administration, or as permitted by the Hearing Officer, Administrative Law Judge or mediator.

Section History - amended 3/16/06 and effective 3/17/06; amended 5/xx/23 and effective 5/xx/23.

1-2.04 OPTIONS FOR —ADMINISTRATIVE REVIEW

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

Mediation. If a 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 the Commission or staff is estopped from taking a certain position in a matter because of a prior act of the Commission or staff, the applicant may request review to determine applicability of estoppel as provided in Part III below.

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

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

Petition Under Chapter 120 Delegated Program. If a 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.) petition as provided in Part V below.

Variance or Waiver. If a regulated entity seeks a variance or waiver from existing regulations, it may apply as provided in Part VI below.

Private Property Rights. If a regulated entity seeks relief as provided by section 70.001, 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 section 70.51, 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 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

1-2.05 REQUEST FOR DECISION OF THE EXECUTIVE DIRECTOR

Any applicant for any ~~authorization or~~ permit may request a written decision of the Executive Director approving or denying the application no earlier than 30 calendar days after submittal of a complete application. The written request shall cite this rule section and shall provide a basis for the need for a written decision from the Executive Director. Except where a different time is provided by another rule, the Executive Director shall issue a written decision setting forth 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 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

1-2.051 PUBLIC NOTICE REQUIREMENTS

(a) **General Noticing.** Any applicant for any of the following permits or authorizations from the Executive Director shall provide notice to citizens who may be affected by the issuance of the permit ~~or authorization~~: initial wastewater permits in excess of 100,000 gallons discharge per day; authorizations issued under Rule 1-7.202(1)(c) or (d); authorizations issued under Rule 1-10.05(2)(a)(1); and air construction permits issued under Chapter 1-3. Public notification required by any other law that meets this noticing rule shall be sufficient and this rule shall not require any duplicate notice. Compliance with noticing requirements under Stationary Air Pollution Sources Chapter 1-3, Rules of the EPC shall serve as compliance with this sub-section (a). 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 30 inch by 48 inch sign and must be legible from the nearest public road. The notice format shall be available by contacting the ~~Commission-Executive Director~~ staff. Notice-but shall be posted by the applicant at the applicant's expense no later than 15 calendar days after submittal of any application to the

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Executive Director. Signage must remain on the property for at least 30 calendar days but must be removed by the applicant no later than 30 calendar days after 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: application for renewal, modification, or transfer of the aforementioned permits ~~or authorizations~~, and application for any initial operating permit that follows issuance of a construction permit at the same facility for any of the aforementioned permits or authorizations.

(b) **Projects of Heightened Public Concern.** 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 the EPC Act may be deemed by the Executive Director as "projects of heightened public concern." A project of heightened public concern may include any activity that requires an Executive Director's permit ~~or authorization~~ and also any renewal, modification, transfer, or subsequent operating permit (collectively referred to as "activity"). A project of heightened public concern may also include an activity referred to in subsection 1-2.051(a).

(1) (A) The following subsection applies to all applicable activities, except for General Permits and renewals of competitive motor vehicle events authorizations. Within 20 calendar days of notice from the Executive Director that the activity is a project of heightened public 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 or a municipality which lie within one mile of the activity. The staff will provide the applicant with the 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.

(1) (B) For projects involving General Permits and renewals of competitive motor vehicle events authorizations, within 5 calendar days of notice from the Executive Director that the activity is a project of heightened public 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 1,000 feet of the activity; and (iii) all neighborhood organizations registered with the Commission or a municipality which lie within 1,000 feet of the activity. The staff will provide the applicant with the potentially affected neighborhood organization lists and, within 5 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.

(1) (C) If the General Permit or competitive motor vehicle events authorization is a renewal and at the time of renewal it is deemed a project of heightened public concern, the applicant shall post a sign provided by the ~~EPC~~Executive Director's staff. The sign must be posted conspicuously on the property so

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as to be readily viewable from the busiest adjacent public roadway. The applicant must pick up and post the sign within 5 calendar days of notice of the ~~EPC's~~ Executive Director's heightened public concern determination, and the sign must remain posted for 20 days.

(2) Within 20 calendar days of notice from Executive Director that the activity is a project of heightened public 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 at the applicant's expense. Signage must remain on the property for at least 30 calendar days but must be removed by the applicant no later than 30 calendar days after 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. This subsection is not applicable to General Permits and renewals of competitive motor vehicle events authorizations.

(3) Upon request from any substantially affected person or the Executive Director regarding a project of heightened public concern, the staff may also conduct a public workshop to be held no later than 10 calendar days before the intended agency action is issued or for General Permits and renewals of competitive motor vehicle events authorizations, as soon as practicable.

(4) Within 20 days of issuance of the agency action from the Executive Director for an activity deemed a project of heightened public concern the applicant shall publish at the applicant's expense, a notice of agency action or intended agency action, in a newspaper of general circulation, as defined in Chapter 50, F.S., within the affected area. 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. This subsection does not apply to General Permits. General Permits are not required to be noticed unless so required under State rules or section 403.814(3), F.S. is utilized. Renewals of competitive motor vehicle events authorizations deemed a project of heightened public concern must also publish notice pursuant to this section, and publication by the applicant of such notice must occur within 20 days of agency action or within 20 days of the applicant becoming eligible to use the renewal.

(c) **Processing Timeframes.** Any form of notice or workshop required under sub-sections (a) or (b) shall not extend any timeframes for reviewing applications under any applicable laws governing application processing.

Section History - New and adopted 04/20/06 and effective 04/21/06; amended 12/13/07 and effective 12/14/07; amended 8/9/12 and effective 8/20/12; ~~amended 5/xx/23 and effective 5/xx/23.~~

1-2.052 REPEAL OF DECISION OF THE EXECUTIVE DIRECTOR

(a) A decision of the Executive Director, including Director Authorizations, permits, or other decisions shall be effective until suspended, revoked, surrendered, or expired.

(b) Failure to comply with pollution control laws and rules shall be grounds for suspension or revocation.

(c) The Executive Director may suspend or revoke any decision issued by him or her if he or she finds that the permit holder or his or her agent:

(1) Submitted false or inaccurate information in the application or required reports.

(2) Has violated law, Commission or Executive Director orders, rules or approval conditions.

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(3) Has failed to submit operational reports or other information required by Commission rules.

(4) Has refused lawful inspection.

(d) No suspension or revocation shall become effective except after notice is served by personal service or certified mail upon the person or persons named therein. However, if a hearing is requested pursuant to Part IV of this rule, the effective date will be based on a final order issued after the hearing process is finalized. The notice shall specify the provision of the law, or rule alleged to be violated, or the permit condition or order alleged to be violated, and the facts alleged to constitute a violation thereof. This subsection does not preclude the ~~Commission~~ Executive Director from seeking immediate injunctive relief under section 18 of the EPC Act.

Section History - New and adopted 8/9/12 and effective 8/20/12.

1-2.053 REQUEST FOR ADDITIONAL INFORMATION

If the Executive Director asks a permit applicant to respond to a written request for additional information (RAI) and the applicant does not timely respond in writing to the RAI, that failure to respond to the RAI is grounds for denial of the application. The denial does not prohibit the applicant from reapplying for the same activity by submitting the appropriate application and fee. Unless a law provides differently, the Executive Director will provide at least 30 days to respond to an RAI.

Section History - New and adopted 5/xx/23 and effective 5/xx/23.

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

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

(b) In the case of legally sufficient petitions filed under Part V, Administrative Law Judges will be those assigned by the Division of Administrative Hearings.

(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 1-2.61.

Section History - amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12.

1-2.08 JUDICIAL REVIEW

(a) Upon the conclusion of an appeal pursuant to Section 9 of the EPC Act, ~~Chapter 84-446, Laws of Florida administrative appeal process~~, any person aggrieved by the final administrative decision (Final Order) of the Commission may seek judicial review by filing an appeal with the Second District Court of Appeal.

(b) Upon conclusion of a Chapter 120 administrative petition process, any person aggrieved by the Final Order pursuant to a delegation from the 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 3/16/06 and effective 3/17/06.

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**PART II
(Informal Process)**

1-2.10 PRE-APPLICATION MEETING

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

Section History - amended 3/16/06 and effective 3/17/06.

1-2.11 REQUEST FOR MEDIATION

(a) Any person 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 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 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.

(b) Mediation may consist of engaging the services of a trained mediator 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.

(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 mediators 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.

(2) If appellant does not make a selection within 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.

Section History - amended 3/16/06 and effective 3/17/06.

1-2.12 MEDIATION PROCESS

(a) The mediation process shall be subject to Chapter 44, F.S. The Mediator shall schedule the mediation 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. The Mediator may request the parties submit position papers or other documentation to assist in preparing the Mediator.

(1) The mediation 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.

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(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.

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

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

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

(e) 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 to appoint a Hearing Officer pursuant to section 1-2.07 or will refer the matter to the Division of Administrative Hearings pursuant to Part V, with notice thereof provided to each party.

Section History - amended 3/16/06 and effective 3/17/06.

PART III (Estoppel)

1-2.20 REQUEST FOR HEARING TO DETERMINE ESTOPPEL

(a) Any applicant for a permit ~~or Director's authorization~~ who claims that the Commission or Executive Director is estopped from implementing its any applicable 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.

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

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

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

(3) Denying the applicant a permit ~~or approval~~ under the rules adopted pursuant to the EPC Act, or issuing a permit ~~or approval~~ consistent with the criteria and standards of ~~said any~~ rules, would destroy his or her rights and be inequitable, unjust or fundamentally unfair.

(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 with findings and conclusions, and assign the request for hearing to a Hearing Officer within 30 calendar days of receipt of the initial request, unless a different time is agreed to by the parties. Such report shall contain a Notice of Rights explaining the applicant's administrative review rights under Part IV of this rule.

(d) The Hearing Officer shall determine procedural matters and shall follow the procedures under Part IV of this rule where applicable and not in conflict with this section. 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 b above. The applicant has the burden of demonstrating that the criteria are met. Upon receipt of the recommendation, the Commission will render a Final Order at its next regular

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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.

(e) The Hearing Officer assigned to hear the request shall be a Hearing Officer appointed by the Commission pursuant to section 1-2.07~~(4)~~ above.

(f) Notwithstanding anything in 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 of the county, the request for relief under this part may be denied by the Commission.

Section History - amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

PART IV (Chapter 84-446 Appeal)

1-2.30 ADMINISTRATIVE REVIEW

(a) Any person who has received a permit, Citation of Violation, Order to Correct, or other written decision of the Executive Director pursuant to the EPC Act, and any person whose interests protected by the EPC Act 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.

(b) To be accepted and processed, a Notice of Appeal must be received by the Legal Department on behalf of the Commission Chair within 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.

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

(1) The name, address, e-mail, and telephone number of the Appellant; the name, e-mail, 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 perform a sufficiency review as described below and accept or dismiss the Notice of Appeal. ~~I, and if accepted by the Legal Department, it shall,~~ unless otherwise provided by law, refer the matter to the assigned Hearing Officer. ~~The Notice of Assignment of Legal Department shall also provide 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.

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(e) A Notice of Appeal shall only be dismissed if it is not in substantial compliance with subsection (c) of this rule section, ~~or~~ it has been untimely filed or it contains allegations or requests for relief that are not designed to be addressed in a Section 9 Appeal. Dismissal of a Notice of Appeal shall, at least once, be without prejudice to allow the Appellant's Appellant to fileing 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.

(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.

(h) If the law or facts warrant it, the Executive Director may revise the agency's position and file a change of agency action. Upon serving a change of agency action to the parties, the Appellant may amend the Notice of Appeal in accordance with section 1-2.30(g) above or any party may file an appropriate response.

(i) A notice of appeal challenging a modification (e.g. modified permit) of an Executive Director's final decision shall be limited to the changes made by the modified decision and does not re-open the original Executive Director decision to an administrative appeal on the unchanged portions of the decision.

Section History - amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

1-2.31 FILING, SERVICE

(a) A Notice of Appeal shall be served and filed by ~~mail, electronic mail ("e-mail") or other specified electronic method, or hand delivery with the Commission Chair, and a copy served onto~~ the Legal Department.

(b) Upon transfer of the case to the Hearing Officer, the oOriginal pleadings, papers, documents or notices shall be filed electronically 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.

(c) ~~Except for a Notice of Appeal, S~~service of any pleadings, papers, documents or notices ~~may must~~ be by ~~regular United States mail, e-mail electronic mail ("e-mail") or facsimile if desired or any other specified electronic method. Otherwise, Service by e-mail shall be available where all parties have access to e-mail and the~~ procedures for service shall be in accordance with the Florida Rules of Civil Procedure and the Florida Rules of Judicial Administration regarding electronic filing and service. ~~E-mail will not be mandatory unless the Hearing Officer enters an order requiring such method of service.~~ If a party is represented by an attorney of record, service shall be had by serving 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

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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 appeal or request for extension of time to file an appeal within 20 calendar days waives the right to request a hearing on such matter and the decision shall become final.

Section History - amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

1-2.32 PROCESS BEFORE THE HEARING OFFICER

(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.

(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.

(c) Each party may avail itself of discovery at 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 Civil Procedure as guidance. Requests for reconsideration or rehearing made within 10 calendar days of a ruling on a motion may be granted.

(d) The Hearing Officer shall have the power to issue notices of hearings, subpoenas, and to require the attendance of witnesses, and the production of evidence, to administer oaths, and take testimony as may be necessary. 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 appealed decision, or the Appellant's written withdrawal of his or her appeal.

(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 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, a motion to strike, or a motion for summary final order, 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.

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(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 3/16/06 and Effective 3/17/06; amended 5/xx/23 and effective 5/xx/23.

1-2.33 ADMINISTRATIVE HEARING

(a) All hearings shall be public.

(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:

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

(2) Submit rebuttal evidence and conduct such cross examination as may be required, subject, however, to the ruling of the Hearing Officer.

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

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

(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 applicant to establish entitlement to a permit, order, authorization, exemption, or exception allowed by the rules. Fact issues not raised by the Notice of Appeal shall be accepted as undisputed. Hearings held under this section shall be *de novo* in nature.

(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.

(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

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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.

(g) Where procedural matters are not provided for in this rule or by the Hearing Officer, the Florida Rules of Civil Procedure and the Florida Rules of Judicial Administration may be applied.

Section History - amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

1-2.34 REPORT AND RECOMMENDATION

(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 pursuant to the EPC Act, and rules promulgated by the Commission.

(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 based upon the evidence submitted to the Hearing Officer and based upon applicable laws and rules. The Hearing Officer shall not rule on constitutional issues, 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.

(d) When a Hearing Officer issues the recommended order, the file maintained by the Hearing Officer in that matter shall be forwarded-provided to the Commission Chair Legal Department, and the Hearing Officer shall have no further responsibility in the matter unless the Commission refers it back for additional review.

Section History - amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

1-2.35 EXCEPTIONS AND FINAL ORDER

(a) The parties may file exceptions to findings of fact and conclusions of law contained in the Hearing Officer's recommended order to the Legal Department 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. The Legal Department will distribute the exceptions and responses to the commissioners.

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

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

(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 all parties on issues reasonably

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raised by the exceptions. Each party shall have ten minutes to argue their exceptions and respond to another party's exceptions, unless the Commission approves a different time limit. Material questions of fact necessary to final application of the laws and rules, will be referred back to the Hearing Officer for review.

(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.

(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 the EPC Act or the rules enacted pursuant to said act.

Section History - amended 3/16/06 effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/xx/23 and effective 5/xx/23.

PART V (Delegated Programs)

1-2.40 PETITION OF CHAPTER 120 DELEGATED ACTION

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

(b) Any such 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.

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

(d) Upon receipt of the Administrative Law Judge's recommended order, the Executive Director or the Secretary of DEP, as required by the delegation agreement, shall issue a 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 3/16/06 and effective 3/17/06.

PART VI (Variance or Waiver)

1-2.50 REQUEST FOR VARIANCE OR WAIVER

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(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to the EPC Act, where the applicant demonstrates:

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

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

(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, 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.

(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.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation, as defined in Chapter 50, F.S., in the County at least 10 calendar days prior to the public hearing, and such notice shall include a summary of 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.

(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 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 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12.

PART VII (Private Property Rights)

1-2.60 CLAIM UNDER THE BERT HARRIS ACT

(a) Any person claiming that a specific action of the Commission or Executive Director in implementing regulations subject to section 70.001, F.S., has inordinately burdened an existing use or vested right in his or her property as defined in section 70.001(3), F.S., must present a written claim to the Commission Chair with a copy to the Executive Director, within one year of the challenged action. The claim must specifically identify the action taken by 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.

(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.

(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.

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(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.

(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.

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

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

Section History – amended 3/16/06 and effective 3/17/06; amended 5/xx/23 and effective 5/xx/23.

1-2.61 CLAIM UNDER THE DISPUTE RESOLUTION ACT

(a) Any person claiming that a Commission or Executive Director enforcement action, permit, ~~authorization,~~ or ~~other~~ development order unfairly burdens the use of his or her land or real property, may seek relief as allowed by section 70.51, F.S. by filing a written request for appointment of a special master to the Commission Chair with a copy to the Executive Director, within 30 calendar days of the challenged action. The request must specifically identify the action taken by 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.

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

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

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

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

(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.

(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 Commission or Executive Director action and who requests notice of any subsequent proceeding. 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 the Commission or Executive Director, may request permission to participate in the special master proceeding, but not as a party or intervenor.

(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 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

(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 action, and to explore alternatives.

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- (1) The special master will provide at least 40 calendar days notice prior to the hearing.
- (2) The hearing will be informal and not require the services of an attorney. The hearing will be open to the public.
- (3) The special master may subpoena any nonparty witness in the state to aid in the disposition of the matter.
- (4) Actions or statements made by participants in the special master hearing are inadmissible in any subsequent judicial or administrative proceeding.
- (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.
- (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 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), F.S.
- (h) Within 14 calendar days after the conclusion of the hearing, the special master must prepare and submit a written recommendation to the parties.
 - (1) If the special master determines that the action is not unreasonable or unfairly burdens the real property, the proceeding ends and the claimant may pursue other available remedies;
 - (2) If the special master determines that the 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.
- (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. 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.
- (j) Fees, costs and expenses of the special master process are to be shared equally between all governmental parties and the claimant. 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 3/16/06 and effective 3/17/06.

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

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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 3/16/06 and effective 3/17/06.

1-2.71 ADOPTION PROCEDURES

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

(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 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12.

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 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

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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 3/16/06 and effective 3/17/06.

1-2.73 CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS

(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

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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 3/16/06 and effective 3/17/06.

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 3/16/06 and effective 3/17/06.

Rule History:

Adopted 4/25/85

Substantially Amended 8/21/97

Amended Referenced Sections 03/16/2006

Amended Referenced Sections 04/20/2006

Amended Referenced Sections 12/13/2007

Amended Referenced Sections 8/9/2012

Amended Referenced Sections 5/XX/2023

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ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.a.

Date of EPC Meeting: May 18, 2023

Subject: Overview of Air Division Environmental Program and Services

Agenda Section: Regular Agenda

Division: Air Division

Recommendation: Informational Report

Brief Summary: At the request of Commissioner Myers, staff will present the Commission with an overview of the Air Division environmental program and services that are provided for the citizens of Hillsborough County

Financial Impact: No Financial Impact

List of Attachments: None

Background: Staff will present the Commission with an overview of the Air Division environmental programs. The Air Division is responsible for protecting the environment and the health and safety of the public as they relate to air quality. We regulate various sources of air pollution to ensure local, state, and federal rules and regulations are followed. Air pollution sources include, but are not limited to industrial and commercial facilities, such as power plants, petroleum storage terminals, manufacturing, material handling facilities, and dry cleaners, among others. Other activities that generate noise, dust, or involve asbestos and open burning are also regulated. We permit and monitor pollution sources, investigate citizen complaints, and collect and analyze air quality data using special sampling equipment located throughout Hillsborough County.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item # 9.b.

Date of EPC Meeting: May 18, 2023

Subject: Ozone in Hillsborough County

Agenda Section: Regular Agenda

Division: Air Division

Recommendation: Informational Report

Brief Summary: This presentation will provide an overview of what ozone is, how EPC staff monitors for it, and its environmental and human impact.

Financial Impact: No Financial Impact

List of Attachments: None

Background: In the 1970s, the U. S. Environmental Protection Agency created National Ambient Air Quality Standards for several air pollutants to better protect human health and the environment. For over 40 years, EPC staff has monitored for these pollutants, of which ground-level ozone is the most pervasive. Unlike stratospheric ozone which protects us from the sun's harmful rays, ozone is a lung irritant at ground-level. This informational presentation will provide an understanding of what ozone is, why and how EPC staff monitors for it and ways individuals can protect themselves from its effects.



ENVIRONMENTAL PROTECTION COMMISSION

AGENDA ITEM COVER SHEET

Agenda Item #9.c.

Date of EPC Meeting: May 18, 2023

Subject: Legislative Update on Environmental and Administrative Bills

Agenda Section: Regular Agenda

Division: Legal Department

Recommendation: Informational Report

Brief Summary: The regular session of the Florida Legislature convened on March 7, 2023, and adjourned on May 5, 2023. EPC legal staff provides updates on various environmental and administrative bills that may impact the EPC or may be of interest to the EPC.

Financial Impact: No Financial Impact

List of Attachments: None

Background: The regular session of the Florida Legislature convened on March 7, 2023, and adjourned on May 5, 2023. The Commission approved a legislative strategy (EPC Policy No. 2007-02) on March 15, 2007, that gives staff and the Chair continuing direction to monitor, comment on, and lobby, among other things, bills that impact the functions of the EPC. Annually, EPC staff reviews environmental and administrative bills to determine if they may impact the EPC's functions and budget. Although EPC tracks numerous bills, included below is a summary of just a few notable bills regarding environmental regulation or administrative matters that may impact EPC functions or may be of interest:

LEGISLATION THAT PASSED:

Local Ordinances

SB 170 / HB 1515

Sponsored by Senator Trumbull and Representative Brackett

This bill would require local governments to create a business impact estimate explaining the direct economic impact of the proposed ordinance on private for-profit businesses prior to adopting an ordinance. After adoption and upon challenge, enforcement of the ordinance would be suspended if the challenge meets certain criteria. The prevailing party may be awarded attorney's fees if the law is determined to be arbitrary or unreasonable. Among other things, these bills would affect local government rulemaking procedures, but does include certain exemptions such as for ordinances relating to emergencies, procurement, growth policy, land development regulations (zoning, development orders, permits, etc.), adoption of budgets, and ordinances proposed to comply with federal or state law. Important to note is that the proposed amendments are prospective in nature and apply only to ordinances adopted on or after October 1, 2023. Senate Bill 170 passed both chambers and was enrolled. It has not yet been sent to the Governor for signature.

Vessel Regulations (f/k/a Floating Vessel Platforms and Floating Boat Lifts)

HB 847 / SB 1082

Sponsored by Representative Stark and Senator DiCeglie

These identical bills update 403.813 regarding floating vessel platforms to create a presumption of compliance to minimize adverse environmental impacts if FVP is associated with an existing dock. Redefines “local government” to include those operating under 403.182. House Bill 847 was passed by both chambers and enrolled. It has not yet been sent to the Governor for signature.

Use of Phosphogypsum

HB 1191 / SB 1258

Sponsored by House Subcommittee and Representative McClure

House Bill 1191 and Senate Bill 1258 direct the Department of Transportation to conduct a study to determine whether phosphogypsum is suitable for use as a construction aggregate material. FDOT may also consider any ongoing or prior studies to fulfill this requirement in lieu of conducting their own. The study must be completed and a determination on whether phosphogypsum is suitable as an aggregate material must be made by April 1, 2024. If the study finds the use suitable, the material may be utilized as an aggregate in accordance with any existing Environmental Protection Agency (EPA) conditions and approval for the use. The bills are prospective in nature and the use of phosphogypsum for road base is currently prohibited by the EPA. In October 2020, the EPA did conditionally approve the specific use of phosphogypsum in government road construction projects subject to certain terms and conditions. However, in June 2021, the EPA withdrew this conditional approval for specific use and phosphogypsum remains prohibited for use in road construction. House Bill 1191 was passed by both chambers and enrolled. It has not been sent to the Governor for signature.

Appropriations - Fertilizer

SB 2500

Appropriates \$250,000 to University of Florida Institute of Food and Agricultural Sciences (UF IFAS) to study the effectiveness of seasonal fertilizer restrictions.

Implementing the 2023-2024 General Appropriations Act - Fertilizer

SB 2502

Senate Bill 2502 requires that to provide UF IFAS the opportunity to conduct their study on seasonal fertilizer restrictions, county or municipal government cannot adopt or amend between June 30, 2023, and July 1, 2024, a fertilizer management ordinance which includes a prohibited application period (e.g. – summer application ban). Any ordinance in place prior to June 30, 2023, is not impacted but future amendments are not allowed for the above-described year.

Biosolids

HB 1405 / SB 880

Sponsored by Senator Brodeur and Representative Tuck

The bill authorizes the Department of Environmental Protection (DEP) to provide grants to counties, special districts, and municipalities for projects that implement innovative technologies for the disposal of biosolids and for building or upgrading facilities that convert wastewater residuals to class AA fertilizer or other uses. Matching funds are required, except in rural areas of opportunity. HB 1405 will be sent to the Governor for approval.

LEGISLATION THAT FAILED:

Mangrove Planting and Restoration

SB 100 / HB 561

Sponsored by Senator Garcia and by Representatives Mooney and Basabe

These identical bills direct the Florida Department of Environmental Protection to adopt rules for mangrove replanting and restoration which must include specific criteria that addresses significant erosion, protection of barrier and spoil islands, promotes public awareness of mangrove importance, and identifies vulnerable properties along the coastline which may be ripe for local government partnerships. Both bills died in committees.

Management and Storage of Surface Waters

HB 371 / SB 910

Sponsored by Representative Killebrew and Senator Burton

These proposed bills create a new Noticed Exemption framework for certain environmental habitat creation, restoration, and enhancement activities and water quality improvements located on classified agricultural lands and government-owned lands. The exempt activities must result in a “net increase in wetlands resource functions.” Both bills died in committees.

Sovereign Immunity

HB 401 / SB 604

Sponsored by Representative Beltran and Senator Gruters

Both bills propose to increase statutory limits on liability for tort claims against the State and its agencies and subdivisions from \$200,000/\$300,000 per incident to \$2,500,000/5,000,000 per incident, respectively. Further, House Bill 401 1) removes the requirement for local governments to seek a claim bill prior to accepting a settlement, 2) increases the statute of limitations for filing a claim from three years to four years after the claim accrues and 3) reduces from six months to three months the general pre-suit statutory time period for a government entity to review and dispose of a claim. Conversely, Senate Bill 604 would require the Department of Financial Services to adjust the limitations on tort liability every year. Both bills died in committees.

Recycling of Covered Electronic Devices

HB 691 / SB 1030

Sponsored by Representative Basabe and Senators Trumbull and Stewart

These similar bills would require by January 1, 2025, that each county submit to FDEP a plan for ensuring the county will appropriately dispose of covered electronic devices at a permitted reclamation facility. Effective January 1, 2026, any person who owns or operates an industrial, institutional, or commercial facility must dispose of that facility’s covered electronic devices in a permitted reclamation facility. Effective January 1, 2028, it will be unlawful for any person to dispose of covered electronic devices in this state except at a permitted reclamation facility. Both bills have died in committees.

Dangerous Tree Preemption

SB 886

Sponsored by Senator Stewart

Senate Bill 886 proposes to repeal the tree preemption law, Section 163.045, F.S., that was enacted in 2019. This bill has not been heard by any committees and will likely not pass this session, primarily because in last year’s legislative session, the law was clarified to address concerns from regulatory agencies. Repeal of this law would expand EPC’s regulatory authority back to pre-2019 status for the removal of hazardous trees within wetlands. This bill was never heard by its assigned committees.

Land and Water Management

HB 1197 / SB 1240

Sponsored by Representative Maggard and Senator Burgess

The identical bills propose to prohibit counties and municipalities from adopting laws, regulations, rules, or policies relating to water quality or quantity, pollution control, discharge prevention or removal, or wetlands and preempts such regulation to the State. Further, the bills require FDEP to notify Florida’s Chief Financial Officer of certain violations which would require the CFO to withhold certain funds from the county or municipality found in violation of the statute. Neither bill was heard by their assigned committees.

Organic Material Products

HB 1361 / SB 1472 / HB 1343

Sponsored by Representative Truenow and Senator Bradley

The comparable bills both propose amendments to Section 823.14, F.S., which is Florida’s Right to Farm Act. Specifically, they both define what “organic material” is and include organic material within other applicable definitions for consistency in application of the section. In general, the collection, storage, processing, or distribution

of organic material products (i.e. – yard waste from landscaping or land clearing) is deemed a bona fide farm operation. This preemption of local government would limit the ability of the EPC to regulate facilities located on classified agricultural property that meet the proposed criteria. House Bill 1361 was passed by its three referred committees, but House Bill 1361 was not taken up by the House chamber. Senate Bill 1472 died in committees. Near the end of the session, the language of these bills was proposed in House Bill 1343 entitled Agricultural Property, but the amendment was withdrawn from House Bill 1343's most recent draft. HB 1343 was not passed by both chambers prior to the end of the legislative session.

In the event the Commission or the Executive Director proposes a letter of support or opposition for any of these or other pending bills, staff will work with the Chair to issue it.